

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 OCT 1988

APPLICATION NO.

1206

/ 08(F)

W.P. NO.

Applicant(s)

Shri V. Mohammed Shafiulla
To

Respondent(s)

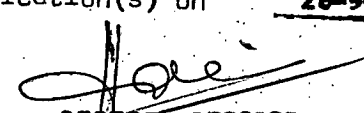
V/s The Director, GTRE, Bangalore

1. Shri V. Mohammed Shafiulla
No. 70, Naguera Palya
Bangalore - 560 016
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banachankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Director
Gas Turbine Research Establishment (GTRE)
C.V. Ramen Nager
Bangalore - 560 093
4. 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/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 28-9-88.

Encl : As above

Issued
K. M. M.
7-10-88
dc

SECTION OFFICER
~~REGISTRY~~
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 28th DAY OF SEPTEMBER, 1988

Present : Hon'ble Shri P.Srinivasan

Member (A)

APPLICATION No. 1206/1988.

Sri V.Mohammed Shafiulla,
D.No.70, Nagwara Palya,
Bangalore - 16.

...

Applicant

(Sri M.R.Achar

...

Advocate)

vs.

The Director,
Gas Turbine Research Establishment,
C.V.Raman Nagar,
Bangalore - 93.
(Sri M.Vasudeva Rao

...

Respondent

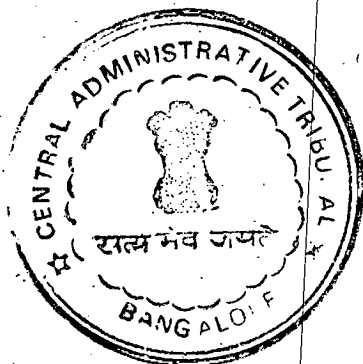
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Advocate)

This application having come up before the Tribunal
for hearing today, Hon'ble Member (A) made the following :

ORDER

The applicant was working as Master Craftsman (MCM)
in the Gas Turbine Research Establishment(GTRE) at Bangalore,
before he took voluntary retirement with effect from
31.8.1988. In the post of MCM, he became due for an incre-
ment raising his pay from Rs.1800 to Rs.1850 on 1.5.1988
which was subject to crossing the Efficiency Bar (EB). He
was not allowed to cross the EB and so he was not allowed
this increment. By letter dated 13.7.1988, the Director,
GTRE, who is the respondent in the application informed
the applicant that the EB Committee of GTRE had found the
applicant unfit for crossing EB. with effect from 1.5.1988
and this recommendation had been accepted by the Director.
It is this order which the applicant is challenging in
this application. When the matter came up for hearing
today, Sri M.Vasudeva Rao, learned Counsel for the respon-
dents produced the E.B. file of the applicant which was



P. Vasudeva Rao

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also shown to Sri Achar, learned counsel for the applicant. Sri Achar made his arguments on the basis of the notings in this file.

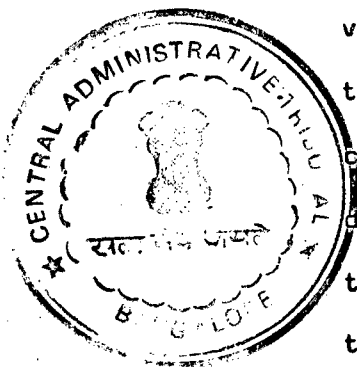
2. The Divisional Head (DH) under whom the applicant was working recorded a note on 17.5.1988 to the effect that from March, 1987 the applicant had taken nearly 125 days of leave and as such "no job could be entrusted to him to judge his efficiency and clear EB". The Group Director (GD) noted on file "the individual has not done any work as a Craftsman or Tradesman for the last 5 years (well over 5 years) and under the circumstances it is not possible to assess his efficiency in work". There upon the DH, Administration, recorded a note on 22.6.1988 setting out the recommendations of the EB Committee, under the Chairmanship of the Director, GTRE. The note states that the Committee considered the recommendations of the GD and DH who had expressed their inability to assess the efficiency of the applicant "owing to his long absence as also the fact that he has not done any work as MCM or Tradesman for the last 2 years". The Committee was of the view that crossing of EB cannot be allowed as a matter of routine, as it was one way of marking out a good worker from a bad one. The note concludes "the Committee, therefore, felt that in the circumstances it should go by the recommendations of the GD and DH concerned as there was no reason, whatsoever, to differ with them. The Committee therefore recommends that Sri Mohammed Shafiulla is not considered fit to cross the EB with effect from 1.5.1988". On this the Director recorded his order in the following words; "I concur with the recommendations of the EB Committee. I agree that

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Sri Mohammed Safiulla, Token no.41, is not yet fit to cross the EB as on 1.5.1988".

3. Sri Achar submitted that the Committee purported to act on the recommendations of the GD and DH but neither the GD nor the DH had recorded a definite view that the applicant was unfit to cross the EB. They had only stated that they were unable to assess the fitness of the applicant for crossing the EB and not that he was not to cross the EB. The Group Director had recorded that the applicant had not done any work during the past 5 years. If that were so, the office of the respondents should have pulled up the applicant, from time to time and warned him to do his work regularly. It was not fair for the GD to suddenly wake up after 5 years and allege that the applicant had not done any work without having issued any warning to the applicant during the period. If this statement of the GD had been treated as a recommendation not to allow him to cross EB, the decision of the Committee to withhold EB to the applicant did not conform to the principles of natural justice.

4. Sri M. Vasudeva Rao for ^{M. K.} respondents submitted that after careful consideration, the Committee had come to the view that the applicant was not fit to cross EB. Crossing the EB has to be allowed to an official provided he is not considered unfit. But in this case the Committee had considered the applicant unfit for the purpose. It is not for this Tribunal to substitute its own judgement for that of the Committee. The applicant had taken leave for long periods from March, 1987 onwards and as a result did not contribute anything to the organisation in which he was working. Though as an active union worker he was obliged to



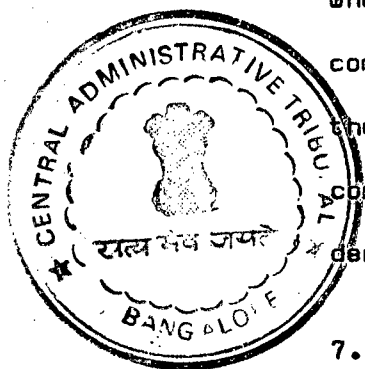
work in the office for only 2 hours a day, the GD had stated that the applicant had not even done this for a period of 5 years till the date when he became due to cross the EB. The Committee, therefore, had enough material to come to the conclusion which it did and it is not for this Tribunal to step into the shoes of the Committee and substitute its own view. Shri M. Vasudeva Rao also submitted that the applicant had a departmental remedy by way of appeal which he had not exhausted. Relying on section 20 of the Central Administrative Tribunals Act (the Act, for short), Sri Rao submitted that this application should be dismissed as all departmental remedies had not been exhausted.

5. I will first deal with the last objection of Sri Rao, that the applicant had not exhausted departmental remedies. Section 20 of the Act merely says that the Tribunal "shall not ordinarily admit an application" (emphasis supplied) unless all remedies under the Service rules had been exhausted". This is a case involving very few facts and the applicant has already retired from service. I therefore do not think it proper to send the applicant back to the appellate authority under the Rules to seek his remedy. Sri Rao's objection is therefore rejected.

6. I have given the matter the most anxious consideration. It is true, as Sri Achar has pointed out, that the EB Committee purported to follow the recommendations of the GD and the DH in advising that the applicant was not fit to cross EB. The notings recorded by the GD and the DH, again as pointed out by Sri Achar, do not contain a clear recommendation that the applicant was not fit to cross EB. On

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the other hand both these officials expressed their inability to state any opinion on the subject for want of adequate evidence. I have, therefore, to agree with Sri Achar that no specific recommendation on the subject of crossing of EB was made either by the GD or by the DH which could be accepted or rejected by the Committee. The Director GTE, in turn, acted on the recommendation of the Committee in declining to allow the applicant to cross EB. If, as already stated, one comes to the conclusion that neither the GD nor the DH had recorded any opinion one way or the other, the recommendation of the Committee has no legs to stand upon. The GD noted that the applicant had not done any work for 5 years. Sri Achar submitted that if that were so, the applicant should have been warned from time to time to reform himself and to do better. Sri Rao admitted that no warning had been issued to the applicant calling attention to the fact that he was not doing any work. It is the duty of the respondent to warn ^{his} ~~its~~ employees periodically if they do not do any work and if after such warning they do not improve, then and only then would it be in order to deny them the benefit of crossing EB. It would appear that during the 5 years when the applicant allegedly did not do any work, the officers controlling him showed equal indifference and thereby indulged the applicant for which he cannot be blamed. Therefore the comment of the GD cannot also be taken as a valid basis for denying EB to the applicant.

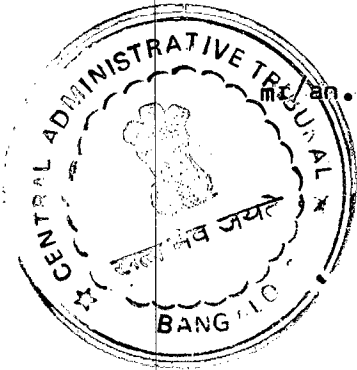


7. In the light of the above discussion, I am of the view that the respondent was not justified in not allowing the applicant to cross EB from 1.5.1988.

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8. In the result the respondent is directed to allow the applicant to cross EB from 1.5.1988 and to give him the consequent increment from that date till his retirement on 31.8.1988 and to extend to him the ^{resultant} retirement benefit also. The application is allowed. Parties will bear their own costs.

MEMBER (A) 401



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