

ANNEXURE - A

CAT

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE 299/29(i) of 1989 (L)

NAME OF THE PARTIES

Shri R. N. Kureel

Applicant

Versus

Union of India

Respondent

Part A, B & C

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Certified that no further action is required to tally
and that the case is fit for closing account to the
second review (Ex.)

Rajeev
5/1/2016

checked

for
21/6/11

Wazir Singh
Tatyag

(P)

12/10/89.

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 289 of 1989 (U)

APPLICANT(S) Ram Nath Kuriel

RESPONDENT(S) Union of India

	<u>particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1.	Is the appeal competent ?	Yes
2.	a) Is the application in the prescribed form ?	Yes
	b) Is the application in paper book form ?	Yes
	c) Have six complete sets of the application been filed ?	Yes
3.	a) Is the appeal in time ?	Yes
	b) If not, by how many days it is beyond time ?	
	c) Has sufficient cause for not making the application in time, been filed ?	
4.	Has the document of authorisation Vakalatnama been filed ?	Yes
5.	Is the application accompanied by B.D./Postal Order for Rs.50/-	Yes
6.	Has the certified copy/copies of the order(s) against which the application is made been filed ?	Yes
7.	a) Have the copies of the documents relied upon by the applicant and mentioned in the application, been filed ?	Yes
	b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	
	c) Are the documents referred to in (a) above neatly typed in double space ?	Yes
8.	Has the index of documents been filed and paginated properly ?	Yes
9.	Have the chronological details of representation made and the outcome of such representation been indicated in the application ?	Yes
10.	Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?	



Particulars to be Examined

Endorsement as to result of examination

1. Are the application/duplicate copy/spare copies signed ? *yes*

2. Are extra copies of the application with Annexures filed ? *yes*

a) Identical with the Original ? *yes*

b) Defective ? *-*

c) Wanting in Annexures *-*

Nos. _____ pages Nos. _____ ? *-*

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *-*

14. Are the given address the registered address ? *yes*

15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *-*

17. Are the facts of the case mentioned in item no. 6 of the application ? *yes*

a) Concise ? *yes*

b) Under distinct heads ? *yes*

c) Numbered consecutively ? *yes*

d) Typed in double space on one side of the paper ? *yes*

18. Have the particulars for interim order prayed for indicated with reasons ? *yes*

19. Whether all the remedies have been exhausted. *yes*

dfnosh/

CA. 229/89(CC)

12

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

4/12/89

Hon. Justice K. Nath, re.
Hon. K. J. Ramam, A.M.

Sms V.K. Srivastava for the applicant and Dr. Dinesh Chandra for the opposite parties are present.

The learned counsel for the opposite parties accepts notice. The office will deliver copies of the petition and copy of the opposite parties to Dr. Dinesh Chandra.

The will obtain instructions and list for admission on 1/1/90 on which date the case will be disposed of finally.

A.M.

Dr
VC

2. Notices served

L
S/H

OR

Notice received by Dr. D. Chandra on 4-12-89.

No reply filed submitted to calendar

L
S/H

1/1/90

Hon' Mr. Justice Kamleshwar Nath, V.C.
Hon' Mr. K. Obayya, A.M.

Shri V.K. Srivastava counsel for the applicant is present. Dr. Dinesh Chandra learned counsel for the Op.Ps. says that he has not yet received instructions and requests for a short date.

List this case for admission on 29.1.90, when the Op.Ps. will produce the record. The case be listed again to dispose of finally on that date.

A.M.

V.C.

OR
No reply filed submitted to calendar

L
S/H

(sns)

Dinesh

2.1.91. - No sitting Adj'd to 27.2.91.

22.1.91. - No sitting adj'd to 20.3.91.

3.3.91. - No sitting Adj'd to 14.3.91.

12
1.4.91.

La. Counsel ?
the applicant
does not want
to file any
evidence. He
appeared today.

Put up this
case for Final
Hearing 23.4.91
before the Hon'ble
Bench.

1.4.91

Affidavit

21/4/91

Re. 43

D. L. 11/1991
Do

23.4.1991

Hon. Mr. D. K. Agrawal, J.M.
Hon. Mr. K. Obayya, A.M.

Sri U. K. Srivastava, for the applicant.

Sri D. Chandra, for the Respondents.

Heard the learned Counsel of the
Parties. order passed separately.

Mr.

A.M.

J.C.

J.M.

A3/1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH LUCKNOW.

...

O.A. No. 289 of 1989 (L)

Ram Nath Kureel Applicant.

Versus

Union of India and others Respondents.

...

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. D.K. Agrawal, J.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant against the disciplinary proceedings initiated 3 days prior to his retirement falling on 30.11.1987. Further prayer made was that direction be issued to settle his retirement dues. The application was filed on 18.10.1989. Since filing of the application, the enquiry proceedings have concluded. Supplementary Affidavit filed by the applicant contains as Annexure-A, the order of Collector, Central Excise, Allahabad dated 27.8.1990. The said order clearly mentions that the disciplinary proceedings against the applicant stand dropped. Consequently, there remains no hurdle for the payment of pensionary benefit to the applicant.

2. In the circumstances, relief (i) has become redundant. In regard to relief (ii), competent authority be directed to settle the retirement dues of the applicant within a specified time.

D.K.Agrawal

4/3
1/2

- 2 -

3. The learned counsel for the applicant has prayed for payment of interest on the amount of pension due to him on 1.12.1987. However, the applicant was charge-sheeted before his retirement and the enquiry proceedings has been concluded only ~~in~~ ^{on} August, 1990. We are of the opinion that in such ~~circumstances~~ ^{occasions} no interest becomes due on the amount of retirement dues.

4. In the result, the claim petition is allowed in part. The Opp. Parties are directed to settle the retirement dues of the applicant within 3 months of the receipt of copy of this judgment failing which, ~~they~~ ^{they} would become liable for payment of interest on the amounts due to the applicant. Parties are left to bear ~~their~~ their own costs.

Arvind
Member (A)

DR. Gyanendra
Member (J) 23.4.91

Dated : 23.4.1991

Lucknow.

(n.u.)

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 19/10/89
Date of Receipt by Past...


Deputy Registrar(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

.....

Application No. 289 of 1989 (A)

Between

Ram Nath Kureel

...Applicant.

Versus

Union of India and others

...Respondents.

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Filed today
Noticed for
4/12/89
S. P. Sharma
C/o S. N. K. Srivastava
C/o S. N. K. Srivastava



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2.

<u>Sl.No.</u>	<u>Particulars</u>	<u>Pages</u>
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(Umesh Kumar Srivastava)

Advocate,

Counsel for the ~~Plaintiff~~ Applicant

Dated: Lucknow:

October , 1989.

Central Administrative Tribunal
Circuit Bench at Lucknow
Date of hearing
10-10-89 (F4)
(F4)

Deputy Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

• • •

Application No. 289 of 1989 (C)

Between

Ram Nath Kureel

... Applicant.

Versus

Union of India and others

... Respondents.

DETAILS OF APPLICATION

1. Particulars of the applicant:

(i) Name of the applicant : Ram Nath Kureel

(ii) Name of Father : Sri Rustam Kureel

Kureel

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(iii) Designation and office : Retired as Superin-
tendent of Central
Excise, Sardar Nagar
Range Gorakhpur.

(iv) Office address : Retired as Superin-
tendent of Central
Excise, Sardar Nagar
Range Gorakhpur.

(v) Address for service : 568 Kailashpuri,
Behind District Jail
Alambagh, Lucknow.

2. Particulars of the respondent:

(i) Name and/or designation : 1. Union of India,
of the respondent Through Secre-
tary, Customs
and Central
Excise, New
Delhi.

2. Collector,
Central Excise,
Allahabad.

3. Accountant
General, Uttar
Pradesh Allah-
bad.

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: 4. Enquiry Officer/
Assistant Collector,
Central Excise,
Lucknow.

(ii) Office address : 1. Union of India, through
of the Secretary, Customs and
respondent Central Excise, New-
Delhi.

2. Collector, Central
Excise, Allahabad.
3. Accountant General,
Uttar Pradesh,
Allahabad.

4. Enquiry Officer/
Assistant Collector,
Central Excise,
Lucknow.

(iii) Address for : 1. Union of India, through
service of all Secretary, Customs and
notices. Central Excise, New-
Delhi.

2. Collector, Central
Excise, Allahabad.

3. Accountant General,
Uttar Pradesh Allahabad.

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: 4. Enquiry Officer /
Assistant Collector,
Central Excise, Lucknow.

3. Particulars of the order ag-ainst
which application is made

The application is against the
following order:

(i) Order No. : Claim for retirement
benefits.

(ii) Date : Withholding of retirement
benefits after retirement
on 30.11.87.

(iii) Passed by : Withholding of retirement
benefits by the respondents.

(iv) Subject in
brief. : The petitioner retired as
Superintendent of Central
Excise, Sardar Nagar Range
Gorakhpur, but the
opposite parties are
withholding the entire
retirement benefits of the
petitioner regarding final
pension and gratuity.

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4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the case:

The facts of the case are given below:-

(1) That by means of this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for the quashing of the disciplinary proceedings under Rule 14 of the Central Civil Services (C.C.A.) Rules, 1965 pending against the petitioner before the respondent No. 4 and also for appropriate orders and directions commanding the respondents No. 1 to 3 to release the

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retirement benefits of the applicant in the nature of final pension and gratuity.

(2) That the facts giving rise to the instant application are stated as under.

(3) That just before the date of retirement of the applicant, he was served with a memorandum of chargesheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide Office C.No.II(10) 130-Confl./87/1579 dated 26.11.87 issued by the Collector, Central Excise, Allahabad, the respondent No.2. This memorandum of chargesheet was served on the applicant on 26.11.87 through special messenger. The true copy of the memorandum of chargesheet dated 25.11.87 is filed to this application as Annexure No.1.

(4) That ultimately the applicant was retired from service on reaching the age of superannuation on 30.11.87 afternoon and was relieved from service. The true copy of the retirement order dated 30.11.87 is filed to this application as Annexure No.2.

(5) That a perusal of the articles of charges served on the applicant by means of the

Answered

aforesaid memorandum of chargesheet would show that there are 2 broad charges which have been framed against the applicant. Firstly, that the applicant failed to seek the permission from the Prescribed Authority for ~~qua~~ acquiring a plot on 28.3.87 for Rs. 6,000/- and constructed a 2 toom accommodation with bath room and kitchen by spending an amount of Rs. 20,000/-, and thereby he contravened the provisions of Rule 18(2) of C.C.S.(Conduct) Rules, 1964, and secondly the applicant wrongly intimated the cost of construction of the house by his wife Smt. Jagrani as Rs. 20,000/-, while the actual valuation of the house in question was assessed by the Executive Engineer, C.P.W.D., Lucknow as Rs. 45,600/- vide his letter dated 6.5.86.

(6) That after his retirement the applicant submitted a representation dated 27th September, 1988 to the respondent No.2 praying therein that the disciplinary enquiry proceedings against him under Rule 14 of the Central Civil Services (C.C.A.) Rules, 1965 may be dropped as the applicant was already retired from service and consequently no disciplinary enquiry under the aforesaid service rules

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could be continued or concluded against a retired government servant. A true copy of the aforesaid representation dated 27.9.88 is filed to this application as Annexure No.3.

(7) That the applicant is advised to state that if a disciplinary action is sought to be taken against a government servant, then it has to be done and concluded before he retires and in case a disciplinary enquiry cannot be concluded before the date of such retirement, the only course open to the government is to pass an order of suspension and refuse to permit the concerned government servant to retire from service and thereafter to retain him in service till such enquiry is completed and a final order is passed therein.

(8) That originally under Rule 6 of the Central Civil Services (Pension) Rules, 1972, there was a provision empowering the appointing authority to make reduction in the amount of pension, or gratuity, or both if the services rendered by a government servant prior to the date of his retirement had not been satisfactory. However, this Rule 6 of the Pension Rules, 1972 was deleted with effect from 3rd March, 1980.

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(9) That after the deletion of Rule 6 of the Central Civil Services (Pension) Rules, 1972, it was no longer necessary for the appointing authority to indulge in the exercise of determining whether any part of the qualifying service rendered by the retiring government servant was satisfactory or not for exercising the power of reduction in pension or gratuity.

(10) That after the deletion of Rule 6 of the Pension Rules, 1972, the right to withhold or withdraw pension has only been conferred under Rule 9 under which the power to withhold or withdraw pension is reserved for recovering any pecuniary loss caused to the government, if in any departmental or judicial proceedings the applicant is found guilty of grave misconduct or negligence during the period of his service.

(11) That in the instant case the charge against the applicant is that he did not seek prior permission from the Prescribed-Authority regarding purchase of the plot of land on 28.3.77 by his wife and also regarding construction of 2 room house with bath room and kitchen over such plot of land. Thus, the applicant has merely

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been charged for contravening the provisions of Government Servants' Conduct Rules, 1964.

(12) That as stated above, the applicant has not caused any pecuniary loss to the government and consequently no recovery is required to be made by the respondent No.2 from the applicant after his retirement from service from the amount of pension and gratuity payable to him.

(13) That as stated above, if by the grave misconduct or negligence on the part of a government servant, no pecuniary loss has been caused to the government, then in such a case it would merely render his service as unsatisfactory, but in any case action cannot be taken under Rule 9 of the Pension Rules of 1972 for withholding or withdrawing the amount of pension or gratuity payable to such government servant after rule 6 of the Pension Rules of 1972 which previously made satisfactory record of service as condition precedent for the grant of pension and gratuity has been deleted.

(14) That in the case reported in (1988) 7 Administrative Tribunal Cases Page 1,

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as well as in the case reported in (1987) 7 Administrative Tribunal Cases Page 8, in identical and similar situation of facts, the departmental enquiry was quashed and the respondents of the said cases were restrained from proceeding further in the enquiry proceedings, and the applicant was further allowed all retirement benefits including consequential service benefits.

(15) That even if the disciplinary enquiry initiated against the petitioner just before his retirement is taken to be an enquiry under Rule 9(2) (a) of the Central Civil Services (Pension) Rules, 1972, it cannot be proceeded with and is liable to be set aside firstly on the ground that no pecuniary loss has been caused to the government in pursuance of the charges framed against him, secondly such an enquiry cannot take place in respect to the alleged misconduct which is alleged to be of the year 1978-79, and consequently did not fall within a period of 4 years before the institution of such disciplinary enquiry.

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(16) That for the facts and the reasons stated above, the entire disciplinary enquiry proceedings against the petitioner pending in the hands of the respondent No.4 in pursuance of the memorandum of chargesheet given by the respondent No.2, are totally illegal, without jurisdiction and are merely an abuse of the process of law and deserve to be set aside.

(17) That in view of the disciplinary enquiry which is kept pending against the applicant, he has merely been paid the amount of provisional pension for the last more than one year, while the entire amount of gratuity has not been paid to him due to the pending disciplinary enquiry.

(18) That for the facts and the reasons stated above, the applicant is entitled to get the full amount of final pension payable to him in accordance with the Pension Rules, as well as full amount of gratuity which became payable to him after his retirement from service.

(19) That on 18.11.88 the applicant submitted a reminder to the respondent No.2 for

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expeditious disposal of his representation dated 27.9.88. A true copy of the aforesaid reminder letter dated 18.11.88 is filed to this application as Annexure No.4.

(20) That till now the applicant has not been informed about any decision taken on his representation dated 27.9.88. Thus, / than six months have already lapsed from the ~~xx~~ date of the making of the representation dated 27.9.88, and the applicant is not entitled to approach this Hon'ble Tribunal.

(21) That the applicant is thus left with no other efficacious and alternative departmental remedy available to him begs to file the instant application on the following amongst other grounds :-

G R O U N D S

(A) Because the disciplinary enquiry proceedings initiated by the respondent No.2 cannot be continued and concluded even after the retirement of the applicant, and accordingly the disciplinary enquiry pending against him is liable to be set aside.

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(B) Because under Rule 9 of the Central Civil Services (Pension) Rules, 1972, an enquiry for withholding or withdrawing the pension of a government servant can only be instituted for recovering any pecuniary loss caused to the government.

(C) Because the enquiry initiated by the respondent No.2 and pending in the hands of the respondent No.4 is totally illegal and is without jurisdiction firstly because no pecuniary loss has been caused by the applicant to the government during his period of service and secondly because the alleged misconduct and charges stated in the memorandum of chargesheet issued by the respondent No.2 does not fall within a period of 4 years before the institution of the disciplinary proceedings.

(D) Because the charges framed against the applicant relate to the contravention of the Government Servants' Conduct Rules contained under C.C.S. (Conduct) Rules, 1964 and by which no pecuniary loss can be said to have been caused to the government.

(E) Because after the deletion of Rule 6 of the

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Central Civil Services (Pension) Rules, 1972, no disciplinary enquiry can be continued and concluded after the retirement of the applicant from service, for reduction of pension or, for withholding of gratuity on account of unsatisfactory service rendered during his service period, and such enquiry can only be maintainable for the purposes of making any recovery for compensating any pecuniary loss caused to the government.

7. Relief(s) sought:

In view of the facts mentioned in para 6 above, the applicant prays for the following relief(s):-

(1) That by means of an appropriate order, or direction, the memorandum of chargesheet issued by the Collector, Central Excise, Allahabad, the respondent No.2 vide C.No.II(10)130-Confl./87/1579 dated 25.11.87 under Rule 4 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and contained in Annexure No.1 to this application, as well as the entire consequential enquiry proceedings pending before the

No relief

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respondent No.4 in pursuance of the memorandum of chargesheet may kindly be quashed.

(ii) That consequent upon the quashing of the disciplinary enquiry proceedings pending against the applicant in the hands of the respondent No.4, appropriate orders and directions may kindly be issued commanding the respondents to pay to the applicant the full amount of his final pension payable to him calculated in accordance with Pension Rules, as well as the full amount of gratuity payable to him after his retirement from service within a period provided by this Hon'ble Tribunal, alongwith an interest of 18 per cent over such amount till the date of actual payment of such amount, and the respondent be further commanded not to withhold, withdraw or reduce any amount of final pension or gratuity payable to the petitioner on his retirement, on the basis of disciplinary enquiry pending against the applicant.

(iii) That any other appropriate order or direction which the entire facts and

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circumstances of the case may admit, be also issued or passed.

(iv) That costs of the instant application be also awarded to the applicant.

8. Interim order, if prayed for:

Pending final decision on the application, the applicant seeks issue of the following interim order:-

(a) That for the facts and the reasons stated in the instant application under Section 19 of the Administrative Tribunals Act, 1985, ~~which is duly sworn by an affidavit of the applicant himself,~~ it is most humbly and respectfully prayed that during the pendency and decision of the instant application, the respondents No. 1 to 3 may kindly be directed to pay the full amount of pension calculated in accordance with Pension Rules, as well as the full amount of gratuity payable to the petitioner after his retirement from service.

(b) That admittedly the applicant has retired from service on 30.11.87 and consequently the action on the part of the respondents

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No. 1 to 3 in withholding the retirement benefits of the applicant including the final pension and gratuity is totally arbitrary, perverse and illegal.

(c) That similar and identical matters have already been decided by this Hon'ble Tribunal and there is a *prima facie* case in favour of the applicant for the grant of the interim order and the balance of convenience also lies in favour of the applicant for the grant of the aforesaid interim orders.

(d) That the applicant after being retired during the year 1987 has now no means to survive and in case the amount of pension and gratuity are not released immediately, the applicant would be compelled to face starvation.

9. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

(a) That the applicant submitted a representation dated 27.9.88 to the respondent No. 2 for



(b)
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quashing the disciplinary enquiry and for releasing the retirement benefits to him including final pension and gratuity.

(b) That a reminder letter dated 18.11.88 was again sent to the respondent No.2 for expeditious disposal of his representation dated 27.9.88, but to no avail.

(c) That the applicant has already waited for more than six months for the disposal of the aforesaid representation and he is now entitled to file the instant application.

10. Matter not pending with any other court etc.:

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal Order in respect of the Application Fee:

1. Name of the Bank on which drawn
2. Demand Draft No.

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OR

1. Number of Indian Postal Order(s)
2. Name of the issuing Post Office
3. Date of issue of Postal Order(s)
4. Post Office at which payable

12. Details of Index:

An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures:

1. Copy of memorandum of Chargesheet dated 25.11.87 issued by the respondent No.2 and served on the petitioner on 26.11.87.
2. Copy of the retirement order dated 30.11.87 retiring the petitioner from service on his reaching the age of superannuation on 30.11.87 afternoon.

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3. Copy of the representation dated 27.9.88 submitted by the applicant.
4. Copy of the reminder letter dated 18.11.88 submitted to the respondent No.2 for expeditious disposal of his representation dated 27.9.88.

Verification

I, Ram Nath Kureel, son of Sri Rustam Kureel, aged about 60 years, retired Superintendent of Central Excise, resident of 568, Kailashpuri, Behind District Jail, Alambagh, Lucknow, do, hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.



Signature of the applicant.

Place.....

Date.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW
APPLICATION NO. OF 1989.
Ram Nath Kureel ... Applicant
versus
Union of India & others ... Respondents
ANNEXURE NO. 1

- 22 -

C.No.II(10) 130-Conf/ 87/ 1574
CENTRAL EXCISE COLLECTORATE: ALLAHABAD
DATED: The 25.11.87

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri R.N.Kureel, Superintendent under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge is proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri R.N.Kureel, Superintendent is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desire to be heard in person.

3. He is informed that an inquiry will be held only in respect of these articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri R.N.Kureel, Superintendent is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CA)Rules, 1965 or the orders/ directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri R.N.Kureel, Superintendent is invited to Rule 20 of Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri R.N.Kureel, Superintendent is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.
Encl: Annexure I to III.

Shri R.N.Kureel
Superintendent
Central Excise
Gorakhpur

(M.S.KANWAL)
Collector
Central Excise: Allahabad

Kureel

(2)

Annexure-I

STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI R.N.
KUREEL, SUPERINTENDENT, GROUP 'B', CENTRAL EXCISE
COLLECTORATE: ALLAHABAD.

ARTICLE NO. I

It is alleged that Shri R.N. Kureel, Superintendent, while posted as Superintendent, MOR, Barabanki, intimated vide his letter No. 1-CL/1/79/827 dated 10-9-1979 addressed to Collector of Central Excise, Allahabad(PW-1) that his wife Smt. Jagrani Kureel purchased a plot in Rs.6000/- on 28-3-1977 and constructed a two-room house with bath-room and Kitchen thereon by spending an amount of Rs.20,000/- but he failed to seek prior permission from the prescribed authority, viz., Collector, Central Excise, Allahabad for acquiring of the said property and construction thereon and thereby he contravened the provisions of Rule 18(2) of CCS(Conduct) Rules, 1964.

ARTICLE NO. II

It is further alleged that Shri R.N. Kureel, Superintendent, Group 'B' wrongly intimated the cost of the construction of the house by his wife Smt. Jagrani Kureel as Rs.20,000/- since the actual valuation of the house in question, as assessed by Executive Engineer, CPWD, Lucknow vide his letter No.2(3)LCD/1345-46 dated 6-5-86 (PW-2) comes to Rs.45,600/- with reference to the prices in the year 1978-80.

ARTICLE NO. III

It is also alleged that Shri R.N. Kureel, Superintendent, Group 'B' in his letter C.No.1-CL-1/79/827 dated 10-9-79 falsely reported to Collector, Central Excise, Allahabad that intimation regarding purchase of plot and construction of two rooms house thereon was intimated by him to Assistant Collector, Central Excise, Lucknow vide his letter dated 4-5-1977. However, the fact is that his letter dated 4-5-1977(PW-4) purported to have been handed-over to Shri S.D. Khar, the then Assistant Collector, Central Excise, Lucknow

Contd..3.

Kureel

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on 4-5-79 as intimated vide his letter dated 14-12-79 (PW-3), is merely a fake document engineered by the said Shri R.N. Kureel, Superintendent, Group 'B' to mislead the department in order to save himself from the contravention of CCS(Conduct) Rules, 1964. This is further corroborated by the fact that he for the first time in the I.P.R. as on 1-1-79 (PW-5) intimated that he has acquired a house located at Kailashpuri (behind District Jail), Lucknow in the name of his wife Smt. Jag Rani Kureel. ^{Further} He intentionally failed to submit his I.P.R. for the year 1977.

ARTICLE-IV

It is further alleged that whereas vide his letter dated 19-9-1979 (PW-1) he has intimated the house to be consisting of two rooms, though on the actual verification done by the Assistant Collector, Central Excise, Lucknow and intimated vide his letter No. II(8)/Confl/87 dated 11-6-87 (PW-10), the house consisted of 8 rooms. No intimation was given ~~to~~ or permission sought from the competent authority i.e. Collector, Central Excise, Allahabad for construction of these 6 additional rooms and he has, therefore, contravened the provisions of CCS(Conduct) Rules, 1964.

The aforesaid act on the part of Shri R.N. Kureel, Superintendent, Group 'B' amounts to serious misconduct, suppression of facts with the intention to evade the provision of Rule 18 of CCS(Conduct) Rules, 1964. He has, thus, acted in a manner which is unbecoming of a Government servant and has contravened the provisions of Rule 3(1)(i)(ii) and (iii) of CCS(Conduct) Rules, 1964.

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Annexure-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI
R.N.KUREEL, SUPERINTENDENT, GROUP 'B', CENTRAL EXCISE,
ALLAHABAD.

It is alleged that Shri R.N. Kureel, Superintendent, Group 'B', Central Excise Collectorate, Allahabad while posted as Superintendent, Central Excise, M.O.R., Barabanki, intimated vide his letter C.No.1-GL/1/79/827 dated 10-9-79 (PW-1) to Collector, Central Excise, Allahabad with endorsement to Assistant Collector, Central Excise, Lucknow that his wife Smt. Jagrani Kureel had purchased a plot for Rs.6000/- on 28-3-77 and constructed a two room house with bath-room and kitchen thereon valued at Rs.20,000/-. He also stated that the land and construction of two-room house thereon was done by his wife out of her savings and money that she received from her parents. Shri Kureel, Superintendent further intimated that though through oversight he could not mention this fact to Collector, Central Excise, Allahabad yet this fact was already intimated to Assistant Collector, Central Excise, Lucknow vide his letter dated 4-5-77 (PW-4). This fact was reported by Shri Kureel for the first time in his I.P.R. for the period as on 1-1-1979 (PW-5). It has been found that the so called intimation dated 4-5-77 purported to have been sent to Assistant Collector, Central Excise, Lucknow was not at all received in the office of the Assistant Collector, Central Excise, Lucknow. When Shri Kureel was confronted by Assistant Collector, Central Excise, Lucknow vide his letter C.No.II(9)26-Confl/79/673 dated 3-12-79 (PW-6) to furnish a copy of his letter dated 4-5-77 alongwith a proof of it having been submitted in ~~Central~~ Assistant Collector, Central Excise, Lucknow's office, Shri Kureel vide his letter ~~dated~~ C.No.1-GL/1/79/997 dated 14-12-79 (PW-3), while submitting a copy of letter dated 4-5-77 purported to have already been sent to Assistant Collector, Central Excise, Lucknow further stated that this letter i.e. letter dated 4-5-77 alongwith a copy of sale-deed registered on 28-3-77 (PW-7) was personally handed-over to the then Assistant Collector, Central Excise, Lucknow Shri S.D.Khare. He, however, stated that he has no acknowledgement for the same. Shri Kureel was further asked by Assistant Collector, Central Excise, Lucknow vide his office letter C.No.II(9) 26-Confl/79/45 dated 16-2-1981 (PW-8) to clarify as to:-

Kureel

(5)

"(a) Whether you obtained permission from competent authority before starting construction of two rooms, at Lucknow.

(b) The amount spent in construction of two rooms with full details.

(c) The exact amount which Smt. Jagrani, w/o Shri R.N. Kureel, received from her parent and mode of transacting the said amount.

(d) Whether before acceptance of the money from the parent and any intimation was submitted to the Department by you, if so, please quote reference."

In response to the above queries, Shri Kureel vide his letter dated No. 1-GL/1-Conf/80/249 dated 30-3-81 (PW-9) stated that he himself has not constructed the house. The same was constructed by his wife Smt. Jagrani Kureel without his knowledge after receiving financial assistance from her parent amounting to Rs. 10000/- received from time to time and from her personal saving being STRIDHAN during 30 years.

It is further alleged that though Shri R.N. Kureel intimated the cost of house as Rs. 20,000/-, the same was, however, assessed and valued at Rs. 45,600/- as per costs in the year 1978-80 by Executive Engineer vide his C.No.2(3)LCD/1345-46 dated 6-5-86(PW-2).

Again vide his letter dated 10-9-79(PW-1) he has intimated ^{that} the house to be consisting of 2 rooms, though an the actual verification done by Assistant Collector, Central Excise, Lucknow and intimated vide his letter No. II(8)Conf/87 dated 11-6-87 (PW-10) the house consisted of 8 rooms. No intimation was given or permission sought from the competent authority i.e. Collector, Central Excise, Allahabad for construction of these 6 additional rooms and he has, therefore, contravened the provisions of CCS(Conduct) Rules, 1964.

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Enclosed

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(6)

From the fore-going, it is evident that Shri Kureel has failed to abide by the provisions contained in Rule 18(2) of CCS(Conduct) Rules, 1964 inasmuch as though Smt. Jagrani Kureel, wife of Shri R.N. Kureel acquired a plot at Kailashpuri, behind District Jail, Lucknow in Rs.6000/- in the year 1977 and constructed two room house thereon in Rs.20,000/- during 1977-78, yet Shri Kureel failed to obtain necessary permission from the prescribed authority viz., Collector, Central Excise, Allahabad for this purpose. Not only this, but he also suppressed the cost of construction of house as reported to Collector, Central Excise, Allahabad vide his letter dated 10-9-79 (PW-1) and also mis-represented the fact that he had already intimated the fact of acquiring of the said house in the name of his wife to Assistant Collector, Central Excise, Lucknow on 4-5-77. Shri Kureel also failed to obtain Collector's permission for construction of 6 additional rooms in the house. Shri Kureel also failed to submit his I.P.R. for the year 1977 with a view to hide the above facts.

It is, therefore, clear that the said Shri R.N. Kureel, Superintendent, Group 'B' has acted in a manner which is highly unbecoming of a Government servant and thereby he has contravened the provisions of Rule 3(1)(i)(ii) and (iii) of CCS(Conduct) Rules, 1964.

Contd...? 25-11-87

Kureel

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Annexure-II

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE
FRAMED AGAINST SHRI R.N. KUREEL, SUPERINTENDENT
GROUP 'B.C' CENTRAL EXCISE, ALLAHABAD ARE PROPOSED
TO BE SUSPAINED.

(1) Letter C.No.1-GL-1/79/827 dated 10-9-79 of
Shri R.N.Kureel, Superintendent addressed to
Collector, Central Excise, Allahabad and copy
to Assistant Collector, Central Excise, Lucknow
(PW-1)

(2) Letter No.2(3)LCD/1345-46 dated 6-5-86 from
Shri S.R.Pandey, Executive Engineer, CPWD, Lucknow
addressed to Assistant Collector, Customs, Lucknow
with copy to Deputy Collector(P&E), Central Excise,
Allahabad.
(PW-2)

(3) Letter S.No.1-GL/1/79/997 dated 14-12-79 from
Shri R.N. Kureel, Superintendent addressed to
Assistant Collector, Central Excise, Lucknow
(PW-3)

(4) Letter dated 4-5-77 from Shri R.N.Kureel, Supdt.
addressed to Assistant Collector, Central Excise,
Lucknow.
(PW-4)

(5) I.P.R. of Shri R.N.Kureel, Superintendent as
on 1-1-79.
(PW-5)

(6) Letter C.No.II(9)26-Confl/79/673 dated 3-12-79
from Shri A.Phillips, Administrative Officer,
Central Excise, Lucknow addressed to Shri R.N.
Kureel, Superintendent.
(PW-6)

(7) Sale deed dated 28-3-77.
(PW-7)

(8) Letter C.No.II(9)26-Confl/79/45 dated 16-2-81
from Shri K.U.Khan, Steno to Assistant Collector,
Central Excise, Lucknow addressed to Shri R.N.
Kureel, Superintendent.
(PW-8)

(9) Letter C.No.1-GL/1-Confl/80/249 dated 30-3-81
from Shri R.N.Kureel, Superintendent addressed
to Assistant Collector, Central Excise, Lucknow
(PW-9)

(10) Letter C.No.II(8)8-Confl/87 dated 11th June, 1987
from Shri M.A.Hamid, Assistant Collector, Central
Excise, Lucknow addressed to Dy. Collector(P&E),
Central Excise, Allahabad.
(PW-10)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW
APPLICATION NO. OF 1989.
Ram Nath Kureel ... Applicant
versus
Union of India & others ... Respondents
ANNEXURE NO. 2

- 29 -

(P.S.)
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CENTRAL EXCISE DIVISION: GORAKHPUR
* * * * *

ORDER

30.11.87

On my superintendence Shri R.N.Kureel,
Superintendent of Central Excise, Sardarnagar Range
is hereby relieved from service in the afternoon of
30.11.87.

Sd/ B.N.Singh
Assistant Collector.

C.No.II(3)26-T/30/87/ Dated the Nov. 1987

Copy forwarded for information and necessary
action to:-

1. The Deputy Collector (P&E) of C.P.Allahabad.
2. The Chief Accounts Officer of C.P.Allahabad.
3. The Pay & Accounts Officer of C.P.Allahabad.
4. Shri R.N.Kureel, Superintendent Sardarnagar
5. I/C. Pension unit I.D.O.Gorakhpur.

ABD
Assistant Collector.

Abc

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW
APPLICATION NO. OF 1989.
Ram Nath Kureel ... Applicant
versus
Union of India & others ... Respondents
ANNEXURE NO. 3

- 30 -

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10/10

REGISTERED WITH A.D.

To

The Collector,
Central Excise,
ALLAHABAD.

Respected Sir,

Subject : Disciplinary proceedings under Rule 14 of C.C.S. (C.C.A.) Rules 1965 instituted against Shri R.N. Kureel on 30th Novr., 1987 - Request for dropping the proceedings in terms of the provisions of Rule 9(2)(a) of C.C.S. Pension Rules 1972.

I, respectfully beg to submit that while I was posted as Superintendent, Central Excise, Sardarnagar, Gorakhpur during the year 1987, I was served with a Memorandum under Rule 14 of the C.C.S. (C.C.A.) Rules 1965 vide your office C. No. II (10) 130-Confl/87/1579 dated 25.11.87 issued under your signatures, being the disciplinary authority. This Memorandum alongwith its Annexures Nos. I to III were served upon me on 26.11.87 at 16.00 hours through a special messenger.

2. That the Articles of charges framed against me relate to the alleged contravention of Rule 18 of C.C.S. (Conduct) Rules, 1964 which has been alleged to be a serious misconduct, suppression of facts with the intention to evade the provisions of Rule 18 ibid. It has, therefore, been alleged that I acted in a manner which is unbecoming of a Government servant and has contravened the provisions of Rule 3(1)(i)(ii) and (iii) of C.C.S. (Conduct) Rules 1964.

3. That I was allowed to retire on reaching the age of superannuation that is, on 30.11.1987 afternoon from the place of my aforementioned place of posting.

4. That the above said departmental proceedings referred to in sub-rule (1) of Rule 9 of C.C.S. Pension Rules, 1972, if instituted while I was in service shall, in terms of sub-rule (2)(a) of Rule 9 of the

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said Pension Rules, after the final retirement of the Government servant shall be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

5. That Rule 9(1) of the C.C.S. Pension Rules 1972 lays down as follows:-

"(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement".

6. That it is respectfully submitted that the proceedings under Rule 9 for withholding or withdrawing the pension can be taken only for the purpose of recovering any pecuniary loss caused to Government.

7. That in the instant case instituted against me there is no question of any pecuniary loss caused to Government because it was issued for contravention of Rule 18 of C.C.S. (Conduct) Rules, 1964.

8. That in the case of State of Punjab versus Khem Ram (AIR 1970 SC 214 : (1969) 3 SCC 28 it was held by the Hon'ble Supreme Court that :

"If the disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by Rule 3.26(d). If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned

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public servant to retire and retain him in service till such enquiry is completed and a final order is passed thereon*.

10. That, it may kindly be noted that the said Memorandum was issued on 25.11.87 and served upon me on 26.11.87 and just after four days I was allowed to retire.

11. That while agreeing with the above decision it was held by a Division Bench of the Madras High Court reported in 1985 Writ Law Reporter (II) - page 197, as follows:-

" It is now well settled that if disciplinary action is to be taken against an employee it must be taken before he retires from service and if the disciplinary enquiry cannot be completed in one initiated already, the only course open to the Government is to pass an order of suspension and refuse to permit the concerned Government servant to retire and permit him to continue in service, till final orders are passed thereon*:

12. That the same view has also been taken by a Full Bench of the Kerala High Court as reported in R.P. Nair versus Kerala Electricity Board (AIR 1979 Ker 135). It was also held in 1985 Writ Law Report Vol. II page 197, brought out above, that any disciplinary enquiry conducted after the Government servant retires can only be for the purpose of exercising the right of the Government to withhold or withdraw or to effect recovery from pension and that such inquiry would be permissible only if there had been any pecuniary loss caused to Government by the official's grave misconduct or negligence. In this case, no pecuniary loss to Government had been caused by the applicant on account of any alleged misconduct.

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13. That in the case of K.V. Subramanian versus Assistant Director (ESTT), Post Master General's Office, Madras and others decided by the Central Administrative Tribunal, Madras (1988) 7 Administrative Tribunals Cases 8, decided on June 15, 1987, the Hon'ble Bench has fully agreed with the above judicial pronouncements and held as follows:-

Paragraph 10. In this view of the matter, the respondents in this case cannot proceed further with the disciplinary matter, initiated by issue of a Charge memo dated 27.6.1980, after the retirement of the applicant on 30.11.80*.

Paragraph 11. We would also draw attention to the fact that Rule 6 of the Pension Rules had been deleted from March, 1980*.

Paragraph 12. Accordingly, if a pensioner is to be proceeded against for any grave misconduct or negligence during his service, it cannot be for the purpose of establishing that his past service under Govt. was not satisfactory and on that account for making a reduction or even withholding pension but can only be for purpose of withholding the pension or for recovering from the pension if pecuniary loss had been caused to Govt. as a result of such grave misconduct.

If by the grave misconduct of the petitioner, no pecuniary loss had been caused, but at the same time it would merely render his service as unsatisfactory, action cannot be taken under Rule 9 of the Pension Rules inasmuch as Rule 6 which previously made satisfactory record of service as condition for grant of pension, has been deleted*.

A photostat copy of the above mentioned decision is enclosed for ready reference.

14. That the above mentioned judicial pronouncements fully apply in my above mentioned case. Since no pecuniary loss has been caused to Government as a result of alleged grave misconduct for contravention

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of the provisions of Rule 18 of C.C.S. (Conduct) Rules, 1964, the impugned Memorandum is liable to be dropped.

15. It is also submitted that the instructions as contained in D.G. P & T letter No. 13/6/83-Vig.III dated the 28th February, 1984 and circulated to all concerned for their information and guidance provide that if the disciplinary authority comes to the conclusion that action under Rule 9 of the Pension Rules, is not justified and the proceedings should be dropped, it would be within the competence of the disciplinary authority to drop proceedings, since the proceedings have been instituted by that authority. In such cases, there is no need to submit a report regarding the findings of the disciplinary authority to the President in terms of Rule 9(2)(a) of the Pension Rules.

P R A Y E R

It is, therefore, most humbly and respectfully prayed that the aforementioned Memorandum issued to me under Rule 14 of the C.C.S.(C.C.A.)Rules, 1965, in the light of the above mentioned submissions, may kindly be dropped by your kind and judicious self for which I would ever remain grateful to you.

Thanking you,

LUCKNOW

Dated : September 27, 1988

Enclosures:

Yours faithfully,

Kureel

27-9-88
(R.N. KUREEL)

Superintendent,
Central Excise (Retired)
R/O 568, Kailashpuri,
Behind Distt. Jail,
P.O. Alambagh, Lucknow.

Kureel

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Copy submitted to:

1. Shri S.N. Singh I.R.S., Assistant Collector of Central Excise, Lucknow for information and necessary action. He is requested not to proceed with the above enquiry and grant interim stay, till the above mentioned representation is disposed off by the Collector of Central Excise, Allahabad who is the Disciplinary Authority in the above case instituted against me.
2. The Secretary to Government of India, Ministry of Finance, Department of Revenue, (Customs and Central Excise), New Delhi for information and necessary direction.
3. The President of India, New Delhi for information and necessary ~~as~~ directions.
4. Member Personnel, Central Board of Excise & Customs, North Block, New Delhi for information and necessary directions.

Enclosed One Set of the Document
of 11 Pages Only

Acured
17-9-88
(R.N. KUREEL)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH AT LUCKNOW
APPLICATION NO. OF 1989.
Ram Nath Kureel ... Applicant
versus
Union of India & others ... Respondents
ANNEXURE NO. 4

AS
AS

To,

Reqd. A.D.

The Collector,
Central Excise,
ALLAHABAD.

Sub:- Disciplinary proceedings under Rule 14
of C.C.S (C.C.A) Rules, 1965 instituted
against Shri R.N.Kureel Supdt, Central
Excise (Retd), Request for dropping
the proceedings in terms of the
provisions of Rule 9(2) (a) of C.C.S.
Pension Rules, 1972.

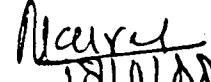
Hon'ble Sir,

I respectfully beg to invite your kind
attention to my representation dated 27-9-88 sent under
Registered Cover, on the above mentioned subject.

It is most humbly prayed that necessary
orders in the matter may kindly be issued at your earliest
convenience.

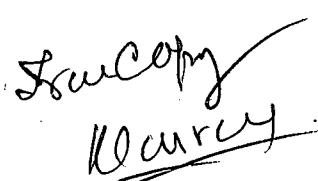
Thanking you,

Yours Faithfully,


(R. N. KUREEL)

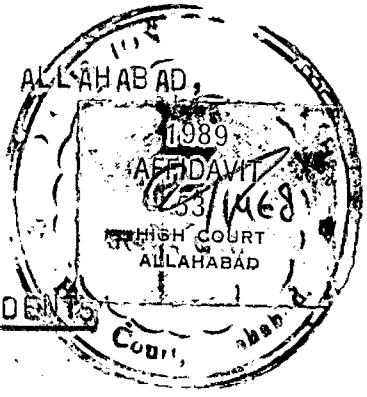
Supdt (Retd),
Central Excise.
H.No.568, Kailashpur,
Behind Distt. Jail, Lucknow.

Dated. 18-11-1988.


Sw. Copy
R. N. Kureel


R. N. Kureel

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.



COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS

IN RE. :

Application No: 289 of 1989.



Ram Nath Kureel Applicant.

Versus.

Union of India & others ~~Respondents~~
Respondents.

Assistant Collector, Central Excise, ALLAHABAD

I, P.B. Deshpande, aged about 57 Years, son of
Balkrishna Deshpande, do hereby solemnly affirm
and state as under :-

1. That the deponent is competent to swear this affidavit on behalf of all the respondents.

2. That the deponent has read the application filed by Shri Ram Nath Kureel and has understood the contents thereof.

3. That the deponent is well conversant with the facts of the case deposed hereinafter.

4. That in order that the Hon'ble Tribunal may appreciate the submissions made in subsequent paragraphs it will be worthwhile to give below a brief history of the case.

BRIEF HISTORY OF THE CASE

Shri R.N. Kureel, Supdt. Group 'B' of this

Collectorate (since retired) was charge-sheeted



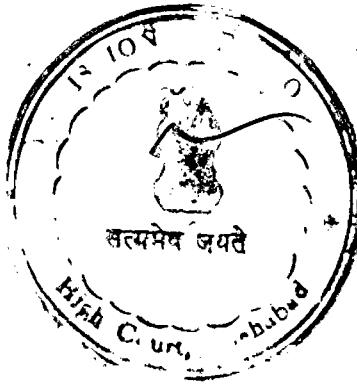


under Rule 14 of the C.C.S. (CCA) Rules, 1965
by the Collector of Central Excise, Allahabad vide
Memorandum of charge sheet C. No. II(10)30-Conf1./87/
1574 dated 25.11.87 inter-alia on the charges that
Shri R.N. Kureel while posted as Supdt. C.Ex. Barabanki
intimated vide his letter C. No. 1.GL/1/79/827 dated
10.9.79 that his wife out of her savings and money she
received from her parents had purchased a plot for
Rs. 6,000/- on 28.3.77 and constructed 2 Room on
the same with Bath Room and kitchen thereon valued at
Rs. 20,000/-, Shri Kureel further reported thereon
that though he could not intimate about the transaction
to the Collector Central Excise, Allahabad but the
fact was, however, intimated to the Assistant Collector,
Central Excise Division, Lucknow vide his letter dated
4.5.87.

~~Whether the said intimation was received in the office of the Asstt. Collector Central Excise Division, Lucknow.~~

Later it was observed that Shri Kureel did not
submit any intimation as the purported letter of
intimation dated 4.5.87 was not received in the office
of the Asstt. Collector Central Excise Division,

(2. Check up the date)
Lucknow. Whereupon he was asked to supply a copy
of the said intimation alongwith proof of the same
having been submitted to the Asstt. Collector, Central
Excise, Lucknow, in response to which Shri Kureel
intimated that the purported intimation dated 4.5.87
along with the sale deed was personally handed over
to the Asstt. Collector Central Excise, Division,
Lucknow but he expressed his inability to submit any



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acknowledgement in token or having submitted the same to the Assistant Collector's Office.

Shri Kureel was, therefore, asked to explain whether he obtained any permission of the competent authority before starting construction of the house, the amount spent on the construction, the exact amount which his wife received from her parents and whether any intimation in this regard was given to the Department. To these queries Shri Kureel intimated on 30.3.81 that his wife constructed the house without his knowledge after receiving financial assistance from her parents amounting to Rs. 10,000/- received from time to time from her personal saving being STREE DHAN during 30 years.

Subsequently when the house so constructed by Shri Kureel was got assessed through Executive Engineer, it was opined by him that in the year 1978-80, the valuation of the house was Rs. 45,600/- as against the value of Rs. 20,000/- reported by Shri Kureel. Further also on actual verification done by the Asstt. Collector, Central Excise, Lucknow it was reported by him on 11.6.87 that the house consisted of 8 rooms as against 2 rooms intimated by Shri Kureel. No intimation/permission for the construction of the additional rooms was ever obtained by him. Since the aforesaid omission/commission on the part of Shri Kureel, Superintendent amount to the violation of Rule 18(2) of the CCS(Conduct) Rules, 1964, therefore, his conduct was not above board and attracted contravention of Rules 3 (1) (i) (ii) and (iii) of the C.C.S. (Conduct) Rules, 1964 which ultimately culminated in the issue of above said memorandum of charges under rule 14 dated 25.11.87. The applicant

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is not co-operating with the Inquiry proceedings on one pretext or the other., finalisation of which could help him in getting the withheld dues.

PARAWISE COMMENTS

5. Para 1 to 4 :- Need no comments.

6. Para - 5 :- The application is barred by limitation under Section 21 of the Administrative Tribunal Act. The Memorandum of the Articles of Charge is dated 25.11.87 and the applicant's application was filed before the Hon'ble Tribunal in November, 1989 after a lapse of about one year and ten months.

7. para 6 (1) & 6 (2) :- Need no comments.

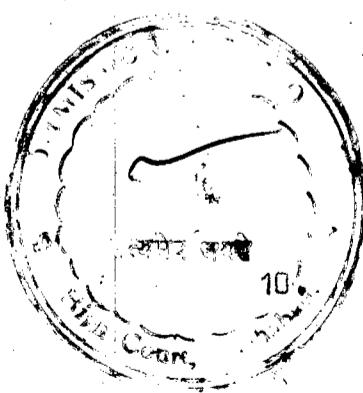
8. para 6 (3) to 6 (5) :-
Contents are admitted.

9. Para 6 (6) :-

Receipt of the representation dated 27.9.88 is admitted. It is further submitted that the applicant had sent reminders to the Member (Personnel), Central Board of Excise & Customs, New Delhi for the disposal of his representation dated 27.9.88. The decision on the said representation was communicated to him on 3.2.89 under Registered cover.

10. Para 6 (7) :-

Contents of the para are misconceived. In this connection it is submitted that there exists specific permission under Rule 9 of the C.C.S. (Pension) Rules to proceed ahead with the disciplinary proceedings if already initiated against the Govt. employee.



Yours

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and after conclusion of the disciplinary proceedings submit a report of its findings to the President.

Rule 9 (2) (b) of the said rules provides for proceeding against a Govt. servant even after retirement. Thus there was nothing irregular in initiating disciplinary proceeding against the applicant.

11. Para 6 (8) :-

Needs no comments.

12. Para 6 (9) :-

Contents of this para are misconceived and irrelevant; hence denied. In the present case the disciplinary proceedings have been initiated against the applicant on the grounds of misconduct. There exist specific provisions under Rule 9 of the C.C.S. (Pension) Rules to proceed against a Govt. servant on the ground of misconduct.

13. Para 6 (10) :-

Disciplinary proceedings were initiated against the applicant prior to his retirement on 25.11.89 for misconduct which he committed during the course of employment. It is admitted that the right to with-hold or withdraw pension is reserved for recovery of any pecuniary loss caused to the Govt., if in any departmental or judicial proceedings the applicant is found guilty of grave misconduct or negligence during the period of his service. Action was not taken under the provisions of deleted Rule 6.

14. Para 6 (11) :-

In reply to the contents of this para it is stated



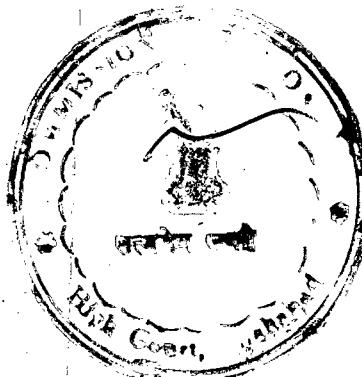
that the imputation of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the statement of articles of charges enclosed with Memorandum C. No. II(10) 130-Confl/87/1574 dated 25.11.1987.

15. Para 6 (12) :-

It is submitted that the applicant did not cause any pecuniary loss to the Govt. Disciplinary enquiry against the applicant has been initiated on the basis of his grave misconduct during the course of his employment/service.

16. Para 6 (13) :-

It is submitted that under the provisions of Rule 18(2) and 18(3) of the Central Govt. Services (Conduct) Rules, no Govt. Servant shall, except with the previous knowledge of the prescribed authority, acquire any immovable property by purchase either in his own name or in the name of any member of his family. It was also obligatory on his part to report the transaction entered into by his wife in respect of the plot of land acquired by her. The petitioner before starting construction of the house should have reported and sought permission and after completion of the house should have reported the same to the prescribed authority. The applicant failed to observe the above provisions and thereby contravened the provisions of Rule 18 (2) and 18(3) of the C.C.S. (Conduct) Rules. Thus the disciplinary proceedings have rightly been initiated against the applicant for violation of the above rules which are well within the ambit of Rule 9 of the CCS (Pension) Rules, 1972.



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17. Para 6 (14) :-

Consequent upon the representation dated 27.9.88 of the applicant, the matter was referred to the Ministry of Finance for opinion. The opinion communicated vide their F.No. C. 14012/15/88-Ad.II.B dated 23.1.89 is reproduced below :-

" As the interpretation of rule 9 of the CCS (Pension) Rules, 1972, given by CAT, Madras has not been accepted and the department has filed ~~his~~ ^{two} S.L.Ps. against the said interpretation before the Hon'ble Supreme Court in consultation with the Law Ministry and the Deptt. of Personnel, the contention of Shri Kureel does not merit favourable consideration at this stage till the outcome of the S.L.Ps. is known. You may, therefore, reject the representation dated 27.9.88 and take steps to complete the enquiry expeditiously." The Ministry's decision was duly communicated to the applicant on 3.2.89 under registered cover.

18. Para 6 (15) :-

Submissions made in para 17 above are reiterated. It is, however, further stated that the last sentence of this para is totally incorrect and misconceived. in as much as Rule 9 (2)(b)(ii) of the Pension Rules provide that disc. action should not be taken in respect of any event which took place during currency of service after 4 yrs. of retirement of an incumbent. In the instant case, there was no bar to proceed against the petitioner for a misconduct during the year 1978-79 because the charge-sheet was issued to him on 26.11.87 i.e. before he actually proceeded on retirement on 30.11.1987 (A/N).

19. Para 6 (16) :-

The contents of this para are denied. The proceedings initiated against him are covered by Rules and Regulations as detailed in the above paragraphs.



20. Para 6 (17) :-

It is stated that the petitioner has to blame himself for ^{his} non-cooperation in the enquiry proceedings. Once the petitioner cooperates with the Inquiry Officer, the proceedings would be completed expeditiously. And after conclusion of the disc. proceedings his pensionary benefits would be settled early. The Hon'ble Tribunal ^{in the affiancement} may issue necessary directives, to cooperate with the Inquiry proceedings.

21. Para 6 (18) :-

The Pensionary benefits will accrue to the petitioner subject to the outcome of the disciplinary proceedings which had been initiated against him prior to his retirement.

22. Para 6 (19) :-

It is stated that his representation was duly dealt with and the applicant was duly informed of the rejection by registered post on 3.2.89.

23. Para 6 (20) :-

Decision taken on the representation dated 27.9.88 was communicated to the applicant on 3.2.89 through registered post.

24. Para 6 (21) :-

It is submitted that the petitioner has filed a writ petition in the Lucknow Bench of Hon'ble Allahabad High Court on the same subject matter and prayed for the same relief as indicated in para 7 and 8 of the present application.

25. Para 9 to 12 :- Need no comments.

26. That it is respectfully submitted that the charge-sheet was served upon the applicant before his retirement on 31

30/12/88

the basis of mis-conduct under Rule 9 of CCS(Pension) Rules 1972. The disciplinary proceedings initiated against the applicant are well within the competence of the disciplinary authority in view of provisions of the Fundamental Rules and shall not be quashed as the same was undertaken under the provisions of Rule 11 of the CCS (CCA) Rules 1965. Besides the Govt. of India has filed two S.L.Ps. before the Hon'ble Supreme Court against the interpretation of Rule 9 of the CCS(Pension) Rules, 1972 as given by CAT., Madras.

27. That the grounds taken by applicant have been adequately dealt with in the foregoing paragraphs.

28. That in view of the facts indicated in the above paragraphs, the relief sought for in para 7 and Interim relief prayed in para 8 are not admissible. The application is devoid of merit both in fact and in law and is liable to be dismissed with costs.

ALLAHABAD
Lucknow

X S. A. K. M.

Dated :

Deponent.

Verification

I, the above named deponent do hereby verify that the contents of paras 1 of this affidavit are true to my personal knowledge and those of paras are believed by me to be true based on records and as per advise of my counsel. That nothing materials facts has been concealed and no part of it is false so help me God.

Signed and verified this the day of Feb. 1990.

X S. A. K. M.

Deponent.

I identify the deponent who has signed before me.

I, Sri Bhagwan Clark & Sri Shikhar Kumar, Sri Bhagwan Solemly affirmed by the deponent Dr. Dinesh Chandra, Advocate, High Court of Lucknow Bench.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him by the Govt. I. b. o. d.

Sl. No. 53/1468

Date 19/2/90

S. A. K. M.

In the Central Administrative Tribunal
(Circuit Bench at Lucknow)



Application No. 287(L)89

Ram Nath Kureel

... Applicant.

Versus

Union of India and others

... Respondents.

Supplementary Affidavit

.....

I, Ram Nath Kureel, aged about 62 years, son of Sri Rustam Kureel, resident of 568 Kailash Puri, Behind District Jail, Lucknow, the deponent, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the applicant



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in the above noted case and he is fully acquainted with all the facts of the case.

2. That the applicant retired from service on the post of Superintendent of Central Excise, Sardar Nagar, Range Gorakhpur.

3. That just before his retirement, the applicant was served with a memorandum of chargesheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 issued by the Collector, Central Excise, Allahabad.

4. That on the basis of the aforesaid chargesheet, all the retirement benefits of the applicant including the final pension, gratuity etc. has been withheld.

5. That the applicant filed the above noted case before Hon'ble Tribunal challenging the memorandum of chargesheet issued to him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that after the retirement of the applicant, the



Received

respondents have no jurisdiction to continue and conclude the disciplinary enquiry in respect to the alleged charges for purposes of Rule 9 of the Central Civil Services (Pension) Rules, 1972 for withholding or withdrawing the pension of the applicant, which could otherwise be done only for recovering any pecuniary loss caused to the Government.

6. That during the pendency of the case, the respondent No.2, namely, Collector, Central Excise, Allahabad has dropped the disciplinary proceedings initiated against the petitioner vide the aforesaid memorandum of chargesheet issued under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 dated 25.11.87 vide his order dated 27.8.90. The true copy of the aforesaid order is filed to this supplementary affidavit as Annexure No.A.



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7. That for the facts and the reasons stated above, the respondents are liable to be commanded to make full payment of the final pension payable to the

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applicant in accordance with pension rules, as well as full amount of gratuity payable to him after his retirement from service within the time allowed by this Hon'ble Tribunal alongwith an interest of 18 per cent over such amount till the date of actual payment of such amount.

Kureel

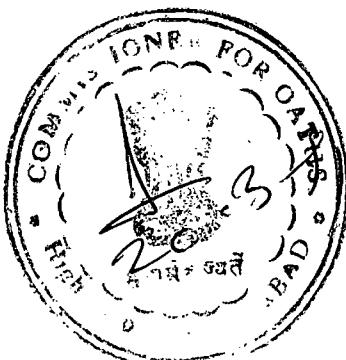
Deponent

Dated: Lucknow:

March 20, 1991.

Verification

I, Ram Nath Kureel, aged about 62 years, son of Sri Rustam Kureel, retired Superintendent of Central Excise, resident of 568, Kailash Puri, Behind District Jail, Alambagh, Lucknow, the deponent, do hereby verify that the contents of paragraphs 1 to 7 of this supplementary affidavit are true to my personal knowledge and belief, and that I have not suppressed any material fact.



Dated: Lucknow:

March 20, 1991.

Kureel
Deponent

PTO

Entre Central Administrative Tribunal
(Circuit Bench at Lucknow)

Ram Nath Kureel _____ Applicant

Union of India and others _____ Respondents

RTA

Annexure No A

1. CENTRAL EXCISE COLLECTORATE; ALLAHABAD;

RECORDED

ORDER:

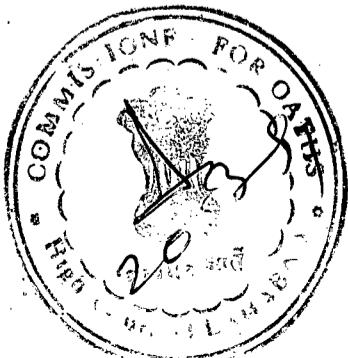
- (1) An appeal against this lies to the Member (Personnel), Central Board of Excise and Customs, New Delhi within 45 days from the date of receipt of this order.
- (2) A copy of the appeal so preferred by the Govt. servant should also be endorsed to the undersigned.

.....

Shri R.N. Kureel, Superintendent of Central Excise of this Collectorate (since retired on 30.11.87) was served with a Memorandum of charge sheet under rule 14 of the CCS (COM) Rules, 1965 vide Memorandum C.No.II(10)130-Comfl./87/1579-80, dated 25.11.87 on 26.11.87 i.e. prior to his retirement on 30.11.87 inter-alia on the following charges :-

- (i) That in the year 1977, he failed to seek prior permission from the prescribed authority with regard to purchase of a plot by his wife and also constructions of two rooms thereon with bathroom and kitchen.
- (ii) That the said Shri Kureel gave in 1979-80 a wrong intimation of the cost of construction of house by his wife Shri. Jagrani Kureel as Rs.20,000/- as against Rs.45,600/- determined by the CGO authorities later, on a reference made to them.
- (iii) That the said Shri Kureel falsely intimated in his letter C.No.I-GL-1/79/827, dated 10.9.79 that intimation

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regarding purchase of the plot and construction of two room thereon was submitted by him to Asstt. Collector, C.E., Lucknow vide his letter dated 4.5.77.

(iv) That he intimated vide his letter dated 10.9.79 that the house consisted of two room with bath and kitchen, but on actual verification done by Asstt. Collector, C.E., Lucknow the same was found to have 8 rooms. For this additional construction of six rooms, no permission was ever sought from the prescribed authority nor any intimation was given by him.

26. Regular proceedings laid down under rule 14 of CCS (CCA) Rules, 1965, were instituted against the said Shri Kureel which continued after the retirement of Shri Kureel in terms of rule 9 of CCS (Pension) Rules, 1972 and ultimately culminated in submission of an Inquiry Report on 1.8.90 by the Inquiry Officer Shri S.N. Singh, Asstt. Collector appointed by the disc. authority. The Inquiry Officer held the charges as not proved.

37. I have carefully gone through the records of the case, defence statement dated 18.10.89, prosecution brief dated 28.8.89 and Inquiry Report dated 1.8.90.

4. The presenting officer has given the arguments that all the four charges as mentioned herein above have been proved against the said Shri Kureel. With regard to the imputation (Article-I) on the alleged failure on the part of the charged officer to submit intimation to the prescribed authority relating to the purchase of a lot of land in the name of Shri Jagrati Kureel at the cost of Rs. 6,000/-, the presenting

(Contd. P. 3)



W. Kureel

officer has argued that the same is proved because the charged officer failed to produce any evidence to suggest that due intimation regarding the purchase of the plot was given to the prescribed authority. Further the then Asstt. Collector, C.E., Lucknow Shri S.D. Khare in the course of enquiry proceedings also could not confirm the receipt of the purported intimation dated 4.5.77 given by the charged officer. With regard to the imputation (Article-2) relating to the wrong intimation of cost of construction of house i.e. Rs.20,000/-, the presenting officer has argued that this article of charge is also proved against the charged officer on the strength of valuation certificate dated 6.5.86 showing cost of construction as Rs.45,600/- given by the Executive Engineer CPWD, Lucknow (Ex.P.2) whose validity has not been challenged by the defence.

With regard to the imputation (Article -3) relating to furnishing of wrong information to Collector, Central Excise, Allahabad by the said Shri Kureel vide his letter dated 10.9.79 to the effect that intimation with regard to purchase and construction of house thereon was given to Asstt. Collector, C.E., Lucknow, the presenting officer has argued that the same is proved because neither the charged officer has produced any evidence in token of showing receipt of his intimation letter dated 10.9.79 by the Department nor the then Asstt. Collector Shri S.D. Khare had during the course of his deposition in open enquiry on 23.5.89 confirmed the version of the charged officer. With regard to the fourth article of charge relating to furnishing of wrong information vide his letter dated 10.9.79 to the effect that only two room with bathroom and kitchen were constructed, the presenting officer has argued that this charge is also proved because on actual verification, eight rooms were found to have been constructed.

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5. The charged officer in his defence brief dated

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18.10.89 has argued as under :-

(a) The article no. 1 totally fails because as per provisions contained in CCS (Conduct) Rules, 1964, he was not required to obtain prior permission for acquiring of land and construction thereon by his spouse.

(b) The second article relating to furnishing of wrong intimation of cost of construction as Rs.20,000/- against Rs.45,600/- assessed by the Executive Engineer CPWD, Lucknow vide his letter dated 6.5.86, the charged officer in his defence has argued that this article of charge is also not proved in the face of the fact that the Executive Engineer was not produced during the course of open enquiry to prove his letter dated 6.5.86 (Ex.P. 2) therefore, the same has got no evidentiary value.

(c) With regard to the third article of charge about not giving intimation for acquiring of land and construction of house and also furnishing of wrong information to the Collector, the defence has argued that the same is also not proved because he personally handed over the intimation letter to the then Asstt. Collector, Shri S.D. Khare on 4.5.77 and that during 1977 he was an Inspector only, therefore, he was not required to submit any IPR to the prescribed authority under the conduct Rules.

(d) With regard to the charges contained in Article 4 to the effect that six additional rooms were constructed without prior permission the charged officer has argued that the same is also not proved because six rooms were constructed by his wife out of her 'STRIDHAN', personal savings and agricultural income, etc. The remaining two rooms were constructed by the charged officer himself out of his monthly

(Contd.P.....5)



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savings as per intimation given by him to the Collector, Central Excise, Allahabad vide his letter dated 19.6.81 which in turn was returned to him for re-submission in the prescribed form and the same was complied with by him vide his letter dated 21.12.81.

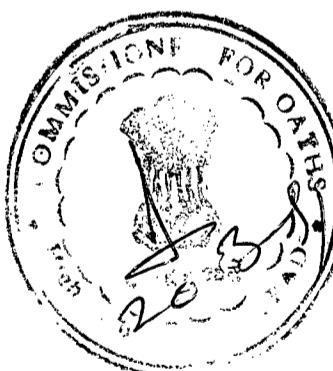
DISCUSSION AND FINDINGS:

6. I have carefully gone through the records of the case, prosecution brief, defence brief and the Enquiry Officer's report as stated above.

7. I find that the charges are confined merely to the effect that Shri R.N. Kureel, Supdt. failed to obtain prior permission from the prescribed authority before purchasing of the plot by his wife and undertaking construction of house thereon by her, that the cost of house was wrongly intimated as Rs.20,000/- as against Rs.45,600/- as per valuation certificate of Executive Engineer, CPWD, Lucknow and that he misrepresented facts to the Collector of Central Excise, Allahabad vide his letter dated 10.9.79 (Ex.P.1) and that 6 additional rooms were constructed without prior permission. The charged officer though effectively tried to disprove these allegations as contained in Articles II, III & IV with the help of his letters dated 19.6.81 (Ex.D-2), 7.12.81 (Ex.D-3), 21.12.81 (Ex.D-4) and 27.9.82 (Ex.D-6), yet he has not been able to effectively prove to the hilt that he actually submitted intimation dated 4.5.77 to the Asstt. Collector, C.E., Lucknow with regard to purchase of land by his wife Smt. Jagrani Kureel for Rs.6,000/- and construction of 2 rooms house with bathroom and kitchen thereon.

W.C. Kureel
This article of charge, however, is not sustainable when viewed in context of Govt. of India, Ministry of Home Affairs, Office Memorandum dated 25.8.59, which provides that if a spouse of Govt.

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servant acquires movable or immovable property out of her own funds in the form of 'STRIDHAN', etc, which is distinct from the earnings of a Govt. servant is not required to obtain permission in such cases. Further, the prosecution has also not been able to produce any evidence to suggest that Shri R.N. Kureel, acquired fund beyond his means which were utilised in the subject transaction/construction.

regards the allegations is that Shri Kureel wrongfully estimated the cost of construction as Rs.20,000/- through the valuation certificate submitted by the CPWD (Ex.P-2) showing the cost of construction as Rs.45,000/- with reference to the price of building material during the year 1978-80, I am inclined to agree with the findings of the Inquiry Officer given in his report dated 1.4.90 to the effect that valuation certificate, furnished by the CPWD, Lucknow is not sufficient to prove the allegations in article 2 inasmuch as the Executive Engineer has given the certificate straight away, without furnishing the details of covered/constructed areas, the description of the constructed numbers of rooms, bathroom and kitchen etc. The Inquiry Officer has also observed that the valuation certificate is not specific as to whether the valuation has been made in respect of two rooms or eight rooms. The Asstt. Collector, C.R., Lucknow in his letter dated 11.6.87 (Ex.P.10) has stated that the cost of construction shown by the Executive Engineer is also inclusive of six additional rooms and Shri Kureel has accounted for a sum of Rs.34,966/- invested by his wife out of her own funds. Viewed in this context, I concur with the findings of the Inquiry Officer and hold that the charges as contained in article 2 are not proved.

Moorthy
8. In view of the foregoing discussions, I

(Contd. P. 7)

hold that although none of the articles of charge levelled against the said Shri Kureel, Supdt. (now retd.) as contained in this office Memorandum C.No. II(10)130-Conf./87/1579-1580, dated 25-11-87 are proved, yet from the entire episode it transpires that the conduct of Shri Kureel so far as it relates to submission of purported intimation dated 4.5.77 to the Asstt. Collector, C.E., Lucknow with regard to purchase of a piece of land in Rs. 6,000/- by Smt. Jagrani wife of Shri Kureel and construction of two rooms thereon is concerned, is highly dubious because had this been a fact, then what was the necessity of submitting intimation to the Department when the purchase of a piece of land and construction of two room thereon was done by the spouse of Shri Kureel out of her own funds ? In the face of the arguments, now advanced by him in his defence dated 18.10.89 that he was not obliged to obtain/give prior permission or intimation in respect of the transaction entered into by his wife in terms of the provisions contained in Ministry of Home Affairs, Office Memorandum No. 25/18/59-Ests. (A), dated 28.8.59 and 11.9.78, it can be said that he was fully involved in the entire transaction. For this dubious conduct on his part, his conduct is liable to be censured. However, since Shri Kureel has retired from service, awarding of punishment of 'Censure' on him would have no effect at this juncture. Further in view of the foregoing discussions, I feel that in the entire episode Shri Kureel is neither found guilty of grave misconduct nor negligence on his part meriting the case to be referred to the Govt. for Presidential Orders for withholding of his pension in terms of Rule 9 of OS (Pension) Rules, 1972.



Kureel

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9. Under the circumstances, I am left with no other option but to drop the entire disc. proceedings against Shri R.N. Kureel, Supdt. (now retired) initiated against him by the Collector, Central Excise, Allahabad vide memorandum of charge referred to above in terms of provisions contained in the Govt. of India's instruction No. 10 appended below Rule 9. of the CCS (pension) Rules, 1972 (Swamy's compilation - corrected upto 1.6.85).

Dated 27/8/90
(R.K. TSWARI)
COLLECTOR

Shri R.N. Kureel,
Superintendent (Retired),
568-Kailash Puri, Behind District
Jail, Alambagh, LUCKNOW.

C. No. II(10)130-Confl./87/1071

Dated the 27th August, 1990

W.M. 27/8/90

