

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 5 DEC 1994

APPLICATION NO: 336 of 1994

APPLICANTS:- K. Chakrapani.
V/S.

RESPONDENTS:- Secy, M/o Science & Technology, New Bell 84m

T.

1. Shri. Col. V.K.K. Nani
Advocate
No. 24, 1st Main
Dombar layout
Dombar, Bangalore.- 71

2. Shri. M. Vasudha Rao
Adv. Adl. E.G. Sc
High Court Bldg
At Bangalore- 1

Subject:- Forwarding of copies of the Order 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 29th November 1994

Issued on
8/12/94

[Signature]

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.336/94

TUESDAY THIS THE TWENTY NINTH DAY OF NOVEMBER 1994

Shri V. Ramakrishnan ... Member [A]

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

K. Chakrapani,
S/o Sri Kumaran,
'Vrindavanam',
40-A, Kaveri Street,
Opp:Jubilee School,
Doorvaninagar,
Bangalore-560 016.

... Applicant

[By Advocate Col V.K.K. Nair]

v.

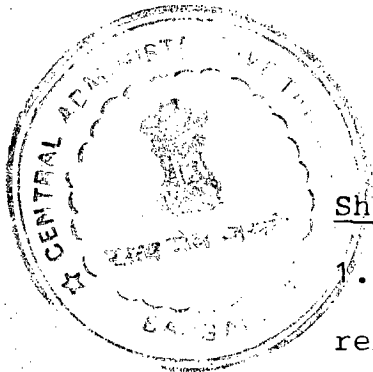
1. Union of India represented
by Secretary,
Ministry of Science & Technology,
New Delhi.
2. Director General,
Council of Scientific and
Industrial Research,
Rafi Marg, New Delhi.
3. The Director,
National Aeronautical Laboratory,
Airport Road, Bangalore.
4. The Chairman,
Canteen Management Committee,
National Aeronautical Laboratory,
Airport Road, Bangalore.
5. The Secretary [Executive Secretary],
Canteen Management Committee,
National Aeronautical Laboratory,
Airport Road, Bangalore. ... Respondents

[By Advocate Shri M. Vasudeva Rao ...
Addl. Standing Counsel for Central Govt.]

O R D E R

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

1. The applicant who is aggrieved by the order of
removal from service as Manager of Canteen passed



by the Disciplinary Authority ['DA' for short] which came to be confirmed by the Appellate Authority ['AA' for short] as well as Reviewing Authority ['RA' for short] has filed this application seeking to quash those orders at Annexures A-2, A-3 and A-4 respectively besides enquiry report Annexure A and corrected report at Annexure A-1.

2. The applicant was proceeded against for his alleged refusal to maintain proper records as he was required by the Canteen Policy Committee in that he had refused to receive C.M. dated 23.9.1988 stating that he was not good in accounting and that he was not an Accountant, in effect refusing to carry out the order and perform the duties assigned to him. The enquiry proceeding held on 27.11.1989 was abruptly closed and the report dated 14.12.1990 [Annexure A] was submitted. The DA by his order dated 14.5.1992 [Annexure A-2] imposed the penalty of removal from service. The AA and the RA by their respective orders dated 12.8.1992/8.10.1992 [Annexure A-3] and 29.4.1993 [Annexure A-4] have confirmed the penalty. Hence the application on the grounds that the order of removal was passed by an incompetent person, that there was denial of opportunity and that penalty imposed was disproportionate to the charge and that at one stage Secretary, Canteen Committee, had informed the applicant that he would be reinstated.

3. We have heard Col V.K.K. Nair, learned counsel

h

for the applicant and Shri M.Vasudeva Rao, learned Standing Counsel for the respondents.

4. At the outset, Shri Rao representing the respondents took up the contention that the applicant ought to have approached the Industrial Tribunal and submitted that this tribunal lacks jurisdiction. Col Nair referring to the decision of the Full Bench of the Tribunal in A. PADMAVALLI AND OTHERS V. CPWD AND TELECOM - Full Bench Judgments of CAT 1989-1991 at page 334 contended that this Tribunal can also go into the contentions and it is not necessary that the applicant has to first exhaust his remedy before the Industrial Tribunal. The position explained in PADMAVALLI's case is not disputed but the contention of the learned Standing Counsel is that this decision is pending before the Supreme Court in SLP and, therefore, it has not become final. But the fact remains that SLP has not yet been disposed of and the view taken in PADMAVALLI's case still holds the field. Therefore, this Tribunal can entertain the application of this nature and go into the question of legality or otherwise of the enquiry, findings and penalty imposed.

5. It is the contention of Col Nair that the Manager of the Canteen is a holder of civil post under the Central Government as per the notification dated 11.12.1979 issued by the Department of Personnel and Administrative Reforms as could be seen from Annexure C and for this reason also, he is entitled to invoke the jurisdiction of this Tribunal. We can only say



that this contention is well taken and the same was not controverted to by the other side.

6. The applicant came to be appointed as Manager by the then Chairman of the Canteen Committee at which time there did not exist any Secretary of the Canteen Committee. However, the Departmental Canteen Employment [Recruitment and Conditions of Service] Rules, 1980 [Annexure R-1] produced by the respondents stipulates in Schedule C the appointing authority to be Hony. Secretary of the Managing Committee in respect of the Manager and also the DA. It further discloses that Chairman of the Managing Committee as the AA and Head of the Office Establishment as the RA. Relying on this provision, it is the contention of the respondents that even though the Chairman has signed the appointment letter of the applicant, under Rules the Appointing Authority and DA is only the Hony. Secretary and the Hony. Secretary who has passed the removal order is well in accordance with the rules and cannot be faulted. Learned counsel for the applicant referred us to Annexure R dated 13.9.1985 and Annexure U dated 23.9.1986 and pointed out that at relevant point of time there was no Secretary or Hony. Secretary in the Managing Committee and, therefore, only the Chairman who was the appointing authority was the DA in strict sense and for the same reason, the order of removal Annexure A-2 passed by Hony. Secretary is incompetent and unauthorised.

A

7. Annexure GG is the daily order sheet dated 27.11.1989 maintained by the Enquiry Officer ['EO' for short]. On that day he had questioned the applicant viz., the charged official and further examined two more witnesses viz., N. Janardhana Rao and A.R.Bhagwan. When the applicant made a submission that he wishes to bring to the notice of the EO signed letters from Dr. Rajan Muthaiah dated 5.8.1988, the EO abruptly closed the enquiry and recorded that the enquiry was concluded. This has resulted in denial of fair and reasonable opportunity. Besides the EO did not submit the report immediately and only on 14.12.1990 he made the report. Thereafter, the order of removal came to be passed by the DA only on 14.5.1992. In the meanwhile on 25.11.1991, the Secretary, Kodihalli Canteen managing Committee addressed a letter to the Director [Annexure L] informing him that the Managing Committee had decided to reinstate the applicant K. Chakrapani as Manager and had informed the same to the applicant by letter dated 27.11.1991 [Annexure L1]. However, the applicant was not reinstated and his representation at Annexure M dated 29.5.1992 was not responded. The way in which the enquiry was abruptly closed by the EO goes to show that the applicant was denied fair and reasonable opportunity and the same has resulted in miscarriage of justice. The charge levelled against the applicant was that he had refused to maintain proper records as required by the Canteen Policy Committee but had restricted the enquiry only to the refusal of the



applicant to receive the O.M. dated 23.9.1988. It is not in dispute that one Sri Ullal was appointed to look after the maintenance of accounts and only after his resignation, the applicant was required to take over the maintenance of accounts. It is the say of the applicant that he had not refused to receive the O.M. dated 23.9.1988 but had only wanted certain clarifications which was not heeded to by the concerned authority and in his explanation the applicant had stated that he has not refused to receive OM dated 23.9.1988. Still the EO without giving proper opportunity to the applicant and without trying to appreciate his contention has made delayed report which was simply accepted by the DA, again after considerable delay. For a minor lapse of the alleged refusal to receive the O.M. the imposition of penalty of removal is also highly disproportionate. In any case as the same has not been processed at all it calls for interference by this Tribunal. Consequently the orders passed by the DA, AA and the RA also cannot be sustained. In view of what is discussed above, the order of removal passed by the DA on 14.5.1992 [Annexure A-2] and the subsequent orders of AA and RA at Annexures A-3 and A-4 are liable to be quashed.

8. In the result we allow this application and quash the orders of the DA, the AA and the RA respectively dated 14.5.1992 [Annexure A-2], 12.8.92/8.10.1992 [Annexure A-3] and 20.4.1993 [Annexure A-4] and direct

h

reinstatement of the applicant. No costs.



Sci-

29/11/94

MEMBER [J]

sd-

MEMBER [A]

TRUE COPY

[Signature]
28/12/94

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

B-762

ORDER SHEET

Review Application No. 6 of 1995
in DA No. 336/94

Applicant

Respondent

UOI by Secy, M/O Science & Technology
N.Dli & ors
Advocate for Applicant

Sh K Chakrapani

Advocate for Respondent

Date	Office Notes	Orders of Tribunal
		<p>VRMA/ANV MJ 13.2.1995</p> <p><u>O R D E R</u></p> <p>1. The respondents in O.A. No.336/94 have filed this Review Application on the following grounds. The first ground is that while the contentions of the rival parties have been narrated in the order dated 9.11.1994 there is no finding as to the appropriate authority who is competent to take action in such disciplinary matters. No doubt in para 6 of our order we have narrated the contentions but did not record our finding on those contentions inasmuch as it was not necessary</p>

Date	Office Notes	Orders of Tribunal
		<p>for the disposal of the application. Besides the decision did not rest on any finding on the rival contentions set out in para 6 of the order. Therefore, we did not find it necessary to record a definite view in respect of those contentions.</p> <p>2. While narrating that the respondent herein was not afforded proper opportunity we did not feel it necessary to direct de novo enquiry inasmuch as at one stage there was a view expressed by the Secretary, Kodihalli Canteen Managing Committee informing that the Managing Committee had decided to reinstate the applicant ie., the respondent herein. Taking the entire aspect of the case and having regard to the trivial nature of the charge it was not felt necessary to direct de novo enquiry but only direct reinstatement.</p> <p>3. The next ground urged by the review applicants is that</p>

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

REVIEW Application No.....6.....of 1995

ORDER SHEET (Contd.)

O A NO.

Date	Office Notes	Orders of Tribunal
		<p>the observation that for minor lapse the penalty of removal was highly disproportionate and the Tribunal ought to have recommended the appellate authority for modification of the quantum of punishment. This aspect of the matter was also considered and for the reasons stated in the preceding para we felt it was not necessary to direct the appellate authority to consider modification of quantum of punishment.</p> <p>4. Thus we see no merit in this review application and accordingly we reject the same by circulation.</p>

MEMBER [J]

TRUE COPY

MEMBER [A]

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

-3-
In the Central Administrative Tribunal
Bangalore Bench
Bangalore

B-762

C.P. [CIVIL] Application No. 61 of 1995

in OA 336/94
ORDER SHEET (Contd.)

Sri K. Chakrapani

V/s. Secy. M/o. Science & Technology
N. Delhi & Co.

Date	Office Notes	Orders of Tribunal
		<p>PKS(VC)/TVR(MA) 4.7.95</p> <p>This application seeks for action against the department which is said to have not complied with the directions of this Tribunal. It has now transpired that the department has complied with the directions and to that effect, a statement has been filed by the Standing Counsel for the department. It has been shown to Col.V.K. Nair, who confirms the same. On facts, we see no contempt. This application seeking initiation of action for contempt stands dismissed and the alleged contemnors are discharged.</p>

Sd/-

Sd/-

MEMBER (A)

VICE CHAIRMAN

TRUE COPY

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore