

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 18 JUL 1988

APPLICATION NO.

727

/87(F)

W.P. NO.

Applicant(s)

Shri S.K. Ramakrishnaya

V/s

Respondent(s)

The Head Record Officer(D), City RMS,
Bangalore & 2 Ors

To

1. Shri S.K. Ramakrishnaya
S/o Shri S.T. Krishnaya
Shivapur Post
Maddur Taluk
Mandya District
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Head Record Officer (Detach)
Bangalore City RMS
Bangalore Sorting Division
Bangalore - 560 023

4. The Post Master General
Karnataka Circle
Bangalore - 560 001
5. The Senior Superintendent
RMS, Bangalore Sorting Division
Bangalore - 560 020
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

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(s) on 15-7-88.

Received S.K. Ramakrishnaya

18/7/88

(S.K. Ramakrishnaya) DEPUTY REGISTRAR
Applicant. (JUDICIAL)

Encl: As above

K. J. Rao
19/7/88

o/c S

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 15TH DAY OF JULY, 1988.

PRESENT:

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

.. Vice-Chairman.

And

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

.. Member(A).

APPLICATION NUMBER 727 OF 1987.

S.K. Ramakrishnayya,
S/o S.t. Krishnayya,
Major, Shivapur Post,
Maddur Taluk, MANDYA DISTRICT.

.. Applicant.

(By Sri M. Raghavendra Achar, Advocate)

v.

1. Head Record Office (D),
Bangalore Stg. Division,
Bangalore-23.
2. Post Master General,
Karnataka Circle,
Bangalore.
3. Senior Superintendent,
RMS, Bangalore Sorting Division,
Bangalore-20.

.. Respondents.

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

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This application having come up for hearing, 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. From 29-8-1988 the applicant was working as an Extra Departmental Agent ('ED Agent') governed by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 ('ED Rules'). In the Departmental Test held on 17-7-1983 for regular group-D posts in the Postal Department, the applicant was one of the successful candidates. On that basis, the Senior Superintendent, RMS, Bangalore Stg. Division, Bangalore ('Superintendent') by his Order dated

21-7-1983 appointed the applicant as a Mailman on a temporary basis. In Memo No.HRO/PF/85-86 dated 30-10-1985 the Head Record Officer, Bangalore, Sorting Division, Bangalore ('HRO') had terminated the services of the applicant under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules,1965 ('the Rules') with immediate effect granting one month's pay in lieu of one month's notice. Aggrieved by the same, the applicant filed appeals/representations before the Post Master General, Karnataka Circle, Bangalore and the Postal Services Board ('Board') who by their orders made on 5-12-1985 and 21-4-1986 (Annexures-B and C) rejected them. Hence, this application.

3. In making this application, there is a delay of 116 days. In I.A.No.I, the applicant has sought for condonation of that delay, which is opposed by the respondents.

4. On merits, the applicant has urged that his termination was as a measure of punishment and was in contravention of Article 311 of the Constitution, the Central Civil Services (Classification, Control and Appeal) Rules,1965 and the principles of natural justice.

5. In their reply, the respondents have asserted that the termination of the service of the applicant was on the ground that he was found unsuitable to hold the post and that it was termination simpliciter in conformity with the Rules.

6. We will first deal with I.A.No.I and then the merits.

7. Sri M.Raghavendra Achar, learned counsel for the applicant contends, that the facts and circumstances stated in I.A.No.I constitute a sufficient ground for condoning the delay of 116 days in making the application.

8. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents opposes I.A.No.I.

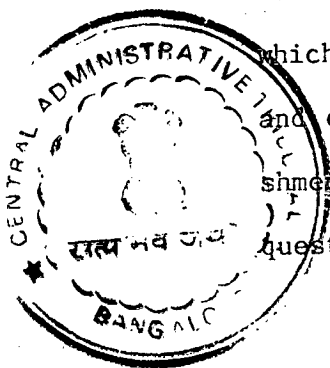


9. In I.A.No.I, the applicant has stated that on receipt of the Order dated 21-4-1986 of the Board, he approached the Labour Commissioner for relief under the Industrial Disputes Act, before whom the respondents urged that he had no jurisdiction to adjudicate the same and that the jurisdiction vested with this Tribunal and on that objection he has approached this Tribunal on 14-8-1987. In other words, the applicant states that the delay was due to the fact that he was pursuing the remedy in a wrong forum. In their objections to I.A.No.I, the respondents do not dispute this fact. If that is so, then the time taken in pursuing the remedy before a wrong forum and the delay that had occasioned on that account, would undoubtedly constitute sufficient cause for condoning the delay. We, therefore, allow I.A.No.I and condone the delay in making the application and proceed to deal with the case on merits.

10. Sri Achar contends that the termination of the applicant was really as a measure of punishment in contravention of Article 311 of the Constitution, the Central Civil Services (Classification, Control And Appeal) Rules and was not termination simpliciter. In driving home this point, Sri Achar has relied on a large number of rulings of the Supreme Court, the High Courts and this Tribunal, which have explained the scope and ambit of the Rules, the distinction and difference between termination simpliciter and a measure of punishment and the powers of the Courts and Tribunals to decide such questions.

11. Sri Padmarajaiah contends that the termination of the applicant was on the ground that he was found unsuitable to hold the post and is termination simpliciter in conformity with the Rules and the same does not therefore call for our interference.

12. The order of termination made against the applicant un-



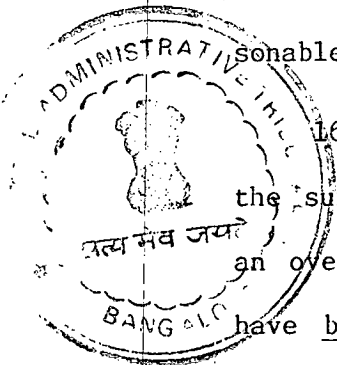
undoubtedly states that it is termination simpliciter under Rule 5(1) of the Rules. But, as pointed out by the Supreme Court in more than one case, the order and the form of the order are not decisive in deciding whether the termination was termination simpliciter or was as a measure of punishment and that the same should necessarily be examined and decided on a fair and proper examination of all attendant circumstances and the records leading to the order of termination.

13. Bearing the principles that are no longer in doubt, we have carefully examined all the attendant circumstances and the records leading to the impugned order of termination. On such an examination we find that the termination of the applicant was on the ground that he was found unsuitable to hold the post and was not as a measure of punishment as pleaded before us.

14. Examination by us of all the circumstances and the records, reveals that the conclusion on the suitability or otherwise of the applicant to hold the post was reached on relevant considerations and material.

15. We are also of the view that the conclusions reached to the authority can never be characterised as so perverse that no reasonable man would have ever reached that conclusion.

16. When the authorities who are better suited to adjudge on the suitability or otherwise of the applicant to hold the post, on an overall consideration of all the circumstances and the material have bona fide reached that conclusion, this Tribunal should not examine the same as if it is a Court of appeal and come to a different conclusion. On these conclusions themselves, the challenge of the applicant to the impugned orders must fail.



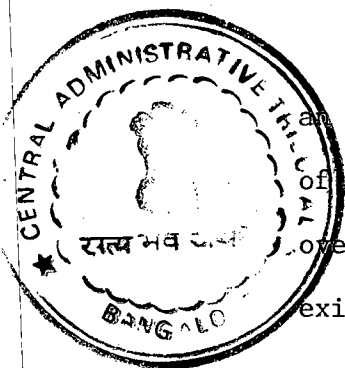
17. The fact that frequent and intermittent leave sought by the applicant during the short span of his career have been sanctioned does not necessarily mean that the conclusion reached by the authority that the applicant was unsuitable to hold the post was vitiated. We are of the view, that that was also a relevant factor in deciding on the unsuitability or otherwise of the applicant to hold the post. Even otherwise, this was not the sole ground on which the applicant was found unsuitable.

18. We see no infirmity in the conclusions reached by the authorities and the orders made by them against the applicant. On these conclusions, it follows that we cannot interfere with the impugned termination of the services of the applicant.

19. We have earlier noticed that the applicant had been working as an ED Agent from 1977 till he was regularly appointed. Sri Achar made a passionate plea that notwithstanding the termination of the applicant from the post of regular Mailman, the respondents should be directed to continue the applicant at least as an ED Agent. Sri Padmarajaiah opposed this direction sought by Sri Achar.

20. We have earlier noticed that the applicant was working as an ED Agent before he was appointed as a regular Mailman. An order of termination simpliciter does not prohibit the respondents from ever again appointing the applicant as an ED Agent in any of the existing or future vacancies if he is willing for the same.

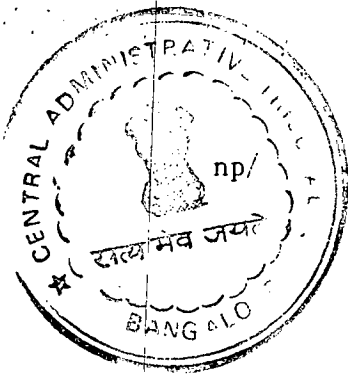
21. The applicant is quite young and has practical experience as an ED Agent. The appointment to the post of ED Agent also had to be made in accordance with the ED Rules. As and when any vacancy arises, it is undoubtedly open to the applicant to make an application for the same, which we have no doubt will be considered by the com-



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competent authority on its merits with due regard to his previous experience and all other relevant factors. We do hope and trust that the authorities will do so.

22. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application subject to what we have expressed on the claim of the applicant for fresh appointment as an ED Agent. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-
VICE-CHAIRMAN 15/7/88

Sd/-
MEMBER (A) 15/7/88

TRUE COPY

for *[Signature]*
DEPUTY REGISTRAR (Jd/18/88)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE