

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated:-

22 JUN 94

APPLICATION NUMBER: 672 of 1993

APPLICANTS:

Sri N. V. Huthe Gowda  
I.O.

RESPONDENTS:

vs. Senior Supt of Post Offices,  
Mysore Div, Mysore and others.

- ① Dr. M. S. Nagaraja,  
Advocate, no. 11  
IInd Floor, 1st Cross,  
Sujatha Complex,  
Gandhinagar, Bangalore-9.
- ② Chief Post Master General,  
Karnataka Circle,  
Bangalore-1.
- ③ Sri. M. S. Padmarajiah,  
Sr. CGSC, 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 15 June 94.

Issued  
for

S. Shanwar  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.  
29/6

CENTRAL ADMINISTRATIVE TRIBUNAL,  
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 672/ 1993

Wednesday, the 15th day of June, 1994

Shri V. Ramakrishnan ... Member (A)

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

Shri N.V. Hutche Gowda,  
Aged 52 years,  
S/o Shri Venkata Gowda,  
Ex- Branch Post Master,  
G. Nagatihalli,  
Nagamangala Taluk,  
Mandya District.

... Applicant

( By Advocate Dr. M.S. Nagaraja )

Vs.

1. The Senior Superintendent of Post  
Offices, Mysore Division,  
Mysore - 570 020.
  2. The Director of Postal Services (S/C),  
Office of the Post Master General,  
Karnataka Circle,  
Bangalore - 560 001.
  3. The Director General of Postal Services,  
Ministry of Communications,  
Government of India, Dak Bhavan,  
Sansad Marg, New Delhi.
  4. The Member (Personnel),  
Ministry of Communications,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi.
  5. Union of India  
represented by  
Secretary to Government,  
Ministry of Communications,  
New Delhi.
- ... Respondents.

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

ORDER

Shri V. Ramakrishnan, Member (A)

This is the third round litigation when the applicant has come  
up before the Tribunal. The applicant who was dismissed from service  
when he was functioning as an extra department branch post master has



prayed that he should be reinstated in service with full back wages. When the applicant approached this Tribunal on the first occasion in OA 633/1989 the Tribunal while setting aside the orders of the appellate authority, directed the department to hand over the original memo of charges and the punishment order passed by the disciplinary authority to the petitioner. The petitioner was directed to represent to the appellate authority again. Accordingly, he filed an appeal to the appropriate authority, which rejected the same. Aggrieved by this order he had approached this Tribunal in OA 900/1990 where he sought a direction that impugned orders should be quashed and that he should be reinstated forthwith. This application was gone into in detail and on merits and after carefully considering the various contentions, the Tribunal found that the order of dismissal was in order and not liable to be interfered with. Accordingly OA 900/ 1990 was disposed of by an order rendered on 11.4.91 dismissing the application.

2. Subsequently, on 27.1.92, the applicant filed a revision petition before the Member (Personnel), Department of Posts, where he sought the intervention of the revising authority for quashing the punishment inflicted on him and for reinstating him in service. The main ground urged by the applicant in the revision petition was that in a criminal case filed against him on a connected matter, he was acquitted by the competent court. His revision petition was disposed of by the Member, Personnel, Department of Posts, by his order dated 17.6.92. The revising authority held that there was no merit in the revision petition as the departmental proceedings against the applicant were on different charges as compared to the criminal case. As such acquittal of the applicant by the Court in the criminal case has nothing to do with the departmental ~~order~~ taken for proved misconduct.

3. The revising authority, inter alia, had also <sup>mentioned</sup> ~~remembers~~ that the petitioner was afforded full opportunity at all stages to defend himself. We may extract para 4 of the revising authority's order dated 17.8.92 as below:-

"I have carefully gone through the petition and all other relevant records/ papers connected with this case. I find that the petitioner was afforded full opportunity at all stages to defend himself. However, he deliberately avoided to receive the various correspondence/ orders sent to him by registered post as a result of which, the same were received back undelivered. As such, ex-parte proceedings were held, which resulted in his removal from service. The petitioner intentionally did not prefer any appeal initially for about 4 years against the orders passed by the disciplinary authority. His appeal dated 26.9.88 preferred after a lapse of about 4 years was correctly rejected by the appellate authority. On the directions of CAT, Bangalore Bench, he was supplied with copies of memo of charges and the punishment order passed by the disciplinary authority to afford him an opportunity to represent to the appellate authority again. He availed of the opportunity. However, his appeal was rejected by the appellate authority on merits after due deliberation. Thus, I am convinced that the contention of the petitioner that enquiry was conducted behind his back is untenable and cannot be accepted inasmuch as full opportunity was given to him both during and after enquiry to defend himself."

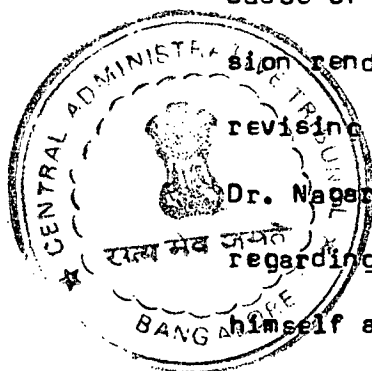
The applicant is before us challenging the decision of the revising authority which had confirmed the orders of the disciplinary authority and appellate authority.

4. We have heard Dr. M.S. Nagaraja for the applicant and Shri M.S. Padmarajaiah, Senior Standing Counsel, for the department.

5. Dr. Nagaraja contends that the applicant has got a fresh cause of action on account of the fact that subsequent to the decision rendered on 11.4.91 in OA 900/ 1990, he had approached the revising authority and it turned down his revision petition.

Dr. Nagaraja further argues that the revising authority's contention regarding the opportunity available to the applicant to defend himself as indicated in the order at para 4 stated above is in

....4/-



conflict with the Supreme Court judgement in Dr. Ramesh Chandra Tyagi vs. Union of India and others which was decided on 11.2.94 (1994 Supreme Court Cases L&S 562). The learned counsel brought to our attention, in particular para 7 of the judgement where the Supreme Court has observed:

"May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non est the order of dismissal falls automatically."

Dr. Nagaraja submits that in the light of the above observation, the applicant has an excellent case on merits and the decision of the revising authority cannot be sustained. He does not press any other point vis-a-vis the order of the revising authority. He also refers to Section 22 of the Administrative Tribunal's Act and submits that the Tribunal has considerable latitude in its functioning so as to ensure that substantial justice is done.

6. Shri Padmarejaiah submits that this question has already been gone into by the Tribunal in its judgement in OA 900/ 1990 and the application was dismissed. It is, therefore, not open to us to go into the same issue as it is barred by res judicata. The learned standing counsel further asserts that Section 22 cannot be

stretched to exclude the principles of res judicata as the concerned principle is based on public policy and the same should therefore apply in respect of proceedings before the Tribunal. Shri Padmarajaiah contends that on the short ground that the application has to fail.

7. On perusal of the decision of the Tribunal in OA 900/ 1990 we notice that the main issue urged by Dr. Nagaraja regarding the tenability of ex parte proceedings was gone into in detail and the Tribunal had reached the conclusion that they were in order. We are afraid we cannot go into this question again. If the applicant had felt aggrieved by the order of this Tribunal in OA 900/ 1990 he should have agitated the same before the appropriate forum and not come to us virtually with the plea to sit on appeal over the earlier decision. The fact that the revision petition was filed subsequent to the judgement in OA 900/ 1990 and the same was rejected cannot revive the applicant's case which had already been gone into and decided on merits by the Tribunal earlier.

We, therefore, find no merit in this application and accordingly dismiss the same. No costs.



( A.N. Vujjanaradhya )  
Member (J)

TRUE COPY

( V. Ramakrishnan )  
Member (A)

TCV

*S. Shankar*  
29/6  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE