

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:

26 NOV 1993

APPLICATION NO(s) 232 of 1993.

APPLICANTS: M.R. Jagannatha Rao RESPONDENTS: Chief Engineer, Kakshina
Command Mukhalay, Pune and Others.

TO.

1. Dr.M.S.Nagaraja,
Advocate, No.11,
First Cross,
Second Floor,
Sujatha Complex,
Gandhinagar,
Bangalore-560 009.
2. The Chief Engineer,
Southern Command Headquarters,
Engineers Branch,
Pune (Pune)-411001.
3. The Engineering Chief,
Army Headquarters,
Kashmir House,
New Delhi-110011.
4. The Secretary,
Ministry of Defence,
New Delhi.
5. SO-II(Pers)
Office of Chief Engineer(AF),
Bangalore-560 022.
6. Sri.M.Vasudeva Rao,
Central Govt.Stng.Counse
High Court Bldg,
Bangalore-560 001.

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

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 11th Nov'1993.

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

26/11/93

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE

ORIGINAL APPLICATION No.232/93

DATED THIS THE 11TH DAY OF NOVEMBER, 1993

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN .. MEMBER (A)

Sri M.R. Jagannatha Rao,

Aged 58 years,

S/o. late Sri M. Raghupathi Rao,

84/5, 8th Cross, Wilson Garden,

Bangalore - 560 027.

... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Chief Engineer,
Dakshina Command Mukhalay
Engineering Shakha Headquarters
Southern Command Engineering
Pune - 411 001.

2. The Engineering Chief
Army Headquarters
Kashmir House
New Delhi - 110 011.

3. Union of India
represented by
Secretary to Government
Ministry of Defence
New Delhi.

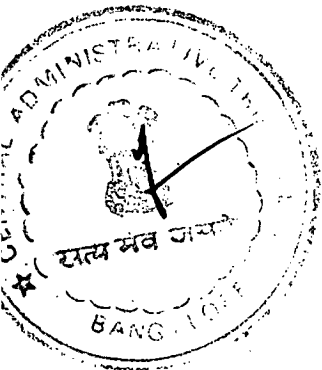
... Respondents

(By Advocate Shri M. Vasudeva Rao)

ORDER

Shri Justice P.K. Shyamsunder, Vice Chairman.

This is an application by one M.R. Jagannatha Rao, under Section 19 of the Administrative Tribunals Act asking us to quash the punishment of Compulsory Retirement imposed on him by the Disciplinary Authority after holding an enquiry into an alleged mis-conduct, which punishment was subsequently upheld by the Appellate Authority as per Annexure-A6. The order of punishment imposed by the Disciplinary Authority is at Annexure-A4.



2. We have heard Dr. Nagaraja who appears in support of the applicant and Shri M.Vasudeva Rao, the learned standing co-unsel representing the Chief Engineer, Dakshina Command Mukhalay Engineering Shakha Headquarters, Southern Command Engineering, Pune and others, etc. etc. The applicant, while working as a Superintendent Gr.I in the office of the Commander Works, Garrison Engineering, Bangalore, had wilfully abstained from duty with effect from 24.7.88 to 28.4.89 and that he had submitted a false medical certificate in support of his leave. At the enquiry to which he was summoned, both the aforesaid charges were held true, as a consequence, he was imposed the punishment of Compulsory Retirement as per Annexure-A4. As pointed out earlier, there being an appeal from the order, the Appellate Authority had since dismissed the appeal as per Annexure-A6.

3. We find that charge of submitting a false medical certificate in support of the applicant's leave application is held to be established both by the Disciplinary Authority and the Appellate Authority for *one* infact the *charge* *is* really unfounded. There is absolutely no material on the basis of which the aforesaid charge could have been substantiated at all.

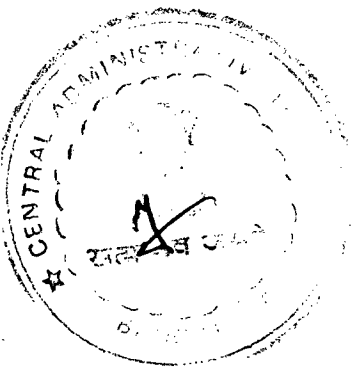
4. Briefly stated, the case against the applicant is that he was away from duty from 24.7.1988 to 28.4.1989 and had sought to support his absence by medical certificates one of which was issued by Dr. Jawali, Head, Cardiovascular Surgery Unit in a well known cardiological institution in Bangalore, Jayadeva Institute of Cardiology. The certificate issued by Dr. Jawali dated 20.12.1988 reads:

"This is to certify that Mr. Jaganath Rao M.R. is suffering from essential ~~hypertension~~ hypertension and ischaemic heart disease. His blood pressure is not fully controlled and he is advised to undergo a complete evaluation of his ischaemic heart disease. He will need periodical visit and a rest for one month followed by light work for three months."

It would appear, after the submission of the aforesaid medical certificate issued by Dr. Jawali, the Disciplinary Authority having felt some doubt in deciphering Dr. Jawali's certificate wrote back to Dr. Jawali a letter which is found in the records and is as follows:

"A doubt has arisen in the mind of inquiry being held as to whether "light work for 3 months" as recommended by you in the medical certificate is to be treated as fit for duty which in this case was desk duty by the concerned person and hence light duty only."

In reply, Dr. Jawali wrote back to the Disciplinary Authority merely mentioning that there was nothing in the certificate except advising one month's rest for the applicant and thereafter resumption of duties which in the nature of things should be limited to light work for further period of 3 months. It would appear that subsequently, the applicant was directed to undergo medical investigation by a medical board and that was in the year 1990. The second medical opinion certified that on the date of the medical examination done somewhere in the year 1990 "fit for duty" and the applicant's case is that on the very morrow of that report, he reported for duty. Be that as it may, on the basis of medical certificate furnished by the applicant, one of them by Dr. Jawali, which was so scrupulously examined and a clarification sought for from the Doctor stating that it had raised some doubt. We think the Disciplinary Authority would have become wiser after the Doctor had reiterated what he had stated in the certificate. In view of the certificate the applicant could have stayed away only for a period of one month and thereafter reported for duty. What consequence would follow thereafter is a different aspect. But, there is no reason whatsoever, on the basis of the material on record any one could ever conclude that the applicant had *but then* his plea by producing a false medical certificate. It may well be



said that the applicant presumed more than what his Doctor granted or recommended but by no stretch of imagination could anybody possibly treat the certificate itself to be ~~a shield~~^{an ash}. The Appellate Authority could also have not held the applicant guilty of producing and relying on false medical certificate.

5. Under the circumstances, we think it appropriate to strike down the finding recorded by the Disciplinary Authority and upheld by the Appellate Authority that the charge of production of a false medical certificate is held proved. That finding stands vacated.

6. We are sorry to notice in the reply statement filed on behalf of the respondents the allegation that the applicant had obtained a medical certificate in collusion with certain Doctors although he had not suffered from any disease is averred to. We must say that the objection statement is wholly uncharitable. We must strongly disapprove the aforesaid statement made in the objection statement which appears to distort facts.

7. We move on to the other charge of wilful absence from duty for the period from July, 1988 to April, 1989. We find the applicant had applied for commuted leave on three different occasions, i.e., from 24.7.88 for 2 months, 24.7.88 for 3 months and from 1.1.89 to 31.3.1989 for 3 months. We find the leave sanctioning authority has not passed any orders thereon. It has neither rejected nor granted the leave. We are told the applicant had good lot of leave to his credit and even if the authority were not disposed to granting commuted leave on medical grounds, he could have been considered for grant of other types of leave, viz., Earned Leave, Half Pay leave or Leave Not Due. It seems to us this aspect of the matter should in

the facts of this case been investigated by the Appellate Forum. Ity before it took ^{the} course to upholding the finding of the Disciplinary Authority. We, therefore, think it appropriate to remit the case to the Appellate Authority to consider the aspect of relating to the issue whether the period of absence could have been regulated by granting him some other leave to which he was entitled to and if he was entitled to other kinds of leave, the authorities may consider directing the granting of such leave and in case it takes recourse to that step, it may consider setting aside the punishment of Compulsory Retirement now imposed. With the result, the application succeeds in part, the finding of the Disciplinary Authority and the Appellate Authority on the charge No.2 is struck down.

8. In the light of the above observation made herein, we make it clear the Appellate Authority will only confine its attention to charge No.1 since we have found the charge No.2 to be not true. The Appellate Authority will dispose off the appeal denovo within three months from the date of receipt of a copy of this order. Let a copy of this order be sent to the respondents for necessary action.

Sd -

(V. RAMAKRISHNAN)
MEMBER(A)

Sd -

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

psp.

TRUE COPY

Dr. K. S. S.
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

26/11/93



B-661

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**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

OA 232/93 ✓

Contempt Application No. 32 of 1994.

ORDER SHEET (contd)
Sh. M.R. Jagannatha Rao Vs Maj. Gen. N. R. Khanna, Chief Engineer

| Date | Office Notes | Orders of Tribunal |
|------|--------------|--------------------|
|------|--------------|--------------------|

(PKS) ve / (DWR) M.A.
1.8.1994.

Apparently no con-
tempt, as such he
do not see ^{any} the petition
should be dismissed.
proceeding are dropped.

Sd/-
M.A.

Sd/-
ve

TRUE COPY
S. S. Bhawar
SECTION OFFICER 17/8
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE