

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Miscellaneous Appln.No.318/95 in

Dated: 11 SEP 1995

APPLICATION NO.

1594 of 1994.

APPLICANTS: Smt.Vimala,
V/S.

RESPONDENTS: The Postmaster General, S.K.Region,
Bangalore another.

To

1. Sri.A.R.Holla, Advocate,
No.3A, Second Floor,
Sujatha Complex, 1st Cross,
Gandhinagar, Bangalore-9.
2. Sri.M.Vasudeva Rao, Additional
CGSC, High Court Bldg, Bangalore-1.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

---XXX---

Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 18-08-1995.

Issued on
11/9/95

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

9/C

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

A.No.1594 of 1994

Application No.....1594.....of 1994

Smt. Vimala

**ORDER SHEET (contd)
v/s. The PMG, S&T Region, Bangalore.**

Date	Office Notes	Orders of Tribunal
		<p style="text-align: center;"><u>(PKS)VC/(VR)M(A)</u></p> <p style="text-align: center;">AUGUST 18, 1995.</p> <p style="text-align: center;"><u>ORDER ON M.A.NO.318 OF 1995</u></p> <p>In this M.A. wherein further time is sought for to comply with the directions of the Tribunal, it is pleaded that it becomes necessary to ask for more time in view of the filing of the application seeking review of the order made in O.A.No.1594 of 1994. That review application being R.A. No.27 of 1995, we have just now heard and rejected it. In the circumstances, there is absolutely no reason to extend the time. However, as a last chance we extend time by 4 weeks to comply with the directions of the Tribunal. No further extensions.</p> <p style="text-align: center;">Sd- Sd-</p> <p style="text-align: center;">[Redacted]</p> <p style="text-align: center;">MEMBER(A) VICE-CHAIRMAN.</p> <p style="text-align: center;">TRUE COPY</p> <p style="text-align: center;">Shyam Tatas</p> <p style="text-align: center;">Section Officer</p> <p style="text-align: center;">Central Administrative Tribunal Bangalore Bench Bangalore</p>

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

B-797

ORDER SHEET

Review Application No. 21 of 1993
OA 1594/94

Applicant

PMG, SK Regn, B'llore & anr

Advocate for Applicant

Sh MV Rao

Respondent

Smt Vimala

Advocate for Respondent

Date	Office Notes	Orders of Tribunal
		<p>(PKS)VC/(VR)M(A)</p> <p>AUGUST 18, 1995.</p> <p>The ground now urged is that a decision of the Supreme Court runs contrary to the decision reached in O.A.No.1594 of 1994 is an aspect which we cannot countenance. If there is something in the decision of the Supreme Court contrary to the view expressed in the order made in the original application, it was the duty of the counsel to have brought the same to the notice of the Bench. But, the Government cannot seek to get over their remissness by filing this review application.</p>

Date	Office Notes	Orders of Tribunal
		<p>Review application is, therefore, dismissed.</p> <p>Sd- <i>[Signature]</i> Sd- <i>[Signature]</i></p>

Review application is, therefore, dismissed. | 0

Sd-

Sd-

MEMBER(A)

VICE-CHAIRMAN.

TRUE COPY

~~SPB Headquarters
San Francisco~~ - 6-298

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated: **28 MAR 1995**

APPLICATION NO. **1594 of 1994.**

APPLICANTS: **Smt. Vimala, Mangalore-6**

V/S.

RESPONDENTS: **The Post Master General, South Karnataka Region,
Bangalore-1, and another.**

To

1. **Sri. A.R. Holla, Advocate,
NO. 3, Second Floor, I-Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560 009.**

2. **Sri. M. Vasudeva Rao, Additional
Central Govt. Stng. Counsel,
High Court Buldg, Bangalore-1.**

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

---XXX---

Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 17-03-1995.

Issued on
28/03/95

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%

Shyam
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:

To

1. Sri.Sanjeav 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., P B N o . 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 K.G.I.D. Building,
Bangalore-560 001.

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. O.A.NO.1594 of 1994.... Dated 17-03-1995.

-X-X-X-X-X-X-

Yours faithfully,

28/3/95

DEPUTY REGISTRAR
JUDICIAL BRANCH.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 28 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, Bhagat Singh
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Old K.G.I.D. Building,
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Sir,

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with a request for publication in the journals.

APPLICATION NUMBER.

DATE OF THE ORDER.

1. O.A.NO.1594 of 1994.... Dated 17-03-1995.

-x-x-x-x-x-

Yours faithfully,

Deputy Registrar
28/3/95

DEPUTY REGISTRAR
JUDICIAL BRANCH.

gm*

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, Prescot 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, 1st 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, Patta, PB.No.619, Jodhpur-342 006 (Rajasthan).
13. The Registrar, Central Administrative Tribunal, Caravas Complex, No.15, 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).

28/3/90
DEPUTY REGISTRAR
JUDICIAL BRANCH.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.1594/94

FRIDAY THIS THE SEVENTEENTH DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

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

Smt. Vimala,
Aged 55 years,
Retired Sub Post Master,
Mangalore Collectorate,
at Tantry Lane, Urva,
Mangalore-575 006.

... Applicant

[By Advocate Shri A.R. Holla]

v.

1. Post Master General,
South Karnataka Region,
Bangalore-560 001.
2. Senior Superintendent of
Post Offices,
Mangalore Division,
Mangalore-575 002.

... Respondents

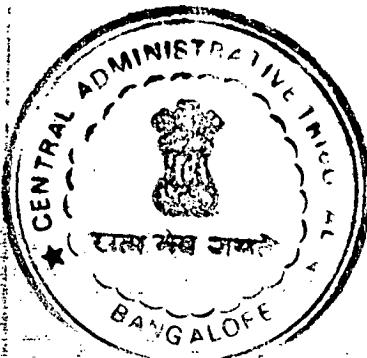
[By Advocate Shri M. Vasudeva Rao .
Addl. Standing Counsel for Central Govt.]

O R D E R

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

1. The applicant is aggrieved by the memo dated 6.8.1993 issued by Respondent ['R' for short] No.1, Post Master General, S.K. Region, Bangalore, as in Annexure A-7 retiring ~~her~~ from service.
2. The facts are as below:

The applicant was working as Sub Post Master in Mangalore Collectorate Post Office at Mangalore. In letter dated 30.1.1993 the applicant requested



R-2 to permit her to retire on invalid pension in accordance with Rule 38 of Central Civil Services [Pension] Rules ['Pension Rules' for short]. The applicant was examined by a Medical Board constituted for the purpose on 8.4.1993 and the medical board certified that the applicant was suffering from Rhenmatoid Arthritis and that she was unfit to work. Therefore, she was retired on invalid pension as per Annexure A-2. The applicant came forward with a representation dated 21.4.1993 as in Annexure A-3 that her health having been improved, she should be continued in service. R-2 by his order dated 21.4.1993 as in Annexure A-4 had kept in abeyance the order to retire the applicant on invalid pension. In view of the representation of the applicant, the Director of Medical Education, Bangalore, was addressed a letter requesting to constitute a medical board as in Annexure A-5, in response to which the Director of Medical Education, Bangalore, by his letter dated 14.7.1993 informed that there was no provision to constitute 2nd medical board as per rules. On the advice of the office of R-1 the applicant was relieved on invalid pension on 3.8.1993[Annexure A-6]. Again on 15.11.1993 the applicant submitted another representation stating that she has improved her health and requested to permit her to join duty. The applicant was informed by letter dated 6.12.1993 that there was no provision under the rules to accede to her request. Consequently

the applicant has filed this application seeking to quash Annexure A-7 dated 6.8.1993 and for a direction to reinstate her in service with full back salary and consequential benefits.

3. We have heard Shri A.R. Holla, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents and perused the records made available by the department.

4. Shri Holla contended that while the order says that the applicant was permitted to retire on invalidation as per her request as in memo dated 6.8.1993 [Annexure A-7] there was no such request from the applicant pending as on 6.8.1993 and the request made on 3.1.1993 was withdrawn by representation dated 21.4.1993 and, therefore, the action of the department is without any valid reasons and not justified. The action of the department in retiring the applicant compulsorily is in violation of rules and law does not provide for such retirement. After the applicant who was continued to work on her representation, had discharged her duties after the order of retirement was kept in abeyance for nearly four months and the department was satisfied with her work. Therefore, the action of the department is wholly unjustified and will have to be interfered with.

Shri Rao, on the other hand, contended that when once action was taken as per the request of the appli-



cant to retire her on invalid pension, there is no provision in the rules to constitute a second medical board as stated by the Director of Medical Education and, therefore, the request of the applicant could not be considered. Accordingly he has justified the action taken by the department.

6. It is no doubt true that the applicant had applied for retirement on the ground of invalidity on the basis of which the medical board was constituted to examine the applicant and the her was accordingly examined and a certificate of her being not fit to work was issued. Even though the learned counsel for the applicant now contends that no medical board had examine her in fact on 8.4.1993 as stated in the certificate, at this stage we are not required to go into the that aspect of the matter because the question for consideration is not whether she was actually examined about her fitness to discharge the duties or not but the question is whether the requirement on the request of the applicant on invalid pension which was sought to be withdrawn by her is validly considered.

7. By letter dated 19.4.1993 the applicant was permitted to retire with effect from 23.4.1993. But on the representation of the applicant on 21.4.1993 the said order was kept in abeyance by R-2 by an order of even date. But subsequently on the ground that

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Director of Medical Education has stated that a second medical board could not be constituted as per rules, her request to continue in service was declined and she was relieved on the ground alleging that it was on her request on 3.8.1993. Actually, as rightly contended by the learned counsel for the applicant, the request for retirement on the ground of invalidity made by the applicant had been withdrawn earlier and no such representation was pending before the competent authority to take any action on that basis. But the contention of learned Standing Counsel is what was done by the R-2 was only to keep the order of retirement in abeyance and it was not permitted to be withdrawn and, therefore, the applicant is not entitled to contend that her request for retirement was not pending. Under Rule 38 of CCS Pension Rules, invalid pension can be granted when the Government servant applied and the medical board issues a certificate after examination about the fitness of the government servant. In the present case, even though the applicant had applied for retirement on the ground of invalidity, the fact is that she withdrew the same and came forward to continue in service and she was in fact continued in service and she had discharged her duties for some time. This fact is not in dispute. Therefore, Rule 38 of Pension Rules could not have been invoked by the department for retiring the applicant on the ground of invalidity.



8. However, as provided in the Central Civil Services [Medical Examination] Rules, 1957, found at Appendix 9, hereinafter referred to as Medical Examination Rules, it is open to the competent authority to take action under Rule 2 therein. Under Rule 2 of Medical Examination Rules where the competent authority has reason to believe that the Government servant is suffering from a physical or mental disability which in its opinion interferes with the efficient discharge of his duties, may retire him from service on the basis of the opinion expressed by the medical authority. The Department should have had recourse to this medical examination rules to take action against the applicant when she withdrew her application for retirement on the ground of invalid pension. In Government of India decision dated 12.9.1963, a government servant declared by medical authority to be permanently incapacitated for further service is entitled to prefer a request for examination by a medical review board. If at all the applicant had disputed the medical certificate issued by the medical board, the department ought to have had recourse to clause [c] of para 5 of Government of India decision dated 12.9.1963 and should have had recourse to the medical review board for second examination of the applicant to ascertain her fitness or otherwise to discharge efficiently the duties. Instead of taking such a

recourse the department has acted under Rule 38 of the Pension Rules which is not justified and is arbitrary. Therefore, we have to quash the memo dated 6.8.1993 as in Annexure A-7 holding the same to be arbitrary and illegal as also the relief of the applicant and direct her reinstatement. The competent authority, we have to observe, is, however, at liberty to constitute a medical review board for examining the applicant as per OM dated 12.9.1963 and to take action in accordance with law.

9. In the result the application is allowed, the memo dated 6.8.1993 as in Annexure A-7 is quashed. We direct the respondents to reinstate the applicant in service with a further direction to ~~grant~~ ^{take} all consequential ~~benefits~~ ^{steps}. The competent authority is at liberty to constitute a medical review board and to take further action in respect of the applicant as per rule. The direction to reinstate the applicant shall be complied with within a period of two months from the date of receipt of a copy of this order.

No costs.



TRUE COPY

28/3/95
S/No. 1283/95

Section Officer

Central Administrative Tribunal

Bangalore Bench

Bangalore

Sd/-
11/12/95
MEMBER [J]

Sd/-
11/12/95
MEMBER [A]