

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.617/93.

THIS THE 27TH DAY OF DECEMBER, 1993

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN ... MEMBER (A)

Sri M. Sathyanarayanan,
Dental Technician,
S/o. L.K. Mahadevan,
No.73, II Cross, Saraswathipuram,
Ulsoor, Bangalore - 560 008. ... Applicant

(By Advocate Shri D. Rajashekhar)

Vs.

1. The Union of India by
Health Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
2. The Director,
Central Government Health Scheme,
Nirman Bhavan, New Delhi.
3. The Deputy Director,
Central Government Health Scheme,
Infantry Road, Bangalore-560 001. ... Respondents

(By Advocate Shri M.S. Padmarajaiah)
Central Govt. Sr. Standing Counsel.

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman.

Heard. Admit.

2. Now that the pleadings are complete, we have also heard both sides carefully and propose to dispose off this application finally. The applicant, an employee borne on the establishment of the C.G.H.S. at Bangalore, who had applied and obtained leave for

for the period between 19.5.92 and 22.5.92 as could be seen from the endorsement at Annexure-A1. Subsequently, by another endorsement dated 19.8.92, as per Annexure-A2, the leave sanctioned to the applicant at Annexure-A1 was withdrawn and cancelled adverting some reasons mentioned at Sl.No.1 and Sl.No.3 in that Annexure which is a cyclostyled communication. Sl.No.1 therein reads: "The absence from the duty of the official in a concerted manner", and Sl.No.3 reads: "The medical certificate does not conform to all the stipulations of Rule 19 of CCS (Leave) Rules, 1972 and the provisos/G.O.I. decisions thereunder". The final verdict is: "In view of the above, the period of absence from duty of 4 (four) days from 19.5.92 to 22.5.92 is hereby treated as "Diss Non" under F.R.17(1). The leave Memo No.A24015/191/BNG/CGHS/1950 dated 17.6.92 is hereby treated as cancelled." Sd/- Deputy Director, CGHS, Bangalore.

3. The applicant above, assails the endorsement under Annexure-A2 and contends the same as malafida apart from violating the principles of natural justice. He had, on an earlier occasion approached this Tribunal in O.A.No.595/1992 assailing the very same order at Annexure-A2. On that occasion, our Brother Shri S. Gurusankaran, Member(A), made an order disposing off the application directing the respondents to dispose off a representation made by the applicant as per Annexure-A4. Subsequently, that representation appears to have been disposed off vide Office Memorandum dated 5.2.1993 at Annexure-A6. The same is being unproductive, he is once again before us.

4. The learned standing counsel who supported the impugned order at Annexure-A2 pointed out that it is clearly a case of designed action resorted to by all the employees of the C.G.H.S.

by going organisedly on leave, although, their intention was to really go on strike. The resulting position was that none of the staff responsible for carrying on duty etc. being available to attend to the ailing employees of Central Govt. The respondents therefore took exception to the concerted behaviour of the employees and the result was cancellation of orders passed earlier granting leave and the period of absence treated as "Dies Non". The learned standing counsel mentioned that action as above was taken on the recommendations of a committee specially constituted to go into the situation arising out of the allegedly pre-emptive strike by the employees by going all of a sudden on leave over a particular period and that the committee having considered the entire thing allegedly in appropriate perspective concluded resorting to leave on large scale was merely a false facade. It held all the employees who had taken the precautionary measure of applying for leave deserved to be met with stern action and the consequence was an order like Annexure-A2 resulting in the cancellation of leave already granted and the period of leave treated as absence from duty, the employees' salary for the period being forfeited.

5. We noticed from the records produced and the pleadings filed on behalf of the respondents that before the issuance of the order at Annexure-A2 cancelling the leave period and treating the absence from duty as "Dies Non", etc., etc., no show cause notice had been issued to the applicant and on that aspect, there appears to be no quarrel or contention. The order revoking the leave granted earlier and forfeiting of 4 days pay treating the leave period as "Dies Non", it cannot be denied, it clearly results in civil consequence and operates to the detriment of the employee

concerned. Any order made in that behalf must be preceded by some kind of an enquiry. Otherwise, such order will offend the principles of natural justice. We may in this connection refer to the decision of the Supreme Court in the case of State of Orissa Vs. Dr. Bina Pani AIR 1967 SC 1269, the Govt. of India order under F.R.17(a) makes it clear that the revocation of leave without giving a reasonable opportunity of being heard in situations like the present one is untenable and the authorities are enjoined not to make such orders without holding an appropriate enquiry. The Impugned Order is thus not merely violative of principles of natural justice but is also prone to the attack of infraction of F.R.17(a).

6. While, we do appreciate that if as the authorities did suspect and may be they were also right in reading the situation suspecting the employees having actually resorted to illegal strike but trying to clear their tracks by applying for and obtaining leave on medical grounds in advance. But, if their apprehension was to be true, but they could not have passed orders recalling leave and treating as not being on duty without holding some kind of enquiry in consonance with the principles of natural justice.

7. We have found that not even a show cause notice had been issued to the employee asking the latter to show cause why the leave granted should not be cancelled and absence from duty treated as "Dies Non". This is the least that was expected of the authorities if not more, and therefore we think the order under Annexure-A2 is clearly illegal and has got to be struck down. Accordingly, we allow this application and quash Annexure-A2 which will in turn

revive the memo at Annexure-A1 under which leave had been sanctioned to the applicant. Since, this is an old matter of the year 1992, we direct this controversy should rest here and ask the department not to proceed with the matter any longer.

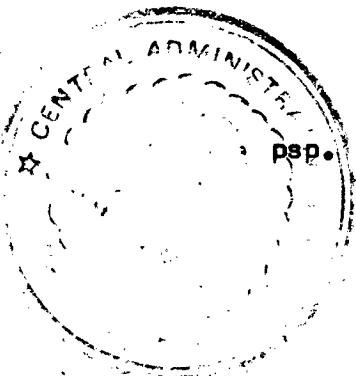
8. At this stage, Shri M.S. Padmajaiah, the learned standing counsel pleaded for reserving liberty to the department to hold an appropriate enquiry and to pass appropriate orders as a result of such enquiry. Having given our earnest consideration to the submission of the learned standing counsel, we do not think it necessary to accede to his request as aforesaid.

Sd/-

Sd/-

(V.RAMAKRISHNAN)
MEMBER (A)

(P.K.SHYAMSUNDAR)
VICE CHAIRMAN



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12/1/94

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 13.01.94

APPLICATION NO(s) 617 of 1993

APPLICANTS:

M. Sathy anarayanan
TO.

RESPONDENTS: Secretary, M/o Health and
Family Welfare, N.Delhi and others.

- ① Sri. D. Rajashaker,
Advocate, No. 4,
Palani Mundhiai Street,
Usoor, Bangalore-8.
2. The Deputy Director,
Central Govt Health Scheme,
Infantry Road, Bangalore-1.
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.

-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 27-12-1993.

SC Bunker
For DEPUTY REGISTRAR (2/1) 1994
JUDICIAL BRANCHES.

gm*