

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 23 NOV 1993

APPLICATION NO(s) 580 of 1993.

APPLICANTS: T.G.Vijayan

RESPONDENTS: Controller General of
Defence Accounts, New Delhi and Others.

TO.

1. Dr.M.S.Nagaraja, Advocate, No.11, Second Floor, First Cross, Sujatha Complex, Gandhinagar, Bangalore-560 009.
2. The Controller of Defence Accounts, (ORs), South, K.Kamaraja Road, Bangalore-560 001.
3. Sri.G.Shanthappa, Addl.Govt.Stng.Counsel, High Court Building, 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 10th Nov 1993.

~~N. Alles~~
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

28/11/93

gm*

O/C Clerical
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CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

ORIGINAL APPLICATION NUMBER 580 OF 1993

DATED THIS THE 10TH DAY OF NOVEMBER, 1993

Mr. Justice P.K. Shyamsundar, .. Vice-Chairman.

And

Mr. V. Ramakrishnan, .. Member(A).

T.G. Vijayan,
Aged 49 years, S/o T. Gopalan,
8/11, DAD Residential Complex,
Sanswarapuram, Bangalore-560 008.

.. Applicant.

(By Advocate Dr. M.S. Nagaraja)

v.

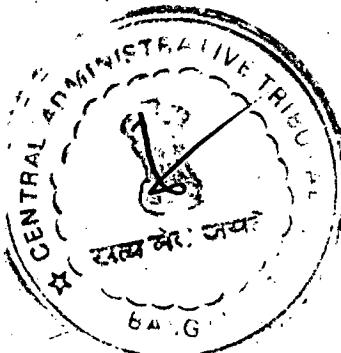
1. The Controller General of Defence Accounts, R.K. Puram, New Delhi-110 060.
2. The Financial Adviser, Defence Services, Ministry of Defence, New Delhi.
3. The Controller of Defence Accounts, Research & Development, Bangalore-560 093.
4. The Union of India, represented by its Secretary to Government Ministry of Finance, Department of Expenditure, New Delhi.
5. The Controller of Defence Accounts (ORS) South, BANGALORE-1. .. Respondents.

(By Standing Counsel Shri G. Shanthappa)

O R D E R

Mr. Justice P.K. Shyamsundar, Vice-Chairman:

The short question for consideration herein is whether an order made by respondent-3 regulating the period of absence by the applicant from 16-5-1983 to 13-1-1988 during which period he stood removed from service following the imposition of penalty of removal at a disciplinary inquiry in relation to which he launched a successful agitation that finally ended up with the penalty of removal being substituted by imposition of minor



penalty of stoppage of two increments without cumulative effective as per Annexure-A2 dated 10-01-1991 is sustainable. Government has passed the impugned order (Annexure-A7) which purports to regulate the period of absence of duty by the applicant from 16-5-1983 to 13-1-1988 as follows:-

"Consequent on finalisation of disciplinary proceedings initiated against Shri T.G.Vijayan, Auditor, A/c No.8297115 vide charge memo bearing No.AN/II/8297115/DISPN. dated 31-3-1981, the competent authority has fixed the quantum of pay and allowance for the period 16-5-1983 to 13-1-1988 (i.e. from the date of removal from service to the date of Tribunal's order) as follows:-

16-5-1983 to 13-1-1988:

(a) 50% (Fifty Percent) of pay admissible as on 15-5-1983 (revised pay to be notionally arrived at with effect from 1-1-1986) and allowances thereon. The period from 16-5-1983 to 13-1-1988 will be treated as duty for the purpose of pension only.

xx | xx"

The applicant is seriously aggrieved by the modus adopted by Government in regulating the aforesaid period of absence limiting the remuneration payable to 50 per cent along with allowances etc. It is also not denied that because of the type of regulation adopted by the impugned order the applicant will stand to lose heavily resulting as it does in displacement of seniority, entitlement to leave and postponing of increment etc. That appears to be the position.

2. We are however, at a loss to understand as to why the department has chosen to impose the aforesaid kind of hardship on the applicant, that too, in the face of the official memorandum No.11012/15/85-Est.(A) dated 3rd December,1985 which provides -

".....Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be

wholly unjustified in terms of F.R.54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B".

(emphasis supplied)

The Official Memorandum supra clearly refers to the principle to be followed as regards regulating the period of absence. Although we do notice there is a slight difference because the O.M.refers to the period of suspension whereas in this case the applicant had stood removed, but, once the order of removal is set aside the officer is deemed to continue under suspension till reinstatement. Our attention in this connection is invited to the decision of the Ernakulam Bench of this Tribunal in V.V.SANKARANKUTTY v. ASSISTANT CONTROLLER OF DEFENCE ACCOUNTS (O.A.No.819 of 1991 dated 11-3-1993) taking a similar view following a reported decision of the Madras Bench in Y.RAMA RAO v. COMMODORE, OFFICIATING GENERAL MANAGER, CANTEEN STORES DEPOT, BOMBAY AND ANOTHER [(1990)14 ATC 185]. We find in the said decision the Ernakulam Bench was concerned with the affairs of one Sankarankutty who had been proceeded against in a departmental inquiry on charges totally similar to the one faced by the applicant herein. Therein it was held -

"Even otherwise, we feel that the disciplinary proceedings initiated for a major penalty having resulted in the imposition of a minor penalty, the period of absence from duty, cannot be treated otherwise than on duty. In Y.Rama Rao Vs. Cammodore, Officiating General Manager, Canteen Stores Depot, Bombay and another (1990) 14 ATC 185, it was held that the Government of India's instructions in O.M.11012/15/85-Estt.- (A) dated 3-12-1985 which laid down that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, full pay and allowances for the period of suspension should be given, should be applied also in a case where a Government servant has been dismissed, removed or compulsorily retired but later reinstated with a minor penalty.

10. In the above light we allow this application



in part to the extent of setting aside the impugned order dated 30-4-1990 at Annexure-IX and the order dated 14-1-1991 at Annexure-X and direct that the applicant shall be treated as on duty for all purposes for the period of his absence from 16-5-1983 to 9-11-1987. There will be no order as to costs."

(emphasis supplied)

The decision of Ernakulam Bench supra clearly covers the case on hand and should have been followed by the department. But the position being otherwise we have ~~no~~ force to interfere with the impugned order. Learned Standing Counsel says after the disposal of the departmental ~~appeal~~ ^{process} applicant should have preferred an ~~plea~~ appeal to the higher authority. We think that formality was not warranted in the facts and circumstances of the case.

3. Be that as it may, we now allow this application and quash that portion of the impugned order at Annexure-A7 pertaining to the regularisation of the applicant's services for the period between 16-5-1983 to 13-1-1988 and direct that the applicant be paid full pay and allowances during the aforesaid period with treatment of the said period of absence as being duty for all purposes. No costs.

Sd -

MEMBER(A)

Sd -

VICE-CHAIRMAN.

np/

TRUE COPY

R. *[Signature]*
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

26/11/93