

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: 31 MAR 1995

APPLICATION NO. 2098 of 1994.

APPLICANTS: Sri .N.K. Suparna,
V/S.

RESPONDENTS: Secretary, Deptt of Communications,
New Delhi and Three Others .

To

1. Sri . P. A. Kulkarni,
Advocate, No. 47,
2nd floor, 415 Block,
5715 - A - Cross,
Rajajinagar,
BANGALORE-560010.
2. Sri. M. S. Padmarajaiah,
Sr. C.G. S.C. High Court Bldg,
BANGALORE-560001.

Received for SLD

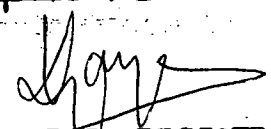
31/3/95
Sri . N. K. SUPARNA

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 24.03.95

Issued on
31/03/95

O/c for 
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore - 560038.

Dated: 31 MAR 1995

To

1. Sri.Sanjeev Malhotra,
All India Services Law
Journal, No.22, Tagore
Park, Near Model Town,
D E L H I - 110 009.
2. M/s.Administrative Tribunal
Reporter, No.90, Bhagar Singh
Market, NEW DELHI - 110 001.
3. The Administrative Tribunals
Judgements, No.3857, Sector-32D,
C H A N D I G A R H - 160047.
4. The Editor, Administrative
Tribunal Cases, C/o. Eastern
Book Company, No.34, Lalbagh,
L U C K N O W - 226 001.
5. M/s.Services Law
Reporter, No.108,
Sector-27-A,
C H A N D I G A R H.
6. The Chief Editor,
Weekly Law Notes,
Khanda Falsa,
J O D H P U R.
7. The Dy.Secretary,
Indian Law Academy,
Rajajipuram,
L U C K N O W - 226017.
8. The Manager,
Swamys Publishers(P)
Ltd., PB.No.2468,
No.164, R.K.Mutt Road,
Sandhya Mansions,
Raja Annamalaipuram,
M A D R A S - 600 028.
9. The Secretary, Karnataka
Law Reporting Council,
Old KGID Building,
BANGALORE-560001.

Sir,

I am directed to forward herewith a copy each of
the undermentioned Orders passed by a Bench of this Tribunal
with a request for publication in the journals.

APPLICATION NUMBER.

DATE OF THE ORDER.

1. C.A.No.2098/94 ---- Dt: 24-3-95

xxx

Yours faithfully,

Sd-

Copy, for information is forwarded to the following Benches:

1. The Registrar, Central Administrative Tribunal,
Principal Bench, Faridkot House, Copernicus Marg,
N E W D E L H I - 110 001.
2. The Registrar, Central Administrative Tribunal,
Fifth Floor, B.D. Patel House, Near Sardar Patel
Colony, Navjivan Post, Naranpura, Ahmedabad-380014.
3. The Registrar, Central Administrative Tribunal,
No.23-A, P.B.No.13, Thorn Hill Road, Allahabad-211001.
4. The Registrar, Central Administrative Tribunal,
Gulistan Bldg, 4th Floor, Near Bombay Gymkhana,
Opp:B.M.C.ENT Hospital, Prescott Road, Bombay-400001
5. The Registrar, Central Administrative Tribunal,
C.G.O.Complex, 234/4, A.J.C.Bose Road,
Nizam Palace, Calcutta-700 020.
6. The Registrar, Central Administrative Tribunal,
S.C.O., No.102/103, Sector-34-A, Chandigarh-22.
7. The Registrar, Central Administrative Tribunal,
Kandamkulathil Towers, 5th & 6th Floor, M.G.Road,
Opp:Maharaja College, Ernakulam, Cochin-682 001.
8. The Registrar, Central Administrative Tribunal,
4th Floor, Rajaswa Bhavan, Cuttack-753 002.
9. The Registrar, Central Administrative Tribunal,
Rajgarh Road, Bhangagarh, PB No.58, GPO, Guwahati-781005.
10. The Registrar, Central Administrative Tribunal,
No.5-10-193, Ist Floor, H.A.C.A.Bhavan, Opp:Public
Gardens, Hyderabad-500 004.
11. The Registrar, Central Administrative Tribunal,
No.C-12, Civil Lines, Bhat Vatika, Jaipur.
12. The Registrar, Central Administrative Tribunal,
No.69, Pata, PB.No.619, Jodhpur-342 006 (Rajasthan).
13. The Registrar, Central Administrative Tribunal,
Caravas Complex, No.13, Civil Lines, Jabalpur-482001.
14. The Registrar, Central Administrative Tribunal,
No.2, Moti Mahal, Rana Pratap Marg, Lucknow.
15. The Registrar, Central Administrative Tribunal,
First Floor, Additional City Civil Court Building,
High Court Campus, Madras-600 104.
16. The Registrar, Central Administrative Tribunal,
No.B-8-A, Sri Krishna Nagar, Patna-800 001 (Bihar).

Sd/-
DEPUTY REGISTRAR
JUDICIAL BRANCH.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.2098/94

FRIDAY THIS THE TWENTY FOURTH DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

N.K. Suparna,
S/o N. Krishna Iyengar,
Aged about 52 years,
Working as Accounts Officer [TRA],
Office of the General Manager West,
Bangalore Telecom District,
Bangalore-20.

... Applicant

[By Advocate Shri P.A. Kulkarni]

v.

1. Union of India represented
by its Secretary,
Department of Communications,
No.20, Sanchar Bhavan,
Ashoka Road, New Delhi.
2. Member Finance,
Department of Telecom,
No.20, Sanchar Bhavan,
Ashoka Road,
New Delhi.
3. Chief General Manager, Telecom,
Karnataka Telecom Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore.
4. General Manager,
Telecom District,
Bangalore-9.

... Respondents

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

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the order of Respondent ['R' for short] No.2 dated 1.7.1994 as in Annexure



A-4 sanctioning his prosecution under the provisions of Prevention of Corruption Act ['PC Act' for short].

2. The applicant while working as Accounts Officer in the office of the Executive Engineer [Telecom] Civil Division No.I, Bangalore, had demanded and accepted a sum of Rs.2,500/- on 3.11.1993 from one Shri B. Mohan Rao, a Class I contractor is the allegation levelled against him on which ground, R-2 had sanctioned his prosecution on 1.7.1994 by his order as in Annexure A-4 under Section 19[1][c] of PC Act for the offences under Sections 7 and 13[2] read with Section 13[1][d] of the PC Act. The applicant seeks to assail the same on the ground that it is arbitrary, illegal and one passed without affording him reasonable opportunity before granting such sanction and has thus violated the principle of natural justice. Respondents contend the grievance of the applicant is not a service matter and, therefore, this Tribunal has no jurisdiction to entertain the application.

3. We have heard Shri P.A. Kulkarni, the learned counsel for the applicant and Shri M.S. padmarajaiah, the learned Senior Central Govt. Standing Counsel for the respondents. According to Shri Kulkarni, because the applicant is a Govt. servant, he cannot be prosecuted without the previous sanction under Sec. 19[1][a] of the PC Act and therefore, the same is a condition of his service. It is his further contention that the impugned order is one passed with-

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out application of mind and without affording an opportunity of personal hearing. Thus it is contended that impugned sanction to prosecute the applicant cannot be sustained. Drawing our attention that the suspension of the applicant was revoked, it is contended by Shri Padmarajaiah that condition of service of applicant is in no way affected, it is further contended for the respondents that grant of sanction to prosecute the applicant is not a service matter.

4. The learned counsel for the applicant has formulated three points as arising out of the contentions of the parties for our consideration - [a] whether the sanction impugned in the application is or is not assailable; [b] if assailable, can the applicant challenge the same under Section 19 of the Administrative Tribunals Act ['AT Act' for short]; and [c] if not where else is the remedy open to him. Elaborating further that the sanction to prosecute a Govt. servant is a protection given to such Govt. servant, it is contended that grant of such sanction presupposes application of mind and personal hearing of such Govt. servant. In this connection the learned counsel referred to the decision in MAHADEV VS. STATE OF BOMBAY reported in AIR 1953 SC 179 which discusses only with reference to facts. According to Shri Padmarajaiah, the protection contemplated is not the service right of an employee, but the one afforded to employer to safeguard the interests of members of Govt. service



from being sought to be prosecuted frivolously and thus harassed. He has further contended that the sanction for prosecution is not a punishment affecting the condition of service, and pointed out that the suspension of applicant was revoked to support his contention. It is a fact which is pleaded by the applicant that his suspension was revoked, for which purpose he had moved this Tribunal, thus indicating that no condition of his service is affected by the grant of sanction for his prosecution by R-2. In INDIAN NATIONAL NGO'S ASSOCIATION OF ARMY ELECTRONICS INSPECTION V. SECRETARY, MINISTRY OF DEFENCE reported in [1992]21 ATC 261 from which the learned counsel sought support, the Full Bench of this Tribunal while considering the words "service matters" found in Section 3[q] of the AT Act, had occasion to consider "any other matter whatsoever" mentioned Section 3[q][v] and on such consideration had held that any other matter whatsoever means conditions of service in respect of any other matter whatsoever. The Full Bench went on to hold whether any matter relates to a condition of service depends upon whether the right claimed is same thing which regulates the holding of the post by the employee concerned. The Full Bench also referred to certain decisions of the Supreme Court. We may with advantage extract the relevant portion in para 8 which reads "In these decisions of the Supreme Court it has been laid down that 'conditions of service' means all those conditions which regulate the holding

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of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. Hence, it is not possible to accept the broad proposition put forward on behalf of the applicants that every right or privilege that accrues by virtue of his being an employee is a condition of service. The test to be satisfied is as to whether it regulates the holding of the post. It can be said to regulate the holding of the post when there is proximate nexus between the right or matter and the holding of the post. If it does not have any bearing on the holding of the post, it cannot be regarded as regulating the holding of the post." Applying this test we have to point out that sanction to prosecute the applicant under PC Act does not have a proximate nexus to the holding of the post. The applicant continues to hold the post even after issue of sanction. In fact even the suspension order has been revoked. Depending on the outcome of criminal trial and if it is disadvantageous to the applicant, and if the Government takes any action on the basis of the outcome of the criminal trial having a direct bearing on his holding the post, it will then amount to a service matter. The question of sanction is clearly not a service matter. We therefore, hold that giving sanction to prosecute has not affected the service condition of the applicant and we cannot subscribe to the view that it has proximate nexus



to the holding of the post by the applicant as a Govt. servant as such the present grievance of the applicant cannot be agitated before this Tribunal.

4. Applicant cannot get much support from the decision in S. RANGANATH V. STATE OF KARNATAKA [ILR 1994 KAR 3595] inasmuch as Sec. 9[3][a] of Karnataka Ioka-yukta Act stipulates that opportunity to be afforded to a Govt. servant and the same can be distinguished from Section 19[1][c] of the PC Act. Similarly Sec. 279[1] of Income-tax Act discussed in P.V.PAI V. R.L. RINAVANA [ILR 1993 Kar 709] also contemplates accused person of being afforded opportunity of being heard before according sanction. This being the case, applicant cannot seek to get much support for his contention even from this decision.

5. Our discussion in the preceding paras demonstrate that giving sanction to prosecute the applicant has not violated his condition of service and his grievance before us is not a service matter attracting the jurisdiction of this Tribunal. Therefore, none of the points or contentions of Shri Kulkarni for the applicant survive for consideration. It is, therefore, not for this Tribunal to examine the question whether or not the sanction communicated to be applicant in Annexure A-4 is assailable. The remedy of the applicant, if any, is elsewhere, which also will not survive for our consideration.

6. In the conspectus and circumstances of the case we hold that giving sanction for prosecution under Section 19[i][c] of the PC Act is not a matter which falls within the jurisdiction of this Tribunal and this application seeking to challenge the said sanction as in Annexure A-4 is not maintainable before us. Therefore, we dismiss the same with no order as to costs.

JM
Sd-

MEMBER [J]

Sd-

MEMBER [A]

bsv



TRUE COPY

[Signature]
31/3/15
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore