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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.626 OF 2004
Cuttack, this the 28th day of December, 2005.

URP VARMA

APPLICANT

Versus

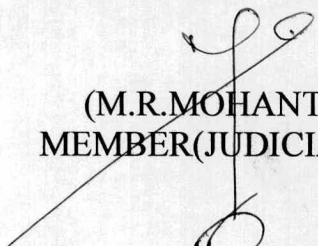
UNION OF INDIA & Ors.

RESPONDENTS

FOR INSTRUCTIONS

- s. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of CAT or not? *Yes*


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)

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CORAM:

**THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)**

URP VARMA, Aged about 54 years,
S/o.U. Venkatipali Raju,
At present working as A.E. B/R,
C/o. O.E. (I), Gopalpur on Sea.

..... **APPLICANT.**

For the Applicant : M/s. B.K.Sahoo, S.Mohapatra,
& G.Mishra, Advocates.

VERSUS

1. Union of India, represented through its
Secretary, Ministry of Defence, South Block,
New Delhi-110 001.
2. Engineer-in-Chief,
Kashmir House, Rajaji Marg,
New Delhi - 110 011.
3. Chief Engineer, Head quarters,
Southern Command, Engineer Branch,
Pune- 411001.
4. Chief Engineer, Hqrs.,
Central Command, Lucknow, U.P.-2.

..... **RESPONDENTS.**

For the Respondents: Mr. U. B. Mohapatra, SSC.



O R D E RMR. M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant was served with a Memorandum of Charges (under Annexure-1 dated 29-07-1999) drawn under Rule-16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. He was asked to file his show cause within ten days. He submitted his reply under Annexure-2 dated 05-08-1999. Long after two years, he was communicated with an order dated 27-05-2001; wherein the charge-sheet drawn up against him, as indicated above, was cancelled Rules, 1965) and a fresh charge-sheet (drawn up under Rule 14 of the CCS (CCA) was served on the Applicant. Applicant replied to the same on 21-04-2001 refuting/denying the charges leveled against him. He also prayed therein that since the charges leveled under Rule 14 were almost identical as those of the charge leveled against him under Rule 16, the representation made by him earlier (under Annexure-2 dated 05-08-1999) may be treated as his representation against the charges under Rule 14. Then the matter was duly enquired into by an Inquiring Officer, who submitted his report during November, 2001. As no communication was made to the Applicant, even after the conclusion of the enquiry, he submitted a representation in order to know the fate of the disciplinary proceeding. Ultimately,

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vide letter under Annexure-5 dated 05-01-2004, the Applicant was served copy of the enquiry report and the copy of the advice of the CVC; from which he could come to know that although the charges leveled against him were not proved in the enquiry I.O., yet the CVC advised imposition of minor penalty.

2. In absence of any final orders in the disciplinary proceedings in question the Applicant made a representation on 20.08.2004 and that having not yielded any fruitful result, he has approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayer to direct the Respondents to pass a final order in the Disciplinary Proceedings initiated under Rule 14 of CCS (CCA) Rules by declaring the conversion of Rule 16 proceedings to Rule 14 as illegal and for grant of all consequential benefits.

3. Respondents, in their counter, have disclosed that the Applicant (while serving as Assistant Garrison Engineer under the jurisdiction of CESC Hqrs. Chief Engineer of Southern Command, Pune) was involved in a serious corruption (by way of carrying out business with the Department in the name of his wife and other relatives, through a firm known as M/s.Srinivas Construction) and, on detection of such fraudulent activities, the Applicant was issued with the charge sheet under Rule 16 of the CCS (CCA) Rules, 1965.

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Thereafter the matter was referred to Central Vigilance Commission for their advice. The CVC, having regard to the gravity of offence, disagreed with the issuance of charge sheet under Rule 16 and, on the basis of the advice of the CVC, it has been stated by the Respondents, the proceedings under Rule 16 and the charges framed there under were withdrawn and a fresh charge sheet under rule 14 of the Rules was issued to the Applicant. The Disciplinary Authority of the Applicant on receipt of the enquiry report that held the Applicant as not guilty, referred the matter to CVC; which advised imposition of a penalty other than the censure. The Disciplinary Authority, who did not agree with the findings of the Inquiry officer and decided to serve a disagreement memo on the Applicant. At the said stage, the Applicant has approached this Tribunal. It has further been submitted that neither there was any delay in concluding the proceedings nor the Applicant has been harassed in any manner. During the enquiry it has been disclosed by the Respondents all reasonable opportunities were given to the Applicant to prove his innocence and the proceedings were conducted as per the Rules governing the field.

4. We heard Mr. B.K.Sahoo, learned counsel appearing for the Applicant and Mr. Uma Ballav Mohapatra, learned Senior Standing Counsel appearing for the Respondent-Department and perused the materials placed on record.

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5. Learned counsel appearing for the Applicant has submitted that the proceedings initiated against the Applicant is liable to be quashed on the ground that (a) the Respondents are estopped to initiate fresh charge under Rule 14 of the CCS (CCA) Rules on the self same allegations/charge, after the first one is withdrawn; (b) the proceedings having been initiated by an incompetent authority, does not have jurisdiction, the same is liable to be set aside; (c) copies of the report of the CVC (rendered at the first stage as also second stage) having not been supplied to the Applicant the subsequent proceedings is liable to be set at naught ; (d) the Respondents intentionally delayed the matter for a considerable time without any reason, and, thereby, the interest of the Applicant has sufficiently been jeopardized for no fault of his and (e) the Disciplinary Authority surrendered its discretion (on the dictation of the CVC) and having acted without application of mind, the entire proceeding is liable to be set aside. By stating so, he has also reiterated some of the facts and grounds taken in his Original Application and rejoinder.

5. On the other hand, learned Senior Standing Counsel appearing for the Respondent-Department has submitted that there was no delay in the matter. The charge sheet issued under Rule 16 of the CCS(CCA) Rules was withdrawn on the advice of the CVC as per the Rules/instructions of the Govt. of India. Since the charge leveled

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against the Applicant is grave in nature and since it involved the prestige of the institution, at each stage it was required to consult the CVC. After receipt of the report of the CVC, at the final stage, the matter was to progress and, because of the stay order passed by this Tribunal, the progress of the matter has been delayed. Learned Senior Standing counsel has asserted that as there was no violation of any of the Rules nor was there any violation of the principles of natural justice, interference in the matter by this Tribunal may create confidence on other employees of the Organization to do illegal work in the Department.

6. We have given our anxious consideration to various issues put forward by the learned counsel for both sides. We have also perused the materials placed on record. From the record it is seen that under Annexure-1, the Applicant was issued with the charge sheet under Rule 16. Applicant submitted his reply under Annexure-2 dated 5.08.1999. Instead of taking any decision on the explanation submitted by the Applicant, the Chief Engineer (in his order under Annexure-3 dated 27-05-2001) withdrew the said charge-sheet which reads as under:-

“ O R D E R

WHEREAS disciplinary proceedings were initiated under Rule 16 of CCS (CCA) Rules, 1965 against MES-183059 Shri URP Varma, AE B/R by Chief Engineer

[Handwritten signature]

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Southern Command, Pune vide Memo No. 130103/7/G/29/EID dt. 16th July, 1999.

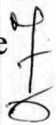
AND WHEREAS the matter has been examined in consultation with the Central Vigilance Commission, by MOD who have directed that the memorandum of charge issued to said Shri URP Varma AE/B/R be cancelled and disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 initiated;

NOW THEREFORE the undersigned, under the provisions of instruction No. 9 of Government of India under Rule 15 of CCS (CCA) Rules, 1965 hereby cancel the said Memorandum of charge, without prejudice to initiate further action under Rule 14 of CCS (CCA) Rules 1965 which may be considered in the circumstances of the case."

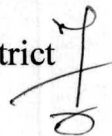
It is also seen that on the same date on 27.05.2001, another memorandum of charges was issued under Rule 14 of CCS (CCA) Rules, 1965. The matter was enquired into and the Inquiring Officer held the charges to have not been established and the said enquiry report was supplied to the Applicant along with the advice of CVC under Annexure-5 dated 05.01. 2004; wherein it is seen that the CVC has given his advice to impose a minor penalty (other than censure) on the Applicant. It is also seen that in the order dated 09.12.2004, this Tribunal directed the Respondents not to pass any final orders in the disciplinary proceedings without leave of this Tribunal; whereas the Disciplinary Authority (instead of issuing any dissenting views), has taken the plea in the counter (filed on 18th February, 2005) that they are in process to issue the dissenting view to take action against the Applicant. It is seen that the Respondent-Department have allowed the



Damocles' sword to hang over the head of the Applicant from July, 1999 till filing of the counter on 18th February, 2005. Even though the Applicant has been found to be exonerated from the charges, till filing of this O.A. (on 20th September, 2004) no finality has been attained in the matter. From the fact of the matter, it can safely be concluded that the Disciplinary Authority, without due application of mind, has surrendered his discretion on the advice of the CVC even starting from issuance of the charge sheet. It is further seen that no reason has been assigned in the order, while withdrawing the charge sheet issued to Applicant. Before acting on the advice of the CVC, copies of such advice had also not been supplied to the Applicant. Law is well settled that before acting on the advice of the CVC, the delinquent is entitled a copy of the same and non supply of copies of the same violates the principles of natural justice (Ref. 1993 SCC 13=1993(2) SLJ 88-State Bank of India and others vrs. D.C. Agarwal and another). That apart, it is also seen that the Disciplinary Authority has surrendered its discretion on the dictation of the CVC without due application of mind and that dissenting views are going to be issued to the Applicant on the basis of the advice of the CVC. On perusal of the letter of the CVC under Annexure-5 it is also seen that the CVC did not furnish any reason as to why punishment shall be imposed on the Applicant, although the charges have not been proved by the



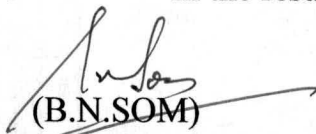
Inquiring Officer. In the case of Hari Prakash Mishra v. Union of India and others (2000(2) SLJK (CAT) 89, a Division Bench of this Tribunal at Lucknow have quashed an order of termination of service; firstly on the ground that no show cause notice was issued and secondly on the ground that the order of termination was issued by Superintendent of Post Offices at the dictation of the superior authority. The Tribunal held that if discretion vested in the appointing authority is exercised under the directions or in compliance of the instructions of any other authority, then it will be a case of failure to exercise discretion altogether. It was held that the discretion of the appointing authority cannot be exercised by any other authority. Exercise of power on the basis of external dictation came up for consideration of the Hon'ble Supreme Court in the case of Anirudhsinhji Jadeja and another v. State of Gujarat, reported in AIR 1995 SC 2390 That was a case under Terrorists & Disruptive Activities (Prevention) Act, 1987 (TADA) In that case the Hon'ble Supreme Court took note of the case of Commissioner of Police v. Gordhandas Bhanji, reported in AIR 1952 SC 16, where it was held that the Commissioner of police was bound to take his own and independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass. In that case the concerned authority, the District

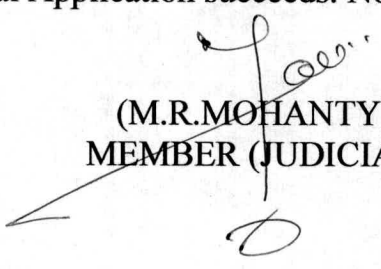


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Superintendent of Police, instead of giving approval on his own, sought for permission of Additional Chief Secretary to proceed under TADA. The Hon'ble Supreme Court held that this is a case of exercise of power on the basis of external dictation. Therefore, we find that the Rule of law in the matter of conducting disciplinary proceedings has not been observed in letter and spirit and, thereby, entire proceedings in this case has been vitiated. The charges leveled against the Applicant having not been established in the enquiry, any further proceedings (as initiated by the Authorities) is uncalled for and unwarranted and, resultantly, the status of the Applicant dates back to the position as if there were no proceedings against him.

7. In the result, the Original Application succeeds. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)