

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 1467/2002
TA No.

5-6-02

Date of Decision

37

Sh. Vishnu Bhakash Chawla

...Petitioner (s)

Sh. Sant Lal

...Advocate for Petitioner (s)

VERSUS

...Respondents

...Advocate for respondents

Coram :-

Hon'ble Shri/Smt. Lakshmi Swaminathan, (V.T.)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES

2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

RECORDED IN THE BENCH OF THE HON'BLE MEMBER
ON A DAY IN THE MONTH OF JUNE 2002
AT THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1467/1999

(39)

New Delhi, this the 5th day of June 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Shri Vishnu Prakash Sharma
S/o Shri Nandlal Sharma
Ex. Jr. Store Keeper
22/309, DMS Colony
Hari Nagar, New Delhi - 64.

...Applicant
(By Advocate Shri Sant Lal)

V E R S U S

1. Delhi Milk Scheme
through its General Manager
West Patel Nagar
New Delhi - 1100 08.

2. Union of India
through its Secretary
Ministry of Agriculture
Dept. of Dairing & Animal Husbandry
Krishi Bhawan, New Delhi.

(By Advocate Shri S.M.Arif)

...Respondents

O R D E R

By Hon'ble Shri Govindan S.Tampi.

This OA filed by Shri Vishnu Prakash Sharma, being continued by his widow after his death on 9-3-2001, is directed against his dismissal from service and the move to have his family evicted from the official accommodation, allotted to him.

2. Heard S/Shri Sant Lal and S.M.Arif, legal counsel for the applicant and the respondents respectively.

3. Applicant who was working as Jr. Store Keeper, with Delhi Milk Scheme and who had 25 years of unblemished service, was charge sheeted on 11-8-97, for alleged misappropriation of 2367.8 KG Ghee causing loss of Rs. 2.13 lakhs. Following an ex parte

enquiry, he was dismissed from service on 12-8-98, the dismissal being upheld in appeal on 15-12-98 and in revision on 12-5-99. All the three orders under challenge for procedural irregularities as well as for violation of the principles of natural justice.

4. The applicant who was working as Jr. Store Keeper in Bi-Products Dn in D.M.S., had during May 1994, reported about the theft of poly packs of ghee as well as difficulty in keeping a check thereon, primarily because of the need for constant movement among four floors. He had also sought transfer from the stores. Though the applicant was transferred out on 3-6-94, but was not relieved for quite some time. Inspection carried out on 14-6-94, pointed to a number of reasons for the shortage/loss of ghee, like cuts made on the packs by the sharp edges of plastic crates, handling loss, rodents' presence and possible thefts. On 15-6-94, when it was known that thefts had also taken place at gate No.3, air lock cold storage, the matter was reported to senior officers and security staff and the physical verification showed shortage of 1367 Kgs of ghee. Besides, a FIR was also lodged which resulted in the apprehending and conviction of Kanhaialal who was an employee of a private contractor. Applicant replied to the memos issued to him on 15th and 16th July 1994. After being placed under suspension on 24-7-94, he was relieved on 24.8.94 and was issued a charge sheet on 11-8-97. Following the ex-parte enquiry held the E.O. in his report of 28.3.98 held the charge as proved. The applicant who was directed to be present before the General Manager did so on 27-6-98 and prayed for a fresh enquiry,

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stating that the earlier enquiry had taken place, behind his back. The same was not permitted and the applicant was directed to submit a representation which he filed on 13.7.1998. Disciplinary Authority, however rejected the above and dismissed him from service on 12.8.98. As pointed out earlier, both the appeal and the review petition filed by him were also rejected. His subsistence allowance amounting to Rs. 1,40,000/- which was stopped on 16-10-1995, was restored by the Manager on 27.6.98, but the same had not been released and he had been served with a notice to vacate the official accommodation and to pay an amount of Rs.30,649/- towards licence fee. Hence this O.A.

5. Grounds raised in the OA and forcefully reiterated by Shri Sant Lal, ld: counsel for the applicant are that :-

- (i) no shortage had been noticed on the stock verification of 31-3-94 ;
- (ii) no mention of either the theft or the other reasons in the inspection has been made in the enquiry report ;
- (iii) holding of proceedings in the absence of the applicant was improper ;
- (iv) applicant's repeated requests for posting one storage clerk had not been heeded to;
- (v) though the applicant was transferred in March 94 he had not been relieved until much later ;
- (vi) Likelihood of the misappropriation of ghee by Kanhaiaya lal with connivance of the security guards cannot be ruled out, especially as the shortage is noticed by the Inspection team after incidence of theft;

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(vii) report did not take into consideration likely reason for shortage like menace by the rats, faulty sachet machines, faulty and broken crates, frequent electricity failure leading to melting of ghee, stoppage of lifts etc.

(viii) the charge-sheet has been vague and unspecific;

viii) the charge-sheet was vague and unspecific; as far as shortage of 2367.8 Kg of ghee was concerned, as no. of polypacks were not shown as short but only quantity was shown as short;

ix) Insinuation that the applicant was responsible for the shortage for his pecuniary gains had no basis;

x) mere signing the report does not mean that the applicant has accepted the guilt;

(xi) holding of the enquiry ex-parte was wrong and the respondents' remarks that postman could not deliver the letter and the applicant was not available on repeated visits, cannot be relied upon. Respondents should have resorted to advertisement in newspapers;

(xii) punishment was totally harsh and highly disproportionate to the gravity of the offence, as the applicant could at worst have been penalised for negligence;

(xiii) material witness like D V Singh, PAO was not produced and this raises suspicion;

xiv) all relied upon documents were not provided;

(xv) denial of subsistence allowance since 16.10.95 was improper and inspite of the manager's direction on 29.6.98, the same was not given effect to;

(xvi) there is no realisation that in the work assigned to the application, some amount of process/shortage / handling loss can take place;

(xvii) orders passed by the DA, appellate authority and revision authority were purely mechanical and non-speaking in nature ;

(xviii) the appellate authority had considered a new charge that the applicant had deserted from duty; which was improper;

(xix) appellate authority attempt to justify the stoppage of the subsistence allowance was improper;

(xx) revisioning authority had also not considered the points raised by the applicant but has issued a non speaking order.

6. In view of the above, the OA should be allowed with full relief to the applicant, argues Shri Sant Lal.

7. In the reply filed on behalf of the respondents, and forcefully reiterated by Shri S.M.Arif, 1d. counsel for the respondents, it is pointed out that the applicant had been chargesheeted for violation of Rule 3 of CCS (Conduct) Rules, 1964 and dealt with under Rule 14 of CCS (CCA) Rules, 1965, the shortage of 1367 Kg of ghee noticed in the DMS godown in his charge. This was confirmed by the Internal Audit. Preliminary enquiry conducted against the applicant for the alleged shortage of 2367.8 Kg, valued at Rs. 2.13 lakhs; which showed that the above shortage had occurred and the applicant was responsible for the loss. Applicant was therefore placed under suspension and his explanation was called for as a prelude to further action. Chargesheet was issued thereafter, but no reply was filed by the applicant. When the enquiry was held, several letters were addressed to the applicant's last known address but there was no response as the applicant had deserted his official accommodation without prior information ^{to} the disciplinary authority. The family of the applicant also did not file any missing report with the Police or the respondents, which led to the stoppage of the subsistence allowance. Enquiry proceedings, were conducted ex-parte and the report was submitted on 25-3-98. Report could not be served on the applicant on 6-4-98 as he was away from his house and no member of the family knew his whereabouts, it was served on his daughter on 11-6-98 duly acknowledged receipt

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thereby. On 13-7-98, the applicant appeared/indicated that he had lost mental balance and memory for quite sometime in between and represented against all actions of the respondents and sought a fresh enquiry. Disciplinary authority did not accept the plea as it appeared that he had not co-operated with the inquiry deliberately avoided all the proceedings and tried to take shelter behind the plea of absence of mental balance. This, according to the respondents, was not acceptable. This was therefore followed by the impugned orders.

8. The applicant had been chargesheeted for the shortage of 2367.8 Kg of ghee from the store under his direct charge and the shortage report has been signed him. The applicant who was negligent about the discharge of his duties of protecting Govt. property failed to do so and therefore did not deserve any sympathy or consideration. The impugned orders of 12.8.98, 5.12.98 and 21.5.99 also show that the applicant had manipulated Govt. stores for pecuniary gain. Though he was given repeated opportunities to prove ^{his} innocence, he had kept away from the proceedings and adopted delaying tactics and desertion from duty. All the orders have been issued after due process and there was no illegality about them. As he was over all charge of the ghee stores, he alone was responsible for the shortage and his attempt to apportion blame to others was incorrect. Physical checking conducted on 15-6-94 showed a discrepancy of 1367 Kg. Further there were 6930 packets in leaking condition, which showed a loss of another 1000.8 Kg. Thus the total shortage came to 2367.8 Kg valued at Rs. 2.13 lakhs. The

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applicant had also signed the physical verification report, in token of accepting the *Shortage* 2. Accordingly, the applicant had been suspended and thereafter chargesheeted on 11.8.97 and proceedings gone through. Memo dated 10-6-98 was sent to the applicant, but it could not be served. It was sent again and was accepted by his daughter on 11-6-98 after which the applicant appeared and made certain pleas, including a request for fresh enquiry, which was not accepted. He was given another opportunity to file his representation which he did on 13.07.1998 following which orders were issued. Enquiry officer, was forced to conduct, ex parte proceedings as the applicant was absconding and did not appear before the EO inspite of registered letters dated 22.9.97, 13.10.97 and 4.11.97. The applicant had been absconding from January 95 as he was aware that he had misappropriated Rs. 2.13 Lakhs being the cost of 2367.8 Kg of ghee found short. substantial amount of money belonging to the Govt. Still the respondents had given him all the opportunities and when he had chosen not to avail himself of the same, there was nothing much the respondents could have done. Respondents had in the circumstances held that the individual was not fit enough to be retained in service and penalised him accordingly. The applicant's subsistence allowance had been held back, primarily because he had absconded from the Headquarters, without intimating the disciplinary authority. All the grounds raised in the OA are also disputed by the respondents. The alleged incidents of theft, leakage due to shifting/melting were wrong and he had not brought those incidents properly to the notice of his seniors Even when opportunity was given

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to him he did not avail himself of the same. Being the overall in charge of the store, it was for him to report discrepancies, difficulties etc. instead of seeking to take shelter behind such excuses. The shortage was noticed both during the check and the audit and the applicant was aware of it but he was not able to prove his case. The penalty imposed on him was minimum, keeping in view the gravity of the offence and he was liable to be prosecuted. He was not given the preliminary enquiry report, as there is no provision for the same. The entire proceedings had gone through properly. And the absence of PW 1 Shri D V Singh IAO- was not material as others have appeared in the proceedings. Subsistence allowance was correctly held back, as he had deserted his Headquarters without permission. Disciplinary Authority had passed a reasoned and speaking order after examining all aspects and on coming to the conclusion that the applicant was not a fit person to hold the office the Appellate and Revision  were also correct and speaking orders issued after examining all the points raised in the appeal without taking into consideration, any extraneous matters, alleged. All the orders deserved to be upheld, according to the respondents.

9. During the oral submissions Sh. Sant Lal learned counsel reiterated his written pleadings indicated that

- a) the charge raised against the applicant was vague and unspecific;

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- b) the subsistence allowance of the applicant was stopped arbitrarily and improperly;
- c) the proceedings were conducted ex-parte;
- d) the disciplinary authority's order was non-speaking;
- e) no personal hearing was granted.
- f) the applicant's request for fresh enquiry was rejected and;
- g) both the appellate and reviewing orders were faulty

10. According to Sh. Mohd. Arif, learned counsel for the respondents all the above points were wrong as

- a) the shortage/loss of ghee from the store, specifically accepted by the applicant by signing the report was the basis of the charge.
- b) subsistence allowance was correctly stopped as the applicant had absconded;
- c) proceedings had to be ex-parte as the applicant had absconded and did not attend the enquiry;
- d) all the orders were reasoned and speaking orders and

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e) applicant was given all the opportunities to prove his innocence which he had failed to make use of ;

f) fresh enquiry was not called for and

g) applicant as the stores-in-charge was fully responsible for the loss in the store.

OA in the above circumstances merits dismissal , urges Sh. Mohd. Arif, learned counsel.

11. We have carefully considered the matter and perused the relevant documents brought on record. Challenge in this OA is directed against the extreme penalty of dismissal from service, imposed on the applicant (now deceased) formerly Jr. Store Keeper with Delhi Milk Scheme (DMS), for the alleged shortage of 1367.8 +1000.8 kg of ghee from the stores which was directly under his charge. The facts are not disputed. During the course of stock verification undertaken on 14.6.94 , in the ghee store 1367 Kgs of Ghee , kept in plastic pouches were found to be short. Besides, the audit inspection also showed that a total quantity of 1000.8 Kg of Ghee was found short in number of pouches which were sent for re-combining to the Central Processing unit . These have been recorded in the contemporary reports, and also signed by the applicant. After the applicant was placed under suspension a Charge sheet was issued to him but he was not available for reply, having left his residential premises, on

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account of which ex-part proceedings were taken, which the charge was held to be proved. After considering the applicant's representation the disciplinary authority agreed with the Enquiry Officer and imposed on him the penalty of dismissal which was endorsed and reiterated by both the appellate authority and the revisionary authority. While the applicant ever said that proceedings have been taken behind his back and through the medium of an ex-part enquiry he has been found guilty and punished without considering his plea for a fresh enquiry, the respondents state that being in overall charge of the godown/store where from the loss/storage has occurred he was solely responsible for the loss and that he had forfeited his right for protesting against the proceedings not having presented himself at the appropriate time and availed himself of the opportunities given.

12. The charge raised against the applicant vide Memo. dated 11.8.97 reads as below:

"That the said Shri V P Sharma while functioning as Jr. Store Keeper in D.M.S. and posted in Ghee Store under the charge of Manager (Distt) has misappropriated 2367.8 Kgs of Ghee upto 15.6.94 intentionally for his pecuniary gains. He is thus charged with misappropriation of 2367.8 Kgs. ghee deliberately for his pecuniary gains and thus causing loss to DMS approximately to the extent of Rs. 2.13 lacs which acts of Govt. servant shown dishonesty, doubtful integrity, highly unbecoming of a Govt. servant in violation of rule 8 of CCS (Conduct) rules 1964."

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As the applicant did not reply and did not appear before the Enquiry Officer inspite of letters having been issued to him, repeatedly, proceedings were held ex-parte and the E.O. in his report of 28.3.98, recorded as under:-

"Facts for consideration:

1. The charge sheeted employee, Sh. V P Sharma, Jr. Store keeper has misappropriated 2367.8 Kg. of ghee intentionally and for pecuniary gains and thus caused loss of Rs. 2.13 lakhs to the Delhi Milk Scheme.
2. Whether because of the above misconduct he has violated rule 3 of CCS(Conduct) Rules, 1964.

Decision:

That in view of the various documents produced by the department it is proved beyond reasonable doubt that on 15.6.94 in Central Diary Sh. B D Mehta ADO, Sh. Devi Dayal Jr. A/c Officer, Shri D V Singh IAO, Sh. B R Sethi and Shri V P Sharma store keeper had jointly carried on the physical verification of the stock of ghee. On the basis of documents produced by the department it is proved beyond reasonable doubt that there was shortage of 1367 Kgs. of ghee. This has been proved by the officers of physical verification team by means of document No.1. Besides this difference was also found on the stock register whose details are given in document No.4.

That the charge-sheeted employee Shri V P Sharma on 26.6.94 was enquired by DGM Administration. During the enquiry Shri V P Sharma admitted the shortage of stock of ghee.

That the charge-sheeted employee was given enough time to defend, for filing chief and General Examination but he did not make use of the opportunities.

CONCLUSION:

In view of facts of the case the charge made against Shri V.P. Sharma Jr. Store Keeper stands proved."

13.. The applicant's representation dated 13.7.98 against the findings of the EO was considered by the disciplinary authority who held on 12.8.98, as below:-

"It was established beyond doubt that Sh. Sharma was absconding from the Headquarter since January 1995". He proceeded to record as below:

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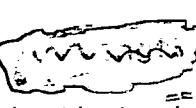
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"The under signed has also gone through the enquiry report wherein the charge against Sh. V.P. Sharma, Jr. Store Keeper for misappropriation of 2367.8 Kg of ghee deliberately for his pecuniary gains causing loss to the organisation to the extent of Rs.2.13 lakhs has been proved ex parte.

"The undersigned after considering all the facts/documents Enquiry Officer report as well as the submissions made by Sh. Sharma, come to the conclusion:-

"That it had been established that "Shri Sharma has managed to misappropriate 2367.8 Kgs of Ghee from the Ghee stores under his charge and inclined to agree with the findings of the EO and hold Shri V P Sharma Jr. Store Keeper, guilty of the charge and consider him not a fit person to be retained in Govt. service". and accordingly imposed on him the penalty of dismissal. The DA, has during the course of his findings, also justified the withholding of the applicant's subsistence allowance, as the applicant was absconding. Main reason for the decision against the applicant would appear to be that the applicant who was placed under suspension had left the Headquarters without permission. In the appellate order dated 15.12.98 mention is made of the six issues raised by the applicant in his appeal though those have not been discussed. The revision authority's order 21.5.99 observes that the applicant "has not brought to notice any new material or evidence which has the effect of changing the nature of the case which requires reconsideration of the orders of the Disciplinary Authority and the Appellate Authorities," and accordingly dismissed the review petition."

14. As noted earlier, the applicant has at considerable pains  sought to explain his position and has averred that by holding the ex-parte enquiry and

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denying the chance of a fresh enquiry, as he was prevented from attending the same on account of his mental imbalance, the respondents have violated principles of natural justice and acted arbitrarily. On the other hand, the respondents with equal vehemence argue that as the applicant had deliberately avoided the proceedings, inspite of repeated opportunities being given to him, ^{he} cannot turn up at a later stage and demand a fresh enquiry. He has therefore to bear the consequences of his action.

15. Shortage / loss of 2367.8 Kgs of Ghee from the store which was under the direct charge of the applicant is an established fact. Stock Verification conducted on 15.6.94, showed that as against the book balance of 70,376 Kgs, quantity present on checking came to be only 69009 Kgs, pointing to a shortage of 1367 Kg, physical verification report has been signed by the applicant pointing to the above shortage. Besides, 6930 torn packets ^{1.1kg} (14) in leaking condition were returned to Central diary for recombining, which had a total nett weight of 5929.2 Kg, showing a loss of 1000.8 Kgs. This report has also been signed by the applicant. Thus the shortage of 2367.8 Kg of ghee has been noticed from the store, under the direct charge of the applicant. When shortage/loss occur from storage premises, the person incharge of the store, who has also signed the report as having been a party to them verification cannot wash off his responsibility. All the explanation given by the applicant would not come to his rescue as the loss/shortage points to his lack of supervision and failure of duty. However it has to be seen whether the individual concerned had himself

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misappropriated the goods found short for his pecuniary gains, pointing to dishonesty and doubtful integrity calling for the imposition of dismissal. The applicant has signed stock verification report and the audit report pointing to the shortage/loss but these have not been proved against him in the enquiry through witnesses, as he was himself away either absconding or otherwise and had not responded to enquiry officer's directions. While the applicant therefore, cannot take shelter behind a plea ex-parte proceedings have been held against him and he has been penalised, unheard, respondents also could not have taken a view that they would not hold a fresh enquiry, when the request for the same, was raised by the applicant on 13.7.98, before the order was passed by the Disciplinary Authority. In fact it is found that the request has been brushed aside with the observations "the undersigned find that there was no point for conducting fresh, enquiry as sufficient opportunities have been provided by the EO during the course of Enquiry Proceedings and he deliberately avoided enquiry proceedings and therefore there was no point left to the EO but to conduct the enquiry proceedings ex-parte". This was patently wrong, as neither the enquiry report nor disciplinary authority order or appellate order or revision order, has discussed the contents of the charge in any manner. In fact there is no whisper about the charge. All of them ^{in the} has gone on to record that the applicant had stayed away from the enquiry proceedings, for whatever reasons, and on account of the applicant's absconding or desertion, the charge stood proved that the applicant misappropriated the goods, intentionally to secure

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pecuniary gains. Thus the only reason for confirming the charge was the applicant's absence from the enquiry proceedings. Without in any way, ourselves straying to appreciating the evidence, which is clearly outside the scope of our judicial review, we have to record that an attempt has been made by the respondents at any level to appreciate the evidence. It was clearly a violation of procedural requirements and of the principles of natural justice and evidently the findings by the enquiry officer as well as the order of the DA were based on facts, extraneous to the issue, inspite of all valiant protestation by the learned counsel for the respondents. Appellate Authority and revision Authority have also not improved the matters in any way. Appellate Authority carefully enumerated the points raised by the appellant (applicant) but had not discussed them or disposed them, while the revision authority only indicated that no fresh points have been raised. That the applicant had abstained himself from the enquiry proceedings, does not absolve the enquiry officer or the Disciplinary Authority from proving the charge against the charged officer. And this they have failed to do. While the applicant, having been the Store keeper in charge of the store, wherein the shortage/loss has been noticed cannot be absolved of the responsibility of lack of supervisory control, Enquiry Officer, Disciplinary Authority and others should have established that in addition to the shortage / loss there was a deliberate motive for pecuniary gains. In the absence of the same, what remains is ^{Only} the basic fact of the shortage / loss of Ghee -2367.8 Kgs from the Store. The proceedings adopted by the respondents have been less than proper

and fair. In the circumstances of the case wherein the charge has not been noticed proved against the applicant the imposition of extreme penalty of dismissal was not called for and the same shocks the judicial conscience, as brought out by the Hon'ble Supreme Court's findings in the case of B C Chaturvedi Vs UOI and Others [JT 1995(8) SC 65]. This is a case where imposition of a penalty less harsh than dismissal/removal would alone have been justified. We do not intend to substitute our judgement for that of the respondents in regard to the question of penalty but only leave it to them to take an appropriate decision, in view of our observation.

16. Under normal circumstances, this OA would have been remitted to the disciplinary authority for conducting the enquiry afresh. The same has now become irrelevant as the Charged Officer is no more. Still justice and fair play demand that the respondents are directed to consider the case once again, only keeping in mind what has been proved i.e. shortage/loss of 2367.8 Kgs of Ghee from the store, which would at worst amount to negligence and consider imposition of penalty less harsh than dismissal or removal so that the retirement dues payable to the legal representatives of the deceased applicant would not be totally denied.

17. Incidentally, we also observe that the applicant's subsistence allowance, during suspension, has not been paid from January 1995, while the LRs have been directed to pay the arrears of licence fee for the official accommodation, Respondents version that payment of subsistence allowance was stopped, as the

applicant's whereabouts were not known, has no relevance, once he has come back and appeared before the Disciplinary Authority in August 1998. holding back of the subsistence allowance was improper and the amount has to be released, subject of course to adjustment of any amount due from the applicant/LRs.

18. In the above view of the matter, the application succeeds to a substantial extent and is accordingly disposed of. The orders of dated 12.8.98, 15.12.98 and 21.5.99 passed respectively by the Disciplinary Authority, Appellate Authority and revisionary authority, are quashed and set aside. The matter is remitted to the disciplinary authority for consideration and passing of a fresh order, if felt needed, imposing on the applicant a penalty less harsher than dismissal or removal, keeping in mind only the proved facts - i.e. the loss/shortage of ghee from the storage room and keeping out of consideration the applicant's "absconding or desertion". This exercise should be completed within three months from the date of receipt of a copy of this order. While doing so, the respondents shall also in fairness consider the question of release of the subsistence allowance of the applicant which has been held back, subject of course to the adjustment/recovery of any amount due from the applicant or his LRs. No costs.

(Govindan S. Tampi)
Member (A)
Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)