

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:-22 AUG 1994

APPLICATION NUMBER: 334 of 1994

APPLICANTS:

Sri H. J. Krishnamurthy
To.

RESPONDENTS:

The Director & Appellate Authority,
Dept of Space, Hassan and other

① Sri P. S. Marjunath, Advocate, "Sri Bhavana Nilka"
4/2, Miller Road, BANGALORE-560052

② Sri M. S. Padmarajiah, Sr. C.G.S.C.
High Court Bldg, BANGALORE-560001

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 01-08-94

Issued on

22/08/94

R.

of

for

S. S. Narayana
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 334 OF 1994

MONDAY, THIS THE 1ST DAY OF AUGUST, 1994.

Mr. Justice P.K. Shyamsundar,

.. Vice-Chairman.

Mr. T.V. Ramanan,

... Member(A)

H.J. Krishnamurthy,
Aged 37 years,
S/o late H.T. Javarayappa,
No. 3413/A, 4th Cross,
Hasanamba Road,
Hassan-573 201.

.. Applicant.

(By Advocate Shri P.S. Manjunath)

v.

1. The Director & the Appellate Authority, Department of Space, Government of India, INSAT Master Control Facility, Hassan-573 201.
2. The Administrative Officer-II, Disciplinary Authority, Department of Space, Government of India, INSAT Master Control Facility, Hassan-573 201.

.. Respondents.

(By Standing Counsel Shri M.S. Padmarajaiah)

ORDER

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

We have heard both sides. The applicant said to be a chronic absentee was removed from service for such chronic absentism after holding an inquiry at which he was afforded a number of opportunities to present his case but did not show his face at all. The charge against him was that he remained unauthorisedly absent from 16-12-1991 and that he was always deserting his post frequently causing serious inconvenience to the office. Umpteen attempts were made to bring him to the arena of the inquiry which proved to be futile. Instead records show that he went on sending telegrams one after the other asking for extension of leave



on one pretext or the other, but never made any attempt to appear before the inquiring authority at all. The exhausted authority finally issued a public notice of the proposal to hold an inquiry in a local newspaper which did not make any impact on the applicant who cold shouldered even that opportunity.

2. Finally, when all the efforts of the authorities to bring the applicant to the inquiry proved futile, they held the inquiry ex-parte, concluded it and the disciplinary authority after accepting the findings of the inquiring authority imposed the punishment of dismissal from service on the applicant. From that order the applicant appealed which however resulted in the modification of the punishment with the dismissal order being modified to one of removal from service. From that order a review petition filed to the higher authority also drew a blank. Hence, this application.

3. Having heard the learned counsel for the applicant at length, we find ourselves unable to aid the applicant at all. We have the records of the inquiry before us and have perused the same and they clearly demonstrate the endemic absentism peculiar to the applicant. We are now told at the Bar the applicant was physically prevented from attending the inquiry by his father-in-law who had literally held him incommunicative at his coffee estate. When we asked why the father-in-law was doing all this, we were told by the learned counsel that the father-in-law was against his son-in-law working in a small job for a pittance and considered the whole thing to be infra dig. We are however unable to accept this story as true because it comes for the first time across the Bar without there being any foundation anywhere except the interested assertion in the pleadings. The fact that he managed to send so many telegrams from the residence of his father-in-law asking for

extension of leave indicates that he was indeed a free agent and was not under any restraint. In the interregnum he appears to have consulted a neurologist ~~doctor~~ by name Dr. Nagesh at Hassan who had advised him complete rest for mental related illness for the period from 15-1-1992 to 8-7-1992, but the certificates issued thereto have not been relied upon by the authorities who wanted a better proof of his indisposition. Be that as it may, facts do indicate that he was free to run around and that it belies the story that the father-in-law or anybody else had prevented him from attending the office and therefore it is true that the applicant had not appeared before the inquiring authority although he apparently had the knowledge of the proceedings. The fact that he had applied for leave from 16-12-1991 to 9-7-1992 which was not sanctioned hardly makes any ground to sustain an argument that the authorities had vindictively proceeded against him. Whatever that may be, he should have gone before the inquiring authority and put forth his case justifying his absence and joined the issue with the authority in the matter of availment of leave.

4. We are told by the learned Standing Counsel appearing for the respondents that there was of ^{no} any kind leave to the credit of the applicant, ^{all} that leave of any kind and of any category had been granted and that the authority was not in a position to grant any more leave. Be that as it may, we are convinced that this is not a case in which the applicant did not have suitable opportunity to defend himself at the inquiry and on the contrary we think this is a case in which the applicant turned up his nose at the inquiry and deliberately refrained from participating in the inquiry. In the circumstances, the view taken by the authorities that the applicant was suffering from chronic absentism deliberate in nature resulting in the appropriate penalty that cannot therefore be interfered ^{with}. The

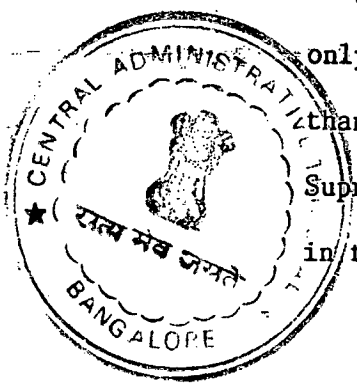
The appellate authority was kindly towards the applicant and has converted the punishment of dismissal to one of removal from service. That clearly indicates that the appellate authority was compassionate enough but we have no powers to improve on that nor can we ask the authorities to make any amends in favour of the applicant. We see no reason to interfere with the order of the disciplinary authority.

5. The learned counsel for the applicant brought to our notice the decision of the Supreme Court in UNION OF INDIA AND OTHERS v. GIRIRAJ SHARMA (AIR 1994 SC 215). In that case the employee concerned had been dismissed for overstaying leave. Their Lordships however felt that the punishment imposed was too harsh and totally disproportionate to the misdemeanour of overstaying leave for a period of 12 days. In that situation, their Lordships interfered and directed reinstatement with monetary service benefits with liberty to impose a minor punishment. Apart from the fact that we do not enjoy such overall powers the Supreme Court exercises under Article 141 of the Constitution, the case before the Supreme Court is clearly distinguishable. There the man had overstayed for a period of only 12 days, but here we find the man has overstayed for more than 200 days. Therefore, there is no comparison between the Supreme Court decision and this case, consequently the dicta in that case cannot prevail herein.

6. This application, therefore, fails and is dismissed.

No costs.

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

MEMBER(A)

VICE-CHAIRMAN.