

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 346 of 1997

Friday, this the 6th day of September, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.J. Antony,
Mate,
Integrated Fisheries Project, Cochin-16
residing at Pulikkal House,
Kannamaly PO, Puthenthodu, Cochin-8Applicant

[By Advocate M/s Santhosh and Rajan]

Versus

1. The Director,
Integrated Fisheries Project,
Cochin-16
2. Union of India represented by the
Secretary, Ministry of Agriculture and
Cooperation, Krishibhavan, New Delhi.
3. Joint Secretary to the Govt. of India,
Ministry of Agriculture, Department of
Agriculture and Cooperation,
Krishibhavan, New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 28-6-2002, the
Tribunal delivered the following on 6-9-2002:-

O R D E R

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

This Tribunal vide its order dated 1.10.1999 allowed the Original Application and quashed the orders impugned therein. The respondents had preferred an appeal before the Hon'ble High Court against the the order of this Tribunal in O.A No.346/97 as per O.P.No.4006/2000 and the Hon'ble High Court after hearing remitted the case back to the Tribunal with the following directions:-

"Since the Tribunal has not gone into the merits of the case, we remit the case to the Tribunal. The Tribunal will dispose of the O.A after considering as to whether the conclusions reached by the disciplinary authority that the first respondent is guilty of misconduct is supported by the materials on record and if so, whether the order to recover an amount of Rs.12,000.- is legal. Now that the Tribunal has not disposed of the matter on merits, the Tribunal will therefore dispose of the matter on its merits in the light of what has been stated above".

2. The applicant in the OA has challenged the order of the 1st respondent against the recovery of an amount of Rs.31,118/- from him after finding him guilty of misconduct. On appeal, the Appellate Authority vide its order dated 10.9.96 modified the said order and reduced the amount to Rs.12,000/- as against Rs.31,118/- ordered by the disciplinary authority. An OA was filed before this Tribunal contenting that Annexure A-20 and A-26 be quashed and prayed for the return of the amount recovered from his salary with 18% interest. The scope of remand is to adjudicate on a point by the Tribunal that the applicant is guilty of misconduct is supported by the materials on record. On the basis of the conclusion reached by the disciplinary authority and if so, whether the order to recover an amount of Rs.12,000/- is legal. In other words, deriving the proper conclusion of the above reference, the entire matter is to be reconsidered afresh.

3. Applicant in the OA was working as Mate on Board in one of the fishing vessels attached to the project under the respondents. He was found guilty by Annexure A-20 and was ordered to recover Rs.31,118/- from his pay. The Appellate Authority by A-20 order reduced the amount from Rs.31,118/- to Rs.12,000/-. The applicant has been given charge of Skipper in a brand new vessel "Lavanika" which has not even taken trial run and which was purchased from M/s Bharathi Ship-Yard Ltd. The applicant was asked to take the vessel just for the purpose of taking photos etc., in connection with the handing over function held on 19.5.95. It took about half an hour time. After that,

while coming back to the jetty, the vessel came to a stop about 50 meters away where it was to be tied up. It is alleged in the petition that the applicant has given the gear to give a bit more forward movement to the vessel and immediately when the vessel picked up momentum, the neutral gear and then the reverse gear was put. There was no response or load felt, obviously due to some defect in the remote control system. Immediate message was given to the Chief Engineer in the Engine room, asking him to apply full reverse gear. This was done by pressing the press button in the wheel house, which would convey the message to the Chief Engineer, by means of a beep sound and simultaneous blowing of bulb meant for the purpose, in the Engine room. The Chief Engineer failed to catch the message in time and apply the reverse gear in the Engine room. According to him, the failure was because the vessel was new to him and failure of the Engineer to act on instructions. Under the circumstances, the vessel hit with another vessel "Sagar Jyothi" which was tied up with defect for the past four months. Applicant reported the matter to the concerned authority as per Annexure A-1 and a Surveyor of MMD, Mr.K.A.Simon has made some inspections and enquiries, duly questioned the applicant, the Chief Engineer of the vessel and some Crew Members and the applicant was under the impression that the matter was closed. After about 10 days the 1st respondent had appointed a Mechanical Marine Engineer to conduct an enquiry and submit a report confidentially. While the said inquiry was going on, a third enquiry was also ordered to be conducted through another MMD Surveyor, Mr.John. In all the three enquiries, the applicant, Chief Engineer of the vessel and some Crew Members were questioned by the officers separately and individually. Despite request of the applicant for a copy of the inspection report conducted by MMD Surveyor, Mr.Simon, it was not given to him. The relevant corresponding record enquiries are produced as Annexure A-2 to A-7. Thereafter, the 1st respondent

had issued memorandum dated 16.10.95 proposing to initiate disciplinary action under Rule 16 of CCS(CCA) Rules, 1965. The statement of imputation was also enclosed alongwith the memorandum as Annexure A-8. It is pleaded in the OA that the accident occurred due to some defect in the remote control system and he had applied neutral and reverse gear to arrest the forward movement of the vessel and the Chief Engineer also did not apply the reverse gear in the Engine room. The engine operations are done in the engine room either by the Chief Engineer or the person in charge of the Engine room according to the message given from the wheel house by the master or the person in charge of the wheel house. But in Fishing vessels, the engine operations are done directly from the wheel house by applying remote control mechanism. There are press buttons provided in the wheel house to give instructions/messages to the Chief Engineer in the Engine room, to do the necessary operational actions by picking up the message through beep sound and blowing of bulbs for each operational requirement as and when remote control system failed. The first respondent had been proceeding on the basis that there was no defect as reported by the applicant and the applicant has put the reverse gear after the "hitting" only and it has been done deliberately for covering up the lapses on the part of the applicant and no telegraphic message was given to the Chief Engineer. By Annexure A-8, the applicant was asked to make representation within 10 days. Applicant was unaware of the proceedings and findings in the three different enquiries conducted regarding the incident. He had requested the 1st respondent to give him copies of the inquiry reports and proceedings as per letter dated 20.10.95 (Annexure A-9). The reminder, Annexure A-10 was dated 26.10.95. The copy of the inquiry report of M.M.E and the statement recorded thereof was sent to the applicant as per Annexure A-11 dated 24.10.95. True copy of the Enquiry report of M.M.E

alongwith estimate of damage and repair to the vessel "Sagar Jyothi" was received by the applicant as per Annexure A-12. The statements/depositions were made available to the applicant as per Annexure A-13 to A-18. It is submitted that he had no knowledge about these documents until he received Annexure A-11 and A-12. The applicant submitted detailed representation dated 8.11.95 (Annexure A-19). Thereafter, on 16.12.95 as per Annexure A-20 the 1st respondent had issued an order finding gross negligence and ordering recovery of the estimated loss of Rs.31,118/- from the applicant. A-19 representation was adverted only for accusing and finding fault with the applicant. The 1st respondent had proceeded as though the vessel was in the custody of the applicant from 16.5.95 onwards, till the M.M.D.Surveyor came on 17.5.95.

4. The applicant had filed an appeal against Annexure A-20 order before the Appellate Authority as per Annexure A-21, memo of Appeal. The applicant requested for stay of recovery by letter dated 8.1.96 as per Annexure A-22. But the 1st respondent ignored Annexure A-22 and started recovery from the salary for December, 1995 onwards. This Tribunal as per orders in O.A 52/96 directed to limit the recovery to the tune of Rs.500/- per month. Annexure A-23 is the argument notes submitted in the enquiry. It is submitted that the Surveyor report of Shri Simon has found that the Chief Engineer was not vigilant during his engine room duty on the day in question. The Engineer of Bharathi Ship-Yard Ltd., who was the only person in the wheel house during that time. Applicant further sent a reminder on 27.7.96 and 10.7.96 as per Annexure A-24 and A-25. The 3rd respondent had disposed off the appeal as per order dated 10.9.96 (Annexure A-26), and partly allowed the appeal by reducing the penalty of Rs.31,118/to Rs.12,000/- entering into a finding that the collision had happened due to the negligence of the applicant. The Appellate

