

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 1199 of 2001

Allahabad, this the 30 day of November 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Ram Narain a/a 57 years, Son of Late Sukhdeo Resident of 87/8, Juhi Lal Colony, Kanpur Nagar.

Original Applicant

Substituted by: -

1. Smt. Shanti Devi a/a 55 years W/o Late Ram Narain.
 2. Smt. Kamlesh Verma W/o Sri Santosh Kumar Verma (Married).
 3. Smt. Meena Kumari W/o Late Kailash (D/o Ram Narain)
 4. Udai Pratap Singh S/o Ram Narain (deceased)
 5. Smt. Poonam W/o Sri Munna (Married D/o Ram Narain)
 6. Ajai Kumar Verma S/o Ram Narain (deceased)
 7. Smt. Anita Verma W/o Sri Akal Kumar (D/o Ram Narain)
 8. Sri Vivek Kumar Verma S/o Ram Narain (deceased)
 9. Smt. Sunita Verma W/o Anil Kumar Verma (D/o Ram Narain)
 10. Km. Seema Verma D/o Late Ram Narain
 11. Km. Aarti Verma D/o Late Ram Narain
 12. Km. Pooja Verma D/o Late Ram Narain.
- All residents of 87/8 Juhi Lal Colony, Kanpur.

Substituted Applicants

By Advocate: Mr. S.K. Mishra

Vs.

1. Union of India through the Secretary Ministry of Defence, New Delhi.
2. The Director General, Ordnance Factories/Chairman, Ordnance Factories Board, 10-A, Auckland Road, Calcutta.
3. The Addl. Director General, Ordnance Factories Directorate General Manager Ordnance Factories, Ordnance Equipment Factories General Headquarter of Road, Kanpur.
4. The General Manager, Ordnance Parachute Factory, Kanpur.

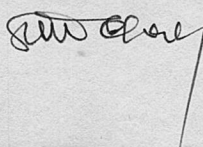
Respondents

By Advocates: Sri R.C. Shukla
Sri S.N. Chatterji

ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Having into account the bulky record, the Judgment of Hon'ble Apex Court reported in AIR 1986 SC 1370 Life Insurance Corporation of India vs. Escorts Ltd. And others will be most relevant and the same is reproduced: -



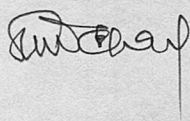
"A truly mountainous record was built up running to several thousand pages and more have been added in this Court. Indeed, and there was no way out, we also had the advantage of listening to learned and long drawn-out, intelligent and often ingenious arguments, advanced and dutifully heard by us. In the name of justice, we paid due homage to the causes of the high and mighty by devoting precious time to them, reduced, as we were, at times to the position of helpless spectators. Such is the nature of our judicial process that we do this with the knowledge that more worthy causes of lesser men who have been long waiting in the queue have been blocked thereby and the queue has consequently lengthened. Perhaps the time is ripe for imposing a time-limit on the length of submissions and page-limit on the length of Judgments."

2. Instant O.A. has been instituted for the following relief (s): -
"to set aside the impugned order dated 18/20th April 2001 passed by respondent No. 3, Annexure A-1 to Compilation No. I and order dated 16.09.2000 (Annexure A-2) and the order dated 09.06.2001 passed by respondent No. 4 (Annexure A-3). Further prayer has also been made in order to declare the entire inquiry proceedings vitiated against the applicant as illegal, void abinitio after summoning the records there from the respondents to quash the same as it has been initiated by respondent No. 4 who was not at all competent to do so. Further prayer has been made for giving direction to respondent No. 1 to 4 to reinstate the applicant with all consequential benefits like arrears of salary etc."
3. The pleadings of the parties may be summarized as follows:

The applicant being fully qualified and eligible after completing Intermediate from Commerce got himself appointed on the post of Lower Division Clerk in the year 1962 under the orders of Director General, Ordnance Factories, Calcutta and consequently was posted at Ordnance Parachute Factory, Kanpur.

Butcher

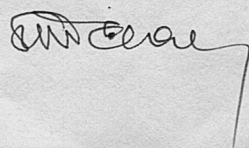
Thereafter applicant was promoted as Upper Division Clerk in the year 1970, considering his satisfactory performance. It is stated that the factory account work was being looked after by separate wing under the authority of Cash Officer, who is Class-II Officer and over all In-charge and Supervisor as General Manager. No post of Assistant Cashier or Cashier had been created by the department and Upper Division Clerk had been discharging the duties of Assistant Cashier without there being any change in their remuneration and status and amongst Assistant Cashier was also nominated Cashier and entitled for additional allowance of ₹ 30/- per month without any change. It is stated that the respondent No. 4 posted the applicant as Assistant Cashier on 17.09.1993 and 30.04.1980. The applicant was further directed to discharge the duties of Cashier and order was issued on 15.07.1980. The applicant under the orders of respondent No. 4 was compelled to discharge the work of Cashier but the applicant was not able to discharge the duties on the post of Cashier being neither qualified nor otherwise found himself to be competent enough to take the said work. The applicant requested respondent No. 4 ^{on} ~~at~~ 07.07.1981 to relieve him from the work of Cashier and to send him back to work as Upper Division Clerk for which he is duly eligible. Thereafter, in pursuance of the letter dated 07.07.1981, the respondent No. 4 vide Order dated 15.07.1981 posted the applicant from Cash Office to Upper Division Clerk-Establishment Section. Due to lack of knowledge and work, several bonafide mistakes were committed by the applicant in making entries in various registers, resulting a sum of ₹ 16,500/- remained with him in excess for which applicant



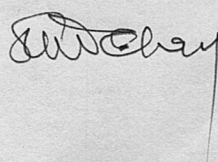
requested the respondent No. 4 to get the same amount deposited as he has not been able to find out the bonafide error committed by him. The amount was left in excess with the applicant. The amount was deposited by one Dwarika Prasad who was successor cashier of the applicant. The respondent No.4 without any authority initiated disciplinary inquiry against the applicant and placed the applicant on suspension vide order dated 08.02.1982 without mentioning any reason except stating that the disciplinary inquiry proceedings were contemplated against the applicant. A Court of Inquiry was also ordered against the applicant and the same submitted report on 21.01.1983 pointing out certain deficiencies in various cash book and registers. Consequently, a F.I.R. was lodged at P.S. Rail Bazar. It has been alleged that the applicant has committed embezzlement and misappropriate a sum of ₹ 3,131.98. In spite of the fact that the applicant was put under suspension, no charge sheet was served on the applicant for a period of one and half year. Various representations were made in that connection and even subsistence allowance was not increased from half to 3/4th. The delay in completing the inquiry was on account of fault of respondent No. 4. At the time of placing the applicant under suspension, there was no sufficient material available with the respondents. It has been provided under Rule 23 (1) of the CCS (CCA) Rules 1965 that the suspension order must contain the reasons of suspension and hence the suspension order was illegal abinitio. Due to earlier charge sheet, it is violative of Rule 3 (1) of CCS (CCA) Rules. It has been alleged in the charge sheet that the applicant had made certain wrong entries pertaining to some



items. But no loss was suffered to the department due to deliberate act of the applicant. In Article II of the charge sheet, it is alleged that while the applicant was functioning as Cashier had made certain over payments and the account shows over payment of five paise to ₹ 4/-. Nine items in all were shown in the Article-II. Prima facie allegations made against the applicant were false. The applicant was required to submit reply within 15 days but for submitting the reply applicant demanded copy of documents relied in the charge sheet. But the applicant's request was rejected on 26.08.1983. There was no delegation of power to respondent No. 4 to act as Disciplinary Authority and the entire exercise taken on the part of respondent No. 4 was abundantly illegal and violative of Article 311 (1) of the Constitution of India. There is long narration of the facts, which are not required to be repeated. It has also been alleged that all the proceedings conducted by the Inquiry Officer-Sri Mazumdar were illegal and without jurisdiction. Appeal was preferred against the rejection of representation of the applicant but the inquiry was completed by the Inquiry Officer and a request was made to serve the copy of inquiry report but even the copy of inquiry report was not supplied to the applicant. The Disciplinary Authority was biased and prejudiced against the applicant even declined to change the Inquiry Officer and directed the applicant to cooperate with the inquiry. The Disciplinary Authority issued the inquiry report dated 27.11.1989 in which it was held that Article-I is wholly proved, in Article II-4 items were found not proved but the remaining were found to be proved, in the Article-III-charges of carelessness was found to be proved in Article-IV it was stated that it was



completely proved and in Article-V it was stated that no loss or excess payment was found, yet irregularities and errors in the entry were found to be proved. To the utter surprise of the applicant, respondent No. 4 who was not competent, passed the order for removal of the applicant from service on dated 22.02.1990. Consequently, the applicant filed O.A. No. 952 of 1990 before the Tribunal, and the Tribunal passed the final order on 24.11.1995 of setting aside the orders dated 05.04.1988 and 22.02.1990 by following the Judgment of Hon'ble Apex Court in the case of '*K.R. Dev vs. Union of India*'. It was also observed that denovo inquiry by the respondents was patently illegal as Rule 15 (1) of CCS (CCA) Rules, 1965 did not permit for denovo inquiry. The finding was recorded by the Tribunal that the Disciplinary Authority had power to the extent to direct any further inquiry such as the circumstances as relevant services can not be examined or the same matter was left, and the order of removal was quashed. The applicant submitted copy of the Judgment of the Tribunal along with the representation. The respondent No. 4 again passed an Order dated 07.03.1996 for further inquiry to be conducted from the stage of 2nd May 1986 when the Cashier was examined. Another order was passed on 07.03.1996 passed by respondent No. 4 stating that in order to conduct the inquiry against the applicant he was put under suspension w.e.f. 22.02.1990. Two orders were issued on same date on 07.03.1996. Sri S.B. Mishra, Assistant Works Manager was appointed as Presenting Officer and Sri V.K. Elwadi was appointed as the Inquiry Officer. In the representation submitted by the applicant it was stated that the suspension order passed by

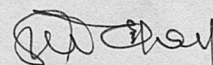


the respondents is patently illegal. The respondent No. 4 was the ^{not} Appointing Authority of the applicant nor authorized to act as a Disciplinary Authority and moreover the suspension order was quashed by the Tribunal hence it is illegal. But even then in spite of the representation of the applicant, inquiry was conducted. After conducting inquiry, report was submitted to respondent No. 4 and the respondent No. 4 illegally passed the order of removal against the applicant on 16.09.2000. An appeal was filed by him under Rule 3 (1) of the CCS (CCA) Rules, 1965 before respondent No. 3. No opportunity was provided to the applicant and representation was made and without passing any order on the representation, a show cause notice was issued on 06.04.2001. On 18/20-04-2001, the respondent No. 2 rejected the appeal of the applicant. The order of rejection was totally non-speaking. A detailed reply was submitted to show cause notice narrating all the facts and also motive for imposing the punishment. But a non-speaking order was passed. However, the applicant has also alleged that the charge sheet was served without any basis, Inquiry Officer was illegally appointed by respondent No. 4 without any authority, documents were not supplied to the applicant in spite of request, which is illegal and the entire inquiry vitiated. The impugned orders are liable to be set aside of the Disciplinary Authority as well as of the Appellate Authority.

4. The respondents filed a detailed Counter Reply and denied from the allegations made in the O.A. It has also been alleged that earlier the applicant filed O.A. No. 952 of 1990 before the Tribunal seeking quashing of the charge sheet dated 15.07.1983,

Wintery

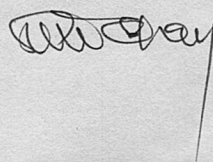
order dated 05.04.1988 imposing punishment for setting aside the enquiry conducted by Shri K.J.J. Ratanam-another Officer was appointed as Inquiry Officer to hold the denovo inquiry into the charges and passed the order dated 22.02.1990 regarding removal of the applicant. The O.A. was allowed vide Judgment dated 24.11.1995, order dated 05.04.1988 and 22.02.1990 were quashed. In compliance of the Tribunal's order, the Disciplinary Authority decided to hold further inquiry vide order dated 07.03.1996 from the stage of 02nd May 1986. Joint General Manager was appointed as an Inquiry Officer vide order dated 07.03.1996 to inquire into the charges framed against him and the report was submitted on dated 14.03.2000 against the applicant holding him guilty of charges framed against him. Inquiry report is annexure CA-4 of the Counter Affidavit. Copy of the report was submitted to the applicant vide letter dated 28.06.2000. In pursuance of the show cause notice, and inquiry report, a detailed representation was submitted by the applicant on 11.07.2000. It is stated that intention of the applicant was to linger on the disciplinary proceedings, as the representation was submitted in Hindi and vide representation Hindi version of the inquiry report was demanded whereas the applicant educationally well qualified and capable to understand the contents of the inquiry report and in order to delay the matter, Hindi version of the inquiry report was demanded. It has also been prayed that the representation submitted by the applicant may be treated as reply of the inquiry report. The Inquiry Officer held the applicant guilty of charges of committing ^{misconduct} gross in public fund account resulting in loss to the State which showed complete lack of



devotion of duty and lack of integrity, and it was decided by the Disciplinary Authority that considering the gravity of proven charges that applicant is not a fit person to be retained in Government service, and imposed punishment of removal w.e.f. 16.09.2000. It is stated that against the order of Disciplinary Authority of removal, applicant filed an Appeal before the Additional Director General Ordnance Factory, Ordnance Equipment Factory, Group Headquarter, Kanpur. The Appeal was rejected by the Appellate Authority vide Order dated 18.04.2001. The respondents had taken all actions against the applicant under Rule 14, 15 and 27 of CCS (CCA) Rules, 1965 as well as directions issued by the Tribunal in the earlier O.A. It is submitted by the respondents that the O.A. is argumentative and it is not necessary to give reply of each and every allegations made in the O.A. as the procedure was followed according to Rule and hence O.A. is liable to be dismissed.

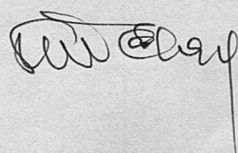
5. We have heard Mr. S.K. Mishra, Advocate for the applicant and Mr. S.N. Chatterji, Advocate for the respondents and perused the entire facts of the case.

6. It is an admitted fact that the applicant was appointed as Lower Division Clerk in the year 1962 in the Organization of the respondents, and posted at Ordnance Parachute Factory, Kanpur. He ^{was} promoted in the year 1970 on the post of Upper Division Clerk but it has been alleged by the applicant that the work of Factory Account was being looked after by a separate wing under the authority of Cash Officer who was a Class II officer and over all



Incharge and Supervisor as General Manager. It is stated that no post of Assistant Cashier or Cashier has been created by the department, and the employee working on the post of Upper Division Clerk is the same to discharge the duties of Assistant Cashier without there being any change in their remuneration and status. Any person in the cadre of Upper Division Clerk may be chosen by the General Manager to work as Cashier and entitling him the additional allowance of ₹ 30/- per month. The respondent No. 4 posted the applicant as Assistant Cashier on 17.05.1993 and 30.04.1998. It is alleged that the General Manager compelled the applicant to discharge the work of Cashier but the applicant was not able to perform the duties of Cashier being not fully qualified nor find himself to be the competent enough to do that work. Therefore, the applicant requested the respondent No. 4 to relieve him from the work of Cashier and to send him back to work as U.D.C. for which he is fully eligible and qualified. In pursuance of the letter dated 07.07.1981, the respondent No. 4 vide his order dated 15.07.1981 posted the applicant from Cash Office to work as U.D.C. in the Establishment Section. Hence it is established fact that the applicant worked as Assistant Cashier dealing with the account of respondents' department.

7. Although it is an admitted fact that during applicant's working on the post of Assistant Cashier, certain irregularities were committed by the applicant. In this connection, applicant alleged that the error committed by the applicant were due to his lack of knowledge of the accounting work and under these circumstances the applicant alleged that a sum of ₹ 16,500/- in



excess remained with the applicant and he could not ascertain that how this amount was ⁱⁿ excess. On the transfer of the applicant, he deposited that amount with the successor and a certificate was issued to that effect, whereas it is definite case of the respondents that embezzlement was committed of the Government money and hence the Disciplinary ^{enquiry} Authority was initiated against the applicant. He was also put under suspension. We have stated above that earlier an order was passed by the respondents based on the report of the Inquiry Officer for removal from service and the order was challenged in the O.A. No. 852 of 1990. The O.A. was allowed to the following effect: -

"11. In the result, the O.A. is allowed in part. The order dated 5.4.88 and 22.2.90 are quashed with the liberty to the Disciplinary Authority to act in accordance with the observations quoted here in above given by the Hon'ble Supreme Court in K.R. Dev's case and as spelt out in our observations here in above. Parties shall bear their own costs."

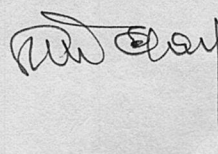
Thereafter fresh inquiry was ordered in pursuance of the direction of the Tribunal and the Inquiry Officer submitted a report against the applicant, in the inquiry report applicant was found guilty and the Disciplinary Authority passed an order of removal from service.

8. It has been argued by learned counsel for the applicant that the entire inquiry suffers from irregularity and illegality and hence the inquiry was vitiated and hence same is liable to be quashed. As we have stated above, that the factum is not disputed that the applicant has not worked on the post of Assistant Cashier and it is also an admitted fact by the applicant also that the irregularities were committed by him but these irregularities were for want of knowledge of accounting. But it is the definite case of the

But

respondents that the embezzlement was committed of the Government money by the applicant. To some extent, it is an admitted fact that the applicant had not discharged the duties of Assistant Cashier to the best of his capability. If the applicant was not aware with the working of the Accounting, then he was free to make a representation to the effect for not posting him to discharge the duties of accounting in the Account Section. But prior to his posting as Assistant Cashier, no representation was made by the applicant for not posting him in the Accounts Section. The applicant has alleged that the representation was made by him subsequently on 07.07.1981, and on the representation of the applicant he was relieved from the working of Cashier. It was only at the stage when the embezzlement was detected by the respondents. It is an admission of the applicant that due to lack of knowledge and bonafide mistake, entries could not be made of numerous entries in the register, and consequently sum of ₹ 16,500/- remained surplus with the applicant in excess. It may be possible that the applicant fully knowing that embezzlement has been noticed by the respondents and in order to show his bonafide he stated that due to bonafide mistake, a sum of ₹ 16,500/- remained with him in excess. If the said amount was deposited subsequently with the successor, then the applicant cannot ~~be~~² escaped the responsibility and liability. He will certainly be held responsible for embezzlement.

9 After noticing the factum of embezzlement committed by the applicant, F.I.R. was lodged by the respondents on 31.05.1983 with P.S. Rail Bazar. It has also been argued by



learned counsel for the applicant that the applicant was placed under suspension but for a period of 1 ½ years, no charge sheet was served on the applicant regarding the mistake committed by the applicant during discharge of his duties, and the charge sheet was submitted on 15.07.1988. Learned counsel also argued that during this period, applicant remained suspended and his subsistence allowance was not increased from 50% to 3/4th of the salary. It will not be proper at this time that whether the departmental inquiry conducted after the time of filing the O.A. No. 959 of 1990 was in accordance with law or not. Because it will be a futile exercise to observe anything regarding that inquiry. It is admitted fact that the order of removal as well as Order of the Appellate Authority ^{were} ~~was~~ set aside ⁸ in the decision of O.A. No. 959 of 1990, and liberty was given to the respondents to act in accordance with the observation made in the body of the Judgment. The inquiry conducted subsequently to the Judgment of the Tribunal is relevant.

10. Learned counsel for the applicant argued that again the applicant was put under suspension from back date and it was illegal. We are not concerned about the order of suspension, we are concerned that whether the inquiry conducted by the respondents subsequently was in accordance of the law or the Rules. Judgment in O.A. No. 959 of 1990 was delivered on 24.11.1995 and the respondents vide order dated 07.03.1996 ordered for further inquiry from the stage of 08.05.1986 when the Cashier was examined and applicant was again suspended w.e.f. 22.02.1990 by the order dated 07.03.1986. It is noticed that the

Subray

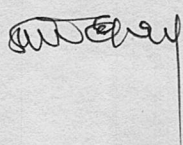
order of suspension was passed with retrospective effect. It has been argued by learned counsel for the applicant that the respondents were not justified in resuming the inquiry from the stage of examination of the Cashier because entire proceeding was held illegal and quashed. Learned counsel for the applicant argued that in the subsequent inquiry also, conducted after the Judgment of the Tribunal, the respondents or Inquiry Officer committed gross irregularities. The applicant submitted a representation to the Inquiry Officer for supplying him the copy of the documents relief upon by the respondents. It has also been argued by learned counsel for the applicant that the Inquiry Officer himself admitted that the sixth document in number were not available on record and hence it is not possible to supply the copy of documents. Learned counsel for the applicant vehemently argued on this ground that as the vital documents were not supplied to the applicant hence, the inquiry is vitiated. Learned counsel for the applicant himself admitted that the Inquiry Officer himself admitted this fact that copy of the document is not available on the record hence it was not possible for the inquiry to supply copy of the documents, which are not available on the record. It will not be possible to state that even then the inquiry was initiated due to non-supply of copy of vital documents. From perusal of the entire facts, it is evident that full opportunities were provided to the applicant during the inquiry except that copy of the documents which are not available on the record were not supplied to the applicant. The Inquiry officer submitted the report on 14.03.2000. Copy of the inquiry report was ^{supplied} ~~submitted~~ to the applicant and in response of that applicant submitted his

W. Chay

representation on dated 11.07.2000. A request was made by the applicant in the representation that Hindi version of the inquiry report may be supplied to the applicant as he is not having full knowledge of the English. The respondents' counsel in this connection argued that the Disciplinary Authority considering that the applicant by making this representation and demand for supplying Hindi version of the inquiry report, is trying to delay the matter and hence the request was rejected. Treating the representation as reply to the show cause notice, the order of removal was passed on 16.09.2000, and the Appeal was also dismissed on 18/20-04-2001. Learned counsel for the applicant also argued that respondent No. 4 - Appellate Authority at the time of deciding the Appeal served a show cause notice to the applicant to the effect that the period from 08.02.1982 to 16.05.2000 may not be ordered to be treated as 'not on duty' and subsequently the appeal was dismissed. Reply of the show cause notice was submitted but the Appellate Authority committed illegality in not accepting the show cause notice for not treating the period from 08.02.1982 to 16.09.2000, as not on duty. Learned counsel for the applicant cited the following case law: -

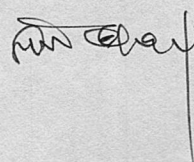
"1998 (6) SCC, 651, U.P. State vs. Strughan Lal"

And on the basis of aforesaid Judgment, learned counsel for the applicant also argued that it is incumbent on the respondents or Inquiry Officer to serve the copy of documents relied by the respondents and these documents were most material for just decision of the inquiry. It could have been established on the basis of documents that due to act of the applicant, no loss was caused to the department, as alleged by the respondents.



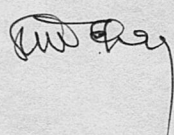
Learned counsel for the applicant in this connection also argued that the applicant was not permanently posted in the Accounts section and he was temporarily posted for a period of six months to work in the Accounts section. The applicant was not fully well conversant with the working of the Accounting and he was wrongly posted in the Accounts Section. In this connection, we have already held above.

11. It has also been argued by learned counsel for the applicant that the respondent No. 4-General Manager, Ordnance Parachute Factory, Kanpur was not the Disciplinary Authority of the applicant. He was not appointing authority of the applicant and hence he was not competent to initiate the inquiry against him and subsequently not competent to pass the order of removal, and as the order was passed by incompetent officer hence, it is illegal. It is alleged that the Director General, Ordnance Factories/Chairman, Ordnance Factories Board, 10 Auckland Road, Calcutta is the appointing authority of the applicant. In this connection learned counsel for the applicant cited the CCS (CCA) Rules, 1965 as well as Article 311 of the Constitution of India. He also cited a Judgment of the Hon'ble Supreme Court in the case of *A.I.R. 1979 SC 1912 Krishna Kumar vs. Divisional Assistant Electrical Engr. Central Railway*. Learned counsel for the applicant argued that the Rule as well as Judgment of the Hon'ble Apex Court provided that members of civil services of Union of India or All India Service or a Civil Service of a State or hold a Civil Post under the Union or a State, and hence such Members can only be dismissed or removed by the authority, 'not below' and



subordinate to that who is the appointing authority. Although it is established position of law that the Director General, Ordnance Factory is the Head of the Ordnance Factory but the General Manager of the Ordnance Parachute Factory, Kanpur can be treated the Disciplinary Authority. In this connection, appointment letter has not been produced. Moreover, earlier also this point was agitated by the applicant in the earlier O.A. but no definite finding has been given by the Tribunal, contrary to the contention of the respondents. Moreover, this point was not agitated so vigorously by the applicant. Perusal of the Judgment shows that the General Manager is the Disciplinary Authority. At this stage, it appears not justified that the respondent No. 4 is the Disciplinary Authority of the applicant. For all purposes only respondent No. 4 is the Disciplinary Authority and has got power to suspend the applicant as well as directing for inquiry and on the basis of inquiry report, pass the order of removal. No other glaring irregularity has been alleged by learned counsel for the applicant during the inquiry by the Inquiry Officer.

12. It has also been argued by learned counsel for the applicant that the punishment awarded by the Disciplinary Authority is too harsh and disproportionate to the gravity of charges. The applicant was entrusted the work of Assistant Cashier temporarily fully knowing that the applicant is not well acquainted with the work of accounting, and that work ought not to have been entrusted to the applicant. It will not be justified at this stage to allege that the applicant was entrusted the work of the Accounting fully knowing that he was not aware of the work of accounting. It



was at that stage when he was posted as Assistant Cashier in the accounting section of the respondents. It has been admitted by the applicant himself that there ^{were} ~~was~~ ~~a~~ bonafide mistake^s in maintaining the accounts during that period and it resulted that sum of ₹ 16,500/- remained surplus with the applicant. But learned counsel for the applicant argued that this amount was delivered to the successor Dwarika Prasad and a receipt was issued by him on 15.07.1981 hence it cannot be inferred that the applicant is guilty for misconduct. There was no deliberate and intentional default on the part of the applicant and with this background learned counsel for the applicant argued that the respondents may be directed to reconsider the case of the applicant and to award the punishment against the applicant considering the gravity of the charge, and as the charge is not so grave hence the punishment must be in proportion. From perusal of the allegation, it is evident that the charge against the applicant was of embezzlement, and the charge of embezzlement is a serious misconduct irrespective of the fact that how much amount is involved and according to own version of the applicant, there were some irregularities in maintaining of the accounts. It will not be possible to state that how a sum of ₹ 16,500/- was surplus with the applicant and due to lack of knowledge, entry could not be made in the record of the final amount and subsequently this amount was delivered to Dwarika Prasad-successor. On the basis of this contention, it will not be justified to state that the applicant is not guilty or cannot be held responsible. In all circumstances, the applicant has not adopted

Satish Chandra

the due sincerity and devotion to the work, as is required from the Government servant.

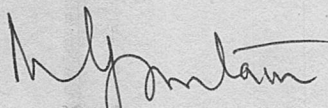
13. Learned counsel for the respondents argued that in compliance of the Central Administrative Tribunal's order dated 24.11.1995, the Disciplinary Authority decided to hold denovo inquiry vide order dated 07.03.1996. New Inquiry Officer Mr. V.K. Ailavadi, Joint General Manager was appointed as Inquiry Officer and applicant was afforded full opportunity to defend his case and thereafter the Inquiry Officer submitted the inquiry report on 14.03.2000, and according to the report of the Inquiry Officer, the applicant was found guilty. It is stated that no illegality or irregularity has been committed by the Inquiry Officer and the punishment awarded is in accordance with the gravity of the lapses committed by the applicant. There was a complete lack of devotion of duty and lack of integrity. The charge of embezzlement was proved against the applicant. The entire proceeding was conducted by respondent No. 3 and 4 under the provision of Section 14, 15 and 27 of CCS (CCA) Rules, 1965. The General Manager is empowered to impose the penalty ^{under} Rule 11 of CCS (CCA) Rules, 1965 and the respondent No. 4 was the Disciplinary Authority in view of Article 311⁽¹⁾ of the Constitution of India.

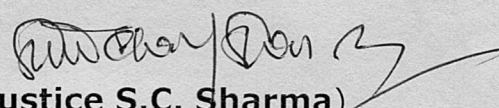
14. For the reasons mentioned above, we are of the opinion that the inquiry conducted against the applicant is perfectly in accordance with the provisions as provided in the CCS (CCA) Rules, 1965. Full opportunity was given to the applicant to

under

defend his case before the Inquiry Officer and as the charge against the applicant was of grave nature regarding embezzlement of the Government money and admittedly there were irregularity in maintaining the account. Under these circumstances, considering the gravity of the office, the Disciplinary Authority had rightly passed the order of removal of the applicant. It cannot be said too harsh considering the facts of the case. The O.A. lacks merits and deserves to be dismissed.

15. O.A. is dismissed. No cost.


{**Manjulika Gautam**}
Member - A


(**Justice S.C. Sharma**)
Member - J

/M.M/