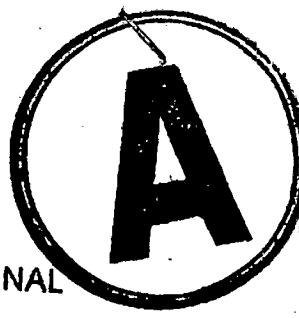


**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**



O.A.No.3 & 4 of 2003

Tuesday, this is the 17th day of May, 2005

CORAM:

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

O.A. 3/2003

**P. Radhakrishnan
Assistant Enforcement Officer
Enforcement Directorate
Central Government Office Complex
Poomkulam, vellayani P.O
Thiruvananthapuram-695 522**

Applicant

By Advocate Mr. CSG Nair

Vs

- 1. The Director of Enforcement (FEMA)
6th Floor, LokNayak Bhavan
Khan Market,
New Delhi-110 003**
- 2. The Secretary
Department of Revenue
North Block
New Delhi-110 001**
- 3. Union of India
represented by the Secretary
Ministry of Finance
North Block
New Delhi-110 001.**

..Respondents.

By Advocate Mr. Sunil Jose, ACGSC

O.A.No.4/2003

**C.P. Nair
Assistant Enforcement Officer
Directorate of Enforcement
II Floor, WAFA Bhavan,
Mavoor Road
Calicut-673 001,**

Applicant

By Advocate Mr. CSG Nair

Vs.

1. The Director of Enforcement (FEMA)
6th Floor, Lok Nayak Bhavan
Khan Market,
New Delhi-110 003
2. The Secretary
Department of Revenue
North Block
New Delhi-110 001
3. Union of India
represented by the Secretary
Ministry of Finance
North Block
New Delhi-110 001.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

As the matters relate to the same point at issue arising from the same set of facts and events, we take up the identical applications for common disposal.

2. The applicants, P Radhakrishnan (O.A. 3/2003) and C.P. Nair (O.A.4/2003), Assistant Enforcement Officers in the Directorate of Enforcement, Calicut, are seeking the quashing of A-4 chargememo, A-6 disciplinary order and A-9 appellate order on the grounds that they were neither responsible for the action they were charged with, nor were they found guilty on enquiry and yet the disciplinary authority imposed a major penalty on them and that appeal against it were rejected. The bare facts of the case are that the applicants, as members of a team led by the Enforcement Officer visited on 12.2.1998 by staff car the Court of the Judicial Magistrate First Class, Cherthala in connection with a FERA violation case unearthed by the police and while returning to the Headquarters at Trivandrum, the Team leader got down in the city and the applicants got down

together from the staff car sometime later together leaving the tour box containing official documents in the staff car. The applicants contend that they were not personally responsible for the custody of the tour box containing documents and that the Driver had been repeatedly instructed to hand over the tour box either to the Chowkidar or to keep it inside the car in the garage properly locked. While the applicants as well as the Team leader took this stand, the Driver who confessed his guilt. Thereupon an enquiry was held and the Inquiry Officer found the applicants circumstantially responsible, although the Team Leader had to take the full responsibility for the custody of records and recommended issue of warning. But the disciplinary authority while agreeing with the findings, concluded that the applicants could not be absolved of the charges, as they could have been proceeded in the staff car to the office, instead of getting down in the city, and should have ensured that the four box was handed over for safe custody. Accordingly, he imposed the major penalty (Annexure A6) of reducing the pay of the applicants by one stage for a period of one year, during which they would not earn increment and the future increments would stand postponed to that extent. The applicants' appeal against this order was rejected by A-9 appellate orders holding the applicants jointly responsible as part of the Team.

3. Heard.

4. We reject the applicants' prayer to quash A-4 charge memo straightaway as in the circumstances of the case, no government servant would be within his rights to question the institution of a Departmental Enquiry on the basis of *prima facie* evidence. It is for the disciplinary authority to decide on the justification of an enquiry and not for the charged official. As far as the Enquiry Report is concerned, the processes have been undergone fairly and the

applicants have also participated in the processes without demur. While finding that the Team Leader was primarily responsible for custody of the tour box, the Inquiry officer also held the view that the applicants who were the last to alight from the staff car could have travelled in the staff car upto the office to ensure safe custody of the tour box. This possibility cannot be denied. After all the applicants were important members of the Team, and if they were true to their duty they should have gone ahead to ensure the safe custody of the tour box, even when the leader failed. Given their rank and responsibility they cannot underplay their own responsibility while harping on the Driver's delinquency. As the authorities have rightly held, it was not for the driver to ensure the safety of the tour box, it was for the Team members to do so. We have noted, very carefully, the contention of the learned counsel for the respondents that an instance like this in the Enforcement Directorate where highly sensitive documents are required to be handled in great secrecy, should not be treated merely with reference to the degree of secrecy of the records in the box, but with reference to potential hazards of abject failure of accountability perpetuated by responsible officials, and those responsible should be awarded exemplary punishment. Interestingly applicant Radhakrishnan (O.A. 3/2003) had with him the keys to the box, and allegedly the documents were spirited away by the Driver from the box without tampering. We do not wish to go into the matter further, but we are most naturally dismayed by the ease with which a team of officers allowed a lapse like this to occur and the **nonchalance** with which a staff car Driver executed the act. We have no doubt that in the circumstance, the guilt of all concerned stands compounded.

5. Since the enquiry process was completed uninitiated and by the logic of common prudence and the nature of evidences produced, we are unable to see how else an instance of such deplorable lack of responsibility could have been

handled, we are not inclined to interfere with the disciplinary order or with the appellate order. We are also not convinced that the punishment is disproportionate to the charge merely because the inquiry officer unauthorisedly expressed a view that only warning would do. The inquiry officer had no business to recommend punishment, and the lapse in terms of its impact on the system, goes far beyond the immediate event.

6. O.A.s are dismissed. No order as to costs.

Dated 17.5.2005

Sd/-

H.P. DAS
ADMINISTRATIVE MEMBER

Sd/-

K.V. SACHIDANANDAN
JUDICIAL MEMBER

trs