

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.605/03

.....TUESDAY.....THIS THE 28th DAY OF MARCH,2006

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

V.T.Peter,
Unskilled Labourer (on compulsory retirement)
Naval Store Depot, Naval Base, Kochi
residing at Veliaparambil House,
Kusumagiri PO, Kochi.30.Applicant

(By Advocate Mr. K.A.Abraham)

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- 1 Union of India, represented by Vice Admiral
The Flag Officer Commanding in Charge,
Southern Naval Command,
Kochi.
- 2 Chief Staff Officer (P&A), Headquarters
Southern Naval Command,
Kochi.
- 3 The Lieutenant Commander (Inquiry
authority appointing in the Inquiry against Sri
VT Peter) Southern Naval Command,
Kochi.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 14.3.2006, the

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Tribunal on 28.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was proceeded under Rule 14 of the Central Civil service s(Classification, Control & Appeal) Rules, 1965.

2 The articles of charges against him were as follows::

Article I: That the said Shri V.T.Peter, whilst employed as USL, Naval Store Depot, Kochi at about 13.20 hrs. on 06 Dec 2000 did behave in a disorderly manner towards his superior Officer Viz., Shri RS Manjunath, ANSO, Naval Stores Depot, Kochi. The said act of Shri VT Peter, USL is unbecoming of a Govt. Servant and in violation of Rule3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article II: That the said Shri VT Peter whilst employed as USL in Naval Stores Depot, Kochi at about 1320 hrs. on 06 Dec 2000 did use abusive language towards his superior officer viz. Shri RS Manjunath, ANSO, Naval Store Depot, Kochi. The said act of Shri VT Peter, USL is unbecoming of a Govt. Servant and in violation of Rule3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article III: That the said Shri VT Peter, whilst employed as USL in Naval Stores Depot, Kochi at about 1320 hrs on 06 Dec 2000 did threaten and attempt to assault his Superior Officer viz. Shri RS Manjunath, ANSO, Naval Stores Depot, Kochi. The said act of Shri VT Peter, USL is unbecoming of a Govt. servant and in violation of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

The statement of imputations of misconduct or misbehavior in support of the aforesaid articles are the following:

Article I: At about 1320 hrs on 06 Dec 2000 Shri RS Manjunth along with Shri K.K.Rajappan, ANSO-I entered into the Industrial Canteen of Naval Stores Depot, Kochi



for having lunch. On entering the canteen Shri VT Peter, USL who was standing in the canteen, at once, became violent and misbehaved unruly towards Shri RS Manjunath, ANSO in that he pounced upon him using most humiliating and abusive language saying that "you are a vadakkan, kacheda ANSO, useless fellow, saale, gandoo" etc, without any provocation in front of the employees who were having their lunch. This attracted crowd in front of the canteen. However Shri K.S.Muraleedharan Nair, ASK, Naval Store Depot, Kochi and KL Lerar, MUL, Naval Stores Depot, Kochi and others had tried to take him away from the scene to pacify the situation. But he did not heed the advice of the fellow employees and on the contrary continued to shouting and using abusive language towards Shri RS Manjunath, ANSO. The said act on the part of Shri VT Peter is unbecoming of a Govt. servant and in violation of Rule 3(1)(iii) of the Central Civil Services (Conduct), Rules, 1964.

Article II: At about 1320 hrs on 06 Dec 2000 Shri RS Manjunth along with Shri KK Rajappan, ANSO-I, entered into the Industrial Canteen of Naval Stores Depot, Kochi for having their lunch. On entering the canteen Shri VT Peter, USL, who was standing in the canteen at once started abusing in vulgar languages loudly towards Shri RS Manjunath, ANSO saying that "you are a vadakkan, kacheda ANSO, useless fellow, saale, gandoo' etc, without any provocation in front of the employees who were having their lunch. This attracted crowd in front of the canteen. However, Shri K.Muraleedharan Nair, ASK and KL Lerar, MUL and others had tried to take him away from the scene to pacify the situation. But he did not heed the advice of the fellow employees and on the contrary continued to shout and used abusive languages towards Shri RS Manjunath, ANSO. The said act on the part of the said Shri VT Peter, USL is unbecoming of a Govt. servant and in contravention of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article III: At about 1320 hrs on 06 Dec 2000 Shri RS Manjunath along with Shri KK Rajappan, ANSO-I, entered into the industrial canteen fo Naval Store Depot, Kochi for having their lunch. On entering the canteen Shri VT Peter, USL, who was standing int eh canteen at once started abusing in vulgar language loudly towards

Shri RS Manjunath,ANSO saying that "you are a vadakkan, Kacheda ANSO, useless fellow, saale, gandoo, etc. without any provocation in front of the employees who were having their lunch. This attracted crowd in front of the canteen. However, Shri K.Muraleedharan Nair,ASK and KL Lerar, MUL and others had tried to take him away from the scene to pacify the situation. But he did not heed the advice of the fellow employees and on the contrary continued to shout and used abusive language towards Shri RS Manjunath,ANSO and also he came close to him and attempt to manhandling him, but he could not succeed due to intervention of the employees who were present and witnessed the scene. After a gap of few minutes again the said Shri VT Peter, USL turned in violent fashion and thumping on the dining table and threatened in a dare consequences towards Shri RS Manjunath, ANSO, saying that "Saale, vadakkan, mera transfer ayega, thum ko kadam karega". Subsequently he went out shouting and abusing filthy languages. The said act on the part of the said Shri VT Peter, USL is unbecoming of a Govt. Servant and in contravention of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

3 The applicant did not admit any of the charges and therefore, an inquiry was held under Article 14 (ibid). Shri Poka Ram, Lieutenant Commander was appointed as Inquiry Authority. During the course of the hearing the applicant preferred three applications and two appeals alleging bias against the Inquiring Authority. The Disciplinary Authority/Appellate Authority had considered these applications/appeals and rejected them as not tenable. After the inquiry, the inquiring authority came to the conclusion that the applicant was guilty of all the three charges framed against him and submitted the report to the Disciplinary Authority. The disciplinary authority on furnishing a copy of the inquiry report to the applicant submitted a representation on 25.2.02 against the findings of the

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inquiring authority and raised the following main contentions":

- (a) The Memorandum of Charges contained only four witnesses and their pre-recorded statements. However, the Presenting Officer had introduced Shri RS Manjunath as the 5th Witness and included his statement in which there was an active role of the Inquiring Authority. There was no communication from the disciplinary authority that suggests inclusion of Shri RS Manjunath as a witness.
- (b) None of the prosecution witnesses are independent but are colleagues of Shri RS Manjunath.
- (c) The preliminary inquiry was held without affording the delinquent government servant a reasonable opportunity to seek the assistance of a Defence Assistant. Though the inquiring authority assured the delinquent government servant to translate the proceedings in Malayalam, the proceedings were held in English and not translated to Malayalam. Since the Presenting Officer is the prosecutor, he could not be relied on to act as translator.
- (d) During the inquiry the Delinquent government servant pointed out on two occasions that the inquiring authority was acting more as a prosecutor than a balanced and neutral presiding officer and that continuance of the officer as the inquiring authority is denial of natural justice to him,. The findings of the inquiring authority against whom the delinquent government servant repeatedly alleged bias for good and valid reasons deserve to be rejected on that ground alone. He also alleged that the biased inquiring authority even read out the questionnaire from the recorded sheets for each witness during the deposition. It can be seen from the proceedings that the same questions were asked to all the defence witnesses primarily to establish that the witness was present for duty and they visited the canteen for lunch on that day. Thereafter the witnesses were asked to speak on their own.
- (e) The delinquent government servant was not a party to proceedings recorded in para 4 of page 53 as the same was recorded after he was permitted to withdraw. The inquiring authority tried to trap the delinquent government servant and did not act bonafide manner, which indicted bias.

(f) On most of the days the inquiring authority dispensed with the services of the typist and recorded the proceedings in his own hand writing leaving sufficient space in between the paragraphs to enable him to add materials to his best advantage. Copies of proceedings were given to the delinquent government servant at very distant dates disabling him to verify the authenticity. It is relevant from pages 32,33,34,40,41,43,45,48,53 of the proceedings that the Inquiring authority had added materials in DTP prints to defeat the case of the delinquent Government servant. The findings of the inquiring authority deserve to be rejected outright on this account. The inquiring authority is forbidden by Central Civil Services (Classification, Control & Appeal) Rules from making even the slightest alteration or addition in the proceedings. Thus the Inquiring Authority had violated the said rules.

(g) The comments of the Inquiring authority along with his findings (appearing on page 154 para 3,4) are beyond his jurisdiction and is a proof of his prejudices.

(h) The inquiring authority himself acted as a prosecutor/investigator and addressed Material Superintendent to obtain certain clarifications, when the said Material Superintendent was the brain behind cooking up the charges against the delinquent Government servant. The action of the inquiring authority coupled with his offer to help the delinquent government servant summoning Shri Sueelan, the Material Superintendent as defence witness clearly exposes the inquiring authority.

(i) The inquiring authority forgot his role and instead of asking questions with a view to elucidating answers for a proper understanding of the facts before him, began a searching cross-examination of witness Shri KK Rajappan (page 94).

(k) Since Shri RS Manjunath, the complainant witness himself stated that prosecution witnesses are his colleagues; the delinquent Government servant did not cross-examine them. The delinquent Government servant noticed certain deliberate alterations of timings and wordings in favour of the prosecution in the pre-recorded statement of witness Shri Muraleedharan. Though this

witness confessed that this statement was given to Shri RS Manjunath as demanded by him, the Inquiring authority refused to record the same. Fair typed copies of the deposition of this witness were sent to Mumbai without the original and the witness had no objection to sign that.

(l) Similarly, although too much material had been inserted by the Inquiring authority in the statements of witnesses S/Shri RS Manjunath and NJ John, they had no hesitation to sign the DTP prints without even looking at the manuscript recordings. The prosecution witness who claims that he tried to take the delinquent Government servant away from the dining room did not notice witnesses Shri NJ Johon and KRC Kartha in the dining room (page 44Q 129). At least these two witnesses prepared their pre-recorded statements by mutual consultation. This matter was placed before the inquiring authority pointed out common factors in the two statements. If this is not by mutual consultation, a third party can only dictate it to them.

(m) Though the inquiry was concluded only on 30 Oct 2001, the inquiring authority instructed the Presenting Officer on 14 Aug 2001 to submit his written brief, which he did on 22 Aug 2001. The Presenting Officer submitted a further written brief and as such there are two written briefs of the prosecution on record, which is illegal. The Presenting Officer had not evaluated the depositions of defence witnesses with due merit.

(n) A delinquent government servant had a right to submit his list of witnesses on closing the case of the disciplinary authority (Rule 14(16) and (17) refers) which means that the proceedings after closing the stage of Rule 14(16) is the stage where the defence witnesses are to be offered latest. However, the Inquiring authority deliberately refused to entertain the defence witnesses, which again exposes his prejudices against the delinquent Government servant. Hence the findings of the inquiring authority are biased and perverse and deserve to be rejected.

(p) The inquiring authority, without any valid ground concluded that the delinquent government servant is argumentative/quarrelsome in temperament. He came to such a confusion of his own and was not authorized by

the Disciplinary Authority to probe and had no materials before him to judge the general behaviour of the delinquent government servant.

(q) On 06 Dec 2000 the food was given in the NSD(K) canteen on the first come first serve basis except for officers as there was not sufficient food for the workers who demanded food. Even though the canteen committee member Shri Gopalakirshnan himself deposed this fact, the inquiring authority did not hesitate to conclude that there was enough meals for all.

® The charges are fabricated. The fact remains that several staff on that day did not get lunch due to paucity of resources. Many staff while being denied lunch the officers were served lunch even though they came only subsequently. The delinquent government servant was one of the workers who questioned this injustice. The officers fraternity conspired to take revenge on the delinquent government servant by isolating the delinquent government servant from others since his voice by habit was loud. The delinquent government servant did not intend nay disrespect to his superiors. The inquiring authority strained very much to establish that the dining room where Shri Manjunth was having lunch is tiny room and there is space for only one person to move between tables in 2 rows. If the person who according to the allegations was standing hardly 1.25 feet away from his target had the slightest of intentions to assault leave alone attempt nothing on the earth could have prevented the action. This is a clear evidence to prove that the charges are fabricated.

(s) The absence of prosecution witnesses in the company of Shri Manjunath in the lunchroom is confirmed by all the defence witnesses and one of the prosecution witness. But the inquiring authority played it down for no valid reasons.

(t) What was intended to establish by producing witnesses on the defence side was to break the theory of the prosecution regarding "special meals" and that the prosecution witnesses had their lunch at different timings, forfeiting their credibility to appear as witnesses. Neither the Presenting Officer nor the inquiring authority could understand this position and committed mistakes in their conclusions.

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(u) The defence witnesses include S/Shri KG Kesavan and KA Larar whom the complainant himself relied to substantiate his allegations. Presence of Shri K.Gopalakrishnan, MUK the canteen committee member who was also a defence witness in the canteen and managing the canteen affairs for the day was also not denied by anybody.

(v) The inquiring authority who vehemently opposed to entertain the list of defence witnesses, on the closing of the day of inquiry tried to introduce Shri TRK Suseelan as a defence witness. This was a clear trap. The inquiring authority and presenting officer had conspired along with Shri TK Suseelan to introduce Shri RS Manjunath as a witness and his undated statement as a document by fabricating certain antedated letters.

(w) The delinquent government servant is not a party to recordings on pages 1 to 5 of the proceedings and the same shall not form part of the proceedings.

The disciplinary authority considered each and every objections aforementioned in his order dated 3.9.2002 in the following manner:

(a) It is a fact that the Memorandum of charges contained only four witnesses and their pre-recorded statements. However, the Presenting Officer can introduce additional documents/witnesses not included in the Memorandum of Charges as per Rule 14(15) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The inquiring authority in its discretion can allow introduction of additional documents/witnesses. In this regard no communication is required from the disciplinary authority. Hence the introduction of Shri RS Manjunath, ANSO as an additional witness and his pre-recorded statement as an additional documents were in accordance with the provisions of the Rule 14 inquiry. In any case, the delinquent government servant was given an opportunity to cross-examine the witness and therefore no prejudice has been caused to him. Therefore, the contention of the delinquent government servant is unsustainable as per rules.

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(b) The inquiry proceedings reveal that the witnesses were given their evidence independently on their own as to what was witnessed by them on 06 Dec 2000, without prejudice to whether or not they were colleagues of Shri Manjunath, ANSO. Their pre-recorded statements are also independent of each other. Hence the contention of the delinquent government servant is incorrect and unsustainable.

(C) A perusal of the inquiry proceedings and the available evidence on record reveals that the inquiring authority had provided enough opportunity to the delinquent government servant to engage his defence assistant. The inquiring authority vide his letter dated 27 Feb 2001 had asked the delinquent government servant to forward the details of his defense assistant by 08 Mar 2001. (Annexure.1 (Page 159) of the inquiry report refers). It is also seen that the date was extended to 22 Mar 2001 on the request of the delinquent government servant vide inquiring authority's letter at Annexure-5 (Page 164) of the inquiry report. It is also evident from Annexure.A15 (Page 179) of the inquiry report that the inquiring authority had further extended the date up to 26 Mar 2001 suo motu. Due to non-appearance of the delinquent government servant on the first date of preliminary inquiry on 26 Mar 2001, the date was again extended to 05 Apr 2001 by the inquiring authority vide his letter at Annexure.21 (page 186) of the inquiry report. Further, it is also evident from the letters of the delinquent government servant at Annexure.20 and 22 (Pages 185 and 190) of the inquiry report that he had already taken the consent of his defence assistant to assist him. The preliminary hearing were held only on 26 Mar 2001 and 05 Apr 2001. The delinquent government servant had also attended the proceedings on 05 Apr 2001. Therefore, it is evident that the inquiry authority had provided enough opportunity to engage his defence assistant. It is also evident from the proceedings dated 05 Apr 2001 that the delinquent government servant had duly answered all the questions and that he had not raised any doubt or requested the inquiring authority for getting the proceedings translated into Malayalam. Hence the contention of the delinquent government servant is incorrect, unsustainable and an afterthought.

2 (d) Perusal of the inquiry report reveals that the inquiring

authority had complied with the provision of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. It is seen that the objections/submissions of the delinquent Governments servant were duly recorded and interlocutory orders were passed by him amplifying justifications. The delinquent government servant was also provided with all the documents relied upon by the prosecution side and was given the opportunity to submit the list of documents/defence witnesses to establish this innocence. No documents were taken cognizance of without giving copy of the same to the delinquent Government servant to enable cross-examination. Opportunity was also afforded to the delinquent Government servant to cross-examine all the witnesses who were the authors of the documents taken on record. It is further seen that every query of the delinquent Governments servant during the course of the inquiry was promptly replied by the inquiring Authority with due justifications. The Inquiring Authority had afforded reasonable opportunities in conformity with the principles of natural justice. He had adjourned hearings whenever sought for by the delinquent Governments servant. The bias raised by the delinquent Government servant against the inquiring Authority were duly considered by the disciplinary Authority as well as appellate Authority and found that the grounds raised by him were not tenable and accordingly rejected vide respective speaking orders. There is nothing wrong in the inquiring authority's remarks that th Defence Assistant was reading out questionnaire from xeroxed sheets for each witness as he might have found the defence assistant so doing. This has, however, not influenced the Inquiring Authority to arrive at his findings.

(e) The contention of the delinquent Government servant is not tenable. Para 4 of page 53 of the inquiry proceedings is considered as a general intimation from the inquiring authority to the presenting officer and the delinquent Government servant on conclusion of the oral hearings in compliance of Rule 14(19) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. there is no indication in the said paragraph that the inquiring Authority tried to trap the delinquent Government servant. Hence his contention is incorrect and unsustainable.

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(f) As per rule, the Inquiring Authority has to record the proceedings, including depositions of each witness and required to be read out. If the witness denies the correctness of any part of the record, he is having the liberty to record his objection. However, perusal of the inquiry proceedings reveals that there is no objection recorded by any of the witnesses with regard to the correctness of their depositions. Notwithstanding to the above, necessary stenographic assistance was provided to the Inquiring Authority for assisting him in recording the statements ad-verbatim. However, it is evident from the proceedings that it was the defence assistant who preferred recording of the proceedings in long hand during the proceedings on 09 Apr 2001. Hence the present contention of the delinquent Government servant that on most of the days the Inquiring Authority dispensed with the services of the stenographer is incorrect. It is also evident from the proceedings that all the witnesses have signed the proceedings to the effect that their depositions are correct. The inquiry proceedings at pages 32,33,34,40,41,43,45,48,53 were signed by all the concerned including the delinquent Government servant and Defence Assistant as correct. If the inquiring Authority had added materials in the fair typed proceedings, the delinquent government servant could have objected the same in the relevant pages while signing the same. Hence the contention of the delinquent Government servant is unsustainable being an afterthought.

(g) Para 3 and 4 of page 154 of the Inquiry Report is part of the inquiring authority's report. The inquiring authority had assessed the evidences adduced before the inquiry and mentioned his views in the report and there is nothing wrong in doing so. Hence the contention of the delinquent government servant is unsustainable.

(h) The contention of the delinquent Government servant is incorrect. There is no material evidence in the proceedings to substantiate the contention of the delinquent government servant that the inquiring Authority acted as prosecutor/investigator. However, in accordance with Central Civil Services (Classification, Control & Appeal) Rules, 1965, the Inquiring Authority is vested with the power to call for any documents from any Authority in connection with the case in the interest of justice. With regard to introduction of Shri T.K.Suseelan, NSO as a witness, it is seen from the proceedings that the inquiring

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authority had given an opportunity to the delinquent Governments servant to examine him as documents purported to have been signed by him were taken on record, which have also relevance to totality of evidence in conclusion of the case.

(j) Perusal of page 94 of the inquiry report reveals that the said portion of the inquiry proceedings does not deal with examination/cross-examination of the witness Shri K.K.Rajappan, ANSO. Hence the contention o the delinquent government servant is unsustainable.

(k) The contention of the delinquent government servant is incorrect. Whether the witnesses are colleagues or not is immaterial in departmental inquiry. However, the witnesses were independent each other. Cross-examination of the prosecution witnesses was a vested right of the delinquent government servant. However, it was for him to decide whether this right is to be utilized or not. It is evident from Question Answer 120 of the proceedings that Shri KS Muraleedharan,ASK himself had given his statement dated 07 Dec 2000. Hence the contention of the delinquent government servant with regard to the confession of the witnesses on submission of his statement is incorrect and unsustainable. It is also evident that the witness had signed the proceedings for the correctness of his statements.

(l) The correctness of the deposition of witness is to be ascertained by the witness himself. In the instant case, all the witnesses have set their hand to state that their statements are correct. Hence the contention of the delinquent Government servant is unsustainable. The witnesses are anticipated to depose on what they actually witnessed. The witness Shri KS Muraleedharan,Assistant Store Keeper had deposed what he witnessed on 06 Dec 2000. He might not have noticed the presence of S/Shri NJ John,ANSO and KRC Kartha,ANSO in the lunch room and hence deposed that he "did'nt notice". This doesn't mean that S/Shri NJ John,ANSO and KRC Kartha, ANSO were not present in the canteen while the incident occurred. Since the each witness submitted their own statements the contention of the delinquent Governments servant that the witness had prepared their statements in mutual consultation is unsustainable.

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(m) The contention of the delinquent government servant is incorrect. It is evident from Page 53 of the proceedings that the proceedings were concluded at 1615 hrs on 08 Aug 2001 and the inquiring Authority directed the presenting officer to prepare his written brief. It is also evident from page 58 of the proceedings that the proceedings were recommended with effect from 25 Sept 2001 for examination of defence witnesses. It is further evident that the inquiry was finally concluded on 30 Oct 2001 (page 95 of the proceedings refers) and the Presenting Officer was required to submit his brief for the latter part of the inquiry. The Presenting Officer has very clearly mentioned in his second brief that the same is in continuation of his earlier brief. The dates of submission of these briefs are stated as 22 Aug 2001 and 08 Nov 2001 respectively, which correctly coincides with the earlier completion of the proceedings on 08 Aug 2001 and final conclusion on 30 Oct 2001. Hence availability of two written briefs from the Presenting Officer is legally sustainable. The dates of submission of the presenting officer's brief mentioned by the delinquent Government servant, as 14 Aug 2001 and 22 Aug 2001 are incorrect and considered as misleading. It is also evident from the present officer's brief dated 08 Nov 2001 that he had evaluated the depositions of the defence witnesses and hence contention of the delinquent Government servant is incorrect.

(n) The contention of the delinquent government servant is incorrect. In accordance with Rule 14 (11)(ii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the delinquent government servant is required to submit a list of witnesses to be examined on his behalf. Similarly, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority and the prosecution witnesses shall be examined as per Rule 14(14). As per Rules 14(16) of the case of the defence side will be considered after the closure of the case of the Disciplinary authority. However, this does not mean that the defence side can submit the list of witnesses in the initial stage of the inquiry as per Rule 14 (11)(ii). However, as per Rule 14(15) the inquiring Authority can also allow the delinquent government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

(p) The contention of the delinquent Government servant is unsustainable. Nothing prevents the inquiring Authority in assessing the delinquent Government servant. However, the inquiry proceedings reveals that the inquiring Authority arrived at his findings based on the evidences adduced before inquiry.

(q) The contention of the delinquent government servant is unsustainable. Availability of food in the canteen was not a subject for the inquiry. The inquiring authority has not gone into the said aspect as per the proceedings/findings.

⑧ In case of shortage food, the right course of action was to bring the matter to the notice of the competent Authority through proper channel. Notwithstanding to this, there were three specific charges against the delinquent Government servant and the departmental inquiry was conducted to inquire into these charges. Hence the shortage of food was not inquired upon and the delinquent government servant's contention is also unsustainable.

(s) The contention of the delinquent Government servant is unsustainable. It is evident from the proceedings that none of the prosecution witnesses were cross-examined by the delinquent Government servant/defence assistant, which *inter alia* indicates that the depositions of these witnesses were acceptable to the defence side. Further, while the prosecution witnesses have submitted their pre-recorded statements, the defence witnesses have not rendered any pre-recorded statements. An analysis of the depositions of the Defence Witnesses reveals the following:

(i) Defence witnesses -DW1,DW2,DW3,DW4,DW6,DW9 and DW14 had reached the canteen at 1315 Hrs and DW7 and DW8 between 1300 to 1315 Hrs. While DW1,DW3,DW6,DW7,DW8 and DW9 got their lunch DW2,DW4 and DW14 didn't get meals. This is contradictory. Similarly DW4,DW5,DW7,DW8,DW11 and DW12 did see the delinquent government servant at the canteen while the others didn't see him. Both DW2 and DW2 entered the canteen at 1315 Hrs. While DW2 saw Shri NJ John, ANSO on his way to canteen on the opposite direction, DW1 saw the officer entering the canteen when he was going back from canteen. Further, the defence witnesses saw many of the

prosecution witnesses at various points and time. Many of the defence witnesses deposed that the delinquent government servant entered the canteen while they were having food, but some others even didn't see him. Thus the evaluation of the depositions of the Defence Witnesses reveals that their depositions are not based on facts. Hence the contention of the delinquent government servant is unsustainable.

- (t) The contradictions in the deposition of Defence Witnesses reveal that they have not actually witnessed the happening in the canteen on 06 Dec 2001. The defence witnesses could not establish that the prosecution witnesses had their lunch at different times. Hence the contention of the delinquent government servant is unsustainable.
- (u) Depositions of S/Shri KG Kesavan, KA Larar and K.Gopalakrishnan have not been disproved the charges framed against the delinquent government servant. Hence the contention is unsustainable.
- (v) Shri T.K.Suseelan, NSO was neither listed as a prosecution witness nor the presenting Officer requested for his inclusion as an additional witness. Whereas Shri RS Manjuanth was introduced as an additional witness by the presenting officer. However, entertaining the list of defence witnesses on the closure of the case of disciplinary authority is not permissible as per rules. This aspect has already been explained hereinabove against a similar contention raised by the delinquent government servant.
- (w) Pages 1 to 5 of the proceedings are related to the preliminary hearings of the departmental inquiry conducted on 26 Mar 2001 and 05 Apr 2001 in which the delinquent government servant participated the hearing conducted on 05 Apr 2001. There were no other transactions on 26 Mar 2001 except introduction of the Presenting Officer. There were also not many transactions during the second hearing on 05 Apr 2001 except general questions to the delinquent government servant from the inquiring Authority. The proceedings were read over to the delinquent government servant and admitted as correct, but he refused to sign the proceedings stating that he had been advised by his defence Assistant not to sign any document in his absence, which is not considered as valid reason. In addition, it is also relevant from the available

documents on record that the delinquent Government servant was informed of the scheduled hearing well in advance. Hence the contention of the delinquent government servant is unsustainable.

4 The disciplinary authority after considering the entire aspects of the case came to the conclusion that the applicant was given sufficient opportunity to defend the case, the principles of natural justice had been adhered to during the course of the inquiry, the inquiry was conducted strictly in accordance with the provisions contained in the CCS (CCA) Rules, 1965 and the three articles of charges framed against the applicant were proved beyond doubt. Accordingly, the disciplinary authority imposed the penalty of "reduction of his pay by three stages from 3440/- to 3235/- in the time scale of Rs. 2650-65-3300-70-4000 for a period of three years with effect from 1.9.02." The disciplinary authority has also ordered that the applicant would not earn increment on pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay.

5 On an appeal dated 25.10.02 by the applicant, the appellate authority rejected the various contentions raised by the applicant and passed Annexure.A8 order dated 23.12.02 agreeing with the reasons for imposing the penalty given by the disciplinary authority. While rejecting the appeal, the appellate authority has also held that the applicant was guilty of the charges framed against him, the procedure laid down in Rule 14 of the CCS (CCA) Rules, 1965

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has been complied with, there were no violation of the principles of natural justice and the penalty imposed by the disciplinary authority was adequate and it meets the ends of justice.

6 The applicant filed the present OA mainly on the following grounds:

- (i) The findings of the disciplinary authority is per verse, arbitrary, illegal, untenable and arrived at with no evidence proved in the inquiry;
- (ii) The inquiry officer was totally biased. No reasonable opportunity has been granted to him during the inquiry. Even though he had made three complaints against the inquiry authority to the disciplinary authority against his biased attitude, all his representations were rejected without making any inquiry into the allegations of bias made by him. The inquiry authority willfully manipulated the manuscript of depositions of the witnesses and it differs with the xerox copies of the depositions of the witnesses enclosed in the inquiry report. The inquiry authority introduced the statement of the complainant Shri R.S.Manjunath and also included him as a prosecution witness even though his statement or name were not included in the list of witnesses and documents in the memorandum of charges.
- (iii) There were procedural irregularities and infirmities and violation of the principles of natural justice thereby denying the applicant reasonable and fair opportunity to defend his case effectively

during the inquiry and the inquiry authority arrived at the conclusion on surmises and conjunctions. His right to submit a list of witnesses on closing of the case of the disciplinary authority available to him under Rule 14(16) of the CCS(CCA) Rules, 1965 read with Rule 14(17) thereof has been completely been violated.

The Inquiry authority refused to entertain the defence witnesses and concluded the inquiry.

(iv)The punishment imposed to the applicant is shockingly disproportionate to the charges levelled and proved in the inquiry.

7 In the reply affidavit the Respondents defended the inquiry authority's report, the orders of the disciplinary authority and the appellate authority. They have also refuted all the grounds taken by the applicant. They have stated that the findings of the inquiry authority and the appellate authority are based on the evidence adduced during a fulfledged departmental inquiry and it cannot be termed as per verse or arbitrary in any manner. The applicant was also afforded opportunity for cross-examination of the prosecution witnesses but he did not avail the same. It was submitted that the defence witnesses were also examined and cross examined in accordance with rules. The disciplinary authority and the appellant authority have duly considered his representations regarding bias against the inquiry officer and the same was rejected being found not having any merits. The submission of the Respondent was that it was the duty of the applicant to submit his list of witnesses, request for

discovery and production of the documents in the custody of the Government as per Rules 11(ii) & 14 (iii) of the CCS (CCA) Rules prior to the commencement of the regular hearing. The applicant was also expected to state his defence after the conclusion of the case of the disciplinary authority in terms of Rule 14(16) (ibid). Rule 14(17) envisages production of evidence on behalf of the applicant, which means examination of witnesses on his behalf. According to the respondents, the applicant cannot be allowed to produce a list of witness after the case of the disciplinary authority. Even though he was provided an opportunity to submit the list of witnesses and documents even before taking up the case of the disciplinary authority, he did not avail of it and preferred to submit his list of witnesses on closure of the case of the disciplinary authority, which was against the laid down rules. Even then in order to see that full opportunity has been provided to the applicant in all respects, for the sake of principles of natural justice, the applicant was allowed to produce his witnesses for giving evidence in the inquiry. The pre-recorded statement of Shri R.S.Manjunath which was available on record was produced by the presenting officer as an additional documents and the author of the statement as an additional witness in terms of Rule 14(15) (ibid). As regards the bias is concerned, the submission of the Respondents was that the applicant has not shown any established bias against the inquiry authority and the amount of bias are purely imaginary and the disciplinary authority and appellate

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authority had duly considered his applications and rejected the same.

The Respondents have also refuted the ground taken by the applicant in the OA that the inquiry officer willfully manipulated the manuscripts of the depositions of the witnesses. PW2 was examined on 23.7.2001 by the PO in the absence of the applicant but in order to provide an opportunity to the applicant, PW2 was examined afresh on 7.8.01 in the absence of the applicant and it was mutually agreed to make a manuscript of common questions. The applicant is now taking advantage of this situation to show that this is a manipulation of manuscript copies of the depositions which only shows the malafide of the applicant. They have contended that no prejudice has been caused to the applicant by adopting the common questions/answers on 23.7.01 to that on 7.8.01. The respondents, have, of course admitted that the charge sheet does not include the statement of Shri R.S. Manjunath. However, the disciplinary authority provided the statement of Manjunath, the PO preferred to introduce Shri Manjunath as an additional witness and his pre-recorded statement as additional document. This was in terms of Rule 14(15) (ibid) and there is no irregularity in this regard. As regards the submission of the applicant that the penalty was shockingly disproportionate to the charges proved in the inquiry, Respondents submitted that the applicant was charge-sheeted for serious misconduct of misbehaving in a disorderly manner towards his superior officer and using abusive language and threatening and



assaulting him. The penalty imposed, according to Respondents, is very mild compared to the gravity of the misconduct and the Disciplinary Authority has taken a lenient view in the matter.

8 We have heard Shri K.A.Abraham, counsel for the applicant and Shri Rajeev on behalf SCGSC for respondents. We have also perused the records made available in the pleadings.

9 First of all we shall consider whether it is a case of no evidence or perverse as contended by the applicant. As held by the Apex Court in Nandkishore Prasad Vs. State of Bihar (1978) 3 SCC 366, State of AP Vs. Rama Rao, AIR 1963 SC 1723, Central Bank of India Ltd. Vs. Prakash Chand Jain, AIR 1969 SC 983, Bharat Iron Workers Vs. Bhaghubai Patel, (1976) 1 SCC 518, Rajendra Kumar Kindra Vs. Delhi Administration (1984) 4 SCC 635, Kuldeep Singh Vs. Commissioner of Police, 1999(2) SCC 10 and many other cases, the findings recorded by an Inquiry Officer can be perverse, if only there is no evidence to sustain the charges framed against the delinquent and he cannot be held to be guilty or no reasonable person could have come to those findings on the basis of that evidence. We have observed from the records that five (5) Prosecution Witnesses and fourteen (14) Defence Witnesses were examined during the inquiry proceedings. All the P.Ws deposed against the Applicant had confirmed the charge levelled against the Applicant. None of the Defence Witnesses has denied that the incidences narrated in the article of charge have happened, though

some of them have said that they did not witness anything abnormal in the officers lunch room. After going through the evidence recorded on behalf of the P.Ws and D.Ws by no stretch of imagination it can be said that is a case of no evidence. Therefore, this contention of the Applicant needs to be rejected outrightly.

10 Next we shall consider the allegation of bias levelled against the Inquiry Authority. This allegation is also to be rejected at the outset itself for the simple reason that the Applicant has not made the Inquiring Authority as a party by name in the present OA denying him his valuable right to defend his position. The Applicant has made only a general statement that the Inquiring Authority was biased and prejudiced. The representations made by the Applicant against the Inquiring Authority were duly considered and rejected by the Disciplinary Authority. The appeals against those orders of the Disciplinary Authority were also rejected after due consideration. The applicant's counsel has relied upon the judgment of the Apex Court in **G.N.Nayak Vs. Goa University and others, (2002) 2 SCC 712** wherein it has been held as under:

34 It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest – whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a Judge in his own cause. Being a statement of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable

possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred."

The applicant has not established that the Inquiring Authority had any personal, pecuniary or self-interest in the matter. In the facts and circumstances of the present case explained above the aforesaid judgment of the Apex Court has no application here. As held by the Supreme Court in **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shanker Pant**, (2001) 1 SCC 198 that mere general statements will not be sufficient for the purpose of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in miscarriage of justice.

11 The other grounds taken by the applicant are certain procedural irregularities and infirmities which alleged to have resulted in denial of fair opportunity in violation of the principles of natural justice. We find that there is no valid basis for these allegations. Rather we find from the documents before us that adequate effective opportunity was afforded to the applicant to defend his case and in fact he did defend the case before the Inquiring Authority. His allegation of denial of his right under Rules 14(16) and 14(17) of the CCS(CCA)Rules, 1965 is devoid of any merit as all his 14 Defence Witnesses were examined during the inquiry and their statements were recorded by the Inquiring Authority.

The applicant also cannot raise any valid objection for the

permission granted by the Inquiring Authority to take on record the pre-recorded statement of Shri RS Manjunath and to examine him as a PW because it is protected under Rule 14(15) ibid. Such alleged procedural violations are to be tested to see as to whether such violations have been prejudicial to the applicant or not. The applicant has not established any such prejudices caused to him.

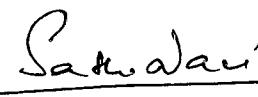
12 The applicant has also challenged the disciplinary authority's order stating it as shockingly disproportionate to the charges levelled against him and proved in the inquiry. In Regional Manager, Rajasthan State Road Transport corporation V. Sohan Lal, (2004) 8 SCC 218, it has been held that it is not the normal jurisdiction of the superior Courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case here. The charge against the applicant was that he behaved in a disorderly manner towards his Superior Officer, used abusive language towards his superior officer and threatened and attempted to assault him and the penalty imposed on him was only "Reduction of his pay by three stages from Rs. 3440/- to 3235/- in the time scale of pay of Rs. 2650-4000 for a period of three years with effect from 1.9.2002 and that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. By no stretch of imagination it can be said that the said penalty is shockingly disproportionate to the

charges levelled and proved in the inquiry.

13 Interference of the Courts and Tribunals in Departmental Inquiry is warranted if there are any grave violation of the principles of natural justice causing prejudice to the delinquent official and there is patent illegality in the conduct of the inquiry resulting in traversity of justice. We do not see any such situations in the present case. In the result in our considered opinion, the OA lacks merits and the same is accordingly dismissed. There is no order as to costs.

Dated this the ^{28th day of March, 2006}


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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