CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Miscellaneous Application No.359/93 in
Dated: 1 NOV 1993

APPLICATION NO(s). 710/93 and Contempt Petition No;29/93.

Applicant(S)
Sh.C.C.S.Pillai

v/s.

Respondent(s)
Dr.R.K.Bhattacharya,Director,
Anthropological Survey of India,
Calcutta and Others.

1. Sri.S.Ranganatha Jois,Advocate,No;36,Shankarapuram, Bangalore-560 004.

2. Dr.R.K.Bhattacharya,Director,Anthropological Survey of India, Indian Museum,No.27, Jawaharlal Nehru Road,Calcutta-16.

3. Sri.S.S.Sastry,Head of Office,Anthropological Survey of India, No.2963, Gokulam Road,Mysore-2.

4. Sri.Bhasker Ghosh,Secretary,Department of Culture and Human Resources,Development,Shastri Bhavan,Dr.Rajendraprasad Road,New Delhi.

5. Sri.M.S.Padmarajaiah,Central Govt.Stng.Counsel, High Court Building,Bangalore-1.

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

Please find enclosed herewith a copy of the ORDER/ STAY/INTERIM ORDER passed by this Tribunal in the above said application(s) on 19th October 1993.

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.
1/11/93

Issued

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS DAY THE 19TH OF OCTOBER, 1993

Present: Hon'ble Justice Mr. P.K. Shyamsundar ... Vice Chairman

Hon'ble Mr. V. Ramakrishnan ... Member (A)

M.A. No. 359/93 in OA 710/93
&
CP No. 29/93

Shri C.C.S. Pillai,
S/o Late Parameshwaran Pillai,
aged about 43 years,
L.D. Clerk, Office of the
Anthropological Survey of
India, Southern Regional Centre,
Mysore. ... Complainant

(Shri S. Ranganath Jois, Advocate)

vs.

1. Dr. R.K. Bhattacharya, Major,
The Director, Anthropological
Survey of India, Government of
India, Indian Museum, No.27,
Jawaharlal Nehru Road,
Calcutta - 16.

2. Shri S.S. Sastry, Major,
Head of Office,
Anthropological Survey of
India, No. 2963. Gokulam Road,
Mysore - 2.

3. Shri Bhasker Ghosh, Major,
Union of India, represented
by its Secretary, Department of
Culture and Human Resources
Development, Shastri Bhavan,
Dr. Rajendraprasad Road,
New Delhi. ... Respondents

(Shri M.S. Padmarajaiah, Advocate)

This application has come up before this Tribunal for orders. Hon'ble Justice Mr. P.K. Shyamsundar, Vice Chairman made the following:

CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE

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O R D E R

The two applications herein are both liable to be disposed off by a common order to be made as under. The first Application is C.P. No. 29/93 arising out of O.A. No. 710/93 which was disposed off by an order made by us on the 27th of August, 1993, declining to interfere with the order passed by the respondents, the Anthropological Survey of India transferring the applicant in this case Shri C.C.S. Pillai, L.D.C. from his present posting at Mysore to Ranchi in Bihar. Shri Pillai was seriously aggrieved by that order of transfer from Mysore to Ranchi and amongst other things he urged before us that being tied down as he was with a 70 years old mother, not to mention the inconvenience that he suffers in shifting his school going children in the midst of the academic year, the impugned order of transfer certainly will cause him great hardship and prove to be a source of severe inconvenience. Despite the emphatic plea put forth on his behalf by Shri S.P. Kulkarni, who appeared in O.A. 710/93 on behalf of the applicant, we declined to interfere with that order as indicated by following observation made therein.

> "We see nothing in it except a routine order passed in the usual course the applicant holding a position which is All India based and cannot possibly circumvent order posting him from one place to another. In fact, this is not the first time he was posted out. We notice he had been posted to Andaman, Madhya Pradesh, Udaipur etc. before coming to Mysore. Possibly he finds Mysore somewhat convenient and therefore difficult to leave. That may be so, but then the administration has got to run and requires his placement elsewhere. Therefore, it is not open to us to intervene in orders of transfer which gives us very little reason for interference."

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2. After having made this observation, we however decided to acceede to counsel's plea that his client should be given some more time i.e. permission to remain till the academic year at Mysore so that he can conveniently shift his children to Ranchi thereafter. Mainly in consideration of that submission made by Shri Kulkarni, the learned counsel appearing therein, we stated as follows:

> "Therefore, under the circumstances, we think it just and proper to direct the Department to keep in abeyance the impugned order of transfer till the end of academic year, i.e. upto 31.3.94 and to give effect to the same thereafter."

3. This order it transpires was communicated from the Registry of our Court on the 6th of September, 1993, and is stated to have received on the 8th September, 1993, by the Department. But by then admittedly a telegram sent by Shri Kulkarni, learned counsel for the applicant notifying the Department of the directions issued by the Tribunal stopping the transfer order dated 18.8.93 from taking effect, was sent and it is not denied that it had been received by the Department on the 29th of August, 1993. We notice, reacting to this cable communication, the Head of the Department issued an endorsement to the applicant dated 8.9.93 as per Annexure A-1 produced along with the contempt petition referred to. It says:

> "The undersigned is directed to inform Shri C.C.S. Pillai, Lower Division Clerk (on transfer) that he does not any more belongs to this Regional Centre as he stands relieved with effect from the afternoon of 30.8.1993. He should therefore route his applications to the Director, Anthropological Survey of India, Calcutta through proper channel, i.e. Ranchi station. His applications dated 7.9.93 together with the xerox copy of the Central Administrative Tribunal Order and his application dated 7th & 8th September, 1993 regarding attendance are also returned herewith.
>
> No further applications will be entertained in this office."

...4/-

4. We are told that albeit passing the order at Annexure A-3 on the 30th of August, 1993, i.e. one day after the receipt of the telegram, the Head of the Department made an order relieving the applicant from the Institution w.e.f. the afternoon of 30th August, 1993 so that he could report to his new place of posting at Ranchi on or before 6.9.93. The applicant takes strong exception to what appears to be the highhanded attitude of the Department in shifting him from Mysore to Ranchi despite the directions issued by the Tribunal while disposing off O.A. 710/93 dated 27.8.93, Operative portion of which had been communicated to the Department by counsel's telegram dated 27th August, 1993. Pursuant to the orders at Annexure A-1 and A-3, no further action has been taken to ensure the applicant's transfer from Mysore to Ranchi but the communications at Annexure A-1 and A-3 have been allowed to remain quiescent.

5. Nevertheless the applicant seeks to highlight the conduct of the Department in taking steps to contravene an order made by the Tribunal. It is in this context the applicant has filed contempt petition in No. CP 29/93. We have alongside an application by the Department seeking recall of the order made by us while disposing off O.A. No. 710/93 on 27.8.93 on two grounds. First one is that the respondents were not heard before it was ~~found~~ passed and secondly inability to comply with the Tribunal's directive touching the continuance of the applicant at Mysore till the end of academic year, without prejudice to the order of transfer which would take effect thereafter. We have heard the

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applicant and we are told by the learned Standing Counsel there is some difficulty in complying with the Tribunal's order and that difficulty is absence of appropriate personnel to handle the work at the Ranchi office which is said to be newly commissioned. He, urges that the order of transfer was dictated by total necessity and nothing more. We were therefore asked to recall our order and to dismiss the application.

6. But, we pointed out to the learned standing counsel the mere absence of a L.D.C. in an establishment could not possibly handicap the administration so severely as to warrant a second look at the earlier order made by us. The Standing Counsel agreed but added that the waiting period should atleast be reduced to the end of December, 1993. Shri Jois for the applicant in the contempt petition agrees that a modification of the waiting period from the end of March, 1994 to end of December, 1993 can be done. Accordingly, we modify our order passed while disposing of M.A. 359/93 in O.A. No. 710/93. Department will now keep in abeyance the impugned order of transfer till 31st of December, 1993, and would be at liberty to give effect to the same thereafter. This should dispose of M.A. No. 359/93 filed by the Department for a recall of the earlier order dated 27.8.93. That application stands disposed off in the light of the modified order passed having regard to the temporary status of the impugned order which will be given effect to from 1.1.94 instead of 31.3.94. But, we must take this opportunity of expressing our displeasure about what we find to be a very daring and open eyed contravention of the order

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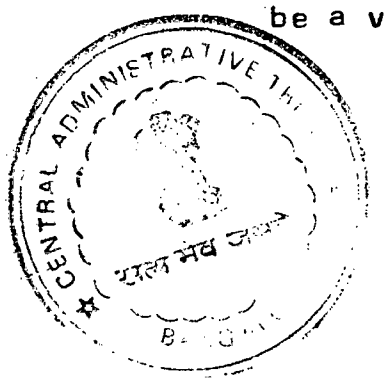

made by us in OA 710/93 on the 27th of August, 1993, directing the Department to keep in abeyance the impugned order till the end of March, 1994. Although the official communication of that order from the Registry of this Court took place only after the 6th of September, 1993, the said order had been communicated to the Department by a very responsible officer of the court, viz. the learned counsel for the applicant who appeared in support of the application. We need hardly mention herein that counsel who appears before us are officers of the court and anything done by them is as good as done by the court itself. In this case, it is clear that counsel had done nothing more than communicating our order giving a true and accurate account to the last detail. Nobody could dub counsel's telegram as an innovation of a fertile mind. Counsel merely communicated our order and what he communicated was indeed the truth. The Department should have taken notice of the same instead of making an order on the next day although by then the impugned order had no legal potency at all. In other words, it had by then become deadwood. But still behaviour in defiance of our orders having no regard for the direction of the court and issuing an order contrary to our direction is indeed undesirable. The officer, The Director, apparently thinks that he is someone above the law. We were strongly inclined to issue notice to the Director to explain the action taken by him in the light of the communication of our order by means of a telegram issued by the learned counsel but learned Standing Counsel, Shri M.S. Padmarajaiah with his usual persuasive ways asked us not to carry this matter further

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and assured us that he had already made apparent to the officer concerned the unethical conduct displayed by him and also assured us that he will once again endeavour to inform the concerned that it will be in their own interest to mend their ways and attitude in dealing with orders and directions of the court emphasising the need to be more deferential to such orders and directions. Being satisfied with Shri Padmarajaiah's assurance as aforesaid, we propose not to pursue this matter and direct the contempt application shall stand filed. A copy of this order be handed over to the learned standing counsel for such further action as is found necessary. Registry will also notify all concerned. We, however, take the precautionary step of quashing Annexure A-1 and A-3 appended in CP 29/93. We make it clear to the respondents that the order of transfer impugned in O.A. No. 710/93 shall be given effect only on or after 1.1.94 and not before. In the light of this order, the applicant will be entitled to continue further without any hassle and will continue to be at Mysore till the end of December, 1993. He will get all pay and allowances as applicable to the post at Mysore. No costs.

Sd-

MEMBER (A)

Sd-

VICE CHAIRMAN

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SECTION OFFICER
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7/11/93