

ANNAKURE (A)
4
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 12TH NOVEMBER 1987

Present : Hon'ble Shri P. Srinivasan ...
Hon'ble Shri Ch. Ramakrishna Rao ...

Member (A)
Member (J)

APPLICATION NO. 913/86

Shri M.V.Mathew,
Civilian Storekeeper, Grade II,
No. 1385922, Head Quarters,
Madras Engineer Group & Centre,
BANGALORE-560042.

... Applicant

(Shri K.T.Panikar, Advocate)

vs

(1) Union of India, by its Secretary,
Ministry of Defence,
Raksha Bhavan, NEW DELHI-1.

(2) The Engineer-in-Chief,
Army Headquarters,
DHQ Post, New Delhi-11.

(3) The Commandant,
Head Quarters,
Madras Engineering Group & Centre,
Post Bag No. 4200,
BANGALORE-560042.

(Shri M.Vasudeva Rao, Advocate) ... Respondents

This application came up for hearing this
Tribunal on 28-9-1987 and Hon'ble Shri P. Srinivasan,
Member (A), today made the following:

ORDER

The applicant, who was working as a Civilian
Store Keeper Grade II, Training Battalion II, Madras
Engineering Group and Centre (MEG&C), Bangalore, was
removed from service after a departmental inquiry by
order passed on 15-6-1985 by the Disciplinary Authority
(DA), i.e. the Commandant, MEG&C, Bangalore (Respondent 3).
An appeal against this order filed by the applicant was
rejected by the Engineer-in-Chief (Appellate Authority)
(AA), Army Headquarters, New Delhi (Respondent 2), by
order dated 21-1-1986. In this application, the



P. L. 162

applicant wants us to quash the order dated 15-6-1985 (Annexure-I), of the DA as well as the order dated 21-1-1986 (Annexure-II) of the AA.

2. The respondents have filed their reply to the application. Shri K.T.Panikar, learned counsel for the applicant, and Shri M.Vesudeva Rao, learned counsel for the respondents have also been heard. The hearing of this application was spread over seven days and voluminous paper books have been filed by both sides.

3. Respondent 3 issued a memorandum on 22-9-1981 (Annexure 15) to the applicant proposing to hold an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (the Rules for short). Articles of charge enclosed with the said memorandum as Annexure I read as follows:

"Article of Charge I: That the said Shri M.V.Mathew (QP/SK II No.1385922) while functioning as Storekeeper in Training Battalion III, Madras Engineer Group and Centre, forged the medical certificate of fitness."

"Article of Charge II: That the said Shri M.V.Mathew (QP/SK No.1385922) while functioning as Storekeeper in Training Battalion III, Madras Engineer Group and Centre, produced the forged Medical Certificate of fitness as genuine one knowing fully well that it has been forged by him to cover up his period of absence."

The statement of imputation of misconduct relating to these two articles of charge were also annexed to the said memorandum as Annexure II. The statement is brief and is, therefore, reproduced below:

"Article of Charge I: That the said Shri M.V.Mathew (QP/SK II No.1385922) forged a Medical Certificate of fitness, issued by Doctor B.Venkata Rao, L.M.P. Shanti Clinic, Ulsoor, Bangalore-8, on 16 Sep 74 by amending the dates on under to suit his period of absence;"

P.D. 49

	Original date	Amended date
(a) Date of treatment as per Medical certificate of fitness	25 Aug 74 to 16 Sep 74	25 Aug 74 to 11 Oct 74
(b) Date fit to resume duty	17 Sep 74	7 Oct 74
(c) Date of issue of medical certificate	16 Sep 74	11 Oct 74

Article of Charge II: That the said Shri M.V. Mathew (QP/SK II No.1385922) has produced the forged Medical Certificate of fitness as genuine one and thus misrepresented his period of absence knowing fully well that the Medical Certificate for fitness has been intentionally amended to cover up his period of absence."

Only two documents were listed in Annexure III by which the articles of charge were proposed to be sustained viz. (a) medical fitness certificate dated 16-9-1974 issued by Dr. Venkat Rao and (b) statement dated 14-10-1974 from Shri M.V. Mathew. No witnesses were proposed to be summoned to prove the articles of charge.

4. It appears that in respect of the same charges disciplinary proceedings were initiated earlier on 2-11-1974 and by an order dated 4-2-1975 (said to have been communicated to the applicant on 20-5-1975), the DA directed that the applicant "will be removed from service" and an appeal against that order was rejected by the AA as belated by an order dated 18-7-1975. The applicant then filed a writ petition (WP No. 6209/75) before the High Court of Karnataka. This writ petition was dismissed by the High Court by judgment dated 10-1-1978 on the ground that the applicant was pursuing an alternative remedy of review before the President of India. The application for review filed by the applicant was decided by the President of India on 14-8-1981. The President, in effect, set aside the orders of the Disciplinary and Appellate authorities by issuing the following directions:



1. D. 62

"The case is remitted to the competent disciplinary authority for initiating fresh disciplinary proceedings from charge sheet stage and for passing appropriate orders."

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It was in pursuance of this order that the Memorandum dated 22-9-1981 referred to in the earlier paragraph was issued by the DA.

5. An Inquiry Officer (IO) was appointed to conduct the inquiry. The IO submitted his report. The IO recorded a finding that the charges levelled against the applicant had been proved. Thereupon the DA, agreeing with the finding of the IO imposed the penalty of removal from service by order dated 15-6-1985. As already stated the appeal filed against the order of the DA was dismissed by the AA by order dated 21-1-1986.

6. The first ground of objection raised by Shri Panikar, learned counsel for the applicant, was that on 22-2-1985 when the matter was fixed before the Inquiry Officer, the applicant's defence assistant was there on time, but the Inquiry Officer proceeded with the inquiry ex parte and closed the proceedings that day itself. The Inquiry Officer recorded that the applicant did not report till 0925 hours on that day, though the inquiry was to commence at 0900 hrs. In fact, he also recorded that the presenting officer was also not present till 0925 hrs. The applicant's defence assistant was there before the Inquiry Officer, but still the Inquiry Officer decided to go ahead with the inquiry ex parte. According to Shri Panikar, the applicant reached the place at 0925 hours but the Inquiry Officer asked him to get out. The applicant had to wait outside while the inquiry proceeded ex parte. This amounted to denial of opportunity to the applicant to present his case. The applicant was present on earlier days as the record of the inquiry would show. The applicant had addressed a letter

P. S. - 18

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to the Inquiry Officer on 2-5-1983 in which he had asked for production by the presenting officer of the letter addressed by the authorities to Dr. Venkata Rao in reply to which the latter had clarified that he had not made the changes in the dates in the fitness certificate issued by him. The applicant had also objected to the Inquiry Officer taking on record the alleged confession made by the applicant in his letter dated 14-10-1974, cited as one of the documents in support of the charge memo. He had contended that if the letter addressed to the doctor could not be produced, the doctor's letter denying that he had made the changes in the dates should have been proved by the presenting officer by summoning the doctor. The applicant's contention was that the so-called letter of confession dated 14-10-1974 had been obtained from him by coercion by Capt. Pillai and that, therefore, the truth of the confession should be proved by summoning Capt. Pillai to the inquiry. The Inquiry Officer had declined to summon the doctor on the ground that the letter denying that he made any correction was duly signed by him. He had also declined to summon Capt. Pillai taking the view that the letter dated 14-10-1974 signed by the applicant cannot be treated as having been obtained under coercion. The doctor and Capt. Pillai were necessary witnesses whom the applicant could have cross-examined to establish that he had not forged the correction of dates in the fitness certificate and that he had written the so-called letter of confession on 14-10-1974 under coercion from Capt. Pillai. The offence with which the applicant was charged was that he had forged the fitness certificate and this charge was sought to be sustained with reference to his so-called confession. By not summoning the doctor and Capt. Pillai



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the applicant was denied the opportunity of refuting both the charges by proper cross-examination. The respondents, in their reply, contended that because the inquiry was conducted ~~ex parte~~, the line of proving the documents for sustaining the charge could not be followed. The Inquiry Officer was not right in proceeding with the inquiry ex parte on 22-2-1985 and he was also not justified in not summoning the doctor and Capt. Pillai to prove the documents cited by the presenting officer to sustain the charge against the applicant. There was thus blatant denial of natural justice.

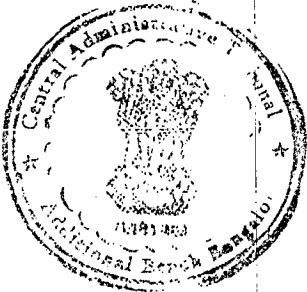
7. Shri Vasudeva Rao, learned counsel for the respondents, submitted that principles of natural justice require that notices should be issued to the applicant and he should be given an opportunity of presenting his case. Adequate notice was given to the applicant and opportunities were also given to him of being heard. On 22-2-1985, the applicant did not come to the place of inquiry in time and even earlier, the applicant had been late to attend the inquiry and had given evasive replies to questions asked of him. It was clear that the applicant was only trying to delay the proceedings and so the Inquiry Officer was right in proceeding with the inquiry ex parte. The Inquiry Officer felt that it was not necessary to summon the doctor and Capt. Pillai and he was within his right to come to that decision.

8. After careful consideration, we are of the view that the Inquiry Officer was not right in declining to summon the doctor and Capt. Pillai. The presenting officer had stated that the letter addressed to the doctor which elicited the doctor's reply denying that he had made corrections in fitness certificate was not available. The applicant then required that the doctor be summoned and examined as to why he wrote the reply. The purpose also was to enable the



applicant to cross-examine the doctor to bring out the true state of affairs in regard to the correction in dates in the fitness certificate. The confessional statement said to have been made by the applicant on 14-10-1974 which has played a big part in coming to the conclusion that he was guilty of the charge was explained away by the applicant as having been made under coercion brought on him by Capt. Pillai. When the applicant wanted Capt. Pillai be summoned at the inquiry, the request could not have been brushed aside by merely saying that the confessional letter could not have been given under coercion because that amounted to begging the question. The applicant was thus denied an opportunity to establish, if possible, by cross-examining Capt. Pillai that the so-called confessional statement was obtained under coercion. The respondents have in their reply referred to a letter dated 31-1-1975 (Annexure R-10 to the reply of the respondents) said to have been written by the applicant admitting that he had committed the mistake. Shri Panikar rightly objected to this on the ground that it was not a document cited at the inquiry and as such he had no opportunity to explain why this letter was written. We must agree that a document not forming part of the inquiry proceedings cannot be relied upon at this stage. We are also not satisfied that the Inquiry Officer was right in proceeding with the inquiry ex parte on 22-2-1985. The records show that the applicant was present on all earlier occasions. The Inquiry Officer has himself recorded the presence of the defence assistant on 22-2-1985 at the appointed time. The record made by him that the applicant did not turn till 0925 hrs suggests that the applicant did come at 0925 hours i.e. 25 minutes late as contended on behalf of the applicant. The applicant himself wrote on 23-2-1985 to say that he was present on the earlier day and yet the Inquiry Officer had proceeded ex parte. We are, therefore, of the view that by going ahead with the

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inquiry ex parte on 22-2-1985 and making it an excuse for not proving the documents relied upon by the presenting officer amounted to violation of principles of natural justice.

9. In the view taken by us in the previous paragraph, it is not necessary to go into the other arguments put forward by Shri Panikar. Since the Inquiry Officer did not follow the principles of natural justice, as noticed by us in the previous paragraph, the finding in the Inquiry has to be struck down and therefore the orders of the disciplinary and appellate authorities imposing the punishment on the applicant are also liable to be struck down.

10. We therefore strike down the order dated 15-6-1985 of the disciplinary authority (Annexure-I page 26 to the application) and order dated 21-1-1986 passed by the appellate authority (Annexure-II page 27 to the application). The disciplinary authority will be at liberty to conduct fresh inquiry in accordance with law. The applicant should be reinstated in the post he was holding before he was removed from service unless the disciplinary authority decides to hold a further inquiry and the provisions of rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, come into operation. If the applicant is so reinstated, he should be paid salary and allowances from the date from which he was removed from service till the date of reinstatement.

11. In the result, the application is allowed.

Parties to bear their own costs.

Sd/-

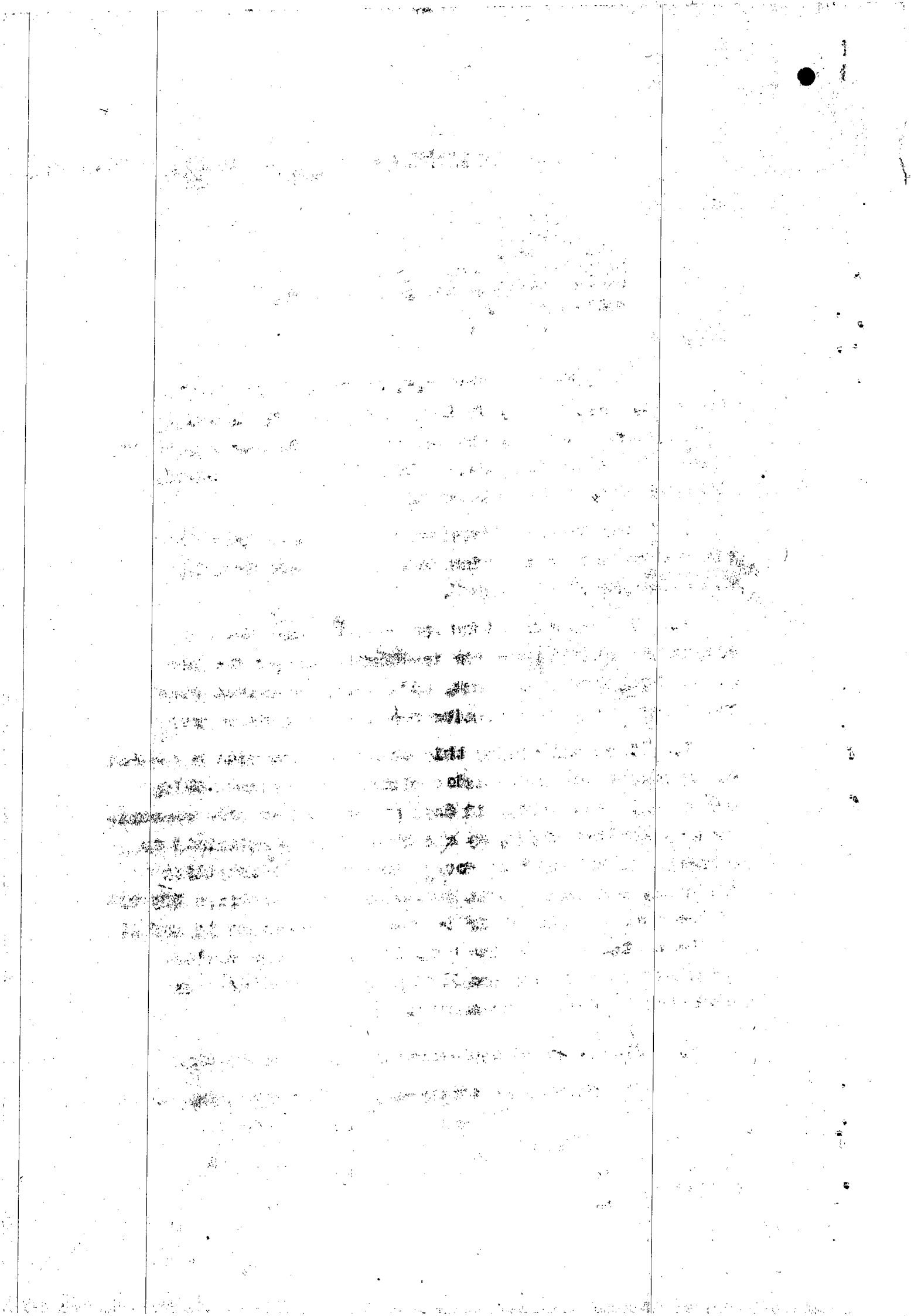
MEMBER(J) 17/1

Sd/-

MEMBER(A) M

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B.V. Mukundan
DEPUTY CHIEF JUSTICE
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
MANGALORE



CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 9 AUG 1988

CONTEMPT OF COURT APPLICATION NO.
 IN APPLICATION NO. 913/86(F)
 W.P. NO.

60

/88

Applicant(s)

Shri M.V. Mathew

To

Respondent(s)

V/s The Commandant, MEG & Centre, Bangalore

1. Shri M.V. Mathew
 12/1, 'D' Street
 Jai Bharath Nagar
 Bangalore - 560 042
2. Shri K.T. Panikar
 Advocate
 67/2, Osborne Road
 Bangalore - 560 042
3. The Commandant
 Madras Engineering Group & Centre
 Post Box No. 4200
 Bangalore - 560 042
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/EXAMINATIO ORDER
 Contempt of Court
 passed by this Tribunal in the above said application(s) on 3-8-88

genuine
 9-8-88

Encl : As above

O/C -

P.V. Venkatesh
 DEPUTY REGISTRAR
 (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL:BANGALORE

DATED THIS THE 3RD DAY OF AUGUST,1988.

PRESENT:

Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.P.Srinivasan, .. Member(A).

CONTEMPT OF COURT APPLICATION NO.60 OF 1988

M.V.Mathew,
Aged about 38 years,
S/o M.M.Verghese,
Store Keeper, Gr.II (C.I.F)
Madras Engineer Group& Centre,
BANGALORE 560 042. .. Petitioner.

(By Sri K.T.Panikar,Advocate.)

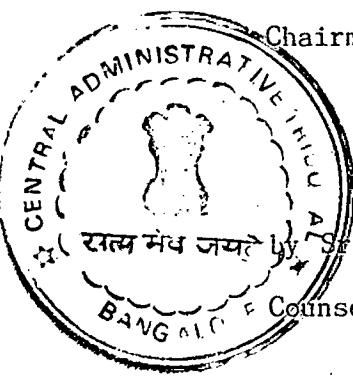
v.

Brigadier S.N.Endley,
Commandant,
Madras Engineer Group & Centre,
Post Box No.4200,
BANGALORE 560 042. .. Respondent.

(By Sri M.Vasudeva Rao,Standing Counsel)

This application having come up for hearing, Hon'ble Vice Chairman made the following:

ORDER



Petitioner and his counsel Sri K.T.Panikar present. Respondent

Sri M.Vasudeva Rao, Additional Central Government Senior Standing Counsel.

2. In this application made under Section 17 of the Administrative Tribunals Act,1985 ('the Act') and the Contempt of Courts Act, 1971 (CC Act), the petitioner has moved this Tribunal to punish the respondent for non-implementation of the order made in his favour on 13-11-1987 in A.No.913 of 1986.

3. In A.No.913 of 1986 the petitioner had challenged the orders made in a disciplinary proceeding imposing on him the punishment

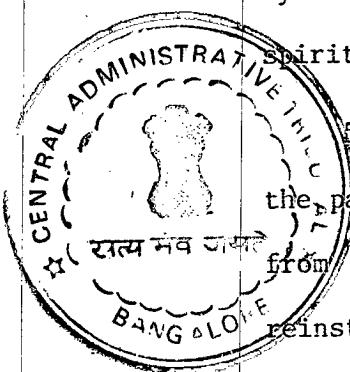
punishment of removal from service. On an examination of the same, a Division Bench of this Tribunal consisting of one of us (Sri P. Srinivasan, Member(A)) made an order in these terms:

10. We, therefore, strike down the order dated 15-6-1985 of the disciplinary authority (Annexure-I page 26 of the application) and order dated 21-1-1986 passed by the appellate authority (Annexure-II page 27 to the application). The disciplinary authority will be at liberty to conduct fresh inquiry in accordance with law. The applicant should be reinstated in the post he was holding before he was removed from service unless the disciplinary authority decides to hold a further inquiry and the provisions of Rule 10(4) of the CCS (CCA) Rules, 1965, come into operation. If the applicant is so reinstated, he should be paid salary and allowances from the date from which he was removed from service till the date of reinstatement".

The petitioner claims that this order has not been implemented by the respondent in letter and spirit.

4. In his reply, the respondent has asserted that in pursuance of the order of this Tribunal the petitioner has been reinstated to service. Sri Panikar does not dispute this assertion of the respondent. From this it follows that the first part of the order made by this Tribunal had been complied by the respondent in letter and spirit.

5. In the second part of its order, this Tribunal had directed the payment of arrears of salary and allowances due to the petitioner from the date from which he was removed from service till he was reinstated to service. In compliance with this direction, the respondent is tendering a cheque for Rs.45,655/- drawn in favour of the petitioner and the receipt of the same is reported by Sri Panikar. But, notwithstanding this, Sri Panikar contends that the order had not been complied in all its particulars. We are of the view that this is factually incorrect. We are satisfied that the respondent had complied with the order of this Tribunal in letter and spirit. But, even assuming that the petitioner has any grievance arising



out of his reinstatement or on the amounts actually due to him, then the proper remedy for him is to agitate them in a separate proceeding.

6. On any view, these contempt of Court proceedings are liable to be dropped.

7. In the light of our above discussion, we hold that these contempt of Court proceedings are liable to be dropped. We, therefore, drop these contempt of court proceedings. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-

VICE-CHAIRMAN. 3/8/1977

Sd/-

MEMBER (A)

TRUE COPY



Deputy Registrar (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

9/8/1977

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
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R.V. Venkatesh
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 (JUDICIAL)

Encl : As above

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DATED THIS THE 3RD DAY OF AUGUST,1988.

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And:

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CONTEMPT OF COURT APPLICATION NO.60 OF 1988

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(By Sri K.T.Panikar,Advocate.)

v.

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This application having come up for hearing, Hon'ble Vice Chairman made the following:

ORDER


Petitioner and his counsel Sri K.T.Panikar present. Respondent by Sri M.Vasudeva Rao, Additional Central Government Senior Standing Counsel.

2. In this application made under Section 17 of the Administrative Tribunals Act,1985 ('the Act') and the Contempt of Courts Act, 1971 (CC Act), the petitioner has moved this Tribunal to punish the respondent for non-implementation of the order made in his favour on 13-11-1987 in A.No.913 of 1986.

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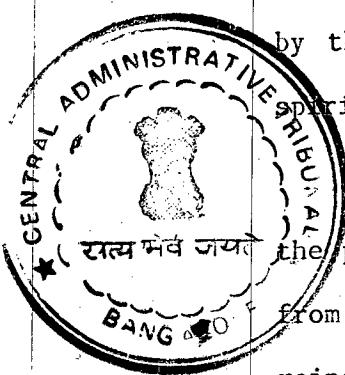
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Sd/-

VICE-CHAIRMAN.

Sd/-

MEMBER(A)



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DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL (9/8)
BANGALORE