CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 DEC 1988

APPLICATION NOS. 51, 93, 143, 168, 180 & 181 /88(F)

W.P. NO. /

Applicant(s)

Shri D. Ramana Rao

V/s

Respondent(s)

The General Manager, Telecom, Karnataka Circle, Bangalore & 4 Ors

To

1. Shri D. Ramana Rao
Junior Telecom Officer
Office of the Telecom District Engineer
Karwar - 581 301
Uttara Kannada District

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

3. The General Manager
Telecommunications
Karnataka Circle
Bangalore - 560 009

4. The Divisional Engineer (Telecom)
Trunk Task Force
Opp : Ganapathi Temple
Vazhuthcad
Trivandrum - 14 (Kerala)

5. The General Manager
Bangalore Telephones
Bangalore - 560 009

6. The Director
Telecommunications
Mangalore Area
Mangalore - 575 001

7. Telecom District Engineer
Karwar - 581 301
Uttara Kannada District

8. 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(s) on 1-12-88.

SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE FIRST DAY OF DECEMBER, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy .. Vice Chairman

Hon'ble Shri L.H.A. Rego .. Member (A)

APPLICATION NOS. 51, 93, 143, 168, 180 and 181 OF 1988

Shri D. Ramana Rao
Son of Late Narayana
Major, Jr. Telecom Officer
Telecom Divisional Engineer
Karwar. .. Applicant

(Shri M.R. Achar, Advocate)

Vs.

1. The Director
Telecom
Mangalore Area
Mangalore.

2. General Manager
Telecom
Karnataka Circle
Bangalore-560 009.

3. Telecom District Engineer
Karwar.

4. Divisional Engineer(Telecom)
Trunk Task Force,
Opp: Ganapathi Temple,
Vazuthacad, Trivandrum.

5. General Manager
Bangalore Telephones
Bangalore-560009.

.. Respondents

(Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel)

These applications having come up for hearing before the Tribunal today, Hon'ble Vice Chairman made the following:

ORDER

As the applicant in all these applications made under Section 19 of the Administrative Tribunals Act of 1985 (Act) is common and the questions that arise for determination are interconnected, we propose to dispose of them by a common order.

2. Shri D. Ramana Rao, the common applicant before us, joined service in 1971 as a Junior Engineer (JE)

in the Telecommunications Department, Government of India, and so working in that capacity Mercara Division of the Department from 1984 and onwards.

3. When the applicant was on medical leave, the General Manager, Telecom, Karnataka Circle, Bangalore (GM) by his order No. Staff/3-57/XXXII dated 30.5.1986 (Annexure A in A. No.93/88) transferred him from Madikeri to Karwar. In pursuance of this order, the Telecom District Engineer, Madikeri, (TDE for short) by his Memo No.E-10/4/III/9 dated 16.6.1986 (Annexure-B, in A.No.93/88), relieved the applicant at Madikeri from the forenoon of 16.6.1986. In compliance with these orders, the applicant claims that he reported for duty at Karwar on 6.11.1986, which is disputed by the respondents, who state that he so reported only on 19.11.1986. But there is no dispute on the fact that the applicant was working at Karwar from 19.11.1986.

4. While working at Karwar, the applicant made an application before the GM on 25.5.1987 (Annexure-A in A.No.51/88) renewing his earlier prayers for a "request transfer" under Rule 38 of the Post and Telegraphs Manual, Vol.IV. Even before that application was decided by the competent authority, the applicant in pursuance of Circular No. GMT BG No. Est/Staff/3-JEs dated 24.6.1987 issued by the GM made an application dated 29.6.1987 (Annexure B in A. No.51/87) expressing his willingness for his appointment as a Junior Engineer under the DE Task Force, whose headquarters was at Trivandrum. On an examination of his application

for the same, the General Manager, Telecommunications, Bangalore, in his Order No. EST/STAFF/3-JEs dated 1.9.1987 accorded his sanction for the same which was communicated to him on 9.9.1987 by the Telecom District Engineer, Karwar, (TDE, Karwar).

