CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.587/98

Dated this the 24th day of December,1999.

CORAM
HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI J.L.NEGI,MEMBER(A)

P.V.P.Thajudeen, S/o. Nallakoya,
aged 36 years,
Pentavelipura, Androth Island
Lakshadweep(Ex-Police Constable). ..Applicant

(By Advocate Mr. M.R.Rajendran Nair)

vs.

1. The Superintendent of Police,Union Territory of Lakshadweep, Kavarathi.

2. Collector Cum Development Commissioner, Union Territory of Lakshadweep, Kavarathi.

3. The Administrator, Union Territory of Lakshadweep, Kavarathi.

4. Union of India represented by Secretary to Government, Ministry of Home Affairs, Delhi.
(By Advocate Mr. P.R.R.Menon)

The Application having been heard on 20.12.99, the Tribunal on 24.12.99 delivered the following:

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as a Police Constable of Kavaratti Police Station was proceeded against under Rule 14 of the Central Civil Services(Classification, Control and Appeal)Rules (CCS(CCA) Rules-for short) vide the memorandum of charge dated 25.1.91. The two Articles of Charges were as follows:-

"ARTICLE OF CHARGE

Shri P.V.P.Tajuddin, PCB No.325 of Kavaratti Police Station while posted at Kavaratti Police

Station on 20.10.1990 at 1310 hours intruded into the room of the Sub Inspector of Police (SHO of Police Station) without permission and without observing usual formality and abused him in threatening tone. By doing so Shri P.V.P.Tajuddin, PCB No.325 of Kavaratti Police Station has committed grave misconduct and act of indiscipline and thus made himself liable for disciplinary action under CCS(CCA) Rules, 1964 and Selction 7 of the Indian Police Act,1861.

ARTICLE OF CHARGE II

Shri P.V.P.Tajuddin, PCB No.325, while posted at Kavaratti Police Station was found absent from his official duty on 14.2.1990, 15.6.1990, 27.8.90, 20.11.90 and 2.12.1990. By wilfully absenting himself from official duties on above dates constable B.No.325 P.V.P. Tajuddin committed grave indiscipline and dereliction in his official duty and thus made himself liable for disciplinary action under CCS(CCA) Rules, 1965 and Section 7 of the Indian Police Act,1861."

The applicant having denied the charges, an enquiry was

held.The enquiry authority submitted his report(Annexure A5) holding Article of Charge No.1 proved and Charge 2 proved partly. A copy of the enquiry report(Annexure A5) was forwarded to the applicant along with a memo in which it was stated that the first respondent had provisionally reached a conclusion that the applicant was not a fit person to be retained in service. The applicant submitted his representation explaining how the finding and the proposal could not be justified. However, the disciplinary authority found both the Articles of Charges established and by the impugned order dated 10.1.97(Annexure A1) imposed on the applicant the penalty of removal from service with immediate effect. The appeal submitted by the applicant was dismissed by the third respondent finding no merit. Aggrieved by that, the applicant has filed this application praying that the impugned orders Annexures A1 and A2 may be set aside declaring that the applicant was illegally kept out of service and the respondents be directed to reinstate the applicant in service with full back wages and also to treat the period for which he was kept out of service as duty for all purposes.

2. It has been alleged in the application that the enquiry has been held in violation of the principles of natural justice and violating the mandatory provisions of the rules. It has further alleged that the Enquiry Officer has committed a grave error of not complying with the

mandatory provision contained in sub-rule 18 of Rule 14 of the CCS(CCA)Rules as the applicant was not questioned broadly on the evidence appearing against him in the testimonies of the witnesses examined in support of the charge.It has further been alleged that as the Superintendent of Police, the disciplinary authority, had reached a conclusion that the applicant was not a fit person to be retained in service even before a copy of the enquiry report was served on the applicant, the applicant has been deprived of an effective opportunity to defend himself and that the action on the part of the disciplinary authority in differing with the finding of the enquiry authority that Charge No.2 was proved only in part, without notifying the applicant of the intention to do so, has vitiated the proceedings. The competence of the 1st respondent to impose the penalty on the applicant also has been disputed.

3. The respondents have filed a detailed reply statement in which it is contended that the impugned order of penalty has been imposed on the applicant only after his guilt having been proved in an enquiry held in full conformity with the rules and that no judicial intervention is called for.

4. We have with great care gone through the pleadings and materials on record and have heard Mr.M.R.Rajendran Nair, the learned counsel of the applicant and Shri

P.R.R.Menon, the learned counsel of the respondents.

5. Though various grounds have been taken in the application, the learned counsel of the applicant has stressed mainly five grounds namely:-

(a) the finding that the applicant is guilty, is perverse as it is not supported by any evidence.

(b) as the disciplinary authority has in his notice(Annexure A6) accompanying Annexure A5, the enquiry report, reached a conclusion that the applicant was guilty and was not a fit person to be retained in service, even before giving the applicant an opportunity of making his representation , the proceedings are vitiated.

(c) as the disciplinary authority has differed from the findings of the enquiry officer in regard to part of Article 2 of the charge without giving the applicant a notice of the intention to disagree, the proceedings are vitiated.

(d) as the applicant was not questioned after the evidence in support of the charge was taken, the mandatory requirement of sub-rule 18 of Rule 14 of the CCS(CCA)Rules has been violated and therefore the impugned order A1, is unsustainable.

(e) the penalty imposed is disproportionate to the misconduct.

6. We shall now deal with the points raised by the learned counsel of the applicant. A mere perusal of the impugned order Annexure A1 and the enquiry report Annexure A5 is sufficient to show that the argument that there is no evidence, has no force at all. Sufficient evidence is available to show that the applicant entered the room of the Sub Inspector of Police who was examined as a witness, without permission and without observing the usual formalities and had used intemperate language against him questioning his authority to issue memo to the applicant and threatening to teach him a lesson. Similarly regarding the second Article of Charge many of the witnesses have given evidence that the applicant has been absenting himself from duty especially during roll call on many occasions. Though regarding the absence on one date, the enquiry officer has held that there was no conclusive evidence to prove the absence , the Article of Charge No.2 has been in essence established by proving that the applicant had remained absent unauthorisedly and without permission. Therefore the argument of the learned counsel of the applicant that the finding is perverse has no force at all.

7. It is seen that the respondent No.1 had in his office memorandum Annexure A6 accompanying a copy of the

enquiry report(Annexure A5) mentioned that on a careful consideration of the enquiry report,he had provisionally come to the conclusion that the applicant was not a fit person to be retained in service and that it was proposed to impose on `him the penalty of removal from service.However in the impugned order issued by the second respondent, the explanation submitted by the applicant has been fully considered and the second respondent has given clear and cogent reasons for arriving at the conclusion that the applicant was guilty. Therefore the contention that by reaching a conclusion that the applicant was guilty even before a copy of the enquiry report was furnished to him, the applicant has been deprived of a reasonable opportunity to defend himself, has no merit at all,because though in A6 the first respondent stated that a provisional conclusion was arrived at,the second respondent who issued Annexure A1 order has applied independent mind to the entire relevant matters including the applicant's representation.

8. Learned counsel of the respondents invited our attention to paragraphs 5 and 7 of the impugned order (Annexure A1) wherein the disciplinary authority has differed from the finding of the enquiry officer that Charge No.II was proved only in part and not in full. He argued that as the disciplinary authority did not give the applicant a notice of his intention to differ with the finding of the enquiry officer, the finding of the

disciplinary authority on that point is vitiated. In support of this contention , the learned counsel referred us to the decision of the Apex Court in Narayan Misra's case,1969 SLR 657. The Article No.2 of the charge is that the applicant had wilfully absented himself from official duty on 14.2.90, 15.6.90, 27.8.90, 20.11.90 and 2.12.90. It is true that the enquiry officer had held that the charge that the applicant absented from duty on 14.2.90 could not be established for want of corroborative entries in the general diary. It has also been observed hy him that the applicant was not absent from duty on 20.11.90, but the absence was on 19.11.90. It is true that the disciplinary authority has not given a notice to the applicant before disagreeing with the finding of the enquiry officer that Charge No.2 was proved only in part. However the gravamen of the Charge No.2 was that he unauthorisedly absented himself from duty. Whether it is on 3 days or 4 days would not make much of a difference regarding the nature of the misconduct. Therefore the fact that the disciplinary authority did not give the applicant a notice before he disagreed with the finding of the enquiry officer in regard to the number of days of absence mentioned in Article 2 of the Charge does not affect the finding of the disciplinary authority that the charge of unauthorised absence has been proved.No substantial prejudice has been caused to the applicant . We do not therefore find any merit in this argument either.

9. The learned counsel of the applicant argued that as the enquiry authority has not questioned the applicant broadly on the evidence appearing against him, especially as the applicant did not choose to examine himself as a witness on his side,he has violated the mandatory provisions of sub-rule 18 of Rule 14 of the CCS(CCA)Rules and therefore the whole proceedings is vitiated. We have gone through the enquiry file. We find that after the evidence in support of the charge was recorded, the statement of the applicant was also recorded in which the applicant has stated that he did not commit the misconduct and has also stated that the witnesses examined in support of the charge are neither his relatives nor friends.He has also stated that there is enmity between him and the Sub Inspector. It is true that apart from this, a further questioning was not made. However as the applicant has been broadly questioned and his statement recorded, though not in the form of question and answers, but in a narrative form, we are convinced that the provisions of sub-rules 16 and 18 of Rule 14 of the CCS(CCA) Rules have been substantially complied with and that no prejudice at all has been caused to the applicant,as he got an opportunity to explain the evidence appearing against him.

10. The last argument of the learned counsel of the applicant was that the penalty imposed is grossly disproportionate to the misconduct and that this aspect has

not been considered even by the appellate authority. The Charge No.1 proved against the applicant is that he intruded into the room of the official superior the Sub Inspector of Police without permission and without observing the usual formalities and used intemperate language against him challenging his authority to issue memo to him and threatening to teach him a lesson. This behaviour of the applicant is undoubtedly unbecoming of a Government servant. Sri M.R.Rajendran, the learned counsel of the applicant referred us to the ruling of the Supreme Court in Ram Kishan vs. Union of India and others,(1995)6 SCC 157 wherein a police constable was dismissed from service for charges including that he abused his superior officer. The Apex Court found that the penalty of dismissal from service was disproportionate.Learned counsel brought to our notice the observations of Their Lordships contained in paragraph 11 of the judgment, which is extracted below:-

> "11.It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket

> formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated."

Seeking support from the above observations of their Lordships, Sri Rajendran Nair argued that even if the Charge No.1 is taken as proved, the penalty of removal from service is grossly disproportionate to the misconduct. We are unable to agree with the argument of the learned counsel. Intruding into the room of the official superior and challenging his competence to issue a memo and threatening to teach him a lesson if any memo was given to him, according to us, is a very severe and grave misconduct. If this type of behaviour is not visited with severe consequences a uniformed force the police cannot function effectively. If the misconduct proved was only unauthorised absence or use of some merely intemperate language without understanding the import of that,probably consideration would have been different. It is well-settled by a plethora of rulings of the Apex Court that once the misconduct is proved in a properly held enquiry , the choice of the penalty to be imposed should be left to the competent authority and judicial intervention would be justified only if the penalty imposed is shockingly disproportionate to the proved misconduct. In this case we do not consider that the penalty of removal from service is shockingly disproportionate to the misconduct proved.

11. In the result in the light of the discussion, as above, we do not find any merit in this application and therefore, we dismiss the same, leaving the parties to bear their own costs.

J.L.NEGI
MEMBER(A)

A.V.HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1.	Annexure A1	True copy of the order dated 10.1.97 No.F.No.1/14/96-Estt(Pol)/206 issued by the 2nd respondent.
2.	Annexure A2	True copy of the order No. F.No.1/4/97-Estt(Pol) dt,15.9.97 issued by the 3rd respondent.
3.	Annexure A5	True copy of the Inquiry Report issued by the Inspector of Police, Minicoy.
4.	Annexure A6	True copy of the Office Memorandum F.No.18/1/91-Pol/668 dt. 5.10.93 issued by the ist srespondent.