

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 447/2001.

Dated Friday this the 23rd day of May, 2003.

C O R A M

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

M. Philipose S/o Late E. Mathew
Staff Car Driver, Grade-II
Customs House, Cochin-9
residing at New Customs Quarters
No. 44, Willington Island, Cochin-3.

Applicant

By Advocate Mr. V. R. Ramachandran Nair

Vs.

1. The Commissioner of Customs
Customs House, Cochin-9
2. The Joint Commissioner of Customs (P&V)
Customs House, Kochi-9
3. Union of India rep. by the Secretary
Ministry of Finance
Department of Revenue,
New Delhi.

Respondents

By Advocate Mr. C. Rajendran, SCGSC

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Applicant M. Philipose, while working as Staff Car Driver under the respondents, was elected as Director Board Member of the Cochin Custom and Central Excise Co-Operative Society Limited No. E-340 (Society, for short) during the period 1987-89. According to the applicant, he was served with a memorandum of charges alleging that while functioning as Member of the Managing Committee of the Society, applicant received the amount recovered from the salary of the staff, who are members of the Society, towards the payment of installments to the Industrial Credit and Development Syndicate Limited (ICDS, for short) during the period

1897-89 and he failed to make remittance of the same since 1990. Applicant submitted a detailed explanation to the memorandum of charges dated 13.12.95 (Annexure A/1). The applicant's case was that he never misused or misappropriated any public fund. Not satisfied with the explanation submitted by the applicant, an enquiry was ordered to be conducted. In that enquiry, the enquiry officer held that the charges against the applicant were proved. Annexure A/2 is the true copy of enquiry report dated 15.09.98. While agreeing with the findings of the enquiry officer, the disciplinary authority imposed a penalty of withholding promotion for one year on the applicant vide order dated 20.06.2000 (Annexure A/3). Applicant filed an appeal dated 17.08.2000 (Annexure A/4) to the first respondent against the order of the disciplinary authority. However, the appeal was also rejected by the first respondent vide order dated 30.11.2000 (Annexure A/5) confirming the order passed by the disciplinary authority. Aggrieved by the orders of the disciplinary authority (Annexure A/3) and the appellate authority (Annexure A/5), the applicant has filed this O.A. seeking following reliefs:

- " (i) To call for the records leading upto Annexure A/3 and Annexure A/5 and quash the same.
- (ii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. Respondents have filed a detailed reply statement contending that the applicant, in his written brief dated 29.06.98, admitted that the amount received from Cash & Accounts Department has been accounted in full in the concerned register of the Society, but it has not been stated that the entire amount payable to ICDS was paid in full. This itself was a clear evidence for misconduct which attracts Rule 3(iii) of CCS (Conduct) Rules warranting initiation of disciplinary proceedings

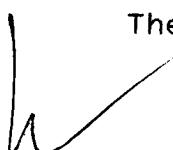
against him. During the enquiry proceedings, the applicant denied the charges levelled against him. It is stated that the applicant did not take the help of a defence assistant on his own and defended the case by himself. Therefore, the contention of the applicant that he was denied the opportunity of engaging a defence assistant is not correct. It is further averred that the office bearers of the Society had entered into an agreement with ICDS for purchase of TV sets on hire purchase basis, which was perused by the enquiring authority and was taken on record. Respondents submitted that the applicant, as one of the Committee members, cannot be escaped from the responsibility of paying dues that were claimed by ICDS, since there was an agreement between M/s. ICDS and the Society to pay the complete installments to ICDS in case of any default made by individual members. The office bearers of the Society have failed to make repayments in full to ICDS even though they have collected the amount from the individuals. In view of this, it is contended by the respondents that the articles of charge framed against the applicant stand proved beyond doubt. The Society, as per its Bye-laws, was governed by a Managing Committee elected from the members of the Society. The applicant got an opportunity to become a Committee Member of the Society only because he was an employees of the Customs department. It is further stated that any misconduct alleged by a member of the Society, which is formed as a part of staff welfare scheme, is equal to doing any misconduct unbecoming a Government servant. Even though the goods was purchased by the members of the Society from M/s. ICDS as per individual agreements, the Society made an agreement with ICDS for regular payment of the installments by collecting the same from the members. The liability of the department to pay the loan does not exist as it is not a party to the agreement. Therefore,

availing of loan and its settlement is between the individual and M/s. ICDS and the Society was functioning as a mediator. It is averred that the applicant received money from the Cash and Accounts Department of the Custom House for settling payment due by members of the Society on behalf of fellow staff members and had not entirely paid them to M/s. ICDS or accounted for them. It has been duly accounted in the Society register but there were no documents to prove that the amount so received by him had been fully paid to M/s. ICDS. M/s. ICDS made a claim of Rs. 55537/- as outstanding in which Rs. 14975/- alone was to be collected from the members of the Society. The differential amount was presumably collected by the office bearers of the Society from the Cash Department of the Customs House in the account of the individual officers, but not remitted to ICDS. The Secretary and other office bearers of the Society were responsible for not paying the amount collected from the individual officers to ICDS. The applicant is held guilty since he committed misconduct while working in the position of a Committee Member, duly elected by the members of the Society. It is submitted by the respondents that this is an act unbecoming of a Government servant as per Conduct Rules and the applicant is liable for penalty under the CCS (CCA) Rules, 1965. As per agreement, the Society has to pay the complete installments to ICDS in case of any default made by individual members. But the office bearers of the Society have failed to make repayments in full to ICDS even though they have collected the amount from the individuals. While collecting the amount from the Cash and Accounts Department, the applicant was well aware that the amount so collected has to be remitted to ICDS. Instead, they utilised the same for another purpose. Based on enquiry report, charge sheets were issued to the applicant and other members, who were

in service. Notice was not issued to some other members since they retired from service. It is also stated that the disciplinary proceedings initiated against one Shri E.J. Cleetus, Driver, has been dropped in terms of Rule 15 of the CCS (CCA) Rules, 1965, on account of his death. The enquiry officer held that the applicant was responsible to pay the amount to ICDS. One Shri P. Venugopalan Nair was exonerated from the charges by the enquiry officer since there was no evidence to establish that he received money from the Cash and Accounts Department on behalf of the members towards the said hire purchase. M/s. ICDS vide their letter No. CB/B-1-5 dated 15.11.91 addressed to the Commissioner of Customs informed that an amount of Rs. 68,053/- plus interest is due to them as per the terms of hire purchase agreement being arrears towards the purchase of TV sets. This proves the non-remittance of payment to ICDS. No documents were produced by the charged officer to disprove the claim of ICDS. Therefore, it is submitted by the respondents that the penalty imposed on the applicant is correct. There is no merit in the O.A. and the same deserves to be dismissed.

3. Shri V.R. Ramachandran Nair (represented by Mr. Premchand), learned counsel, appeared for the applicant and Shri C. Rajendran, SCGSC (represented by Ms. Nisha Nair), appeared on behalf of the respondents.

4. Learned counsel for the applicant took us through various facts of the case and submitted that the Society was formed with an object of providing overall welfare of the members of all categories of Customs staff irrespective of officers or staff. The applicant was only one of the Committee members and he had



not done any misconduct in his official capacity unbecoming of a Government servant under the Central Civil Service (Conduct) Rules. Learned counsel for the applicant argued that all the amount collected by the applicant by way of installments from the staff members had been credited to Society's account or to the account of ICDS. There is no case that the applicant manipulated or misappropriated a single paise from the aforesaid account. Since the applicant has not committed any mistake in his official capacity as driver, he cannot be proceeded against under the Central Civil Services (Conduct) Rules. On the other hand, learned counsel for the respondents argued that since the amount collected was not paid in full to ICDS, it amounts to misconduct warranting initiation of disciplinary proceedings against the applicant under Rule 3(1) (iii) of CCS (Conduct) Rules. Accordingly, the penalty in question was imposed on the applicant, which as per the respondents, is correct.

5. We have heard learned counsel for the parties in detail, gone through the pleadings and perused the documents placed on record.

6. To begin with, the relevant portion of articles of charge levelled against the applicant are as follows:

"ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI M. PHILIPPOSE, DRIVER

ARTICLE - I

Shri M. Philippose, Driver, while functioning as member of the Managing Committee of the Cochin Customs and Central Excise Co-Operative Society Limited during the period 1987-89 has received the amounts recovered from the salary of staff, of this Custom House who are members of the Society, towards the payment of installments to the ICDS, Cochin-16, and failed to make the remittance to the

ICDS since 1990. The inquiry officer appointed by the Assistant Registrar (General), Cochin, in his report recommended that the amount overdue for payment to the ICDS has to be recovered from the Secretary and Office bearers of the Society who are responsible for non-payment of the said amount.

By the above said acts, Shri M. Philipose, Driver, committed an act unbecoming of a Government Servant and thereby violated Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964.

ANNEXURE II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI M. PHILIPPOSE, DRIVER.

During the year 1988, the Cochin Custom and Central Excise Co-operative Society Ltd. No. E-340, had introduced a Scheme for distribution of various articles on instalment basis among its members. The Society brought T.V. sets from the Industrial Credit and Development Syndicate Ltd., Cochin, for distribution among the members on the condition that the pay disbursing officer would deduct the amounts to be repaid by members as demanded by the Society in turn will remit the amount to the promoters, M/s. ICDS, Cochin. Accordingly the monthly installments were collected from the salary of the members by ACAO and handed over to the Society. But the Society did not remit the entire amount to the promoters, M/s. ICDS, Cochin.

On receipt of requests from the ICDS to the Collector to intervene in the matter to ensure the payment of the installments without further delay, the issue was taken up with the Registrar of Co-operative Societies. At the instance of noticing the irregularities in the functioning of the Society, the Assistant Registrar ordered an enquiry to look into the malfunctioning of the Society and appointed the Inspector of Co-operative Society as Inquiry Officer. In his Inquiry Report No. G.902/92 dated 3.8.1993, he observed that the Secretary and the Office bearers of the Society are bound to remit the amount recovered from the members for repaying the installments on due date. It is further added in the report that the Managing Committee should have ensured the payment of the monthly premium due to the ICDS on recovery and receipt of the same from the monthly salary of the members.

The Inquiry Officer recommended for recovery of the amount due to the ICDS wholly from the Managing Committee for the reason that they are responsible for the default.

The ICDS, Cochin, have stated that an amount of Rs. 55,377/- is due from the members of the Society as arrears of monthly installments and its interest works out to Rs. 90,770/-. In addition to this, they charged an amount of Rs. 160/- as option money. Total aggregate works out to Rs. 1,46,307/-. The non-payment of monthly

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installments on the due date led to a huge liability to the tune of Rs. 90,770/- which is almost double the principal amount.

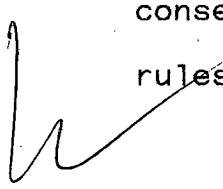
By the above acts, which led to the defunctioning of the Co-operative Society formed by the Staff members of this Customs House for their welfare which resulted into a great loss to the Society, and its untimely closure, Shri M. Philipose, Driver, has committed an act unbecoming of a Government servant and thereby vitiated Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."

From the above, it is clear that the imputation against the applicant is that he failed to make remittance to M/s. ICDS since 1990 while functioning as member of the Managing Committee of the Cochin Customs and Central Excise Co-Operative Society Limited, the amounts recovered from the salary of staff of the Customs House and the amount overdue for payment to the ICDS has to be recovered from the Secretary and office bearers of the Society, who are responsible for non-payment of the said amount. It is also clear that the alleged misconduct was committed during the transaction between M/s. ICDS and the office bearers of the Society based on an agreement. The Society was mainly formed with an object of providing assistance to the members of all categories of Customs staff. The applicant was elected by the members of the Society as one of the Committee Members. It is an admitted fact that all the amounts collected by way of installments from the staff members had been credited to the Society's account or to the account of ICDS. There is no case at all that the applicant manipulated or misappropriated any amount from the said account. From the pleadings, we find that all the decisions of the Society were taken by the joint action of the members of the Society and that of the General Body. It has come out in the enquiry that there was no shortage of money as per the Accounts of the Society. Apart from that, it is also seenn that there were individual agreements with the members and that of ICDS for repayment of the loans and, therefore, it cannot be

construed that the Society has undertaken to see that the amount should be repaid and they will take appropriate steps for repayment of the same. The agreement is basically between the individual members and M/s. ICDS, which could be absolutely the subject matter of civil jurisdiction. The Co-operative Society is an artificial jurisdictional person in the eye of law, which can be sued and to be sued. The Co-Operative Society is not formed for the purpose of availing the loan by itself and distributing it to individuals. It is the individual employees themselves who had entered into a contract with M/s. ICDS and availed the finances/loans for purchase of consumer goods, like TV etc. So the primary duty of remittance of the amount of loans, if any, is an individual affair rather than the Society comes into picture. Besides, one of the contentions raised by the applicant is that the claim of M/s. ICDS for recovering certain dues, is barred by limitation and M/s. ICDS is not entitled to recover the same. In these circumstances, the locus standi of M/s. ICDS in recovering the said amount is questionable and in our view, merely sending a letter by M/s. ICDS to the department claiming huge amount towards principal and exorbitant interest thereon and acting on such irregular and time barred claim, the department could not have proceeded against the applicant. Therefore, ordering an enquiry and on the basis of the report, taking a decision by the department is very much faulted and such action is not at all justified nor will stand to reason. M/s. ICDS is a private concern lending out finances on exorbitant interest to individuals and it acquires no legal right to recover the amount through the department since there is no privity of contract between ICDS and the department. We would like to mention that the Government Departments, like the respondent organisation, should not act as an agent for such

transaction. It is also not in dispute that M/s. ICDS had never entered into a contract for any such dealings with the respondent department and, therefore, the question of repaying the amount by the department does not arise. Though the department was informed by ICDS through a letter that certain amount was due to be paid by its staff to them, it is not in their parlance to act upon such letter and if M/s. ICDS was really aggrieved, they should have taken appropriate civil legal recourse at the appropriate forum. If such forum (say, Civil Court) finds that the employees are at fault, then only the department can proceed against the erring employees. Therefore, we are of the view that the entire action in question, which is based on a contract between the individual and the private concern M/s. ICDS, should not come under the purview of CCS (CCA) Rules / CCS (Conduct) Rules.

7. The CCS (CCA) Rules, 1965, comes into operation only in regard to matters covered by special provisions under the orders of the President of India, Government of India instructions/orders and by judicial pronouncements. These rules deal with the recruitment, penalties, disciplinary proceedings and other matters relating to service conditions of the Central Government employees. Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, is a general provision wherein it is provided that if any misconduct is found to have been committed by an employee of the Central Government, this rule is made applicable for initiating disciplinary proceedings. But, as discussed above, we are of the view that the alleged misconduct in the case on hand, which is a matter to be dealt with by a civil jurisdiction and have civil consequences, does not come under the purview of the disciplinary rules unless and until he is found guilty of charges by the Civil



Court or by any other appropriate forum. Therefore, primary finding of the appropriate authority is necessary to initiate such proceedings against a Government servant. In this case, no such finding by an appropriate is available for initiating the disciplinary proceedings against the applicant.

8. Therefore, we are of the view that the entire proceeding is vitiated as it is not in conformity with Articles 14 and 16 of the Constitution. This aspect is to be viewed in this context so long as it did not violate the provisions of CCS (Conduct) Rules. The CCS (Conduct) Rules cannot be extended to personal and individual recoveries from a Government servant on behalf of the private concern towards disputed debts. Since the agreement was entered into between the employees and M/s. ICDS in an individual capacity, probably through the Society as a mediator, the action of the respondents in awarding punishment to the applicant without following the correct procedure is bad in law and is violative of Articles 14 and 16 of the Constitution of India. In such circumstances, the general law which applies is to take its own course. If the department goes on interfering with such personal matters, which are concerned with a private concern, like recovering the loan amount etc., without obtaining a decree of the Court, it would amount to great hardship to the individual and the Society. Besides, on going through the pleadings, we find that the co-accused, who are also alleged to be responsible for such action, have been exonerated from the charges on the ground that they have either been retired or expired. Isolating the applicant for the alleged misconduct and imposing punishment on him alone is a clear case of discrimination and is violative of principles of natural justice.

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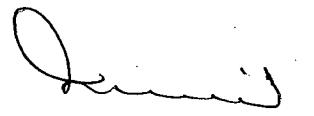
It is not a case that the applicant manipulated or misappropriated the amount in question. The applicant along with others had implemented the decisions of the Society jointly. In these circumstances, we do not find any reason to find fault with the applicant for the alleged misconduct and it is a case of no evidence. For the reasons aforesaid, we are of the view that Annexures A/3 and A/5 are not sustainable and deserve to be quashed. We are also of the opinion that the responsible departments, like Customs department, should not have acted upon a single letter addressed by a private concern (ICDS) for recovery of dues and proceeded against their employees. We do not think that the Commissioner of Customs can act as recovering agent to the private concern on a disputed debt.

9. In the conspectus of facts and circumstances, we allow the O.A and quash and set aside Annexures A/3 and A/5 and direct the respondents to grant all consequential benefits to the applicant as expeditiously as possible and in any case, within three months from the date of receipt of a copy of this order. There will be no order as to costs.

Dated 23rd May, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.