

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: **31 JAN 94**

APPLICATION NO(s) 754 of 1993.

APPLICANTS: S. Jagadeesh

RESPONDENTS: Pr. Director of Commercial
Audit & Appellate Authority,
Bangalore and Other.

TO.

1. Sri. A. A. Shiraguppi,
Advocate, No. 105/B,
First Floor, 46th Cross,
Fourth Block, Rajajinagar,
Bangalore-560 010.
2. The Principal Director of Commercial Audit and Appellate Authority,
Office of the Member, Audit Board and Ex-Officio Directorate of
Commercial Audit Basava Bhavan, First Floor, Bangalore.
3. The Deputy Director and Disciplinary Authority, Office of the Member
Audit Board and Ex-Officio Directorate of Commercial Audit,
First Floor, Basava Bhavan, Bangalore.
4. Sri. M. Vasudeva Rao, Addl. Central Govt. Stng. Counsel, High Court Bldg,
Bangalore-560 001.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 12-01-1994.

*Issued on
21/2/94*

For *31/1/94*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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*Received Copy
for Appellate
31/1/94
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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.754/93

TUESDAY THIS THE TWELFTH DAY OF JANUARY 1994

Shri A.N. Vujjanaradhya ... Member [J]

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

S. Jagadeesh,
Occ: Group D,
Office of the Director of
Commercial Audit & Ex-Officio,
Audit Board, Bangalore.

...Applicant

[By Advocate Shri R.A. Shiraguppi]

v.

1. The Pr. Director of Commercial
Audit & Appellate Authority,
Office of the Member,
Audit Board & Ex-Officio,
Directorate of Commercial Audit,
1st Floor Basav Bhavan,
Bangalore.

2. The Deputy Director and
Disciplinary Authority,
Office of the MEMBER
Audit Board & Ex-Officio,
Directorate of Commercial Audit,
1st Floor, Basava Bhavan,
Bangalore.

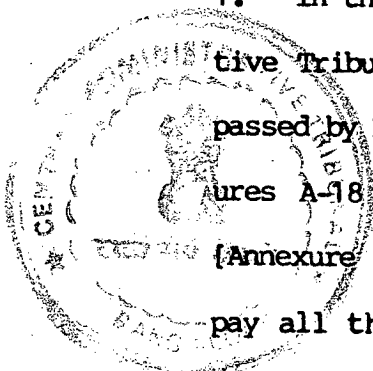
... Respondents

[By Advocate Shri M. Vasudeva Rao, Addl. Central Govt. Standing
Counsel]

ORDER

Shri A.N. Vujjanaradhya, Member [J]:

1. In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks to quash the order passed by Respondent ['R' for short] No.2 dated 16.10.1992 [Annexures A-18 and A-19] and the order passed by R-1 dated 9.3.1993 [Annexure A-20] with a further direction to the respondents to pay all the benefits to which the applicant is legally entitled to and to issue monetary and service benefits.



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2. Briefly stated the facts are as below:

The applicant, a Group D employee was working at the office of the Member, Audit Board, Directorate of Commercial Audit. A complaint was filed against the applicant by one Sri Madhukar Shetty, Audit Officer, as per Annexure A-1, alleging that the applicant had assaulted him. After enquiry the Disciplinary Authority ['DA' for short] passed an order as per Annexure A-18 dated 16.10.1992 reducing the salary of the applicant by two stages from Rs.810 to Rs.786 in the time scale of pay with cumulative effect and treating the period of suspension from 3.5.1992 to 15.12.1992 as such by order of even date [Annexure A-19]. On appeal the Appellate Authority ['AA' for short] reduced the penalty by one stage as could be seen from Annexure A-20 dated 9.3.1993. Aggrieved by these orders, the applicant has made this application mainly on the ground that the orders are vitiated inasmuch as the complainant viz., Madhukar Shetty has not been examined as a witness before the Enquiry Officer ['EO' for short] and thus seeks quashing of the impugned orders.

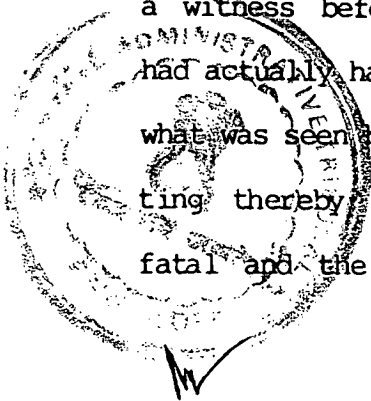
3. The respondents in their reply seek to justify the orders under question and having regard to the evidence brought on record, they further contend that the non-examination of the complainant Madhukar Shetty is not fatal and, therefore, the orders will have to be confirmed and the application dismissed.

4. We have heard Shri R.A. Shiraguppi, learned counsel for the applicant, Shri M.Vasudeva Rao, learned Addl. Standing Counsel for the respondents and perused the records.

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5. The main contention of the learned counsel for the applicant is that in the absence of evidence of the complainant Madhukar Shetty no order imposing penalty on the applicant can be legally passed and as such the orders challenged in this application are vitiated and cannot be sustained. But the contention of Shri Rao for the respondents is that even though the complainant was not examined other witnesses have been examined who substantiate the charge levelled against the applicant and the non-examination of the complainant is immaterial particularly in view of the fact that the applicant had never made any request to summon and examine the complainant. He also contended that in case the Tribunal were to come to the conclusion that the non-examination of the complainant has vitiated the orders imposing the penalty, then liberty may be reserved to the respondents to examine the complainant and to dispose of the matter afresh which the learned counsel for the applicant vehemently opposed stating that the applicant has been unnecessarily harassed by the complainant and others in the office.

6. A perusal of the enquiry report found at Annexure A-17 goes to show that the applicant did complain before the EO that complainant had manipulated the entire scene, that the complainant had managed to escape the responsibility of participating as a witness before the EO and that witnesses had not seen what had actually happened from the beginning and that they have stated what was seen by them according to oral statement recorded indicating thereby that the non-examination of the complainant was fatal and the report of EO is prejudiced and also the orders



of DA and the AA. The main witness who has to speak to the allegations in the complaint is the complainant himself. He was the important witness whose evidence was required to be recorded and who was required to be tendered for cross examination by the applicant to test his veracity and to arrive at the truth. The other witnesses are only circumstantial witnesses who did not directly speak to the incident of the alleged assault. Therefore, the conclusion of the DA as well as AA that the incident as reported by the complainant was established is without any basis and, therefore, it has resulted in causing injustice to the applicant. The non-examination of the main witness is a serious lacuna which has resulted in causing illegality in the final orders passed by the DA and the AA. In this view of the matter, it is necessary for us to intervene in the matter and direct that justice be done to all concerned by quashing the orders of DA found at Annexure A-18 and that of the AA found at Annexure A-20. Because of the non-examination of the main witness in the enquiry and the orders thereon are vitiated and further because the department is required to be given an opportunity to arrive at truth and do justice, we feel it would be just and proper to direct the department to examine the complainant Madhukar Shetty and proceed further from that stage against the applicant.

7. In view of what is discussed above, we proceed to pass the following orders:

- i. The orders passed by the DA and the AA as per Annexure A-18 and A-20 are hereby quashed. So far as the question of treating the period of suspension as per rules is left open

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for consideration of the authority concerned at the time of final disposal of the matter;

ii. The department is at liberty to proceed against the applicant from the stage of examining the complainant Madhukar Shetty and dispose off the matter within a period of three months from the date of the receipt of the copy of this order;

iii. No order as to costs.



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Sd-
MEMBER [J]

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[Signature]
SECTION OFFICER 31/1
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Miscellaneous Appln.No.216/94 in

Dated:- **24 JUN 1994**

APPLICATION NUMBER: 754 of 1993.

APPLICANTS:

RESPONDENTS:

To. Sri.S.Jagadeesh v/s. Principal Director, Commercial Audit & Appellate Authority, Bangalore & Other.

1. Sri.R.A.Shiraguppi, Advocate, 105/B,
First Floor, 46th Cross, IV-Block,
Rajajinagar, Bangalore-560 010.
2. The Principal Director,
Commercial Audit & Appellate Authority,
Office of the Member, Audit Board and
Ex-Officio, Directorate of Commercial Audit,
First Floor, Basava Bhavan, Bangalore.
3. Sri.M.Vasudeva Rao, Addl.CGSC.
High Court Bldg, Bangalore-1.

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 09-06-1994.

S. Shannar
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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Issued
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Office Notes

Orders of Tribunal

ORDERS ON MA 216/94

VR(MA)/ANV (MJ)
9.6.94

Heard on MA 216/94. On the ground that the applicant did not cooperate with the disciplinary proceedings continued against him and the consequent delay in the disposal of the DA, the respondents in OA 754/93 have come up with this application seeking extension of time for a further period of two months from 9.5.94. Because the disciplinary proceedings is continued and further because of the non-cooperation of the applicant, it would be proper to extend time as sought, i.e. for a period of two months from 9.5.94.



Member (J)

Member (A)

TRUE COPY

S. S. Chauhan
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE