CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 15.2.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.51/89

M.M.Jossey - Applicant

Versus

1. The Flag Officer
Commanding-in-Chief,
Headquarters Southern
Naval Command,
Cochin-682 004.

2. The Chief Staff Officer(P&A),
Headquarters Southern
Naval Command,
Cochin-682 004.

3. The Commanding Officer,
INS Venduruthy,
Cochin-682 004. - Respondents

Mr.M.Girijavallabhan - Counsel for applicant

Mr.PA Mohamed, ACGSC - Counsel for respondents

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant, an Ex-serviceman, serving as an M.T.Driver under the respondents challenging the validity of the order dated 25.1.1988 of the second respondent imposing on him a penalty of withholding of increment for a period of three years at Annexure-A-2 and the appellate order dated 27.9.1988 of the first respondent confirming the order of punishment. The facts of the case in brief are as follows.

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2. On 9.3.1987 at about 2300 hours when the applicant was carrying 10 bottles of rum, 1 bottle of brandy and 1 bottle of beer in the jeep which he was driving within the area of the Cochin Naval Base, he was stopped by the Naval Police. The liquor was seized and a statement was obtained from him. Though the applicant stated that he had borrowed the liquor from his Ex-servicemen friends for being used in connection with his sister's wedding, this explanation was not accepted and the third respondent, on 7.5.1987 issued a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965, alleging that the applicant kept in his possession 10 bottles of Rum, one bottle of brandy and one bottle of beer illegally. A departmental inquiry was held. The Inquiry Officer however submitted a report finding that the applicant had not contravened any known orders/ regulations regarding possession of liquor in the premises of Naval Base, Cochin and had not committed any misconduct. The second respondent disagreed with the finding of the Inquiry Officer, found the charge proved and passed the impugned order at Annexure-2 imposing a penalty of withholding the increment for a period of three years. Aggrieved by that, the applicant preferred an appeal to the Appellate Authority. The first respondent confirmed the order of the second respondent by the Annexure-3 order. Aggrieved by these two orders, the applicant has filed this application.

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It has been averred in the application that the third respondent had no authority to charge-sheet the applicant, that the respondent No.2 had no authority to impose punishment, and that the Annexure-3 order of the Appellate Authority also is invalid on account of lack of jurisdiction. It has also been averred that, as the Inquiry Authority has recorded a finding that the applicant is not guilty without any further material, the respondents 1 and 2 could not have come to a different finding. It is further contended that the charge does not disclose any misconduct and that the evidence adduced before the Inquiry Authority does not warrant a finding of guilt. The respondents have filed a detailed reply statement. It has been contended that the authorities who have issued the charge-sheet, passed the order of punishment and the appellate order had the jurisdiction to deal with the matter dealt with by them and that the facts proved in the inquiry justified the second respondent's finding that the applicant is guilty, disagreeing with the finding of the Inquiry Authority.

3. We have heard the arguments of the learned counsel and have also perused the documents produced. The learned counsel for the applicant argued that the third respondent had no authority to issue the charge-sheet, the second respondent had no authority to impose the punishment, and that the first respondent had no authority to dispose of the appeal. In support of this argument, the learned counsel invited our attention to the order of the Madras Bench of the Central Administrative Tribunal,

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in TA 203/85, wherein it was held that, as the Appointing Authority and the authority competent to impose penalty mentioned in Rule 11 in respect of Group 'C' and Group 'D' posts under the Southern Naval Command is the Director of Civilian Personnel as per Part-5 of the Schedule therefore, the 5th respondent in that case, the Chief Staff Officer (P&A), Headquarters, Southern Naval Command had no authority to impose the penalty. In this case also the second respondent is the Chief Staff Officer (P&A), Headquarters, and the applicant is a Group 'D' staff. At the first blush it would appear that the decision cited applies all on fours to the facts of the case as well, and that the impugned order suffers from want of jurisdiction. But as per Clause 'A' of Sub-Rule 2 and Rule 12 of the CCS (CCA) Rules, 1965, all the penalties specified in Rule 11 may be imposed on a member of the Central Civil Service, by the Appointing Authority, or the authority specified in the schedule in this behalf, or by any authority empowered in this behalf by a general or special order of the President. Ext. R-1 is a copy of the order issued under Clause(a) of Sub Rule-2 of Rule 12 of the CCS(CCA) Rules, 1965 empowering the officers mentioned therein to impose penalties specified in Clause (i) to (ix) of Rule 11 of the CCS(CCA) Rules in respect of Group 'C' and 'D' Defence civilian employees of the Indian Navy under their control and jurisdiction.

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As per this order, the authority competent to impose the penalties on civilian grade 'C' and 'D' employees in Southern Naval Command was Command Supply Officer, Southern Naval Command. But this order has been amended by Ext.R.2 order dated 15th July, 1981, wherein the words Command Supply Officer, Southern Naval Command have been deleted and the words Chief Staff Officer(P&A), Headquarters, Southern Naval Command have been substituted. So as per the orders of the President, in exercise of the powers conferred by Clause-A of Sub Rule-2 of Rule 12 of the CCS (CCA) Rules, Officer in charge, Ext.R.1&2, the second respondent, the Chief Staff Officer, P&A, Headquarters, Southern Naval Command has been authorised to impose penalty specified in Clause-1 to 10 of Rule 10 of Group 'C' and 'D' defence civilian employees working under his control and jurisdiction. The Appellate Authority is shown to be the Flag Officer, Commanding in the Southern Naval Command. Therefore, the argument of the learned counsel for the applicant, that the respondent No.2 has no authority to impose the penalty and the first respondent has no authority to hear the appeal has no merit. The contention of the applicant that the third respondent is not competent to issue charge-sheet also is not tenable. The learned counsel for the applicant argued that the Disciplinary Authority has gone wrong in finding the applicant guilty of the charge while the Inquiry Authority

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has held the charges not proved, disagreeing with the Inquiry Authority without any further materials and without giving a notice to the applicant. It is settled now that if the Disciplinary Authority proposes to disagree with the finding of not guilty entered by the Inquiry Authority, notice should be given to the delinquent and adequate opportunity has to be given to him. In Narayan Misra -Vs- State of Orissa, reported in 1969 (Vol.III), SLR-657, the Supreme Court has held that in a case where Disciplinary Authority disagrees with the finding of not guilty entered by the Inquiry Authority, an opportunity should be given to the delinquent official about the attitude of the punishing authority and if that is not done, there is violation of natural justice and fairplay. The dictum laid down by their Lordships is applicable to the facts of this case. The Disciplinary Authority has obviously committed a grave error of law by not giving a notice to the applicant of his intention to disagree with the finding of the Inquiry Authority, thereby violating the principles of natural justice. On that score the finding of the Disciplinary Authority, that the applicant is guilty of the charge has to be set aside. We Therefore, do so.

4. In view of our conclusion that the finding of the Disciplinary Authority that the applicant is guilty

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disagreeing with the finding of the Inquiry Authority cannot be sustained, we do not propose to go into the question whether the charge actually disclosed a misconduct and whether the evidence on record warrants a finding of guilt.

5. In view of what is stated above, we set aside the impugned punishment order at Annexure-A2 and the appellate order at Annexure-A3. It is made clear that the respondents would be at liberty to re-commence the disciplinary proceedings from the stage after submission of the inquiry report by the Inquiry Authority, if they so choose and complete the proceedings in accordance with law, after giving the applicant notice and adequate opportunity to defend himself.

6. There will be no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER

15.2.90

(S.P.MUKERJI)
VICE CHAIRMAN

15.2.1990