REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
****

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

Dated :

Application No. 1285, 1350 & 1349 /86(T)

W.P. No 12825, 12814 & 12813 /84

Applicant

R.Gangaraju & 2 Ors
To

1. Shri MS Siddaraju, Advocate,
35/1, I Main Road, Gandhinagar,
Bangalore-560 009.

2. Secretary, Department of Space,
New Delhi.

3. ISRO Satellite Centre,
Peenya Post, Bangalore-560 058
rep. by its Director.

4. Controller, ISRO Satellite Centre,
Peenya, Bangalore-560 058

5. Shri MS Padmarajaiah,
Senior Central Govt. Standing Counsel,
High Court Buildings, Bangalore-560 001.

Sublect: SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NO. 1285, 1350 & 1349/86(T)

Please find enclosed herewith the copy of the Order/~~Interim Order~~ passed by this Tribunal in the above said Application on 22-12-1986.

Encl : as above.

SECTION OFFICER
(JUDICIAL)

Balu*

Copy in file No 1350/86(T)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTY SECOND DAY OF DECEMBER
1986

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

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

APPLICATIONS NO.1285/86(T), 1350(T) AND
1349/86(T)

R. Gangaraju,
No.116, Police Line,
Byatarayanapura,
GEF Post, Mysore Road,
Bangalore-560 026.

K. Mahadeswara,
Dommasandra,
Via Sarjapura,
Bangalore District.

Aswathanarayana,
254/6, 9th Main Road,
Sampangiramanagar,
Bangalore-560 027. ... Applicants

(Shri M.S. Siddaraju ... Advocate)

V.

Union of India represented
by the Secretary,
Department of Space,
New Delhi.

ISRO Satellite Centre,
Peenya Post, Bangalore-560 058
represented by its Director.

Controller, ISRO Satellite Centre,
Peenya, Bangalore-560 058. ... Respondents

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

These applications came up for hearing before this Tribunal. Hon'ble Member (A) made the following:

ORDER

These are in all, three applications transferred under Section 29 of the Administrative Tribunals Act, 1985, to this Bench, wherein the order of removal from service passed by the third respondent as the Disciplinary Authority (DA) and modified to that of compulsory

retirement by the second respondent, as the Appellate Authority (AA), has been challenged by the applicants, with a prayer to quash the same and grant them consequential benefits. All these applications being alike on facts and the question of law being common, we propose to dispose them, by a common order.

2. The applicants were engaged as Drivers in the erstwhile Indian Scientific Satellite Project (ISSP) in 1973. Pursuant to the decision to convert the Indian Space Research Organisation (ISRO) into a Government Body, with effect from 1.4.1975 and consequent on declaration of election by the applicants, they were appointed as drivers of ISSP with the Government Body. Their relevant service particulars as drivers are given below:

Sl. No.	Application No.	Name of the Driver	Dates of appointment as Driver
(1)	1285/1986(T)	Shri R. Gangaraju	1.10.73-As LVD in ISSP outside GOI. 1.4.'75 As LVD in ISSP within GOI. 14.7.'80 As HVD in ISSP within GOI.
(2)	1350/1986(T)	Shri K.Mahadeswara	16.5.'73 As LVD in ISSP outside GOI. 1.4.'75 As LDV in ISSP within GOI. 20.2.'76 As HVD in ISSP within GOI .
(3)	1349/1986(T)	Aswathanarayana	16.5.'73 As HVD in ISSP outside GOI. 1.4.'75 As HVD in ISSP within GOI.

N.B.:LVD means Light Vehicle Dirver,
HVD means Heavy Vehicle Driver,
GOI means Government of India.

3. The details of the authorities who appointed them as drivers in the respective posts are as under:

Sl. No.	Name of the driver	Post to which appointed	Designation of the appointing authority
	S/Shri		
(i)	R. Gangaraju	LVD-ISSP	Project Director, ISSP, ISRO, Bangalore.
		LVD-ISSP in GOI	-do-
		HVD-ISSP in GOI	Controller ISRO Satellite Centre(3rd Respondent
(ii)	K. Mahadeswara	LVD-ISSP	Project Director, ISRO Satellite Centre.
		LVD-ISSP in GOI	-do-
		HVD-ISSP in GOI	-do-
(iii)	Aswathanarayana	HVD-ISSP	-do-
		HVD-ISSP in GOI	-do-

NB: ISSP means Indian Scientific Satellite Project, Bangalore
ISRO means Indian Space Research Organisation

4. The refrain of grievance of the applicants is, that the working conditions of the drivers in the ISSP were dismal and they were asked to work overtime, without commensurate allowance. According to them, this situation was aggravated by introducing a double shift system, known as the "split system", under which the drivers were required to work in two shifts a day, for nearly 16 hours. As the working conditions for the drivers in the ISSP worsened, the three applicants and another driver, are said to have taken the lead to ventilate the grievances of the drivers and to form an association of drivers. The management according to them, found it difficult to implement the "split system", for want of cooperation from all the drivers, ~~which~~ and felt that the applicants and others who were putting a spoke in the wheel, ought to be got rid of.

5. The applicants allege that with this as a motive, the management (which actually is a Department of the Government of India) served charge sheets on them, between September, 1982 to October, 1983, under Rule 11 of the Department of Space Employees (CCA) Rules, 1976 (Rules for short). The following articles of charge were framed on each of them by the third respondent viz. the Controller of ISRO Satellite Centre, holding that all the applicants, under each article of charge, had failed to maintain absolute devotion to duty and integrity, in violation of the Central Civil Service (Conduct) Rules 3(1)(i) and (ii) (CCSR for short).

S.No. (1)	Name of the applicant (2)	Articles of charge framed (3)
(1)	Shri R. Gangaraju	I Unauthorisedly took Bus No. MEN 6162 on 12.8.1982 for IInd shift without checking the condition of the bus, thereby causing inconvenience to the staff of ISSP. II Carried 15 unauthorised passengers by the above bus on 12.8.1982. III Stopped the bus at an unscheduled place on 12.8.1982, on the return journey, causing inconvenience to the staff of ISSP

(1)	(2)	(3)
(2)	Shri K.Mahadeswara	I Absented himself from duty, as a driver on 3.9.1983, without prior intimation and sanction. II Did not report himself for duty on 5.9.1983 as driver. III Absented himself from duty on 7.9.1983, without permission. IV Refused to take duty slips for extra trips to be performed by bus on 4.8.1983 and 24.8.1983 and disobeyed orders. V Carried 7 unauthorised persons on 3.10.1983 by Bus No. MEE 6364.
(3)	Shri Aswathanarayana	I Carried unauthorised personnel ~~on~~ by on 8.8.1983 by Bus No. CAA 1891 II Took the above bus on 8.8.1983 on an unapproved route. III Carried unauthorised personnel by bus, on 25.7.1983 despite earlier warning.

6. The salient details of the result of the departmental enquiry against each of the three applicants and of the penalty imposed by the DA and the AA, are tabulated as under, to facilitate reference at a glance:

Sl. No.	Name of applicant	Articles of charge proved	Penalty imposed by the DA	AA
(i)	Shri R.Gangaraju	II and III	Removed from service with immediate effect by the Controller of ISRO Satellite Centre (Third Respondent, Order dated 3.12.1983)	Compulsorily retired by the Director ISRO Satellite Centre (Second Respondent) w.e.f.3.12.1983, Order dated 19.4.84
(ii)	Shri K. Mahadeswara	V	-do- Order dt.1.12.83	-do- w.e.f. 1.12.1983 Order dt.19.4.84
(iii)	Shri Aswathanarayana	I and III	-do- Order dt.21.11.83	-do- w.e.f. 21.11.1983 Order dt.19.4.84.

7. Aggrieved by the decisions of the AA and DA, the applicants filed writ petitions in the High Court of Judicature, Karnataka, which are now transferred to us and are the subject matter of the applications before us.

8. We have heard carefully the rival contentions and examined the material placed before us.

9. The learned counsel for the applicants, Shri Siddaraju, contends, that the orders passed by the DA and the AA are without application of mind and are contrary to facts, circumstances and law and are therefore violative of Articles 309 and 311 of the Constitution; that the impugned orders are illegal, as the authority who initiated the disciplinary proceedings and imposed the penalty of removal from service, was subordinate to the AA; that the charges framed cannot be deemed as misconduct under the rules; that the Inquiry Officer (IO) was highly biased in favour of the management and was thus unfavourable to the applicants; that the IO, DA and AA have misconstrued the explanation of the applicants, as having accepted the charges and arrived at an erroneous conclusion; that the punishment imposed is of the nature of victimisation, on account of the applicants having taken a leading role in the formation of association of drivers and not cooperated in the implementation of the new "split system", and that the impugned orders are mala fide and discriminatory, as other drivers have been let off with a mere warning for similar charges.

10. Shri Siddaraju took us through the following catena of Supreme Court decisions, to substantiate the case of the applicants. He first relied on the ruling in 1979 SCC (L&S) CHIEF JUSTICE OF ANDHRA PRADESH V. L.V.A. DIXITULU AND OTHERS, in regard to interpretation of Article 235 of the Constitution, in the context, that the Supreme Court had held in this case, that the power to promote an official, did not necessarily imply delegation of power to appoint him. The contention of Shri Siddaraju is, that Shri R. Gangaraju was first appointed as LVD in ISSP on 1.10.1973, by the Project Director, ISSP, ISRO Centre and was later promoted as HVD on 14.7.1980 by the

Controller ISRO Satellite Centre ie., the third respondent, who according to Shri Siddaraju, was lower in rank than the Project Director, ISSP, ISRO. We have carefully perused the Office Order dated 14.7.1980, in regard to the appointment of Shri Gangaraju as HVD, which reads as under:

"020/1(005)/80 July 14, 1980

OFFICE ORDER

On the recommendation of the Selection Committee which met on July 9, 1980, Shri R. Gangaraju, Light Vehicle Driver, ISAC, is appointed as Heavy Vehicle Driver on a basic pay of Rs.320/- in the grade of Rs.320-6-326-8-390-10-400/- plus allowances as admissible from time to time.

2. He will be on probation for a period of one year from the date of his appointment, which may be extended or curtailed at the discretion of the competent authority. During the probation period, if the services of Shri R. Gangaraju is not satisfactory, he will be reverted back as Light Vehicle Driver.

3. He will continue to be governed by the terms and conditions of service under the relevant rules and orders of ISRO, as amended from time to time.

4. The appointment is effective from the date of his taking over the duties of the post of Heavy Vehicle Driver at ISAC, Bangalore.

5. If these conditions are acceptable, Shri Gangaraju may report to the Administrative Officer-II, ISAC, Bangalore within 10 days from the date of receipt of this order.

Sd/-
(P.G.Puranik)
Controller"

11. This order on its plain reading reveals, that the appointment of Shri Gangaraju, was in the nature of a fresh appointment as HVD and not a promotion from the post of LVD. Shri Siddaraju, however, lay emphasis on the concluding line in para 2, of the above Order, which referred to the contingency of Shri Gangaraju reverting back as LVD, in case his services as HVD, during his probationary period were not satisfactory. On this premise, Shri Siddaraju contended, that the appointment of Shri Gangaraju to the post of HVD, was by way of promotion and not as fresh appointment. Extending his line

of argument further, Shri Siddaraju submitted, that the Project Director, ISSP, ISRO, who had actually appointed him first to the original post of LVD, on 1.10.1973, was the lawful appointing authority and not the third respondent, who had merely promoted him from the post of LVD to HVD on 14.7.1980 and who was inferior in rank to the former. Furthermore, according to him, the third respondent, who had imposed the punishment of removal from service on Shri Gangaraju, on 3.12.1973, had acted beyond his competence, as he was not truly the appointing authority.

12. Shri Siddaraju sought to buttress his above contention, by relying on the decision in 1980 SCC(L&S) 1 (1979) 4 SCC 289 - KRISHNA KUMAR V. DIVISIONAL ASSISTANT ELECTRICAL ENGINEER AND OTHERS - wherein it was ruled, that as the appellant was removed from service, by an authority subordinate in rank to the appointing authority, this action was violative of Article 311(1) of the Constitution and that subsequent delegation of power to a subordinate authority, to make appointment to the post in question, would not confer on him power to remove from service, a person appointed before such delegation of power.

13. Shri Siddaraju also endeavoured to fortify his point further, by taking recourse to the ruling of the High Court of Karnataka in AIR 1969 MYSORE 4 (V56 C 9) in MYSORE SRTC V KHAJA MOHIDDIN, that a civil servant should not be deprived of the valuable constitutional guarantee given to him, under Article 311 (1) of the Constitution, for no fault of his, merely because, the authority which appointed him, had ceased to exist and that the meaning of that Article was, that if there was no officer of equal rank to the appointing authority, then, the order would have to be passed by an officer of superior rank and that in no circumstances, can such an order be passed by an officer of lesser rank.

14. We shall first deal with the contention of Shri Siddaraju that the third respondent i.e. the Controller ISRO Satellite Centre, was not competent to impose the penalty of removal from service, on all the three applicants, under the Rules, as he was not the appointing authority. According to him, all these applicants were initially appointed as drivers by the Project Director, ISSP, ISRO, who was the proper appointing authority and was, therefore, competent to impose this penalty. In the case of Shri Gangaraju he asserts, that he was first appointed as LVD on 1.10.1973 by the Project Director, ISSP, ISRO and that his next appointment to the post of HVD on 14.7.1980, when the organisation became a Department of the Government of India, was not by way of direct recruitment to this post, but by way of promotion. We have observed earlier, in para 10 supra, that a plain reading of the Office Order dated 14.7.1980, signed by the third respondent, (a copy of which has been reproduced in that para) reveals, that the appointment of Shri Gangaraju was in the nature of a fresh appointment as HVD and not a promotion from the post of LVD, as contended by Shri Siddaraju.

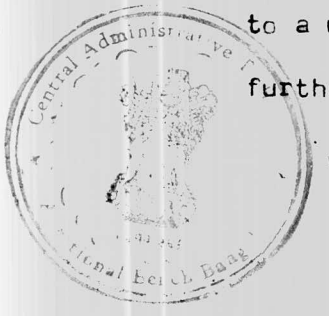
15. Shri M.S. Padmarajaiah, the learned counsel for the respondents submitted, that Shri Gangaraju, the applicant, was appointed as HVD by open selection, against a post that was advertised, and therefore, the contention of Shri Siddaraju, that the applicant was merely promoted as HVD, is not borne by facts. We are inclined to agree with Shri Padmarajaiah, for the reasons aforementioned.

16. Shri Padmarajaiah further averred, that the posts of Project Director, ISSP, ISRO and Controller ISRO Satellite Centre, are of the same grade and rank and that consequent to the ISRO having been converted into a Government body, with effect from 1.4.75, the duties of these two posts were clearly demarcated, in that the Project Director, ISSP, ISRO, was exclusively in charge of the scientific aspect of ISSP, while the Controller was solely in charge of administration. According to him, the Controller was not sub-ordinate to the Project Director.

17. It is strange, that while the question of competence of the DA, in imposing the penalty of removal from service is now being raised belatedly, before this Bench, none of the three applicants bestirred themselves in the matter, in time, before the concerned authorities, including the AA, but remained complacent throughout and thereby acquiesced in the competence of the DA to impose the penalty. The legal position in this regard has been well set out by S.A. de Smith, in his "Judicial Review of Administrative Action". At page 314 he observes as follows:

> "A decision made without jurisdiction is void, and it cannot be validated by the express or implied consent of a party to the proceedings. It does not always follow, however, that a party adversely affected by a void decision will be able to have it set aside. As we have seen, certiorari and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to disentitle him to a remedy. Whether the tribunal lacked jurisdiction is one question; whether the court, having regard to the applicant's conduct, ought in its discretion to set aside the proceedings is another. The confused state of the present law is due largely to a failure to recognise that these are two separate questions."

18. It follows therefrom, that a person, who though aware of a lacuna in or lack of jurisdiction, does not raise any objection on that ground at the appropriate time, but acquiesces, ostensibly taking the chance of a decision in his favour, will be disentitled to a writ of certiorari. At page 315 of his above book, de Smith further observes on this point, as under:



> "The right to certiorari or prohibition may be lost by acquiescence or implied waiver. Acquiescence means participation in proceedings without taking objection to the jurisdiction of the tribunal once the facts giving ground for raising the objection are fully known. It may take the form of failing to object to the statutory qualification of a member of the tribunal, or appealing to a higher tribunal, against the decision of the tribunal of first instance without raising the question of jurisdiction."

19. In this connection it is also pertinent to cite what a Division Bench of the High Court of Judicature, Karnataka, observed in a Civil Petition No.400 of 1961, through Kalagate J. The following is the observation which is relevant to the case before us:

> "Can a party who seeks to challenge the jurisdiction of the Tribunal to which he has submitted himself be permitted to raise the question of jurisdiction when he invokes our power in a writ petition under Article 226 or 227 of the Constitution? The power the High Court is asked to exercise is a discretionary one, and when the party who has not challenged the jurisdiction of a Tribunal but submitted to it and took the chance of a decision in his favour, later turns round when the decision goes against him and challenges the jurisdiction of the very Tribunal, the High Court will not exercise its discretionary power in favour of such a party. By refusing to exercise its discretionary power under Article 226 or 227 of the Constitution, it is plain that the High Court is not holding that the petitioner by not challenging the jurisdiction of the Tribunal confers jurisdiction upon it if that Tribunal has, in fact, no jurisdiction, but simply tells him that he by his own conduct is precluded from invoking its discretionary powers under the writ jurisdiction, no matter whether the proceedings which he seeks to quash are without jurisdiction. If they are without jurisdiction, it is true that no conduct of the party will make them with jurisdiction. But such considerations do not affect the principle on which the Court acts in granting or refusing to grant the writ of certiorari."

This dicta was approved by a Division Bench in C.R. Gowda v. M.S.A.T. 1964(1) Mys L.J. 319. On these principles that squarely govern the question, we reject the belated contention of the counsel for the applicants, that the third respondent was not competent to impose the penalty of removal from service on the applicants and that the disciplinary proceedings were vitiated on this account.

20. The other contention of Shri Siddaraju, that the IO, DA and the AA, did misconstrued the explanation of the applicants, as having accepted the charges and arrived at an erroneous conclusion, is not borne by facts as is seen from the following. In the course of their examination it is seen, that all the three applicants admitted the charges framed against them. Even then, out of the three charges each framed against S/Shri Gangaraju and Aswathanarayana and five charges against Shri Mahadeswara, only two charges and one charge each respectively, were held as conclusively proved, by the DA and the AA-*vide* tabular statement in para 6 *supra*.

21. Scrutiny of the past service record of the applicants reveals, that all the three of them had come for adverse notice for similar misdemeanour and were punished. Shri Gangaraju was warned on 3.1.1981, and Shri Mahadeswara censured on 27.3.1979, for carrying unauthorised passengers and reduced on 8.1.1981, by two stages in his time-scale of pay, for misconduct. Shri Aswathanarayana too, was warned on 26.7.1978 and 6.3.1979 earlier, for carrying unauthorised passengers. It is apparent therefrom, that despite this punishment, they had not made amends but were inveterate in their misconduct.

22. Notwithstanding the above facts and circumstances, the AA took a compassionate view and minimised the punishment imposed by the DA to that of compulsory retirement, with effect from the date of the original order, thus restoring pensionary benefits to the applicants.

23. The contention of Shri Siddaraju, that the punishment smacks of victimisation falls to the ground in the light of the foregoing.

24. His other contention, that the charges framed do not constitute misconduct under the CCSR, also does not hold water, as among other things, the conduct of the applicants in carrying unauthorised passengers in the buses, belonging to the ICSP, clearly bewrays lack of integrity and devotion to duty on their part, so as to attract the provisions of Rule 3(1)(i) and (ii) of the CCSR, specially when the misconduct had recurred, despite punishment in the immediate past.

25. The allegation of bias against the IO is clearly an after-thought, as at no time, was this urged by the applicants before the competent authority earlier, seeking for change of the IO. The contention of Shri Siddaraju in this behalf, is therefore, make-believe and is rejected. The plea of Shri Siddaraju, that

that other drivers have been lightly dealt with, for similar misdemeanour, as compared to the applicants and that this is discriminatory is not tenable, as the facts and circumstances relating to each case are different and even in the case of the applicants, they were leniently dealt with earlier, as brought out in the foregoing and had to be meted deterrent punishment in the instant case for incorrigible misconduct.

26. As all the contentions of the counsel for the applicants fail, these applications are liable to be dismissed. We, therefore, dismiss the same accordingly, but with no order as to costs.

sd/-
VICE CHAIRMAN

sd/-
MEMBER (A)(R) 22.12.86

bsv

TRUE COPY

8/1/87

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Fe no 8

file it with records of connected matter under cross reference to Civil Appeal No. 2155/87 Supreme Court Registry

D.No. 819/87/IV-A
SUPREME COURT OF INDIA
NEW DELHI
Dated 13th April, 1987

FROM

The Additional Registrar,
Supreme Court of India,

To

The Registrar,
~~High Court~~ of Central Administrative Tribunal, Bangalore Bench, Bangalore

PETITION FOR SPECIAL LEAVE TO APPEAL(CIVIL)NO 2155/1987

(Petition under Article 136 of the Constitution of India for Special Leave to Appeal to the Supreme Court from the Judgment and Order dated the 22-12-86 of the ~~High Court of~~ Division Bench of the Central Administrative Tribunal, Bangalore in Applin. No. 1350/86

K. Mahadeswara ..Petitioner

-vs-

Union of India & ors. ..Respondents

Sir,

I am to inform you that the petition above-mentioned for Special Leave to Appeal to this Court was filed on behalf of the Petitioner above-named from the Judgment and Order of the High Court noted above and that the same was dismissed by this Court on the 23rd day of March, 1987.

Yours faithfully,

ASSISTANT REGISTRAR

512/87(J)
21-4-87

tri/iv-A/-3-3-1987/