

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 27-1-88

APPLICATION NO^{S.} 444 & 477 / 87(F)

W.P. NO. / /

Applicant

Shri S. Nanjaiah

To

Respondent

v/s The Station Director, AIR, Bangalore

1. Shri S. Nanjaiah
14, 1st Cross
Dattatreya Extension
Bangalore - 560 019

2. Shri A.V. Srinivas
Advocate
107 (Upstairs)
Gandhi Bazaar
Basavanagudi
Bangalore - 560 004

3. The Station Director
All India Radio
Raj Bhavan Road
Bangalore - 560 001

4. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

RECEIVED (2) com. 28/1/88

88-1-88
Date: 28-1-88
Dairy No. 16536/CP/1

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~EXTRAM/EXTRAM/EXTRAM~~ passed by this Tribunal in the above said application on 21-1-88.

0.
Received one copy
R. Subrahmanyam
As 27/1/88
AIR, Bangalore

B. V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE

DATED THIS THE 21st DAY OF JANUARY, 1988

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION NO. 444 & 477 of 1987

S. Nanjaiah
14, 1st Cross, Dattatreya Extension,
Bangalore 19 - Applicant

(Sri A.B. Srinivas, Advocate)

vs

The Station Director,
All India Radio
Raj Bhawan Road
Bangalore 560 001 - Respondent

(Sri M.S. Padmarajaiah, Senior C.G.S.C.)

This application has come up before the
Tribunal for hearing and Hon'ble Sri Ch. Ramakrishna Rao,
Member (J) to-day made the following:

O R D E R

This is an application filed under Section 19 of
the Administrative Tribunals Act, 1985.

2. The facts giving rise to the application are,
briefly, as follows: The applicant is a Peon working
in the office of the Station Director, All India Radio,
Bangalore (Respondent). In 1983, disciplinary proceedings
were initiated against the applicant under Rule 14 of the
Central Civil Services (Classification, Control & Appeal)
Rules, 1965 ('the Rules', for short). He was placed under
suspension by the Programme Executive, working in the office
of the Respondent on 27.8.1983 but not by the Respondent
himself, who was the authority competent to pass the order.
His request for being represented by a person of his choice
in the disciplinary proceedings was rejected by the
Respondent. The applicant, therefore, filed A.No. 1921/86.

This Tribunal on ~~its~~ ^{its} order dated ~~the~~ 3rd April, 1987 ~~disposed of~~ ^{disposed of}
~~of the application quashing the order of suspension passed by~~
~~quashed the order dated 27.8.1983,~~



27.8.1983 on the ground, that it was ~~passed~~ not passed by the competent authority and directed the applicant to make a request afresh, for engaging a legally trained person in the light of the last limb of Rule 14(8) of the Rules, within fifteen days of receipt of the order. The Tribunal also directed the respondents herein, to suggest a panel of names of officials, who can act as defence assistants, so that the applicant may choose one from the panel. Thereafter, the Respondent passed an order on 29.4.1987 deeming the applicant to have been placed under suspension with effect from 27.8.1983. The Respondent also turned down the request of the applicant for engaging a legally trained person in the disciplinary proceedings by order dated 29.4.1987. Aggrieved by these two orders, the applicant has filed this application.

3. At the outset, Sri M.S. Padmarajaiah, learned counsel for the respondent, clarified, that the original order of suspension was revoked on 20.3.1985 under Rule 10 of the Rules and in view thereof, the order dated 29.4.1987 of the respondents deeming the applicant under suspension ^{to be} w.e.f. 27.8.1983 governs the period from 27.8.1983 to 20.3.1985. It is not disputed by Sri A.V. Srinivas, learned counsel for the applicant, that his client has been receiving full pay and allowances due to him from 20.3.1985.

4. Sri Srinivas strenuously contends, that it is not open to the Respondent, to pass an order on 19.4.1987 deeming his client to have been placed under suspension retrospectively from 27.8.1983. According to Sri Srinivas, Rule 10(2) of the Rules envisages only two situations,

in which the Government servant shall be deemed to have been placed under suspension, by an order of the appointing authority, while Rule 10(3) specifies a situation, where an order of suspension shall be deemed to have been continued in force. Sri Srinivas maintains, that these provisions in the Rules are exhaustive and the order dated 29.4.1987 is wholly invalid, since it is not covered by Rule 10(2) or 10(3).

5. Sri Padmarajaiah vehemently refutes the contention put forward on behalf of the applicant and submits that an order of suspension operating retrospectively is not void in toto but is operative from the date the Government servant ^{-ed4} is actually relieved from service and placed under suspension. In support of his submission, Sri Padmarajaiah relies on the decision in Dr. Partap Singh v State of Punjab AIR 1963 Punjab 298, in which the decision rendered by the Orissa High Court in Narayan Prasad v the State of Orissa AIR 1957 Orissa 51 was referred to. Sri Padmarajaiah also calls in aid, the circumstance that after the order of suspension dated 27.8.1983 was issued by the Programme Executive, the file was put up to the Station Director, All India Radio and in view of this, it was open to the latter, to cure the defect arising ⁴⁴ out of the former having passed the order and this was precisely what was done in issuing the order dated 29.4.1987.

6. We have considered the rival contentions carefully. The legal position is well-settled, that an order is effective, only from the date of its issue and it will not have retrospective operation. The decisions relied upon by Sri Padmarajaiah have no application to the present case, since

WJ

in those decisions, the competent authority passed the order and it was held that the order would be effective from the date the Government servant was actually relieved of his duties and placed under suspension. In the present case, the original order of suspension was not passed by the competent authority and on account of this defect, the original order was quashed by this Tribunal in and by its order dated 3.4.1987. The legal effect of ~~the~~ quashing ^{of} the original order of suspension dated 27.8.1983, was that it became non-est, in the eye of law and it cannot be resuscitated, by the issue of an order, by the competent authority in the manner it was done. This, however, does not conclude the matter in favour of the applicant. It is noteworthy that the relief sought by the applicant in A.No. 1291/86, earlier disposed of by this Tribunal, was for quashing ^{of} the order of suspension dated 27.8.1983 and that prayer was granted. Even this prayer was introduced in the said application with the leave of the Tribunal. No reference was made, while seeking ~~the~~ amendment, to the memorandum dated 7.3.1984 (Annexure R1 of the reply to the said application) wherein the Station Director informed the applicant, that he is appointing and disciplinary authority and ~~that~~ the applicant was placed under suspension w.e.f. 17.8.1983 by him and the Programme Executive only conveyed the order ^{to} ~~the~~ applicant. ^{to} This order was not quashed and it is still ~~operative~~. In the view taken by this Tribunal, in its order dated 3.4.1987, that the original order of suspension dated 27.8.1983 was not passed by the competent authority, the memorandum dated 7.3.1984 will be

effective, only from the date it was passed and not from the date mentioned therein viz. 27.8.1983.

7. The Supreme Court in R.Jeevarathnam v State of Madras AIR 1966 SC 951 has laid down the law as follows:

"An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order that the super added direction that the order should operate retrospectively as from an anterior date where the parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid and severable part of the order."

The law laid down by the Supreme Court in the passage extracted above, is equally applicable to an order of suspension.

Applying the ratio of the decision of the Supreme Court cited supra, to the present case, it follows that the memorandum of suspension dated 7.3.1984 is valid, in so far as the period posterior to the date of its issue but not from a date anterior to it.

8. In the light of the foregoing discussion, we hold that -

- (i) the order dated 29.4.1987 (Annexure 'D') besides being redundant, is illegal;
- (ii) the quashing of the order dated 27.8.1983 (Annexure 'G' in A.No. 1921/86) by this Tribunal does not have the effect of rendering the order dated 7.3.1984 (Annexure R₁ in that application) non est; and
- (iii) by virtue of order dated 7.3.1984, the applicant shall be treated as on duty from 27.8.1983 to 6.3.1984 and on suspension from 7.3.1984 to 19.3.1985.



9. Sri Srinivas next contends, that the request of the applicant for being represented by a legally trained person was not acceded to, by the Respondent for no valid reason.

10. We have perused the order dated 29.4.1987, passed by the respondents and we are satisfied, that ~~the~~ after careful consideration of the matter, the respondent has declined the request of the applicant, for being represented by a legally trained person.

11. Sri Padmarajaiah has invited our attention to the fact, that the respondent, by issuing memorandum dated 28.5.1987, gave an opportunity to the applicant, to choose an officer from a panel of five names mentioned therein. The same was acknowledged by the applicant on 28.5.1987 but he has not so far informed the respondent ^{of his} choice made by him nor has he intimated the name of any other officer, for assisting him in the presentation of his case before the Inquiry Officer. Though the time granted for the purpose of choosing an officer from the panel ^{has} expired, we consider that the ends of justice would be met, if the applicant is allowed to choose an officer from the panel already furnished by the respondent or inform the respondent of the name of any other officer, whom he would like to represent him before the Inquiry Officer, within fifteen days of the receipt of this order.

12. In the result, the application is allowed to the extent indicated above. Parties will bear their own costs.

TRUE COPY

By
DEPUTY REGISTRAR (JULY 27)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd/-
(Ch. Ramakrishna Rao)
Member (J)

Sd/-
21.1.1988
(L.H.A. Rego)
Member (A)

bsg/-