

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.519/2005

Friday this the 2nd day of November, 2007

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**P.Ramakrishna Kurup, S/o late Padmanabhan Unnithan,
aged 52 years, Postal Assistant,
Poovachal PO, Trivandrum.695 575
residing at 'Renjit Bhavan', Mylakara PO
Kattakkada, Trivandrum.695 272.**

.....Applicant

**(By Advocate Mr.OV Radhakrishnan (Senior Counsel)
alongwith Mrs. Radhamani Amma)**

V.

- 1 Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram.14.**
- 2 V.Balakrishnan Nair,
Inspector of Post Offices (PG) and
Inquiry Officer, Thiruvananthapuram
South Division, Thiruvananthapuram.14.**
- 3 Director of Postal Services (HQ)
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.**
- 4 Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.695033.**
- 5 Union of India represented by its Secretary,
Ministry of Communications,
New Delhi-1.**

.....Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC (R,1,3-5)

**This application having been heard finally on 25.9.2007 the Tribunal on
2.11.2007 delivered the following:**

ORDER

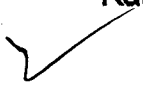
Hon'ble Mr. George Paracken, Judicial Member

The applicant in this O.A was charge-sheeted vide Memo No.ASP(OS)/Misc/TV(S) dated 14.3.2002 issued by the Respondent No.1 ie., the Superintendent of Post Offices (SPOs for short) under Rule 16 of the CCS (CCA) Rules, 1965 for violation of the provisions of Rule 3 (i)(iii) of the CCS (Conduct) Rules, 1964. The following charges were framed against him:

"Shri C.Madhusoodhanan,SPM, Kaudiar Square and Divisional Secretary of National Union of Postal Employees Group C came to Thiruvananthapuram(S) Divisional Office on 11.10.2001 at 16.55 hrs, contacted ASP(OS)and asked for permission to meet S.P.Tvm(S) Division. The SP granted him permission and accordingly he went to the cabin of the Superintendent and engaged in discussion with SPOs.

While the discussion between the two was going on Sri P.Ramakrishna Kurup, PA, Kattakada came to the office of the Supdt. Of Post Offices, Trivandrum South Division at 1700 hrs on 11.10.2001 and went inside the office without obtaining permission of ASP(OS) and entered the cabin of the Superintendent without obtaining permission from SPOs. After entering the SPOs cabin he started shouting in a rude manner. He was asked by the SPOs to go and meet ASP(OS) who will arrange his meeting when the ongoing discussion with Sri C.Madhusoodhanan is over. But instead of acting according to the directions of the SPOs he continued to interrupt the discussion between Sri Madhusoodhanan and SP by shouting in a loud voice. He was not paying heed to repeated request of SPOs and continued his misbehavior creating ugly situation in the cabin of SPOs. He was adamant and was not willing to leave the cabin. In this circumstances, SPOs was forced to call Police. Police came and removed Shri P.Ramakrishna Kurup from the Chamber of the Supdt of Post Offices.

Shri V.Balakrishnan Nair, IPO(PG) was ordered to inquire into the incident. The IPO(PG) on 06.12.2001 visited Kattakada and contacted Shri P.Ramamkrishna Kurup, PA,, Kattakada and asked to give his version in writing on the



incidence. But he refused to give statement before the investigating officer, the IPO(PG).


Shri C.Madhusoodhanan, SPM, Kaudiar Square in his written statement dated 6.12.2001 has stated that he visited Divisional Office at 16.55 hrs, that while he was having discussion with SPOs, Shri P.Ramarkrishna Kurup, PA, Kattakada shouting at a high pitch intruded into the chamber in a rude manner, that SPOs directed him to contact ASP (OS) to arrange his meeting with the SPOs after finishing the discussion with him that Shri Ramakrishna Kurup continued his misbehaviour SPOs called the Police, that after obtaining written complaint from th SPOs the Police removed Shri Ramakrishna Kurup from the chamber of SPOs.

Shri P.Sudhakaran Pillai, ASP(OS) Trivandrum South Division in his statement dated 6.12.2001 before the IPO (PG) Trivandrum South Division has stated that on 11.10.2001 at about 17.00 hrs while SPOs was engaged in discussion with Shri Madhusoodhanan, Shri P.Ramakrishna Kurup, PA, Kattakada entered the chamber of SPOs without permission and started shouting something loudly in a rude manner, that SPOs directed him to contact ASP(OS), that Sri Ramarksihan Kurup was not willing to act according to the directions of SPOs, that the continued misbehavior, that as there was no other way SPOs called Police and Police removed Shri Ramakrishna Kurup from the Chamber of SPOs."

2 The applicant vide Annexure A1 representation dated 23.4.2002 denied all the aforesaid charges levelled against him and requested for quashing the charge sheet on the ground that the SPOs being a material witness in the case, he was prohibited from issuing the charge sheet itself. He has demanded for an enquiry under Rule 16(1)(b) of the CCS (CCA) Rules, 1965, in case the disciplinary authority was intending to proceed further in the matter, as the charges against him were of serious nature and only by way of cross-examination of the witnesses, his innocence could be established. The disciplinary authority did not agree to his demands and proceeded in the matter under Rule 16(1)(b) of the

CCS (CCA) Rules, 1965 itself and vide Annexure.A3 proceedings dated 24.7.2002 imposed the minor penalty of withholding of one increment of the applicant for a period of 35 months without cumulative effect.

3 Aggrieved by the said penalty order, the applicant submitted Annexure.A4 appeal dated 10.8.2002 bringing to the notice of the Appellate Authority also that the Disciplinary Authority was a material witness in the case and, therefore, he should not have issued the charge sheet as per the instructions of the Government contained in D.G P&T Memo No.6/64/64-Disc dated 27.1.1965 wherein it has been stated that the principle of natural justice, namely, "no one shall be a judge in his own cause", shall be applicable even in the case of disciplinary authority, where the (i) disciplinary authority is himself a complainant (ii) he is a prosecution witness and (iii) he is intimately concerned with the subject matter. He further pointed out to the appellate authority that the disciplinary authority Shri G.Pavithran, SPOs himself was the actual complainant as the charge against him was that he had entered his (SPOs) cabin without his permission and shouted at him in rude language and therefore, he was a material witness in the case. The appellate authority did not agree to both of his requests but modified the duration of penalty and ordered for withholding of one increment for a period of only 2 years without cumulative effect vide Annexure.A5 order dated 2.5.2003. The appellate authority agreed with the reasoning given by the disciplinary authority in not holding the inquiry under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 and ruled that the case against the applicant was not a case between him and the Disciplinary Authority but it was a case of misconduct on the part of the



applicant inside the public office and there was nothing wrong in the said SPOs functioning as the disciplinary authority. The applicant still not being satisfied with the orders of the appellate authority submitted the Annexure.A6 Review Petition dated 1.8.2003 under Rule 29 of the CCS (CCA) Rules, 1965. However, the Revisional Authority was of the opinion that the punishment imposed was not commensurate with the offence committed by him and proposed to enhance the penalty imposed by the disciplinary authority and appellate authority and he was served with Annexure.A7 show cause notice dated 10.3.2004. The applicant submitted Annexure.A8 representation against the aforesaid show cause notice. Thereafter, the applicant was served with Annexure.A9 order dated 20.7.04 ordering that the order of the appellate authority be enhanced as that of withholding of one increment of the applicant for a period of 35 months without cumulative effect as originally imposed by the disciplinary authority in its order.

4 The applicant has challenged Annexures A3,A5 and A9 orders stating that they are patently illegal, contrary to the rules, void and they are issued in violation of the principles of natural justice. He specifically submitted that the Annexure A3 order of penalty is ex facie illegal,arbitrary and discriminatory and violative of Articles 14, 16(1) of the Constitution of India. According to him, in view of the seriousness of the charges levelled against him, it was imperative that an inquiry in the manner as laid down in sub rules (3)to (23) of Rule 14 of the CCS (CCA) Rules as laid down in the judgment of the Apex Court in *O.K.Bhardwaj V. Union of India and others* , (2002) SCC L&S 188 wherein it has been held that if the charges are

factual and if they are denied by the delinquent employee, an inquiry should be held to satisfy the minimum requirement of the principles of natural justice. He has also alleged that the disciplinary authority has acted arbitrarily and in disregard to the binding executive directions contained in Annexure.A2 OM of the Govt. of India, Department of Personnel & Training dated 28.10.1985 wherein it has been held that if the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily. He has also repeated the grounds taken before the disciplinary Authority and the Revisional authority, that the first respondent, namely, the Superintendent of Post Offices was the actual complainant in the case and the misconduct alleged to have been committed by the applicant was against him and, therefore, the first respondent in whose chamber the applicant was alleged to have been misbehaved was a material witness and was an interested person in the case and thereby he had disqualified himself to act as the disciplinary authority. He has also challenged the Annexure.A7 show cause notice as it did not give him any real opportunity to represent his case against the proposed action of enhancement of the penalty.

5 The counsel for the applicant has relied upon the following judgments:

(i) *Ministry of Finance and another V.S.B.Ramesh (1998) 3 SCC 227*
in which it was held as under

✓ "15 On a careful perusal of the above findings of the Tribunal

in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available for us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental inquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it"

(ii) *Dr.D.P.S.Luthra Vs. Union of India and others, 1988 (8) ATC 815 in*

which it was held by the Principal Bench of this Tribunal that:

"15 In the instant case, the non-examination of Shri Jagbir Singh, the complainant who was a key witness in the inquiry, has vitiated the proceedings in the entirety. The inquiry officer has, while assessing the evidence brought out the various inconsistencies but, at the same, time has concluded that "as there has been a recovery of the said ten-rupees note, which could not have been planted in the pocket of the charged officer, there is preponderance of probability that the charged officer demanded and got the said 1- rupee note from Shri Jagbir Singh". Shri Jagbir Singh was not examined as a witness. This finding of the inquiry officer is based on the statement of Shri Jagbir Singh which was obtained behind the back of the petitioner To our mind, the finding of the inquiry officer is based on surmises and conjectures. This is a case where nor reasonable inference could be drawn from the proved facts that the charged officer had demanded and accepted the bribe, as alleged. To our mind, the findings of the inquiry officer are vitiated as based on no evidence and on inadmissible material and the guilt of the petitioner has not been established such as to stand scrutiny and test of reasonableness consistent with human conduct and probabilities."

(iii) *State of Madhya Pradesh Vs. Chintaman Sadashiva Waishampayan,*

AIR 1961 SC 1623 in which the Apex Court held as under :

"...It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art.226 it is for the High Court to consider whether the constitutional requirements of Art.311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the inquiry officer. The inquiry officer may have acted bonafide but that does not mean that the discretionary orders passed by him

are final and conclusive. Whenever, it is urged before the High Court that as result of such orders the public officer has been deprived of a reasonable opportunity, it would be open to the High Court to examine the matter and decide whether the requirements of Art.311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules, whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case...."

- (iv) *V.O.Koruthu V. Kerala State Electricity Board ,1971 KLT 780* in which the High Court of Kerala has held as under:

"7 The fact that the delinquent officer did not in his written statement claim an opportunity for personal hearing would not dispense with the necessity for an enquiry which is enjoined by Rule 15. In *Jagdish Prasad V. State of Madhya Bharat (AIR 1961 SC 1070)* the Supreme Court said:

"The departmental inquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such inquiry it would not be fair to strain facts against the appellant and to hold that in view of the admission made by him the inquiry would have served no useful purpose."

- (v) *State of Mysore and others V. Shivabasappa Shivappa Makapur* AIR 1963 SC 375 in which the Apex Court held as under:

"...For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial and actions in Courts nor are they bound by the strict rules of evidence. They can unlike Courts, obtain all information materials for the points under inquiry from all sources and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may received unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are not open to attack on the



ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

- (vi) *Central Bank of India Limited Vs. Prakash Chand Jain, AIR 1969 SC 983* – decided by the Supreme Court, wherein it was held as under:

"....It is true that, in numerous cases, it has been held that domestic tribunals like an inquiry Officer, are not bound by the technical rules, about evidence contained in the Indian evidence Act, but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the inquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act...."

- (vii) *Sheo Kumar Tiwari Vs. Janapada Sabha, Lakhnadon and others, 1968(2) SLR 867* in which the Madhya Pradesh High Court held as under:

"....The rule further says that if the employee desire or if the authority concerned so directs, an oral inquiry shall be held and that inquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, and the proceedings shall contain a sufficient record of the evidence. It is thus plain from this rule that when the petitioner did not admit the charges levelled against him, it was essential for the enquiry officer to record the evidence of witnesses in support of the charges. As is evident from the fact that the petitioner examined six witnesses on his behalf he undoubtedly desired that an oral inquiry should be held. That the failure to examine witnesses in support of the charges is fatal infirmity in the proceedings cannot be now be doubted in view of the decisions of the Supreme Court in *Jagadish Prasad V.State of M.B. AIR 1961 SC 1070*, *State of MP V.Chintaman, AIR 1961 SC 1623* and

Bombay State V. Nurul Khan, AIR 1966 SC 269 and of this court in HP Verma V. State of MP, No.361 of 1964 decided on 18.12.19764 and R.N.Waghmare State V. State of MP, No.215 of 1963 decided on 6.2.1964. All these decisions held that wherever statutory provision or a rule lays down that if it is desired by the charge sheeted officer or if the authority concerned so directs, an oral inquiry shall be held, the holding of an oral inquiry is mandatory, it is obligatory on the authority concerned to record evidence in support of the charges as well as the evidence which the charge sheeted officer may lead in support of his plea, and the failure to hold such an oral inquiry is a serious infirmity in the enquiry depriving the charge sheeted officer of a reasonable and adequate opportunity of defending himself against the charges."

(viii) *John K Kurien and another Vs. Principal, Govt. Engineering College, Trichur and others, 1976 KLT 215* in which the High Court of Kerala has held as under:

"But then there cannot be any doubt that in any kind of domestic inquiry, a tribunal should not rely on evidence taken behind the back of the party accused in respect of which the said party has not been given an opportunity to controvert or explain the same."

6 In the reply statement, the respondents have stated that the second respondent Shri V.Balakrishnan Nair, Inspector of Posts (Public Grievances) (IPO/PG for short) had conducted an inquiry into the incident and recorded the statement of Shri Madhusoodhanan, SPM, Kaudiar Square and P.Sudhakaran Pillai, ASP(OS) Trivandrum (South). The IPO/PG also visited Kattakada SO on 6.12.01 and contacted the applicant with a view to obtain his version but the applicant refused to cooperate in the inquiry and refused to give a written statement. Based on the statemetns of Shri C.Madhusoodhanan SPM and Shri Sudhakaran Pillai, ASP(OS), the IPO/PG submitted his report on 7.12.01 and the applicant was charge sheeted on 14.3.2002. In response to the said charge sheet

the applicant sought copies of the report of the IPO/OG dated 7.12.200 and statements of Shri Madhusoodhanan, SPM and Shri P. Sudhakaran Pillai, ASP (OS) and they were supplied to him on 12.4.2002. Thereafter, he has submitted Annexure.A1 written statement dated 23.4.2002. According to the respondents, the applicant has not refuted the charge in the said representation but objected to the issuance of the charge sheet by the Superintendent of Post Offices as he was a material witness in the case. He has also demanded an enquiry under Rule 16(1)(v) of CCS (CA) Rules, 1965. The respondents denied the contention of the applicant that the first respondent was a material witness and, therefore, he was not competent to issue the memo of charges. According to them it was not a case between an employee and his disciplinary authority but it was a case of misconduct on the part of the applicant inside the public office. The request for detailed inquiry was also rejected by the disciplinary authority after reasons for doing so. In the reply statement the orders of the appellate authority and revisional authority were also defended.


7 We have heard Shri O.V. Radhakrishnan, Senior Counsel for the applicant and Smt. Aysha Yousuf, ACGSC for the respondents. In our considered opinion this is a clear case of misuse of power conferred upon the Disciplinary Authority under Rule 16(2) (a) of the CCS (CCA) Rules to impose any minor penalty upon delinquent government servant without holding any enquiry in the manner laid down in Sub Rules (3) to (23) of Rule 14 of the said Rules. Under Rule 15(3) (ibid), it is only after considering the Enquiry Report submitted after an enquiry under Sub Rules (3) to (23) of Rule 14 and the representation of the government servant on

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the enquiry report, the Disciplinary Authority decides as to whether the penalties specified in clauses (i) to (iv) or (v) to (ix) of Rule 11 should be imposed on the government servant. The procedure as laid down in Rule 16(1)(a) for imposing minor penalty on the Government servant is an exception to the procedure as laid down in Sub Rules (3) to Rule 15. The general rule is to impose any penalty only after an enquiry following the procedure as laid down in the Rule and not without any enquiry. The charges against the applicant are quite serious. The 'SPOs' as mentioned in the charge and in the statement of imputations of misconduct or misbehaviour issued in support thereof is none other than Shri G.Pavithran, Superintendent who has issued the Annexure. A3 penalty order dated 24.7.2002 in his capacity as Disciplinary Authority. According to the charge the applicant entered the cabin of SPOs and shouted at him in a rude manner in the presence of Shri C.Madhusoodhanan, SPM, Kaudiar. Further, it says that the SPOs had asked the applicant to go out and meet the ASP(OS) who will arrange a meeting with him, but the applicant did not act according to the direction of the SPOs and continued to interrupt the discussions. The SPOs had to finally call the police and it is with the help of the police that the applicant was removed from his cabin. In a such situation, who can say that Shri G.Pavithran, SPOs was not the real complainant or he was not intimately connected with the disciplinary case against the applicant. However, Shri Pavithran rejected the applicant's request to desist himself from proceeding further in his capacity as disciplinary authority giving a very flimsy reason that the case was not one between the employee and his disciplinary authority but it was a

misconduct on the part of the employee inside the public office. It is seen that Shri Pavithran has purposely avoided his name in the charge and the imputations. When the name of Shri C.Madhusoodhanan, SPM, with whom Shri Pavithran, SPOs was in discussion, was clearly written, why the name of Shri G.Pavithran, SPOs was omitted in the charge. It was in these circumstances that the applicant has challenged the SPOs authority to act as disciplinary authority under Rule 16 of the CCS (CCA) Rules, 1965 vide his Annexure.A1 representation stating that he is a material witness in the case and, therefore, the issuance of the charge was in violation of the principles of natural justice. Again the disciplinary authority did not mention his actual designation in his Annexure.A3 order. When his designation was SPOs, as mentioned in the charge, it was written as Superintendent under his name in the impugned penalty order. Obviously Shri.Pavithran, Superintendent was an interested party in the matter. Shri C.Madhusoodhanan was only an outside party and a witness of the incident. In other words the disciplinary authority himself was the most affected party and the complainant in this case. Transparency and fair play in a departmental proceedings demand that if the officer who is the disciplinary authority of a charged employee happens to be the virtual complainant, the said authority should desist from issuing the charge-sheet, ordering for inquiry and functioning as the disciplinary authority in the matter. It is for the specific purpose that the Govt. of India, DG, P&T has issued the Memo No.6/64/64-Disc dated 27.1.65 to the following effect:

“The principle of natural justice, namely, “no one shall be a judge in his own cause” shall be applicable even in the case of a disciplinary authority where-



- (i) the disciplinary authority is himself a complainant
- (ii) he is a prosecution witnesses
- (iii) he is intimately concerned with the subject matter."

The government has also prescribed the procedure to be adopted when the competent authority is unable to function as "the disciplinary authority vide the aforesaid DG P&T which reads as under:

"In a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of being personally concerned with the charges or being a material witness in support of the charges, the proper course of that authority is to refer such a case to government in the normal manner for nomination of an ad hoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of CCS (CCA) Rules, 1965."

Without giving a straight forward reason for not observing the well established principles of natural justice, that "no one shall be a judge in his own cause", the disciplinary authority in his Annexure.A3 penalty proceedings has simply brushed aside it by stating as under:

"The argument of Sri P.Ramakrishna Kurup is that according to the statements of Sri P.Sudhakaran Pillai and Sri C.Madhusoodhanan, SP, Trivandrum South is a material witness in the case. Sri P.Ramakrishna Kurup may be remembering the proceedings of a Rule 14 inquiry considering the gravity of his offence. However, the undersigned was limiting the proceedings to a Rule 16 charge sheet."

The Apex Court in the judgment of *Rattan Lal Sharma V. Managing Committee, Dr.Hariram (Co-Education) Higher Secondary School and others*, (1993) 4 SCC 10 held as under:

"One of the cardinal principles of natural justice is nemo debet esse iudex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in *Secretary to Government, Transport Department V.Manuswamy Mudaliar*, 1988 Supp.SCC 651 that a predisposition to decide for or against one party without

proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias....."

8 Now we shall consider another important argument of the counsel for the applicant that the disciplinary authority should have favourably considered his request for ordering a detailed inquiry as envisaged under Rule 16(1)(b) of CCS (CCA) Rules, 1965 to meet the ends of justice. In this regard, the Govt. of India has already issued necessary instructions vide Department of Personnel & Training OM No.11012/18/85-Estt(A) dated 28.10.19785 that such requirements for detailed inquiry cannot be rejected solely on the ground that an enquiry is not mandatory. The said OM is reproduced below:

"The staff side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16(1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2 The above suggestions have been given a detailed consideration. Rule 16(1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of Disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent government servant has asked for inspection of certain documents and cross-examination of the prosecution witness, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the

Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding an inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

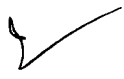
However, the disciplinary authority without considering the request of the applicant to hold the inquiry under Rule 16(1)(b) of CCS (CCA) Rules, 1965 made vide his Annexure.A1 representation dated 23.4.2002, proceeded under Rule 16(1)(a) *ibid* and imposed the penalty of withholding of one increment of the applicant for a period of thirty five months without cumulative effect. Though "withholding of increments of pay" is a minor penalty the duration and extent of the penalty is 35 months. The Apex Court in *O.K.Bhardwaj V. Union of India, (2002) SCC L&S 188* has clearly held as under:

".....Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect of the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an inquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

9 The purpose of proceedings under Rule 16 of the CCS (CCA) Rules 1965 is not to necessarily inflict a punishment upon charged employee. It also should not be employed as a mechanism to punish an employee without subjecting himself to a detailed enquiry or to avoid cross examination by the prosecution witnesses, particularly when the disciplinary authority or any person has any vested interest in the matter. The disciplinary authority in this case, it appears, avoided the detailed

enquiry against the applicant in order to save himself as witness in the enquiry proceedings and escape from the rigors of cross-examination by the applicant in his defence. At the same time he wanted to punish the applicant somehow or other for the alleged misconduct of barging into his cabin without his permission and shouting at him in the presence of another officer. As held by the Apex Court in *K.I. Shephard and others V. Union of India and others*, (1987) 4 SCC 431 "fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law, every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens." The reasons given by the disciplinary authority in not proceeding the enquiry under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 are vague and flimsy. The Appellate Authority and the Revisionary Authority are also found wanting in the discharge of the responsibilities assigned to them as statutory authorities under the CCS (CCA) Rules, 1965.

10 In the above facts and circumstances of the case, this O.A succeeds and is allowed. The impugned Annexure A3, A5 and A9 orders are quashed and set aside. Consequently, the respondents shall refund the entire amount withheld so far from the pay and allowances of the applicant as a result of the implementation of the disciplinary/Revisional Authority's orders forthwith but not later than within one month from the date of receipt of this order. However, the respondents, if they are so advised, may initiate proceedings through a competent disciplinary authority other than the disciplinary authority in the present case or by an



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ad hoc disciplinary authority after issuing the article of charges and the statement of imputation in support thereof in clear terms without any ambiguity. There shall be no order as to costs.

Dated this the 2nd day of November, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

S