

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated:-

8 JUN 1994

APPLICATION NUMBER: 815 of 1994

APPLICANTS:

Sri. M. Rajamma
v/s. General Manager, Telecom Region (Maintenance),
Bangalore and Other.

1. Sri.S.V.Narasimhan, Advocate,
and M.Raghavendra Achar, Advocate,
No.1074 and 1075, Second Main,
Fourth Cross, Srinivasanagar,
Bangalore-560 050.
2. The General Manager Maintenance,
Southern Telecom Region,
Grace Mansion, 25, Infantry Road,
Bangalore-560 001.
2. Sri.M.S.Padmarajaiah, Sr.C.G.S.C.,
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 27-05-1994.

S. R. Rao
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

*On
27 June
LW*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

APPLICATION NO.815/1994

DATED THIS THE TWENTYSEVENTH DAY OF MAY, 1994

MR. JUSTICE P.K. SHYAMSUNDER, VICE CHAIRMAN

MR. V. RAMAKRISHNAN, MEMBER (A)

M. Rajanna
S/o. Muniyappa
Junior Telecom Officer
Microwave Station
Bangarpet Road
Kolar.

..... Applicant

(By Shri S.V. Narasimhan, Advocate)

VS.

1. The General Manager
(Maintenance), Southern
Telecom Region, No.25,
Grace Mansion
Infantry Road, Bangalore-1.

2. The Sub-Divisional Engineer
Micro-wave Maintenance
Microwave Station
Bangarpet Road, Kolar Respondents
By
(Shri M.S. Padmarajaiah, S.C.G.S.C.)

O R D E R

(Mr. Justice P.K. Shyamsunder, Vice Chairman)

Rajanna, the applicant herein is an Officer of the rank of Junior Telecom Officer, right now attached to the Microwave Station at Kolar. He was transferred by his official superior from Kolar to Bangalore way back on 19.5.1993. Being aggrieved by that order, he came to this Tribunal seeking relief against the order of that transfer in O.A. No.518/1990 what was subsequently disposed off on 29.7.1993. After appraising of



the controversies involved, we however, desisted from recording our views but instead made ^a palliative order with the consent of both sides, in terms of which we directed the department to keep in abeyance the order of transfer till the end of April, 1994 and to be at liberty to give effect to it thereafter. This is what we said therein. But this dead line of April, 1994 expired and the department promptly took steps to give effect to the earlier order of transfer, which was simply kept in cold storage for some time and the off shoot is the present application challenging the resultant order of transfer made under Annexure-A7 and A8. A-7 is issued by R-1, General Manager (Maintenance), Southern Telecom Division, Bangalore-1, to relieve the applicant, which reads as follows:

No.GMM/STR-BG/STE-10/93-95/KW dtd. at
B'lore, the 27.4.1994.
" Sub: Relieving of Shri M. Rajanna,
JTO, Microwave Maintenance, Kolar.

In accordance with orders contained in this office letter of even no. dated 19.5.1993 and order of the Hon'ble CAT, Bangalore, dated 20th August, 1993 in Application 518/1993 of Sri M. Rajanna, JTO, may be relieved on the afternoon of 30th Apr. 1994 on transfer of JTO Traffic Trail's under Asst. Engineer, Traffic Trail, Bangalore and compliance reported.

sd/-
(K.K. PILLAI)
General Manager (Maintenance)
Southern Telecom Division
Bangalore.

✓
Annexure-A8 is by someone lower in the hierarchy and under that order the applicant is stated to have been relieved of his present charge with effect from 30.4.1994 which reads as follows:

" No.AE/MU-KLR/94-95/2 dtd. 30.4.1994

In pursuance of the order contained in the General Manager (Maintenance) STR, Bangalore-1 letter GMM/STR-BG/STE-10/93-94-40 dtd. 19.5.1993

reiterated vide even No. dated 27.04.1994 and letter DE-MW/E-2/JTO/93-95/7 dated 29.4.1994 from the DE Microwave Maintenance, Bangalore. You are hereby relieved on the afternoon of 30.04.1994 and struck off from the strength of Kolar Microwave Maintenance sub-division. You are hereby instructed to report as JTO, Traffic Trail under Asst. Engineer Traffic Trail, Bangalore on expiry of leave availed by you.

sd/-

Sub-Divisional Engineer
Microwave maintenance
Kolar - 563 101.

Earlier

As stated above the 2 orders (supra) are the subject matter of challenge in this application which was filed during vacation in the earlier part of May, 1994. The matter was taken up by a single Member (Administrative), who passed an order, copy of which is produced at Annexure-A6 dated 11th May, 1994. Hon'ble Member(A) disposed off that application holding the application itself was premature but gave the applicant liberty to come back to the Tribunal with the department's order actually shifting him from Kolar to Bangalore. Presently, that contingency having occurred as per Annexure-A7 and A8, the applicant has come up before us contending that the order shifting him from Kolar to Bangalore and the order relieving him of his present charge at Kolar as invalid in law. His contention is based on a subtle question of jurisdiction which is raised and argued by his learned counsel, Shri Narasimhan at the stage of admission. Since Shri Padmarajaiah learned, Sr. Central Govt. Standing counsel has also filed statement of objections, we think it appropriate to dispose of this application after admitting the same. Accordingly, we admit the application and proceed to dispose off the same on merits. The only point to be noticed in the argument of Shri Narasimhan is that the orders issued by the General Manager (Maintenance), Southern Telecom (Annexure-A7) order



of relief and Annexure-A8 relieving the applicant of the charge of Maintenance at Kolar are liable to be treated as incompetent in law and bereft of jurisdiction, since it did happen that in between 1993 and 1994, that is, when we disposed off earlier Application No.518/1993, and the passing of the impugned order Annexure-A7 and A8, much water has flown under the bridge rendering the officers who passed the orders at Annexure-A7 and A8 to be totally incompetent to pass these orders. Counsel says that the order of transfer which was made in 1993 had been given effect only under Annexure-A7 and A8 and could not be put on course by the officers who made Annexure-A7 and A8 because they had no jurisdiction to execute or to bring the transfer order function by giving effect to the same.

2. He invited our attention to the decision of the Supreme Court in the case of Dr. Ramesh Chandra Tyagi Vs. Union of India and Others (1994 2 SCC 416). In particular counsel invites our attention to para 5 & 6 of the judgement which considered the question of validity of a transfer order made by an authority who was incompetent and did not have the jurisdiction or competence to make order of transfer. Therein it was held that the order of transfer when it was made being without any validity/any amount/affirmation of that order by an authority may be even superior could be of no avail, as an order is without jurisdiction cannot be infused with life and kept alive. The next decision to which the learned counsel invited our attention is in the case of Inayathulla S. Vs. Deputy Conservator of Forests, Chickmagalur & Anr. 1982 (2) KLT 432 wherein it was held that an authority not empowered to pass an order of suspension under Rule 10(1) of the Rules, derived no impecus by the alleged affirmation by an authority competent to affirm that order and that a mere

order of ratification did not alter an order of suspension which was totally non-est. We respectfully agree with the decisions referred to supra. But, we however, notice that they have no bearing on the question under consideration herein. The learned Standing Counsel passed on to us the records of the case. The file indicate that even before the orders Annexures-A7 & A8 had been passed by the 2 authorities, who are now said to be ~~effete~~, steps taken to shift him from Kolar to Bangalore and to relieve him had been affirmed and ratified even before the necessary orders at Annexures-A7 & A8 came to be passed. The file is before us. We find that the steps had since been taken admittedly to enforce the earlier order of transfer kept in abeyance for a period of one year in terms of our order in OA. No.518/1993. It has been confirmed by the Chief General Manager and that the Chief General Manager had, at any rate, the authority to make an order of transfer and in this case, it is he who had transferred the applicant. We notice from the files that the order of transfer has come to be made much earlier to the passing of Annexures-A7 & A8. What may, therefore, becomes obvious is that the impugned orders at Annexures-A7 & A8 have been approved by the Chief General Manager, who is the competent authority to give necessary directions in this behalf.

3. Be that as it may on facts and in law the applicant cannot assail the order of transfer. The fact the sub-ordinate officers had no jurisdiction to pass Annexures-A7 & A8 is of no consequence. The order of transfer was in fact made by the competent authority. It did originate from the competent authority, viz., the Chief General Manager. Therefore, we see no substance in the point based on jurisdiction or lack of it as



a circumstance to censure the order of transfer shifting the applicant from Kolar to Bangalore. In that view of the matter, the decisions relied on by Shri Narasimhan referred to supra is of little assistance to the applicant in this case. However, we must notice that at one stage we felt that the orders Annexures-A7 & A8 were clearly inviolable because they were apparently passed as a step-in-aid of our order in the earlier O.A. 518/1993. We find that our Administrative Member while disposing of O.A. 808/1994 had given liberty to the applicant to assail the order if any made in actually shifting him from Kolar to Bangalore. The applicant took advantage of the observations made by the learned Member. Be that as it may, our order made in O.A. 518/1993 on the earlier occasion was based on consent of both parties. In terms of that order, the order of transfer was kept in abeyance for the period stipulated in that order and at present it is merely given effect to. The applicant very well knew after the passage of the stipulated time referred to in the earlier order, he will have to pack up his bag, and come to Bangalore but surprisingly he came up with more than one application challenging the jurisdiction of the department in shifting him from Kolar to Bangalore on some ground of change of jurisdiction. We are, however, constrained to state that the applicant who was a beneficiary vide our order made in the earlier occasion had thought it fit to opt out of that order of transfer. On the earlier occasion its effectiveness was postponed for some time but we see the present endeavour is to knock it down after taking advantage of the same. We cannot approve of such conduct by an officer, whom we expect to be more disciplined and be of orderly behaviour. We dismiss this application as bereft of any merit. No order as to



TRUE COPY

S. Shashikar
SECTION OFFICER 86
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
cc: etc.

S. Shashikar
(S. SHASHIKAR)
MAY 1994 (A)

S. K. SHAYMULKA
VICE CHAIRMAN