

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.419/2002

Monday, this the 28th day of February, 2005.

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

**P.Parameswaran Nair,
Group'D' (under order of dismissal),
O/o Joint Commissioner of Income Tax,
Kottayam Range, Kottayam.**

- Applicant

By Advocate Mr OV Radhakrishnan

vs.

**1. Joint Commissioner of Income Tax,
Kottayam Range,
Public Library Building,
Sashstri Road,
Kottayam – 686 001.**

**2. Commissioner of Income Tax,
Kottayam.**

**3. K.K. Mohapathra,
Enquiry Officer and
Additional Commissioner of
Income Tax (South Zone),
Chennai – 34.**

**4. Union of India represented by
Secretary,
Ministry of Finance,
Government of India,
New Delhi.**

- Respondents

By Advocate Mr T.P.M. Ibrahimkhan, SCGSC

ORDER

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

In this application, P.Parameswaran Nair, a dismissed Group D employee of the office of the Joint Commissioner of Income Tax, Kottayam Range, is challenging the suspension order, the Charge memo, the inquiry report, the

dismissal order and the appellate order issued to him by the appropriate authorities on the grounds that (i) the inquiry proceedings were vitiated and (ii) the scope of charges fall outside the purview of the CCS (CCA) Rules.

2. It is the applicant's case that no domestic inquiry should have been instituted when the charges fall squarely in the domain of the Indian Penal Code and the Prevention of Corruption Act. According to him, the offences for which he was charged do not fall under any of the misconducts enumerated in the conduct rules. Further, the inquiry was vitiated for the reasons that the charged official (applicant) was not provided with the opportunity of availing the services of a defence assistant, inquiry proceedings were conducted in English which the charged official did not understand, the evidences adduced were insufficient and inconclusive, the charged official was not provided the opportunity to state his defence at the conclusion of the proceedings, and the venue for inquiry was charged without giving the applicant even the minimum time. The respondents have stoutly contested all the grounds. They have contended that the charges were squarely in the domain of domestic inquiry as the charges related to lack of integrity which attracted major penalty. As no criminal complaint was filed by the complainant and he filed a complaint only before the Departmental Authority, departmental action was initiated. In regard to the non-availability of the chosen defence assistant, the respondents have contended that the selection was approved by the Inquiry Authority and the fact was communicated to the defence assistant with instruction to obtain necessary approval from his controlling officer.

3. In regard to the language used for transacting the proceedings at the inquiry, they have contended that applicant's various communications in English and the record of his participation in the inquiry bear testimony to the fact that the applicant had no problem in comprehension or communication. In regard to the

insufficiency or inconclusiveness of the evidence relating to absence of the applicant from the office after 1.30 P.M. Of the relevant day, the applicant failed to cross-examine the witness who had made the statement. The Inquiry Officer's finding that one could commute to Thiruvalla from Kottayam in about an hour to be present at Thiruvalla by 2.30 P.M. could not be disputed. The respondents have also discarded the possibility of any conspiracy or ill-will as the applicant occupied the lowest rung in the echelon and none of his seniors would have any axe to grind.

4. Heard.

5. We find from the charge memo that allegedly the applicant impersonated as an Inspector attached to the Investigation Wing of the IT Department at Ernakulam and sought illegal gratification of Rs.50,000/- from Vysakh Jewellery at Thiruvalla, in return for the information about an impending raid. This charge could well be within the ambit of penal and anti-corruption laws, but the fact remains that the scope of domestic inquiry could not be foreclosed by that. Annexure to G.I. instruction under Rule 14 of the CCS(CCA) Rules detail types of cases which may merit action for imposing a major penalty. The first such type relates to cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law. The specific types of cases include inter alia, obtaining or attempting to obtain illegal gratification. Thus, the applicant's contention that the charges do not fall in the domain of domestic inquiry would not hold.

6. Now about the inquiry – The six components of the Single Article of charge were:

"(i) by absenting himself from duty and leaving the office without the permission of the Head of Office showed lack of devotion to duty and thus violating Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

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(ii) being an employee of the Income Tax Department and by entering the business premises of an assessee for which he was not authorised, he has committed an act unbecoming of a Government servant thereby violating Rule 3(1)(ii) of the CCS(Conduct) Rules, 1964.

(iii) by introducing himself as Prabhakaran Nair, Inspector of Income Tax from ADI/DDIs Wing at Ernakulam to the Proprietor of Vysakh Jewellery, Thiruvalla and his Chartered Accountant, he has committed impersonation with the intention to extract money from them and has failed to maintain absolute integrity, which a Government Servant is expected to maintain, thereby violating Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

(iv) by pretending as somebody who could avoid a raid by using his influence, advising the proprietor of Vysakh Jewellery, Thiruvalla and his Chartered Accountant the way to avoid an Income Tax raid which he was not expected to do, he has exhibited lack of devotion to duty and failed to maintain absolute integrity thereby violating Rules 3(1)(ii) and 3(1)(i) of the CCS(Conduct) Rules, 1964.

v) by demanding Rs.50,000/- as illegal gratification for giving advance information about the Income Tax raid and for advising the method to avoid the raid he has acted in a manner -

- a) exhibiting lack of absolute integrity and
- b) so as to lower the dignity and reputation of the department before the public and thereby unbecoming of a government servant violating Rule 3(1) (i) and 3 (1)(iii) of the CCS (Conduct) Rules, 1964.

vi) by accepting Rs.500/- and a bottle of liquor worth Rs.270/- as illegal gratification, he has acted in such a way that -

- a) He has failed to maintain absolute integrity as a Government servant thereby violating Rule 3(1)(i) of the CCS(Conduct) Rules,
- b) he has utilised his official position to enrich himself thereby committing an act of unbecoming of a Government servant violating Rule 3(1)(iii) of the CCS(Conduct) Rules, 1964

c) he has lowered the dignity and reputation of the Department before the public thereby committing an act unbecoming of a Government servant violating Rule 3(1) (iii) of the CCS(Conduct) Rules, 1964."

7. In his appeal the applicant had raised the following grounds:

"5. In the appeal petition dated 4.1.2002, received on 9.1.2002 the appellant has raised the following grounds:

i) The inquiry was conducted violating principles of natural justice and by disabling the appellant from utilising the services of a defence assistant.

ii) The inquiry was conducted unilaterally by disabling the appellant from effectively participating in the inquiry proceedings.

iii) The Presenting Officer has not produced any documents or presented any witnesses except, interested witnesses.

iv) The appellant was not given the opportunity to utilise the services of a Defence Assistant by the omission of the Inquiring Authority to intimate the superior officer or the defence assistant. The inquiry proceedings were completed during the period of 26 hrs. from 11 A.M. On 23.5.2001 to 1 P.M. On 24.5.2001, at a distance of 70 kms. Of H.Qrs. Of the appellant, disabling him utilising the services of a defence assistant.

v) The appellant was not well versed in English and could not effectively participate in the inquiry as the Inquiring Authority denied the help of a defence assistant. In the absence of a defence assistant he could not cross examine the witnesses produced by the Presenting Officer.

vi) The complainant Shri G.Vijayendra Kurup was known to the appellant and the allegation that he misrepresented himself before Shri G.Vijayendra Kurup was false. Due to the alleged denial of the services by the defence assistant by the Inquiring Authority, the appellant lost the chance to cross examine the witness.

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Vii) The appellant has not cross examined the witnesses but had signed on all papers tendered to him in the course of the inquiry proceedings.

5.1 The appellant has raised the following additional grounds in his written statements submitted on 4.3.2002 at the time of hearing of the appeal.

Viii) In the absence of the defence assistant, the appellant could not effectively communicate with Inquiring Authority who did not know Malayalam language. Even though Inquiring Authority agreed to the presence of Defence Assistant and the appellant submitted the consent letter of Shri P.A. Mathew, the Inquiring Authority did not issue a notification to the controlling authority of the defence assistant, and objected the appellant to arrange the presence of the defence assistant.

ix) The Inquiring Authority had manipulated the record and fabricated documents by obtaining the appellant's signature to show that in the absence of defence assistant, the appellant himself cross examined the witnesses. The ugly haste on the part of the Inquiring Authority would prove his biased state of mind.

x) The Inquiring Authority has cut short the mandatory requirements like perusal of documents, production of additional documents and conducted the inquiry in a perfunctory manner and violated the relevant rules.

xi) The appellant was denied the opportunity to defend his case and denied natural justice.

Xii) The disciplinary authority has joined hands with the Inquiring Authority, without looking into the points raised by him in his statement dated 30.7.2001, submitted to the Disciplinary Authority.

Xiii) The charges are fabricated and the inquiry was not conducted in accordance with Rule 14 of CCS(CCA) Rules.

5.2 During the course of hearing of the appeal the appellant and his defence reiterated the above grounds and raised the following further grounds:

xiv) The primary evidence regarding absence from duty on

8.12.1999 was not furnished for perusal of the appellant.

xv) The Inquiring Authority did not question the appellant finally regarding his absence from office and his visit to the jewellery shop."

8. In the light of the submissions made by the learned counsel for the parties, we perused the proceedings of the inquiry including the disciplinary and appellate orders. Without going into the merit of the orders under challenge, we sought to assure ourselves of the availability of a modicum of reasonable opportunity to the applicant to defend himself in conformity with Article 311 of the Constitution of India. We could not find any.

9. Firstly, the inquiry proceedings have been grossly vitiated by not ensuring that the defence assistance sought by the charged official (applicant) is made available to him. By A-11 dated 14.2.2001 the charged official had informed the Inquiry Officer of the fact that he had selected one P.A. Mathew, Assistant Superintendent of Post Offices, Aluva, as his defence assistant. He had also furnished the full address of the defence assistant and had requested the Inquiry Officer to keep the controlling officer of the defence assistant, suitably informed of the selection, so as to facilitate his relief on the dates of oral inquiry. The said P.A. Mathew by A-11(a) dated 14.2.2001 had informed the Inquiry Officer separately requesting him to address the Senior Superintendent of Post Offices for facilitating his relief. The inquiry Officer by A-12 dated 2.3.2001 addressed only a general communication to the charged official, without mentioning the name and address of the defence assistant, that his request has been granted. Seen in the light of CVC's directive contained in letter No.61/3/67-C dated 8.1.1968, the action of the Inquiry Officer would not pass the test of reasonableness or fairness. The relevant extracts from the letter is reproduced below (listed as G.I. Decision 17 below Rule 14 of Swamy's Compilation of CCS(CCA) Rules (2002 Edn.):

"(17) Intimation to be given to the Controlling Authority of the Government servant assisting the accused: Rule 14(8) provides the Government servant against whom disciplinary proceedings have been initiated may take the assistance of any other Government servant to present the case on his behalf. While no permission is needed by the official who is charge sheeted to secure the assistance of any other Government servant, it is necessary for the latter to obtain the permission of his Controlling Authority to absent himself from office in order to assist the accused Government servant during the enquiry. It would avoid delay in granting such permission, if the Inquiry Officers take the initiative in the matter of informing the Controlling authority in this regard. It is, therefore, suggested that as soon as the accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer should intimate this fact to the Controlling Authority of the Government servant concerned. Further, the date and time of the hearing should be intimated to the said Controlling Authority sufficiently in advance adding that if, for any compelling reason, it is not practicable to relieve the Government servant concerned. Further, the date and time of the hearing should be intimated to the said Controlling Authority sufficiently in advance adding that if, for any compelling reason, it is not practicable to relieve the Government servant concerned on the due date or dates to attend the enquiry, the Inquiry Officer, the accused official and the Government servant chosen for assisting the accused official may be advised well in time."

How could the services of an officer of the Government be spared for defence assistance without any intimation from the Inquiry Officer? The charged official (applicant) a Group D functionary in Income Tax Office could not on his own strength secure the attendance of an Assistant Superintendent of Post Offices as defence assistant. Without such defence assistance, the charged official (applicant) was naturally quite reluctant to proceed with oral examination and this

fact has been admitted by the Inquiry Officer in his report. The stand of the respondents that the CVC directive is only advisory in nature is deplorable. They seem to have missed the spirit of the instruction completely in their anxiety to see through the proceedings. The initial sloth and then the hurry with which the enquiry has been conducted would bear testimony to this. The Inquiry Officer was appointed on 6.11.2000 (A-5) while the first sitting was held on 23.5.2001 at Kottayam and the enquiry was conducted ex-parte the very next day at different location (Cochin) enroute the Inquiry Officer's return to headquarters. Effectively, the enquiry was completed in one sitting after hearing the evidence of the complainants and officials who had witnessed the recording of the complaint. The only other witness, on whose evidence much reliance was placed in regard to the absence of the charged official (applicant) from office after 1.30 P.M. on the date of alleged activity of the charged official (applicant), amounted to nothing more than an observation without any conclusive finding.

10. Secondly, the language used in the proceedings was apparently English, a language in which the Charged official has hardly any proficiency. We found from the records that the complainant's deposition had to be orally translated into Malayalam in order to make it comprehensible to him (A-24). If that is so then how could it be expected that the Charged official would be able to cross-examine the witnesses in English? Though the Charged official has studied upto Class X, he has been communicating in writing with the respondents in English, and that was sufficient to convince the respondents that lack of proficiency in English was only a pretext. We do not think so. The written communications were only signed by the Charged official as the applicant's counsel pleaded, the text could as well have been written for him by someone else. In oral enquiry, there is no scope for prompting or ghost-writing. The Charged official, without the assistance of a defence assistant, had to take the full responsibility upon himself. Given the

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gravity of the charge, it is not difficult to see how the defence floundered. Assuming for a moment that the cross-examination attributed to the Charged official were indeed his, no one would fail to notice the inept manner in which the Charged official sought to carry himself by bluster. He even refused to cross examine the prime witness who had vouched for his absence in the office after 1.30 P.M. A reference to his defence statement would show how the Charged official could not use the available opportunity to his advantage in the absence of a defence assistant.

11. Thirdly, the enquiry, completed in a day is virtually a summary proceeding. The complainants reiterated what they had got recorded in the complaint. No evidence was produced to prove the charges excepting through the statement of interested parties. The controlling officer of the Charged official was not examined. Mohanan, who could have been a material witness to the conversation between the Charged official and the complainant was not examined. The Office Superintendent who had stated that he had not seen the Charged official after 1.30 P.M., was not categorical about the absence of the Charged official. This has to be seen in the light of the fact that he was allotted some work outside the office in the afternoon. The disciplinary authority and the appellate authority have failed in looking into the points made by the Charged official and in relying on a highly perfunctory enquiry report.

12. In regard to the A-1 and A-1(a) orders relating to the applicant's suspension from service, Rule 10(5)(6) provides the answer:

"(b) When a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government

servant shall continue to be under suspension until the termination of all or any of such proceedings."


13. Thus, the second suspension in effect resulted in the continuance of suspension. We have noted from the reply statement of the respondents that the applicant was already under suspension consequent on his arrest and detention in judicial custody for a criminal offence registered as Crime No.84/2000 under Section 409 and 419 of IPC by Valiyuthura Police Station, Trivandrum City, for impersonating as Inspection of CBI before the Deputy Commissioner of Customs, Air Cargo Complex, Trivandrum. So, when a second charge was levelled before the first charge was conclusively settled, the applicant was placed on suspension for the second time. This cannot be faulted.

14. In the final analysis, while we consider the charge to be grave and find no reason to belittle the anxiety of the Department to bring the guilty to book, we are dismayed by the summary procedure adopted in the enquiry in disregard of the minimum safeguards provided for securing the rights of the applicant in conformity with Article 311(2) of the Constitution. We therefore, set aside the enquiry report (A-26), the dismissal order (A-28) and the appellate order (A-30) and direct the respondents to have the enquiry held de novo giving the applicant adequate opportunity to defend himself. To facilitate the enquiry the applicant shall be deemed to have been placed under suspension from the date of dismissal from service and the arrears of subsistence allowance at the appropriate rate paid to the applicant within a month from the date of receipt of copy of this order. The de novo enquiry as directed shall be commenced within a period of one month from the date of receipt of copy of this order and completed within a period of four months thereafter.

The O.A. is disposed of with the aforesaid direction. No order as to costs.

Dated, the 28th February, 2005.


H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN