

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 28 MAR 1995

APPLICATION NO. 2031 of 1994.

APPLICANTS: Smt. Shylaja Devaraj, Bangalore.

V/S.

RESPONDENTS: Secretary, Ministry of Information and
Broadcasting, New Delhi and two others.

To

1. Sri. Subramanya Jois Advocate and
Sri. Ranganath Jois, Advocate, No. 36,
'VAGDEVI' Shankara Park,
Shankarapuram, Bangalore-560 004.
2. Sri. M. S. Padmarajaiah, Senior Central
Govt. Standing Counsel, High Court Bldg,
Bangalore-560 001.

*sent by
air
on
28/3/95*

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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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 21-03-1995.

Issued on
29/03/95

for *Shy*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.2031/94

TUESDAY THIS THE TWENTY FIRST DAY OF MARCH 1995

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri T.V. Ramanan ... Member [A]

Smt. Shylaja Devaraj,
Aged 43 years,
Programme Executive,
Doordarshan Kendra,
Bangalore.

... Applicant

[Shri Senior Advocate Subramanya Jois
and Advocate Shri Ranganath Jois]

v.

1. Union of India represented by its Secretary, Ministry of Information and Broadcasting, New Delhi-110 001.

2. Sri Bhaskar Ghose, Major, Secretary to Govt. of India, Ministry of Information and Broadcasting, New Delhi-110 001.

3. The Director, Doordarshan Kendra, Bangalore. ... Respondents

[By Shri M.S. Padmarajaiah... Senior Standing Counsel for Central Govt.]

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. We have heard learned Senior Counsel Shri Subramanya Jois who has appeared in support of this application which arises from an order passed by Respondent



['R' for short] No.2 Secretary to Government of India, Ministry of Information and Broacasting dated 11.11.1994 directing placement of the applicant Smt. Shylaja Devaraj, Programme Executive, Doordarshan Kendra, Bangalore, under suspension on the ground that she was under investigation for having committed a criminal offence.

2. When the matter came up for hearing today, we asked Shri Jois at the very threshold as to how this application is maintainable since the applicant has not exhausted the right of appeal which is clearly open to her provided under Section 20 of the Administrative Tribunal Act ['the Act' for short]. We may in this connection advert to sub-clause [1] of Section 20 of the Act, which reads --

"[1] A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

3. Based on the aforesaid provision we were constrained to accost the applicant as she had in fact not exhausted the remedy of appeal since in our view such a remedy was available. We were told that the applicant had not exhausted the remedy of appeal for the reason that the impugned order was one that does not come within the provisions under which it was supposed to have been made and it is argued that if the order had been made under the format of the law then the applicant would have preferred an appeal

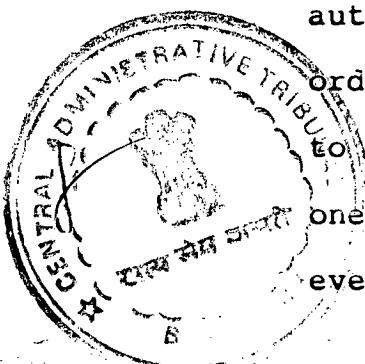
but not otherwise. To put this argument in its proper prospective and to make it more explicit we invited the attention of the counsel to Rule 10 of the Central Civil Services [Classification, Control and Appeal] Rules, 1965 ['Rules' for short] which reads:

"[1] The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension --

...."

We also referred to rule 23 of the Rules which provides for remedy of appeal to a Government servant placed under suspension.

4. Rule 10 refers to the power of the authority to place a Govt. servant under suspension if it is found that he or she is the part of on-going criminal investigation and that the applicant being under investigation for criminal offence is not in dispute. But learned counsel takes the stand that the authority who placed the applicant under suspension does not have the competence or jurisdiction and, therefore, the resultant order is not one made under Rule 10 of the Rules. This argument fails to persuade us. Until somebody else more competent than the original authority is able to adjudge the tenability of the order made under Rule 10 of the rules, it is not open to the affected person to say that the order is not one made a fortiori under Rule 10 of the rules and even he or she could not take cognizance of it and



therefore, also holds him or her free from the fetters of the provisions of any appeal. It is thus argued such a person can approach this Tribunal which in any event has jurisdiction, straightaway.

5. As pointed out earlier, the question whether the impugned order was made under Rule 10 of the rules or not is of course a matter in issue and if we can decide that issue, the appellate authority can also do so and there is no doubt about it. Therefore, the applicant cannot feel free to dissuade herself from the objection to avail the right of appeal. The law specifically provides for.. Hence we cannot accede to the submission of Shri Jois that in the circumstances referred to supra the applicant was advised not to avail the remedy of appeal.

6. We think this is a fit case in which the applicant should have moved the Appellate Authority and in no circumstances can she be said to be at liberty to put aside that remedy. Hence, it is we dispose of this application directing the applicant to file an appeal under Rule 24 of the Rules to the President of India who is now the designated appellate authority. Shri Jois submits that there is the question of limitation and that appears to be real but we clear the passage for the applicant by adding that if the applicant were to prefer such an appeal within two weeks



from the date of this order, the appellate authority will consider and dispose of the same on merits and dehors of the question of any limitation.

7. Shri Jois also says that we must impose a time limit for the disposal of the appeal. In the normal course we would hesitate to set a time limit for disposal of her appeal to the President of India. Acceding, however, to the submission of Shri Jois we direct the R-1, Government of India, Ministry of Information and Broadcasting, to move the President in the matter and request the President to dispose of the appeal within two months from the date of receipt of the memorandum of appeal if filed by the applicant.

8. With the foregoing we conclude this order. No costs.

9. All the contentions raised herein are, however, left open for subsequent adjudication if necessary. We are constrained to express the view of non-exhaustion of the appeal remedy being a bar because we have taken a similar view in the case of J. Alexander in O.A. No.340/93 disposed of on 12.4.1993 which order having since, ^{been} confirmed by the Supreme Court.

TRUE COPY

[Signature]
28/3/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

MEMBER [A]

VICE-CHAIRMAN