CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 524 of 2004

Tuesday, this the 19th day of December, 2006

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

K.P. Devadas,
S/o. Shri K.P. Kunjhikkannan,
Extra Departmental Branch Postmaster,
Kolakkattuchalil BO, Chelambra SO,
Manjeri HO (under orders of removal),
Residing at Puliyalil House,
Kolakkattuchalil P.O, Chelambra : 673 634 ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr.)

v e r s u s

1. Superintendent of Post Offices,
Manjeri Division, Manjeri : 676 121

2. Superintendent of Post Offices,
(Ad hoc Appointing Authority),
Tirur Division, Tirur : 676 104

3. V.K. Sudhakaran,
Inquiry Authority and Assistant,
Superintendent of Post Offices,
Tirur Sub Division, Tirur : 676 101

4. Director of Postal Services,
Northern Region, Calicut : 673 011

5. Postmaster General,
Northern Region, Calicut : 673 011

6. Director General (Posts),
Dak Bhavan, New Delhi.

7. Union of India, represented by its Secretary, Ministry of Communications, New Delhi. ... Respondents.

(By Advocate Mrs. Mariam Mathai for R-1, 2, 4 – 7)

(The Original Application having been heard on 9.11.06, this Tribunal on 19.12.06. delivered the following) :

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Challenge is made against the following orders:-

(a) Annexure A-10 order dated 10-06-2002 whereby the applicant was removed from service as GDS BPM, Kolakkatchali in Manjeri Division.

(b) Annexure A-12 order dated 31-01-2003 whereby the applicant's appeal had been dismissed.

(Though in para 1 certain other orders have been assailed, in para 8 - relief sought, the applicant has confined his case only to the extent of setting aside of the aforesaid orders).

2. Brief Facts of the case as contained in the OA are as under:-

(a) The applicant while working as Extra Departmental Branch Postmaster, Kolakkattuchalil BO was issued Annexure A/3 Memorandum dated 23.1.2001 proposing to take action against the applicant under Rule 8 of the P&T ED Agents (Conduct and Service) Rules, 1964. The articles of charge are as under :-

"Article I

That the said Shri K.P. Devadas, while functioning as EDBPM, Kolakkattuchalil, on 28.3.2000, failed to credit to Government Accounts a sum of Rs. 250/- accepted by him for deposit in Kolakkattuchalil BO RD Account 392860, from the depositor of the account, Sri P. Satheesh in contravention of the provisions contained in Rule 144 read with Rules 131 & 143 (3) of Rules for Branch Offices Sixth Edition (2nd Reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

Article II

That the said Shri K.P. Devadas, while functioning as EDBPM, Kolakkattuchalil, on 29.1.2000, failed to credit to Government Accounts a sum of Rs. 100/- accepted by him for deposit in Kolakkattuchalil BO RD Account 391444, from the depositor of the account, Sri A. Arumughan in contravention of the provisions contained in Rule 144 read with Rules 131 & 143 (3) of Rules for Branch Offices Sixth Edition (2nd Reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

Article III

That the said Shri K.P. Devadas, while functioning as EDBPM, Kolakkattuchalil, on 29.1.2000, failed to credit to Government Accounts a sum of Rs. 100/- accepted by him for deposit in Kolakkattuchalil BO RD Account 393809, from the depositor of the account, Sri A. Arumughan in contravention of the provisions contained in Rule 144 read with Rules 131 & 143 (3) of Rules for Branch Offices Sixth Edition (2nd Reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964."

(b) The applicant submitted a representation dated 29.01.2001 denying the charges in toto. He was called upon to appear before the third respondent on 22.03.2001 on which dates the

Articles of Charge and imputations of misconduct was read over to him. The applicant pleaded not guilty of any of the charges. Regular inquiry proceedings commenced on 26.04.2001 and concluded on 28.12.2001. SW-1 to SW-8 were examined. Ext. S-1 to S-15 were marked in support of the charges alleged against the applicant. On the close of the evidence on the side of the prosecution, the applicant was asked ~~to~~ whether he was guilty of the charges. The applicant pleaded not guilty of any of the charges framed against him. On the side of the applicant DW-1 and DW-2 were examined. The applicant had filed a petition requesting to make available five documents to put up his defence. Out of the above documents ledger copies ~~ledger copies~~ in respect of R.D. Account No. 391444 and 393809 were not made available on the ground that it was informed by the custodian authority that those items were not prepared and hence were not available. The applicant was questioned on 28.12.2001. The applicant submitted his written brief (Annexure A/7) dated 30.1.2002. Thereafter, the applicant was served with a memo dated 26.3.2002 alongwith a copy of inquiry report calling upon him to make his representations or submissions in writing against the inquiry report to the disciplinary authority. The applicant submitted a representation dated dated 12.4.2002 challenging the findings entered by the inquiry officer to the disciplinary authority.

(c) The second respondent without properly appreciating the evidence oral and documentary adduced during the inquiry and the objections raised by the applicant against the findings entered by the inquiry officer passed A/10 proceedings dated 10.6.2002 ordering that the applicant be removed from service

with immediate effect.

(d) Being greatly aggrieved by the order of removal, applicant preferred an appeal petition (A/11) dated 31.8.2002 to the 4th respondent. The Appellate Authority as per A/12 order dated 31.01.2003 confirmed the punishment of removal from service imposed on the applicant.

(e) The applicant carried a revision petition dated 17.7.2003, as amended. As the revision petition remained undisposed of, the applicant submitted a letter dated 24.01.2004 by way of reminder. The revision petition has not been disposed of till date.

(f) Grounds for reliefs with legal provisions:

(i) Annexure A/10 order of removal and Annexure A/12 order rejecting the appeal are all illegal, arbitrary and are violative of Articles 14 and 16 (1) of the Constitution of India.

(ii) Order of removal was vitiated by breach of the principles of natural justice. The applicant has not been furnished copies of the relevant documents requisitioned by him which has prejudiced him in setting up his defence. The applicant has not been afforded a reasonable opportunity as contemplated by Article 311 (2) of the Constitution of India.

(iii) Rule 8 of the ED Agents (Conduct and Service) Rules are not consistent with Article 311 (2) of the Constitution of India and does not lay down the detailed procedure in holding the inquiry as contained in Rule 14 of the CCS (CC&A) Rules. Therefore, Rule 8 of the ED Agents (Conduct and Service) Rules is

liable to be struck down as violative of Article 311 (2) of the Constitution of India.

(iv) The first charge levelled against the applicant is that he failed to credit a sum of Rs. 250/- received by him from the depositor for deposit in Recurring Deposit Account No. 392860 to Government Accounts. The depositor Shri P. Satheesh though was cited as a witness was not produced and examined as a witness to prove S-3 statement. The applicant thereby was denied the opportunity to cross examine the maker of S-3 statement and to contradict the statement given by him. The Inquiry Officer, Disciplinary Authority and the Appellate Authority lost sight of legal requirement in relying on S-3 statement. SW-7 (State witness) when examined had candidly stated that the statement was given as dictated by the Postal Inspector and expressed his utter ignorance of the contents of S-3 statement. Therefore, the finding of the inquiry officer that Charge No. 1 is proved, is perverse.

(v) The Inquiry Officer, the Disciplinary Authority and the Appellate Authority lost sight of the aspect that SW-2, the Investigating Inspector had admitted in his cross examination that RD Pass Book 392860 was taken to custody by the Mail overseer and that the said Pass Book was not produced in the inquiry. The Mail Overseer as SW-8 deposed that the said Pass Book was not available. The above Pass Book is relevant and material document and adverse inference ought to have been drawn against the prosecution for non-production of the above material document.

(vi) The deposition of SW-2 and SW-8 are mutually contradictory and the disciplinary authority and the inquiry authority disregarded the deposition of the Sub Divisional Inspector and preferred to believe the Mail Overseer to suit the interest of prosecution.

(vii) The Law is well settled that if the Department seeks to rely on any document in proof of the charge, the principles of natural justice requires that such copies of those documents need to be supplied to the delinquent and if that opportunity was not given, it would violate the principles of natural justice.

(viii) The Inquiry Authority, the Disciplinary Authority and the Appellate Authority failed to appreciate the fact that S-1 statement was obtained from the applicant under duress and coercion. The deposition of DW-1, DW-2 and SW-5 butress the fact that the S-1 statement was not one voluntarily given by the applicant. The stand of the applicant that the depositor had not brought the pass book and hence he returned without paying the amount has not been disproved by the prosecution.

(ix) The findings entered on Charge No. II and III are also perverse and are not based on any legal or acceptable evidence. The depositor was examined as SW-3 and during his examination he has clearly admitted that the allegation made that he had paid 300/- on 29.1.2000 was not true. The inquiry authority or for that matter the disciplinary authority cannot make any inference of its own contrary to the statement made by the witness unless it is established that the witness was not speaking the truth and in that event the deposition of the

witness can only be disbelieved but the inquiry authority and disciplinary authority cannot enter a contrary finding in the absence of any other material or evidence.

(x) The appellate authority has not complied with the requirements under Rule 15 of the ED Agents (Conduct and Service) Rules.

3. Respondents contested the OA and their version is as under:-

(a) There were cases of shortage of office cash and delay in credit of SB deposits in previous two occasions by the applicant. The applicant had been under put off duty with effect from 5.10.1993 in connection with the misappropriation of office cash. Later the applicant was reinstated into service by memo dated 28.1.1994. The applicant was charge sheeted under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 on 8.2.1994 in connection with delay in credit of Rs. 890.40 in SB A/c. No. 50520. A charge sheet for imposing minor penalty was issued in this case and a punishment of debarring from appearing for examination for promotion to the cadre of Postman for a period of one year was imposed on him.

(b) The applicant was put off duty with effect from 7.4.2000 in connection with non-credit of deposit in SB/RD and misappropriation of said amounts. It was decided to proceed under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 against the applicant. As the normal disciplinary authority was a witness in the case, Superintendent of Post Offices, Tirur Division, Tirur (2nd respondent) was appointed as ADA by the competent

authority empowering to impose all the penalties prescribed in the said Rules.

(c) The applicant was directed to submit his representation against the charge sheet and he submitted a representation dated 29.1.2001 denying all the charges. Therefore, a detailed inquiry as prescribed in the Rules was ordered under the requirement of Article 311 (2) of the Constitution of India.

(d) Inquiry was conducted by the Inquiry Authority offering all reasonable opportunities to applicant at each and every stage. The inquiry was conducted in a just and fair manner and no objection was raised by the applicant or his AGS at any stage of inquiry. All the witnesses listed in Annexure IV of the charge sheet were examined except one who did not turn up for inquiry in spite of repeated notices. All the documents listed in Annexure III of the charge sheet were also produced and marked as exhibits. The applicant requested for certain documents on his behalf, but these could not be produced as these items were not available with its custodian. On conclusion of the examination of defence witnesses, the applicant was questioned by IA and his deposition was recorded. On receipt of written brief from the applicant the inquiry report was prepared. All the three charges framed against the applicant were proved. A copy of the inquiry report was given to the applicant. The representation of the applicant challenging the findings of the Inquiry Authority was received by the 2nd respondent (ADA) and thereafter, Annexure A/10 order of removal was issued to him.

(e) The 2nd respondent passed A/10 order after assessing the

oral and documentary evidence adduced during the inquiry and considering the objections raised by the applicant. All reasonable opportunities had been given to the applicant and all the mandatory provisions of inquiry had been followed. Annexure A/10 order of removal was issued by the 2nd respondent after duly considering the representation on the inquiry report from the applicant and giving the reasons for arriving at the decision. The said order of removal is a speaking order.

(f) The appeal submitted by the applicant was rejected by the appellate authority after finding that the observation of the ADA was correct. The particulars mentioned by the applicant in the appeal were carefully considered by the 4th respondent and he assessed the whole issue afresh and came to the conclusion that there was no reason to differ from the findings of the Inquiry Authority and Disciplinary Authority. He also found that the quantum of punishment was not excessive considering the nature of offence of defrauding the Department and cheating the public.

(g) The revision petition filed by the applicant was disposed of by the competent authority (5th respondent) by order dated 21.6.2004. The grounds for the decision has been stated in the said order. Therefore, three different authorities have concurred regarding the punishment and there is full justification in the punishment awarded to the applicant and the same is reasonable in the circumstances of the case.

4. Applicant had filed his rejoinder in which he had reiterated his earlier

contention as contained in the OA. It was contended that as per SW-1, pass book was taken into custody by him and as such it is not correct to say that the pass book was with the depositor. As regards making available the documents as requisitioned by the applicant, it is the duty of I.O. to ensure availability of the same in exercise of his powers vested with him under Sec. 5 of the Act.

5. Additional reply was filed by the respondents, contending in nutshell, the same as had been advanced in the counter.

6. The learned senior counsel for the applicant argued that principles of natural justice had been a complete go bye and reliance upon such statements which were not duly proved by the prosecution by properly examining the maker of such statement is fatal to the inquiry. The learned senior counsel argued that provisions of Art. 311(2) are more elaborate compared to those in section 8 of the Act and even this limited drill under section 8 was not performed properly. He had cited the following decisions in support of his case:-

(a) (1986) 3 SCC 229
(b) (1982) 2 SCC 376
(c) AIR 1971 SC 1865 = *1972) 4 SCC 562,*
(d) AIR 1977 SC 1677 = (1977) 3 SCC 94,
(e) (1995) 1 SCC 404
(f) (2004) 10 SCC 87
(g) AIR 1964 SC 506
(h) AIR 1976 SC 376 =***(1976) 1 SCC 311***

(i) AIR 1961 SC 1070
(j) AIR 1974 SC 2335 = ***(1975) 1 SCC 155***

In addition, certain other judgments of the High Court and Tribunal have also been relied upon by the applicant's counsel.

7. Arguments were heard and pleadings gone through. Original records of disciplinary proceedings were also perused.

8. Before dealing with the contentions of the applicant, the cardinal principle to be kept in mind is that in disciplinary proceedings, judicial review is limited to the deficiency in decision making process and not decision itself. (See **Union of India vs K.G. Soni (2006) 6 SCC 794** .

9. In Commissioner and Secy. to the Govt. vs. C. Shanmugam, (1998) 2 SCC 394, the Apex Court has held as under:-

> *"In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusions on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on*

no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India , State of T.N. v. T.V. Venugopalan, Union of India v. Upendra Singh Govt. of T.N. v. A. Rajapandian".

10. One of the contentions of the applicant as could be seen from the pleadings and canvassed during the course of arguments is that Sec. 8 of the GDS Act is not in conformity with the provisions of Art. 311(2) of the Constitution. Though this aspect was contended in Ground D of the OA, the applicant has not specifically claimed relief to declare the same as ultra vires. As regards violation of principles of natural justice, the claim of the applicant is that in respect of Charge I, Shri P. Satheesh, the depositor was not produced as witness to prove the statement S-3 reported to have been given by him. But the statement has been given credibility in the inquiry. Again, S-1 had been got written by him under duress which he retracted. Thus, the applicant has been deprived of a reasonable opportunity to cross examine him.

11. The Inquiry Officer has dealt with this aspect stating that there are in all S-1 (statement of the applicant), S-2 (Pay in slip), S-3 (statement of depositor), S-8, S-10. S-11 and S-14. Of these S-11 and S-14 have been relied upon to show that entry as on 28-03-2000 of Rs. 250/- had not been made in the BO account and daily account. The applicant never disputed the fact that no entry had been made. All his contention is that when no amount

had been deposited by the subscriber Shri Satheesh, where is the question of entry being made in the accounts. Thus, it is to be seen whether prosecution had proved the alleged fact of amount of Rs 250/- having been received by the applicant from the depositor. S-2 is admittedly the pay in slip, which contains the signature of the applicant and the date stamp which was under the safe custody of the applicant. The contention of the applicant is that the said Satheesh tendered this pay in slip which was, in anticipation of deposit of pass book and amount, duly signed and stamped by the applicant but the depositor, who had gone back to fetch the pass book and the money did not return at all. The inspector at the time of inspection spotted the pay in slip and asked the applicant to write statement S-1 which the applicant wrote and gave. However, this statement was retracted later on as the same did not contain the truth. However, discussion on this aspect by the I.O is : *"Both the witnesses have tried to make the Inquiry Authority feel that SW1 has threatened the CEDA on 07-04-2000 and recorded the S-1 statement by force but nobody has explained any reason behind such threat by SW-1. As explained above, SW1 has only performed his duty when he found the pay in slips of prior dates at the B.O. and no no ill-motive of any sort was there on his part in questioning the CEDA on 07-04-2000. It is also very clearly established that the questioning of the CEDA was on the basis of the pay in slips like Ext S-2 found at the BO and so the action of the SW1 was correct and such action is very much needed to safeguard the interest of the general public and the depositors. "* Thus, this aspect has been fully dealt with and

with the help of S-1 and S-2 the Inquiry Officer has come to the conclusion that charge-I is proved. In so far as S-3 is concerned, the contention of the applicant is that the same cannot be relied upon as the maker of that document was not examined. The Inquiry Officer had dealt with this aspect by holding, "*No objection of any sort was raised by the CEDA when Ext. S3 was produced before the IA as a document and when it was marked as Exhibit S-3 document on 06.09.2001. So it is a genuine document and because of that only it was marked as an Exhibit S-3 without any objection of the CEDA.*" However, at the conclusive part in respect of Charge-I, the Inquiry had not taken into account Ext. S-3 and his findings were on the basis of other evidences. These are S-2, S-1 and the deposition of the applicant at the time of inquiry when the I.O. put forth the mandatory questions. Thus the Inquiry Officer has held, "*It may also be seen that, the Ext. S2 pay-in-slip was date stamped and signed by the CEDA which means according to his own version during the questioning by the IA that he had collected the amount of Rs 250/- also mentioned in it, because at the time of narrating the procedure for acceptance of deposits, he has clearly stated that he use to make entries in the pass books and date stamp and sign the pay in slips only after collecting the amount from the depositors. So naturally in this case also he should have collected that the amount of Rs 250/- on 28-03-2000 from the depositor of RD Account 392860 and then only signed and date stamped it. So this aspect when looked into along with the depositions of the witnesses and the statement of the CEDA (Ext S-1)*

clearly prove that he had actually collected the amount of Rs 250/- from the depositor of RD Account 392860 on 28-03-2000 and so thereby it is clearly proved beyond any doubt that the charge against the CEDA under Article is true." This finding of the Inquiry Officer goes to show that S-3 has not been given any weight while proving the first charge. Ultimately, it is the statement of the applicant, his deposition at the time when the IA asked him the mandatory questions and S-2 pay in slip which had been duly signed and stamped by the applicant, which is done only after receipt of the money from the depositor, that are the documents considered by the I.O. in proving this charge. When S-3 was not given that weight to have this charge proved, non examination of the maker of S-3 cannot be fatal to the inquiry proceedings. Thus, it cannot be stated that the report of the I.O. is perverse.

12. As regards Art. II, the contention of the applicant is as given in para 4 of his written representation dated 12-04-2002 (Annexure A-9) and the same reads as under:-

> "4. The allegation under Articles II and III of the charge sheet are that I failed to credit Rs. 100/- in RD Account No. 391444 and Rs. 100/- in RD Account No. 393809 accepted from the depositor Shri A. Arumughan. If there is no dispute that the person examined as SW-3 in the inquiry is Shri A. Arumughan the depositor of the said RD Accounts. I submit that he has deposed unambiguously before the IA that he had totally tendered Rs. 200/- only for depositing in the said accounts. Since the truth has come from the horse's mouth, no one else could vouch for the correct amount of deposit

tendered. Shri M. Dasan SW-5 has also undoubtedly deposited that the depositor had told him to prepare pay in slips to deposit Rs. 200/- each in his RD accounts under reference. The oral inquiry is a sacred process to bring out the truth. Despite the IA is gerrymandering leaving aside this supreme evidence of the material witness. Therefore, it is prayed that the disciplinary authority may be pleased to exonerate me of those two charges giving absolute weight age to the material witness. I tender my unconditional apology of any lapse on my part due to oversight."

13. Inquiry Officer has dealt with the above contention as under:-

"Further, the depositions of the depositor SW-3 that he had remitted only Rs. 200/- on 29.01.00 towards deposits in RD Account referred to above is not at all believable as he has not satisfactorily explained the reason for deviating from his statement vide Ext. S-9. It was clear from the way in which he was deposing and replying to the questions that he deposed things under the influence of the CEDA, and not based on facts. This may also be taken into consideration while evaluating the evidence given by him."

14. To prove Art. II and Art. III, the I.O. has considered the fact that the concerned original pass book was produced and marked as Exhibit S-4. As per the entry in S-4 pass book on 29-01-2000, three installments of deposits of Rs 100/- each for the months of Nov. '99, Dec. '99 and Jan., 2000 are seen to have been deposited on that day. The balance as on 29.01.2000 in the said account is Rs 3,600/-. As per the statement of the depositor of the above account, Sr. A. Arumughan, given before SW-2 on 08.06.2000, i.e. as per Exhibit S-9, the depositor has admitted during the preliminary enquiry that he had actually handed over Rs 300/- on 29.01.2000 to the CEDA for deposit in his RD account No. 391444. The Inquiry Officer

has considered the fact of entry having been made in the pass book and conspicuous omission to enter Rs 100/- in the account books and arrived at the conclusion on the basis of the aforesaid facts and the fact that in S-9 statement, the depositor did confirm he having deposited Rs 300/- came to the conclusion that Art. II has also stood proved. The retracting of the statement of S-9 by the said depositor has not been believed by the Inquiry Officer as stated above. Full discussion about this witness and S-9 document has been made by the Inquiry Officer in his report. Thus, this part of the I.O's report too cannot be held as perverse.

15. The disciplinary authority had discussed in extenso the entire case and dealt with the points raised by the applicant in his representation against the Inquiry Report. While normally no detailed discussion or appreciation of evidence is needed when the disciplinary authority agrees with the findings of the inquiry officer. (See ***State Bank of Bikaner & Jaipur v. Prabhu Dayal Grover, (1995) 6 SCC 279)*** where the Apex Court has held, "*In our considered opinion, when the disciplinary authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings.")* In this case, the disciplinary authority has thoroughly gone through the entire documents and arrived at the conclusion that penalty of removal from service be imposed.

16. Now, as to the case laws cited by the learned senior counsel for the applicant:

(a) In Kashinath Dikshita v. Union of India, (1986) 3 SCC 229, the Apex Court has held:

"it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.

(b) In State of U.P. v. Mohd. Sharif, (1982) 2 SCC 376, the Apex Court held::

we are satisfied that both the appeal court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matter of his defence.

(c) Committee of Management, Kisan Degree College v. Shambhu Saran Pandey,(1995) 1 SCC 404, : In this case, the Apex Court has held as under:-

"we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge-sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent

to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross-examine him. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given.

Thus, in the above cases, all the documents were relied upon documents. In the last one, both journal and ledger books were requisitioned. In the instant case, the documents that the applicant demanded were all made available save one (the ledger) which was not prepared at all. Nor was the same relied upon by the prosecution. Entry in to the ledger would be only if corresponding entries were available in the journal. This is the basic procedure in accounting system. In the above decision, denial of documents were actually those which were enlisted in the list of documents relied upon by the prosecution to prove. Thus, the above decision does not apply to the facts of the case.

17. **In *Sait Tarajee Khimchand v. Yelamarti Satyam, (1972) 4 SCC 562,*** the Apex Court held:

"The plaintiffs wanted to rely on Exs. A-12 and A-13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved. The proof of the plaintiffs books of account became important because the plaintiffs accounts were impeached and

falsified by the defendants case of larger payments than those admitted by the plaintiffs. The irresistible inference arises that the plaintiffs books would not have supported the plaintiffs."

In the above case the ratio is that mere marking as exhibits would not suffice but has to be proved. It is the contention of the applicant that S-3 remained not proved as the maker of the statement did not choose to appear before the I.O. and the I.O. at the instance of the P.O. dropped the same witness whereas his statement S-3 had been taken into account. In fact, as could be seen from the discussion below, the said S-3 was not taken into account in proving the first charge against the applicant.

18. ***Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94,*** is the authority which affirms the legal status of GDS as "not a casual worker but he holds a post under the administrative control of the State." And it is by virtue of this authoritative holding of the Apex Court that due process of inquiry is conducted in conformity with the provisions of Art. 311(2) of the Constitution. Though in para 4 of the O.A. the applicant contended that GDS Rules are not that elaborate to conform to the provisions of Rule 14 of the CCS (CC&A) Rules, the virus has not been attacked in the form of relief. In fact, as could be seen from the facts of the case even as narrated by the applicant in the OA, the procedure adopted by the respondent meets all the requirement of conducting a departmental proceedings.

19. In ***Union of India v. Mohd. Ibrahim,(2004) 10 SCC 87,*** the Apex Court has held as under:

> "In a disciplinary proceeding against the respondent, a set of charges levelled against whom appear to be grave and serious, the ultimate conclusion of the enquiring officer having been based upon statement of persons made in the course of preliminary enquiry, the Tribunal came to hold that the conclusion is vitiated since the same was based upon the statement of persons examined in the preliminary enquiry and accordingly the Tribunal set aside the order of dismissal."

In the instant case, whatever documents were obtained in the preliminary investigation, were all not only made available, the authors of such documents were also examined as witnesses. Exception is author of S-3 but then, this document was not considered by the inquiry authority, as could be seen from the discussion. Hence, this decision is also not of any assistance to the case of the applicant.

20. ***State of Mysore versus K. Manche Gowda,(1964) 4 SCR 540,*** the Apex Court has held :

> **"7.** Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action".

Here again, the records produced have also been perused and there has been no denial of reasonable opportunity as such. And the non availability of one particular document (ledger) and non examination of one witness (author of S3 statement) have already been dealth with earlier.

21. ***Shri Krishnan v. Kurukshetra University, (1976) 1 SCC 311,*** the Apex Court has stated :

> "It is well settled that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission."

22. In ***Jagdish Prasad Saxena v. State of M.B.,AIR 1961 SC 1070, 1073,*** the Apex Court itemised a number of omissions as under:

> "Under Article 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the charge-sheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He was not given a copy of the report made by the enquiry officers in the said enquiries. He could not offer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that in the circumstances of this case he has had no opportunity of showing cause at all, and so the requirement of Article 311(2) is not satisfied."

Under no stretch of imagination could the above case be compared with the case of the applicant, where every opportunity was given to the applicant.

23. Yet another case relied upon is ***State of Punjab v. Bhagat Ram, (1975) 1 SCC 155,*** wherein the Apex Court has stated *"It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant."* No such omission has taken place in the instant case.

24. Other authorities relied upon by the learned senior counsel are not applicable and the case against the applicant, as per the inquiry officer's report stood proved and no legal lacuna could be pointed out so as to quash or set aside the orders of the disciplinary authority and the appellate authority.

25. The O.A. is, therefore, devoid of merits and hence dismissed. No costs.

(Dated, the 19th December, 2006)

Dr. K B S RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

cvr.