

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 11 OCT 1988

APPLICATION NO.

96

88(F)

W.P. NO.

Applicant(s)

Shri T. Thimmappa
To

V/s

Respondent(s)
The Divisional Engineer, Telegraphs,
Gulbarga & another

1. Shri T. Thimmappa
Telephone Operator
Telephone Exchange
Gulbarga
2. Shri J.M. Umesha Murthy
Advocate
No. 11, Parkal Mutt Building
Tank Bund Road
Gandhinagar
Bangalore - 560 009
3. The Divisional Engineer
Telegraphs
Gulbarga - 565 101

4. The Director
Telecom
Hubli Area
Hubli - 560 023
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/~~ORDER/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 29-9-88.

*Yours
K. M. S. 11-10-88*

Encl : As above

O/C

J. S. S. S.
SECTION OFFICER
~~REGISTRAR/REGISTRAR~~
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 29TH DAY OF SEPTEMBER, 1988

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

APPLICATION NO. 96/1988

Shri T. Thimmappa,
Telephone Operator,
Gulbarga.

..... Applicant.

(Shri M. Umesh Murthy, Advocate)

v.

1. The Divisional Engineer,
Telegraphs,
Gulbarga.

2. Director Telecom,
Hubli Area, Hubli.

..... Respondents.

(Shri M.S. Padmarajaiah, C.G.S.S.C.)

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

ORDER

In this application made under Section 19 of the Administrative Tribunals Act, 1985 (Act), the applicant has challenged order No. STA/10-189 dated 6.1.1987 (Annexure A3) of the Director, Telecom, Hubli Area, Hubli, and the Appellate Authority (AA) and order No. X-2/IT/85-86/24 dated 28.2.1986 (Annexure A2) of the Divisional Engineer, Telegraphs, Gulbarga and the Disciplinary Authority. (DA).

2. At the material time the applicant was working as a Telephone Operator at the Telephone Exchange, Gulbarga. On noticing certain omissions and commissions in the discharge of his duties, the DA initiated disciplinary proceedings against the applicant under Rule 14 of the Central Civil



Services (Classification, Control and Appeal) Rules, 1965 (Rules) on 2 charges which he denied. On that, the DA appointed one Shri M.H. Jaba, Sub-Divisional Officer, Tele-communication, Yadgiri as the Inquiry Officer (IO) to inquire into the truth or otherwise of the charges levelled against the applicant and submit his report. In conformity with the same, the IO held a regular inquiry on the charges and submitted his report to the DA on 12.2.1986 (Annexure A1) holding the applicant not guilty of the charges.

3. On an examination of the report of the IO and the evidence on record, disagreeing with the findings of the IO, and holding the applicant guilty of the 2 charges the DA by his order made on 28.2.1986 (Annexure A2) inflicted on the applicant the penalty of reduction by 2 stages for a period of 2 years with effect from 1.3.1986, without cumulative effect. Against this order, the applicant filed an appeal before the AA with an application for condonation of delay of 10 days in filing the same. On 6.1.1987, the AA holding that there was no sufficient cause for condonation of delay had rejected the said appeal. Hence this application.

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

5. Shri J.M. Umesh Murthy, learned counsel for the applicant contends that the DA before disagreeing with the findings of the IO and inflicting the penalty on his client, had not issued him a show cause notice and afforded him an opportunity of hearing in conformity with the principles of natural justice and had illegally inflicted the penalty.



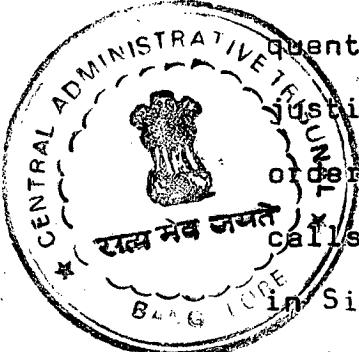
In support of his contention, Shri Murthy strongly relies on a ruling of this Bench in Shri P.K. SIVANAND Vs. COLLECTOR OF CENTRAL EXCISE (1987 ATC, page 854).

6. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents sought to support the impugned orders.

7. In presenting the appeal before the AA there was a short delay of 10 days. Every one of the facts and circumstances stated by the applicant, constituted a sufficient cause to condone that short delay and dealt with the appeal ^{on merits} which he had not done. On this view, we should normally set aside the order of the AA and remit the case to him. But as the order of the AA suffers from an incurable illegality we do not propose to do so.

8. An examination of the order of the AA and the proceedings before him clearly show that before disagreeing with the findings of the IO and inflicting the penalty on the applicant, the DA had not issued a show cause notice to the applicant and afforded him an opportunity of hearing.

9. In Sivanand's case, we have examined a similar situation and held that the failure to give a show cause notice and afford an opportunity of hearing to the delinquent was in contravention to the principle of natural justice and illegal. On the ratio of Sivanand's case, the order of the DA suffers from an incurable illegality and calls for our interference. On the very principles stated in Sivanand's case, it is necessary for us to direct the applicant to treat the order of the DA as giving him a



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show cause and permit him to file his representations and objections to the same. We consider it proper to grant 45 days for the same from this day.

10. In the light of our above discussions, we make the following orders:-

(1) We quash the impugned orders of the AA and DA.

(2) We declare that the order made by the DA on 28.2.1986 (Annexure A2) 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 is open to the applicant to file his written objections to the same before the DA within 45 days from this day.

(3) We direct the DA - Respondent No.1 to consider the written representations if any to be filed by the applicant within the time permitted by us and then afford an opportunity of oral hearing to the applicant on such date as he may find it convenient thereafter and then decide the matter afresh in accordance with law.



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

TRUE COPY

12. Let this order be communicated to the parties within a week from this day.

Devi
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
VICE-CHAIRMAN 28/9/95

Sd/-
MEMBER (A) 28.02.95