

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1554/97

dt. 1-6-1999

Between

P. Madhan Mehan Reddy

: Applicant

and

1. Asstt. Superintendent of Post
Offices, Hyderabad North Sub Divn.
Hyderabad

2. The Post Master
SNIE Post Office,
Sanathnagar, Hyderabad

: Respondents

Counsel for the applicant

: V.V. Narasimha Ra
Advocate

Counsel for the respondents

: V. Shimanna
CGSC

Ceram

Hon. Mr. Justice D.H. Nasir, VC

Hon. Mr. H. Rajendra Prasad, M(A)

Order

Order (per Hon. Mr. Justice D.H. Nasir, Vice Chairman)

The order dated 27-10-1997 issued by Respondent-1 by which the services of the applicant were terminated has been challenged in this OA.

2. The applicant was appointed as PTC Nightwatchman on 5-8-93 in the office of the second respondent on temporary basis. However, his services were terminated by an order dated 17-7-97 without following the principles of natural justice. The applicant therefore filed OA.1096/97 against the order of termination which was allowed by an order dated 26-8-97 and the applicant was reinstated in service as Night Watchman. However, according to the applicant, since the respondents were bent upon dispensing with the services of the applicant, another order of termination was passed on 27-10-97 in Proceedings No.AHP(N)/Disc/97-98 the tenability of which is challenged in the present OA.

3. The legality of the impugned order is also attacked on the ground that it was not a speaking order. There was no mention about the alleged misconduct. According to the applicant, he was subjected to harassment by the respondents for seeing to it that the applicant was removed from service under one pretext or another.

4. The applicant is alleged to have attempted to commit the offence of theft. The Assistant Superintendent of Post Offices, North Sub-Division was directed by the Senior Superintendent of Post Offices, Hyderabad City Division to enquire into the case. One G. Ramesh said in his statement

that he could not open the Treasury on 17-7-1997 due to bending of hinges of the lock and iron belts of the Treasury room. He therefore, reported the matter to the Sub-Postmaster, Sanathnagar Industrial Estate Post Office, who on examining the facts reported the matter to the Senior Superintendent of Post Offices, Hyderabad City Division on 17-7-97. It was found in the investigation that the hinges of the lock and the iron belts were found bent which was the result of the attempted theft on the night of 16-7-97. The applicant was remanded to the police custody for two days in connection with the said offence. According to the respondents the investigation revealed that there was involvement of the applicant in the attempted theft and he was absent on that night, which disclosed that the Contingent Night Watchman utterly failed in discharging his duties and on that ground his services were terminated without notice and that no departmental enquiry was conducted as the applicant was only a contingent worker paid on daily wage basis. It is further stated by the respondents that in accordance with the order passed in OA.1096/97 the applicant was reinstated in service ^{thereafter} and a show cause notice dated 22-9-97 was issued to the applicant. He submitted his explanation on 22-9-97 itself and before any action could be taken the Sub-postmaster, Sanathnagar Industrial Estate Post Office, again reported vide his letter dated 9-10-97 that the contingent Night Watchman was not behaving properly and was finding fault with the superiors. Further according to the respondents, the applicant's services were terminated on 27-10-97 in view of the fact that the applicant was only a contingent worker, he was paid on daily wage basis and no rules relating to transfer, punishment etc. were applicable to him. It was revealed in

the investigation of the case against the applicant that the attempted theft occurred due to the negligence on the part of the applicant who was on duty as Night Watchman and therefore, according to the respondents, the attempted theft was not a concocted story.

5. In the case of State of Bihar vs. Gopikishore Prasad (AIR 1960 SC 689) the Constitution Bench of the Supreme Court held that the discharge being clearly by way of punishment, he was entitled to protection of Article 311(2) and that since the petitioner had been wrongly deprived of that protection, his removal from service was not in accordance with the requirements of the Constitution and therefore could not be sustained. In para-3 of the above decision, the Supreme Court held that if instead of terminating such a person's service without any enquiry, the employer chose to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career and therefore, he was entitled to protection of Article 311(2) of the Constitution. In the concluding part of the judgement, the Supreme Court observed in para-6 that though the respondent was only a probationer, he was discharged from service apparently because the Government had on enquiry, come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. The Supreme Court further held that if Government came to the conclusion that the respondent was not a fit and proper person to hold the post in public service of the State, it could discharge him without holding

any enquiry into his alleged misconduct. If the Government proceeded against him in that manner without casting any aspersions on his honesty and competence, his discharge would not in law have the effect of removal from service by way of punishment and he could therefore have no grievance to ventilate in any court. Instead of taking that easy course, the Government chose the most difficult one of starting proceeding against him and branding him as a dishonest and incompetent officer. He had the right, in these circumstances, to insist upon the protection of Article 311(2) of the Constitution and that protection not having been given to him, he had the right to seek his redress in the Court.

6. In the case before us, the applicant was not a probationer but he was appointed on temporary basis. Apart from the same, the show cause notice in the case before us had been duly issued on 22-9-97. The applicant also gave his explanation, of course, denying all allegations made against him. But according to the learned counsel for the applicant, the show cause notice was an empty formality and that the respondents did not consider the contents of the explanation. Further according to the learned counsel for the applicant, the show-cause notice was the consequential action taken by the respondents in implementation of the orders of the Tribunal in the earlier OA.1096/97 and in process of the same the services of the applicant came to be terminated. The positive

^{as was} proof that on 16-10-97 a similar incident occurred after the applicant completely discharged his duties, which was brought to the notice of the higher authorities but the higher authorities did not consider the same and on the other hand, served a show cause notice for termination. Further,

according to the applicant, the impugned order also deserves to be quashed and set aside on account of the fact that the stigma on the character and conduct of the applicant stood attached by the impugned order without recording a finding that the applicant was guilty and without conducting any enquiry apart from the fact that the complaint was withdrawn by the respondents themselves. The applicant also pleads that the termination order did not contain any reason except a bald statement that continuation of the service of the applicant was likely to seriously subvert the discipline/dangerous to service and that there were sufficient reasons to terminate the services of the applicant without stating the reasons.

7. Out of two considerations which may be put against the applicant, one consideration that the applicant by virtue of his position as Night Watchman was expected to exercise a thorough vigil to ensure that no such untoward incident took place precludes the applicant from seeking exonerations from the charges levelled against him. It is a matter of ordinary prudence that a person whose duty it is to ensure that no theft is committed or any other act of misfeasance takes place cannot ask for taking a lenient view because the default committed constitutes the basic and fundamental duties of a Watchman, the gravity of which in case of a watchman cannot be undermined. It is indicative of gross negligence on part of a watchman. It is well settled that a person appointed as Night Watchman to ensure that no theft or any other offence of such nature is committed, himself indulges into such act of

misfeasance, there cannot be any hesitation whatsoever on part of the Courts and Tribunals to hold him guilty.

8. However, there is one factor which heavily weighs against the respondent that in order to show compliance with the direction given by the Tribunal in OA.No.1096 of 1997, the respondents merely issued the show cause notice before venturing to terminate once again the applicant from service on the basis of the explanation tendered by the applicant in reply to the show cause without following the grievance procedure to find out whether the allegations and imputation of motives made against the applicant by the department were proved or not or whether the applicant succeeded in proving his innocence. It is necessary in all cases of departmental inquiry that sufficient opportunity should be afforded to the delinquent if the allegations and counter allegations are made inasmuch as it was incumbent upon the respondents to appoint an Inquiry Officer and to conduct regular inquiry as laid down in the disciplinary rules after receipt of the explanation from the applicant in response to the show cause notice. When the earlier Order in OA.No.1096 of 1997 was passed directing reinstatement of the applicant into service and giving liberty to the department to issue show cause notice, ^{to the} The Tribunal did not say that mere show cause notice and explanation could be treated as sufficient to derive satisfaction that the grievance procedure had been properly followed. We are firmly of the opinion that the respondents have scuttled the process of inquiry by straight away passing the order of punishment without affording an opportunity of hearing and without allowing

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the applicant to produce oral and documentary evidence before coming to a conclusion whether the delinquent could be held responsible for the charges levelled against him. Ofcourse, such an opportunity of producing the oral and documentary evidence is also required to be extended to the department for coming to any final conclusion whether the charge against the applicant is proved or not. The purpose of issuing show cause notice is to enable the defaulter to state his defence and to prove the same by examining his witnesses and cross examine the witnesses which may be produced by the department. If this exercise is not followed, mere issuance of show cause notice and the explanation to the show cause notice is not a sufficient compliance with the rules and regulations relating to domestic inquiries.

9. In the above view of the matter, therefore, we are not inclined to accept the proposition advanced on behalf of the respondents that the misconduct is proved from the explanation submitted by the applicant in reply to the show cause notice. In that view of the matter, therefore, the OA deserves to be allowed and once again the respondents can still be granted liberty to precisely and scrupulously follow the grievance procedure as laid down in Rules and not to arrive at an abrupt conclusion without examining the evidence which may have come on record and without giving the delinquent an opportunity of personal hearing and allowing him to produce any material to show his innocence. It is pertinent to note that the Respondents at this stage cannot escape from conducting a full-fledged inquiry when ^② they did not dispute the

legality of the direction given by the Tribunal in the earlier OA to issue show cause notice.

10. In the result, therefore, the OA is allowed. The impugned Order issued by the first respondent bearing No. ASP(N)/Disc/97-98, dated: 27-10-1997 is hereby quashed and set aside. No costs. The applicant, if removed, should be reinstated forthwith with full back wages.

H.RAJENDRA PRASAD

MEMBER (ADMN)

01 JUN 99.

D.H.NASIR

VICE CHAIRMAN

DATED: 1st day of June 1999

Amrit
1-6-99

sk/DSN.

1ST AND 2ND COURT

TO:-

HOHNJ

HHRP M(A)

HBSJP M(J)

D.R.(A)

SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE - CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR.R.RANGARAJAN :
MEMBER (A)

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

ORDER: 1699

ORDER / JUDGEMENT

MA./RA./CP No.

in
O.A. No. 1554/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

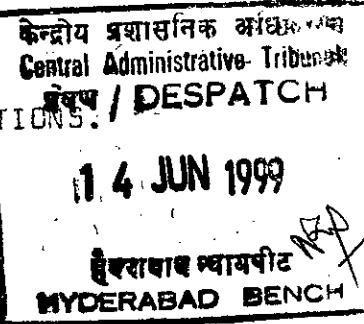
DISMISSED.

DISMISSED AS WITHDRAWN

ORDERED / REJECTED.

NO ORDER AS TO COSTS.

SRR



Swami (WV)

HIGH COURT FILE NO. 26/2002

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH AT HYDERABAD

WRIT PETITION NO. 23656/1999

W.P.M.P. No.

1/2002

A writ Petition was filed in the High Court of Andhra Pradesh
by Asst. Supdt. of Post Offices, Hyderabad North Sub Division, Hyd. & Another
vs. P. Madan Mohan Reddy

against the Order/Judgement of this Hon'ble Tribunal dated 1-6-99
and made in O.A. No. 1554/97.

The High Court was pleased to Dismiss/Allow/Dispose of the W.P.
or Interim Suspension/Stay/Notice the operation of Judgement

on 27-2-2002.

The Judgement of the Tribunal in O.A. No. 1554/97
and the order/Notice of the High Court of Andhra Pradesh is enclosed
herewith for perusal.

9/4/2002
10/4/2002

D.D.P.TY REGISTRAR (J)

1/4/2002

REGISTRAR

FON'BLE VICE-CHAIRMAN

FON'BLE MEMBER (ADMIN)-I

FON'BLE MEMBER (ADMIN)-II

FON'BLE MEMBER (JUDG)

Jed
27/3/2002

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD.
(SPECIAL ORIGINAL JURISDICTION)

WEDNESDAY THE TWENTYSEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWO

:PRESENT:

THE HON'BLE MR.JUSTICE: B. SUDERSHAN REDDY

AND

THE HON'BLE MR.JUSTICE: V. ESWARAIH

WRIT PETITION No. 23656 of 1999

Between:

1. Asst. Superintendent of Post offices,
Hyderabad North Sub. Division, Hyderabad.
2. The Postmaster, SNIE post offices,
Sanathnagar, Hyderabad.

And

... Petitioners

P Madan Mohan Reddy s/o. Yadava Reddy,
Sanathnagar, Hyderabad.

... Respondent.

Petition under Article 226 of the Constitution of India
praying that in the circumstances stated in the affidavit filed
herein the High court will be pleased to issue an appropriate
writ, order or direction more particularly one in the nature of
certiorari by calling for the records of the Central Adminis-
trative Tribunal, Hyderabad Bench in O.A. No. 1554/1997 and quash
the orders ~~passed~~ dated: 01-06-1999 made therein.

For the petitioners: Mr. C. V. Ramulu, SC for Central Govt.

For the Respondent: Mr. V. V. Narasimha Rao, Advocate.

The court made the following order:-

Case No. 23656 of 1999
Central Admin. T. B. Hyderabad
27/3/2002
134/2002
28 MAR 2002
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At the Law Library

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134/2002
134/2002

the Tribunal gave liberty to the petitioners herein to proceed further against the respondent-applicant in accordance with the rules after issuing show cause notice.

It is clear from a bare reading of the order passed by the Central Administrative Tribunal that it had interfered in the matter and set aside the order of termination on the ground that the petitioners herein failed to comply with the principles of natural justice. In the circumstances, the Tribunal directed the necessary show cause notice to be issued by the petitioners herein to the respondent-applicant before passing any order against him.

It is evident from the record that pursuant to the directions of the Central Administrative Tribunal, the petitioners herein have reinstated the respondent-applicant into the service followed by a show cause notice dated 22-9-1997 requiring the respondent-applicant to submit his explanation as to why his services should not be terminated for 'dereliction and imperfectness' in discharge of his duties. The precise allegation against the respondent-applicant, according to the said show cause notice, is that on 16-7-1997 he was on duty and there was an attempted theft on the very same night at SNIE Post Office due to which hinges of the lock used for treasury room of SNIE Post Office were completely bent and ring of the hinges located at upper portion of the treasury door was also found broken. It is alleged in the said show cause

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THE HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY
AND
THE HONORUABLE SRI JUSTICE V.ESWARALAH

W.P.No.23656 of 1999

O r d e r: (Per B.Sudershan Reddy, J)

This writ petition is directed against the decision of the Central Administrative Tribunal, Hyderabad Bench in O.A.No.1554 of 1997, dated 1-6-1999 where under the Tribunal quashed the impugned order passed by the first petitioner herein dated 27-10-1997 terminating the services of the respondent-applicant as contingent night watchman. The order passed by the Central Administrative Tribunal is challenged on various grounds.

It may be necessary to briefly notice the relevant facts leading to filing of this writ petition:

There is no dispute whatsoever that the respondent-applicant herein was appointed as part time contingent night watchman on 5-8-1993 in the office of the Post Master, SNIE Post Office, Sanathnagar, Hyderabad. His services were terminated by an order dated 17-7-1997. The respondent-applicant filed O.A.No.1096 of 1997 against the said order of termination before the Central Administrative Tribunal. The Tribunal by its order dated 26-8-1997 allowed the said Original Application filed by the respondent-applicant directing the petitioners herein to reinstate the respondent-applicant into the service as night watchman. However,

The respondent-applicant once again challenged the said order in O.A.No.1554 of 1997 before the Central Administrative Tribunal. The Tribunal after an elaborate consideration of the matter allowed the said Original Application filed by the respondent-applicant by setting aside the order dated 27-10-1997 passed by the petitioners herein. However, the Tribunal once again granted liberty to the petitioners herein to "precisely and scrupulously follow the grievance procedure as laid down in Rules and not to arrive at an abrupt conclusion without examining the evidence which may have come on record and without giving the delinquent an opportunity of personal hearing and allowing him to produce any material to show his innocence." It is that order which is impugned in this writ petition.

The learned Standing Counsel for the Central Government appearing on behalf of the petitioners herein contends that there is no need or obligation on the part of the petitioners herein to make any departmental or disciplinary enquiry against the respondent-applicant before his services are terminated for the simple reason that the respondent-applicant is only a part time contingent employee. There are no rules as such in force compelling the petitioners herein to make or initiate disciplinary or departmental enquiry against such part time contingent employees. It is submitted that the petitioners have complied with the principles of

notice that there was an attempted theft on the treasury of the Post Office and the respondent-applicant was not on duty as night watchman on that day/night and it was apparent that he has allowed somebody else to do the duty. The respondent-applicant submitted his explanation to the said show cause notice on 6-10-1997.

Be that as it may, the petitioners herein served another show cause notice upon the respondent-applicant on 13-10-1997 requiring his explanation in the matter as to why he made a complaint directly with the police authorities on 6-10-1997 about the attempt to commit theft in the Post Office on 16-7-1997. It is also alleged that the respondent-applicant had not been properly behaving with his superior officers. The respondent-applicant again submitted a detailed explanation on 20th October, 1997.

The petitioners herein passed an order on 27-10-1997 terminating the services of the respondent-applicant, which is to the following effect:

"Whereas a case has been investigated against Shri P. Madan Mohan Reddy, the contingent Night Watchman of SNIE P.O.

And whereas it is considered that continuance of Shri P. Madan Mohan Reddy as contingent Night Watchman in SNIE P.O. would likely to seriously subvert discipline/danger to the service.

And whereas said Shri P. Madan Mohan Reddy has given a written explanation which has been duly considered by the undersigned.

Now therefore, in exercise of the powers conferred/ vested the undersigned hereby terminates the services of Shri P. Madan Mohan Reddy, contingent Night Watchman, SNIE P.O., Hyderabad-18 with immediate effect."

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even any reference to the averments made in the explanations submitted by the respondent-applicant to the show cause notices issued by the petitioners. There are no findings whatsoever about the truth or otherwise of the contents of the explanations submitted by the respondent-applicant. The petitioners, strangely, even did not refer to the show cause notices issued to the respondent-applicant. We are of the considered opinion that the impugned order passed by the petitioners dated 27-10-1997 is vitiated for more than one reason; viz., (1) It is violative of principles of natural justice; and (2) It is contrary to the earlier directions issued by the Central Administrative Tribunal in O.A.No.1096 of 1997, dated 26-8-1997. In the circumstances, the Tribunal rightly quashed the impugned order. We find it difficult to uphold the order dated 27-10-1997 passed by the petitioners.

In the circumstances, this writ petition is disposed of confirming the order passed by the Central Administrative Tribunal dated 1-6-1997 in O.A.No.1554 of 1997 so far as it relates to quashing of the order dated 27-10-1997 passed by the petitioners. Consequently, the respondent-applicant is entitled to be reinstated in terms of the directions of the Tribunal.

But, however, we make it clear that there is no need to make any regular departmental enquiry as such against the respondent-applicant. All that is required to be done by the petitioners is to

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natural justice by issuing necessary show cause notices to the respondent-applicant in terms of the directions of the Tribunal in O.A.No.1096 of 1997, dated 26-8-1997. It is submitted by the learned Central Government Standing Counsel that the Tribunal committed a serious error in directing the petitioners herein to initiate disciplinary enquiry in accordance with the rules and to follow the 'grievance procedure'. There is no such procedure in vogue, is the submission made by the learned Standing Counsel.

The learned counsel for the respondent-applicant could not show and bring to the notice of this court any statutory rules in operation under which the petitioners are ^{under a} / ~~obligatory~~ to initiate departmental or disciplinary enquiry even against a part time contingent employee. In the circumstances, we are unable to subscribe the view expressed by the Tribunal that a detailed enquiry in accordance with the 'grievance procedure' is to be held against the respondent-applicant. We accordingly set aside that portion of the order.

But the question that remains for consideration is as to whether the impugned order dated 27-10-1997 passed by the petitioners herein is valid in law?

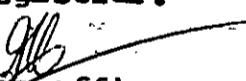
The petitioners herein having received the explanations from the respondent-applicant failed even to advert to the contents of the explanations submitted by the respondent-applicant. There is not

properly consider the explanations submitted by the respondent-applicant and provide him an opportunity of personal hearing, if he so desires, and permit him to place his version by producing either oral or documentary evidence, as the case may be. The petitioners shall take into consideration the contents of the explanations already submitted by the respondent-applicant and the evidence, if any, to be let in by him and accordingly pass an appropriate order, which should be a speaking order. It shall be open to the petitioners to forthwith set the proceedings in motion.

The writ petition is accordingly disposed of. There shall be no order as to costs.

Sd/-P.V.Radhakrishna Rao,
Asst.Registrar.

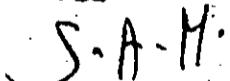
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Section Officer.

To

1. The Registrar, Central Administrative Tribunal, Hyderabad Bench Hyderabad.
2. The Asst. Superintendent of Post offices, Hyderabad North Sub. Division, Hyderabad.
3. The post Master, SNIE Post offices, Sanathnagar, Hyderabad.
4. Two G.D. copies.
5. one c.c. to Mr. V. V. Narasimha Rao, Advocate. (OpUC)

bsr


S.A.M.

High court Rile no. 26/2000

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD

WRIT PETITION NO. 23656 /1999

W.P.M.P.NO. 29411 /1999.

A Writ Petition was filed in the High Court of Andhra Pradesh by Sri Asst. Super. of Post office Hyd & one P. Madan Mohan Reddy against the Order/Judgment of this Hon'ble Tribunal dt. 1/6/99 and made in O.A. No. 1554/97

The High Court was pleased to Dismiss/Allow/Disposessed of order Interim Suspension/Stay/Notice the operation of Judgment O.A. No. 1554/97

The Judgment of the Tribunal in O.A. No. 1554/97
order/Notice to the High Court of Andhra Pradesh enclosed herewith for perusal.

Submiss.

1/3/2000
Deputy Registrar.

2/3/2000
Hon'ble Vice-Chairman. 10/2/00

Hon'ble Member (A) II

Hon'ble Member (J) P
M

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD

THURSDAY THE TWENTIETH DAY OF JANUARY
TWO THOUSAND ONE THOUSAND EIGHT HUNDRED AND EIGHTY EIGHT

PRESENT

THE HON'BLE DR. JUSTICE MOTILAL B. NAIK
AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.M.P.NO. 29711 of 1999

in

W.P.NO. 23656 of 1999

BETWEEN:

1. Asst. Superintendent of Post Offices,
Hyderabad North Sub-Division, Hyderabad.
2. The Post Master, SNIE Post Offices,
Sanathnagar, Hyderabad.

...Petitioners/Petitioners
in W.P.No. 23656/99 on the
file of the High court.

and

P. Madan Mohan Reddy

...Respondent/Respondent
in do

COUNSEL FOR THE PETITIONER: Mr. B. Adinarayana Rao, M.A.,
Standing counsel.

the High court may be filed under Section 151 of C.P.C. praying that
Central Administrative Tribunal, Hyderabad Bench be passed by the
dated 1-6-99 pending the W.P.No. 23656/99 on the file of the
High court.

The court, while directing issue of notice to the
respondents herein to show cause why this application should not
be complied with made the following order (The receipt of this
order will be deemed to be the receipt of notice in the case).

ORDER: INTERIM SUSPENSION. NOTICE.

Sd/- SULTANA BEGUM
ASSISTANT REGISTRAR

// true copy//

for Assistant Registrar

To

1. Central Administrative Tribunal, Hyderabad Bench, Hyderabad.
2. P. Madan Mohan Reddy, S/o. Yadava Reddy, Sanathnagar, Hyderabad. (RPA)
3. One CC to Mr. B. Adinarayana Rao, Sr. Central Govt. Standing Counsel
High court of A.P., Hyderabad (OUT)
4. Two Spare Copies.

KSR.

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1/2/2000

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