

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO.209/2004

Monday..., this the 18th day of September 2006.

CORAM:

**HON'BLE SHRI K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE SHRI N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P.K.Kasali
Tourism Officer, Department of Information,
Publicity and Tourism,
Union Territory of Lakshadweep. ... Applicant.

(By Advocate Shri T.C.G.Swamy)

versus

1. Union of India rep. By the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti
3. The Director, Administration of Lakshadweep, Department of Information, Publicity & Tourism, Kavaratti.
4. Shri Chamanlal,
Executive Director (ADMN), Sir Ganga Ram Hospital
Old Rajendra Nagar, Gangaram Hospital Marg,
New Delhi. ... Respondents.

b ✓ (By Advocate Shri S.Radhakrishnan)

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

Challenge in this case is against the issue of charge sheet, the penalty order and the appellate order.

2. Brief facts as contained in the OA are as under:-

(a) The applicant joined as Village Extension Officer on 12.02.1976 and was promoted as Tourism Officer from 28.06.1990. During 1988 to 1994 he was sent on deputation as Assistant General Manager SPORTS. Again between 4th April 1997 to 31st March 2000 he was on deputation in SPORTS as Deputy General Manager (O & A). Ever since one Shri Chamanlal took over charge as Administrator he developed a sense of ill-feeling and animosity against the applicant. It worsened after two incidents (a) First when the applicant refused to install ISD Telephone at SPORTS expense at the residence of the Administrator and second when a Tourist complained against administrator. A false complaint from one Shri P.Rasheed was made out against the applicant and based on that complaint, a vigilance investigation was attempted to be made. Shri P.Rasheed later withdrew the complaint made out in his name. The applicant was served with Annexure A-4 memorandum of charges in F.No.1/14/2000-IP & T – Tourism dated 22.8.2000 issued by the Administrator raising 11 allegations of misconduct against the applicant.

(b) The applicant gave a reply denying the charges. Copies of documents were also requested to be given in order to enable the applicant to submit a reply. This was not responded to. Later the

Enquiry Officer passed an order directing the applicant to inspect the documents within 5 days and to submit a list of witnesses to be examined on his behalf and also to submit list of additional documents. The applicant had submitted a request for production of 54 documents and by a reminder, asked for another 19 documents. The enquiry was fixed at Kavaratti Island when the applicant was at Kalpeni Island. The applicant requested that enquiry be adjourned. However, some form of enquiry was conducted on 12.10.2000 and the request for large number of documents by the applicant for defending his case was rejected. The applicant also raised objection regarding the jurisdiction of the Administrator to initiate proceedings. He also raised an objection regarding the appointment of Shri K. Haridas as Enquiry Officer. On the question of jurisdiction, the disciplinary authority is the appointing authority and the Administrator, being the next higher authority cannot usurp the power of disciplinary authority. On the question of appointment of Shri K. Haridas as Enquiry Officer, one of the documents relied upon was the deed of registration which was registered by Shri K. Haridas in his capacity as Sub Registrar of Kavaratti. Shri Haridas would be in the status of the witness and therefore he would not be justified in acting as an Enquiry officer. Also Shri K. Haridas was not sufficiently senior to the applicant by virtue of the status of the applicant. Both the objections were over ruled by the Administrator himself.

(c) Thereafter the enquiry continued. The Presenting Officer submitted his brief dated 2.1.2001. Meanwhile, the applicant's widowed mother had a paralytic stroke with Cerebral Hemorrhage on 10.1.2001. The applicant accompanied his mother to Ernakulam. He, therefore, requested for extension of leave from time to time duly sending the medical certificate obtained from the attending doctors.



During this period, and after receipt of Presenting Officer's brief, the enquiry was again fixed on 13.1.2001 which was adjourned to 17.1.2001 and thereafter to 1.2.2001 and later to 17.2.2001. All those enquiries were fixed in spite of the intimations to the Enquiry Officer to the effect that the applicant's mother is bedridden and that applicant was on leave. A questionnaire was sent to the applicant and he was asked to answer the questions contained therein. On account of constant pressure, threat and coercion mounted by the Enquiry Officer, the applicant with great difficulty was compelled to answer the questionnaire in haste. Later the applicant submitted his defence brief dated 7.2.2001. Thereafter, the Enquiry Officer submitted his report dated 15.2.2001. The same was so served on the applicant on 3.3.2001 and he was asked to give the reply before 18.3.2001. The applicant prayed that he may further be granted 30 days extended time to enable him to submit his objections. The letter was responded to by granting time to the applicant only upto 31.3.2001 stating that no further extension would be given. The applicant therefore submitted a revision petition to the first respondent praying for further extension of time. It was stated that no revision lies under Rule 29 of CCS (CCA) Rules against an order passed by disciplinary authority under Rule 15(2) of the CCS(CCA) Rules. Simultaneously the applicant was also served with an order of dismissal from service vide F.No.1/14/2000/IP & T dated 4.4.2001 issued by the second respondent vide Annexure A-1. The applicant submitted a detailed appeal to His Excellency. The applicant filed OA 357/2002 which was disposed of by an order dated 29.5.2002 directing the first respondent to consider and dispose of appeal. Thereafter the applicant received Annexure A-3 order dated 29.3.2003 intimating that his appeal has been disposed of modifying the penalty of dismissal from service as that of reduction to a lower stage in the

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time scale of pay by two stages for a period of three years with cumulative effect.

(d) Grounds for relief with legal provisions if any;

- i) Annexure A1, A2 & A3 are totally arbitrary, discriminatory, opposed to the principles of natural justice, and hence violative of the Constitutional Guarantees under Articles 14 & 16.
- ii) The entire proceedings initiated against the applicant are actuated by malafide. The entire process was initiated based on a fraudulent complaint. The Investigating Officers were made to make reports as desired by the Administrator Shri Chamanlal. Shri Chamanlal also forced the CBI officials to raid the applicant's house in his capacity as Chief Vigilance Officer.
- iii) The entire proceeding is *ab initio* void as being without jurisdiction. The Administrator under CCS (CCA) Rules would be in the position of an Appellate authority in the disciplinary proceedings against a Group 'C' Official like the applicant. He had no reason whatsoever to usurp the power of the disciplinary authority and to deny the applicant an opportunity of revision.
- iv) Enquiry Officer was in the position of a witness. The proceedings conducted by the said Enquiry Officer, therefore, are void *ab initio*, arbitrary and unconstitutional.
- v) The applicant specifically requested for copies of the documents relied upon, no decision was taken on the said request.
- vi) The findings of the Enquiry Officer was perverse, for the following reasons:-

The Enquiry Officer admits in page 9 of the Report that: "Thus, it has to be held that the prosecution has not been able to prove the allegation that the acquisition of the



land described in the Article of Charge No.1 by the Charged Officer was without the previous knowledge of the prescribed authority."

After finding as above, the Enquiry Officer states that :

"The circumstances relied upon are complete, strong and amounting to a certainty as not to leave any reasonable ground for a conclusion consistent with the innocence of the Charged Officer in respect of the Article of Charge No.1."

3. The fact ought to be proved is the fact that the Government had no prior knowledge of the transaction in question. Once it is admitted by the Enquiry Officer himself that the disciplinary authority was not able to prove that the prescribed authority or the government had no prior knowledge of the transaction in question, there is no onus on the part of the charged officer, to prove otherwise.

On Article II of the Charges it is admitted and found as follows:-

"Thus it has to be held that the prosecution has not been able to prove the allegation that the acquisition of the land and the properties described in the Article of Charge No.2, by the Charged Officer was without the previous knowledge of the prescribed authority."

After holding that the prosecution has not been able to prove the charges, the Enquiry Officer arrives at his own conclusion of preponderance of probability.

On Article III of the Charges, the Enquiry Officer deviates from Rule (Rule 14 of CCS (Conduct) Rules and refers to certain observations in the



"Swamy's Manual on Disciplinary Proceedings for Central Government Employees – 1999 and says :

"where a particular charge, as such is not established, but part of the allegation referred to in the statement of imputations is established, the Enquiry Officer should specifically bring this point out."

4. The resistance of the respondents as in reply is as under:-

a) The allegations against Shri Chamanlal IAS, the then Administrator and Chairman (SPORTS) the Disciplinary Authority are false, motivated and malicious and is made solely to reck vengeance for initiating disciplinary action against him to cover up his illegal actions unbecoming of a civil servant and is not supported by any documentary or other evidences. A vigilance inquiry was initiated on the basis of a complaint made by one P.Rasheed. After an elaborate enquiry the Vigilance Officer filed a detailed report on 17.8.2000 which pointed that there is substantive evidence against the applicant in respect of some of the allegations of misconduct. On the basis of the vigilance report, Departmental inquiry was initiated against the applicant under Rule 14 of the CCS(CCA) Rules 1965. The Inquiry Authority during the course of the inquiry had given all the sufficient opportunities to the applicant to furnish the list of witnesses and documents required for defence and his request to appoint Shri P.Thangakoya then working as Executive Officer, Village (Dweep) as his Defence Assistant was allowed. The applicant had raised objections regarding the jurisdiction and appointment of Mr.Haridas as the Inquiry Officer. These objections were considered in detail by the Disciplinary authority and were rejected. The applicant's evidence was closed as early as on 22.12.2000. The Inquiry Officer had also dispensed with the personal

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appearance of the applicant for questioning him on the charges levelled against him, due to his inconvenience owing to his mother's illness and delivered a note containing written allegations requiring written explanations for the same on 17.01.2001. The Inquiry Authority also granted 15 days time to the applicant to answer the same and posted the matter to 1.02.2001. The applicant filed the written explanations in Annexure A-6.

b) The first Article of Charge levelled against the applicant is that he has acquired 630 square meters of land by way of Registered Gift Deed No.55/92 of Kavaratti Sub Registry without the previous knowledge of the prescribed authority. The applicant has not disputed the existence of the said document also. The department could not have any evidence to establish that the delinquent officer had not informed the fact to the department, it being a negative evidence. The delinquent officer can very well produce documentary evidence establishing this positive aspect. In the absence of any such evidence from the delinquent officer registered document by itself would establish the charge empowering the Inquiry Officer to infer the non-compliance of the statutory requirement by the applicant.

c) The second Article of Charge was that the applicant leased out land and building to the Telecommunications Department on consideration of rent of Rs.5,000/- per month, without the previous knowledge of the competent authority. The applicant himself has admitted the fact of lease and the only defence raised by the applicant was that as the transaction was with a department of the government it would not be said that there was no previous knowledge of the government. There was no other effort on the part of the applicant to prove that he had intimated the prescribed authority about the

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transaction of lease. The third Article of Charge is that applicant acquired immovable property in the name of his son without the previous knowledge of the competent authority. The existence of the Lease Deed No.21/99 of the Sub-Registry Office is not disputed by the applicant. The applicant had also not taken any pain to prove that he had complied with the statutory requirements enunciated in GID No.25 incorporated below Rule 18 of the CCS (Conduct) Rules 1964 and in the form prescribed by the Central Government for making prior intimation to the prescribed authority regarding transaction of immovable property entered into by him. The seventh Article of Charge is that the applicant obtained the earned leave for ten days in May 1996 willfully giving false information the reason stated was 'Urgent Domestic Affairs – Visit to Kochi and Bombay but he visited Srinagar. The eleventh Article of Charge is that the applicant was issued with one Motorola VHF Hand set costing Rs.16,095/- for official purposes by the SPORTS but he did not return the same to SPORTS on his repatriation to his parent department on 31.03.2000. The applicant had admitted the receipt of the same. The defence was that it was lost in the mid sea while performing his official duties. The loss of the same was never intimated by the applicant until 20.06.2000 when a reply was issued by the applicant and certain accessories of the VHF set was returned to the SPORTS in furtherance of an OM dated 14.06.2000. The contention of the applicant that he is not governed by the provisions of CCS (Conduct) Rules 1964 while he was working under the SPORTS had been adverted to by the Inquiry Officer who had rightly rejected as unfounded.

5. The applicant had filed a rejoinder to meet the defence of the respondents and by and large reiterated his stand as in the OA.



6. Arguments were heard and the pleadings considered. Succinctly, the contention of the applicant's counsel is as under:-

- (a) Complaint is false, (and in fact the complaint was even later on withdrawn by the complainant) and thus proceedings based on the same are illegal.
- (b) The entire proceedings were at the instance of the Administrator whose attitude towards the applicant was inimical and malafide is manifest in all the actions, as it is the said Administrator who had got the false complaint lodged, ordered vigilance inquiry, got raid conducted by forcing the CBI, and who had acted as the Disciplinary authority, while he is the appellate authority.
- (c) As the appellate authority had acted as Disciplinary authority, a fair opportunity to the applicant to prefer revision petition has been lost.
- (d) The documents required were not made available
- (e) The Inquiry Officer who was to function as witness can not act in that capacity.
- (f) Adequate opportunity/time had not been given to the applicant to submit his reply at various stages.
- (g) The inquiry report is perverse, as could be seen from the way charges I, II, III, etc., have been proved, not based on documentary

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evidence by by extraneous materials.

7. The following are the decisions relied upon by the counsel for the applicant:-

- i) AIR 1969 SC 983
Central Bank of India Ltd Vs. Prakash Chand Jain
Para 8 (Page 988)
- ii) AIR 1978 SC 1277
Nand Kishore Prasad Vs. State of Bihar & Ors.
Para 18.
- iii) AIR 1984 SC 1805
Rajinder Kumar Kindra Vs Delhi Administration through
Secretary (Labour) & Ors
- iv) 1986 SCC (L&S) 383
Ram Chander Vs Union of India & Ors
Para 5, 9 & 25.
- v) AIR 1998 SC 853
Ministry of Finance & another Vs S.B.Ramesh
Para 12
- vi) 1999 SCC(L&S) 429
Kulup Singh Vs. Commissioner of Police & Ors.
Para 6, 9, 10, 28, 30, 32, 35, 36, 37 & 42.
- vii) 2000 (3) SLJ (CAT) 209
K.G.Appan Vs. Union of India & Ors.
Para 5,6 & 8
- viii) 2005 (3) ATJ 359 (AP.HC)
Union of India & Ors. Vs. G.Krishna
Para 16
- ix) 2004 (2) SLJ 170 (CAT)
K.Subramaniam Vs. Union of India & Ors.

8. The counsel for the respondents, on the other hand submitted that

there has been no legal lacuna in the decision making process nor is there any lacuna in jurisdiction of the authority which passed the penalty order. The applicant cannot be said to have been deprived of any of his opportunities or rights by the order passed by the Administrator. When registration of the deed (in respect of Art. I) had been admitted, there is no need for the Inquiry officer who had, in his earlier capacity as the Registrar, effected registration to act as witness. The counsel also furnished a written submission and relied upon the following decisions:-

1. (2006)2SCC 584, South Bengal Transport Corporation V. Sapan Kumar Mitra and Ors - Para 19 - Order passed by the disciplinary authority can be termed as perverse, when the finding is without any material or upon a view of the facts the finding could not be reasonably be entertained or upon those facts no person acting judicially and properly instructed as to the relevant law would have come to that determination.

2. (2005) 7 SCC 597 National Fertilizers Ltd. Vs. P.K.Khanna Para 9 to 11 - In a departmental proceeding, disciplinary authority is required to give reasons for his order only if he disagrees with the report of the Inquiry Officer.

3. (2005) 7 SCC 597 V Ramana Vs. APSRTC and ors - Punishment imposed by the disciplinary authority or the Appellate Authority could not be subjected to judicial review unless shocking to the conscience of the Court/Tribunal.

4. (2004)12 SCC 579 Principal Secretary, Government of A.P. And Anr V/s. M.Adinaravana - Para 24 to 26, Administrative Tribunals cannot interfere in the orders passed by the disciplinary authority unless it is perverse, that is not based on legal evidence. They cannot sit in appeal over the decision arrived at by the disciplinary authority.

5. (2003) 3 SCC 583, Lalit Popli Vs. Canara Bank & Ors. - Para 16, Proof beyond doubt has no application in disciplinary proceedings as opposed to criminal proceedings.

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Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

9. The applicant had, in Ground 'B' contended as under:-

"5.B. The applicant begs to submit that the entire proceedings initiated against the applicant was actuated by malafide for ulterior reasons and on extraneous considerations. In this connection, the applicant begs to submit that the entire process was initiated against the applicant based on a fraudulent complaint made out through one Shri P.Rasheed. The Investigating Officers were made to make reports as desired by the Administrator Shri Chamanlal. During the period the applicant was on leave at Ernakulam with his mother for treatment, Shri Chamanlal also forced the CBI Officials to raid the applicant's house in his capacity as Chief Vigilance Officer, only with the intention of harassing and maligning the applicant during the period of his crisis. The haste with which the entire proceedings were conducted would be sufficient to prove the same."

10. It is inconceivable that the Administrator would have (a) instigated an outsider to lodge a complaint (according to the applicant in getting a blank paper signed by the complainant), would have got the reports from the investigating officers in a manner desired by him and above all that the Administrator would have 'forced the CBI officials to raid the applicant's residence.' If the officers of CBI could be so susceptible to the force and influence, the Apex Court would not have such a confidence in the performance of the work by the officers of CBI, as has been expressed by it



in the case of *Sanjiv Kumar v. State of Haryana*, (2005) 5 SCC 517, wherein the Apex Court has held:

"11. From the very first day, the petitioner has been demanding the whole episode to be investigated into by a highly placed independent investigating agency.

15. In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them.

16. Looking at the quantum of matters which are now being dealt with by CBI, there is need to strengthen this body both qualitatively and quantitatively. Extraordinary care is needed in choosing the personnel for CBI as it handles cases requiring a high degree of professionalism in investigation. The cases are sensitive. And the results of investigation have national and international ramifications. It has to be saved from becoming just another police force. We cannot, right now, foresee any substitute for CBI." (Emphasis supplied).

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11. As regards jurisdiction, law is settled vide the decision of the Apex Court in the case of *A. Sudhakar v. Postmaster General*, (2006) 4 SCC 348 wherein the Apex Court has held as under:-

"18. It is now trite that an authority higher than the appointing authority would also be the designated authority for the purpose of Article 311 of the Constitution. Even the Appellate Authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right. However, if such right of appeal is not embellished, an authority higher than the appointing authority may also act as a disciplinary authority."

12. Contention that the applicant has lost a valuable right of revision has no force since, the the President can function both as appellate authority as well as the Revisional authority.

13. As regards the inquiry officer's incapacity to function as such, as contended by the applicant, the contention deserves outright rejection, since, the factum of registration of the document (in respect of Article I) has not been disputed by the applicant. And the question in the said article was only as to whether the applicant had made due intimation to the authorities of the acquisition of immovable property.

14. Again, the contention that the inquiry officer having found that article I has not been proved by the prosecution, he cannot go further and hold that

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on the basis of preponderance the said article is proved, is also not tenable. For, it was with reference to the 'prescribed authority' that the inquiry officer has come to the conclusion that the said prescribed authority having not been examined, the prosecution has failed to prove the charge. But this does not in any way make the Inquiry Authority to be blind to the other materials on record to analyze whether the charge stands proved or not. He has, therefore, on the basis of the very documents available in the records, examined and has come to the conclusion that the circumstances are strong to come to a conclusion that Charge No. 1 is proved. In fact, the contention of the applicant is that by virtue of the fact that the applicant had obtained advance from the respondents for construction of house on the plot of land, the same is sufficient to meet the requirement under the Conduct Rules, whereas, it is not so. Provisions of Rule 18 of the CCS (Conduct) Rules are to be complied with exclusively. The analysis of the Inquiry officer while arriving at a final conclusion in regard to this article cannot thus be held to be perverse.

15. The other charges have also been promptly dealt with by the Inquiry authority and conclusion arrived at is in accordance with the procedure prescribed.

16. The applicant has fully participated in the proceedings and had been given an opportunity to inspect the records by the Inquiry Officer. As such,

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in the decision making process no legal lacuna could be observed.

17. Contention that when the applicant was engaged in getting his mother having treatment at the mainland, the inquiry continued and no time was granted to defend his case and the same resulted in the applicant's furnishing the reply 'in haste' is also untenable, for, the reply given is exhaustive running into three full pages in single space and had there been any such grievance at the time of furnishing the reply, there would have been a mention about the same. Instead, the reply is emphatic which confirms that the same had not been furnished in 'haste'.

18. The decisions cited by the counsel for the applicant have also been considered, but they do not apply to the facts of this case.

19. Looking through any angle, the applicant has not been able to prove his case. The OA is misconceived and is, therefore, dismissed.

20. No costs.

(Dated, 18th sept, 2006)

N.R.
N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.R.
K.B.S. RAJAN
JUDICIAL MEMBER

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