Authority found the applicant guilty on entirely new and extraneous materials and information. The memo received by the applicant dated 4.8.95 was Annexure A-7 in which the Surveyor had warned the applicant for not keeping a person in the anchor position. The applicant took the vessel only on the insistence of the 1st respondent by memo dated 18.8.95 as per Annexure A-28, A-29 and A-30. One of the submissions dated 8.11.95 (Annexure A-31) stating that it is unsafe and risk to take out the vessel. In Annexure A-32 memo dated 20.11.95, the 1st respondent even threatened to take disciplinary proceedings against the applicant. The applicant was reverted as Mate, and a person who was 14 years junior to the applicant and who was a trainee under the applicant had been promoted as Skipper. The applicant submitted a detailed explanation on 20.11.95 which was marked as Annexure A-34. Respondents dropped Annexure A-32. There was no negligence on the part of the applicant. The 1st respondent had highly prejudiced the action of the applicant and victimised the applicant. The allegations and malafides made against the 1st respondent were well found as per Annexure A-35 and A-36 will prove the same which were denied promotion to the applicant. Annexure A-37, A-38 and A-39 orders in O.A 162/95 filed for his promotion will prove the same. A copy of the statement dated 13.2.96 (Annexure A-40) and a copy of the extract of the log book entry dated 5.2.96 (Annexure A-41) will prove the case of the applicant and basing on these averments the applicant had sought the following reliefs :-

- i. Quash Annexure A-20 and A-26 orders.
- ii. Direct the respondents to return the amount recovered from the applicant on the basis of A-20 order, alongwith interest at 18% per annum with effect from the respective dates of recovery.
- iii. Issue any other appropriate order or direction which this Tribunal may deem fit and proper under the circumstances of the case.

5. Applicant was holding a certificate of competency as Skipper of a Fishing Vessel and was competent to man a fishing vessel as per the Merchant Shipping Act. The Skipper is the supreme commandant of a fishing vessel and Mate is the second in command. On some occasions due to exigencies of service the applicant had been promoted on adhoc basis as Skipper and manned the fishing vessels.

6. On 16.5.1995 at about 12 noon when the applicant was bringing back the fishing vessel (Lavanika) to the jetty, it collided with another stationary vessel (Sagar Jyothi), tied to the jetty, as a result of which the vessel (Sagar Jyothi) sustained damages. The department appointed a qualified Mechanical Marine Engineer to conduct an inquiry about the incident. The Enquiry Officer conducted a detailed enquiry and came to the conclusion that there was gross negligence on the part of the applicant which resulted in the collision. Therefore disciplinary proceedings were initiated against the applicant which culminated in Annexure A-20 order imposing the penalty of recovering from his salary the pecuniary loss caused to the department calculated as Rs.31,118/- in 35 equal instalments. The applicant filed an original application before this Tribunal. As per the directions of the Tribunal in O.A 52/96, the applicant filed an appeal and by Annexure A-26 appellate order, the appeal was partly allowed, reducing the penalty to Rs.12,000/-. The contention that there was no negligence on the part of the applicant was rejected by the Appellate Authority after perusing the entire materials on record. The Appellate Authority had gone wrong in confirming the order of the disciplinary authority had no merit. In Annexure A-20, the order of the disciplinary authority based on the enquiry report was dealt in detail as to the question of negligence. The disciplinary authority also took of the statement of the Chief Engineer of the Ship that there was

no defect in the gear system and remote control system of the ship. Apart from that the report of the departmental Surveyor that there was no mechanical defect was also taken note of by the authority. The question of negligence was confirmed from the reports of the expert persons. Therefore, the contention that there was no negligence on the part of the applicant was baseless. Enquiry was initiated under Rule 16 of the CCS(COA) Rules for imposing minor penalty and therefore there was no procedural irregularity in the enquiry conducted by the authorities. The applicant did not pray for a full fledged enquiry under Rule 14. The present allegations and malafides attributed by the applicant is without any bonafides and not an iota of truth on the allegations levelled by the applicant. Therefore, the respondents prayed to dismiss the Original Application.

