

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 22 AUG 1994

APPLICATION NUMBER: 976 of 1993.

APPLICANTS:

Sri.Dharma Setty v/s. The Central Provident Fund Commissioner,
To. New Delhi and Other.

RESPONDENTS:

1. Sri.H.K.S.Holla, Advocate,
No.34/3, Ganesh Buildings,
Second Floor, Fifth Main,
Bandhinagar, Bangalore-9.
2. Sri.M.Vasudeva Rao, Addl.C.G.S.C.,
High Court Building, Bangalore-1.

Recd 18
Copy S.P.W.
23/8/94

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 02-08-94.

Issued on

23/8/94

P.S.

of

Se Shannar 23/8
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.No.976/93

TUESDAY THIS THE SECOND DAY OF AUGUST 1994

Shri Justice P.K. Shyamasundar ... Vice-Chairman

Shri T.V. Ramanan ... Member [A]

Dharma Setty,
S/o Doddha Setty,
Aged about 32 years,
Working as Lower Division Clerk,
The Regional Provident Fund
Commissioner, Sub-Regional Office,
Mangalore.

...Applicant

[By Advocate Shri H.K.S. Holla]

v.

1. The Central Provident Fund
Commissioner, 9th Floor,
Mayur Bhavan,
Cannaught Place,
New Delhi-110 001.
2. The Regional Provident Fund
Commissioner,
'Bhavishya Nidhi Bhavan',
13, Rajaram Mohan Roy Road,
Bangalore-560 025.

... Respondents

[By Advocate Shri M. Vasudeva Rao ...
Addl. Standing Counsel for Central Government]

ORDER

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. We have heard both sides. The department wants to inflict more injury on the applicant than what he probably deserves justifiably. It is common ground that the applicant was penalised for committing a misconduct and imposed a minor punishment after a departmental inquiry at which he was heard. There was a series of appeals culminating with an order



of Appellate Authority ['AA' for short] dated 20.6.1994 which was apparently published during the pendency of this application.

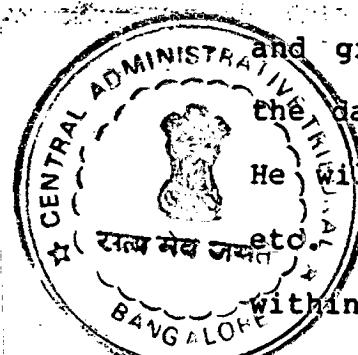
2. The serious objection taken to the tenability of this application is that the application is barred by time since the punishment at the departmental proceedings was recorded some two years ago and that the applicant cannot possibly make a grievance of it long thereafter more particularly the first AA having rejected his appeal as early as on 2.12.1991 as per Annexure A-4. We must make it clear that the endorsement at Annexure A-4 was in relation to the denial of promotion. Be that as it may, we think that the department has unnecessarily linking the question of promotion with the punishment suffered by the applicant. The punishment imposed on him was a minor one and in law cannot stand in the way of the applicant being considered for further promotion. It is well settled that denial of promotion on the ground of having suffered minor penalty would tantamount to double jeopardy which is prohibited under Article 20 of the Constitution. There are a number of decision on the point viz., 1988[8] ATC 496 PARVEEN KUMAR AGGARWAL V. INDIAN COUNCIL OF AGRICULTURAL RESEARCH AND OTHERS 1992[19] ATC 592 S.K. MALLICK V. UNION OF INDIA.

3. The above decisions make it very clear and obvious that the denial of promotion to a government servant

for having suffered minor punishment will amount to double jeopardy and is violative of fundamental right guaranteed under Article 20 of the Constitution. We are bound by the decisions cited supra and in the light of the Constitutional fiat enshrined under Article 20 of the Constitution, the department cannot deny the applicant promotion on the ground that he suffered a minor penalty and was unable to get rid of it by appealing to the AA. The department will have to consider the claim of the applicant for promotion and if his juniors are found to have been promoted he will have to be promoted as well. His right for promotion which rests on the principle of obviation of double jeopardy does not suffer and cannot be brushed aside on technicalities.

4. For the reasons mentioned above this application succeeds and is allowed, the department is directed to consider the case of the applicant for promotion and grant him the necessary relief with effect from the date on which any of his juniors stood promoted. He will also get all consequential monetary benefits etc. The department to do the needful in the matter within three months from the date of receipt of a copy of this order. No costs.

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SECTION OFFICER 28/8
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
BSV

Sdt
MEMBER (A)

Sdt
VICE-CHAIRMAN