

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated **23 NOV 1993**

APPLICATION NO(s) 632 of 1993.

APPLICANTS: S.B.Durgai

v/s. RESPONDENTS: Assistant Engineer (Trunks),
Deptt. of Telecom, Belgaum
and Others.

TO.

1. Sri.A.R.Holla, Advocate,
No.3, Second Floor,
Sujatha Complex,
First Cross, Gandhinagar,
Bangalore-9.
2. Divisional Engineer (Inquiry),
Office of the Chief General Manager,
Karnataka Telecom Circle, No.1,
Old Madras Road, Ulsoor, Bangalore-8.
3. Sri.M.Vasudeva Rao,
Central Govt. Stng. Counsel,
High Court Bldg, Bangalore-1.

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

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 19-11-1993.

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

23/11/93

gm*

[Signature]
Issued
[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.632/1993

FRIDAY THIS THE NINETEENTH DAY OF NOVEMBER 1993

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

S.B. Durgai,
S/o late P.B. Durgai,
Dormitory Attendant,
CTX Belgaum [now dismissed
from service] residing at
H. No.4732/1, Chavat Galli,
Belgaum

... Applicant

[By Advocate Shri A.R. Holla]

v.

1. Assistant Engineer, Trunks,
Department of Telecommunications,
Belgaum-590 001.
2. The Divisional Engineer,
Maintenance [Urban],
Department of Telecommunication,
Belgaum-590 001.

... Respondents

[By Advocate Shri M. Vasudeva Rao ...
Addl. Central Government Standing Counsel]

ORDER

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant was working as Dormitory Attendant in the office of the JTO CTX, Belgaum, till he was removed from service as per order dated 19.7.1991. The applicant was charged for his unauthorised absence as per Memo dated 15.9.1990 issued by Respondent ['R' for short] 1 as in Annexure A-1 for his absence during the period from 30.12.1989 to 3.6.1990 and again from 9.4.1990 till the date of articles of charges, which is dated 15.9.1990. After the applicant furnished his reply stating that he was suffering from Jaundice and was bed ridden enquiry was proceeded further and on 23.4.1991 when the applicant was ques-



tioned by the Inquiry Officer ['IO' for short] it is stated that the applicant had admitted the articles of charges and thereafter the IO made a report dated 10.6.1991 as in Annexure A-6. The applicant had furnished his reply to this report on 30.6.1991 as in Annexure A-7 and considering the entire aspect the Disciplinary Authority ['DA' for short] viz., the Assistant Engineer - R-1 - imposed the penalty of removal of the applicant from service with immediate effect [Annexure A-8]. The appeal preferred by the applicant was rejected by the Appellate Authority ['AA' for short] - R-2 - by order dated 24.7.1992 [Annexure A-10]. Aggrieved the applicant has made this application under Section 19 of the Administrative Tribunals Act 1985. The applicant has sought to quash the order passed by the DA as well as AA [Annexures A-8 and A-10] and has further sought a direction to the respondents to reinstate him in service and to grant all other consequential reliefs deemed fit.

2. The respondents oppose the application contending that the action taken by them is just and proper inasmuch as the applicant had not only remained unauthorisedly absent but he was also previously had the same conduct for which he was punished several times.

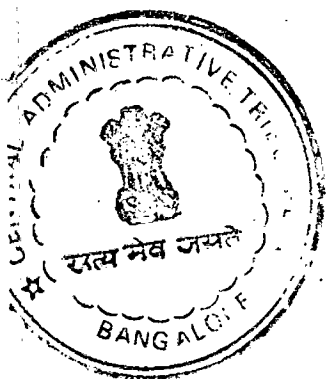
3. We have heard Shri A.R. Holla, for the applicant and Shri M. Vasudeva Rao, for the respondents and have perused the records also.

4. Before considering the contentions of the learned counsel for the applicant, it is necessary to point out that the applicant has not impleaded Union of India as a party to this application. He has also not exhausted the remedy of Revision open to him under Rule 29 of the CCS [OCA] Rules, 1965. We do not propose

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to go into those aspects of the case in detail inasmuch as we are going to consider and dispose of the application on its merits only. The question whether revision is an alternative remedy to be exhausted or not is yet to be finally decided in a number of similar such applications which are still pending awaiting the say of the Secretary to Government of India, Department of Personnel and Training. Because the application is going to be disposed of on merits on the ground that there is no denial of opportunity or any other good cause to interfere with the order of the DA and the AA, the question whether Union of India ought to have been impleaded as a party is also unnecessary to be gone into.

5. Shri A.R. Holla, vehemently contended that when the IO questioned the applicant, he had only referred to Annexure 1 where Article 1 was referred to and did not refer to the statement of imputation - Annexure II and, therefore, the applicant was misled and he had admitted only his absence and as such the same has resulted in denial of reasonable opportunity to the applicant and miscarriage of justice. This contention cannot be accepted as correct inasmuch the applicant was served with copies of the Article of charges as well as the statement of imputation besides the enclosures referred to in Annexure III. It is not the version of the applicant that he was not supplied with any of the copies. No doubt the applicant is stated to be not conversant with English but he had the advantage of getting the same explained to him and he did not make any grievance that he had not been supplied with any Kannada translation of these articles of charges and statement of imputation. In fact he has furnished his reply found at Annexure A-3 dated 27.12.1990 in which he did not make any grievance of the article of charges and statement of imputa-



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tions being in English. Unauthorized absence is also not specifically denied by the applicant. When questioned by the IO, the applicant had positively answered stating that he has received the charge sheet dated 15.9.1990 and that he has also furnished reply on 27.12.1990. For the question whether the applicant is intended to nominate any defendant counsel, he has answered in the negative. When the IO specifically read out the charges of article in Annexure 1 and questioned the applicant whether he admits or denies the same, the applicant unequivocally admitted the articles of charges which was signed not only by the applicant but also by the IO as well as the Presenting Officer. The applicant did not make any grievance of his having not been properly questioned by the IO immediately thereafter. Only when the copy of the report was furnished to him calling upon him to put forth his say, he has come forward with the version that he was not properly questioned and that he had not admitted the charge. This stand taken by the applicant is clearly an after thought as was concluded by the DA and the AA. The applicant was charged that he had violated Rules 62, 63 and 162 of the P&T Manual Volume III relating to the unauthorized absence referred to earlier. When the applicant had admitted his absence being unauthorized, there was no scope for further inquiry into the matter and, therefore, the IO had made the report stating that the charges levelled against the applicant were proved. The DA considering the previous conduct of the applicant and also his admission of the charges has passed the order directing the removal of the applicant from service with immediate effect which was also upheld by the AA. Both the DA and the AA have stressed the fact that the applicant did not immediately make any grievance of the manner in which the IO has proceeded against him in recording his version

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of the admission of the charges. We are unable to accept the contentions of the learned counsel for the applicant that because the applicant was asked only with reference to the charges found in Annexure 1 and not to the statement of imputations in Annexure 2, there was denial of fair and reasonable opportunity and as such the orders passed by the DA and as AA cannot be sustainable. Regard being had to the fact of the applicant having been furnished with all the relevant papers and he having got the opportunity to go through the same and submit his statement, wherein he has not denied specifically about the absence being unauthorised except stating that he had made application for grant of leave with medical certificate subsequently, we do not feel justified in accepting the contentions of the learned counsel for the applicant that there was denial of reasonable opportunity for the applicant during the course of the inquiry.

6. The earlier absence of the applicant during the period from 8.9.1988 to 18.9.1988 was referred to in the article of charges only to point out that he was already punished for the said violation and was proceeded against under Rule 14 of CCS [CCA] Rules and he was not charged for this period in the present inquiry. Therefore, the contention of the learned counsel for the applicant that the applicant was proceeded against once again for the earlier period is incorrect and cannot be upheld.

7. Reference to Rule 20 of the CCS [Conduct] Rules, 1964, in memorandum of charges was only to point out that the applicant should not bring any political pressure on the IO or the DA and there was no specific charge levelled against the applicant under the said rule. Therefore, reference to Rule 20 has nothing to do with the charges relating to contravention of Rules 62, 63



and 162 of P&T Manual Volume III. Anyhow reference to Rule 20 of CCS [Conduct] Rules did not affect the inquiry against the applicant prejudicially.

8. Shri Holla sought to rely on the decision in TEJA NONGHAN V. UNION OF INDIA [1991]17 ATC 113 to support his contention that applicant was not properly questioned by the IO. But that was a case where specific contention was taken that the applicant therein did not understand the language in the charge sheet which is not the case herein. The applicant had never made any grievance of he having not understood the contents of either the articles of charges or the statement of imputation. Therefore, learned counsel for the applicant cannot seek much support from this decision relied on by him. The other two decisions of Supreme Court in JAGDISH PRASAD SAXENA V. THE STATE OF MADHYA BHARAT AIR 1961 SC 1070 and OM PRAKASH V. STATE OF U.P. reported in AIR 1960 SC 409 also do not help the applicant inasmuch as the facts of the present case are entirely different from the facts of those cases.

9. The applicant had applied for grant of leave with medical certificate for the period from 9.4.1990 to 10.6.1990 only on 12.6.1990, but not for subsequent period ie., upto 15.9.1990. This is clearly in contravention of Rules 62, 63 and 162 of the P&T Manual Volume III. Hence we find no merit in the contention of the applicant that his application was not considered by R-1.

10. Viewed from any angle, the application lacks merit. We are only required to examine if there is any denial of fair play, or reasonable opportunity or any miscarriage of justice in the domestic enquiry. No such instance is forthcoming in the instant

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case. Consequently we are unable to accept any of the contentions of the applicant. In the result the application fails and, therefore, it is dismissed but without any order as to costs.



Sd-

MEMBER [J]

Sd-

MEMBER [A]

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

23/11/93