7. The matter was decided by this Tribunal on 1.10.1999 and orders pronounced thereof, which was taken on appeal, and the Hon'ble High Court remanded the matter for a fresh disposal on merits. After that we have posted the case for hearing. Shri T.A.Rajan appeared for the applicant and Shri C.Rajendran, SCGSC appeared for the respondents. We have heard the counsel on either side and perused the materials and records. Both the counsel argued vehemently consistent with their pleadings. The scope of remand by the Hon'ble High Court is to the effect that the Tribunal has not gone into the merits of the case and directed to enter into a finding of misconduct of the applicant and the recoverable damage thereof, if any, on merits.

8. It is an admitted fact by the parties that the applicant was in command of the vessel as Skipper of the vessel 'Lavanika', which has collided with the stationery vessel 'Sagar Jyothi' causing a damage of Rs.31,118/-, required for repairs. According

to the respondents, it was due to the negligence on the part of the applicant which resulted in the incident. Both parties admit the incident. But the applicant would say that it was not due to his negligence, but due to mechanical failure the incident happened and therefore, he may not be held responsible for any damages and thereby not committed any misconduct. Respondents had initiated the disciplinary proceedings against the applicant under Section 16 of the CCS (CCA) Rules to impose a minor penalty without resorting to a full-fledged enquiry as contemplated under Sub-rule 3 to 23 of Rule 14 after affording a reasonable opportunity of being heard and impose a minor penalty. In the instant case, what is contemplated was the recovery of whole or in part of the pecuniary loss caused to the Government by the negligent act of the applicant.

9. The statement of imputation of misconduct, misbehaviour on which action is proposed to be taken against the applicant is imputed in Annexure A-8, which in short is as under:-

"Shri P.J. Antony was working as Skipper on board the fishing vessel "Lavanika" on 16.5.1995. On the said day while the vessel was being brought back to jetty after trails at about 12.00 noon the said vessel collided with the stationary vessel "Sagar Jyothi" tied to the south and jetty. The vessel "Sagar Jyothi" sustained extensive damages due to the collision."

10. As the collision was due to the gross negligence in the discharge of official duty by the applicant, which has resulted in considerable loss to the Government. It amounts to a misconduct under Rule 3(1)(i)(ii)(iii) of the CCS (Conduct) Rules. An enquiry was conducted by Shri K. Nainan, Mechanical Marine Engineer into the incident to ascertain (i) the cause of the incident, (ii) extend of damage suffered to "Sagar Jyothi", (iii) person(s) responsible for the incident, and (iv) make suggestions regarding precautionary measures to prevent recurrence of such incidents. With the help of an expert the

Enquiry Officer assessed the damages. Annexure A-12 is the enquiry report and the estimate cost of repairs was assessed to Rs.31,118/-, which is Annexure A-12.

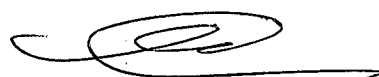
11. For imputing any responsibility of the worker, the primary aspect to be looked into is whether the worker was negligent in his discharge of duties. The word "negligent" in this case, with reference to the incident, has to be evaluated with reference to the law of tort. Since the other vessel was stationery, the principle of 'res ipse loquitur' will apply in this case and further it has to be analysed with the pleadings and evidence available on record as to the mechanical defect beyond the control of the applicant. Admittedly, Shri K.V.Asokan, the Chief Engineer was available inside the engine room of the vessel at the time of the incident. In the fishing vessels, the engine operations are done directly from the wheel house itself, by applying remote control mechanisms. There are press buttons provided in the wheel house, to give instructions/message to the Chief Engineer in the engine room, to do the necessary operations and actions by picking up message through beep sounds and glowing of bulbs meant for each operational requirements. When the remote control system fails, the commands will not reach the Chief Engineer. Therefore, the operational functions are linked with the wheel house and that of the engine room and the MMD Surveyor Shri K.A.Simon, who conducted the enquiry on the next day of the accident i.e. 17-5-1995, had found that the Chief Engineer was not vigilant during his engine room duty on the day in question and had warned him for lapses. This indicates the charges levelled against the applicant for negligence is not sustainable. The contention of the applicant that the distance between two vessels was only 50 mts. and the vessel was on forward propulsion at the relevant time, even one officer kept in anchor position, the accident in question could not have been

avoided. In this context, the Hon'ble Supreme Court in Union of India & Others vs. J.Ahmed (AIR 1979 SC 1022) it has been held that a single act of omission or error of judgement would not constitute misconduct. Therefore, even assuming that there is an omission of a commission on the part of the applicant, it is only a single act without any intention. This cannot in any way constitute a reason for disciplinary proceedings against the delinquent worker. Therefore, considering the aspect of negligence, in the commission of the offence as nil on the above observations and even finding that there was negligence, that will not give a cause of action for disciplinary proceedings. Therefore, the disciplinary proceedings and appellate proceedings are faulted and are to be set aside and quashed.

12. The amount of punishment awarded was to the tune of Rs.31,118/-, i.e. actual estimate for the damages caused to 'Sagar Jyothi', by the disciplinary authority. The said vessel was lying idle for months together due to engine trouble and want of some engine parts to be replaced, while the hitting took place on 16-5-1995 and the vessel has not been repaired and no expense or loss has been incurred on the vessel. Any imposition of penalty for recovery of loss without actually incurring any expenses, cannot be justified. Moreover, the appellate authority has reduced the penalty to Rs.12,000/- on the ground that:-

"taking into account the fact that there is no intention to cause any loss the appeal is partially allowed and the penalty is reduced from Rs.31,118/- to Rs.12,000/- (Rupees twelve thousand only)." (Annexure A-26)

13. It is very clear that the appellate authority is convinced that the applicant has no intention to cause any loss and therefore, it is clear that the penalty of Rs.31,118/- said to have incurred for the vessel towards damages no more exist. Therefore, the split up amount of Rs.12,000/- has no



justification and we declare that the penalty of amount of Rs.12,000/- is without any basis and violative of principles of natural justice.

14. In the conspectus of facts and circumstances, we set aside and quash Annexure A-20 and A-26 orders and direct the respondents to return the amount recovered from the applicant if any on the basis of the above orders. But, in the circumstances, we hold that the applicant will not be entitled for any interest.

15. We allow the above Original Application and direct the parties to bear their respective costs.

Friday, this the 6th day of September, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kvp/ak.

A P P E N D I X

Applicant's Annexures:-

1. Annexure-A1 True copy of the submission dated 16-5-95 of the applicant given to the 1st respondent.
2. Annexure-A2 True copy of the Office Order No.70/95 dated 24-5-95 of 1st respondent, appointing Enquiry Officer, issued to the Mechanical Marine Engineer (Enquiry Officer) with copy to applicant and others.
3. Annexure-A3 True copy of the letter dated 7-7-95 of the applicant to the Enquiry Officer.
4. Annexure-A4 True copy of the Memo No.A3/M/8/95/1978 dated 25-7-95 of 1st respondent to the applicant.
5. Annexure-A5 True copy of the letter dated 10-8-95 of the applicant to 1st respondent.
6. Annexure-A6 True copy of the 'Note' dated 2-9-95 of the Enquiry Officer to the applicant.
7. Annexure-A7 True copy of Memo No.A3/M/8/95/2039 dated 4-8-95 of the 1st respondent to the applicant.
8. Annexure-A8 True copy of Charge Memorandum No.A3/M/8/95 dated 16-10-95 of 1st respondent to the applicant along with statement of imputations.
9. Annexure-A9 True copy of the Letter dated 20-10-95 of the applicant to the 1st respondent.
10. Annexure-A10 True copy of Reminder letter dated 26-10-95 of applicant to 1st respondent.
11. Annexure-A11 True copy of Memo No.A3/M/8/95/2925 dated 24-10-95 of 1st respondent to applicant.
12. Annexure-A12 True copy of Enquiry Report of Enquiry Officer, against applicant.
13. Annexure-A13 True copy of statement/deposition dated 4-9-95 of the applicant along with English Translation.
14. Annexure-A14 True copy of the undated statement of the Chief Engineer in English, along with his statement dated 13-9-95 in Malayalam and its English translation.
15. Annexure-A15 True copy of the statement/deposition dated 13-9-95 of Sri KL Antony, Uncertified Bosun, along with English translation.
16. Annexure-A16 True copy of the statement/deposition dated 13-9-95 of Sri K Vijayabhanu, Deck-hand, along with English translation.
17. Annexure-A17 True copy of the statement/deposition dated 13-9-95 of Sri V.U.Hassan, Jr.Deck-hand, along with English translation.

18. Annexure-A18 True copy of the statement/deposition dated 14-9-95 of Sri SR Bhavale, Engineer, Bharathi Ship Yard Ltd.
19. Annexure-A19 True copy of the Representation/Explanation dated 8-11-95 of the applicant to 1st respondent.
20. Annexure-A20 True copy of the Order No.A3/M/8/95/4924 dated 16-12-95 of 1st respondent.
21. Annexure-A21 True copy of the Appeal dated 1-1-96 of the applicant, against Annexure-A20 order submitted to 2nd respondent.
22. Annexure-A22 True copy of letter dated 8-1-96 of the applicant to the 1st respondent.
23. Annexure-A23 True copy of Argument Note dated 1-6-96 of the applicant to Appellate Authority.
24. Annexure-A24 True copy of letter dated 27-7-96 of the applicant to the Appellate Authority.
25. Annexure-A25 True copy of the Progress Report of the vessel, Lavanika, as on 10-7-96.
26. Annexure-A26 True copy of the Order No.5-15/96-Fy (A) dated 10-9-96 of 3rd respondent.
27. Annexure-A27 True copy of the Memo No.2-Sy(19)/28 dated 2-4-96 of the MMD Surveyor to the applicant.
28. Annexure-A28 True copy of the Memo No.A3/M/12/95 dated 18-8-95 of 1st respondent to the applicant.
29. Annexure-A29 True copy of the letter dated 16-8-95 of applicant to 1st respondent.
30. Annexure-A30 True copy of the letter dated 21-8-95 of the applicant addressed to 1st respondent.
31. Annexure-A31 True copy of the Submission dated 8-11-95 of the applicant.
32. Annexure-A32 True copy of the Memorandum No.A3/M/17/95 dated 20-11-95 of the 1st respondent to the applicant.
33. Annexure-A33 True copy of the "Note" No.05/Misc.T/95 dated 20-11-95 of Deputy Director to the applicant & others.
34. Annexure-A34 True copy of the Explanation dated 29-11-95 of applicant to the 1st respondent.
35. Annexure-A35 True copy of the Office Order No.31/94 dated 5-3-94 of 1st respondent.
36. Annexure-A36 True copy of the Office Order No.55/94 dated 13-4-94 of 1st respondent
37. Annexure-A37 True copy of Order dated 13-2-95 of this Tribunal in OA No.162/95.

38. Annexure-A38 True copy of the Order dated 7-3-96 of this Tribunal in OA No.162/95.
39. Annexure-A39 True copy of the Order No.5-29/96-Fy.Admn. dated 6-9-96 of the 3rd respondent to the applicant.
40. Annexure-A40 True copy of the Submission dated 13-2-96 of Skipper, Lavanika.
41. Annexure-A41 True copy of the Log Book entry of the vessel "Lavanika" on 5-2-96.
42. Annexure-A42 True copy of the Memo No.2.Sy(19)/26 dated 2-4-96 of MMD Surveyor to the Chief Engineer.