

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 27 JAN 1995

APPLICATION NO: 1586 of 1994.

APPLICANTS:- Mr.H.G.Shamasunder,
V/S.

RESPONDENTS:- Secretary, Ministry of Health and Family
Welfare, New Delhi and two others.

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1. Sri.D.Rajashekar, Advocate,
No.7, III-Cross, I-Stage,
Gowthamapuram, Ulsoor,
Bangalore-560008.
2. Sri.M.Vasudeva Rao, Additional Central
Govt.Standing Counsel, High Court Bldg,
Bangalore-560 001.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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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 18-01-1995.

Issued on
27/01/95

[Signature]

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[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION NO.1586/1994

DATED THIS THE EIGHTEENTH DAY OF JANUARY, 1995

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. H.G. Shame Sunder
Dresser
S/o. Jeevarathnam
No.A-15, C.P.W.D. Quarters
Domalur Layout
Bangalore-560 071

..... Applicant

(By Mr. D. Rajashakar, Advocate)

Vs.

1. The Union of India by
Health Secretary
Ministry of Health and Family Welfare
Nirman Bhavan, New Delhi.
2. The Director
Central Government Health Scheme
Nirman Bhavan, New Delhi.
3. The Deputy Director
Central Government Health Scheme
Infantry Road, Bangalore-560 001 ... Respondents

(By Mr. M.V. Rao, A.C.G.S.C.)

O R D E R

Albeit there being some delay in approaching this Tribunal, I consider that ineffective and under the circumstances delay does not command itself for non suiting the applicant in limine. This is a case in which the applicant is an employee of the CGHS, Bangalore, who was granted leave in the first instance for a period of 12 days

....2/-



by an authorised memo, a copy is found in the records. Subsequently, it transpires, the authority sue motto recalled that order and proceeded to cancel the leave with a further direction to recover the salary received by the applicant for the period during which he was granted leave. The offending orders in that connection are at Annexures - A2 and A4.

2. Albeit the submission of the Standing Counsel that applying for leave was a false front for an illegal strike and therefore, the authorities being satisfied that the motion of leave was nothing but a facade for remaining absent for a longish period with a view to support an illegal strike, had on second thought, cancelled the leave granted earlier as could be seen at Annexure-A2 in conjunction Memorandum was issued (Annexure-A4) stating that the period of absence not regularised has to be treated as dies non and the earlier order granting leave being treated as cancelled. He also relied on a decision of the Supreme Court in Bank of India & Ors. Vs. T.S. Kelawala & Ors. (C.A. No.2581 of 1986 and 855 of 1987) wherein it has been held by the Supreme Court that workers are liable to loose wages for the period of strike irrespective of the fact the strike is legal or illegal.

3. What I find in this case is that leave had been granted by the authority who had thereafter cancelled the same without any prior notice to the official and what is more, after treating the leave period as dies non had asked to recover the salary paid to the official. This leads to civil consequence and it is well settled in such circumstances the suffering official will have at least

to be told by the proposed move before hand. In this case such a warning notice is absent and that is the reason I am compelled to interfere. The official has been sanctioned leave and thereafter the leave had been cancelled ex parte, decision reached to treat the period of absence as dies non and consequential direction made to recover the salary during that period. All these steps taken against the applicant has put him in a vulnerable position and if I take exception to it the ground that everything had been done without notice, it becomes futile to resist the onslaught on the impugned order in such circumstances. Hence, it is this application stand allowed. The endorsements at Annexure-A2 and A4 stand quashed. Any salary recovered by the authority from the applicant will have to be paid back to him within 4 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN



TRUE COPY

[Signature]
27/01/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore