

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 23 MAR 1988

APPLICATION NO 252 /88(F)

W.P. NO. _____

Applicant

Shri V. Narayanappa
To

Respondent

V/s The AG(A&E), Karnataka, Bangalore

1. Shri V. Narayanappa
Group 'D'
Office of the Accountant General
(Accounts & Entitlements)
Karnataka
Bangalore - 560 001
2. Shri Ravivarma Kumar
Advocate
No. 11, Jeevan Building
Kumara Park East
Bangalore - 560 001
3. The Accountant General
(Accounts & Entitlements)
Karnataka
Bangalore - 560 001
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/~~ ~~XXXXXX~~ ~~XXXXXX~~
passed by this Tribunal in the above said application on 14-3-88.


DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

9c.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE FOURTEENTH DAY OF MARCH, 1988.

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

APPLICATION NO. 252/1988

Shri V. Narayanappa
Office of the Accountant
General
(A/cs & Entitlement)
Karnataka,
Bangalore.

.. Applicant

(Shri Ravi Varma Kumar ... Advocate)

Vs.

Accountant General
(Accounts & Entitlement)
Karnataka
Bangalore - 560 001.
(Shri M. Vasudeva Rao ... Advocate)

.. Respondent

This application has come up for hearing
before this Tribunal today, Hon'ble Vice Chairman made
the following:

ORDER

In this application made under section 19 of the
Administrative Tribunals Act, 1985, ('the Act') the applicant
has challenged Order No. Es.I/A1/87-88/450 dated 28.1.1988
(Annexure-A1) of the Accountant General (A/cs & Entitlement),
Karnataka, Bangalore ('AG').

2. The Applicant claims to be a member of a
scheduled Tribe ('ST') called 'Nayaka'. On that basis,
he applied and secured an appointment on 18.4.1983
(Annexure-A2) as a peon in the Office of the AG and has
been working in that capacity ever since then.

3. But on the basis of information made available to him, the AG by his memo no. Es.I/A8/85-86/85 dated 8.7.1985 (Annexure-A3) informed the applicant that he was not a member of a ST called 'Nayaka' and was a member of a community called 'Beda' which was not a ST and sought for his explanation, which he denied and asserted as before. Without pursuing the said accusation to its logical conclusion by initiating and completing regular disciplinary proceedings under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('1965 Rules') the AG by his order dated 28.1.1988 (Annexure-A1) had terminated the services of the applicant with one month's notice under the Central Civil Services (Temporary Service) Rules of 1965 (Rules). Hence this application.

4. As before the applicant has asserted that he was a member of a ST called 'Nayaka', the certificate issued thereto was genuine and his termination was really on the ground that he was not a member of a ST and was as a measure of punishment in contravention of Article 311 of the Constitution and the Rules.

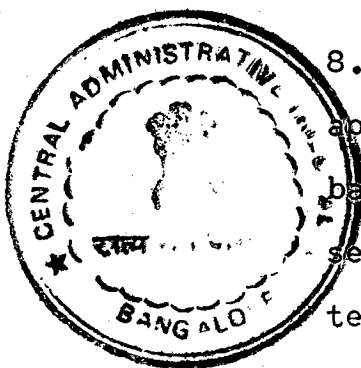
5. In justifying the impugned order, the respondent had filed its reply and had produced the correspondence that had ensued between the office of the AG and the Civil Rights Enforcement Cell of the Police Department of the Government of Karnataka (Cell).



6. Shri Ravi Varma Kumar, Learned Counsel for the applicant, contends that the termination of his client was not a termination simplicitor on any permissible grounds but was really as a measure of punishment on the ground that he was not a member of a ST, on the basis of which he had earlier secured his appointment without complying with the requirements of Article 311 and the 1965 Rules and the same was illegal and impermissible. In support of his contention, Shri Kumar strongly relies on the ruling of the Supreme Court in AIR 1964 SC 499 (JAGDISH MITTER v. UNION OF INDIA) and all other cases which have only reiterated the principles stated in that case.

7. Shri M. Vasudeva Rao, Learned Additional Standing Counsel, for Central Government appearing for the respondent, sought to support the impugned order.

8. The impugned order made against the applicant, who had been appointed on a temporary basis and was so continuing by itself does not set out the reasons and the circumstances for his termination. On its own terms it is a termination simpliciter. But as ruled by the Supreme Court in JAGDISH MITTER's case and other cases, the Court must go behind the order and find out whether the termination was a termination simplicitor or was as a measure of punishment in contravention of



Article 311 and the 1965 Rules and find out as to which of them the case really falls on an examination of all the facts and circumstances of that case and the records. When we so examine this case, there is no doubt that this is not termination simplicitor on any of the permissible grounds like want of a vacancy or non-suitability of the applicant to hold the post but was only as a measure of punishment on the ground that he was not a member of a ST called 'Nayaka' and was a member of a community called 'Beda' which he was seriously disputing. In reality and substance the termination of the applicant was as a measure of punishment only. But in doing so, the authorities have not initiated and completed regular disciplinary proceedings against the applicant, which was undoubtedly open to them under Article 311 of the Constitution and the Rules. On this finding there is no alternative for us except to quash the impugned order with liberty reserved to the authorities to redo the matter in accordance with law where it is undoubtedly open to the applicant to urge all such defences as are available to him. On this view we have not examined all other questions and leave them open.

TRUE COPY

9. In the light of our above discussion, we allow this application and quash the impugned order. But in the circumstances of the case, we direct the parties to bear their own costs.

P. V. Venkataswamy
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

mr.

Sd/-
VICE CHAIRMAN
14/3/1988

Sd/-
MEMBER (A) 14.3.1988