

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 468 of 2001

Wednesday, this the 11th day of June, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K.B. Babu,
S/o Balakrishnan,
Store Keeper (Under orders of dismissal),
Naval Base, Kochi,
residing at Kandathil House,
Muravanthuruth, Vadakkekara PO, N.Parur,
Ernakulam District.Applicant

[By Advocate Mr Anil R Nair for Mr MR Rajendran Nair]

Versus

1. Union of India represented by its Secretary,
Ministry of Defence, New Delhi.
2. The Flag Officer Commanding in Chief,
Southern Naval Command, Kochi.
3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Kochi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 11-6-2003, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, Ex-Store Keeper, Naval Base, Kochi, has in this application filed under Section 19 of the Administrative Tribunals Act, 1985 challenged the legality, propriety and correctness of Annexure A7 order dated 4-11-2000 of the 3rd respondent imposing on him the penalty of dismissal from service as also Annexure A9 order dated

27-4-2001 of the 2nd respondent rejecting his appeal and confirming the penalty of dismissal from service. The facts can be briefly stated as follows:

2. The applicant was employed as Store Keeper in the Naval Store Depot, Kochi. He was detailed for fueling Indian Navy Ships under the supervision of one Shri V.V.Jacob, Senior Store Keeper on 7th March, 1995. Noticing misappropriation of 12 KL LSHSD, a preliminary enquiry was held and on the basis of which a memorandum of charges was served on the applicant. The following were the articles of charges:-

"ARTICLE I:

That the said Shri KB Babu, while functioning as Storekeeper in Storehouse 24 did misappropriate 12 KL LSHSD by diverting on the way on 07 Mar 95. The said act of Shri KB Babu, Storekeeper is unbecoming of a government servant within the meaning of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE II:

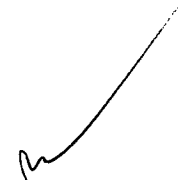
That during the aforesaid period and while functioning in the aforesaid office, the said Shri KB Babu, Storekeeper had misappropriated 4 KL LSHSD by off loading it in the diesel tank of Naval Store Depot, Kochi pump. The said act of Shri KB Babu, Storekeeper is unbecoming of a government servant within the meaning of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE III:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri KB Babu, Storekeeper failed to keep proper records of the lorry receipt and signed the Marine Delivery Receipts without checking the lorry receipts. The said act of Shri KB Babu, Storekeeper is unbecoming of a government servant within the Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE IV:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri KB Babu, Storekeeper did adulterate stock of HSD held in petrol pump with 4000 litres of LSHSD meant for Indian




Navy ships on 08 Mar 95 in collusion with Shri VV Jacob, Senior Storekeeper. The said act of Shri KB Babu, Storekeeper is unbecoming of a government servant under the Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964."

3. The applicant denied the charges and an enquiry was, therefore, held. The enquiry officer vide its report (Annexure A5) held Articles I to III proved and Article IV not proved. On consideration of the enquiry report and the representation submitted by the applicant against the findings of the enquiry officer, the disciplinary authority vide Annexure A7 order found the applicant guilty of the charges in Article I to III and imposed on him the penalty of dismissal from service. The appellate authority, 2nd respondent, vide its detailed order Annexure A9, finding no reason to interfere, confirmed the order of penalty. It is thus the applicant before us challenging the impugned orders.

4. Although various grounds have been stated in the application, learned counsel of the applicant raised mainly two grounds: (a) the enquiry has been held in violation of the principles of natural justice as the documents required by the applicant were not made available to him and the applicant was not either asked to state his defence in writing or orally, nor was he questioned after the close of the evidences in summary of the charges as required under Rule 14(18) of the CCS (CCA) Rules; and (b) the evidences on record does not warrant the findings of guilt.

5. Elaborating on the first point, Shri Anil R Nair, learned counsel of the applicant, argued that the refusal on the part of the enquiry officer to supply to the applicant the documents listed in his requests (Annexure A-14 and A-15)




disabled the applicant from making a proper defence and to that extent the enquiry is vitiated. The documents listed in Annexure A-14 were as follows:-

- "(a) IN/OUT vehicles entries from the register kept at NSD(K) gate on 07 and 08 Mar 95.
- (b) Bin card and Ledger folios of the items HSD and LSHF HSD for the period from 01 Jan 95 to 31 Mar 96.
- (c) Annual stock verification report and monthly stock verification report of items HSD and LSHF HSD for the year ending 31 Mar 95 and 31 Mar 96.
- (d) Receipt (Supply Notes) and Issue Vouchers (IN 936) of item LSHF HSD supplied to various ships at Kochi on 07 Mar 95 and 08 Mar 95.
- (e) Payment particulars to M/s IOC W/Island for the item LSHF HSD against M/s IOC MDR 381, 382 and 363 all 07 Mar 95.
- (f) Overtime statement on 07 Mar 95 of SH 24.
- (g) Worksheet and Log book of vehicle detailed for fueling duty on 07 Mar 95.
- (h) Store house key distribution entries of SH 24 from the Key register kept at NSD(K) gate on 08 Mar 95."

6. The enquiry officer vide its reply (Annexure A-17) informed the applicant that the documents were not relevant and therefore they were not supplied. It is seen from the enquiry report that several material documents were considered and the documents required to be produced were not actually very relevant to the issue involved. Further, ~~where~~ after the close of the enquiry when the enquiry officer asked him whether he was satisfied with the manner in which the enquiry was held, he answered in the affirmative. He was also assisted by another Government servant of his choice. If any prejudice was caused owing to non-supply of documents, he would have stated that. We, therefore, do not find that any prejudice has been caused

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to the applicant on account of the non-supply of documents desired by him to be produced as they were not of much relevance in the conduct of the proceedings. It is seen from the enquiry report that at the close of the evidences in support of the charges the applicant was not asked in so many words to state his defence either orally or in writing as is required under Sub-Rule 16 of Rule 14 of the CCS (CCA) Rules. However, from Question Nos. 335, 336 and 337 it is evident that after closing of the evidences in support of the charges the applicant was asked whether he wanted to state something for which he replied "No", whether he wanted to adduce any evidence in reply to which he said he do not want to call the witnesses and when asked whether he was satisfied with the inquiry proceedings to which he replied "Yes". Thereafter, the applicant had submitted a written brief in which he has stated in detail of his defences. It had been held in many cases that questioning the delinquent government servant after the close of the evidence in support of the charges to enable him to explain the circumstances appearing against him in the testimony of witnesses as is required under Rule 14(18) of the CCS (CCA) Rules, 1965 is a mandatory requirement. In this case, it cannot be disputed that the applicant, though was not examined himself as a witness on his side, was not questioned by the enquiry officer generally on the evidences appearing against him. Could this omission alone vitiate the proceedings? It is well settled that non-observance of a procedural rule would vitiate the proceedings only if it is shown that such non-observance resulted in material prejudice to the delinquent Government servant or has resulted in miscarriage of justice. From the defence brief or from the averments in the application as also in the rejoinders, the



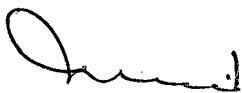
applicant has not stated whether he suffered any prejudice or precisely as to what prejudice on account of an omission by the enquiry officer to question him as required under Rule 14(18) of the CCS(CCA) Rules, 1965. Shri C.Rajendran, learned SCGSC appearing for the respondents argued that although the questions as required under Sub-Rules 16 to 18 of Rule 14 of the CCS (CCA) Rules, 1965 have not been precisely put to the applicant, ~~from~~ the questions and answers at Sl.Nos.335 to 337 would clearly show that the applicant had been given reasonable opportunity and that no prejudice has been caused to him. From the question Nos.335 to 337, it is evident that the applicant had no grievance that he had not been given sufficient opportunities and that he was satisfied about the proceedings in the enquiry. We find that in the facts of the case no prejudice has been caused to the applicant by non-observance of the provisions contained in Rule 14(18) of the CCS (CCA) Rules, 1965 and that the enquiry has been held in accordance with the rules.

7. The next question to be considered is whether the evidences adduced to the enquiry establish the misconduct. The enquiry officer has, in pages 8 to 13 of its report (Annexure A5), discussed in detail the evidences in support of the charges and against it. We find that the conclusion that the applicant was guilty of the charges under Article I, II and III and not guilty of Article IV has been arrived at by the enquiry officer on a proper analysis of the evidences on record and has given cogent reasons for its conclusions. The disciplinary authority in its order also has applied its mind and has accepted the finding that the applicant is guilty of Article I, II and III. We do not find any reason to interfere with the

proper conclusions based on cogent evidences. The appellate authority also has applied his mind to the various grounds raised by the applicant in his appeal memorandum. The findings of the appellate authority that in the facts and circumstances of the case it was not proper to interfere with the disciplinary authority's order cannot be faulted.

8. In the light of what is stated above, we do not find any merit in this application and, therefore, we dismiss the same leaving the parties to bear their respective costs.

Wednesday, this the 11th day of June, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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