

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 2-4-87

Application Nos

1957/86, 92 & 95/87(F)

Applicant

Shri R. Srinivasaiah

To

1. Shri R. Srinivasaiah
32, Issack Sahib Street
J.C. Nagar
Bangalore - 560 006
2. Shri M.S. Nagaraja
Advocate
No. 35, II Floor
(Above Hotel Swagath)
I Main Road, Gandhinagar
Bangalore - 560 009
3. Regional Officer(Karnataka)
Directorate of Field Publicity
Ministry of Information & Broadcasting
Government of India
No. 79, I Main Road
Seshadripuram
Bangalore - 560 020
4. The Director
Directorate of Field Publicity
Ministry of Information and
Broadcasting
Government of India
R.K. Puram
New Delhi-110066
5. Shri M. Vasudeva Rao
Addl Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NOS. 1957/86, 92 & 95/87(F)

Please find enclosed herewith the copy of the Order passed by this
tribunal in the above said Applications on 13-3-87.

: As above

B. V. Venkatesh Reddy
Deputy Registrar
(Judicial)

Copy to file
A no. 95/87(F)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE.

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

and

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

DATED THISTHE THIRTEENTH DAY OF MARCH, 1 9 8 7.

Application Nos. 1957/86, 92 & 95/87.

R. Srinivasaiah,
Daftri,
O/o Regional Officer,
Directorate of Field Publicity,
Bangalore.

....Applicant.

(Dr. M.S. Nagaraja, Advocate)

vs.

1. Regional Officer (Karnataka),
Directorate of Field Publicity,
Ministry of Information and Broadcasting,
Govt. of India,
Bangalore-20.

2. The Director,
Director of Field Publicity,
Ministry of Information & Broadcasting,
Govt. of India,
R.K.Puram,
New Delhi.66.

....Respondents.

(Shri M.Vasudeva Rao, Addl. CGSC)

These applications having come up for hearing today,
Hon'ble Vice Chairman made the following:

O R D E R

A. No. 1957/86 was not listed for hearing today,
and was listed for hearing on 24.3.1987. This applica-
tion is connected with A. Nos. 92 & 95 of 1987 listed



for hearing today. At the request of both sides, this application is preponed to today for hearing and is heard along with A. Nos. 92 & 95 of 1987. Shri R. Srinivasaiah, who is the common applicant in these applications, is present in Court. Dr. M.S.Nagaraja, who represents the applicant in A. Nos. 92 & 95/87 also files vakalatnama for him in A. No. 1957/86 also. In Application No. 1957/86, the respondents are represented by Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel. But Shri M. Vasudeva Rao, Additional Central Government Standing Counsel, who represents the respondents in A. Nos. 92 & 95 of 1987 appears for the respondents in this case also. As the questions that arise for determination in these cases, in which the parties are common, are interconnected, we propose to dispose of them by a common order.

2. The applicant is working as a Daftry in the Office of Regional Officer, Directorate of Field Publicity, Bangalore ('RO') for a fairly long time. On 20.1.1986, he applied for leave for 11 days from 20.1.1986 to 30.1.1986 on medical grounds supported by medical certificate. On that application, the RO made an order on 19.6.1986 (Annexure 'K' in A. No. 95/87), treating the same as dies-non. The said order reads thus:

" Shri R. Sreenivasaiah, Daftry of this office establishment is hereby informed that the undersigned in exercise of the powers conferred by Rule 11(3)(iii) and 11(4) of the CCS(CCA) Rules, 1965, has decided to treat the period of his wilful absence from 20.1.86 to 30.1.86 (11 days) as 'Dies-non' after careful examination of the documents besides taking into account of the official's refusal to obey the written orders of the competent authority."



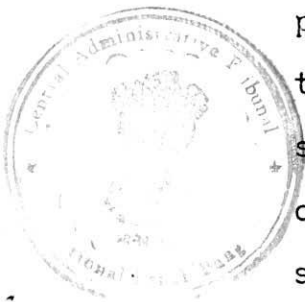
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Aggrieved by this order, the applicant filed an appeal before respondent No.2 who by his order No. C-13013/16/86-Admn. dated 4.2.87 has rejected the same. In A. No. 95/87, the applicant had challenged the order dated 19.6.1986 of the RO only. But in order to do full and complete justice, we also propose to examine the order made on 4.2.1987 by respondent No.2.

3. Evidently, in pursuance of his order dated 19.6.1986 (Annexure-K in A. No. 95/87), the RO had withheld a sum of Rs. 346.50 from the pay of the applicant which is challenged by him in A. No. 1957/86.

4. In exercise of the powers conferred by Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('the Rules'), the RO in his order No. P/3/76-RS dated 18.7.86 (Annexure-A) had placed the applicant under suspension from that date pending 'contemplated' disciplinary proceedings under the Rules and has later commenced them which are not still concluded. In A. No. 92/87, the applicant has challenged the said order of suspension and had also sought for a direction to consider his case for enhancement of subsistence allowance in terms of rule 53(1) of the Fundamental Rules ('FR').

5. The respondents have filed separate replies justifying the orders made by them and opposing the various directions sought by the applicant.



[Handwritten signature]

6. We will first deal with A. Nos. 1957/86 and 95/87, which are really one application only.

7. Dr. Nagaraja contends that the order made by the RO on 19.6.1986 treating the period from 20.1.1986 to 30.1.1986 as 'died non' and directing the recovery of pay & allowances paid for the said period, was unauthorised by the Rules and illegal.

8. Shri Rao contends that though the RO had inaptly invoked rule 11(3) and (4) of the Rules, the order made by him was really made under rule 17A of FR, was authorised and legal.

9. Rule 11 of the Rules enumerates the different penalties that can be imposed against civil servants of the Union of India. Rule 11 classifies punishments into minor and major penalties. Rule 11 relied on by the RO to treat the period as 'dies non' did not empower him to do so. 'Dies non' is not one of the penalties contemplated in Rule 11 of the Rules. In A. No. 245/86 (H. RAMAKRISHNA v. UNION OF INDIA & ANOTHER), decided on 8.12.1986, we have held that disciplinary or appellate authority cannot invent a new penalty of his own and impose a penalty other than those contemplated by rule 11 of the Rules. For these and the reasons stated in Ramakrishna's case, we are of the view that the order made by the RO was unauthorised and illegal. In affirming the same, respondent no.2 had overlooked this illegality.



19. Dr. Nagaraja lastly seeks for a direction to complete the disciplinary proceedings against the applicant with expedition and in any event within a time limit of two months to be fixed by this Tribunal. Shri Rao prays for atleast six months to complete the disciplinary proceedings against the applicant.

20. Whenever disciplinary proceedings are initiated against a civil servant, their completion with expedition is in the interest of that civil servant, Government and interests of justice. In this view, without unnecessarily concerning ourselves with the reasons for the delay, we consider it proper to fix a reasonable time for the completion of the disciplinary proceedings against the applicant. We are of the view that it would be reasonable to direct the completion of the proceedings within a period of four months from the date of receipt of our order.

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

(1) We quash Order No. C-13013/16/86-Adm. dated 4.2.1987 of respondent No.2 and Order No.P/3/76-RS dated 19.6.1986 of the RO.

(2) We direct the RO ^{re-}to/examine the case of the applicant for his absence or leave from 20.1.1986 to 30.1.1986 under Rule 17A FR or such other Rule, if any, governing the same, and make a fresh order in accordance with law and the observations made in this order.



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(3) We direct the RO to complete the disciplinary proceedings against the applicant 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 our order. But even before that, we direct the RO to re-examine the case of the applicant for revocation of suspension and if he decides not to revoke the same, then to consider his case for increase or decrease of subsistence allowance under Rule 53 of FR.

22. Applications are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-

VICE CHAIRMAN

Sd/-

MEMBER(A) T 13.3.1987

dms.

-True Copy-

B. V. Venkatesh Babu
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

we cannot take exception to the same when disciplinary proceedings have actually been initiated and they have not so far been concluded. On this view also, both on principle and authority, we cannot annul the order made by the RO on 18.7.1986.

15. ^{next} Dr. Nagaraja/contends that all the facts and circumstances justify this Tribunal to revoke the order of suspension of the applicant and in any event, issue a direction to the RO to examine his case for revocation.

16. Shri Rao contends that there were no grounds to revoke the suspension or to direct the RO to examine the case for revocation at all.

17. What we have expressed on the aptness of suspension equally applies to this case of the applicant. We cannot really examine this case also, at any rate, at this stage.

18. Even in the matter of continuance of suspension or otherwise, various directions have been issued by Government for the guidance of officers. Whether the suspension of the applicant should be continued or not is a matter for the RO himself to examine and decide. If the RO decides not to revoke the suspension, then he has to examine the case of the applicant for increase of subsistence allowance under F.R.53. We consider it proper to issue appropriate directions to the RO in this behalf.



10. Shri Rao is right in urging that invoking a wrong Rule does not by itself invalidate an order and this Tribunal can uphold the same, if really authorised by another Rule like F.R.17A. We consider it more proper to leave that question to be re-examined by the RO, after affording an opportunity to the applicant to state his case.

11. We now pass on to examine Application No. 92/87.

12. Dr. Nagaraja contends that the RO was unjustified in placing the applicant under suspension for a trifling event and the same, therefore, calls for our interference.

13. Shri Rao contends that the order made by the RO, besides being within his powers, was wholly justified.

14. Rule 10 of the Rules empowers the competent authority to place a civil servant under suspension even when a disciplinary proceeding is contemplated against him. In his order, the RO had stated that disciplinary proceedings against the applicant were contemplated and therefore he was placing him under suspension. From this, it follows that the order made by the RO was well within his powers.

15. As to the aptness of the RO making his order, this Tribunal should not examine the same as ^{if} it is an appeal and reach a different conclusion. On this short ground, the challenge of the applicant to the order of suspension is liable to be rejected. Even otherwise,