

## CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 25 JAN 1989

APPLICATION NO (S) 1147 /88(F)

W.P. NO (S) \_\_\_\_\_

Applicant (s)Respondent (s)

Shri G.S. Banakar  
To

V/s

The District Engineer, Telecom, Belgaum &amp; anr

1. Shri G.S. Banakar  
S/o Shri S.G. Banakar  
Nagzer Camp  
No. 5, M. Vadagoan  
Belgaum - 5
2. Dr M.S. Nagaraja  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009
3. The District Engineer  
Telecom  
Belgaum - 590 006

4. The General Manager  
Telecommunications  
Karnataka Circle  
Bangalore - 560 009
5. 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 a copy of ORDER/~~STAY~~/~~INTERIM~~ ORDER  
passed by this Tribunal in the above said application (s) on 16-1-89.

Issued  
K.V. [Signature]  
27-1-89

o/c [Signature]  
DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE SIXTEENTH DAY OF JANUARY, 1989

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

Hon'ble Sri E.H.A. Rego Member (A)

Application No. 1147/1988(F)

G.S. Banakar,  
Nagzar Camp,  
No.5, M.Vadagoan,  
Belgaum-5.

... Applicant

( Dr. M.S.Nagaraja ... Advocate )

vs.

1. The District Engineer,  
Telecom,  
Belgaum.

2. The General Manager,  
Telecom,  
Bangalore.

... Respondents

( Sri M.Vasudeva Rao ... Advocate )

This application having come up before the Tribunal today,  
Hon'ble Vice Chairman made the following :

ORDER

In this application made under Section 19 of the  
Administrative Tribunals Act, 1935(Act), the applicant has  
challenged order No.STAFF/11-345 dated 29/30.12.1987(Anne-  
sure A5) of the General Manager, Telecom, Karnataka Circle,  
Bangalore and appellate authority (AA) and order No.Q-1595/  
116 dated 31.10.1986 (Annexure A3) of the Telecom District  
Engineer, Belgaum and disciplinary authority(DA).

2. From January 1984 to July 1984, which is the material  
period the applicant was working as Junior Accounts Officer  
(JAO) in the Office of the DA. In the discharge of his  
duties, the applicant examined various accounts records of



that office and reported that there were various derelictions by the then Cashier working in that office. On that very report and other records the DA in his Memorandum No.Q 1558/109 dated 4.9.1986 (Annexure A1) initiated disciplinary proceedings against the applicant under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Rules), charging him with omissions and commissions in the discharge of his duties ~~as~~ as JAO as set out in the Annexure to the same, which reads thus :

"Statement of the imputations of misconduct or misbehaviour against Shri G.S.Banakar JAO/O/O TDE Belgaum.

Sri G.S.Banakar, while working as JAO failed in the duty by

1. Not following the prescribed procedure of verifying the entries in the cash book with the corresponding vouchers and receipts as required in Rule 121 of FHB Volume I.
2. Not maintaining the prescribed register as per procedure contained in Rule 252 of FHB Vol.III Part I, but maintained a different register which did not show separately the cash and cheque remittances.
3. Not doing the reconciliation of bank transactions systematically, with reference to discrepancies between the amounts remitted to Bank and the acknowledged amount as shown in the Bank scroll.
4. Not striking the progressive total in the register on a day to day basis, failing in affixing his initials with date.
5. Not closely scrutinising the transactions at the time of posting in the registers of remittance during the months of April, May and June '84 as revealed from the fact that a cash remittance of Rs.5,000/- was accounted for against a cheque of Rs.5,520/- showing a gross lapse in maintaining proper accounts.

thereby allowing a fraud to the tune of Rs.70,000/- committed by the cashier Office of the TDE Belgaum over a period of more than two months between April'84 and July'84 over eight occasions going virtually undetected during the period and thereby failed to maintain devotion to duty, as required under Rule 3(1)(ii) of CCS(Conduct) Rules, 1964."

In answer to this, the applicant filed his statement of defence denying the charges levelled against him.

3. Before filing his statement of defence, the applicant moved the DA to permit him to inspect the records, which he permitted to such records that were available in his office, however denying that request for records that were held up in the Criminal Court.

4. On an examination of the charge memo, reply filed by the applicant and the records in his office, the DA in his order made on 31.10.1986 (Annexure A3), holding the applicant guilty of the charges levelled against him, had imposed on him the penalty of stoppage or withholding one increment for one year without cumulative effect. Aggrieved by this order, the applicant filed an appeal before the AA who by his order made on 29/30.12.1987 (Annexure A5) concurring with the finding on the guilt recorded by the DA, had reduced the penalty of stoppage of one increment for 6 months. Hence, this application.

5. The respondents have filed their reply and have produced their records.

6. Dr.M.S.Nagaraja, learned Counsel for the applicant, contends that the orders made by the AA and DA without really examining the pleas or defences urged by his client, were not speaking orders and are illegal.



7. Sri M. Vasudeva Rao, learned Additional Standing Counsel for Central Government appearing for the respondents, sought to support the impugned orders.

8. While the order of the AA is a fairly lengthy order, the order of the DA is very brief and sketchy.

9. In his appeal the applicant had urged a number of grounds touching <sup>on &</sup> questions of fact and law. But the AA without really coming to grips, on all of them, making very general observations had rejected them. In an appeal, that too directed against an order imposing a minor penalty under Rule 16 of the Rules, the appellate Authority must come to grips on questions which arise for determining before him in that appeal, examine them critically and record his findings thereon supported by cogent and convincing reasons for the same. We note with regret that the AA, had not done that. In reality the order of the AA is not a speaking order in the true sense of that term.

10. In his order the AA even compliments the applicant for detecting the derelictions of the then Cashier. But still the AA making very general observations upholds the finding of guilt recorded by the DA. We find it difficult to reconcile with these conclusions of the AA.

11. We find, the DA rejects the pleas of the applicant making casual and general observations without really examining the charges levelled and the reply furnished by the applicant thereon. We are of the view that the order of the DA is not a speaking order.

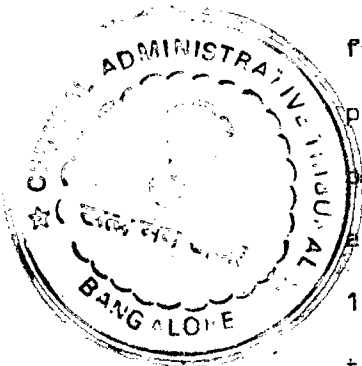
12. On what we have found, we cannot uphold the impugned orders.

13. Dr. Nagaraja next contends that it was not open for the DA to conclude the proceedings without making available the two records referred to by the applicant in para 2 of his reply, and the same denies a fair and reasonable opportunity available to the delinquent under Rule 16 of the Rules and the principles of natural justice.

14. Sri Vasudeva Rao, contends that the original records referred to in para-2 of reply of the applicant, had been produced before the Criminal Court and therefore the DA could not make them available to the applicant.

15. We accept the explanation offered by Sri Rao for non-supply of 2 documents referred to by the applicant in para-2 of his reply. But that does not necessarily conclude the controversy,

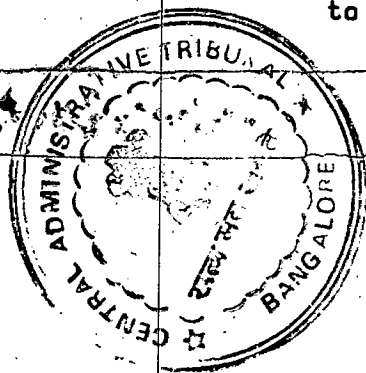
16. In the circumstances that had developed the proper course to be adopted by the DA was to make an application before the criminal Court, for permission to inspect the original records by the applicant and on the court granting that permission, permit him to do so and ~~then~~ receive any further statement of defence from him and then conclude the proceedings. We are of the view that this was not impossible of performance by the DA and he should have done that. We are of the view that this failure by the DA-contravenes Rule 16 of the Rules and the principles of natural justice. Even this conclusion justifies us to interfere with the impugned orders.



17. As the applicant is entitled to succeed on both the grounds, it is unnecessary to examine all other contentions urged by both sides. On these grounds, themselves we must quash the impugned orders reserving liberty to the DA to redo the same in accordance with law.

18. In the light of our above discussion, we quash the impugned orders (Annexures A3 and A5). But, this does not prevent the DA to redo the proceedings in accordance with law and the observations made in this order.

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



Sd/-

VICE CHAIRMAN

6/11

Sd/-

MEMBER (A)

TRUE COPY

*[Signature]*  
DEPUTY REGISTRAR (JDLS)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE