

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 21 APR 1994

APPLICATION NUMBER: 868/93

APPLICANTS: Smt. M. Shankari RESPONDENTS: Chief General Manager
Telecom, Belon & other

To.

- 1) Sri P.A. Kulkarni, Advocate
No. 48, 57th "A" Cross, IV Block
Rajajinagar, Bangalore-10.
- 2) The Chief General Manager,
Telecom, Karnataka Circle,
Ulsoor, Bangalore - 560 008
- 3) Sri M.S. Padmarajiah
Senior Standing Counsel for Central Govt.
High Court Buildings, 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 15-4-1994

Issued on

22/4/94

Rz.

o/c

for *S. Shanmugam*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 868/ 1993

TUESDAY, THE 5TH DAY OF APRIL, 1994

Shri V. Ramakrishnan ... Member (A)

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

Smt. M. Shankari,
Transmission Assistant,
Telephone Exchange,
Kumta - 581 343,
Karwar District. ... Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Chief General Manager,
Telecom,
Karnataka Telecom Circle,
Ulsoor, Bangalore - 560 008.
2. Director, Telecom,
Area Office,
Mangalore - 575 001.
3. Telecom District Engineer,
KARWAR. ... 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 Shri P.A. Kulkarni for the applicant
as also Shri M.S. Padmarajaiah for the department. We
admit the application and proceed to dispose of the
same on merits.

....2/-

2. The applicant is aggrieved by the action of the department in refusing to let her cross the efficiency bar which fell due on 1.12.89. When she had approached this Tribunal earlier in OA 241/93 dated 15.7.93 as at Annexure A-1, we had directed as follows:

"As she has not been on unauthorised absence during the periods, her absence alone will not be valid ground to deny her the benefit of crossing of the efficiency bar. We are informed that she is at present attending to her duties. We, therefore, direct the respondents to reconsider the matter and take a view regarding her eligibility to cross the efficiency bar from the relevant date objectively on the basis of her performance. This direction should be complied with within a period of three months from the date of receipt of copy of the order."

3. We now find that her case was considered by the departmental promotion committee on 30.9.93. We had perused the proceedings of the aforesaid DPC. We find from the proceedings that her case was reconsidered after going through the confidential reports of the official as may be seen from the following extract of the DPC proceedings:

"The D.P.C. has reconsidered the case objectively after going through the service records and confidential reports of the official and come to the following conclusion.

Smt. M. Shankari was transferred from Mangalore to Karwar under C.O. letter No. Staff/3-16/XXX dated 14.6.89. She was posted to Dandeli exchange. She was relieved from Mangalore T.D. w.e.f. 30.9.89. She was continuously on leave on medical grounds. Meanwhile she went on sending representation to CGMT, Bangalore for change of posting from Dandeli to Kumta. She was posted to Kumta under C.O. letter No. Staff/3-16/XXX dated 10.4.90. She reported at Kumta exchange on

....3/-

21.4.90. She was directed to appear for medical examination under this office letter No. Q. 1965/4 dated 16.12.89, which was delibered to her on 20.12.89 as per the acknowledgement card. She failed to appear before the District Surgeon for medical examination. The fact that she failed to appear before District Surgeon for medical examination and her repeated attempts during her leave to get the revised posting reveals that her prolonged absence was deliberate. Had she been obedient and work oriented, she would have reported at Dandeli and tried for change of posting. The Department, being a service oriented one, was deprived of her services for unduly long period of more than 6 months from 30.9.89 to 20.4.90. The work and efficiency of the department suffered to that extent. The covering sanction of the leave was "fait accompli" on compassionate grounds to regularise the period of absence. Hence her services were not satisfactory.

In view of the above, the DPC, after objective analysis of the case, do not recommend Smt. M. Shankari, TA Kumta, for crossing E.B. from 1.12.89 & 1.12.90 from the stage of Rs. 1560/- to Rs. 1600/-."

12 In the ~~next para~~, ~~however~~, the DPC had set out at length the fact that she was on prolonged absence for the period from 30.9.89 to 20.4.90 and the work and efficiency of the department suffered on account of such absence. It is admitted in the proceedings that leave was later on sanctioned to regularise the period of absence on 'compassionate ground'. The proceedings also state that when she was transferred from Mangalore to Dandeli in June 1989, she did not join her duties at Dandeli, but she made a representation for change of posting to Kumta after she was relieved from Mangalore in September, 1989. The department eventually acceded to her request and she was posted to Kumta by an order dated 10.4.90 and she reported there on 21.4.90.

The department obviously had come to the conclusion that her request for a change of posting was justified as they had acceded to the same. The proceedings of the DPC further state that she was directed to appear before the medical board by an order dated 16.12.89 but she had failed to do so which led the department to conclude that her prolonged absence was deliberate. The DPC makes this presumption despite the fact that the department eventually regularised the period of absence with a sanction after she reported for duties at Kumta. There is no reference at all in the proceedings or any remark in her ACR Dossier which can be taken to support the decision of the department in not allowing her to cross the EB. In fact, the CR Dossier contains no such remark.

4. It is clear from the proceedings of the DPC that there is nothing in the ACRs of the official which would stand in the way of her being allowed to cross the EB. This is also borne out by the ACR of the applicant made available to us. The only reason for the department refusing to let her cross the EB was because of her absence from duty for the period from 30.9.89 to 20.4.90 and her failure to take the medical examination as directed on 6.12.89, even though the period of absence ^{was} ~~got~~ regularised subsequently by the department without insisting on a medical certificate. We are informed that she is working regularly after April, 1990. The stand of the department is clearly not in consonance with the directions of the

Tribunal rendered on 15.7.93 referred to supra as there has been no objective reconsideration based on her performance. The department had once again harped upon her absence from 30.9.89 to 20.4.90 which is not unauthorised when the Tribunal had already held that it cannot be a valid ground for refusing to let her cross the EB.

5. In the circumstances, we quash the order dated 5.10.93 as at Annexure A-2 refusing to permit the applicant to cross the efficiency bar on 1.12.89 and 1.12.90. We direct the authorities to issue an order allowing her to cross the E.B. when it fell due with consequential benefits as per rules.

6. The learned standing counsel brings to our notice that the applicant had not exhausted the normal remedy of filing a petition to the appropriate authority against the orders of the department in refusing to cross the EB. In the facts and circumstances of the case, we hold that there is no need for us to direct the applicant to file an appeal to the department.

7. We accordingly allow the application and direct that the applicant shall be permitted to cross the efficiency bar when it fell due and she shall be extended consequential benefits as per rules. This will be done by the department within three months from the date of receipt of a copy of this order. No costs.

TRUE COPY

Sd/-

21/4

(A.N. Vujjanaradhya)
Member (J)

ADDITIONAL DEPUTY
BANGALORE

TCV

Sd/-

(V. Ramakrishnan)
Member (A)