5. On 16.12.1987 the competent officer accorded his sanction to the application made by the applicant on 25.5.1987 for "request transfer" and communicated the same to him by his telegram on 28.12.1987 (Annexure-D in A. No. 51/87). On this order, the applicant moved the concerned authorities to relieve him at Karwar and give him a posting to Bangalore, which for various reasons to be noticed by us later, had not been acceded to so far. On 12.1.1988 the applicant has made Application No.51/88 before us for a direction to the respondents to relieve him from the Task Force Unit at Karwar and give him a posting to Bangalore. In an interlocutory application made later in A.No.51/88, the applicant has challenged the further orders made against him on 4.1.1988 and 5.1.1988 on the same, which we have not specifically allowed. But notwithstanding the same, we have proceeded to hear the same as earlier allowed. We will hereafter refer to this case as "Set No.I".



6. For the period from 16.6.1986 to 18.11.1986 the Director Telecom, Mangalore Area, Mangalore (DTMA) has made an Order on 26.5.1987

....4/-

(Annexure-C in A. No.143/86) to the effect that the applicant was absent from duty without permission and has treated the said period as dies non. On the availing of casual leave by him for 3 days from 15.6.1987 to 17.6.1987 there was an order made by the TDE, Karwar in his Memo No. E-Supr/CL-87/55 dated 20.6.1987 (Annexure-D in A.No.143/88) which has been affirmed in appeal by the DTMA (Annexure-G). All these orders are challenged by the applicant in A.No.93 & 143/88. We will hereafter refer to these cases as "Set No.II".

7. For the periods, viz. (i) 16.5.1984 to 31.3.1985 (ii) 19.11.1986 to 31.3.1987 and (iii) 1.4.1987 to 9.9.1987, there were certain adverse entries made in the pertinent Annual Confidential Reports (ACRs) of the applicant. On those adverse entries made against him, the applicant has filed A. Nos. 168, 180 and 181 of 1988. We will hereafter refer to these cases as " Set No.III".

8. In all these three sets, the respondents have filed their separate replies and produced their records.

9. Shri M.R. Achar, learned counsel has appeared for the applicant and Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel for the respondents in all these cases.

10. We will now deal with these cases in their order noticing such additional facts that are necessary to deal with the contentions urged in them.

SET NO.I

11. Shri Achar contends that on the competent authority allowing the application of the applicant for "request transfer" made under Rule 38 of the Post and Telegraphs Manual, Vol. IV, all the officers subordinate to that authority were bound to comply with the same, relieve the applicant at Karwar and enable him to report for duty either at Bangalore or at such other place to be decided by the competent authority by giving him a proper posting and in not having done so, they have acted illegally and the same should be remedied by us. In support of his contention Shri Achar strongly relies on a Division Bench ruling of the Ahmedabad Bench of this Tribunal in Mr. RADHAKISHAN K. VISHNANI v. UNION OF INDIA & Ors. (ATR 1986 CAT 585).

12. Shri Padmarajiah refuting the contention of Shri Achar contends that the "request transfer" made and allowed on 29.12.1987 by which time the erstwhile two Postal Circles namely (i) The Karnataka Telecom Circle and (ii) The Bangalore Telecom Circle were merged into one Circle known as the Karnataka Circle from 1.1.1987, was itself non est and the same had been rightly cancelled later, on which ground we should decline to interfere with them.



13. Prior to 1.1.1987 there were two Circles known as (i) The Karntaka Telecom Circle and (ii) The Bangalore Telecom Circle. But from 1.1.1987 those two Circles were merged and only one Circle was formed for the whole of the State of Karnataka and designated as the Karnataka Telecom Circle. This administrative

development pleaded by the respondents in their reply is found to be correct also from the records and is not disputed by the applicant. On this conclusion, it necessarily follows, that the applicant making a "request transfer" under Rule 38 or the authority allowing the same on and after 1.1.1987 as if there were two Circles which actually ceased to exist was non est. If that is so, then we must necessarily uphold the later order, cancelling the earlier one which was ill-founded.

14. On the selection and posting of the applicant to the Task Force, the matter also no longer survives as the Task Force had ceased to exist from 30.6.1988. On this view, we cannot also enforce the earlier order made in favour of the applicant on the same.

15. In Radhakishan K. Vishnani's case, the Ahmedabad Bench was dealing with a case of mutual transfer; the relief of the applicant from the place he was originally working and his posting to a new place and its later cancellation. But that is not the position in the present case. Hence the ratio in Radhakishan K. Vishnani's case does not bear on the question.

16. On the foregoing, we hold that we cannot direct the respondents to relieve the applicant at Karwar and give him a posting at Bangalore. With this we now proceed to examine the other questions in this Set.

.....7/-

17. On his selection to the Task Froce, TDE, Karwar, made an Order on 9.9.1987 (Annexure-C in A.No.51/88) which reads thus:

" DEPARTMENT OF TELECOMMUNICATIONS

OFFICE OF THE TELECOM DISTRICT ENGINEER, KARWAR.

No.E-4-11/II/140 Dated @ Karwar the 9/9/1987.

Sub: Formation of Task Force - Posting of JTOs.
Refer: GMT Bangalore letter No.EST/STAFF/3-JEs dated 1.9.1987.

In accordance with the instructions contained in GMT Bangalore letter under reference, Shri D. Ramana Rao, J.T.O. of this office, who has volunteered to work under D.E. Task Force, stands relieved on the A/N of 9.9.1987 without change of Headquarters. The official will continue to be under the establishment of Karnataka Circle though he works under the administrative control of D.E. Task Force, Trivandrum. The official should attend the work relating to Task Forces w.e.f. 10.9.1987 F/N.

sd/-
Telecom., District
Engineer, Karwar. "

On granting the prayer of the applicant for "request transfer" a communication was sent to the concerned authority and the applicant by telegram (Annexure-D in A.No.51/88) and that telegram which is material reads thus:

"XT/0900/29

FILE NO. STA/10-1/87 DATED 28/12/87 AAA REFER GMT KARNATAKA CIRCLE LETTER NO. EST/STAFF/3-87 DATED 16.12.1987 REG. RULE 38 TRANSFER OF JTOs AAA D RAMANA RAO JTO (TTF) IS RELIEVED FROM TTF UNIT WITH IMMEDIATE EFFECT WITH INSTRUCTIONS TO REPORT TO TDE KARWAR AAA =

= DE(TTF) SZ TRIVANDRUM =



On receipt of this telegram, the applicant claims that he stood relieved at Karwar from 29.12.1987, which is seriously disputed by the respondents. Even before this controversy had been decided, there was

a further Order made on 4.1.1988 cancelling the earlier order allowing the "request transfer" of the applicant. This order was communicated to the applicant and the concerned authority on 19.1.1988 by telegram, which is material and reads thus:

" To

1. D. Ramana Rao
   Door No.31, Rangappa Street
   Mavalli, Bangalore-4.
2. N.K. Narayankar, TDE, Karwar.
3. GM Karnataka Circle, Bangalore 9.

NO. STA/10-1/87 AAA REFER GM TELECOM. KARNATAKA CIRCLE BANGALORE XT/1100/15 FROM FILE NO. EST/STAFF/3-57/42/159 AAA D. RAMANA RAO JTO IS RELIEVED FROM THE STRENGTH OF THIS UNIT WITH IMMEDIATE EFFECT WITH INSTRUCTIONS TO REPORT TO TDE KARWAR FOR FURTHER DUTIES AAA INTIMATE DATE OF REPORTING TO ALL CONCERNED AAA

= DE(TTE) TRIVANDRUM 14 "

On these developments, Shri Achar urges that whatever be the effect of the orders made, the applicant had been relieved at Karwar on 29.12.1987 and he had not been given a posting and therefore the entire period from 29.12.1987 to the date a posting is given to him, should be treated as only 'compulsory waiting' and his absence thereof from that date be regulated on that and that basis only.

18. Shri Padmarajaiah contends that the applicant had never been relieved at Karwar and the later orders made had only reiterated that position and therefore the period from 29.12.1987 onwards cannot be treated as 'compulsory waiting' and should only be treated as absence from duty and no other.

19. We are of the view that this controversy, which is not free from doubt, involves

an investigation of facts. We consider it proper to leave this question to be decided by the authorities in the first instance. But in the meanwhile, we consider it proper to direct the applicant to first report for duty at Karwar. With this, we now pass on to examine Set No.II.

SET NO.II

20. In Set II we are concerned with the two periods, viz. (i) from 16.6.1986 to 18.11.1986 and (ii) from 15.6.1987 to 17.6.1987.

21. We will first deal with the case of the applicant in regard to 3 days casual leave said to have been availed of by him from 15.6.1987 to 17.6.1987.

22. Shri Achar contends that the applicant had applied for casual leave for 3 days from 15.6.1987 to 17.6.1987 well in advance and there was, no justification whatsoever for the original or the appellate authorities to refuse that leave as done by them.

23. Shri Padmarajaiah sought to support the original and the appellate order made against the applicant treating the period as dies non.



24. As early as on 9.6.1987, the applicant applied for casual leave from 15.6.1987 to 17.6.1987 giving reasons for the same.

25. We have examined all the papers touching on this short period of leave. On such an examination,

....10/-

we are of the view that the casual leave sought for this period should have been granted by the authorities if the applicant had that leave at his credit, or such other leave, to which he was entitled under the rules. We are constrained to observe that the authorities have made a mountain out of a mole trivial of this matter and thereby compelled the applicant to agitate the same before us. We, therefore, consider it proper to quash Memo Nos. E-Supr/CL-87/55 dated 20.6.1987 and MR/STA/10-102 dated 19.8.1987 (Annexures D & G in A. No.143/88) and direct the competent authority to treat the period from 15.6.1987 to 17.6.1987 as casual leave, if the applicant had such leave at his credit or such other leave to which he was entitled under the Rules. With this, we now pass on to examine absence or otherwise of the applicant from 16.6.1986 to 18.11.1986.

26. For the period from 16.6.1986 to 18.11.1986 there are two orders made against the applicant, in regard to which he has presented an appeal before the Chief General Manager, Karnataka Circle, Bangalore (CGM) on 12.6.1987 which has not so far been disposed of by him one way or the other. We need hardly say that there is a legal obligation on the CGM to examine and dispose of the same one way or the other. We consider it proper to direct the CGM to decide the appeal one way or the other with expedition. On this view, we decline to examine the merits of the orders. With this we now pass on to examine the last set.

SET NO.III

27. Shri Achar contends that the adverse remarks in the pertinent ACRs made by the Reporting

Officer viz. TDE, Karwar, on the applicant to the extent they are not expunged by the Appellate Authority are totally ujustified and we should expunge all of them.

28. Shri Padmarajaiah contends that this Tribunal cannot sit as a court of appeal and come to a different conclusion and therefore, we should not interfere with any of them.

29. For the period from 16.5.1984 to 31.3.1985 there were certain adverse entries in the pertinent ACRs made by the TDE, Karwar. But on an appeal filed by the applicant, they have been expunged by the Director Telecom, Mangalore Area, Mangalore (DTMA) by his order dated 23.2.1988. On this view, Shri Achar does not rightly press the grievance of the applicant for the said period. We, therefore, reject the challenge of the applicant to the earlier order as having become unnecessary.

30. For the period from 19.11.1986 to 31.3.1987 there were adverse entries in the pertinent ACRs made by the Reporting Officer. Against those entries the applicant has appealed to the DTMA, Mangalore who had disposed of the same on 23.2.1988. In I.A. No.1 filed, the applicant has challenged this order also.



31. Shri Achar contends that the Appellate Authority had not really applied his mind and had arbitrarily dismissed the same.

32. We have carefully read the appeal of the applicant and the order made by the DTMA,

Mangalore, deciding that appeal. Firstly we find that the Appellate Authority has not recorded definite and clear findings on the contentions urged by the applicant. Secondly, the order suffers from mutual contradictions as rightly pointed out by Shri Achar. On this conclusion we have to necessarily set aside the Order No. MR/STA/10-183 dated 23.2.1988 of the Appellate Authority and direct the reconsideration of that appeal by the CGM.

33. For the period from 1.4.1987 to 9.9.1987, the TDE, Karwar in his Memo No. X.1/CRs/82 dated 7.1.1988 (Annexure C in A. Nos. 168, 180 & 181 of 1988) had made certain adverse entries in the pertinent ACRs. In para 17 of this order, the authority had referred to the unauthorised absence of the applicant for the period from 15.6.1987 to 17.6.1987, on which we have upheld the case of the applicant. On this view what is stated in the said para 17 cannot stand.

34. On the other entries, the applicant has not filed any appeal so far. On the peculiar facts and circumstances, we consider it proper to permit the applicant to file an appeal against the remaining entries before the CGM. Shri Achar prays for 15 days time to file such an appeal. We grant the same.

35. Shri Padmarajaiah urges that on what we have earlier expressed the applicant was bound to report for duty at Karwar till a further posting was given to him.

.....13/-

36. We are of the view that it would be in the interest of the applicant himself to report for duty at Karwar and then make representations either for his retention at Karwar or for posting him to some other place.

37. We have left open various questions to be decided by more than one authority, one of whom is the CGM being the head of the entire Karnataka Circle. We need hardly emphasise that a decision by one authority on all questions is in the interest of the applicant and the Department also. We therefore, consider it proper to direct the CGM to decide all outstanding questions including appeals remitted or to be filed by the applicant.

38. In the light of our above discussions, we make the following orders and directions:

SET NO.I

(i) We dismiss the application in so far as the same challenges Order dated 4.1.1988 (communicated on 19.1.1988) not for the reasons given by the authorities but for the reasons stated by us.

(ii) We however, leave open the question on the relief of the applicant and his absence thereof to be decided by the CGM for which purpose it is open to the applicant to make all such representations as he desires with necessary documents in support of the same within 15 days from this date.

(iii) We direct the applicant to report for duty at Karwar in the meanwhile.

SET NO.II

(i) We quash orders dated 20.6.1987 and 19.8.1987 (Annexures 'D' and 'G'). We direct TDE, Karwar, to grant casual leave applied for by the applicant for the period from 15.6.1987 to 17.6.1987 if the same was at his credit or such other leave admissible to him under the Rules.

(ii) We direct the CGM to dispose of the appeal filed by the applicant for the period from 16.6.1986 to 18.11.1986 with all such expedition as is possible in the circumstances and in any event within 4 months from the date of receipt of this order.

SET NO.III

(i) We dismiss these applications to the extent, the applicant had challenged the adverse entries for the period from 16.5.1984 to 31.3.1985 in his pertinent ACRs as having become unnecessary.

(ii) We quash Order No. MR/STA/10-103 dated 23.2.1988 of the DTM and direct the CGM to withdraw that appeal to his file and then dispose of the same in accordance with law.

(iii) We permit the applicant to file an appeal for the period of his absence from 1.4.1987 to 9.9.1987

before the CGM, within 15 days from this day and if the same is complied with by the applicant within that time, the CGM is directed to dispose of the same with expedition.

40. Applications are disposed of in the above terms. But in the circumstances of the cases we direct the parties to bear their own costs.

Sd/-
VICE CHAIRMAN

Sd/-
MEMBER (A) 12.12.88

CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE

TRUE COPY

SECTION OFFICER 22/12
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE