

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 17 JAN 1989

APPLICATION NO. 901 / 88(F)

W.P. NO. _____

Applicant(s)

Respondent(s)

Shri Konerao Kulkarni
To

V/s The Senior Supdt. of Post Offices,
Gulbarga & another

1. Shri Konerao Kulkarni
S/o Shri Srinivasarao Kulkarni
At & P.O. Kalkhamba - 585 222
Sedam Taluk
Gulbarga District
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Senior Superintendent of
Post Offices
Gulbarga Division
Gulbarga - 585 101

4. The Director of Postal Services
North Karnataka Region
Dharwad
5. Shri M.S. Padmarajaiah
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 (R) on 12-1-89.

Issued
K. R. fm
18-1-89
Encl : As above

R. V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

qc

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE.

DATED THIS THE 12th DAY OF JANUARY, 1989

Present : Hon'ble Justice Sri-K.S.Puttaswamy Vice Chairman
Hon'ble Sri P.Srinivasan Member (A)

APPLICATION No.901/88.

Konerao Kulakarni,
At and Post Kalkhamba,
Sedam Taluk,
Gulbarga Distt. ... Applicant

(Sri M.R.Achar ... Advocate)

vs.

1. Senior Superintendent of
Post Offices,
Gulbarga Divn.,
Gulbarga.
 2. The Director of Postal
Services, N.K.Region,
Dharwar. ... Respondents
- (Sri M.S.Padmarajaiah ... Advocate)

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

ORDER

The applicant who joined service in the Postal department as an Extra Departmental Post Master on 15.8.1958, was absorbed as a regular Post Man on 19.6.1969 and promoted as Mail Oversear in 1973. Departmental inquiry proceedings were initiated against him by Memo dated 28.8.1986 in respect of a charge that he had remained absent from duty unauthorisedly during July and August 1986 and had thus failed to maintain devotion to duty. The applicant was held guilty of the charge levelled against him and by order dated 20.11.1986



P. Srinivasan

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the Disciplinary Authority(DA) imposed the penalty of removal from service on him. An appeal filed by the applicant was rejected by the Appellate Authority(AA) as being out of time by his order dated 23.3.1987. In this application the applicant is aggrieved with the orders of DA and the AA.

2. This application is late by 76 days. The applicant has filed an application for condonation of delay in which he has stated that he was suffering from suspected Cancer of ear and was taking treatment at Hyderabad and that that was why he could not file the application in time. Sri M.R.Achar, learned counsel for the applicant submitted that the delay should be condoned as reasonable cause had been adduced by the applicant. Sri M.S.Padmarajiah, learned counsel appearing for the respondents opposed this request. After careful consideration and after perusing the records of the applicant's illness produced by Sri Achar during the hearing we are satisfied that the application for condonation of delay deserves to be allowed. We, therefore, condone the delay and proceed to deal with the application on merits.

3. Sri Achar submitted that the punishment imposed on the applicant was disproportionate to the charge levelled against him. The applicant had proceeded on casual leave for two days on 14th and 15th July 1986 but was obliged to overstay the leave because of illness. He applied for earned leave but that ~~was~~^H had been rejected and he had been ordered to report for duty. Since the applicant could not report for duty due to illness, he did not attend office in July and August 1986. The reason for his absence from duty was a

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genuine one though he may be technically guilty of not obeying orders to report for duty. In view of this, Sri Achar submitted, the drastic punishment of removal from service denying the applicant all benefits of his prior service was grossly excessive.

4. Sri M.S. Padmarajaiah, submitted that the applicant had been found guilty of gross misconduct by not joining duty on the day he was required to do so by the authorities and remaining absent for over a month without any sanction of leave having been obtained. In fact he had remained absent from duty till the order of the DA removing him from service was passed. This was not the first occasion that the applicant had absented from duty. On earlier occasions also he had been punished for unauthorised absence but he had failed to reform himself. In view of this the charge levelled against him had been proved and the penalty imposed was fully deserved.

5. We have considered the rival contentions carefully. We must agree with Sri Padmarajaiah that the applicant was indeed guilty of misconduct when he did not report for duty when he should have and remained absent from duty for a long period without sanction of the leave. At the same time we must also take into account the contention of Sri Achar ^{b) that} the applicant was really ill and was undergoing treatment. We have earlier referred to the illness of the applicant—suspected cancer—which prevented him from filing the present application in time. Therefore, while upholding the guilt of the applicant in absenting himself from duty without sanction of leave, we must take the fact of his illness into consideration in

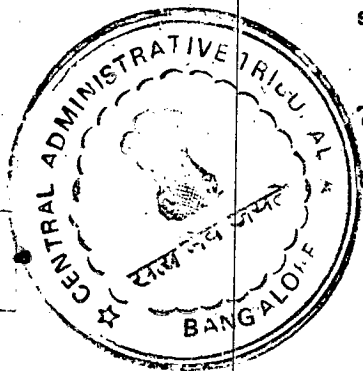


P. S. Padmarajaiah

determining whether the quantum of penalty imposed on him was reasonable. Taking into account all the facts of this case, we feel it would meet the ends of justice if the penalty imposed on the applicant is reduced to one of compulsory retirement from the date of the order of ^{of the} DA.

6. We, therefore, uphold the charge of guilt against the applicant and reduce the penalty to one of compulsory retirement from the date of the order passed by the DA. The respondents will give the applicant all consequential benefits flowing from this order in accordance with the rules on the subject.

7. The application is disposed of accordingly, leaving the parties to bear their own costs.



Sd/-

VICE CHAIRMAN

12/1/89

Sd/-

MEMBER (A)

12/1/89

an.

TRUE COPY

[Handwritten Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE