

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indira Nagar, Bangalore.

FRIDAY, THE 2ND MAY, 1986

PRESENT

The Hon'ble Member(Judl.)

..Shri Ch.Ramakrishna Rao

The Hon'ble Member(Admn.)

..Shri L.H.A. Rego

IN

Application No.602/86(F)

Shri V. Narayana,
Administrative Officer,
(Now under Termination)
National Tuberculosis Instt.,
Bangalore.

.. Applicant.

VERSUS

1. Union of India by Director General
of Health Services, Nirman Bhavan,
New Delhi - 110 011.
2. Director, National Tuberculosis
Institute, Bangalore.

.. Respondents.

ORDER

The respondents herein are directed to stay the
operation of Order No.DIR/CON/86, dated 21.4.86 passed by
the second respondent.

Given under my hand and the seal of this Tribunal
this 5th day of May, 1986.

For 5/5/86
(REGISTRAR)
c/c



Sinks.
R. Issued to P. 1 & P. 2.
R

Joined
5/5/86

Registered A/D

Received my copy
5/5/86
(V. NARAYANA)

INTERIM ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indira Nagar
Bangalore-560 038

Friday, the 16th May 1986

Present

The Hon'ble Member (Admn) Shri.L.H.A.Rego

IN

Application No. 602/86 (F)

Shri.V.Narayana
C/o. Shri.B.B.Khichadi,
Kumara Krupa Guest Home,
High Grounds,
Bangalore-1.

..... Applicant

Versus

1. The Director General of Health Services, Nirman Bhawan, New Delhi.110 011.
2. The Director, National Tuberculosis Institute Bangalore.

..... Respondents

In the above mentioned application, this Tribunal has passed the following orders.

"Shri.K.Apparao present on behalf of Shri.M.B.Nargund, Advocate, for the applicant. He pleads for ~~the~~ extension of interim stay granted on 2.5.86. He informs that the applicant has not yet been terminated from his post and apprehends that if the interim stay granted is not continued the applicant is likely to be terminated. He reiterates his submission that one month's notice as stipulated in the terms and conditions of appointment has not been given by the respondent and that if his client is terminated he would be put to no little financial hardship.

Under these circumstances the interim stay granted on 2.5.86 is further continued upto 29.5.86. The case may be posted for hearing on 3.6.86."

Given under my hand ^{and} the seal of this Tribunal, this 16th day of May 1986.



o/c REGISTRAR

19/11
Issued to R
26/5/86

Recd my copy in paper.
V. NARAYANA-19/6/86
ADmn of 602/86 F

registered A/D

Smt S.
P. Khichadi
R

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indira Nagar
Bangalore -560038

Thursday, the 29th May 1986

Present

The Hon'ble Member(A) Shri L.N.A. Rao

Application No 602/86(F)

Shri V. Narayana
C/o. Shri. B.B.Khichadi,
Kumara Krupa Guest Home,
High Grounds,
Bangalore-1.

... Applicant

Versus

1. Union of India by Director General of Health Services, Nirman Bhavan, New Delhi. 110011.
2. The Director, National Tuberculosis Institute Bangalore

... Respondents

In the above mentioned application, this Tribunal has passed the following Order:-

The interim stay granted on 16.5.1986 expires on 29.5.86. Shri M.B. Nargund, Counsel for the Applicant appeared before me today and pleaded for continuation of the interim stay for another fortnight. None is present for the Respondents despite the notice served.

The Application posted for hearing on 3.6.86 be now deferred to 11.6.86 for administrative reasons.

4) The interim stay shall continue till the date of hearing as requested by the counsel for the Applicant.

Given under my hand and the seal of this Tribunal, this
29th day of May 1986.



Smit S
P. W. Boufford R

REGISTRAR
dc

Issued 27/5/84

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THE NINETEENTH DECEMBER, 1986

Present: Hon'ble Mr Justice K.S. Puttaswamy Vice Chairman

Hon'ble Mr P. Srinivasan Member (A)

APPLICATION NO. 602 OF 1986

V. Narayana

Administrative Officer (Now under Termination)
National Tuberculosis Institute,
Bangalore.

... Applicant

(Shri S.K. Venkata Reddy ... Advocate)

Vs.

1. The Union of India by Director
General of Health Services,
Nirman Bhavan, New Delhi 110 001.

2. Director, National Tuberculosis
Institute, Bangalore

... Respondents

(Shri M.S. Padmarajaiah ... Advocate)

This application has come up for hearing before
Court today. Vice-Chairman made the following:-

ORDER

In this application made under Section 19 of the
Administrative Tribunals Act, 1985 ('the Act'), the
applicant has challenged his termination as 'Administrative
Officer' ('AO') of the National Tuberculosis Institute,
Bangalore ('NTI') with effect from 21-4-1986 by the
Director General of Health Services, New Delhi (DGHS)
conveyed by the Director of NTI in his office order No.
DIR/CON/86 dated 21st April, 1986. (Annexure N).

2. In notification No. F1/427(51)/81-RH dated 6-6-1981,
the Union Public Service Commission ('UPSC') called for
applications to the post of AO in NTI classified as
'General Central Service Group-B Gazetted Ministerial'
on a permanent basis carrying a time scale of pay of Rs.
840-40-1000-EB-40-1200 earmarked exclusively to members
of scheduled caste (SC) only. In response to the said
advertisement the applicant who is a member of a scheduled

caste and who was then working as a Superintendent in the Forest Department of the Government of Karnataka, applied for selection before the UPSC which ultimately selected him to the said post. On the basis of that selection the DGHS made an offer of appointment to the applicant on 5-2-1982 (Annexure-A) on the terms and conditions set out therein which he accepted and reported for duty as AO of NTI on 23-4-1982 and the same has been ratified by the DGHS on 21-5-1982 (Annexure-C) by issuing a formal appointment order.

3. On the very terms of his appointment and also the rules regulating the same, the applicant was on probation for a period of 2 years from 23-4-1982 which was extended by another two years. On 17-4-1986 the DGHS terminated the services of the applicant from 21-4-1986 and the same has been communicated by the Director on 21-4-1986. But, order made by the DGHS on 17-4-1986 reads thus:

" No.A. 35014/1/80-NTI/Adm.I/TB
Directorate General of Health Services
(T.B.Section)

New Delhi, dated 17 April'86

O R D E R

The Director General of Health Services is pleased to terminate the services of Shri V.Narayana, Administrative Officer at the National Institute of Tuberculosis, Bangalore with effect from the afternoon of the 21st April, 1986 in terms of sub-para (1) of para (1) of this Directorate's letter No.A. 35014/1/80(NTI)-Admn.I, dated the 5th February, 1982.

Sd/-
(J.FRANCIS)
Deputy Director of Admn.(PH)

Shri V.Narayana,
Administrative Officer,
National Tuberculosis Institute,
8, Bellary Road,
Bangalore-560003. "

....3/-

The challenge of the applicant is really to this order. The applicant has challenged the order on a large number of grounds. But, at the hearing the applicant confined his challenge to three substantial grounds which will be noticed and dealt by us in due course.

4. In justification of the order of termination, the respondents have filed their reply and produced their original records. We will notice the defences urged by the respondents to the grounds urged before us at the appropriate places.

5. Shri S.K.Venkata Reddy learned Advocate appeared for the applicant. Shri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appeared for the respondents.

6. Shri Reddy urged that the termination of the applicant was as a measure of punishment and in any event casts a 'stigma' on him and all the facts and circumstances and records lead to that conclusion only and no other and on such a conclusion, the innocuous order of termination calls for our interference as ruled by the Supreme Court in JARNAIL SINGH AND OTHERS v. STATE OF PUNJAB AND OTHERS (AIR 1986 SC 1626 = 1986 LAB I.C.1086).

7. Shri Padmarajaiah has urged that the termination of the applicant was on the sole ground that he was found unsuitable to hold the post and was not as a measure of punishment and does not cast a stigma to justify our interference by this Tribunal.

8. We have earlier reproduced the order of termination. The order of termination, is only a termination 'simpliciter', and is not as a measure of punishment and does not cast any stigma against the applicant. The respondents claim that they have found the applicant who was on probation till 23-4-1986 as unsuitable to hold the post and have therefore terminated his services in terms of the very appointment order and the Probation Rules. We must normally accept this assertion of the respondents without unnecessarily examining every day's affairs and every day's records of the office as if we are a court of appeal or a commission of inquiry examining every day's activities and duties of the applicant and the superior officers of the Institute under whom he worked. We cannot on principle or authority or any of the provisions of the Act, undertake such an inquiry and reach a different conclusion. We are also of the view that this is also the position on the satisfaction of the appointing authority as to the suitability of the applicant or otherwise to hold the post. If that is true, then we should normally reject the challenge of the petitioner without probing into all of them (vide ~~Sabji's case~~ *State of Maharashtra vs. V. R. Subh 1980 sec 25.61*)

9. We will now proceed to examine whether the termination of the applicant was as a measure of 'punishment' and cast a 'stigma' against him or not.

10. While the applicant was on probation and functioned as the AO of NTI the same was headed by three Directors and they were Dr. Banerjee, Dr Chandrasekhar and Dr Baili. For the relevant periods they were Directors of

...5/-

NTI they have naturally written the assessment reports of the applicant. Every one of them have rated the performance of the applicant as 'Poor' or 'unsatisfactory'.

11. On 24-3-1984 a review committee consisting of five senior officers of the Department examined the performance of the applicant and held that his performance from 23-4-1982 to 22-1-1984 was not satisfactory. The proceedings of that committee read thus:

"MINUTES OF THE MEETING OF THE REVIEW COMMITTEE
HELD ON 24.3.1984 AT 4 PM IN ADDL. D.G.(PH)'S ROOM

The second meeting of the Review Committee comprising the following was held under the Chairmanship of Additional D.G.(PH) on 24-3-1984 at 4 pm for reviewing the first Assessment Report of Shri V.Narayana Administrative Officer of National Tuberculosis Institute, Bangalore.

- | | |
|------------------------------------|------------|
| 1. Dr.M.D.Saigal, Addl.D.G.(PH) | - Chairman |
| 2. Dr.S.K. Sengupta, DDG(P) | - Member |
| 3. Shri K.Venugopal, Director(A&V) | - Member |
| 4. Dr.S.P.Gupta, ADG(TB) | - Member |
| 5. Shri B.K.Jana, DDA(PH) | - Member |

The Committee after examining the Assessment Report of Shri V.Narayana for the period 23rd April, 1982 to 22nd Jan., 83 has noted that the performance of Shri V. Narayana in the post of Administrative Officer for the aforesaid period is 'Not really satisfactory'.

Sd/-
Dr.(MD Saigal)
Addl.D.G.(PH)

Sd/-
(Dr.S.K.Sengupta)
DDG(P)

Sd/-
(K. Venugopal)
Director(A&V)

Sd/-
(Dr.S.P.Gupta)
ADG(TB)

Sd/-
(B.K.Jana)
DDA(PH)"

On 22-6-1984 another review committee chaired by Dr. M.D.Saigal who was also the Chairman of the Committee held on 24-3-1984 concurring with the earlier recommendation, recommended for extending the probation period of the applicant by one more year from 23-4-1984. The minutes of the committee held on that day read thus:

"MINUTES OF THE MEETING OF THE REVIEW COMMITTEE HELD
ON 22.6.84 AT 3 P.M. IN ADDITIONAL D.G.(PH)'S ROOM

The meeting of the Review Committee comprising of the following members was held under the Chairmanship of Dr. M.D.Saigal, Additional D.G.(PH) on 22nd June, 84 at 3 P.M. in his room for reviewing the Assessment Report of Shri V.Narayana, Administrative Officer, National Tuberculosis

Institute, Bangalore for the period 23rd January, 83 to 22nd April, 1984.

1. Dr.M.D.Saigal
Addl.D.G.(PH) - Chairman
2. Dr.S.K.Sengupta
DDG(P) - Member
3. Dr. S.P.Gupta
ADG(TB) - Member
4. Shri A. Surin,
DS(A) - Member
5. Shri B.K.Jana
DDA(PH) - Member

The Committee after examining the Assessment Report of Shri V.Narayana for the period 23rd January, 83 to 22nd April 1984 has noted that the performance of Shri V. Narayana in the post of Administrative Officer for the aforesaid period is "Not really satisfactory" and has recommended that the probation period of Shri V. Narayana may be extended by one year w.e.f. 23.4.84. The Committee also insisted upon obtaining the Assessment Report in respect of the aforesaid officer for the period 23.4.84 to 22.4.85.

Sd/- Sd/- Sd/-
(Dr.M.D Saigal) (Dr.S.K.Sengupta) (Dr.S.P.Gupta)
Addl.D.G.(PH) DDG(P) ADG(TB)

Sd/- Sd/-
(A. Surin) (B.K.Jana)
DS(A) DDA(PH)"

On 1.6.1985, a review committee of five senior officers with a substantially different composition again decided to extend the period of probation of the applicant by one more year from 23-4-1985 to 22-4-1986. The Minutes of the Committee held on 1-6-1985 read thus:

"MINUTES OF THE MEETING OF THE REVIEW COMMITTEE
HELD ON 1ST JUNE, 1985 AT 11 A.M. IN ADDITIONAL
D.G.(M)'S ROOM

The meeting of the Review Committee consisting of the following members was held under the Chairmanship of Dr.S.N.Mukherjee, Additional D.G.(M) on 1st June, 1985 at 11 A.M. in his room for reviewing the Assessment Reports of Shri V.Narayana, Administrative Officer, National Tuberculosis Institute, Bangalore, for the periods from the 23rd April to the 22nd October, 1984 and 23rd October, 1984 to the 22nd April, 1985, which was the extended period of probation of Shri Narayana with a view to determining whether the officer on probation is fit to be retained in service:-

....7/-

: 7 :

1. Dr.S.N.Mukherjee - Chairman
Addl.D.G.(M)
2. Shri Sarweshwar Jha - Member
Director(A&V)
3. Dr.S.P.Gupta - Member
ADG(TB)
4. Shri Matu Ram - Member
DDA(D)
5. Shri Narain Singh - Member
DDA(PH)

2 The Committee after examining the two Six monthly Assessment Reports relating to the extended probationary period of one year in respect of Shri V Narayana, i.e. for the periods 23-4-1984 to 22-10-1984 and 23-10-1984 to 22-4-1985, observed that the performance of the officer had not improved and continued to be unsatisfactory. This was so particularly with reference to performance factors concerning mental capacity, work habits & attitude, stability, ability to get along and ability to manage, having been graded in respect of each as "does not meet requirements of the job".

/considers

3. The Review Committee, however, keeping in view the fact that the officer belongs to the Scheduled Caste Community, [that he may be given another opportunity to improve upon his performance and recommends extension of period of probation of Shri Narayana for another one year with effect from the 23rd April, 1985 to the 22nd April, 1986 with the stipulation that the Director, National Tuberculosis Institute, Bangalore, may be asked to furnish Six Monthly Assessment Reports on the officer to the Directorate General of Health Services.

Sd/- Sd/-
(DR.S.N.MUKHERJEE) (SARWESHWAR JHA)
ADDITIONAL D.G.(M) DIRECTOR(A&V)

Sd/- Sd/- Sd/-
(DR.S.P.GUPTA) (MATU RAM) (NARAIN SINGH)
ADG(TB) DDA(D) DDA(PH)"

Ultimately on 7-4-1986 a review committee again chaired by Dr.M.D.Saigal who headed the two committees held on 24-3-1984, 22-6-1984 reviewed the earlier performance of the applicant for the entire period in depth and recommended that he was not fit for confirmation and his services be terminated in terms of his appointment and the Rules. The minutes of the proceedings of that committee read thus:

"MINUTES OF THE REVIEW COMMITTEE HELD ON THE 7TH APRIL, 1986 AT 11 A.M. IN ADDITIONAL DIRECTOR GENERAL (P.H.)'S ROOM TO ASSESS THE PERFORMANCE OF SHRI V.NARAYANA, ADMINISTRATIVE OFFICER, NATIONAL TUBERCULOSIS INSTITUTE, BANGALORE."

....8/-

A meeting of the Review Committee to assess the performance of Shri V.Narayana, Administrative Officer, National Tuberculosis Institute, Bangalore was held under the chairmanship of Dr.M.D.Saigal, Additional Director General (P.H.) in his room on the 7th April, 1986 at 11 A.M. The following were present:

1. Dr.M.D.Saigal, Additional Director General(P.H.) - Chairman
2. Dr.Mahendra Dutta, Deputy Director General(P) - Member
3. Shri Sarweshwar Jha, Director(Administration& Vigilance) - Member
4. Dr S.P.Gupta, Assistant Director General (T.B.) - Member
5. Smt. Jessie Francis, Deputy Director Administration(P.H.) - Member

Shri Matu Ram, Deputy Director Administration(D) could not attend, as he was out of station.

2. Shri V.Narayana was appointed to the post of Administrative Officer, National Tuberculosis Institute, Bangalore, on the recommendations of the UPSC with effect from the forenoon of 23rd April, 1982, on probation for a period of two years from the date of appointment which could be extended or curtailed at the discretion of the competent authority. His performance during the initial probation period of two years ending on the 22nd April, 1984 was reviewed by the Review Committee on the 24th March, 1984(for the period from 23rd April, 1982 to 22nd January, 1983) and on the 22nd June, 1984(for the period from 23rd January, 1983 to 22nd April, 1984). On both the occasions the Review Committee was of the opinion that the performance of Shri V.Narayana in the post of Administrative Officer during the periods under review was 'not really satisfactory'. In the meeting held on the 22nd June, 1984, the Committee, however, recommended that the probation period of Shri V.Narayana may be extended for one year with effect from 23rd April, 1984.

3. The performance of Shri Narayana during this extended period was assessed by the Review Committee on the 1st June, 1985 and it was observed that his performance had not improved and continued to be unsatisfactory. The Review Committee, however, keeping in view the fact that the officer belonged to the Scheduled Caste community, recommended that he be given another opportunity to improve upon his performance and his probation period extended further by one more year with effect from the 23rd April, 1985 to the 22nd April, 1986.

4. The performance of Shri Narayana during this extended period was further assessed by the Review Committee on the 7th April, 1986 and it was observed that the performance of Shri Narayana continued to be unsatisfactory. In addition to the Assessment Reports for the periods mentioned above, the Review Committee also went through the Confidential Reports for the said period of probation including the extended periods and observed that his performance reported in these reports also was unsatisfactory. During this period of probation Shri Narayana had the opportunity of working under three different officers, each of whom found his performance unsatisfactory. Even though this state of performance was intimated to the officer, there was no sign of his having shown any improvement in his performance.

5. As per the rules on the subject, the period of probation is normally extended for a period of one year but in no case the extension can exceed double the normal period of probation. In the present case, the normal period of probation was extended twice, thereby giving a maximum permissible period of four years' probation to Shri Narayana.

6. After a careful assessment of the performance, outlook, character and aptitude of Shri V. Narayana, Administrative Officer, National Tuberculosis Institute, Bangalore, the Committee is of the view that he is not fit for confirmation in the post of Administrative Officer at the National Tuberculosis Institute, Bangalore and his services should be terminated as per the relevant rules.

Sd/- (DR M.D. SAIGAL) ADDITIONAL DIRECTOR GENERAL (P.H.)	Sd/- (DR MAHENDRA DUTTA) DEPUTY DIRECTOR GENERAL(P)
-------------------------------------------------------------------	-----------------------------------------------------------

Sd/- (SARWESHWAR JHA) DIRECTOR(ADMINISTRATION & VIGILANCE)	Sd/- (DR.SP GUPTA) ASSISTANT DIRECTOR GENERAL(T.B.)
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Sd/-
(SMT. JESSIE FRANCIS)
DEPUTY DIRECTOR ADMINISTRATION(P.H.)

Sd/-
(J.C.DAS)
UNDER SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE"

On an examination of these proceedings with which one Shri J.C.Das, an Under Secretary (Finance) a member of a scheduled caste also concurred, the DGHS on 16-4-1986 approved the recommendations of the committee and issued the order of termination on 17-4-1986. Every note and minute of the two files dealing with the appointment, probation, extension of probation and the ultimate termination of the applicant only confirm what has been found by the Review Committees from time to time. An examination of the proceedings of the review committees from time to time which we have extracted earlier, accepted by DGHS, the assessment reports of the officers and all other records, without an iota of doubt establish that the applicant had not been found fit for the post or he had been found unsuitable to hold the post and that is the one and only reason for his termination and no other. We find it

... 10/-

impossible to accede to the contention of the applicant that the termination of his services by DGHS was as a measure of punishment or that it has cast a stigma against him. From this it follows that the ratio in the rulings of the Supreme Court in JAGDISH MITTER VS UNION OF INDIA (AIR 1964 SC 449), SHAMSEER SINGH VS STATE OF PUNJAB (AIR 1974 SC 2192), ANOOP JAISWAL VS GOVERNMENT OF INDIA AND ANOTHER (AIR 1984 SC 636), JARNAIL SINGH VS STATE OF PUNJAB (AIR 1986 SC 1626) that condemned removals as a measure of punishment or casting a stigma and not removals on the ground of unsuitability do not really bear on the point. For these reasons, we see no merit in this contention of Shri Reddy and we reject the same.

12. Shri Reddy has next contended that the applicant was not really allowed to discharge the duties of (1) Personnel Management; (2) Financial Management; (3) Material Management and (Control of Transport) specified in the notification calling for applications and was really benumbed of his powers and duties and in that situation the assessment of his work was not possible and a discharge could not be made on the basis of such an assessment.

13. Shri Padmarajaiah refuting the contention of Shri Reddy has urged that the supervision if any undertaken by the Director or entrusting any of the duties of the applicant to others, did not really benumb the powers and duties of the applicant and the assessment made by the Director, Review Committee and DGHS were really on the basis of the performance of the work of the applicant.

14. In the facts of the case of the application, the applicant has set out certain details as to how the Director had interfered with his powers and work and had

entrusted them to others. But, in the grounds the applicant has not specifically formulated this ground as a ground to challenge his termination. In the absence of a specific ground urged in his application, we should decline to examine this ground urged by Shri Reddy. But, we do not propose to do so and examine the same giving every allowance to the applicant.

15. An examination of the records produced by the respondents does not justify us to hold that the applicant was benumbed of his powers and duties and he was only made to attend the office every day and return to his house without exercising the powers conferred on him or the work attached to the post of AO. Every one of the documents like the memos issued by the Director relied on by Shri Reddy do not lead us to the conclusion that the applicant was benumbed of his powers and duties when he was on probation for a total period of 4 years. We see no merit in this contention of Shri Reddy and we reject the same.

16. On the evaluation made by the Director, Review Committee and DGHS, however vast the powers of this Tribunal which has substituted the High Courts in the country, are not so extensive as to examine the case of termination as if we are a Court of appeal. If this Tribunal is not a Court of first appeal, it cannot then review the assessment of the work of the applicant and come to a different conclusion. We must, therefore necessarily accept the assessment of the applicant by the authorities. When once we accept the assessment made by the authorities, there is hardly any ground for us to interfere with the termination of the applicant.

17. Shri Reddy has urged that every one of the Directors

: 12 :

who headed the institute when the applicant was on probation, were all illdisposed to him because he was a member of a scheduled caste and their reports were actuated by malice and bias and do not constitute necessary material to terminate the service of the applicant.

18. Shri Padmarajaiah has urged that the assessment reports made by the Directors were in the due discharge of their duties and were not actuated by malice or by bias against the applicant on the ground that he was member of scheduled caste.

19. We have carefully examined the pleadings of the applicants touching on this contention. We are of the view that the pleadings of the applicant touching on this contention are vague and general and do not even justify us to make a detailed inquiry of the bias attributed by the applicant against the three Directors. In the absence of specific allegations of mala fides against the concerned director, we will not be justified in examining this vague contention of the applicant.

20. Every one of the memos and documents on which Shri Reddy has relied on in highlighting his earlier contention, again relied on to drive home this contention also, do not lead us to the conclusion that every one of the Directors were biased against the applicant on the ground that he was a member of scheduled caste. We are constrained to observe that the applicant appears to malign everyone who is compelled to take an adverse decision against him by virtue of the office he holds and the duties he has to perform, by alleging that decision is taken only because he (the applicant) was a member of a scheduled caste. We find that the Review Committees had even sympathetically considered the case of the applicant on the ground that he was a member of scheduled caste and had even extended his

probation for the maximum period to improve himself and turn a new leaf in his career. But, unfortunately all of them did not have the desired effect on the applicant and he showed no improvement at any stage in the performance of his work at all. We see no merit in this contention of the applicant and we reject the same.

21. On the foregoing discussion it follows that this application is liable to be dismissed. But before parting with this case, we consider it proper to notice two more aspects.

22. On receiving the order of termination issued by the Director on 21-4-1986 the applicant approached this Tribunal on 1-5-1986 with a prayer for stay. On 2-5-1986 a Division Bench of this Tribunal consisting of Hon'ble Members Mr L.H.A. Rego and Ramakrishna Rao admitted the application and stayed the operation of the order on 2-5-1986 which was communicated by the Registrar of this Tribunal on 5-5-1986 in these words:

" The respondents herein are directed to stay the operation of Order No. DIR/CON/86, dated 21.4.86 passed by the second respondent.

Given under my hand and the seal of this Tribunal this 5th day of May, 1986.

Sd/-
(REGISTRAR)"

On subsequent dates this Tribunal noticing the absence of the respondents though served had extended the earlier ex-parte interim order made on 2-5-1986. In C.C.No. 5/86 the applicant had moved this Tribunal under Section 17 of the Act to punish the respondents for disobedience of the interim order made and extended from time to time. On 19-11-1986 we dropped the contempt proceedings.

23. We notice that the respondents taking the view that the applicant had been relieved of his duties on 21-4-1986

and the interim order made by this Tribunal did not direct them to take him back to duty, did not take him to duty and allow him to perform his duties. We will assume that the respondents were correct in their factual and legal position of their case. But, still we are of the view that the respondents would have done well in moving this Tribunal for vacating the ex-parte interim order even if the same had been issued on unjustifiable grounds or contrary to Section 24 of the Act instead of putting their own construction leading to proceedings that only complicated matters. We generally notice that the respondents are not in the habit of moving for vacating ex-parte ad interim orders of stay issued by this Tribunal. We do hope and trust that the respondents will not repeat the same.

24. When the applicant made his application to the UPSC he was working as a Superintendent in the Forest Department of the Government of Karnataka. With all the sympathy to the applicant, we cannot interfere with the order of termination. We need hardly say that the termination undoubtedly causes him and his family considerable hardship. But, on that ground we cannot interfere with the order that is otherwise legal and valid. We are of the view that this is a fit case in which the Government of Karnataka should come to the succour of the applicant and restore him to the post he was holding on his appointment as an AO. In order to enable the Government of Karnataka to examine the case of the applicant and give him that relief, we direct the Registrar of this Tribunal to forward a copy of this order to the Chief Secretary to the Government of Karnataka also for such action as he deems fit in the circumstances of the case.

25. In the light of our above discussion, we hold that

this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

[Signature]

VICE CHAIRMAN

19/12

[Signature]
19/12/88

MEMBER (A)

np/sr

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BANCH: BANGALORE
DATED THIS THE 19TH DAY OF NOVEMBER 1986.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego, .. Member(A)

CONTEMPT OF TRIBUNAL CASE NO. 5 OF 1986

V. Narayana,
Administrative Officer,
(Now under termination),
National Tuberculosis Institute,
Bangalore.

.. Complainant.

v.

Director General of Health
Services, Nirman Bhavan,
Nirman Bhavan, New Delhi-110 011
and others.

.. Accused.

(By Sri M.S. Padmarajaiah, Standing Counsel)

This case coming on for hearing this day, Vice-Chairman
made the following:

ORDER

This is an application made by the complainant under
Section 17 of the Administrative Tribunals Act of 1985 ('the
Act') to punish the respondents under the Contempt of Court
Act of 1971 ('CC Act').

2. The complainant was working as an Administrative
Officer in the office of the National Tuberculosis Institute,
Bangalore ('NTI'). On 21-4-1986 the Director of that Institute
respondent-2 communicated an order made by the Director
General of Health Services New Delhi/respondent-1 terminating
his services from that very day, the validity of which is chal-
lenged by him in Application No. 602 of 1986 made under Section



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19 of the Act on 1-5-1986 before this Tribunal, with a prayer for stay of that order.

3. On 2-5-1986 a Division Bench of this Tribunal consisting of one of us (Sri L.H.A.Rego, Member(A)) and Sri Ch.Ramakrishna Rao, Member(J) granted stay of the order and communicated the same on 5-5-1986 in these words:

Sri M.B.Nargund, Advocate present for applicant.

Application admitted. Counsel submits that his client has not yet handed over the charge of the post he is holding. His further submission is that one month's notice which is stipulated in the terms and conditions of appointment has not been given by the respondents and besides this his client has also been put to humiliation and, considerable hardship both on account of the impugned order. We consider that these factors warrant grant of interim stay. We grant stay accordingly.

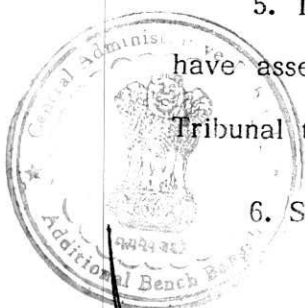
Notice be issued to respondents returnable within one month.

On the basis of this order, the complainant claimed before respondent-2 to take him to duty and allow him to function in the post he was holding in the NTI. But, that officer had refused to comply with that demand on the ground that the complainant stood relieved on 21-4-1986 and there was no direction by the Tribunal to take him to duty notwithstanding his earlier relief from the post. Hence, this application by the complainant.

4. The complainant has urged that there was wilful disobedience of the order of stay made by this Tribunal by the respondents and the same calls for action under the CC Act..

5. In their reply the respondents reiterating their earlier stand, have asserted that they had not wilfully disobeyed the order of this Tribunal to justify for any action against them under the CC Act.

6. Sri V.Narayana, the complainant arguing his own case, contends that



that the respondents have wilfully disobeyed the stay order of Tribunal and the same, therefore, calls for taking action against them under the CC Act.

7. Sri M.S.Padmarajaiah, learned Senior Standing Counsel for the Central Government appearing for the respondents contends that on the very terms of the stay order made by this Tribunal, the refusal of the respondents to take the applicant to duty was justified and they had not wilfully disobeyed the same to justify this Tribunal to proceed against them under the CC Act.

8. Whatever be the legality of the termination order which has to be examined and decided in the main application, it is clear that the stay order made by this Tribunal did not expressly and clearly direct the respondents to take the applicant to duty even if he had been relieved from his duties. In the absence of such direction it was open to the respondents to put their own gloss on the stay order made by this ~~this~~ Tribunal and refuse to take the complainant to duty. From this it follows, that by mere refusal to take the applicant to duty, this Tribunal cannot hold the respondents are guilty of contempt of the order made by this Tribunal. On this view, it is unnecessary to examine all other details to which both sides have referred to in great detail in their pleadings or arguments before us.

9. On the foregoing discussion, we hold that this is not a fit case to proceed against the respondents under the CC Act. We, therefore dismiss the application and drop the proceedings with no order as to costs.



np/

sd/

VICE-CHAIRMAN.

sd/

MEMBER(A). 9.11.1980

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE