

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 7 APR 1994

APPLICATION NUMBER: 171 of 1994.

APPLICANTS:

Sri.V.Mithran
To.

RESPONDENTS:

v/s. Secretary, M/o. Per. Public Grievances and
Pension, N Delhi and Others.

1. Sri.V.Narasimha Holla, Advocate,
No.317, 6th Block, 12th-A-Main,
Rajajinagar, Bangalore-10.
2. The Vice-Chairman,
Central Administrative Tribunal,
Fifth Floor, Kandomkulathy Towers,
M.G.Road, Ernakulam-682011.
3. Sri.M.S.Padmarajaiah, Senior Central
Govt.Stng.Counsel, High Court Bldg,
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 25th March, 1994.

Issued on
7/4/94
RE

o/c

for DEPUTY REGISTRAR 7/4/94
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.171/94

FRIDAY THIS THE TWENTY FIFTH DAY OF MAR, 1994

MR. JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN
MR. T.V. RAMANAN MEMBER (A)

Shri V. Mithran,
Private Secretary,
Central Administrative Tribunal,
Ernakulam Bench,
Ernakulam

Applicant

(By Advocate Shri V.N. Holla)

v.

1. Union of India through
The Secretary,
Ministry of Personnel .
Public Grievances and Pension,
Department of Personnel & Training,
New Delhi
2. The Chairman,
Principal Bench,
Central Administrative Tribunal,
New Delhi through
The Registrar,
Principal Bench,
Central Administrative Tribunal,
New Delhi
3. The Vice Chairman,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam, through
The Deputy Registrar (A),
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam
4. The Deputy Registrar (A),
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam
5. Shri K.V. Prabhakaran,
Sr. Personal Assistant,
Central Administrative Tribunal,
Ernakulam Bench,
Ernakulam

Respondents

(By learned Standing Counsel)
Shri M.S. Padmarajaiah

O R D E R

Mr. Justice P.K. Shyamsundar, Vice Chairman

This is an application transferred to us by the orders of the Hon'ble Chairman made on 10.1.94, from Ernakulam Bench where it was pending in C.A.No.2275/93. That application was moved for consideration by a Bench consisting of Hon'ble Member(Judicial) and Member(Admn) on 20.12.93. On that date, the Bench admitted the Original Application and also passed an interim order staying the operation of impugned order being the one repatriating the applicant to his parent office viz. the Ministry of Finance, New Delhi. The said order we have on record and it reads as follows:

"On the expiry of the fourth year term of deputation in the CAT, Ernakulam Bench Shri V. Mithran, Private Secretary borne on the CSSS cadre of the Ministry of Finance, Department of Revenue, New Delhi will stand relieved of his duties as Private Secretary in the C.A.T. Ernakulam Bench w.e.f. the afternoon of 21.12.93 with instructions to report to the Under Secretary(Ad.IA) Ministry of Finance, Department of Revenue, New Delhi.

2. Shri V. Mithran, Private Secretary will be entitled for TA/DA and joining time as admissible under the rules.

3. This is issued with the approval of the competent authority in the CAT vide Principal Bench's letter No.1/19/87-Estt. Dated 13.12.93."

2. The applicant, who is right now a Private Secretary working in the Ernakulam Bench of the Central Administrative Tribunal deeply resents the move to send him back to his parent office in New Delhi on a variety of grounds. One that

is strongly relied upon by Shri V.N. Holla, learned counsel for the applicant before us is that right through the applicant had been given the hope that he will be permanently absorbed in an appropriate position in C.A.T. at Ernakulam Bench and as a matter of fact on more than one occasion, the Tribunal had sought for his option and the concurrence of his parent department for permanent absorption as also a 'No Objection Certificate' from the Ministry of Finance which according to him was actually given.

3. We are told that so far as the applicant is concerned he was at all times willing to be absorbed permanently in the Department of C.A.T. and be made part and parcel of the Ernakulam Bench where he was working on deputation from the Ministry of Finance since 1989. Presently, there are no written objections on behalf of any of the respondents, including the 5th respondent being Shri K.V. Prabhakaran, Sr.P.A. Ernakulam Bench of C.A.T. who is said to have been promoted or due for promotion as Private Secretary and as a matter of fact is expecting to be accommodated in the vacancy to be caused by repatriation of the applicant. Probably, this matter did require a more in-depth consideration to be done after a proper written statement was filed but we are told the same is not likely to transpire immediately because the written statement has to be approved and finalised by the Department of Personnel to which it is stated to have been forwarded by the learned Standing Counsel for approval who, in the meanwhile,

also filed an application for vacating the interim order of stay granted by our brethren at Ernakulam. As a matter of fact, even on the earlier occasions when the matter came up for consideration the learned Standing Counsel was extremely keen that the stay should be vacated and today again he is very keen for disposal of this matter on ground of absence of any right for absorption. We put aside these aspects for a while and proceed to consider the disposal of this application which really turns on a very short ground raised and argued with great tenacity by the learned Standing Counsel who eventually carried the day even in the absence of written objections and of that we do not find any need because on facts there is no controversy. Learned Standing Counsel maintains the applicant is a person who is on deputation with C.A.T. for the last four years but he is a permanent employee of the Finance Ministry at New Delhi and all that the Tribunal has now done is to send him back to his parent department. Under F.R., deputation is normally for a period of four years and as a matter of fact it could be even for a lesser period. Suffice it to notice that the time factor depends on the borrowing department. If the borrowing department wants the services of the applicant for further periods subject to concurrence of the lending department, the deputation period can be further extended.

4. This is a case in which we find from the statement made by the learned Standing Counsel and the draft written statement filed by him that

the Vice Chairman of the Ernakulam Bench of C.A.T. had suggested that this official be sent back to the parent department. The position, therefore, is that the borrowing department did not want to continue him on deputation. Therefore, after four years of deputation, he will necessarily have to revert or be repatriated back to his parent department. It is against this position, the applicant seeks to contend that he should be retained and should be absorbed permanently into the C.A.T. dispensation. The short answer to this keen demand for absorption is that rules do not provide for absorption by transfer of an officer in the cadre of a Private Secretary. We have perused the Recruitment Rules. They provide that posts of Private Secretary can be filled up by promotion failing which by transfer on deputation. In this case, we notice R-5 has been promoted although on ad hoc basis and that is the piece of information which is furnished to us by the applicant's counsel himself. Therefore, it is clear that rules do not permit the applicant's absorption and what is more his period of deputation is over. Besides, borrowing department has not asked for his retention but has asked for his reversion or repatriation to the parent department. Under the circumstances, his contention that the Tribunal in asking earlier for his option to remain here and seeking permission of his parent department for retention etc. is of no avail. We think neither ^{on} the principle of promissory estoppel or of estoppel, the applicant can seek to maintain that the orders repatriating



him to his parent department is invalid in law. It is a well settled position that estoppel does not operate against law. This is a case in which rules do not provide for his retention in C.A.T. and that is why he has to go back.

5. Shri Holla nevertheless argued that there are others who have been continued and somebody has been absorbed somewhere else though the RRs do not provide but we are not to be detained on these grounds. We have no information about all these and have only the word of the applicant to defend himself nor have we heard the respondents in opposition of the same. We, therefore, do not think it appropriate to pronounce on those matters.

6. Shri Holla says that his client should be retained at least for one year or at least for a period of six more months so that he can wind up his affairs and go back to his parent department.

7. We think deferring his repatriation for three months would be proper and, therefore, as a special case, we direct the deferment of his repatriation till the end of June, 1994. Thereafter, the impugned order will become available for implementation and be enforced. Shri Holla tells us that his client is very hopeful of a benevolent dispensation under the new set of rules said to be under consideration of Government. We do not know anything about it. If on the basis of a new set of rules to be promulgated hereafter the applicant stands to gain, it is upto him to take advantage of the same and take such action as may be deemed

fit in the matter. Even this dispensation, the learned Standing Counsel vehemently opposes. We place on record his opposition. In the result, this application fails and is dismissed without any order as to costs.

sdr
sdm

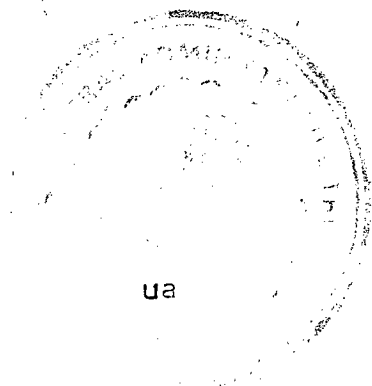
sdr
sdm

(T.V. RAMANAN)
MEMBER (A)

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

S. S. Shauhar
7/4
SECTION OFFICER
NATIONAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE



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