

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 8- Sept - 1987

APPLICATION NO 2051 / 86(F)

W.P. NO _____

Applicant T. H. Vittalamurthy, BIR Grade-I, Military

To 1) Union of India through Engineer-in-Chief, Army HQ
DHQ, New Delhi
2) Chief Engineer, Southern Command, Pune,
3) Chief Engineer, Rajasthan & Gujarat Zone,
Jaipur, Rajasthan,
4) Garrison Engineer, ADGES, Mount Abu,
Rajasthan
5) Shri M. S. Padmasajiah, central Govt Standing
Counsel, High Court Buildg Bangalore - 1.
6) Shri S. M. Babu.
No 247 II Main Road, Gandhinagar Bangalore - 9.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~

~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 3-8-87.

~~Hall~~
SECTION OFFICER
(JUDICIAL)

Encl : as above

7) T. H. Vittalamurthy,
BIR Grade-I, Military Engineering Services,
Garrison Engineer, No 455 1st Stage
Industrial Suburb Mysore - 570008.

Copy to : A. No. 1742/88(F)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 3RD DAY OF AUGUST, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 2051/1986

Shri T.H. Vittalamurthy,
B/R, Grade-I,
Military Engineering Services,
Garrison Engineer,
No.455, I Stage,
Industrial Suburb,
MYSORE.

.... Applicant

(Shri S.M. Babu, Advocate)

v.

1. Union of India through
Engineer-in-Chief, Army HQ,
DHQ, New Delhi.

2. Chief Engineer,
Southern Command,
Pune.

3. Chief Engineer,
Rajasthan & Gujarat Zone,
Jaipur, Rajasthan.

4. Garrison Engineer,
ADGES, Mount Abu,
Rajasthan.

.... Respondents.

(Shri M.S. Padmarajaiah, CGSSC)

This application having come up for hearing to-day,
Vice-Chairman made the following

O R D E R

This is an application made by the applicant under
Section 19 of the Administrative Tribunals Act, 1985
('the Act').

2. Prior to June, 1979, the applicant was working as a civilian Superintendent in the Office of the Commander, Works Engineer, Bangalore ('CWE'). In June, 1979, he was transferred to the office of the Garrison Engineer, Mount Abu, Rajasthan ('GE') at which office, he reported for duty on 25.6.1979, and was working from that day.

3. On 13.12.1981, the Chief Engineer, Southern Command ('CESC') transferred the applicant from Mount Abu to Bangalore (Annexure-B) and that order to the extent it relates to the applicant, with which we are concerned reads thus:

"
POSTINGS/TRANSFERS TO TENURE
STATIONS SUPDT B/R GDE I

I. The following postings are hereby ordered in the interest of the State:

Sl.No.	MES/NO & DE SGN.	<u>POSTED TO</u>		REMARKS
		<u>FROM</u>	<u>TO</u>	
1.	XXXX			
2.	XXXX			
3. 127179	Shri T.H. VITTALAMURTHY SUPDT B/R GDE I	CE R&G ZONE GE MOUNT SUPDT B/R GDE I	CE(P) R&D GE(P) (I)R&D BANGALORE	To move by 15.6.82

2. The moves should be completed as specified above in direct correspondence between the formations concerned.

Sd/-
M. Balakrishnan, Lt.Col.
SO I(R) - For Chief Engineer. "

While this order required that the applicant be relieved from the post he held in the office of the GE on or before 15.6.1982 he was not actually relieved on or before that date in that office. But notwithstanding the same and without obtaining actual relief thereto, the applicant left Mount Abu and did not also report for duty at the Bangalore Office.

4. Evidently before leaving Mount Abu, the applicant wrote to the CESC on 16.6.1982 (Annexure-D), stating that his transfer from Mount Abu to Bangalore was complete from 16.6.1982. But the GE, without accepting the same and taking the view that the applicant had violated the discipline and conduct rules, initiated disciplinary proceedings against him under the Central Civil Services (Classification Control and Appeal) Rules ('Rules') on 19.6.1982 on the following charge:

"Garrison Engineer(N)
Mount Abu Rajasthan

212/2/E1C 19 June 1982

Shri T.H.Vittalamurthy,
Supdt B/R Gde I
445 I Stage Industrial Suburb
Mysore-570 008.

Discipline: Subordinates

1. Reference your application dated 16-6-1982.
2. You have arbitrarily/unauthorisedly left the station on 16-6-82(FN) and and not AN as stated in your application) without getting relieving orders from this office which is considered as breach of discipline. You were advised to proceed on short leave or wait for some time till movement order for a replacement is received. In the meantime you were also told that necessary clarification from higher authorities with regard to implementation of tenure policy was also being sought for.

Despite all this advice rendered, you left the place. Please state why disciplinary action should not be taken against you for unauthorised absence to reach this office by 5 June, 1982.

Sd/-
E. Vijayan
Major
Garrison Engineer "

On receipt of this charge memo, the applicant filed his written statement denying the same, for which reason the GE appointed one Sri S.N. Gupta as inquiry officer (IO) to hold a regular inquiry under the Rules, and submit his report.

5. But before the IO, the applicant did not appear and participate in the inquiry held against him. On an examination of the evidence on record, the IO in his report dated 24.11.1983 (Annexure-R2) found that the applicant was guilty of the charge levelled against him, and submitted the same to the disciplinary authority ('DA').

6. On an examination of the report of the IO and the evidence on record, the DA made an order on 30.11.1984 (Annexure-A) inflicting the penalty of dismissal from service against the applicant. Aggrieved by this order, the applicant filed an appeal before the Engineer-in-Chief New Delhi (AA) who on 7.10.1985 (Annexure-D) dismissed the same.

7. On 13.10.1986 the applicant approached this Bench of the Tribunal in A.No.1742/86 challenging them on diverse grounds. On 20.10.1986, this Bench by an order made on that

day held that the said application was not maintainable before this Bench and directed the return of the papers to the applicant for representation before the appropriate Bench. In pursuance of this order the applicant represented the papers before the Principal Bench of this Tribunal, with a prayer that the same be transferred to this Bench for disposal. On 28.11.1936, the Hon'ble Chairman allowed the said request of the applicant and had transferred the application to this Bench for disposal. In compliance with the said order of the Hon'ble Chairman this application has been taken on the file of this Bench admitted and then notices issued to the respondents.

8. The applicant has challenged the orders of the AA and the DA on more than one ground and We will notice and deal with them in due course.

9. In their reply, the respondents while justifying the orders of the AA & DA on merits, have urged that this application presented before the Principal Bench should have been transferred only to the Jodhpur Bench of the Tribunal and not to this Bench, and therefore this Bench cannot entertain and dispose of the same on merits.

Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel, appearing for the respondents, sought to support this preliminary objection and urged for rejection of the application itself and in any event for its re-transfer to the Principal Bench for its transfer to the Jodhpur Bench of this Tribunal.

10. Shri S.M. Babu, learned counsel for the applicant, contends that once the Principal Bench had entertained the application which it was competent to do, and had transferred the same to this Bench, this Bench cannot examine the validity of the order made by the Hon'ble Chairman, and was bound to dispose of the same only on merits.

11. We have earlier noticed that the applicant had approached this very Bench and this Bench by its order dated 20.10.1986 directed the return of the papers to the applicant for their re-presentation before the appropriate Bench of the Tribunal and in pursuance of the same, the applicant represented the application before the Principal Bench with an application under Section 25 of the Act, for transfer to this Bench. On that application, the Hon'ble Chairman made an order on 23.11.1986 in these terms:

"Petitioner through counsel Ms. Madhu Moolchandani.

Petitioner has since been transferred to Bangalore and requests for transfer of this case to Bangalore Bench of the Central Administrative Tribunal for hearing and disposal under Section 25 of this Act. Petition for transfer is allowed. Petitioner to appear before the Bangalore Bench of the Tribunal on 12.1.1987."

In obedience to this order, the Principal Bench had transmitted the application to this Bench, which, on an examination of the same, had admitted it and had directed notices to the respondents.

12. The Act contemplates and creates only one Tribunal for the whole of India, with different Benches working at different States.

13. On the jurisdiction and powers of the different Benches to entertain applications made under the Act, rule 6 of the Central Administrative Tribunal (procedure) Rules, 1987 (CAT Rules) regulates the same.

14. As one of the respondents in this application was ordinarily residing at Delhi, it was open to the Principal Bench to entertain this application. On such entertainment, it was also open to the Hon'ble - Chairman in exercise of the powers conferred on him Sec. by/25 of the Act, to transfer the application to such Bench as he deemed fit and proper in the circumstances. The power conferred by Sec.25 of the Act, is not restricted and controlled by Rule 6 of the CAT Rules, which only regulates the forum for filing an application under the Act. Rule 6 of the CAT Rules, does not control and restrict the power of the Chairman under Sec.25 of the Act.

15. When we find that the Principal Bench had jurisdiction to entertain the application and the Hon'ble Chairman exercising the special and exclusive power conferred on him by Sec.25 of the Act, had transferred the application to this Bench, we are bound to entertain the same and deal with the same only on merits. We are also of the view that we cannot sit in judgment

on the order made by the Hon'ble Chairman and direct
the proceedings ^{be} retransferred to the Principal Bench
for transfer to the Jodhpur Bench as contended by
Shri Padmarajaiah. We see no merit in this preliminary
objection of the respondents and we reject the same.

16. As we have rejected the preliminary objection
of the respondents, we now proceed to examine the merits.

17. Shri Babu contends that the DA had not furnished
a copy of the report of the IO along with his order as
was mandatorily required by Rule 17 of the Rules, and
that failure completely vitiates the order of the AA and
DA.

18. Shri Padmarajaiah contends that the applicant
had been served with a copy of the report of the IO
and that even otherwise he had not raised the same before
the AA and on the ratio of the ruling of this Tribunal
in H.NARASHIMAPPA v. THE REGIONAL DIRECTOR OF POSTAL
SERVICES & Ors.(ATR 1987(2) C.A.T. 29), the contention
of Shri Babu cannot be sustained.

19. In his letter No.1026/THV/7/E10 dated 13-2-1985
(Annexure-R1), the DA had stated that a copy of the
report of the IO had been served on the applicant. We
have no reason to disbelieve the responsible statement
made in the letter dated 13-2-1985. If that is so, then
this contention is liable to be rejected.

20. We find that the applicant had not urged this
plea in his appeal memo presented before the AA. We
have no doubt that the applicant did not urge this as



a ground in his appeal for the reason that he had received a copy of the report of the IO. On this view also, this contention of the applicant is without any merit.

21. We will also assume that the applicant had not received a copy of the report of the IO as stated by him and examine the contention on that basis.

22. As pointed out by us in NARSIMHAPPA's case, the failure, if any, to supply a copy of the report of the IO does not vitiate the orders made by the AA & DA. For the very reasons stated in NARASIMHAPPA's case, this contention in any event, is liable to be rejected.

23. On the foregoing discussion, we see no merit in the contention of Shri Babu and we reject the same.

24. Shri Babu next contends that the DA by refusing to make payment of subsistence allowance or TA and DA had really denied a reasonable opportunity guaranteed to a Civil servant by Article 311 of the Constitution.

25. Shri Padmarajaiah contends that the applicant who had not been kept under suspension, was not entitled for subsistence allowance, much less, any TA and DA, to attend the inquiry.

26. At no stage of the inquiry or thereafter the applicant had ~~not~~ been kept under suspension. If that was so, then the applicant cannot legitimately claim



subsistence allowance under the rules or otherwise also. If he cannot claim subsistence allowance then the question of non-payment and denial of reasonable opportunity if any guaranteed to a civil servant in Article 311 of the Constitution will not arise.

27. Shri Babu has not relied on any provision of law or order of Government that entitled the applicant to claim TA & DA to attend the inquiry in the circumstances at Mount Abu. If that is so, then we cannot uphold the same solely on the ground that it was held at a distant place.

28. We have earlier noticed that the applicant had not also been relieved at Mount Abu. When the applicant had not been relieved, the question of the applicant claiming TA & DA as if he had been legally relieved and had legally been posted to duty at Bangalore, does not arise. In these circumstances rule 133-A of the TA Rules has no application at all.

29. On the foregoing discussion we see no merit in this contention of Shri Babu, and we reject the same.

30. Shri Babu contends that the authorities had assured the applicant that he would atleast be relieved on or before 30.6.1982 and that on their failure it was not open to the AA & DA to hold that he was guilty of the charge levelled against him.

31. Shri Padmarajaiah contends that when the applicant had not actually been relieved from his post it was not open to him to rely on any assurance.

32. An examination of the records show that the authorities were making earnest efforts to relieve the applicant at Mount Abu and thus enable him to join duty at Bangalore. But the fact remains that they did not actually relieve him at Mount Abu as they were finding it extremely difficult to do so for reasons virtually beyond their control. In this view, the applicant cannot rely on any assurance at all. When the applicant was working at a sensitive post and place, it was not open to him to leave that post and place and proceed as if he had been relieved from that post and place. We also find that the authorities had even taken a sympathetic view and advised the applicant to proceed on leave if his personal conditions compelled him to go to Bangalore. But without heeding to that advise and without waiting for proper relief the applicant had, at his own peril, left the sensitive post and the place. We cannot countenance the conduct of the applicant.

33. On an examination of the evidence on record, the IO had found that the applicant was guilty of the charge levelled against him, with which the AA & DA had concurred. We see no error of jurisdiction or illegality in the inquiry held, or in the orders made by the authorities to the extent they hold that the applicant was guilty of the charge levelled against him.

[Handwritten signature/initials over the bottom left corner]

34. Shri Babu lastly contends that having regard to the long and meritorious service of 18 years rendered by the applicant at various places without blemish, this is a fit case in which we should modify the punishment of dismissal from service to a minor penalty under the Rules.

35. Shri Padmarajaiah contends that there is no justification whatsoever for this Tribunal to modify the punishment.

36. The charge levelled against the applicant was one of dereliction of duty and ^{he did} not involve any moral turpitude. When the applicant was proceeded for dereliction of duty, he had completed 18 years of service. His previous record was good. On these and all other relevant factors we are of the view that the penalty of dismissal from service imposed on the applicant is too severe and disproportionate to the gravity of the charge. We are of the view that having regard to all the facts and circumstances of the case, it will be just and proper to impose the penalty of compulsory retirement from service, instead of dismissal from service.

37. At this stage, Shri Padmarajaiah contends that even then it is proper for us to deny the arrears of pension from 30.11.1984 to 31.7.1987. Shri Babu vehemently opposes this request of Shri Padmarajaiah.

38. We have earlier held that the punishment of dismissal from service from 30.11.1984 should be modified to compulsory retirement from that day. The applicant challenged the orders of the AA & DA only on 13.10.1986. We are of the view that having regard to this and all other factors it is reasonable to deny the actual pension only due to the applicant from 30.11.1984 to 31.7.1987 and not other terminal benefits like gratuity to which he is entitled to under the rules.

39. In the light of our above discussion, we make the following orders and directions:

- (1) We dismiss this application in so far as it challenges the orders of the AA & DA to the extent that they hold that the applicant was guilty of the charge levelled against him.
- (2) We allow this application in part and modify the penalty of dismissal from service imposed on the applicant to one of compulsory retirement from service from 30.11.1984. We further direct the respondents to compute the pension and other terminal benefits due to the applicant on this basis and extend him all such benefits to which he is entitled ^{to} however denying him only the actual arrears of pension from 30.11.1984 to 31.7.1987 with all such expedition



as is possible in the circumstances of the case and in any event, within a period of four months from the date of receipt of this order.

40. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.

Sd---

Vice-Chairman

Sd---

Member (A)

3/8/81

dms/Mrv.

'True copy'

Herr
DEPUTY CHAIRMAN
GENERAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE