

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTY SECOND DAY OF JANUARY, 1987

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

Hon'ble Shri P.Srinivasan Member(A)

APPLICATION No.1427/86(T)

Chandrasekhar Puttur,
Section Supervisor,
O/o the Divisional Engineer,
Telephones, Mangalore - 575001. ... Applicant

(Shri N.B.Bhat ... Advocate)

vs.

1. Deputy Divisional Engineer,
Telephones, Mangalore - 575001.
2. Divisional Engineer, Telephones
Mangalore - 575001.
3. Director of Telecommunications,
Mangalore Area, Mangalore - 575001.
4. Union of India,
by its Secretary, Telecommunications,
Dak-Tar Bhavan, New Delhi - 110001. ... Respondents

(Shri D.V.Shyamendra Kumar ... Advocate)

This application has come up before the court today.

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

O R D E R

This is a transferred application received from the
High Court of Karnataka.

2. The applicant, who is working at present as a Section Supervisor in the Telecommunications Department at Karwar, complains in this application that the punishment of censure has been illegally imposed on him and that he has not been allowed to cross the Efficiency Bar, again illegally.

3. So far as the imposition of the punishment concerned, several grounds were raised in the application, but we need

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refer here only to the first of them, namely, that the person who initiated the proceedings for imposition of penalty under rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules was not competent to do so. He was only in charge of the current duties of the office of Deputy Divisional Engineer, and was not regularly appointed to that post. A certain Shri T.C. Saravanan, who was working as an Accounts Officer in the same office, was asked to attend to the current duties of the Deputy Divisional Engineer for three days and during this period, he initiated proceedings against the applicant. Another ground of attack was that even the Deputy Divisional Engineer was not competent to initiate penalty proceedings since under the relevant rules, he could not impose minor penalties on the applicant.

4. Shri N.B.Bhat, learned counsel for the applicant strongly urged that a person merely appointed to carry on the current duties of a post cannot exercise the statutory powers attached to that post and initiation of proceedings for levy of penalty constitutes a statutory power.

5. Shri D.V.Shylendra Kumar, learned counsel for the respondents, contends that Shri Saravanan only exercised administrative powers and not statutory powers when he issued the memorandum dated 29.12.1983 (Annexure C to the application) initiating proceedings for departmental inquiry, and that therefore he did not act illegally. Shri Shylendra Kumar also contended that under the relevant rules, the Deputy Divisional Engineer was empowered to impose minor penalties on persons of the rank of the applicant and therefore the initiation of proceedings by the person in charge of the current duties of



the Deputy Divisional Engineer and imposition of minor penalty later by the regular Deputy Divisional Engineer was valid in law.

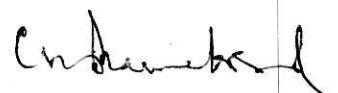
6. After considering the rival contentions, we feel that the applicant should succeed on the first ground of attack viz. that a person who is asked to carry on the duties of a post without being regularly appointed thereto, cannot exercise statutory powers of that post. Initiation of penalty proceedings is a statutory power. The memorandum dated 29.12.1983 issued to the applicant by Shri Saravanan clearly indicates that action was proposed to be taken under rule 16 of the CCS (CCA) Rules. A statement of imputation of misconduct was also attached to the memorandum. The applicant was asked to make any representation as he might wish and he was warned that if he failed to submit representation within ten days, it would be presumed that he had nothing to say on the matter and orders would be passed against him ex parte. This was clearly exercise of power under rule 16(1) of the CCS(CCA) Rules, more particularly clause (a) thereof. Therefore we cannot agree with learned counsel for respondents that Shri Saravanan was merely exercising administrative powers and not statutory powers. That being so, the initiation of proceedings by him was illegal and has to be set aside. The impugned order imposing penalty i.e. memorandum dated 19.9.1984 at Annexure E to the application is therefore set aside as also order dated 24.1.1985 dismissing the appeal against the penalty at Annexure G to the application. The respondents will have the liberty to take such action as they deemed fit in accordance with law.

7. So far as the applicant's grievance against not being

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allowed to cross Efficiency Bar is concerned, we would direct the respondents to review the matter in the light of our decision above in regard to the initiation and imposition of penalty.

8. In the result, the application is allowed subject to the observations made above. Parties will bear their own costs.



(Ch. Ramakrishna Rao)
Member (J)



(P. Srinivasan)
Member (A)

AN.