

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 20 APR 1994

APPLICATION NUMBER ~~535~~ of 535 of 1993.

APPLICANTS:

Sri.T;Srinivasan
Te.

v/s.

RESPONDENTS:

Chief General Manager, Karnataka Telecom,
Bangalore and Others.

1. Sri.P.A.Kulkarni, Advocate, No.48, 57th-A-Cross,
Fourth Block, Rajajinagar, Bangalore-560010.
2. The Chief General Manager, Karnataka Telecom Circle,
No.1, Old Madras Road, Ulsoor, Bangalore-8.
3. Sri.M.S.Padmarajaiah, Sr.Central Govt.Stng.Counsel,
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 05-04-1994.

Issued on
20/4/94

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O/c

for *S. S. Narayan* 20/4
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 535/1993

TUESDAY, THE 5TH DAY OF APRIL, 1994

Shri V. Ramakrishnan ... Member (A)
Shri A.N. Vujjanaradhya ... Member (J)

Shri T. Srinivasan,
S/o late Thimmaiah,
aged about 57 years,
Occn: Higher Grade
Telegraphs Assistant,
Central Telegraph Office,
Bangalore - 560 001. ... Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Chief General Manager,
Telecom., Karnataka Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore - 560 008.
2. General Manager (Operations),
and Appellate Authority,
Office of the Chief General
Manager, Karnataka Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore - 560 008.
3. Director Telecom.,
Bangalore area,
Bangalore - 560 009.
4. The Chief Superintendent,
Central Telegraph Officer (CTO),
Raj Bhavan Road,
Bangalore - 560 001. ... Respondents

(By Advocate Shri M.S. Padmarajaiah,
Senior Standing Counsel for Central Govt.)

O R D E R

Shri V. Ramakrishnan, Member A

We have heard at length Shri P.A. Kulkarni for the
applicant as also Shri M.S. Padmarajaiah, the learned
senior Standing Counsel. Shri M.S. Padmarajaiah had drawn

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our attention to the orders passed by this Tribunal in similar matters where the applicants were directed to file a revision petition. In particular, he refers to our directions in OA No. 1015/93 which was decided on 9th February 1994 and submits that the present case may be decided on the same lines.

2. When the matter came up yesterday, Shri Kulkarni wanted some time to study the same. At his request the case was adjourned to today. Now, he submits that the applicant will be satisfied with orders similar to the one passed in OA 1015/93. He, however, draws our attention to the fact that one of the grounds taken by the applicant in his application is that recovery under Rule 11 (iii) of CCS (CCA) Rules cannot be ordered by way of penalty without establishing either negligence or breach of orders and according to the applicant, in his case, this has not been established. Shri Kulkarni requests that the Tribunal may ^{make} ~~order~~ a suitable observation in this regard.

3. After hearing counsel and following the decision in OA 1015/93 and other connected matters involving similar issues, we think it appropriate to direct the applicant to prefer a revision petition before the competent authority. If such a revision petition is filed within one month of the receipt of a copy of this order, the revising authority will dispose of the same within three months from the date of receipt of the revision petition by means of an appropriate and

speaking order. We may also point out that under Rule 29(3) of the CCS (CCA) Rules, a revision petition shall be dealt with in the same manner as if it were an appeal with the result that whoever decides or disposes off the revision petition will have to consider all the points raised in the memorandum of revision and record thereafter an objective conclusion. As regards the ground taken by the applicant that the recovery under Rule 11 (iii) of the CCS (CCA) Rules cannot be done in his case, as according to him, neither negligence nor breach of orders had been established against him, ^{he} ~~the~~ may take up this point in the revision petition to be filed by him and if he does so the revising authority should deal with this issue also while disposing of the revision petition.

4. The applicant in this case had sought for an interim relief to stay the recovery of Rs. 55,226/- from his salary which was sought to be recovered every month from his monthly salary and this was granted. Following the decision in other similar case, we direct that pending the disposal of the revision petition, the stay of the recovery ordered by the department from the monthly salary of the applicant shall continue if the applicant files a revision petition as directed above.

5. With the above observations, the matter is finally disposed off with no order as to costs.

Sd-

(A.N. Vujjanaradhya)
Member (J)

Sd-

(V. Ramakrishnan)
Member (A)

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SECRETARY

2. ADDITIONAL MEMBER

ADDITIONAL MEMBER

BANGALORE

TCV

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 18TH OF DECEMBER, 1992

Present: Hon'ble Shri Syed Fazlulla Razvi Member(J)
Hon'ble Shri S. Gurusankaran Member(A)

APPLICATION NO.582/92

Shri T. Srinivasan,
Aged 56 years,
H.G.T.A.,
Central Office,
Bangalore

Applicant

(Shri P.A. Kulkarni - Advocate)

v.

1. Chief General Manager,
Telecommunications,
Karnataka Circle
Bangalore - 9
2. Chief Superintendent,
Central Telegraph Office,
Bangalore - 1

Respondents

(Shri M.S. Padmarajaiah - Advocate)

This application has come up before this
Tribunal for admission. Hon'ble Shri Syed Fazlulla
Razvi, Member(J) made the following:

ORDER

This application is being disposed of at the
admission stage after notice to the respondents and
after hearing both the parties.

2. The facts relevant and necessary to be
mentioned for disposal of this application, briefly
put, are these:



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The applicant, while he was working as Higher Grade Telegraphs Assistant (HGTA for short), was proceeded against by way of disciplinary proceedings initiated under rule 14 of the CCS(CCA) Rules, 1965, (hereinafter referred to as CCA rules for short) in respect of certain act of misconduct and an Enquiry Officer came to be appointed. The Enquiry Officer after conducting the necessary enquiry submitted a report to the Disciplinary Authority (DA for short). The DA after issuing notice to the applicant along with a copy of the enquiry report passed order dated 20.8.92 as per Annexure-A2 holding the charge established and directing that the sum of Rs.55,226/- representing the money unaccounted for by the applicant be recovered from him and further imposing the penalty of reducing the pay of the applicant by three stages for a period of three years and directing that during the punishment period, the applicant will not earn any increments and on restoration, the punishment will not have the effect of postponing future increments of pay. This order came to be subsequently modified by order dated 4.9.92 as per Annexure A-3 in view of the fact that the applicant was due to retire on 30.4.94 on superannuation. The DA in lieu of the penalty of reduction of pay by three stages for three years modified that portion of penalty to one of reduction to the minimum basic pay of Rs.1400/- in the time scale of Rs.1400-2300 w.e.f. 1.9.92 upto the end of 30.6.93 and directing further that during the punishment period, the

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applicant will not earn any increments of pay and on restoration, the punishment will not have the effect of postponing his future increments of pay. Aggrieved by the said orders passed by the D.A. as per Annexures A-2 and A-3, the applicant has preferred an appeal dated 17.9.92 before the Chief General Manager (Respondent No.1 herein) and the said appeal is stated to be still pending. Pursuant to the order dated 20.8.92 passed by the DA directing recovery of Rs.55,226/- the 2nd respondent issued the direction dated 16.11.92 as per Annexure-1 to the effect that it has been decided to recover the said amount from the monthly salary of the applicant at the rate of Rs.600/- per month commencing from the salary payable on 30.11.92 till the entire dues are cleared. Challenging this order dated 16.11.92 (Annexure 1), the applicant has come up before this Tribunal seeking the following reliefs:

"This Hon'ble Tribunal be pleased -

a) to hold that it is not open for the authorities to give effect to the orders of the disciplinary authority even before the disposal of the statutory appeal filed by the applicant in connection with Annexures 2 and 3;

and consequently

b) to set aside the action of the Respondent No.2 in giving effect to the order of the disciplinary authority as per Annexures 2 and 3 herein including that act of Respondent No.2 contained in order dated 16.11.92 in No.A2/REC/92-93;

c) Any other order or direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case including the award of costs.



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3. The applicant has also sought an interim relief pending this application. The interim relief sought is in all respects similar to the reliefs sought in the main application itself.

4. On the filing of the application, we felt that it would be proper to hear the respondents also before considering the admission and grant of interim relief. The respondents have appeared through Shri M.S. Padmarajaiah, the learned Senior Standing Counsel. It was submitted for the respondents, that having regard to the nature of the reliefs sought and there being no controversy regarding facts, no reply on behalf of the respondents is necessary. Thus, by consent of parties and having regard to the fact that the granting of the interim relief sought virtually amounts to the granting of main reliefs sought in the main application, this application is being disposed of at the admission stage.

5. We have heard Shri P.A. Kulkarni for the applicant and Shri M.S. Padmarajaiah for the respondents.

6. In para 6.7 of the application, the applicant has stated "that this application raises a legal point whether it is open for the authorities to give effect to the orders of the Disciplinary Authority even before disposal of the statutory appeal preferred by the aggrieved party against the orders of the disciplinary authority. Hence, this application."

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The applicant has pleaded further that the applicant having preferred the statutory appeal u/r 23 of the CCA rules the orders passed by the DA as per Annexures A-2 and A-3 will be subject to the appellate jurisdiction and, therefore, until his appeal is disposed of by the Appellate Authority, the authorities cannot give effect to the orders of the DA, further that the very purpose of appeal will get defeated in case the authorities are to resort to give effect to the orders of the DA even before disposal of the appeal by the Appellate Authority (AA for short). It is further pleaded that the authorities can always implement the order of the DA when it becomes final and the department can wait until the disposal of the appeal whereas if the order of the DA is implemented during the pendency of the appeal, the applicant will be adversely put into economic conditions.

7. Shri Kulkarni contended that the applicant being aggrieved by the orders passed by the DA having filed the statutory appeal, until the appeal so filed is disposed of by the AA, the DA or the 2nd respondent cannot seek to implement the orders passed by the DA. He also urged that on the disposal of the appeal filed by the applicant, the order passed by the DA would merge into the order that may be passed by the AA and that being the legal position, until the appeal is disposed of, the order appealed against does not become operative and capable of implementation. To buttress this contention, he placed reliance upon rule 28 of the CCA rules. He



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then contended that the order passed by Respondent No.2 dated 16.11.92 (Ann-1) is in the nature of an interlocutory order and there being no provisions for appeal against such interlocutory order under CCA rules, the applicant is justified in approaching this Tribunal challenging such order. For this he sought assistance from the provisions of Rule 22(2) of CCA rules. He lastly urged that there is no clear provision in the CCA rules under which an AA can stay the operation of the order appealed against and as such it is open to the aggrieved person to approach this Tribunal seeking stay of the operation of the order challenging which an appeal is pending before the AA under the CCA rules. He strongly relied on two rulings in support of his last contention.

8. Shri M.S. Padmarajaiah for the respondents contended that when the applicant has filed an appeal before the AA under the CCA rules and such appeal is pending, it is open to the applicant to move the AA for staying the operation of the order appealed against and without availing such remedy, the applicant cannot approach this Tribunal for staying the operation of the order appealed against. He stressed that even though there is no specific provision in the CCA rules for staying the operation of the order appealed against by the AA, such power is inherent in the Authority and if the applicant is really aggrieved by the impugned order Annexure-1, the applicant should have approached the AA before whom his appeal is pending, seeking the relief. To

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substantiate his contention that the power to stay the operation of the order appealed against is inherent in the AA, he relied on two rulings.

9. We find no merit in the contention urged for the applicant that once the applicant files a statutory appeal before the AA under the CCA rules, it has the effect of ipso facto staying the operation of the order appealed against and until such appeal is disposed of, the order appealed against does not become capable of implementation and cannot be implemented. We find no such provision to this effect in the CCA rules. Barring rule 28 of the CCA rules, no other provision has been pointed out to us. The other contention that as the order passed by the DA merges into the order passed by the AA and on that ground also the order appealed against cannot be put into operation pending the disposal of the appeal, does not also appeal to us. Rule 28 of the CCA rules states that "The authority which made the order appealed against shall give effect to the orders passed by the Appellate Authority". What rule 28 enjoins is that in a case like that of the applicant if the AA passed any order in the appeal filed by the applicant, the DA shall give effect to such order passed by the AA. Rule 28 cannot be read as laying down the principle that till the disposal of the appeal by the AA, the order appealed against remains suspended or cannot be put into operation. Even under the Code of Civil Procedure or Criminal Procedure Code, the



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mere filing of an appeal does not have the effect of staying the operation of the decree or order appealed against and provisions exist under which the appellate ^{emb} ~~cannot~~ [✓] have the power of staying the operation of the decree or order appealed against, at its discretion.

10. Adverting now to rule 22(ii) of the CCA rules on which reliance is placed, it was pointed out for the applicant that the impugned order is in the nature of an interlocutory order against which no appeal lies and as such though the applicant has filed an appeal before the AA under the CCA rules against the orders passed by DA as per Annexures A-2 and A-3, the applicant is constrained to approach this Tribunal for challenging the impugned order passed by R-2. The order impugned (Annexure 1) cannot be clothed as an interlocutory order falling within the ambit of rule 22(ii) of the CCA rules. It is an order passed by R-2 giving effect to the implementation of the first part of the order passed by the DA relating to the recovery of the amount on monthly instalments and recoverable from the salary of the applicant.

11. It is no doubt true that there is no specific provision in the CCA rules empowering an AA to stay the operation of the order appealed against, as contended for the applicant. In the case of Charan Singh Vs. UOI reported in 1986 ATC 307, the Principal Bench of the CAT had on an application filed u/s 19 of the Administrative Tribunals Act, 1985, challenging the order of

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reversion from Class III post to Class IV post made an interim order staying the reversion. The applicant therein had not availed of the alternative remedies available before approaching this Tribunal. The Bench observed that in the absence of any rule empowering the AA or the reviewing authority to consider the staying of the order appealed against, it is doubtful whether the said authorities could order stay of the order under appeal or review as the case may be. It also pointed out that where the service rules do not empower the authorities to stay the order howsoever just the case may be and howsoever erroneous the order under appeal or review may be that may, in the circumstances of the particular case constitute a valid ground for entertaining the application u/s 19 without insisting upon the applicant to avail of all the remedies of appeal or review provided under the service rules. The Tribunal further observed that "However, whether a petition u/s 19 should be entertained without insisting upon the applicant to exhaust all the remedies is a matter to be considered on the facts and circumstances of each case and no hard and fast rule can be made in this regard." In the facts and circumstances of that case the Tribunal directed the applicant to receive the order of reversion and prefer appeal and review later if he so desires and directed that the interim stay granted shall remain pending disposal of the appeal and the review if any filed.

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12. In the other case of K.G. Rajan Vs. P.M.G., Kerala reported in 1986(3) SLR 629, the Madras Bench of the CAT granted stay of the order appealed against before the AA. In that case, the applicant therein had filed the appeal before the AA and had also filed a petition for stay of the order appealed against and the AA rejected the petition for stay on the ground that there is no provision under the rules in that behalf. The Bench pointed out that "As the first respondent is exercising a quasi judicial power as the Appellate Authority constituted under the rules, it cannot be said that when an appeal is duly filed before him and is pending consideration, he is not competent in proper case for staying the operation of the order appealed against." The Bench, in the facts and circumstances of the case allowed the application and granted stay pending the appeal before the AA.

13. The above decisions relied upon for the applicant were rendered long prior to the decision of the Constitution Bench in Rathore's case and the Full Bench judgment of the C.A.T. in Parameshwara Rao's case. In para 16 of the judgment in the case of S.S. Rathore Vs. State of M.P. reported in AIR 1990 SC 10, this is what their Lordships have observed:

"The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of S.20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules

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and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under S.20 of the Administrative Tribunals Act."

In the case of B. Parameshwara Rao Vs. The Divisional Engineer reported at page 250 in Full Bench judgments of C.A.T. Vol.II by Bahari Brothers, a Full Bench of the C.A.T. sitting at Hyderabad interpreting the word "ordinarily" appearing in Sec.20(1) of the Administrative Tribunals Act, 1985, has ruled that the word "ordinarily" connotes a discretionary power in the Tribunal but that power has to be exercised in rare and exceptional cases and not usually or casually.

14. The applicant, admittedly, has not moved the AA to stay the operation of the order appealed against. The relief which the applicant has sought is to hold that it is not open for the authorities to give effect to the orders of the DA even before the disposal of the statutory appeal filed by the applicant in connection with Annexures A-2 and A-3 and to set aside the impugned order passed by R-2. It was submitted for the respondents that the latter portion of the order passed by the DA relating to the reducing of the pay to the minimum basic pay has already been



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implemented and the impugned order is one relating to the recovery of the amount in instalments. In the light of these, it is not necessary for us to go into the question as to whether the AA could have stayed the order appealed against or not pending the disposal of the appeal, had the applicant approached that authority for grant of such interim relief. It is also not necessary to consider the two rulings cited on behalf of the respondents which are reported in (1) 1988(2) KAR L.J. 209 (Manilakshamma Vs. D.C. Kolar and (2) I.T. Officer Vs. Mohd. Kunhi reported in AIR 1969 S.C. 430.....Moreover, we do not think that this is a fit case where the Tribunal's interference at this stage is called for, having regard to the facts and circumstances of the case. A direction to the AA to dispose of the appeal within a reasonable time would serve the ends of justice.

15. For the above reasons, we reject this application at the admission stage. However, we direct the 1st respondent A.A. to dispose of the appeal filed by the applicant as expeditiously as possible but not later than two months from the date of receipt of a copy of this order. No costs.

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Sd-
(S. GURUSANKARAN)
MEMBER (A)

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(SYED FAZLULLA KAZVI)
MEMBER (J)


SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
11/1/93