

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 14 Oct 87

APPLICATION NO

74 / 87(F)

W.P.No.

APPLICANT

K. Ramanujam Vs

RESPONDENTS

Secretary, Min. of
Defence, N. Delhi & 20rs.

To

1. Shri K. Ramanujam,
Chargeman Grade-I,
Trade Wing,
Inspectorate of Electronics,
P.O. J.C. Nagar, Bangalore-6.
2. The Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
3. The Director General of
Inspection (DGI),
Ministry of Defence,
DHQ PO, New Delhi-110011

4. Maj Gen (now Lt. Gen)
R. L. Kapur,
Director of Inspection-
Arms and Ammunition,
Directorate General
of Inspection,
Min. of Defence,
New Delhi-110011.
5. Shri M. S. Padmarajiah
Advocate (CGSC),
High Court Building,
Bangalore-1.

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 5 Oct 87.

RECEIVED

Diary No.

Date: 15-10-87

Encl: as above.

for DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 5TH DAY OF OCTOBER, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. L.H.A. Rego,

.. Member(A)

APPLICATION NUMBER 74 OF 1987.

K. Ramanujam,
Chargeman Grade-I,
Trade Wing,
Inspectorate of Electronics,
P.O. J.C. Nagar, Bangalore-560006.

.. Applicant.

v.

1. Union of India,
represented by the Secretary to Govt.
of India, Ministry of Defence, NEW DELHI-110 011.
2. The Director General of Inspection,
Directorate General of Inspection
Ministry of Defence, Govt. of India,
DHQ PO NEW DELHI - 110 011.
3. Maj Gen (now Lt. Gen) R.L. Kapur,
Director of Inspection Armaments
Directorate General of Inspection
Ministry of Defence, New Delhi-11.

.. Respondents.

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

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

ORDER

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

2. Sri K. Ramanujam, the applicant before us is working as a Chargeman Grade-I, Trade Wing, Inspectorate of Electronics, Bangalore from April, 1986. Before that, he was working as Chargeman Grade-II in that very office. He claims to be the Chairman of an Association



called 'CIL NGO's Association', now designated as the 'Indian National NGO's Association of Army Electronics Inspection, Bangalore' ('Association') registered under the Trade Unions Act, 1926.

3. In his capacity as the Chairman of the Association, the applicant had sent a telegram to the Defence Minister and the Joint Secretary to Government of India, Ministry of Defence and he followed it up by writing a detailed letter to them on 28-2-1984 (Annexure-B).

4. On the examination of the said telegram and the letter written thereto, the Director of Inspection Armaments, Ministry of Defence, Department of Defence Production, New Delhi ('Director'), as the Ad hoc Disciplinary Authority ('DA') appointed by Government under the Central Civil Services (Classification, Control and Appeal) Rules, 1955 ('Rules'), initiated disciplinary proceedings against the applicant and served on him a charge memo and statement of imputations on 27-2-1985 (Annexure-D). In the statement of imputations the DA charged the applicant thus:

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI K.RAMANUJAM, C/M-II.

Shri K.Ramanujan, C/M-II of Inspectorate of Electronics, Bangalore issued a telegram dated 27 Feb 1984 addressed to the Defence Minister and JS(I), the text of which is reproduced below:-

"SERIOUS ALLEGATIONS ARE AGAINST BRIG DAYAL DPIL WHICH ARE AGAINST NATIONS INTEREST STOP SECURITY OF THE COUNTRY AT STAKE STOP HIS OFFING PROMOTION TO MAJ GEN BE WITHHELD TILL INVESTIGATION STOP DETAILED LETTER ABOUT HIS MISDEEDS FOLLOWS STOP KEEP THIS STRICTLY CONFIDENTIAL STOP PLEASE ACKNOWLEDGE K.RAMANUJAM CHAIRMAN CIL NGOS ASSN 29/1 II GANGENAHALLI BANGALORE-32"

Subsequently he sent a confidential letter No.CIL/NGO ASSN/X dated 28 Feb 84 addressed to Secretary (DP) with a copy to JS(I) making several allegations against Brig (now Maj.Gen) N.Dayal, Director of Production and Inspection Electronics. The allegations made by Shri Ramanujan in the letter are baseless and were intended to tarnish the image of the DPIL.



By sending the telegram to Defence Minister and JS(I) and letter to Secretary (DP) and JS(I) making false and baseless allegations against the Senior Officer, Shri Ramanujam has acted in a manner unbecoming of a Government servant thereby violating rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

In answer to this, the applicant filed his defence statement before the DA on 28-3-1985.

5. On an examination of the charge memo, the statement of imputations, the defence statement and the records, the DA in his order No.A/97563/DGI(Vig.Cell) dated 6-5-1985 (Annexure-F) held that the applicant was guilty of the charge levelled against him and imposed on him the penalty of 'Censure' under the Rules.

6. Against the said order of the DA, the applicant claiming that he fulfils the requirement of Rule 24(3) of the Rules, filed an appeal under the said Rule before the President of India. On 13-10-1985 the Director General of Inspection ('DGI') to whom that appeal was transmitted by Government dismissed the same and upheld the order of the DA.

7. Against the said orders of the DGI and the DA, the applicant filed a review under Rule 29 of the Rules before the President, who by his order dated 7-5-1986 (Annexure-K) had rejected the same.

8. On 3-2-1987, the applicant has made this application challenging all those orders on diverse grounds.

9. In justification of the orders made, the respondents have filed their reply and produced their records at the hearing.

10. Sri K.Ramanujam, applicant appeared in person and argued his case. Sri M.S.Padmarajah, learned Senior Central Government Standing Counsel appeared for the respondents.

11. Sri Ramanujam contends that the appeal filed by him before



the President of India/Government was competent and maintainable before that very authority and that very authority should have decided his appeal as enjoined in the very instructions issued by Government (vide: page 122 Swamy's Compilation of CCS CCA Rules, 15th Edition).

12. Sri Padmarajaiah contends, that the appeal filed by the applicant was not maintainable before the President/Government and, therefore, the same had been rightly transferred to the DGI for disposal and the order made by him was legal and valid.

13. In his appeal memo the applicant claiming himself to be the Chairman of the Association, expressly invoked Rule 24(3) of the Rules for filing that appeal before the President. Without any doubt, the applicant deliberately invoked Rule 24(3) by-passing the ordinary legal remedy available to him under Rule 24(1) and (2) of the Rules.

14. Rule 24 of the Rules indicating the appellate authorities under the Rules, which is material, reads thus:

24. (1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified.

(i) where such Government servant is or was a member of a Central Service, Class I or Class II or holder of a Central Civil Post, Class I or Class II,-

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Central Civil Service, Class III or Class IV or holder of a Central Civil Post, Class III or Class IV, to the authority to which the authority making the order appealed against is immediately subordinate.



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(2) Notwithstanding anything contained in sub-rule (1)

- (i) an appeal against an order in a common proceeding held under Rule 18 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate;

Provided that where such authority is subordinate to the President in respect of a Government servant for whom President is the appellate authority in terms of sub-clause (b) of clause (i) of sub-rule (1), the appeal shall lie to the President.

- (ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(3) A Government servant may prefer an appeal against an order imposing any of the penalties specified in Rule 11 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the President, on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or union, participating in the Joint Consultation and Compulsory Arbitration Scheme."

Sub-Rules (1) and (2) provide for appeals to the various appellate authorities detailed in those sub-rules.

15. Sub-rule (3) of the Rules is in the nature of an exception to sub-rules (1) and (2) of the Rule. This sub-rule provides for a special and a designated forum to a class of Central Government Servants who satisfy the requirements of that provision. This sub-rule allows or permits the person satisfying the requirements of that Rule to directly file an appeal against any of the punishments imposed on him by any of the disciplinary authorities directly before the President/Government of India. We are not concerned with the wisdom of this Rule. We are only concerned with its true import only. Whatever be the rank of the civil servant and whichever be the punishment imposed on him under the Rules, he has a choice to file his appeal, if he ~~is~~ so decides before the President/Government. This choice does not disentitle him to file his appeal before the

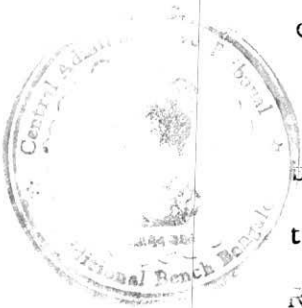


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normal appellate authority specified in the preceding sub-rules of that Rule. Even if the appellant answers the description of this sub-rule, then also it was open to him to file his appeal before the DGI who was the normal appellate authority or before the President/- Government which was the special appellate authority.

16. Whenever an appeal is filed before any specified appellate authority then that authority has a duty to decide that appeal, one way or the other, which necessarily includes the power to decide whether that appeal was maintainable or not, before it. If the appellate authority decides that the appeal filed before it was maintainable, then it is bound to decide the same on merits or on all other points raised in that appeal. But, if the appellate authority decides that the appeal filed before it was not maintainable before it, then the proper course for it was to return that appeal to that appellant, giving reasons in support of the same, to choose his own legal remedy over the same and the order appealed before it. This is the normal requirement of all legal proceedings before any Court, Tribunal and an Appellate Authority under any law. We do not see as to why this salutary practice should not be followed by the appellate authorities under the Rules, though there is no specific provision for the same under the Rules. On this view, the proper course for Government to do was to return the appeal to the applicant, if it held that he does not answer the description of Rule 24(3) of the Rules.

17. The Rules do not provide for transfer of an appeal filed before one appellate authority to another appellate authority whether that authority was a superior or an inferior authority to it. If the Rules do not provide for transfer of an appeal, then it was not open to Government to transfer the appeal to the DGI. On this, as also



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on our earlier conclusion, it was not open to Government to transfer the appeal filed before it to the DGI for disposal.

18. We will, however, assume for purposes of this case, that the power to entertain an appeal comprehends in itself the power to transfer the same to its subordinate authority, on the ground that appeal was not maintainable before it and its subordinate authority was the proper appellate authority to entertain the same and examine, whether the transfer of the appeal filed by the applicant had been done in accordance with law.

19. On receipt of the appeal filed by the applicant, the President's Secretariat acknowledging its receipt, separately forwarded the appeal papers on 31-7-1985 to the Secretary to Government of India, Ministry of Defence for appropriate action. On receipt of this communication, the Defence Ministry, in turn, forwarded in these words the appeal papers to the Director (Admin.), an officer attached to the DGI for his comments and return:

MINISTRY OF DEFENCE

D(INSPECTION)

Subject: An appeal by Shri K.Ramanujam, C/m-II, Inspectorate of Electronics, Bangalore under Rule 24(3) of Central Civil Service (Classification, Control and Appeal) Rules, 1965 addressed to the Hon'ble President of India (Appellate Authority) against the order No.A/97563/DGI (Vi.G.Cell), dated 6-5-1985, awarding him the minor penalty of 'Censure'.

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An appeal by Shri K.Ramanujam, C/m-II, Inspectorate of Electronics, Bangalore under Rule 24(3) of CCS(CCA) Rules, 1965 addressed to the Hon'ble President of India (Appellate Authority) against the order No.A/97563/DGI (Vi.G.Cell) dated 6-5-1985 awarding him the minor penalty of 'Censure'. The appeal has been received from President's Secretariat No.2883-P.1(2)/85, dated 3-7-1985 and has been acknowledged by President's Secretariat is forwarded herewith to examine the appeal and furnish the comments thereon.



It is requested that the case file of Shri K. Ramanujam, C/M-II, Inspectorate of Electronics, Bangalore, may please be sent to this Ministry, immediately.

Sd/- Shakuntala Jain,
Section Officer(I).

Director (Admn.)

M. of D I D No. 4046/85/D (Inspection), dated 31-7-1985.

On receipt of this note and the papers, one Sri K.P. Thomas who was then working as a Vigilance Officer in the office of DGI examined the same and inter alia expressed thus:

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"5. In his appeal Shri Ramanujam had brought out only extraneous matters which are not at all relevant to the charge-sheet issued to him. More over no appeal lies to the President under Rule 24(3) as the misconduct of making false allegations is not an activity connected with trade union. Moreover CIL NGOs Association is not a recognised Association. The appeal may, therefore, be rejected."

He marked the same to the Director (Admn.) and Ministry of Defence /D(Ins.) in that order, with which the former concurred on 29-8-1985 and forwarded the papers to Government for its examination and decision.

20. On an examination of the aforesaid note and the other papers, an Under Secretary to Government in the Ministry of Defence made a note on 12-9-1985 in these words:

"Discussed with Director (Admn.) and Vigilance Officer (DGI). In view of 'A' above, the appeal submitted by Shri Ramanujam may be considered by the Appellate Authority and decision communicated to him. No appeal lies to the President in this case."

On the basis of this note, the appeal papers of the applicant were forwarded to the DGI for disposal, who on 16-10-1985 dismissed the same.

21. What emerges from these proceedings is, that the decision to transfer the appeal filed before the President or Government was reached by an Under Secretary to Government in the Ministry



[Handwritten signature]

of Defence, a very low functionary and not by the concerned Minister of Government. We are of the view, that this decision of the Under Secretary was not authorised by the Allocation of Business and Transaction of Business Rules of Government and was in derogation of circular instructions issued thereto by Government in G.I., M.H.A., O.M. No.7/14/64-Ests.(A) dated the 18th April, 1967. That Circular issued by Government reads thus:

"GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Appeal in the case of a disciplinary order against an office-bearer of an association or union in respect of such activities as office bearer:- All appeals to the President under sub-rule (3) of Rule 24 should be placed before the Minister-in-charge for final orders, irrespective of whether the general directions in various Ministries, relating to the disposal of appeals addressed to the President, require such submission or not.

In respect of persons serving in the Indian Audit and Accounts Department, the appeals referred to in the preceding para, shall be disposed of by the Comptroller and Auditor-General of India."

In this Circular, Government, in our opinion, very rightly had indicated that whenever an aggrieved Central Government Servant lodges an appeal before the President under Rule 24(3) of the Rules, such an appeal should be placed for the consideration and final decision by the concerned Minister of the Government and not by any other lower functionary of Government. We are somewhat surprised that this salutary principle enunciated as early as on 18-4-1967, was overlooked and disobeyed by all concerned and the appeal of the applicant was somewhat inaptly transferred to the DGI for disposal. We are, therefore, of the view, that the decision reached by the Under Secretary was wholly unauthorised and illegal.

22. If the decision to transfer was unauthorised and impermissible, then the decision reached by the DGI would also be unauthorised and illegal.



23. We have held that the decision to transfer the appeal and the ultimate order made by the DGI on the appeal, were without jurisdiction and illegal. If that is so, then the order made on the review petition, has only to be treated as a mere surplusage and that in any event cannot validate the invalid orders. On this view, it is necessary to quash the order made on 7-5-1986 by the President-/Government.

24. On the view we have earlier expressed, it is not proper for us to examine the validity of the order of the DA on which also, Sri Ramanujam made various submissions, We leave them open to be examined by Government if it decides to entertain the appeal.

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

- 1) We quash the order of Government dated 7-5-1986 (Annexure-K) and the order of the Director General of Inspection dated 16-10-1985 (Annexure-H).
- 2) We direct the Government of India to restore the appeal filed by the applicant on 26-6-1985 (Annexure-G) to its original file and dispose of the same in accordance with law and the observations made in this order.

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

np/.

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER(A).

- True copy -

For
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE