

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 24 FEB 1994

APPLICATION NO(s) 876 of 1993.

APPLICANTS:

T.H.Vittalamurthy
T.O.

RESPONDENTS:

v/s. Garrison Engineer, Mount Abu, Rajasthan
and Other.

1. Sri.S.M.Babu, Advocate,
No.242, Kanaka Mandiram,
Fifth Main Road,
Gandhinagar, Bangalore-9.
2. The Chief Engineer,
Southern Command,
Pune-411001.
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.

-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 10-02-1994.

Issued
25/2/94

of
c

S. Shetty 24/2
For DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO.876/93

THURSDAY, THE 10TH OF FEBRUARY, 1994

Shri V. Ramakrishnan

... Member (A)

Shri A.N. Vujjanaradhyā

... Member (J)

Shri T.H. Vittalamurthy, Major,
Ex. B/R Grade-I, M.E.S.,
Garrison Engineer,
R/o 455, 1st Stage,
Industrial Suburb,
Mysore.

... Applicant

(By Advocate, Shri S.M. Babu)

VS.

1. Garrison Engineer, ADGES,
Mount Abu,
Rajasthan.

2. The Chief Engineer,
Southern Command,
Pune.

... Respondents

(By Advocate, Shri M. Vasudeva Rao,
Standing Counsel for Central Govt.)

O R D E R

Shri V. Ramakrishnan, Member (A):

The applicant in this case was working as a Civilian Superintendent in the establishment of Chief Engineer, Southern Command. For certain reasons disciplinary proceedings were drawn up against him in August, 1982 and on completion of the enquiry he was inflicted with the penalty of dismissal from service with effect from 30.11.84. He had remained absent from duty for the period from 1.8.82 to 30.11.84. He approached the Tribunal against the order of dismissal in OA 2051/86 of Bangalore Bench where the penalty



of dismissal from service was modified to that of compulsory retirement from service with effect from 30.11.84.

The operative portion of the Tribunal's order reads as follows:

"39. In the light of our above discussion, we make the following orders and directions:-

- (1) We dismiss this application in so far as it challenges the orders of the AA& DA to the extent that they hold that the applicant was guilty of the charge levelled against him.
- (2) We allow this application in part and modify the penalty of dismissal from service imposed on the applicant to one of compulsory retirement from service from 30.11.84. We further direct the respondents to commute the pension and other terminal benefits due to the applicant on this basis and extend him all such benefits to which he is entitled to however denying him only the actual arrears of pension from 30.11.84 to 31.7.87 with all such expedition as is possible in the circumstances of the case and in any event, within a period of four months from the date of receipt of this order."

We find that the matter had gone to the Supreme Court and the applicant got pensionary benefit for the period from 30.11.84 (when the modified penalty of compulsory retirement took effect) upto 31.7.87. There was no other modification of the order of the Tribunal by the Supreme Court.

2. He had approached the Tribunal again in OA No. 332/1992 where he sought a direction to the respondents that the period from August 1982 to November, 1984 when he had not attended to work should be treated as duty for all purposes. When this question had come up before the

competent authority, he passed an order (Annexure A-6) which inter alia, treated the period from 1.8.82 to 30.11.84 as 'dies non'. The applicant had withdrawn the application (OA No. 332/92) and has now filed a fresh application before us, where he has sought a direction that the period from 1.8.82 to 30.11.84 should be treated as duty for all purposes and that the order at Annexure A-6 should be quashed.

3. We have heard Shri S.M. Babu, the learned counsel for the applicant and Shri M.V. Rao, learned standing counsel.

4. Shri Babu contends that since the penalty of dismissal was reduced to that of compulsory retirement, the period of absence from 1.8.82 to 30.11.84 should necessarily be treated as duty for all purposes. We are unable to agree with this contention as the applicant had not been fully exonerated. There is no automatic legal right for the period of absence to be treated as a period on duty for all purposes. We may take the analogy of the provision of FR 54 in this case. The admitted position here is that the applicant was inflicted a major penalty, namely the modified penalty of compulsory retirement as against the original penalty of dismissal from service and as such FR 54 (3) does not apply to this case. The disciplinary authority has passed an order regarding the period of absence from work and treated the same as 'dies non'. We find no infirmity in this order. We may also mention that when



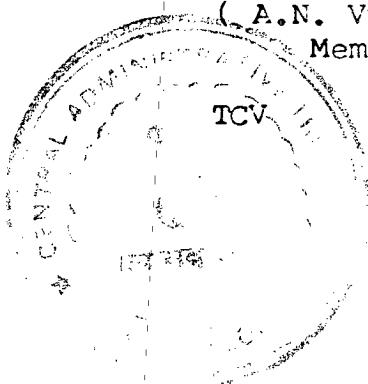
the applicant approached this Tribunal in OA 2051/86 challenging the orders of the disciplinary authority and appellate authority, the Tribunal had dismissed that petition and it did not interfere with the finding that the ~~Applicant~~ was guilty of the charge. The Tribunal had however modified the penalty from dismissal to that of compulsory retirement. Neither the Tribunal nor the Supreme Court had given any other benefit with regard to the period of absence from August 1982 to November, 1984. In view of this position also, the applicant is not entitled to agitate the question again.

5. In the light of the foregoing, we find no merit in this application and we accordingly dismiss the same. No costs.

Sd-

11/6/2174

(A.N. Vujjanaradhy)
Member (J)



Sd-

10/7/2174

(V. Ramakrishnan)
Member (A)

TRUE COPY

St. Shanthi
SECTION OFFICER 24/2
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE