

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

6 FEB 1989

APPLICATION NO (x) 1778

/ 88(F)

W.P. NO (s)

Applicant (s)

Shri S. Swamy Dass
To

V/s

The Asst. Supdt. of Post Offices, No. 3, Sub-Division,
Bangalore & another

1. Shri S. Swamy Dass
C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Assistant Superintendent of
Post Offices
No. 3, Sub-Division
Vimanapura
Bangalore - 560 017

4. The Senior Superintendent of
Post Offices
Bangalore East Division
Bangalore - 560 001
5. 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 a copy of ORDER/~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(x) on 30-1-89.

*Issued
K. R. M.
1-2-89*

Encl : As above

R. V. Sambasiva Rao
DEPUTY REGISTRAR
(JUDICIAL)

ofc

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 30TH DAY OF JANUARY, 1989

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 1778/1988

Shri S. Swamy Dass,
major, E.D. Chowkidar,
Arabic College Post Office,
Bangalore-45.

.... Applicant.

(Shri M. Raghavendrachar, Advocate)

v.

1. Asst. Supdt. of Post Offices,
No.3 Sub-Division,
Bangalore.

2. Sr. Supdt. of Post Offices,
Bangalore East Division,
Bangalore.

.... Respondents.

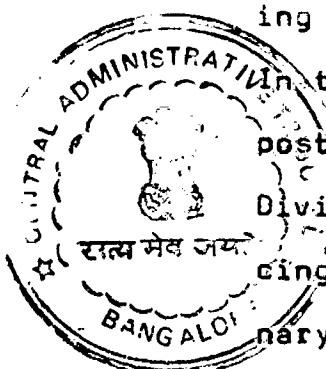
(Shri M. Vasudeva Rao, C.G.A.S.C.)

This application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act. of 1985 ('the Act').

2. Shri S. Swamy Dass, the applicant before us, was working as an E.D. Chowkidar in the Arabic College Post Office. In the performance of the duties of the applicant in that post office, the Superintendent of Post Office, No.3, Sub-Division, Bangalore-17 and the Disciplinary Authority (DA) noticing certain omissions and commissions initiated disciplinary proceedings against him and 2 others with whom we are not concerned, on the charges levelled against him. There after the DA appointed one Shri P.M. Isaac as the Inquiry



Officer (IO) to inquire into the truth or otherwise of the charges levelled against the applicant and submit his report.

3. In pursuance of the same, the IO held a regular inquiry and on a consideration of the evidence placed before him the IO reported to the DA that the applicant was not guilty of the charges levelled against him. On that the DA disagreeing with the findings of the IO, by his order made on 23.3.1987 imposed on the applicant the penalty of removal from service. Against this order of the DA the applicant filed an appeal before the Senior Superintendent of Post Offices and Appellate Authority (AA), who by his order made on 27.10.1987 had dismissed the same. Hence this application.

4. In justification of the impugned orders, the respondents have filed their reply and have produced their records.

5. Shri M.R. Achar, learned counsel for the applicant contends that the order made by the DA disagreeing with the findings of the IO, that was in favour of his client but without issuing him a show cause notice and affording him an opportunity of hearing was violative of principles of natural justice and illegal. In support of his contention, Shri Achar strongly relies on a ruling rendered by a Division Bench of this Tribunal in P.K. SHIVANAND v. COLLECTOR OF CENTRAL EXCISE, BANGALORE (1987) 3 ATC 854.

6. Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for the respondents sought to support the impugned orders.

7. In his order, the DA had stated that the IO had found the applicant not guilty of the charges levelled against him and had to be exonerated. On this, as also on the fact that before disagreeing with the findings of the IO and imposing on the applicant the penalty of removal from service, the DA had not issued him a show cause notice and had not afforded him an opportunity of hearing. The respondents do not rightly dispute the same.

8. In Shivananda's case, this Tribunal examining this very question had ruled that though a Disciplinary Authority was competent to disagree with the findings of the IO, he can do so only after issuing a show cause notice and affording an opportunity of personal hearing to the delinquent Government servant. These principles enunciated in Sivananda's case squarely govern the very questions urged before us. If that is so, then the impugned orders have to be annulled and appropriate directions issued as in that case without examining all other questions.

9. In the light of the above discussion, we make the following orders and directions:-

1. We quash the impugned orders.

2. We declare that the impugned order made by the DA was a provisional one in which he had given notice of the reasons on which he proposed to disagree with the IO, and hold the applicant guilty of the charges levelled against him and that it was open to the applicant



to file his written representation and objections to the same before the DA within one month from this day.

3. We direct, the DA to consider the written representations, if any, to be filed by the applicant within the time permitted by us, then afford an opportunity of oral hearing on such date as he may find it convenient thereafter and then decide the matter afresh. But in so doing, he shall not award a higher penalty than the one he had awarded in the impugned order against the applicant.

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

Sd _____

VICE-CHAIRMAN

30/11/77

Mr/Mrs.

Sd _____

MEMBER (A) B.1.989

TRUE COPY

Deputy Registrar (JDL)
DEPUTY REGISTRAR (JDL) *6/12/77*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE