

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 3rd DAY OF APRIL 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

APPLICATION No.1921/86(F)

S.Nanjaiah,
Peon (Selection Grade),
All India Radio, residing
at No.14, 1st Cross,
Dattatreya Extension,
Bangalore - 19.

(Shri A.V.Srinivas

... APPLICANT
... Advocate)

v.

The Station Director,
All India Radio,
Bangalore - 1.

Sri S.S.Hiremath,
Programme Executive,
All India Radio,
Bangalore - 1.

Sri N.G.Srinivas,
Inquiry Officer,
All India Radio,
Bangalore - 1.

(Shri M.S.Padmarajaiah

... RESPONDENTS
... Advocate)

This application has come before the court today.

Hon'ble Shri P.Srinivasan, Member(A) made the following :

O R D E R

This is an application under Section 19 of the
Administrative Tribunals Act, 1985. The applicant is currently
working as a Peon in the All India Radio Station at Bangalore .By
memorandum dated 25.11.83(Annexure M), disciplinary proceedings were
initiated against the applicant under Rule 14 of the Central Civil
Services (Control, Classification & Appeal) Rules (CC(CA)).
Articles of charge, list of documents relied upon in support of the



charges and list of witnesses proposed to be called were all enclosed with this memo. An Inquiry Officer (IO) was duly appointed thereafter. When the IO commenced the enquiry, the applicant made a request that he should be allowed to engage a legal practitioner to defend him. This request was rejected by the IO by order dated 23.10.1986. In that letter the ~~IO~~ wrote that the contents of the applicant's letter asking for such permission "have been brought to the notice of the Station Director who after careful consideration has disallowed his claim and directed the undersigned to continue the enquiry proceedings". It is this order dated 23.10.1986 issued by the IO (Annexure-W) and an earlier letter dated 2.9.1986 issued by the same authority to the same effect which are challenged in this application. The applicant contends that the rejection of his request for engaging a legal practitioner was illegal and as a result the entire disciplinary proceedings were vitiated. At the time of hearing to day, Shri A.V. Srinivas, learned counsel for the applicant presented an application for adding one more prayer challenging the order by which the applicant was suspended pending initiation of disciplinary proceedings. The said order suspending the applicant appears at Annexure G (Page 20 ^{new} of the application) and is referred to in the main application also. The contention in this regard is that the Programme Executive who passed the order on 27.8.83 suspending the applicant was not competent to do so as he was not the disciplinary authority. Since this additional prayer is intimately connected with the disciplinary proceedings challenged in the main application, we admitted it for consideration.

2. Shri Srinivas contended that in terms of Rule 14(8) the disciplinary authority should have considered the applicant's request for engaging a legal practitioner to defend him. The relevant portion of the said rule reads thus :-

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"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:"

According to Sri Srinivas, there are two alternative situations under which a delinquent official could be allowed to engage a legal practitioner. The first was when the Presenting Officer appointed by the disciplinary authority is himself a legal practitioner and the second was where having regard to the circumstances of the case, the disciplinary authority permits the delinquent official to engage a legal practitioner. The first situation, he admits, does not exist here because the Presenting Officer was not a legal practitioner. However, his contention is that having regard to the circumstances of this case, the disciplinary authority should have considered the case of the applicant to engage a legal practitioner. The applicant was a Group 'D' official not himself well versed in the rules or in the procedure of disciplinary proceedings. He was uneducated. Moreover, being a Group 'D' employee, he was unable to enlist the assistance of any Group 'B' or Group 'C' employee as such employees were not willing to come to the aid of a Group 'D' employee. He had tried his best to get a departmental official to defend him but had failed in his efforts. These were the circumstances, according to Shri Srinivas, contemplated in the last portion of rule 14(8)(a) extracted above and the disciplinary authority had not applied his mind at all to this provision. So far as the impugned suspension orders are concerned, Sri Srinivas re-iterated that the Programme Executive who passed the said order was not competent to do so in view of Rule 10 of the CCS(CCA) Rules. According to this rule, the appointing authority or any authority empowered in that behalf by the President could pass an order of suspension. The appointing authority in the present

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case was the Station Director. He was not aware of any order passed by the President empowering the Programme Executive to pass a suspension order in this case. Therefore, he contended that the order of suspension was liable to be struck down as incompetent.

5. Shri M.S.Padmarajaiah strongly opposes the contentions of Sri Srinivas. Drawing attention to Rule 14(8)(a), Sri Padmarajaiah explained that apart from a case where the Presenting Officer was a legal practitioner, permission to a delinquent Government Official to engage a legal practitioner could be allowed if the Presenting Officer, though not a legal practitioner, was a trained person with considerable experience of conducting departmental proceedings. In any case, according to him, the fact that the applicant was a Group 'D' employee and was uneducated or that he was unable to enlist the support of any Group 'B' or Group 'C' official cannot be one of the circumstances contemplated in the provision in the said rule. He also disputed the fact that the applicant was an uneducated person. If permission was given to engage a legal practitioner on the ground that the delinquent official is a Group 'D' official, departmental enquiries in their cases will cease to be domestic enquiries and will be converted into court proceedings which is not the intention. He drew our contention to the decision of this Tribunal in the case of S.K.Srinivas Vs. Director General, Employees' State Insurance Corporation and others (A.No.1653/86) decided on 30.1.87 where the question of permitting a delinquent official to engage a legal practitioner was considered. So far as the order of suspension was concerned Sri Padmarajaiah showed us the ordersheet in which the Station Director had put his initial on the note submitted to him in this regard by the Programme Executive. According to him, this clearly showed that it was the Station Director who passed the order of suspension and the Programme Executive merely communicated it to the applicant.

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6. We have considered the rival contentions very carefully.

Sri Srinivas drew our attention to the decision of the Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilip Kumar Raghavendra-nath 1983 SCC(L&S) 61. We may usefully extract the following passage occurring in para 8 of the judgement of the Supreme Court:-

"8. The time honoured and traditional approach is that a domestic enquiry is a managerial function and that it is best left to management without the intervention of persons belonging to legal profession. This approach was grounded on the view that a domestic tribunal holding an enquiry without being unduly influenced by strict rules of evidence and the procedural juggernaut should hear the delinquent employee in person and in such an informal enquiry, the delinquent officer would be able to defend himself. ...A strikingly different view was sounded by Lord Denning in *Patt v. Greyhound Racing Association Ltd.* ... Lord Denning observed as under:

I should have thought, therefore that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.

The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequence as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner".

What the Supreme Court said was that the earlier practice of strictly keeping out outside agencies in a domestic enquiry may require reconsideration and that the "trend" in England was to allow representation by a legal practitioner. In that case, however, the Presenting Officer was a legal practitioner and there was no difficulty in upholding the claim of the official concerned to engage a legal practitioner. Therefore, that decision does not clinch the issue for the applicant here.

Turning to the rules, Sri Srinivas is right in contending that even when the Presenting Officer is not a legal practitioner, the rule requires the disciplinary authority to exercise his discretion and permit the delinquent official to engage a legal practitioner "having regard to the circumstances of the case". The question therefore is whether the disciplinary authority had applied his mind and exercised the discretion allowed to him in rejecting the claim of the applicant. That does not seem to be the case. The applicant's claim has been

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rejected only on the ground that the Presenting Officer was not a legal practitioner, but the second part of the provision seems to have been lost sight of. We would therefore direct the disciplinary authority to consider the request of the applicant under the last limb of rule 8(a) of the Central Civil Services (Control, Classification and Appeal) Rules and give a reasoned decision after considering the circumstances of the case. The applicant will be free to urge before him all that has been urged before us viz., that he is an uneducated Group 'D' employee and that he is unable to find any official to defend him. The disciplinary authority may also suggest a panel of names of officials who could defend the applicant and allow the applicant to make a choice, since the applicant's complaint is that he had failed to secure such assistance himself. The applicant in his turn could also furnish to the disciplinary authority a list of officials, any one of whom he would like to have as his defence assistant. Sri Padmarajaiah states that the disciplinary authority will make arrangements to relieve the official so chosen to assist the applicant subject to the rules.

7. So far as the order of suspension is concerned, it is clear that on the face of it, it has been passed by the Programme Executive who is not the disciplinary authority. Nor is it the contention of the respondents that he was specially empowered under Rule 10. The contention of the respondents is that the order was in fact passed by the Station Director but communicated by the Programme Executive. The records in original were shown to us. The noting in this connection made by the Programme Executive reads as follows:-

"Since there is a prima facie case against Sri Nanjaiah for departmental proceedings, he is being placed under suspension immediately pending enquiry.
F.C.signed.

-sd-

SD for information please."

The letters F.C. stand for the fair copy of the order issued by the

P. S. V.

Programme Executive. The letters SD stand for Station Director. Below this note, the Station Director recorded a note to say, "Seen, thanks". We are of the view that this does not amount to an order having been passed by the Station Director which was only communicated to the applicant by the Programme Executive. The Programme Executive submitted the file to the Station Director after he had signed the fair copy of the order and that too ~~and only~~ for "for information" only. There is a difference between submitting a file for information and submitting a file for orders. We have therefore no doubt in our mind that the order was passed by the Programme Executive and he not being the disciplinary authority, the order is liable to be quashed. In the result we pass the following order:-

- i) Order of suspension dated 27.8.83 at Annexure G is hereby quashed.
- ii) The disciplinary authority will consider the applicant's request for engaging a legal practitioner afresh in the light of the last limb of Rule 14(8). The applicant should within 15 days of receipt of this order make a fresh application in this regard to the disciplinary authority setting out the special circumstances for consideration and the disciplinary authority will take a decision thereon within a week after the receipt of the application.
- iii) The disciplinary authority will also, at the same time, suggest a panel of names of officials who could act as defence assistants of whom the applicant may choose one. The applicant may approach the disciplinary authority for this purpose within 15 days of receipt of this order. The applicant also is at liberty to suggest names of officials whom he would like to engage for his defence to the disciplinary authority within the same period and the disciplinary authority subject to the ~~rules~~, will order their relief for the purpose.

8. The application is disposed of as indicated above. Parties to bear their own costs. A copy of this order should be communicated to the respondents within 10 days from the date of this order.

Chandrasekhar
3/11/87
MEMBER(J)

P. D. T. S.
3/11/87
MEMBER(A)

AN.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 13-7-87

Contempt Application No. 17
in Application No. 1921/86(F)

W.P. No. /

Applicant

Shri S. Nanjaiah

v/s The Station Director, AIR, Bangalore

To

1. Shri S. Nanjaiah
14, 1st Cross
Dattatreya Extension
Bangalore - 560 019

2. Shri A.V. Srinivas
Advocate
107, (Upstairs)
Gandhi Bazar
Basavanagudi
Bangalore - 560 004

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN **CONTEMPT**
APPLICATION NO. 17/87

Please find enclosed herewith the copy of the Order/~~Interim Order~~
passed by this Tribunal in the above said Application on 2-7-87.

Encl : as above.

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SECTION OFFICER
(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 2nd DAY OF JULY , 1987

Present : Hon'ble Justice Sri K.S.Puttaswamy

Vice-Chairman

Hon'ble Sri L.H.A.Rego

Member (A)

C.C.APPLICATION No.17/87

S.Nanjaiah,
r/a 14, 1 st Cross,
Dattatreya Extension,
Bangalore - 19.

... Applicant

(Sri A.V.Srinivas

... Advocate)

Vs.

H.V.Ramachandra Rao,
Station Director,
All India Radio,
Bangalore

... CONTEMNOR

This application has come up before the court today.

Hon'ble Justice Sri K.S.Puttaswamy, Vice-Chairman made the following :

ORDER

In this Application made under Section 17 of the
Administrative Tribunal Act, 1985 (The Act) and the Contempt of Courts
Act 1971 (1971 Act), the petitioner has moved this Tribunal for wilful
disobedience of an order made in his favour in A.No.1921/86(F) by the
Contemner. In A.No.1921/86(F) this Tribunal directed as hereunder :

"In the result we pass the following order:-

i) Order of suspension dated 27.8.83 at Annexure G is
hereby quashed.

ii) The disciplinary authority will consider the applicant's
request for engaging a legal practitioner afresh in the
light of the last limb of Rule 14(8). The applicant
should within 15 days of receipt of this order make a
fresh application in this regard to the disciplinary
authority setting out the special circumstances for
consideration and the disciplinary authority will take
a decision thereon within a week after the receipt of
the application.

iii) The disciplinary authority will also, at the same time,
suggest a panel of names of officials who could act as



defence assistants of whom the applicant may choose one. The applicant may approach the disciplinary authority for this purpose within 15 days of receipt of this order. The applicant also is at liberty to suggest names of officials whom he would like to engage for his defence to the disciplinary authority within the same period and the disciplinary authority subject to the rules, will order their relief for the purpose."

In the purported compliance of this order, the Contemnor had made different orders which are being separately challenged by the petitioner in A.No.444/87 and 477/87 before us which are still pending. The errors if any committed by the contemnor in these orders have to be examined and decided in those cases only. Even assuming that these orders are erroneous, on which we express no opinion in this case, then also we cannot hold that there has been wilful disobedience of the order of this Tribunal by the contemnor and bring this Tribunal into disrepute in the eyes of the public. In these circumstances we do not find any justifiable grounds to proceed against the contemnor under the 1971 Act.

2. In the light of our above discussion we hold that this application is liable to be rejected. We, therefore, reject this Contempt of Court Application without notice to the contemnor at the admission stage. But this should not be understood by either parties, as this Tribunal expressing its opinion on the merits of the orders made by the Contemnor which are the subject matter of challenges in A.Nos.444/87 and 477/87.



SD — — —
VICE-CHAIRMAN 20/04/2002
True copy

SD — — —
MEMBER(A) 20/04/2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE