

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 21 JAN 1994

APPLICATION NO(s) 96 of 1993.

APPLICANTS: Dr. P. A. Rajan v/s. RESPONDENTS: Secretary, M/o. Health and
Family Welfare, New Delhi.

TO.

1. Dr. M. S. Nagaraja, Advocate,
No. 11, Second Floor,
First Cross, Sujatha Complex,
Gandhinagar, Bangalore-9
2. The Secretary,
Ministry of Health and Family Welfare,
New Delhi.
3. Sri. M. S. Padmarajaiah, 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 28-12-1993.

R. Shanley 21/1/94
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

by
Shanley
gm

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

APPLICATION NO.96/93

DATED THIS THE TWENTY EIGHTH DAY OF DECEMBER, 1993

Present: Shri S.Gurusankaran, Member (A)
Shri A.N.Vujjanaradhya, Member (J)

Dr. P.A.Rajan
Aged 40 years
S/o Sri Porkodian,
27, 2nd Cross, 7th Block,
Koramangala
Bangalore-560 034.

...Applicant

By Advocate Dr. M.S.Nagaraja.

Versus

Union of India
represented by the
Secretary to Government of India,
Ministry of Health & Family Welfare
New Delhi.

...Respondent

By Advocate Shri M.S.Padmarajaiah, S.C.G.S.C.

O R D E R

Shri S.Gurusankaran, Member (A)



In this application, filed under section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the order dated 27.12.91/30.12.91 (Annexure A7) by which the president has imposed the penalty of dismissal from service on the applicant and has prayed for quashing the

order dated 27.12.91/30.12.91 and directing the respondent to reinstate him forthwith with full back wages.

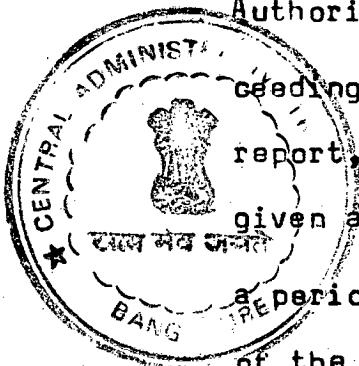
2. The respondents have filed their reply contesting the application.

3. We have heard Dr. M.S.Nagaraja for the applicant and Shri M.S.Padmarajaiah for the respondents. During the preliminary hearing of the case Dr. Nagaraja had pointed out that the Disciplinary Authority, namely the President, had disagreed with the findings of the Inquiry Officer in as much as even though the Inquiry Officer had held that the second ingredient of the article or the charge was not proved, the Disciplinary Authority has disagreed with the findings of the Inquiry Officer and held that the second ingredient of the charge also stands proved due to overwhelming documentary evidence. He strongly argued that whenever the Disciplinary Authority disagrees with the findings of the Inquiry Officer, it is already well settled that the same should be intimated to the charged official to give him an opportunity to put forth his case before the Disciplinary Authority takes a final decision in the matter of imposing or the penalty. In view of this, we directed the respondents

A

to produce necessary records to show as to whether the advice or the UPSC to the President indicating that they do not agree with the findings of the Inquiry Officer as far as second ingredient or the charge is concerned was given to the applicant to submit his explanation before the actual penalty was imposed. Today during the hearing Shri M.S.Padmarajaiah has produced the records and, in all fairness, admitted that the recommendations of the UPSC to the President dis-agreeing with the Inquiry Officer's report was not supplied to the applicant to put forth his case before the President imposed the punishment.

4. We have carefully gone through the orders passed by a Bench of this Tribunal on 6.12.1990 in OA 1179/89 filed ^{by} the applicant, in which he had earlier challenged the dismissal orders passed by the President on the very charge. The Tribunal had ordered quashing of the impugned orders dated 12.4.88 and 13.12.88 and remanded the case to the Disciplinary Authority for commencing of the Disciplinary Proceedings from the ^{stage of} ~~date~~ of receipt of Inquiry Officer's report, if so advised. The applicant was already given an opportunity to make a representation within a period of one month. Even though the recommendations of the UPSC had been supplied to the applicant along with punishment order dated 21.4.88, ~~there~~



recommendations were made without considering the representation of the applicant against the Inquiry Officer's report. Again, even though vide enclosure to Annexure A7, the UPSC had found no substance in the representation of the applicant and also held that there was nothing new brought out by the applicant that may affect the merit of the case, this in fact amounted to the UPSC advising the President not to accept the Inquiry Officer's report in so far as second ingredient of the charge is concerned. It is by now well settled that if the Disciplinary Authority does not agree with the findings of the Inquiry Officer on any of the charges or any of the ingredient of the charge, the same should be communicated with brief reasons to the charged official, so that he can submit his explanation and the same can be considered by the Disciplinary Authority before taking a final decision. Failure to do so has vitiated the disciplinary proceedings, violating the principles of natural justice. In view of this, on this ground alone, the applicant has to succeed. Shri. Padmarajaiah argued that the failure of the respondents in not advising the applicant about the Disciplinary Authority not agreeing with the ^{findings} ~~findings~~ of the Enquiry Officer as far as the second ingredient of the charge is concerned would not ~~viti~~ ^{not} vitiate the Disciplinary proceedings. He pointed out that the first

X

ingredient of the charge has already been held ~~passed~~ ^{passed &}

by the Enquiry Officer and the Disciplinary Authority could have ~~awarded~~ ^{awarded} the penalty of Dismissal on that

ingredient of the charge ~~above~~ ^{above}, since that was also serious enough concerning the applicant securing dishonestly and fraudulently eight false medical bills.

We have to straight away reject this submission, as it is purely hypothetical. It will be wrong to presume that the Disciplinary Authority would have imposed the same penalty ^{ya} ~~only~~ the first ingredient of the charge was held to be ~~passed~~ ^{passed &}. Hence the applicant succeeds.

5. Even though the applicant had raised various other issues regarding merits of the case and the respondents have also resisted the same, we are not going into the same, since the violation of principles of natural justice had vitiated the Inquiry even at the stage of accepting the Inquiry Officer's report and before the punishment order could be passed by the Disciplinary Authority.

6. In view of the above we allow this application partly with the following directions:

- 1) The order of dismissal dated 27-12-91 at Annexure A7 is quashed.
- 2) The respondents have the liberty to proceed with the Inquiry from the stage of supplying the advice of the UPSC to the applicant amounting to the Disciplinary Authority dis-agreeing with the report



of the Inquiry Officer as far as the second ingredient of the charge is concerned, if so advised.

3) The applicant may make a representation within a period of one month from today to the Disciplinary Authority bringing out his side of the case regarding advice of the UPSC disagreeing with the Inquiry Officer's report as far as the second ingredient of the charge is concerned. On receipt of the same the respondent, if so desired, can proceed with the Inquiry further and take a final decision and advise the applicant within a period of three months from the date of receipt of representation from the applicant.

4) The applicant shall be reinstated in service in accordance with law.

5) In view of the circumstances of the case and the long legal battle being fought by the applicant, we award the cost of this application, which is assessed as Rs.500/-.

7. At this stage Shri.M.S.Padmarajaiah, the learned counsel for the respondents, strongly pleaded for waiver of the cost of the application.

We are unable to agree with the same, since we find

that the applicant, being an officer, has been proceeded against and the punishment has been imposed by the highest constitutional authority and serious lacunae or violation of principles of natural justice has recurred during the disciplinary proceedings for a second time causing harassment to the applicant. In view of this, we feel that in all fairness, the cost of the application should be awarded and we award the same. The application is disposed off accordingly.

Sd-

28/12/12

(A.N.VUJJANARADHYA)
MEMBER (J)

Sd-

28/12/12

(S.GURUSANKARAN)
MEMBER (A)



TRUE COPY

R. Shankar
21/1/94

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: **2 DEC 1994**

Miscellaneous

APPLICATION NO: 531/94 in OA.No.96/93.

APPLICANTS:- Dr.P.A.Rajan,
V/S.

RESPONDENTS:- Secretary,M/o.Health & Family Welfare,NDelhi.

I.


1. Dr.M.S.Nagaraja, Advocate, No.11, First Cross, Second Floor, Sujatha Complex, Gandhinagar, Bangalore-560 009.
2. Sri.M.S.Padmarajaiah, Senior Central Government Standing Counsel, High Court Building, Bangalore-560 001.

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

--XX--

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 25-11-1994.

ok
Issued on 2/12/94
Gan

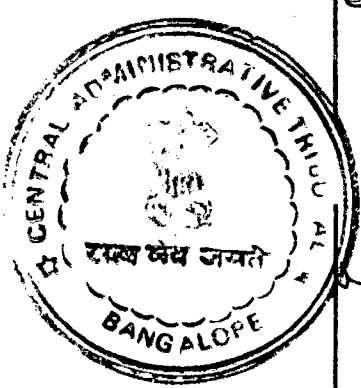
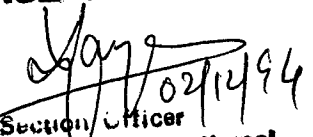

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

Sr. Dr. P. A. Rajan, v. Secy. M.O. Health & Family Welfare
N. Delhi -

Application No. 96/93 of 199

ORDER SHEET (contd)

Date	Office Notes	Orders of Tribunal
		<p>PGSVC/TURMA 25/1/54 <u>Orders on MA No. 53/54</u></p> <p>On the circumstances explained by Sh. MSP we accede to his request of extension of time by a further period of 3 months to enable the Department to carry out the direction. The period of 3 months will be reckoned from the date of this order</p> <p style="text-align: right;">Sd- V VC</p> <p style="text-align: center;"></p> <p style="text-align: right;">TRUE COPY  Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p> <p style="text-align: center;">7</p>