

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 14-1-88

APPLICATION NO. 426/87(F)

Applicant

Shri V. Galiswamy

V/s

Respondents

The DG, ICAR, New Delhi & 9 Ors

To

1. Shri V. Galiswamy
Attendant (Literate) Grade - I
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
2. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002
3. The Director General
Indian Council of Agricultural
Research (ICAR)
'Krishi Bhavan'
New Delhi - 110 011
4. The Director
National Dairy Research Institute
Indian Council of Agricultural
Research (ICAR)
Karnol - 132 001
Haryana
5. The Head
Indian Council of Agricultural
Research
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
6. Shri S.R. Gavali
Incharge Officer
Agricultural Division
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
7. The Administrative Officer
National Dairy Research Institute
Indian Council of Agricultural
Research (ICAR)
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
8. Shri Syed Haji
Attendant (Literate) Grade - I
National Dairy Research Institute
Indian Council of Agricultural
Research (ICAR)
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
9. Shri E. Dayalan
Attendant (Trade) Grade I
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
10. Shri R. Venkatesh
Attendant (Literate) Grade I
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
11. Shri C. Somu
Attendant (Trade) Grade I
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030

d/c

12. Shri Sreedhar
Attendant (Literate) Grade I
National Dairy Research Institute
Southern Regional Station
Hosur Road, Adugodi P.O.
Bangalore - 560 030
13. Shri M. Vasudeva Rao
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 passed by this Tribunal in
the above said application on 4-1-88.

Encl : As above

B. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

QC.

RECEIVED 13 Copies 18/1/88

Diary No. 1634/CRI/88

Jan Date: 17-1-88 *[Signature]*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE

DATED THIS THE 4th DAY OF JANUARY, 1988

Present : Hon'ble Justice Sri K.S.Puttaswamy

Vice-chairman

Hon'ble Sri L.H.A.Rego

Member (A)

APPLICATION No.426/87.

V.Galiswamy,
working as Attendant(Literate)
Grade I, National Dairy Research
Institute, Southern Regional
Station,(Indian Council of
Agriculture Research) Hosur Road,
Adugodi Po,
Bangalore - 30.

Applicant

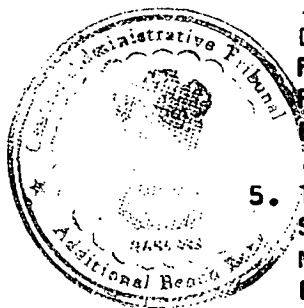
(Sri M.S.Anandaramu

...

... Advocate)

v.

1. The Director General,
Indian Council of Agriculture
Research, 'Krishi Bhavan',
New Delhi - 1.
2. The Director,
National Dairy Research Institute,
Indian Council for Agriculture,
Karnol - 132 001.
3. The Head,
Indian Council for Agricultural
Research, National Dairy
Research Institute, Southern
Regional Station, Hosur Road,
Adugodi PO,
BANGALORE - 560 030.
4. S.R.Gavali,
Incharge Officer, Agricultural
Division, National Dairy
Research Insitute, Southern
Regional Station, Adugodi,
Bangalore - 30.
5. The Administrative Officer,
Southern Regional Station(ICAR)
NDRI, Hosur Road, Adugodi,
Bangalore - 30.
6. Syed Haji,
Attendant (Literate) Grade I,
Southern Regional Station,
NDRI(ICAR), Hosur Road,
Adugodi, Bangalore - 30.



7. E. Dayalan,
Attendant(Trade) Grade I,
Southern Regional Station,
NDRI(ICAR), Hosur Road,
Adugodi, Bangalore - 30.
8. R. Venkatesh,
Attendant(Literate) Grade I,
Southern Regional Station, NDRI,
(ICAR), Hosur Road, Adugodi,
Bangalore - 30.
9. C. Somu,
Attendant(Trade) Grade I,
Southern Regional Station,
NDRI(ICAR), Hosur Road,
Adugodi, Bangalore - 30.
10. Sreedhar,
Attendant(Literate) Grade I,
Southern Regional Station, NDRI,
(ICAR), Hosur Road, Adugodi,
Bangalore - 30. ...

Respondents

(Sri M. Vasudeva Rao ... Advocate)

This application has come up before the Tribunal for hearing today. Hon'ble Justice Sri K.S. Puttaswamy, 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. On 18.2.1983 the Head, Southern Regional Station, National Dairy Research Institute, Indian Council of Agricultural Research, Bangalore(Head)-respondent-3, appointed the applicant as an Attendant(Literate) Grade-I, (Group D), on a temporary basis on the terms and conditions stipulated in his order of that date (Annexure-A). Clause 5 of the same regulating the probation reads thus :-

"5. He will be on probation for a period of two years from the date of his joining the post, which may be extended at the discretion of the competent authority. Failure to complete the period of trial to the satisfaction of the competent authority will render his service liable to be discharged from service."

On expiry of the period of probation, the Head, on 24.2.1986 (Annexure-L), extended the period of probation of the applicant for a further period of two years from 28.2.1985. Ultimately, the Head, with the prior approval of the Director, National Dairy Research Institute, Karnal, Haryana (Director)-respondent-2 by his order No.F.15(iv)/Estt/86112(c)-117(c) dated 16.5.1986 (Annexure-Q) terminated the services of the applicant giving him the necessary notice under Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965 ('Rules'). Aggrieved by this order of the Head, the applicant on or about 27.5.1986 filed a petition, styled as an appeal, before the Director General, Indian Council of Agricultural Research, New Delhi (DG)-respondent-1, who is the overall head of all organisations, under the control of the Indian Council of Agriculture Research ('ICAR'). As the DG had not disposed of the same, within six months from the date on which it was lodged before him, the applicant approached this Tribunal on 2.6.1987 under Section 19 of the Act for appropriate relief.

3. In resisting this application, respondents 1 to 5 have filed their reply. Respondent-8 who has been duly served, has remained absent and is unrepresented. Respondents 6,7,9 and 10 who have not been served are absent. We are of the view that respondents 6 to 10 against whom, no relief is also sought are neither necessary nor proper parties to this proceeding. We, therefore, dispense with service of notices on respondents 6,7,9 and 10 and proceed to deal with the case on merits.



4. Sri M.S.Ananda Ramu, learned counsel for the applicant contends, that the petition filed by his client before the DG was a statutory remedy and the DG was under a legal obligation and duty to decide the same one way or the other on merits.

5. Sri M.Vasudeva Rao, learned counsel for respondents 1 to 5, refuting the contention of Sri Ananda Ramu, contends that the order made by the Head, with the approval of the Director, was final and was not open for correction by the DG at all.

6. Before making his order on 16.5.1986, the Head had referred the matter to the Director for his approval, who by his letter No.F-13-10/E.III(S)-291(C) dated 26.4.1986 had accorded his approval to the same. In this view, it is needless to state, that the order of termination of the services of the applicant, had been made by the Head and the Director and that the only authority before whom a petition if at all lies, under the Rules, would be the DG, who was the overall head of all units of the ICAR in the country.

7. In his order, the Head had expressly invoked Rule 5(1) of the Rules, to terminate the services of the applicant. That termination of the services of the applicant, was made under the Rules is not in dispute. Whether the DG can correct the same or not is the short question. An answer to the same necessarily depends on the provisions made in the Rules.

8. The Rules made by the President under the proviso to Article 309 of the Constitution inter alia regulate the termination of temporary Government servants of Central Government.

9. Rule 5(1) of the Rules which empowers the appointing authority to terminate a temporary Government servant and the procedure to be adopted by him before such termination, in confor-

mity with which only, the Head had terminated the services of the applicant, does not require an analysis and therefore, the same is not analysed.

10. Rule 5(2) of the Rules empowering certain authorities to examine and correct the orders made under Rule 5(1) which is material reads thus : -

"5(2)(a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant, or where the services of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit, -

- (i) confirm the action taken by the appointing authority;
- (ii) withdraw the notice;
- (iii) reinstate the Government servant in service; or
- (iv) make such other order in the case as it may consider proper;

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months-

- (i) from the date of notice, in a case where notice is given;
- (ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule(2) the order of reinstatement shall specify-

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

Firstly, this rule authorises the Central Government or an authority specified by the Central Government or the Head of the Depart-



ment to suo motu or otherwise examine and make any one of the orders detailed therein. Secondly, the nature of the power conferred on the authority is analogous to an unrestricted power of revision conferred on Courts and revising authorities under different enactments. Under this rule, a temporary Government servant against whom an adverse order is made under Rule 5(1), can move one or the other authorities empowered by this Rule. The empowered authority either suo motu or on an examination of the petition, the records and the grounds urged therein, can confirm the order, withdraw or reverse the same, direct reinstatement of the Government servant to service, on such conditions as it may consider it necessary. All this clearly indicates that the remedy is a statutory remedy and the order to be made thereunder should also be a speaking order. In this view, we cannot uphold the contention of Sri Rao.

11. On the above, as also on what we have found earlier, the DG was competent to entertain the petition of the Applicant and deal with the same without making a fetish of the mere nomenclature of the petition. The remedy available under the Rules is a statutory remedy. If that is so, then the DG was bound to examine and decide the same one way or the other. When he had not done the same, we must only compel him to do so without ourselves examining the order of the Head and the Director, atleast in the first instance, leaving open all other questions. Sri Vasudeva Rao prays for at least two months' time for the DG, to examine the petition filed by the applicant and decide the same on merits. We are of the view that this time sought for by Sri Rao is fair and reasonable.

12. On the view we have expressed, we have not examined the other contentions urged by both sides and leave them open to be decided in the first instance, by the DG.

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

1) We direct the Director General, Indian Council of Agriculture Research, New Delhi - respondent-1 to dispose of the petition filed by the applicant on 28.5.1986 as one made before him under Rule 5(2) of the Rules with all such expedition as is possible in the circumstances of the case, and in any event, within two months from the date of receipt of this order.

2) All other questions are left open.

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



an.

Sd/-
VICE-CHAIRMAN, 11/1988
4/11

Sd/-
MEMBER (A) 14.1.1988

- True copy -

[Signature]
DEPUTY REGISTRAR (JDL) *[Initials]*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

....

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

To

Dated: 14-1-88

1. Shri.Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. ~~Shri.R.Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
57-Lower Palace Orchards, Bangalore- 560 003.~~
Post Box No 1518
Delhi- 110006
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s.All India Reporter,
Congressnagar,
Nagpur.
6. Services Law Reporter,
108, Sector 27-A,
Chandigarh- 160 019.

Sir,

I am directed to forward herewith a copy of the under
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K.S. Pullaswamy Vice-Chairman/
Member(J) and Hon'ble Mr. L.H.A. Rega Member(A)
with a request for publication of the order in the Journals.

Order dated 14-1-88 passed in A.Nos. 626/87(F)

RECEIVED

Diary No. 1633/CR/88

Date: 19-1-88

Yours faithfully,

Sd/-

(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

o/c

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compunds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), First Floor, Near Konkon Bhavan, New ~~Mumbai~~-Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh-
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th and 6th Floor, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin- 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanpura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttack- 753 001.

Copy with enclosures also to:

1. Court Officer (Court I)
2. Court Officer (Court II)

sd/-
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR (J).