

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 19 JUL 1993

APPLICATION NO(s).

31/93

Applicant(s)

Pashunian

Respondent(s)

Commander works Engr. (AP), Sec'bad Engr.

1. Shri Pashunian,
13-3-224-5/49-1,
Rajnarasimhanagar Colony,
Hyderabad.
2. Commander Works Engineer (AP),
Madfort, Secunderabad-3
3. Garrison Engineer, Bidar
4. Chief Engineer,
Southern Command,
Pune-1
5. Vice Chief of Army Staff,
Army Headquarters,
New Delhi-110011.
6. Shri S.M. Babu, Adv.,
242, Karakamandiram,
1st Main Road, Gandhi Nagar,
Bangalore - 560005.
7. Shri M.S. Padmarajiah,
Senior Central Govt Standing Counsel,
High Court Bldg.,
Bangalore - 560001.

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 28-07-1993

[Signature]
Encl
2

[Signature]

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 8TH DAY OF JULY, 1993.

PRESENT

HON'BLE JUSTICE MR. P.K. SHYAMSUNDAR .. VICE CHAIRMAN

HON'BLE MR. V. RAMAKRISHNAN ... MEMBER (A)

APPLICATION No.31/93

Sri Pashumiyan,
S/o. Syed Saale Sahab,
13-3-224-5/49-1, Raj narsimhanagar Colony,
Hyderabad. ... Applicant

(Shri S.M. Babu .. Advocate)

Vs.

1. Commander Works Engineer (AF),
Mudfort, Secunderabad-3.
2. Garrison Engineer, Bidar.
3. Chief Engineer,
Southern Command, Pune-1.
4. Vice Chief of the Army Staff,
Army Head Quarters,
New Delhi - 110 011. ... Respondents

(Shri M.S. Padmarajaiah .. Advocate)

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

ORDER

We have heard Shri Babu for the applicant and the learned standing counsel for the respondents. We find that there is no doubt about it the applicant was dismissed from service way back in the year 1984 for



long standing absence regarding which there was an enquiry in which the applicant never took part. All efforts made to serve a notice of enquiry having proved futile with the result the enquiry was held ex-parte and the applicant was dismissed from service.

2. It would appear that subsequently, the applicant preferred an appeal thereafter to the higher authorities against the order of dismissal and the said appeal was rejected as barred by time. The applicant has now come to this Tribunal assailing the series of orders mainly starting with the order of disciplinary enquiry followed by the rejection of the appeal and the revision petition, etc. contending that his absence at the enquiry was not because of his own volition but because of his sickness. It is also urged before us that from the year 1984 to 1989, the man was mentally ill and that is why he was unable to attend to his duties as a Govt. servant. Be that as it may, we think it appropriate now to direct the respondent, Military Institute to hold the disciplinary enquiry denovo, charge him with deliberate absence continuously from duty at the enquiry giving the applicant an opportunity of being heard. Applicant, it is needless to say should produce proof in support of his disability and also undergo if need be such investigation as the department may order the concerned doctors for evaluation of his health.

3. Hence, it is we allow this application and set aside the impugned order of dismissal by the Appellate Authority at Annexures 'F', 'H' and 'M' and remit this matter to the disciplinary authority to conduct a denovo

enquiry with due notice to the applicant to enable him to appear at the enquiry. The period of absence from duty will be dealt with and declared in accordance with the rules.

4. In the circumstances of this case, we condone the delay in filing this application and treat this application as presented in time.

Sd-

MEMBER (A)

Sd-

VICE CHAIRMAN



TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

19/7/93

CA-31/93 ✓

(B-617)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NO. 199/1995

DATED THIS THE TENTH DAY OF JULY, 1995.

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member (A)

Mr. Pashu Miyan
S/o. Syed Sale Sab
R/o 18-8-224-5-48/I
Rajanarasimhanagara Colony
Sayeedabad Post, Kanchan Baugh Road
Hyderabad-59 (Andhra Pradesh). Applicant

(By Mr. S.M. Babu, Advocate)

Vs.

1. Chief Engineer (Airforce)
No.2, D.C. Area, NES Road
Yeshwanthpur Post, Bangalore-22.
2. Commander Works Engineer
(Air Force), Mudfort,
Secunderabad-3 (A.P.) Respondents

(By Mr. G. Shanthappa, Standing Counsel)

O R D E R

Mr. P.K. SHYAMSUNDAR, VICE CHAIRMAN:

✓

We have heard the learned counsel for the applicant as well as the learned Standing Counsel appearing for the respondents. The applicant has been dismissed from service following a Departmental Enquiry vis-avis a case of alleged absenteeism between the years 1982 and 1989. From that order of dismissal, he preferred an appeal as per Annexure-B. Mr. Babu, learned counsel appearing for the applicant submits that the appellate authority disposed of the appeal by making a

simple observation that the charges have been proved. The order of the Appellate Authority runs to 12 paragraphs, none of which deal with the contentions raised by the applicant in his appeal.

& 12

The concluding para nos 11/reads as follows:-

"11. Now whereas Shri Pashymiyan submitted his appeal dated 15 Jul 94. Shri Pashumiyan, in his appeal has pleaded to set aside the dismissal order passed by CWE (AF), Secunderabad under order No.12057/261/E1C dated 11 Jun 94 with a plea that the charges levelled against him have not been proved. In the de-novo inquiry the charges levelled against Shri Pashumiyan has been proved beyond doubt. Therefore, Shri Pashumiyan's plea that he is not guilty of charges levelled against him is not acceptable.

12. Now therefore, the undersigned in exercise of powers vested in him vide Rule 27(2)(c)(i) of CCS(CCA) Rules 1965 hereby upholds the penalty awarded by CWE (AF) Secunderabad under order No.127050/261/E1C dated 11 Jun 94. "

The appeal apparently has been considered and disposed of without meeting the contentions raised against the order of the disciplinary authority nor has it taken pains to consider the material at the enquiry on the basis of the aforesaid absenteeism alleged against the applicant. This Court in more than one case has reiterated that the appellate forum, being a statutory forum must bring to bear certain amount of objectivism, in that the order must speak for itself and indicate reasons for supporting or discounting the finding recorded by the disciplinary authority. The order of the appellate authority in the present case

suffers from the defect of being over brief in that it does not speak at all. In the circumstances, we are left with no option except to quash the appellate authority's order at Annexure-C and to direct the appellate authority to consider the appeal again and dispose it of on its merits taking note of shortfalls and deficiencies pointed out. We, therefore, ^{quash} the appellate authority's order and remit the matter back to the appellate authority as indicated. The appellate authority will now dispose of the appeal on its merit de novo, within 2 months from the date of receipt of a copy of this order.

2. With this observation, this application stands disposed of. No costs.


3. Let a copy of this order be sent to the appellate authority (R-1).

Sd-
(T.V. RAMANAN)
MEMBER (A)

Sd-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

mr.


Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore