

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.480/98

TUESDAY THIS THE 27th DAY OF JUNE, 2000.

C O R A M:

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.K. Anthrayose  
Junior Telecom Officer  
Office of the Divisional Engineer Cable Planning  
Catholic Centre, Ernakulam  
residing at Pavakuzhi, Pambady Post  
Kottayam. . .Applicant

By Advocate Smt. Sumathi Dandapani

1. Deputy General Manager (Planning & Administration)  
Vs  
Telecom, Ernakulam  
Catholic Centre  
Broadway-682 031

2. The General Manager,  
Department of Telecommunication  
Telecom Ernakulam  
Panampilly Nagar  
Cochin-682 036 . . .Respondents

By Advocate Mr. S.Radhakrishnan

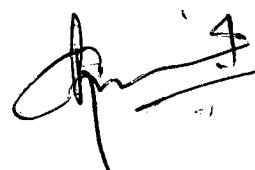
The application having been heard on 6.6.2000, the Tribunal delivered the following on 27.6.2000.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant has approached this Tribunal seeking the following reliefs:

- (a) call for the records leading to Annexures A3 and A6 and quash the same.
- (b) to set aside article 3 in the memo of charges issued as per Annexure A1 dated 16.9.92 and thereby completely exonerating the applicant from that charge.
- (c) to pass an order to the effect that the applicant had not violated Rule 3(1)(i) and (ii) of the Central Civil Service Conduct Rules 1964
- (d) to pass such other appropriate order or direction that this Hon'ble Tribunal deem fit and in the proper circumstances of the case.



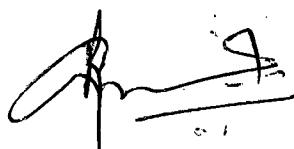
2. Applicant while working as Junior Telecom Officer under the respondents 1 and 2 was issued with A1 charge memo dated 16.9.92 containing three articles of charges the substance of which were as follows:

(1) The applicant while functioning as Junior Telecom Officer (Administration) Circle Telecom Store Depot, Ernakulam, failed to exercise effective control and supervision over watchman during the period 1991-1992 and due to this theft occurred causing loss of about Rs. 9,000,00/-

(2) Applicant failed to exercise proper control over the duty watchman at regular intervals which also led to theft of plumber metal worth Rs. 5,000,00/- and copper wire costing Rs. 8,000,00/- and lead sleeves worth Rs. 8,500/-.

(3) He left the seal of the godowns in an open rack which enabled the miscreants to get possession and to commit theft of the same articles mentioned under item (2).

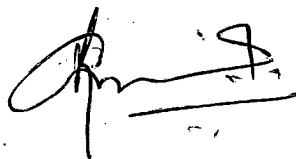
3. Applicant submitted his written statement of defence denying all the charges. Applicant submitted that connected with the above incident one Smt. A.N. Ramani who was also working as Junior Telecom Officer was issued with a charge memo separately and enquiry officer of Smt. Ramani's proceedings was one Sri M. Haridasan, Deputy General Manager, Telecom, Ernakulam who was the disciplinary authority in the proceedings initiated against the applicant. Applicant claimed that because of this he requested for a joint trial of

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these two enquiries as contemplated under Rule 18 of the CCS (CCA) Rules. But the same was not acceded to. By A-3 order dated 12.5.97 applicant's next increment was withheld for a period of two years without cumulative effect. Applicant submitted A5 appeal dated 23.6.97 to the second respondent. The appeal was disposed of as per A-6 order dated 26.9.97 by which the applicant's increment was withheld for a period of one year without cumulative effect. In A-4 enquiry report charges 1 and 2 were not proved beyond doubt and the third charge was stated as 'stood partially correct.' The Disciplinary authority disagreed with the finding of the enquiry officer and furnished the enquiry report with a disagreement note of the disciplinary authority and after taking into consideration the representation submitted by the applicant vide his letter dated 18.3.97 concluded that articles 1 and 2 of the charge sheet were not proved and exonerated the applicant from these articles of charges and the third article of charge was partially proved. Applicant advanced the following grounds for the reliefs sought:

(i) the statement that was given by the applicant was used against him without affording any opportunity to explain that statement as per article 20(3) of the Constitution "no person accused on any offence shall be compelled to be a witness against himself."

(ii) Applicant submitted that in A2 he had requested for certain documents which would throw light how the seal had to be maintained and kept in the absence of any instruction or rules. The same was not furnished. The applicant alone should not have been pinned for the misuse of the seal.



(iii) On the basis of the statements of one of the Tindals namely Sri T.S. Purushan and Sri Raghunanthan, in the absence of any departmental instructions regarding the keeping of the seal no finding should have been rendered against the applicant that there was lapse on his part in keeping the seal under his custody.

(iv) On the basis of A4 enquiry report the applicant should have been given the benefit of doubt by giving the applicant an admonition.

(v) By taking note that the disciplinary authority had not adhered to sub rules (18) and (23) of Rule 14 of the CCS (CCA) in A3 order, while considering the appeal, the charge number 3 in the statement of memorandum should also have been completely dropped.

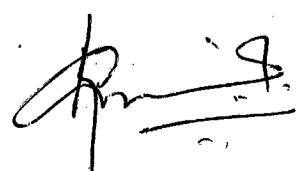
(vi) When the appellate authority while dealing with Article 3, found that the inquiry officer had not furnished reasons for his findings in the enquiry report and, the enquiry officer had not questioned the government servant on the circumstances appearing against him and these constituted a flaw in the disciplinary proceedings charge No.3 against the applicant ought to have been completely upset. Instead the appellate authority, on the basis of the evidence of the Assistant Engineer and Tindal, held there is lapse on the part of the applicant though according to the applicant no lapse was proved by their evidence.

(vii) the enquiry proceedings had not met the principles of natural justice by non supply of documents requested in A2.

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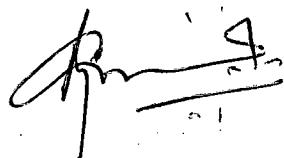
(viii) In the enquiry proceedings against Smt. A.N. Ramani, the applicant's disciplinary authority himself was the enquiry officer. This naturally prejudiced the decision of the authority. According to him the double role of Sri Haridasan had weighed against the applicant and hence denied natural justice.

4. Respondents filed reply statement resisting the claim of the applicant. It was submitted that the enquiry authority in the cases of Smt. A.N. Ramani was not one and the same person as in the case of the applicant. Hence, the request for joint trial of the case was not acceded to. They submitted that there were two seals. The second seal was kept in the office for mailing purposes. The applicant was the custodian of the seal used in the godown. The applicant in his own statement had mentioned that the seal was kept in a small box kept on the side rack in his room which was accessible to miscreants enabling them to possess the same and steal costly items from the godowns. According to them the applicant could not escape from his responsibility on the pretext that a second seal was available which was used in the office. They referred to the deposition of Sri T.S. Purushan, tindal during the enquiry. They denied the applicant's submission that the enquiry proceedings had not met the principles of natural justice by way of non-supply of Register of seals, P & T Manual, Vol.XIII and other documents, as they had no relevance to the charges under article III. It was stated that A3 and A6 orders were issued after observing the formalities and the applicant was personally heard before issuing the orders and hence there was no violation of the principles of natural justice and the orders were legally

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valid. It was submitted that the applicant in his statement had admitted that the seal was in his custody /being a responsible officer of the department no written rule or instruction regarding the retention of seal was specifically required as he was required to be vigilant as to the safe custody of the seal. The applicant had treated it in a casual manner by way of placing the seal on the side rack accessible to others and thereby he was responsible for all its misuse and the consequences thereof. They submitted that the question before the enquiry officer and disciplinary authority was whether the applicant failed in his duty in keeping one of the seals under safe custody. They submitted that in the case of Smt. A.N. Ramani, Sri Haridasan was appointed as enquiry authority when he was AGM(Plg) and not in the capacity of the Disciplinary authority of the applicant. They submitted that the allegation of the applicant that the enquiry of A.N.Ramani conducted by the disciplinary authority had weighed against the applicant and thereby denied natural justice was not based on material facts and evidence. This was evident from the fact that the report of the inquiry officer had been acceptd in toto and exonerated the applicant of the articles of charge No.1 and II and arrived at the conclusion that the article of charge No.III was proved. From the enquiry report and the desposition of the witnesses examination it was established that the applicant had not taken proper care to see that the seal that was entrusted to him was kept in safe custody.

5. Applicant filed rejoinder reiterating the points made in the O.A. Respondents filed additional reply statement.

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6. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the pleadings of the O.A. and rejoinder and also relied on the order of this Tribunal in S.P. Ramesh Vs. Ministry of Finance reported in 1996 32 ATC 731 in support of her submission regarding violation of principles of natural justice by not following sub-rules 18 and 23 of Rule 14 and non-supply of documents asked for.

7. We have given careful consideration to the submissions made by the learned counsel for parties and the pleadings and perused the documents brought on record. Applicant was issued with A-1 memorandum dated 16.9.92 consisting of three articles of charges. As the applicant has been exonerated of articles I and II we are not concerned with the same. The third article of charge included in Annexure A1 is as follows:

That during the aforesaid period and while functioning in the aforesaid office, the said Sri P.K. Anthrayose, JTO, left the seal of the godowns in his room in an open rack which enabled the miscreants to get possession and to commit theft of plumber matal weighing 36186 Kgs worth Rs. 5,24,697/- copper wire weighing 10285 Kgs worth Rs. 8,22,800/- lead sleeves of size 550 X 60 - 39 Nos worth Rs. 4,130/- and size 550 X 90 -23 nos worth Rs. 4,370/-. This deliberate act of placing the seal of the godown in the open rack gave the opportunity for the miscreants to get possession of the seal and commit the theft of the valuable materials. Shri P.K. Anthrayose, JTO thus failed to show absolute devotion to duty and violated rule 3(1)(i) and (ii) of the CCS conduct Rules 1964.



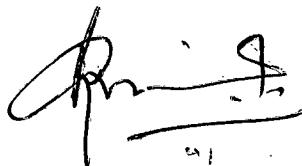
8. We note from A-4 report of the enquiry officer that he had concluded that the third article of charge stood partially correct. The Disciplinary authority in A3 order in para 6(iii) dealt with this article of charge as follows:

"iii) The third Article of charge is about the failure of the charged official in keeping of seal for sealing godown under his safe-custody. This lapse was enable the miscreants to keep possession of the seal and commit theft of the valuable store materials. The JTO(A), Circle Telecom Store depot Ernakulam is entrusted the duty of checking the godown in the morning and evening as a part of security arrangement so as to see whether the godown are properly locked and sealed. Sealing of the godown after locking it in the evening and ensure that the lock's seals are not tampered before opening it in the morning. Proper security can be ensured by this supervision only if the seals are kept under safe custody. From the statement given by the charged official to Dy. G.M (PLG), O/o CGMT Trivandrum on 21.1.92 during preliminary inquiry it is clear that the seal was kept in his room in a small box on the side rack openly. In the above circumstances, and on agreement with the findings of the Inquiry Officer, Shri P.K. Anthrayose deemed to have failed to show devotion to duty thereby violating Rule 3(1) (i) and (ii) of CCS Conduct Rules 1964.

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9. It is evident from the above that the disciplinary authority arrived at the above conclusion based on the statement given by the applicant to the Dy. GM(Plg) on 21.1.92 and agreeing with the findings of the enquiry officer. Thus, we do not find any substance in the first ground advanced by the applicant that the statement given by him was used against him without affording an opportunity to explain the statement. Firstly the disciplinary authority had come to the conclusion not on the applicant's statement alone. Further, we find that his statement dated 21.1.92 was one of the listed documents included in Annexure III to A-1 Memorandum dated 16.9.92 by which the articles of charge against the applicant was proposed to be sustained. According to the applicant Article 20(3) of the Constitution states as follows: "no person accused of any offence shall be compelled to be witness against himself." However, we find nothing had been brought out in the O.A. to show that the statement dated 21.1.92 was obtained from him under coercion or by compelling him. In fact this document was produced by the applicant as Annexure A7 along with the rejoinder. Therefore, we are unable to accept the contention raised in this ground.

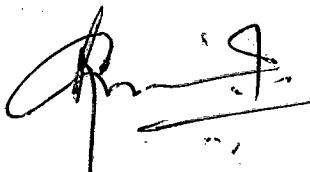
10. In the next ground the applicant himself stated that the applicant alone should not have been pinned for the misuse of the seal as there were no rules and instructions regarding this keeping of the seal in safe custody. In our view this cannot be a ground which can be accepted unless the applicant can show that in the absence of these documents the applicant was prejudiced. In fact the applicant's own statement in this ground that "he alone should not have been pinned for the misuse of the seal" brings out the hollowness of this ground.

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statement

Hence, we reject this ground. His / in one way is his admission as such we do not consider any substance on this ground.

11.. In the next ground the applicant refers to the statement of Shri Purushan and of Shri Raghunanthan. According to him no finding should have been rendered against the applicant on the basis of their depositions. We are of the view that the applicant wants the Tribunal to reappreciate the evidence. In this connection it is an accepted dictum that this Tribunal is not an appellate forum exercising the power of an appellate authority reappreciating the evidence adduced during the domestic enquiry. While exercising the power of judicial review this Tribunal will examine whether the findings had been arrived at on the basis of mere conjectures or surmises or motivated by malafides or perversity in addition to examining whether the prescribed procedure laid down in the Rules to comply with the principles of natural justice and constitutional provisions have been followed. Further, we find that the point raised by the applicant in this ground had been raised by him in A-5 appeal and as reproduced elsewhere in this order the appellate authority in his A-6 order had dealt with the same. By applicant's own statement and on the basis of the statement given by the Tindal and the A.E., the appellate authority had come to certain conclusions. On this basis it cannot be stated that this is a case of 'no evidence'. In view of the foregoing we reject this ground.

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12. The next ground advanced by applicant is that he should have been given the benefit of doubt on the basis of the report of the enquiry officer by giving him admonition. The applicant cannot choose punishment/action against him. Hence, this ground is rejected.

13. The next ground of the applicant is that the Disciplinary Authority had not adhered to the provisions of Rules 14(18) and 14 (23) of the CCS (CCA) Rules. Rule 14(18) of the CCA (CCA) Rules reads as under:

14(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

14. We find from A3 order of the Disciplinary authority that the applicant had raised this point in his representation dated 18.3.97 and requested for a personal hearing before disposal of the case. The disciplinary authority gave him a personal hearing. This has not been denied by the applicant. In this particular case we find that the enquiry authority had come to the conclusion that articles of charges I and II were not proved and article of charge No.III was proved partially. From para 3 of the report reproduced earlier, we find that this conclusion was based on the applicant's statement dated 21.1.92 given by him in the preliminary enquiry and the evidence adduced during the enquiry. Further as stated earlier the disciplinary authority had given an opportunity to

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the applicant as per his request of personal hearing. Moreover, the applicant has not shown as to how prejudice is caused to him due to non-compliance of the Rule 14(18) of CCS (CCA) Rules. Learned counsel for the applicant would argue that even though the applicant had admitted in A-7 statement that he was keeping the seal in a small box kept on the side rack in his room, he had also submitted in the same statement that the room was kept locked when either of the JTOs was not present and this aspect would have been explained by the applicant if the procedure under Rule 14(18) was followed. We are unable to accept this argument for two reasons (i) When the enquiry officer in his enquiry report refers to the statement dated 22.1.92 he would have taken all the aspects stated therein. (ii) The applicant could explain the same personally to the Disciplinary authority.

15. Rule 14(23) regarding preparation of the enquiry report reads as under:

(23)(i) after conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour
- (b) the defence of the Government servant in respect of each article of charge
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and reasons therefor.

Explanation:- If in the opinion of the inquiring authority the proceedings of the inquiry establish any

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article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

- (a) the report prepared by it under clause (i)
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

16. The applicant has not stated as to how the non-compliance of 14(23) had prejudiced his case. We have gone through A-4 enquiry report. We are of the considered view that even though the form of the enquiry report could

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have been better it is in substantial compliance with the provisions of Rule 14 (23) of the CCS (CCA) Rules. In view of the above we reject this ground.

17. The next ground advanced by the applicant is regarding the order of the appellate authority. Not satisfied with A-3 order applicant filed A-5 appeal to the appellate authority. The appellate authority after considering the appeal passed A-6 order, the operative portion of which are reproduced below:

I have carefully examined the whole proceedings and the appeal submitted by the Government servant. The points raised by the appellant against the punishment order of the Disciplinary Authority are discussed in the succeeding paras.

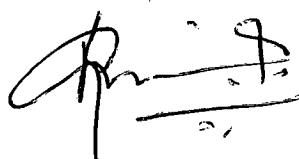
The appellant has quoted the deposition of Shri T.S. Purushan, Tindal (PW 6) to establish that he used to keep the seals always under safe custody. I have gone through the depositions of PW6 and it is very clear that Shri P.K. Anthrayose used to keep the seal in an open rack in his room and PW6 used to take it from this position and keep back in the same position after use. The depositions of the PW6 that the JTO sometimes take the seal from the locker and give to him indicate that the JTO kept the seal in the locker rarely. Further if Shri P.K. Anthrayose was actually in the habit of keeping the seal in the locker, the answers of the PW6 would have been different. Hence, I cannot

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agree with the contention of the appellant that the statement of PW6 suggest the safe custody of the seal by the applicant.

Another statement relied upon by the appellant is that of Shri Raghunandan, SDE (PW1) that he has not seen the seal lying in the open rack. I have gone through the proceedings and the statements of PW1 during the enquiry. The answers of the PW1 to Q.45 and 46 by the P.O. indicate that Shri Raghunandan, SDE has never inspected the office of JTO (Admn) and naturally there is no chance for him to see the seal lying in the open rack in the JTOs room. Hence, I cannot agree with the contention of the appellant that the statement of Shri Reghunandan SDE corroborate the fact of the safe custody of the seal by JTO (Admn).

The appellant has also pointed out certain procedural flaws in the disciplinary proceedings. They are (1) The Inquiry Officer has not furnished the reasons for his findings in the Inquiry Report (2) The Inquiry Officer has not questioned the Government servant on the circumstances appearing against him. Though the above points constitute a flaw on the disciplinary proceedings the evidence adduced during the enquiry cannot be ignored. From the depositions of Shri T.S. Purushan, Tindal, anybody with a reasonable judgment can conclude that there was a lapse on the part of the Governmmt servant in keeping the seal under safe custody. Hence, I do not think that natural justice is denied to the Government servant due to the procedural flaws mentioned above.



The appellant has further represented that Inquiry proceeding have not met the principles of natural justice by non supply of documents viz. P & T Manual Vol. XIII, Register of seals, Inspection reports and preliminary enquiry report. But I do not find any relevance to these documents in proving/disproving the article III of charge.

In view of the above discussions and considering the various aspects of the case I am of opinion that the punishment awarded to Shri P.K. Anthrayose JTO by the disciplinary authority is not excessive. However, considering the long delay in the disciplinary proceedings and consequent denial of promotion to the appellant, I think it is fair to tone down the punishment awarded to Shri P.K. Anthrayose JTO and order as under

O R D E R

I, P.P. Ramachandran, General Manager, Telecom Ernakulam, hereby order that the punishment awarded to Shri P.K. Anthrayose, JTO by DGM (P&A), the Disciplinary Authority is revised as " the next increment of pay of Shri P.K. Anthrayose, JTO (Cable Planning), Ernakulam be withheld for a period of one year without cumulative effect."

18. We find from the appellate order that he had dealt with the matter in toto covering all the points raised by the applicant and in accordance with the relevant Rule 27 of the CCS (CCA) Rules which reads as follows:



27. Consideration of appeal

(1) In the case of an appeal against an order of suspension the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

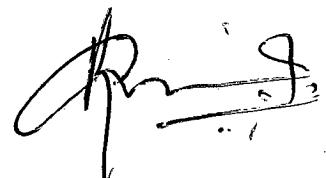
(b) whether the findings of the disciplinary authority are warranted by the evidence on the record and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions it may deem fit in the circumstances of these cases."

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19. After going through A-4 appeal and A-5 appellate order we do not find any infirmity in the order passed by the appellate authority which is in accordance with the relevant provisions of the CCS (CCA) Rules. Accordingly, we reject this ground. As had been pointed out by the appellate authority with which we agree, the applicant has not shown as to how the non-supply of documents had prejudiced his defence. When the applicant is entrusted with the job of proper security of the store godown, we are of the view that even without any procedure or instruction, the applicant has to ensure proper custody of the seal entrusted to him. We are of the view that this ground is only to be rejected.

20. As regards the ground raised by the applicant regarding joint enquiry we hold that the decision whether to hold common proceedings or not is a decision to be taken by the appropriate competent authority under rule 18 of the CCS (CCA) Rules and the applicant has no right to demand the same. We have also examined as to whether the disciplinary authority having been the enquiry authority in the disciplinary proceedings against Smt. A. N. Ramani has caused any prejudice to the applicant's case. We find that the disciplinary authority in the applicant's case has accepted the enquiry report in toto even though initially he gave a note of disagreement. Hence, we reject this ground.

21. Considering all the aspects we are of the view that in this case all things considered there was a fair enquiry and the applicant is not entitled for reliefs sought for.

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22. In view of the foregoing we dismiss this O.A. with no order as to costs.

Dated the 27th June, 2000.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A. V. HARIDASAN  
VICE CHAIRMAN

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List of Annexures referred in this Order

- A1 True copy of memorandum No. ETD/DISC/PKA dated 16.9.92 issued by the 1st respondent to the applicant
- A2 True copy of proceeding dated 18.8.93 at the fourth sitting of the Rule 14 enquiry against the applicant
- A3 True copy of Order Memo No. ETDS/DIC/PKA dated 12.5.97 issued by the first respondent to the applicant
- A4 True copy of Enquiry Report vide No. Rule 14/PKA/66 dated 16.8.96 by the Divisional Engineer, Telecom, Mavelikara.
- A5 True copy of Appeal preferred by the applicant before the 2nd respondent on 23.6.97 with translated version of relevant Malayalam portions.
- A6 True copy of the Memorandum No. ETD/DISC/PKA dated 26.9.97 issued by the 2nd respondent to the applicant.
- A7 Photocopy of the statement given by the applicant before the 1st respondent on 21.1.92.