

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 493 OF 2006

Thursday, this the 22nd day of November, 2007.

CORAM :

**HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER**

C.J. Mathai
Supervisor B/SII,
O/o Garrison Engineer., Army, Thirumala P.O
Thiruvananthapuram
Residing at : P 526, MES Quarters,
Thirumala P.O
Thiruvananthapuram : Applicant

(By Advocate Mr. M.R.Hariraj)

Versus

1. The Garrison Engineer, Coimbatore
Red Field Post, Coimbatore-18
2. The Garrison Engineer (Army)
Thiruvananthapuram
3. The Commander Works Engineer
Wellington
4. The Chief Engineer
Chennai Zone, Chennai
5. Union of India represented by Secretary to Govt. of India
Ministry of Defence
New Delhi. : Respondents

(By Advocate Mr. P.A.Aziz, ACGSC)

O R D E R

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the following orders :-

(i) Annexure A-4 directions dated 03.09.2002 of the Staff Court of Inquiry forwarded to the 3rd respondent, who is the disciplinary authority of the applicant to recover an amount of Rs. 65,638.80 (Rupees Sixty five thousand six

hundred thirty eight and paise eighty only) from the applicant.

- (ii) Annexure A-10 order dated 02.09.2003 of the 3rd respondent imposing a penalty of Rs.19,691/- (Rupees Nineteen thousand six hundred and ninety one only) from his pay and allowances.
- (iii) Annexure A-19 order dated 12.05.2004 of the 4th respondent who is the Appellate Authority who justified by A-10 penalty order imposed by the disciplinary authority
- (iv) Annexure A-14 letter dated 03.03.2006 from the Southern Command directing the disciplinary authority to initiate the action to recover the entire balance amount from the applicant and write off Rs.30,000/- imposed on S.P.Mehra, the other person from whom the said amount was directed to be recovered and also to initiate disciplinary proceedings.
- (v) Annexure A-1 letter dated 14.06.2006 from the Respondent No.1 to the Respondent No.3 to direct Respondent No.2 to effect recovery of Rs.45,947.80 from the pay and allowances of the applicant.

2. In terms of the aforesaid Annexures A-4,A-10,A-14 and A-19 letters/orders of the respondents an amount of Rs.19,691/- has already been recovered from the pay of the applicant and the balance amount of Rs. 45,947.80 is still to be recovered. At the admission stage of this OA, as an interim measure this Tribunal had directed the respondents not to make any further recovery in terms of Annexure A-1, until further orders.

3. In order to dispose of this OA, the following facts are to be considered. Immediately after the Applicant took charge as Store Keeper of Project Maintenance and Minor Work Stores of AGE, BR 1, Coimbatore from one Shri V.Janardhanan, SK I on 30.11.1993 he submitted a report to the 3rd respondent

showing the details of the stock in the Store. This was being followed up, with regular monthly reports. The audit of the accounts were also being done after every three months. After taking over the charge, the first transaction before the applicant was the issuance of the 583 kgs of steel on 15.07.1994. Thereafter, the applicant was transferred to INS Kattahomman (Viajayanarayananam) under GE, Tirunelveli and then to AGE(I) Army, Trivandrum. During the tenure of Shri V.Janardhanan as Store Keeper in Coimbatore, he had misappropriated CTD/Bar 8 mm pertaining to KV Staff Quarters at Coimbatore. A Staff Court of Inquiry was ordered by the Station Hqrs, Coimbatore and vide Annexure A-2 letter dated 26.06.2001. Shri H.P.Mehra, EE,DCWE B/R, CWE(AF), Shri V.Janardhanan, B/S II, GE(AF) and the applicant were directed to be present as witnesses. The Applicant has again called for as witness in the said enquiry vide Annexure A-3 telegram dated 08.11.2001. During the course of the enquiry Shri V.Janardhanan passed away. Thereafter, the Staff Court of Inquiry submitted by the Station Commander, Coimbatore, the GOC, ATNKK & G Area vide Annexure A-4 recommendations dated 03.09.2002 apportioned the total loss of Rs.95,638.80 between the Applicant and Mr.H.P.Mehra reported to the 3rd respondent that there was a loss of 9.00 MT of steel 8mm CTD Bar amounting to Rs. 95,638.80 and it was due to the misappropriation by the then MES – 216396 Shri V.Janardhanan, SK I and he had agreed to make good the loss during the departmental enquiry. Partially agreeing with the recommendations of the report of the Staff

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Court of Inquiry . An amount of Rs. 65,638.80 was recommended to be recovered from the applicant for " not reporting the discrepancy of steel 8 mm CTO (9.00 MT) at the time of or after taking over the project stores" and the balance amount of Rs. 30,000/- from the then EE MES Shri H.P.Mehra for " not exercising proper monitoring of stores when he was over all in charge of the sub division for stores ." Departmental disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 was also directed to be initiated against Shri H . P Mehra for not exercising proper monitoring of stores.

4. Thereafter, the 3rd respondent vide Annexure A-5 Memorandum No.1001/371/36/EIC dated 28.01.2003 initiated disciplinary proceedings against the Applicant under Rule 14 of the CCS(CCA) Rules, 1975.

The statement of Article of charge framed against the Applicant was as under :-

" MES/180107 Shri C.J.Mathai, SK I while serving under GE Coimbatore from 15 October, 1992 to 30 September, 1996 committed irregularities/lapses in that he failed to report the discrepancy of 9.00 MT of steel 8 mm CTD bar at the time of or after taking over the project stores and delayed the bringing out of the facts that misappropriation has taken place and thus delayed the recovery of loss amounting to Rs.95,634.80."

In support of the aforesaid charge, the following statement of imputation was also issued to him:-

" MES/180107 Shri C.J.Mathai, SK I while serving under GE Coimbatore during the period from 15 Oct 92 to 30 Sept 96 committed irregularities/lapses in that :-

(a) He failed to report the discrepancy of 9.00 MT of steel 8 mm CTD bar at the time of or after taking over the project stores.

(b) He had delayed the bringing out of the facts that misappropriation has taken place and thus delayed the recovery of loss.

The above irregularities/lapses have been established during the Court of Inquiry conducted by Stn. HQ Coimbatore on 20 Nov 2001 and subsequent days in which he was deposed."

The only document by which the article of charges was proposed to be sustained against the Applicant was the " Court of Inquiry proceedings (less findings)." There was no list of witnesses by whom the Articles of charge was proposed to be sustained. Vide Annexure A-6 representation dated 10/11 Feb, 2003 to the 3rd respondent, the applicant denied the charge. This was followed by Annexure A-7 representation dated 20.03.2003 requesting him to drop the charges against him stating that there was no delay on his part to bring out the facts of 9.00 MT of CTD Bar 8 mm at the time of II/T. Having not satisfied with the explanation given by the Applicant, the Disciplinary Authority proceeded with the enquiry by appointing an Enquiry Officer in the case. Thereafter, the Enquiry Officer proceeded further and held the sitting on 20.03.2003 and relying entirely on the Staff Court of Enquiry proceedings already held, prepared and submitted Annexure A-8 enquiry report dated 03.04.2003 stating as under :-

(a) He failed to report the discrepancy of 9.00 MT of steel 8 mm CTD bar at the time of or after taking over the project stores.

(b) He had delayed the bringing out of the fact that misappropriation has been taken place and thus delayed the recovery of loss.

As regards the charge that the applicant failed to report the discrepancy of 9.00 MT CTD 8 mm dia bar, the finding of the

Inquiry Officer was as under :-

" Shri V.Janardhanan SK-I who has handed over the charge to Shri C.J.Mathai has confessed that the correction to the stock balance was made by him at the time of handing over the charge. It is appropriate that Shri C.J.Mathai was aware of this correction. Therefore the charge of not reporting the deficiency is sustained."

With respect to the other charge that the Applicant had delayed the bringing out of the facts that misappropriation has taken place and thus delayed the recovery of the loss, the enquiry officer's finding was as under :-

" Based on the confession of V.Janardhanan about the correction of clock balance, it is confirmed that Shri C.J.Mathai did not report about the misappropriation immediately after taking over the charge thus delayed the recovery of loss. Therefore charge framed against him is sustained."

5. The applicant made the Annexure A-9 detailed representation dated 09.05.2003 against the inquiry report. As the enquiry officer in his report has held that the charges levelled against the Applicant were proved, vide Annexure A-10 order dated 02.09.2003 the disciplinary authority imposed the penalty of recovery of Rs. 19,691/- from the pay and allowances for his failure to report the discrepancy of steel at the time of or after taking over the project stores. Thereafter, he simultaneously submitted the Annexure A-11 representation to the Disciplinary Authority not to implement Annexure A-10 penalty order and Annexure A-12 appeal to the 4th respondent on 04.12.2003. However, without taking into consideration of the request of the Applicant, the respondents proceeded with the recovery at the rate of Rs.2,000/- p.m. from December, 2003 onwards and realized the entire amount of Rs.19,691/-. The Appellate Authority has also rejected his appeal

vide Annexure A-19 order dated 12.05.2004 and held that the penalty of recovery of Rs.19,691/- from his pay and allowances was justified.

6. While the matter rested at that stage, the Applicant came to know from Annexures A-18, A-17 and A-16 letters of the Respondents dated 03.12.2004, 11.01.2005 and 01.02.2005 respectively that Shri H.P.Mehra, AEE, the co-delinquent with Applicant was not only promoted as EE but the charges against him was also dropped and closed the case against him by issuing a Memo of Counselling / Warning. Thereafter, the Respondent No.3 vide Annexure A-15 letter dated 15.10.2005 prepared a revised Statement of Case for obtaining the revised directions/recommendation of GOC on the Court of Inquiry to take up the case with CFA to write off the loss. The following "detailed justification" was also prepared by the 3rd respondent for the consideration of the GOC.

" 9. The loss of 9 MT of steel 8 mm CTD bars amounting to Rupees 95,638.80 is due to misappropriation by MES/219396 Shri V Janardhanan, SK I. During the preliminary departmental Inquiry he had admitted that he was responsible for the discrepancy and tampering of documents/records. He was prepared to remit the amount of Rupees 95,638.80 through Military Receivable Order to make good the loss suffered by the department well before his demise. No disciplinary action can be initiated against the individual since he is no more.

10. GOC ATNK & K Area directed to recover the money from the other personnel involved. An amount of Rupees 65,638.60 from MES/180107 Shri CJ Mathai, SK I for not reporting the discrepancy of 8 mm CTD (9 MT) at the time of taking over the stores. Balance of Rupees 30,000 from MES/471020 Shri H.P.Mehra, Executive Engineer who being over all in charge of the sub division stores for not exercising proper monitoring of stores.

11. To implement the direction of GOC departmental disciplinary proceedings were instituted against both the officials, Disciplinary case

against MES/180107 Shri CJ Mathai, SK I has been finalized and penalty of recovery of Rupees 19,691 has been recovered from his pay and allowances. Similarly on finalisation of disciplinary proceedings against MES/471020 Shri H P Mehra, Executive Engineer, he has been served with warning letter as per the directions of Engineer-in Chief's Branch. Now the revised direction of GOPC Area is required to regularize the balance amount of Rs.75,947.80 as a loss to the state through a loss statement. "

But contrary to the aforesaid recommendations of the 3rd respondent, the GOC ATNK & K Area ordered vide Annexure A-4 directions dated 03.03.2006 for initiation of fresh proceedings under Rule 11 of the CCS (CCA) Rules, 1965 against the Applicant to recover the balance amount of Rs.45,947.80 from him after amending the charge for the recovery of entire amount and to write off the amount of Rs.30,000/- in the name of Shri H.P.Mehra in the light of Engineer-in-Chief's ruling. The GOC has also sought explanation from his staff for the delay in finalising his directions dated 03.09.2002 to recover Rs.65,638.80 from the Applicant. Accordingly the 1st respondent vide Annexure A-1 order dated 14.06.2006, through the 3rd respondent directed the 2nd respondent to effect recovery of Rs.45,947.80 from the pay and allowances of the Applicant. At the same time, vide Annexure A-14 letter dated 06.03.2006 annexed with the said Annexure A-1 letter, Col, Col Q (Wks) requested the 3rd respondent to initiate action to write off Rs.30,000/- which was directed to be recovered from H.P.Mehra and by another letter dated 01.02.2005 (Annexure A-16), he was warned to be more vigilant in future. It is at this stage that the Applicant has approached this Tribunal with the present OA. On a prima facie view that the recovery of the aforesaid amount was totally without any authority, we have stayed the operation of the Annexure A-1 order until further orders.

7. Applicant challenged the aforesaid actions of the respondents on the ground that the punishment once imposed cannot be enhanced without notice to him. He has, therefore, submitted that after Rs.16,961/- has already been recovered from him as penalty, arbitrarily recovering the further amount of Rs.45,947.80 for the same offence is nothing but double jeopardy which is against the law. He submitted that the order contained in Annexure A-1 was issued without jurisdiction as the 1st respondent is neither the Appellate Authority nor the Disciplinary Authority of the applicant. When the Disciplinary Authority, after the conclusion of an enquiry under Rule 14 of CCS (CCA) Rules has already imposed the punishment of recovery of Rs.19,691/- the same could have been varied only by the Appellate Authority or by the Court of Law. He has also challenged Annexure A-8 inquiry report as the charge against him itself was a camouflage but the Inquiry Officer has found that the charges alleged against him was proved on the basis of the proceedings of the Court of Inquiry which was constituted only to conduct an inquiry with regard to misappropriation of steel pertaining to KV Staff Quarters at Coimbatore where the applicant was called only as witness and he was in no way implicated in the misappropriation. He has also challenged the entire proceedings which was vitiated for non application of mind. Annexure A-4 directions to recover the alleged loss sustained to the State from the applicant was for the sole reason that Shri V Janardhanan SK I had died during the enquiry and no disciplinary proceedings could be instituted against him and no recovery could be made from him. He has also submitted that the inquiry proceedings were vitiated for procedural irregularities which resulted in denial of reasonable opportunity to the applicant to defend his case. He was not called

upon to adduce evidence on the closure of evidence on behalf of the Disciplinary Authority which is a clear violation of Rule 14 (17) of CCS (CCA) Rules. He has also stated that the proceedings were vitiated for non compliance of Rule 14 (18) of CCS (CCA) Rules and Rule 27 (2) of CCS (CCA) Rules.

8. The applicant's counsel relied upon following judgments in support of his case.

(i) *Khem Chand v. Union Of India and Others* [AIR 1958 SC 300] in which it was held as under :-

" (19). To summarise : the reasonable opportunity envisaged by the provision under consideration includes :

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) An opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence, and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

(ii) *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan*, [AIR 1961 SC 1623] in which it was held as under :-

" The only general statement that can be safely made in this connection is that the departmental inquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not

exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyer, J. has observed in *Union of India v. T.R.Varma*, 1958 SCR 499 at p.507: ((S) AIR 1957 SC 882 at p.885) " stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them." It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. "

(iii) *R.P. Bhatt v. Union of India and others* , [AIR 1986 2 SCC 651], in which it was held as under ;

" 5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with ; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question s to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause © of Rule 27 (2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27 (2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

(iv) *Nariner Mohan Arya v. United India Insurance Co. Ltd., and Others* [(2006) 4 SCC 713] in which it was held as under :-

" 26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the

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report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following : (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India and State of U.P v. Om Prakash Gupta) (3) Exercise of discretionary power involves two elements – (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L.Tripathi v. State Bank of India) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. (See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain, Kuldeep Singh v. Commr. of Police).

2. (1970) 1 SCC 709 : AIR 1970 SC 1255
3. 1958 SCR 1080 : AIR 1958 SC 300
4. (1969) 3 SCC 775
5. (1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273
6. (1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995
7. (1987) 2 Cal LJ 344
8. (1969) 1 SCR 735 : AIR 1969 SC 983
9. (1999) 2 SCC 10 : 1999 SCC (L&S) 429

9. Respondents filed a reply statement stating that the orders issued for recovery of Rs.19,691/- was strictly as per law. They have also denied the contention of the Applicant that he was punished twice and only Rs.19,691/- could be recovered from him

consequent to the departmental enquiry. They have submitted that no change can be done on the directions of the Formation Commander unless new facts have emerged which has a bearing on the findings of the Court of Inquiry and in the present case and there are no such facts and, therefore, the directions of the Formation Commander to recover Rs.65,638.80 from the applicant has to be complied with. Further, the financial responsibility fixed upon Shri Mehra cannot be equated with the personal involvement of the applicant as established by the inquiry report. The other contention of the respondents was that before fixing any responsibility for lapse on any one, all those involved in the proceedings were cross examined and categorised as witnesses and the petitioner was one of them. The staff Court of Inquiry is well within its rights to recommend recovery of Government dues / loss since it was one of the terms of reference under which it has been constituted. The staff Court of Inquiry has only recommended to recover the same from the affected person. The inquiry under Rule 14 of CCS (CCA) Rules and the Staff Court of Inquiry are conducted for different purposes with different terms and reference. They have also submitted that recovery action against the applicant was contemplated not solely for the reason that Shri V.Janardhanan has expired but it was after established that he had willfully suppressed the information during and after taking over the charge, thus delaying the recovery of loss from Janardhanan. They have also stated that in view of the confession of Shri Janardhanan about the correction in the ledger and other documents, the applicant was aware of the misappropriation immediately on taking over the charge and thus delayed the recovery of loss from Shri Janardhanan. They have relied upon the judgment of the Apex Court in B.C.Chaturvedi v. Union of India and others (AIR

1996 SC 484, in which it was held as under :-

" 12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches necessarily correct in the eye of the Court. When an enquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court /Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court / Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court / Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

10. We heard Mr.M.R. Hariraj, learned counsel for Applicant and Mr. P.A.Aziz, ACGSC learned counsel for respondents. In our considered opinion, this is a classic case of good-bye to the Rule of law by the Respondents. It is like the popular saying, " if the person who has stolen the goods is not found, catch the person whoever has been found." The Staff Court of Inquiry is a fact finding enquiry. It's categorical findings were that the then Store Keeper late Shri

Janardhanan was the culprit for the misappropriation of Rs.95,638.80 by unlawfully issuing 9.00 MT of steel CTD Bar. He had also expressed his willingness to remit the amount of Rs.95,638.80 through Military Receivable Order to make good the loss suffered by the department. The Department could not recover the amount only because Shri Janardhanan died before he could return the amount. The 3rd respondent himself has admitted that the aforesaid loss was entirely due to the misappropriation done by late Shri Janardhanan and during the preliminary enquiry also the said fact was stated. The Respondents purposely did not enquire into the matter further to identify the real beneficiaries of the CTD Bar unlawfully issued by the late Shri Janardhanan, the then Store Keeper or to establish the involvement of others including the higher officials in the Army, as, such misappropriation could not have taken place at the level of a mere Store Keeper without the active connivance of his superiors. Admittedly, the Applicant was no where near the scene when the CTD Bar was issued by late Shri Janardhanan . The Respondents have successfully diverted the attention of the authorities concerned from the real issue of identifying the culprits involved in the manipulation which resulted in financial loss of Rs.95,638.80 to the Department and concentrated on the Applicant and Shri H.P.Mehra. The charge against the Applicant was not that he was party to the misappropriation but he did not report the discrepancy at the time of his taking over. The Department was concerned merely with making good the loss suffered by them by some how so that they could escape from the audit objection. They were not

just bothered about the larger issue of misappropriation taking place in the Department as the incident in this case may be only a tip of the ice burg. For this purpose, the Respondents have made the Applicant a scape goat. Any how, the Respondents proceeded against the Applicant under the CCS (CCA) Rules, 1965 and held him guilty for the lapse on his part to report the discrepancy at the time of or after taking over the charge of the project store. Considering the degree of involvement of the Applicant, the Disciplinary Authority, in its wisdom has imposed the penalty of recovery of Rs.19,691/- from his pay though there is no explanation in its order as to how such a punishment would meet the end of justice or as to how he has arrived at the magic figure of Rs.19,691/- for recovering from the Applicant. The Appellate Authority has also blindly justified the aforesaid penalty imposed upon the Applicant without any application of mind. Whether the Disciplinary Authority's order of penalty and the Appellate Authority's order confirming the same and rejecting the appeal of the Applicant would stand the test of law or not is a different question altogether. It has to be adjudicated separately. It is on record that only because Shri Jananrdhanan who did the actual manipulation was not alive, the Court of Inquiry has recommended to recover the amount of Rs.95,638.80 from the Applicant who took over the charge from Shri Jananrdhanan and Shri H.P.Mehra who was the overall in charge of the Sub Division for the Store. While the disciplinary proceedings against the applicant has gone ahead and culminated in the penalty order, the Respondents did not allow the enquiry against Shri H.P.Mehra to proceed an inch.

According to the Respondents themselves, his case was examined in the Office of the Engineer-in-Chief Branch and a decision was taken at that level to close the case against him by simply Counselling / Warning him to be more vigilant in future and thereafter he was promoted to the higher grade. The amount of Rs.30,000/- proposed to be recovered from him was also written off. In the case of the Applicant even after a penalty was inflicted upon him and the entire amount of penalty was recovered from him, the Respondents have in an arbitrary, unjust and illegal manner ordered to straight away recover from him Rs.45,947.80 also so as to clear the ' test audit objection.' The Respondent by issuing such an authorisation order has shown that it has no respect to the well established departmental disciplinary procedures based on the sound principles of natural justice and rule of law. While some part of money misappropriated by late Shri Janardhanan was recovered from the Applicant after holding a departmental enquiry against him, the balance amount is now ordered to be recovered from him in an arbitrary and unlawful manner from his monthly pay and allowances, even without putting him on notice and not affording any opportunity to make even a representation. However, it is seen that even if a notice was issued to him before the further recovery of Rs.45,47.80 from him was ordered it would have been only an empty formality as the Respondents have already made up their mind to recover the amount when they have stated in the Annexure A-4 letter dated 03.03.2006 that " no change can be made at this stage, until and unless new facts have emerged which has bearing on the findings

of the Court of Inquiry ". We, therefore, hold that the impugned Annexure A-14 letter dated 03.03.2006 and the Annexure A-1 letter dated 14.06.2006 issued by the 1st Respondent to the 3rd Respondent are absolutely arbitrary, illegal and therefore violative of the provisions contained in Article 14 of the Constitution and therefore the same is quashed and set aside.

11. As regards the sustainability of the impugned orders are concerned, the charge against the Applicant was that he failed to report the discrepancy of 9.00 MT of steel 8 mm CTD bar at the time of or after taking over the project stores and delayed the bringing out of the facts that misappropriation has taken place and thus delayed the recovery of loss amounting to Rs.95,634.80. It was entirely based on an alleged confession made by late Shri V.Janardhanan during the Court of Inquiry. The Court of Inquiry is a fact finding enquiry and the Applicant had no opportunity before it to cross examine any one including last Shri Janardhanan who alleged to have made any such incriminating confessions. The Disciplinary Authority should have been aware that neither the Applicant nor the Disciplinary Authority itself did not have any opportunity to get the alleged confession refuted or established during the enquiry in the absence of Shri V.Janardhanan. There was not even a single witnesses from the prosecution side to support the allegation of the Disciplinary Authority . As held by the Apex Court in State of Mysore v. Shivabasappa Shivappa Makapur AIR 1963 SC 375 reiterated in Kesoram Cotton Mills Ltd. vs. Gangadhar AIR 1964 SC 708 and State of U.P v. Om

Prakash Gupta (1969) 3 SCC 775 if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross examination by the delinquent. Again as held by the Apex Court in Kuldeep Singh v. Commander of Police & Others (1999) 2 SCC 10 " the enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "reasonable" opportunity ", contemplated by Article 311 (2) of the Constitution. The "bias" in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning " that he based his report entirely on an alleged confession of a ' dead person ' and without any other single witness on behalf of the prosecution. Further it is evident from record that the disciplinary authority has held the enquiry with a pre-determined mind as the statement of imputation against the Applicant itself was that the Court of Inquiry " has already established the irregularities/lapses committed by him ". In such a situation, the departmental enquiry was only a farce and an eye-wash. Again, the only listed prosecution document was the "Court of Inquiry proceedings " and there were no prosecution witnesses at all to identify and establish the prosecution document. The Officer who conducted the Court of Inquiry himself was not cited as a prosecution witness. After the enquiry, the Enquiry Officer held that the Applicant has failed to report the discrepancy of 8.00 MT CTD 8mm dia bar has been sustained because Shri V.Janardhanan had confessed during the Court of Inquiry that the correction to the stock balance was made by him at the time of

handing over the charge and it was 'apparent' that the Applicant was aware of the correction. As regards the other charge that the Applicant has delayed the bringing out the facts that misappropriation has taken place and thus delayed the recovery of loss, it was also based on the same confession of late Shri Janardhanan. The Enquiry Officer held that Shri Janardhanan had earlier confessed that the Applicant did not report about the misappropriation immediately after taking over the charge and thereby delayed the recovery of loss. Apart from the credibility of such an alleged confession, of a person who if no more, no other witnesses were produced by the prosecution to corroborate those statements. Rather, there were no live witnesses at all for the prosecution and the findings of the Enquiry Officer was purely on surmises and presumptions. We are, therefore, of the opinion that the Inquiry Report is based on no valid evidence and therefore it has to be rejected. Though the Applicant made a representation against the findings of the Enquiry Officer, the Disciplinary Authority vide Annexure A-10 order dated 02.09.2003 held that the charge levelled against the Applicant was " deemed to have been established " and imposed the penalty of recovery of Rs.19,691/- from his pay vide Annexure A-10 order dated 02.09.2003. In a departmental enquiry the charges have to be established on the basis of the listed documents and the depositions of the witnesses by which they are sought to be established and that too in the presence of the charged officer who gets an opportunity to cross examine them. Charges cannot be "deemed to have been proved " without any witnesses. If such is the situation, the very purpose of

departmental enquiries itself will be defeated. The Appellate Authority has also justified the aforesaid penalty vide its order dated 12.05.2004 without application of mind, in spite of the various grounds averred by the Applicant in his appeal. Probably the Applicant was reconciled to the Enquiry Report, Disciplinary Authority's order and the Appellate Authority's order as the amount involved was not very big and it has already been recovered in instalments against his protest. But suddenly, the Respondents have dropped the enquiry proceedings initiated against Shri H.P. Mehra, the co-delinquent in the case vide MES/471020 and closed the case against him by a suo-motto Counselling / Warning advising him to be more careful and vigilant in future. The respondents, have also decided to write off the loss of Rs.30,000/- pending against him. Thereafter, the respondents submitted the Annexure A-15 statement of loss dated 15.10.2005 to the GOC ATNK&K Area with the recommendation to regularise the amount of Rs. 75,947.80 (Rupees Seventy five thousand nine hundred and forty seven and paise eighty only) pending against the Applicant also. In the loss statement they have stated as under :-

"11. To implement the direction of GOC departmental disciplinary proceedings were instituted against both the officials. Disciplinary case against MES/180107 Shri C.J. Mathai, SK I has been finalised and penalty of recovery of Rs.19,691/- has been recovered from his pay and allowances. Similarly on finalisation of disciplinary proceedings against MES/471020 Shri H.P Mehra, Executive Engineer, he has been served with a warning letter as per the directions of Engineer-in-Chief's Branch. Now the revised direction of GOC Area is required to regularize the balance amount of Rs.75,947.80 as a

loss to the state through a loss statement."

12. While readily agreeing with the decision to write off the amount of Rs.30,000/- in the name of Shri H.P.Mehra and limiting the penalty imposed upon him for the alleged supervision to Counselling / Warning, the GOC wanted to recover the balance amount of Rs.45,947.50 also from the Applicant and ordered accordingly. Applicant has, therefore, challenged the Annexure A-4 letter dated 03.09.2002 containing the direction / recommendations of the Staff Court of Inquiry to recover Rs.65,638.80 and the Annexure A-10 penalty order dated 02.09.2003 imposing the penalty of Rs.19,691 on him. As we have already observed earlier that the enquiry report was not based on any valid evidence, the impugned A-10 penalty order is also to be rejected 'as a case of no evidence'. The Disciplinary Authority itself has held the charges levelled against the Applicant was only 'deemed to have been established' which is opposed to the basic principles of ' audi alteram partem ' followed in departmental enquiry proceedings. The Annexure A-19 Appellate order holding such a disciplinary Authority's order justified is also contrary to rule and therefore illegal. Consequently, the Annexure A-4 directions / recommendations of the Staff Court of Inquiry dated 03.09.2002, Annexure A-10 Disciplinary order dated 02.09.2003 and the Annexure A-19 Appellate order dated 12.05.2004 are also quashed and set aside.

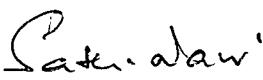
13. Resultantly, the O.A is allowed in terms of the directions made in para 11 and 12 above. Respondents are directed to refund the amount of Rs. 19,691/- to the Applicant which has already been recovered from him in terms of Annexure A-10 order dated 02.09.2003. In the facts and circumstances of the case, the Respondents shall pay a cost of Rs.3500/- (Rupees Three Thousand Five Hundred only) to the Applicant. The Respondents

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shall comply with the aforesaid directions within two months from the date of receipt of a copy of the order.

Dated, the 22nd November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

VS