

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 2 SEP 1994

APPLICATION NUMBER: 1012 of 1993

APPLICANTS:

Sri M. Kushalappa Nayak
To.

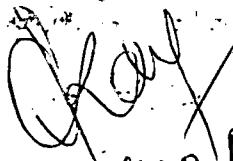
RESPONDENTS:

Director, Mangalore Telecom Area,
and two others.

① Sri M. Raghavendra Achar,
Advocate, no. 1074 and 1075,
4th Cross, Sreenivasanagar 1st phase,
BSK-I Stage, Mysore Bank Colony,
Opp. Raghavendra Nursing Home,
BANGALORE - 560050.

② Sri M. Vasudeva Rao,
Addl. CGSC High Court Bldg.,
BANGALORE - 560001

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(MR. Acharya)
Advocate

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 15th July 94

etc
Issued
on 2-09-94

O/C Sc Shanwar
for DEPUTY REGISTRAR 2/9
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 1012/ 1993

FRIDAY, THE 15TH DAY OF JULY, 1994

Shri V. Ramakrishnan

.... Member (A)

Shri M. Kushalappa Nayak,
S/o Shivappa Naik,
Aged about 40 years,
D/No. 778, E.W.S.,
Kuvempunagar,
Hassan - 573 201.

... Applicant

(By Advocate Shri M.R. Achar)

Vs.

1. The Director of
Telecom, Mangalore Area,
Mangalore.
2. The Superintendent of
Telegraph, Traffic Division,
Mangalore.
3. The Assistant Superintendent
of Telegraph,
Hassan.

... Respondents

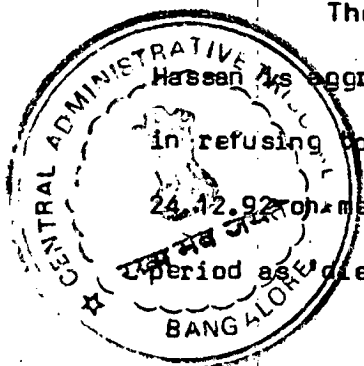
(By Advocate Shri M. Vasudeva Rao, Addl. Central
Government Standing Counsel)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant herein who is a telegraph office assistant in

Hassan is aggrieved at the action of the department of Telecommunications
in refusing to sanction him earned leave for three days from 22.12.92 to
24.12.92 on medical grounds, as the Department had instead treated this
period as 'dies non' which has resulted in loss of pay for those days.



...2/-

2. The facts of the case in brief are as follows:

The applicant had not reported for duty at 3.00 pm on 22.12.92. It is an admitted fact that he had applied for earned leave for three days from 22.12.92 to 24.12.92 enclosing a copy of the medical certificate from a registered medical practitioner which was received by the department at 0905 hours on that day, i.e. well before the commencement of his duty for that day. The department apparently, due to shortage of staff, required his services for that period and refused to grant the leave as applied for. An intimation about the non-sanction of leave was sent to the residential address of the applicant twice on that day and also once on the next day. The applicant was not available at his residence on those occasions. The department, thereupon had presumed that the applicant had left the headquarters and served a show cause notice on him asking him to explain as to why he left the headquarters without prior permission and also as to why he had availed himself of leave without getting it sanctioned. It was also mentioned in the show cause notice that he did not hand over the leave application either to the Telegraph Master and the applicant had also not contacted him over the telephone. The applicant had denied having left the headquarters and explained his absence from home when the departmental official had gone to his house by stating that he had to go to Doctor's clinic and was waiting to receive treatment. He further took the stand that the only person available at the house did not know the local language and because of that she must have replied in Tulu. He further states that owing to non-availability of any telephone near his residence he could not contact the incharge concerned. After getting this explanation, the department by its order dated 30.1.93 informed him that his explanation

dated 31.12.92 was hiding facts and the department further came to the conclusion that as he was not available in his house when the office messenger had gone to his residence, it was clear that he had left the station without taking station leave permission. The fact that his absence resulted in payment of overtime, was also held against him. The applicant filed an appeal dated 13.2.93 against this order where inter alia, he had also brought out that he had earlier asked for earned leave for the period 9.12.92 to 15.12.92 but subsequently requested for curtailment of 4 days' leave and wanted to report on 11.12.92. The department, however, did not accede to his request and he was not admitted to duty as arrangements had already been done for that period and the department desired that he should take the leave as originally asked for without curtailing it by four days. On 12.12.92 the applicant wanted to report for duty but not allowed to do so as the department had managed the work without engaging any additional staff. As such, *according to the applicant:* there should have been no need for any extra expenditure when he actually took leave from 22.12.92 to 24.12.92. His appeal was rejected by the appellate authority on 29.5.93. The subsequent revision petition filed by the applicant dated 15.6.93 also met with the same fate.

3.

I have also perused the relevant file of the department.

The department had conceded the fact that the leave application and the medical certificate from a registered medical practitioner were received on 22.12.92 at about 9.00 am and well before the commencement of the duty of the applicant. It is also seen that the applicant reported for duty on the afternoon of 24.12.92 after getting fitness

certificate from the same medical practitioner. The department had not denied the authenticity of the medical certificate nor did they ask him to undergo medical examination by some other authority. The department's conclusion that he had left the headquarters was based merely on the ground that on three occasions when the departmental official had gone to his house, the applicant was not found there. No attempt has been made by the department to contradict the version given by the applicant explaining as to why he was not available in the house at the relevant time. In fact, this aspect has not been dealt with in the original order dated 30.1.93 nor in the appellate authority's order dated 29.5.93 or in the order of the revising authority dated 7.9.93. While it is true that in the normal course, the applicant should get his leave sanctioned prior to availing himself of the same, in a situation where he claims that he was ill and supports the same with a medical certificate the department should normally consider granting such leave. The action of the Department in refusing the leave merely on the ground that there was a shortage of staff cannot be sustained when there is a prima facie case that the applicant was not in a position to attend to his duties and the department has not disbelieved the authenticity of medical certificate submitted by the applicant. The other contention that the applicant left the headquarters without taking station leave permission has also not been established as the department has not gone into the explanation given by the applicant nor did it ask him to substantiate the same. It made no efforts to rebut his stand. Shri Achar now submits that the factual position was that the applicant had never left his headquarters during that period.

4. In the light of the foregoing, I hold that the department's action in refusing to grant earned leave applied for by the applicant and instead treating the period of three days as 'dies non' cannot be sustained. I, therefore, quash the order dated 30.1.93 as at Annexure A-2 as also the appellate authority's order dated 29.5.93 as at Annexure A-3 and the memorandum dated 7.9.93 as at Annexure A-4 and direct that the department should regulate the period from 22.12.92 to 24.12.92 by granting of earned leave subject to the applicant having sufficient earned leave to his credit. This should be done within a month of the date of receipt of a copy of this order.

5. With the above observation, the application is disposed of with no order as to costs.



TCV

TRUE COPY

S. S. Shauhan
Section Officer 719
Central Administrative Tribunal
Bangalore Bench
Bangalore

sd-
(V. Ramakrishnan)
Member (A)