

Filed for
2
674

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Central Administrative Tribunal
Circuit Bench, Lucknow

Registration No.

77

of 198

92

Date of Filing 5.11.09

Date of Receipt by Post

Put up before Hon'ble Court on 7/11/09

APPLICANT (s)

(s)

G. L. Punvane

Deputy Registrar (JP/4)

RESPONDENT(s)

U.O.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?
4. Has the document, of authorisation, Vakalat-nama been filed ?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

yes

yes

yes

Two sets filed at pt.

yes

In person

yes vide B.D. Draft

No

yes

No

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ?
- (b) Defective ?
- (c) Wanting in Annexures
- Nos...../Pages Nos..... ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
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 ?
- (a) Concise ?
- (b) Under distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?
19. Whether all the remedies have been exhausted.

yes

yes

yes.

No.
 not petition No 1403/83 is pending
 against the Commission's decision
 order.
 No. Only in original
 copy of the petition.
 No

No

No

yes

N.A.

N.A.

yes

yes.

yes.

yes

yes.

Representation still not
 decided

Submitted before the Hon'ble Court for
 order.

OA No 77/89

12/4/90

Hon. Mr. P.S. Habib Mohammad, A.M.
Hon. Mr. J.P. Sharma, J.M.

(25)

Directed the records
so mentioned in C.M. Application
no 272/89 accepted ^{even} Item no-4
be placed before the Bench
at the time of final hearing.
Regarding Item no-4, it is noted
that no specific date and D.P.C.
has been given. So, hearing of
the regular petition and OA No. 77/89
be consolidated together. OA No. 77/89
has already been ordered to be decided
along with TA No 1136/87. Since in
OA No. 77/89, Civil Misc. Application
was moved by the Applicant for
Summoning certain paper relevant
for the decision of the application
of pensionary benefits and the
order having been passed today,
will take some time for the compliance
by the respondents for which 4 weeks
time has been allowed.

As such TA No 77/89 is
adjourned to 25/5/90.

J.M.

A.M.

sd

CM 244/90 (4)
Filed by Applicant for
some documents.
Submitted for order
along with TA 1136/87
21/5

77/89

PC

5.11.90

Hon'ble Mr. D.K. Agrawal, JM.
" Mr. M.Y. Priolkar - AM

Due to resolution of Bar
association, case is adjourned

to 23.11.90

23.11.90

case not reached. case is
adjourned to 13.12.90

D

B.O.C

OK

D
B.O.C

Case is ready for
hearing
H.P.N. 272/90
is also pending
S.F.O a per cent
about 25% 90
along with

22/11

23/11/90

Hon. Justice G. Nalhi, VC
Hon Mr. M.M. Snyl, AM

Learned counsel for the applicant
is present. List the case on 14.12.90
immediately after the admission cases.
Inform the JC for the reports.

D

VC

M K L
AM

Notice Issued

28-11-90

14.12.90

Hon'ble Mr. Justice K. Nalhi. VC
Hon'ble Mr. K. Obayya AM

OK

Notice was read by
the JC for the reports.
S.F.H

On the request of both parties
consider case is adjourned to 24.1.91
for hearing

L
11/12

TA 1136/97/121 has
been decided on 14/12/97

AM

VC

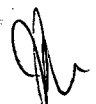
4.6.91 -

Hon. Mr. Justice K. Math, VC
Hon. Mr. K. Obayya AM

(A2)

On the request of Sri
Ashok. Mohle Counsel for applicant
case is adjourned to 2.8.91
for hearing.


AM.


VC

2

2.8.91

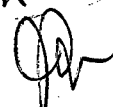
No. 8.11.91 adj to 16.8.91
2

16/8/91

Hon. Mr. Justice K. Math, VC
Hon. Mr. K. Obayya, AM.

The applicant is present in
person but his counsel is not present
due to strike call by the UP Bar
Council. Sri Ashok Mohle
is present for the respondents. List
the case for hearing on 20/9/91.


AM.


VC.

2

(148)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

O.A.No.77 of 1989.

G.I.Punvani Applicant.

Versus

Union of India & 2 others Respondents.

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr.A.B.Gorthi, A.M.

(By Hon'ble Mr.A.B.Gorthi, A.M.)

In this application, the prayer of the applicant essentially is for the grant of pensionary benefits to him on his retirement from the service on 31.1.83. Amongst the other reliefs sought by him are his claims that he be deemed to be a permanent employee^{and} that the period of his suspension from duty from 6.6.75^{to} to 18.8.82 be treated as on duty.

2. The applicant who joined service under the Government of India in the Ministry of Rehabilitation on 6.3.48, was retrenched on 31.3.50. He then joined Rehabilitation Department of Uttar Pradesh on 16.11.50 and with its integration with the Ministry of Rehabilitation, became Managing Director, Acquired Evacuee Property with effect from 28.10.55. He was also commissioned^{in the} Territorial Army (T.A.) as a[^] Second Lieutenant on 18.3.55. While he was embodied with the Territorial Army on being relieved by the Ministry of Rehabilitation with lien of his Civil post with effect from 11.2.60, his lien had to be terminated with effect from 1.5.61 as the post was abolished. He was, however, selected by the UPSC for the post of Assistant Controller of Imports & Exports, Ministry of Commerce which post he joined on 15.7.63 but was relieved on 13.8.63 to enable him to again

AA

join the Territorial Army. He remained in the Territorial Army till 31.3.69. Thus, he served in the Territorial Army during 1962 and 1965 operations against China and Pakistan respectively. On release from the Territorial Army, he resumed his Civil post of Asstt. Controller of Imports and Exports on 9.4.69 at Kanpur. The applicant was given ^{quasi-}permanent status with effect from 15.7.66 and thus became eligible for confirmation as a permanent employee with effect from 15.7.69 but he was denied the same. In a seniority list published as on 19.11.79, the applicant was shown as having been appointed on a 'regular basis' as Controller w.e.f. 15.7.63. It was, however, noted in the remarks column of the seniority list that the recommendations for his appointment in Grade III was kept in sealed cover.

3. A CBI enquiry started against the applicant and a few others of his department in 1971 for alleged violation of import policy in the issue of import licenses. In 1972, the applicant was transferred to Madras, but he did not join there on the ground of illness for which he took medical leave from 17.7.72 to 11.8.74. Thereafter, he reported for duty at Bombay as Controller of Imports and Exports. The CBI launched criminal prosecution against the applicant and his two associates. The applicant was suspended w.e.f. 5.6.75 although the others were not. The applicant approached the Lucknow Bench of the Allahabad High Court which vide its judgment dated 25.5.84 quashed the charges and criminal proceedings.

4. In the mean time, departmental disciplinary proceedings were instituted against the applicant

AP

on 16.4.80 and he was consequently awarded the penalty of compulso~~ri~~ly retirement vide order dated 18.8.82. The applicant challenged the same before this Tribunal which found that there was no justification to hold the applicant guilty of the charges and accordingly set aside the penalty with the direction to the respondents to consider the petitioner to have continued in service till his age of superannuation vide its judgment dated 14.12.90. The date of birth of applicant being 19.1.25, he stood retired from service w.e.f. 31.1.83.

5. The stand taken by the respondents is somewhat perplexing. They contend that they have no official records from which they could either admit or deny the applicant's claim of past service under the Ministry of Rehabilitation. There does not seem to be any ^{dispute} ~~department~~ with regard to the service of the applicant in the Territorial Army as he was commissioned therein as a Second Lieutenant on 18.3.55 and was promoted as a Lieutenant on 18.3.58. It is also apparent that he continued to serve in the Territorial Army upto 14.7.63. It is also admitted that he joined as Assistant Controller of Imports & Exports on 15.7.63, that he was spared to again join the Territorial Army from 14.8.63 to 31.3.69.

6. As regards the claim of the applicant for equal treatment with released Army Officers in the matter of seniority, the respondents clarified that the instructions pertained only to released 'Emergency Commissioned Officers' but not to Territorial Army Officers. They have further contended that the suspension of the applicant, the departmental disciplinary proceedings etc. were all done bonafide and there was no question of any malice. On the

AP1

issue of grant of permanent status to the applicant, the respondents contended that his case was considered by the Departmental Promotion Committee but was not cleared from the vigilance angle, presumably because of the CBI enquiry and the subsequent criminal prosecution of the applicant. As regards the grant of pension, the respondents claim that the applicant is not entitled to pension because he was only a temporary employee and had not rendered 20 years of service. Moreover, he was compulsorily retired and hence he could not claim any pension.

7. At the outset it may be stated that consequent to the judgment of the Lucknow Bench of the Allahabad High Court quashing the criminal proceedings against the applicant and the judgment of the Tribunal setting aside his compulsory retirement, both the judgments having been pronounced on merits, there can be no dispute that firstly the period of suspension with effect from 5.6.75 will have to be treated as on duty and secondly the applicant will be deemed to have retired on attaining the age of superannuation on 31.1.83 and not on the date when he was compulsorily retired. As regards the denial of pension to the applicant, we are not convinced that he is not entitled for the same. In view of the help^{less}ness of the respondents ⁴ either to affirm or to deny the applicant's statement of his previous service with the Ministry of Rehabilitation, the particulars thereof as given by the applicant in his affidavit will have to be accepted. There can be no denial of the fact that the applicant was commissioned in the Territorial Army on 18.3.55. The full period of his embodied service will have to be counted as a regular service

Am

in Government of India. Thereafter, the applicant's service in the Central Trade Service under the Chief Controller of Imports & Exports from the date of his joining the service on 15.7.63 will also have to be treated as qualifying service for pension, mainly for the following reasons:-

i) He was appointed as Controller on a 'regular basis' as can be seen from the seniority list published on 7.7.81. The respondents' contention that notwithstanding what was stated in the seniority list, he was a temporary servant, does not appear to reflect the correct position. Temporary service as defined in the Central Civil Services (Temporary Service) Rules, 1965, Rule 2(d), means 'the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India'. There could be no doubt that the post against which he was appointed in the Central Trade Service was a permanent post and that he was appointed not on a temporary basis but on a regular basis.

ii) The respondents themselves contended that the case of the applicant was considered by the Departmental Promotion Committee for confirmation but was kept in a sealed cover because of the vigilance case. The said vigilance case against him having ultimately collapsed, there can be no impediment to give effect to the DPC recommendation. In any case, in view of the applicant's admission that there was nothing adverse in his confidential report and the respondents' omission to show that, apart from vigilance enquiry, there was anything adverse against the applicant, there can be no justification to deny the applicant the status of a confirmed permanent employee.*

iii) Rule 13 of the Central Civil Services (Pension) Rules, 1972 lays down that 'qualifying service' of a Government servant shall commence from the date

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(113)

he takes charge of the post to which he is first appointed either substantially or in officiating or in temporary capacity, provided that officiating or temporary service is followed without any interruption by substantive appointment in the same or another service or post. The term 'qualifying service' is defined in Rule 3(q) of the said Pension Rules as meaning 'service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under these rules'. Rule 32 of the said Rules further provides for verification of qualifying service and accordingly it is for the various departments of the Government where the applicant had allegedly served, to carry out such verification under Sub-Rule (2) of Rule 32. In view of the observations made in the preceeding sub-paragraph, that the applicant should have been confirmed as a permanent employee when the criminal/disciplinary proceedings had ended in his favour, the respondents are not justified in taking the technical plea, which is rather untenable, that the service rendered by the applicant in the Central Trade Service w.e.f. 15.7.63 to 31.1.83 does not come within the purview of 'qualifying service'.

- iv) The period of suspension w.e.f. 5.6.75 which the respondents tried to show as not qualifying for pension, will have to be treated as service for the purpose of pension in view of the fact that both the criminal proceedings as well as the disciplinary proceeding against the applicant terminated in his favour.

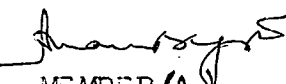
8. We may here advert to certain additional reliefs sought by the applicant. He claimed payment on account of 23 TA/DA bills for his journeys from Bombay to Lucknow in connection with the CBI case. He also claimed compensation for harassment and torture that he suffered on account of departmental disciplinary proceedings. As regards his T.A/DA bills, he should approach the authority concerned who will examine whether he is or is not entitled to

AM

claim the same as per rules. Hence we would not like to entertain this plea, more so, when we are not even sure of the genuineness of the claim. His claim for special compensation for harassment also deserves to be rejected outright as the record does not show that anyone concerned with the departmental enquiry had acted maliciously against him.

9. In view of the above, the respondents are hereby directed firstly to reckon the period of suspension of the applicant with effect from 5.6.75 towards his service and secondly to deem the applicant as having been confirmed as a permanent ^{of the Central Trade Service} employee from a date on which his junior was so confirmed. The respondents shall then take into consideration the details of the past service of the applicant under the Government of India in accordance with the Central Civil Services (Pension) Rules, 1972 and accordingly determine his pensionary benefits and pay the same to him together ^{with} interest thereon at the rate of 10%. The respondents shall comply with the above orders within six months from the date of communication of this judgment.

10. The application is allowed in the above terms without any order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: February 4, 1992
(ug)

Central Administrative Tribunal
Lucknow Bench

Cause Title 0477/89 of 1993

Name of the Parties

Applicant

Versus

Respondents.

Part A : P.C

Sl. No.	Description of documents	Page
1.	Check List	A1 - A2
2.	Order Sheet.	A3 - A7
3.	Judgement. dt 4-2-92	A8 - A14
4.	Petition Copy.	A15 - A31
5.	Annexure.	A32 - A86
6.	Power.	
7.	Counter Affidavit.	A87 - A162
8.	Rejoinder Affidavit.	A163 - A236
9.	S. C. A.	A237 - A260
10.	S. R. A.	A261 - A279
11.	B - File	A280 - A283
12.	C - A	A284 - A285
13.	Reply to C.A	A286 - A295
14.	M.O. 262/91	A296 - A302
15.	Written Arguments (Opp)	A303 - A327
	Written Arguments (Applicant)	
	B - File	

A1 - 288

Part of which B/C needed out / destroyed

C - File

S. C. A.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH.

115

or 7/09/85

G.I.PUNVANI..

VS

APPLICANT.

UNION OF INDIA, THROUGH THE SECRETARY
MINISTRY OF COMMERCE AND OTHERS.....

RESPONDENTS

Application

PAPER BOOK.

1. to 17.
page.

1. Annexure-A-1. Letter dt.1.4.1985 against which appeal filed as inspite of directions to pay pension, pension still not received since 18.8.1982, also malaciously stated that applicant not permanent. 18.
2. " A-2 JCCI&E, Bombay letter dt.22.2.1985, seeking directions for payment of pension, etc. 19.
3. " A-3. Telex message by JCCI&E, Bombay dt.5.1.1987 to CCI&E, New Delhi to send instructions for payment of pension, etc. 20
4. " A-4. Applicant's letter dt.5.10.1988 to Minister, Personnel, Public grievances & Pension, reminding that pension and other benefits still not received, also copy to, Secretary, Ministry of Commerce, to order immediate payment of pension & decide appeal. 21.
5. " A-5. Order dt.20.10.1970 declaring applicant Q.P. wef 15.7.1966. 22.
6. " A-6. Seniority list of Central Trade Service dt. 27.6.1981 issued by CCI&E, New Delhi, showing seniority wef 19.11.1979, applicants srl.no.20 with remarks, that D.P.C's recommendation in sealed envelope. U.P.S.C. Has shown applicant as regular. 23.
7. " A-7. Order of applicant's suspension dt.2.6.1975 issued on the plea that a case in respect of criminal offence is under trial. 25.
8. " A-7(a) Order dt.11.6.1976 cancelling Premature retirement order of applicant, but wrongly ordering continuance of suspension, without issuing fresh suspension order. 26.
9. " A- 8. Order dt.18.8.1982 of CCI&E, New Delhi, imposing penalty of Compulsory Retirement on alleged charge of which exonerated by Inquiry Officer vide report dt.2.2.1981, para 4.14 refers. 27-28
10. " A-9. Types of cases which may merit imposing Major Penalty. 29.
11. " A-10. Order of Ministry of Commerce dt 9.10.1985, setting aside penalty imposed against 2 assistants, based on Orders of Hon'ble High Court(Lucknow Bench) dt.25.5.84. 30.
12. " A-11 Departmental Inquiry report dt.2.2.1981(21 pages) exonerated applicant vide para.4.14(page.11 refers) 31/ 51
13. " A-12 Orders of Hon'ble High Court dt.25.5.1984 acquitting applicant and his 2 assistants, quashing all charges framed & proceedings of 8 crl cases (23+2 pages). 52/79

G.I. Punvani
APPLICANT.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH.

Central Administrative Tribunal

Cum

Date of

Date of

5/4/89
Put up before Honble court on 7/4/89
Ramesh Chandra
APPLICANT.

G.I.PUNVANI, 5, Mall Avenue, Lucknow....

and

1. UNION OF INDIA, through the SECRETARY,
MINISTRY OF COMMERCE, GOVT. OF INDIA,
UDYOG BHAWAN, NEW DELHI-110001

2. CHIEF CONTROLLER OF IMPORTS & EXPORTS,
MINISTRY OF COMMERCE, UDYOG BHAWAN,
NEW DELHI-110001.

3. JOINT CHIEF CONTROLLER OF IMPORTS & EXPORTS,
CENTRAL GOVT. OFFICES, NEW MARINE LINES,
BOMBAY- 400020.

... RESPONDENTS.

DETAILS OF APPLICATION :

1. Particulars of the applicant :

- (i) Name of the applicant . G.I.PUNVANI. (Retd)
(ii) Name of Father . Late Dr.IDANMAL PUNVANI.
(iii) Age of the applicant . 63 years. (19-1-1925)
(iv) Designation & particulars .. Controller of Imports &
of office in which was last Exports (Retd),
employed before ceasing to JCCI&E, BOMBAY.
be in service..
(v) Office address. Office of JCCI&E,
C.G.O, NEW MARINE LINES,
BOMBAY-400020.
(iv) Address for service of notices. AS MENTIONED AGAINST
RESPONDENTS.

2. Particulars of respondents.

- (i) Name of the respondents: As mentioned in array of
respondents.
(ii) Name of father -----do-----
(iii) Age of the respondents -----do-----
(iv) Designation and particulars -----do-----
of office in which employed.
(v) Office address. -----do-----
(iv) Address for service of notice. -----do-----

3. Particulars of the order against which application is made.

- (i) Order NO... with reference Chief Controllers No.6/698/
to Annexure.. 62/-Adm(G)/1667 dt.1.4.85
to JCCI&E, Bombay, to finalise
Pension case of Applicant & other
Pensionary benefits (Annexure-A 1
in reply to JCCI&E, Bombay NO. EST
PEN/GO/GIP/7264 dt.22-2-85 (Annex
ure- A 2).

Annex-A-1.

Annex-A-2.

- (ii) Date.

1.4.1985 and subsequent letters
from CCI&E, New Delhi and JCCI&E,
Bombay.

Filed today
Noted date
7-4-89
Ramesh Chandra

Ramesh Chandra

Letters dt. 7.10.85, 14.2.86, 21.5.86 intimating that case for settlement of pensionary benefits is still under active consideration with Ministry of Commerce, New Delhi as intimated by the Chief Controller of Imports & Exports. Further communication will follow on receipt of reply from the said authority.

Even no decision sent on Telex message dt. 5.1.1987 (Annexure A-3) sent by Jt. Chief Controller of Imports & Exports to Chief Controller, New Delhi. There after sent letters to Minister of Personnel, Public Grievances & PENSION letters dt. 13.2.86, 14.11.86 and 5.10.88 (Annexure A-4), but still neither any pension has been received nor even any acknowledgement has been received.

It is more than 6½ years but no decision has been sent for payment of pension and other retirement benefits although retired wef 18.8.1982. Till 5.1.87 (Annexure A-3) at least letters were acknowledged, but now even no letter is being replied.

(iii) Passed by..

(iv) Subject in brief...

Applicant was maliciously Compulsarily retired wef 18.8.1982, whereafter Pension papers were received for completion, which were duly completed and sent dt. 14.2.1983. Then letter dt. 27.8.84 was received from JCCI&E, Bombay that particulars of past service were being collected. Hence complete details of past service from 6.3.194 to 18.8.1982 were sent deposed in an affidavit and sent to CCI&E, New Delhi and JCCI&E, Bombay on 14.9.1984, to which the CCI&E, New Delhi directed JCCI&E, Bombay dt. 1.4.1985 (Annexure to finalise pension and other pensionary benefits as due to Applicant, but maliciously applicant is being harassed by NON PAYMENT of pension and retirement benefits.

4. Jurisdiction of the Tribunal.

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

5. Limitation.

The applicant further declares, that the application the limitation prescribed in Section 21 of the Adminis

Annex-A-3.

Annex-A-4.

Annex-A-3.

Annex-A-1.

Tribunals Act, 1985.

6. Facts of the case.

- (a) That the applicant due to partition of the country migrated from Pakistan and after coming to India was selected by the Ministry of Rehabilitation, Government of India and joined as Deputy Camp Commandant on 6.3.1948 at Ahmedabad, and worked till 31.3.1950 when he was retrenched.
- (b) Thereafter he came to Uttar Pradesh and was selected as Senior Inspector, Rehabilitation Department and joined at Dehradun on 16.11.1950. That due to his good work and meritorious record, applicant was promoted as Assistant Custodian of Evacuee Properties w.e.f. 9.8.1951 and worked in that capacity till 27.10.1955. His services were integrated by Government of India in the Ministry of Rehabilitation vide Gazette Notification no.27/10/55-5111 and he was designated as Managing Officer, Acquired Evacuee Properties w.e.f. 28.10.55.
- (c) That having patriotic spirit and wanting to serve the country applicant applied for Territorial Army Commission and was selected as an Officer and Commissioned as 2nd Lieutenant wef 18.3.1955. That due to exigencies of service and threat from Pakistan he was embodied for active service and relieved by Rehabilitation Ministry with lien on his Civil Post wef. 11.2.1960. However while serving the Army, unfortunately in spite of lien on Civil Post, his services were terminated as Managing Officer w.e.f. 1.5.1961.
- (d) That retrenched officers of Ministry of Rehabilitation were to be absorbed in other jobs of Government of India, thus the applicant was called by U.P.S.C. for interview for post of Assistant Controller of Imports & Exports, Ministry of Commerce and was selected vide no.1/1041/61-R(H) dated 29.9.1962. The applicant was relieved by Army to join this Civil job to keep his lien and he joined on 15.7.1963 in the Office of Joint Chief Controller of Imports & Exports and was relieved on 13.8.1963 to again join the Army.
- (e) That the applicant served the Army from 11.2.1960 to 31.3.1969

I
31-5-53
11-5-53

72-11-53

C.F.

1-5-61

12-7-61

Signature

in both Operations of War i.e. Chinese Aggression 1962 and Pakistan aggression 1965 and for his meritorious services rendered to Territorial Army, he has been awarded a Silver Medal with cash award of Rs.2500/- by Govt. of U.P.

(f) That on release from Territorial Army on 31.3.1969, the applicant joined as Assistant Controller of Imports & Exports on 9.4.1969 at Kanpur.

(g) That applicant has not been given the benefit of Army Service in matter of Seniority, although this benefit has been given to other Army Officers who joined this organisation, in terms of Ministry of Home Affairs instructions, thus DISCRIMINATION has been shown in case of applicant.

(h) That the applicant was granted QUASI PERMANENT status w.e.f. 15.7.1966 vide CCI&E, New Delhi letter no.19(13)/68-Admn(A) 2569 dated 20.10.1970 enclosed as Annexure A-5.

(i) That as per Govt. of India rules the applicant became eligible on 15.7.1969 to become permanent in his civil post of Controller of Imports & Exports, hence he was asked vide Dy. Chief Controller of Imports & Exports, Kanpur Office Memorandum no. DCCI&E/1(142)/Kan-Admn dt.28.4.1972 to furnish a certificate that he was not holding lien on any permanent post in any other office and this certificate was furnished by applicant vide his letter dt.30.4.1972.

(j) That applicant from date of joining on 9.4.1969 was being given step motherly treatment as he was not given benefit of Army Service while considering his seniority, whereas this benefit has been given to other Army Officers who joined this organisation which is clear from Seniority Lists, applicant was entitled to benefit of double service rendered during Emergency 1962 Chinese Aggression to 1965 Pakistan aggression as has been allowed to other Army Officers in this Organisation.

(k) That having furnished the certificate that applicant was not holding lien on any permanent post in any other office, the applicant was entitled to be declared permanent w.e.f. 15.7.1969 as he never has been communicated any adverse remarks and it is malicious that Chief Controller has shown in his letter dt.1.4.1985 (Annexure A-1)

Annx-A-5

Annx. A-1

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that applicant was not holding a permanent post in the organisation, whereas the applicant was permanent as his junior had been declared permanent and since never any adverse entry had been communicated and he was not holding lien on any other permanent post hence under no Rule or Law applicant could be denied permanency. Even the D.P.C. considered applicant in the new service known as Central Trade Service out of existing Controllers and he has been selected as Assistant Chief Controller and has been placed at Srl. no.20 in the Seniority list circulated by Chief Controller vide letter no.11/4/81-Admn(G)/3827 dt.27.6.1981 and U.P.S.C. has shown him as REGULAR Controller vide their letter no.F.11/21/77-AJIV Dt.2.9.1979, inspite of numerous requests to open the sealed cover, there has been no response, the seniority list is enclosed as Annexure-A-6. Thus the applicant is permanent Controller of Imports & Exports w.e.f. 15.7.1969 and permanent Assistant Chief Controller w.e.f. 19.11.1979, maliciously he is being termed as not permanent, when in fact he is permanent.

(1) That to keep the applicant in mental tension, an inquiry was started by the C.B.I., New Delhi, CIA-11 branch during December 1971, not on any oral or written complaint by of applicant's department, but directly by C.B.I. on some alleged source information, although the inquiry pertained to so called violation of Import policy in issue of Import Licences and C.B.I. was sitting in Judgement and interpretations of Import Policy ignoring the Import Policy makers.

(m) That to further harass the applicant, he was transferred from Kanpur to Madras vide order no.6/698/62.Admn(G) dt.15.7.1972 against all norms and convention, ^{as} up to rank of Controllers no one would be transferred, but for some corruption charges or some indiscipline, which was not the case of applicant.

(n) That the applicant had absolutely unblemished record, but with this malicious shock of transfer, he fell ill with hypertension due to maltreatment by department and was on medical leave w.e.f. 17.7.1972 to 11.8.1974.

(o) That the transfer order to Madras was cancelled and applicant

Annex-A-6.

7/2/81

17-7-72
11-8-74

[Signature]

was transferred to Bombay office vide orders dt.9.8.1974 and he joined as Controller of Imports & Exports w.e.f. 12.8.1974 in the Office of Jt. Chief Controller of Imports & Exports. However applicant's harassment was continued as he was shifted from section to section almost every two months and loaded with work of two or more sections instead of one section.

(p) That the harassment was being metted out to keep applicant under tension all the time so that he could not even claim his seniority on the basis of his Army service during Emergency, which benefit has been allowed to other Army officers, who joined this organisation after release from Army. The frivolous C.B.I. inquiry was allowed to continue from ^{8th} December 1971 to April 1975 and eventually the C.B.I. prosecuted the applicant without getting any Sanction for his prosecution from Disciplinary Authority i.e. Chief Controller of Imports & Exports, New Delhi.

(q) That the prosecutions were unwarranted, without Sanction for prosecution accorded by Competent Authority, the C.B.I. sitting in Judgement over Import Policy makers and by formulating and interpreting Import Policy against definition of Actual User as mentioned in Import Policy Hand Book of Rules, 1969, filed false 8 cases, besides also ignoring the vital fact that Import Licences under the scheme Free Licensing Scheme of Spare Parts of certain essential machinery mentioned in Appendix-32 from Rupee Payment Area had already been issued by predecessor of applicant Shri. Budhran and that applicant only ordered issue of Import Licences under this scheme after getting clear written orders dt.13.5.1969 from Head of Office Shri. O.N. Anand, Dy. Chief Controller of Imports & Exports, Kanpur.

(R) That further ~~discrimination~~ malicious treatment was metted out in case of applicant that although C.B.I. had prosecuted applicant along with his two assistants Sarva Shri. K.C. Bhatia and J.K. Jain, but by showing DISCRIMINATION only applicant was suspended w.e.f. 5.6.1975 on the plea that a case against Sri. G.I. Punvani, Controller of Imports & Exports in respect of a criminal offence is under trial whereas in fact cases were filed against applicant, his two assistants along with owners of firms. The suspension order dt.2.6.1975 is

Annex-A-7.is enclosed as Annexure no.A-7.

(s) That further crystal clear malice is clear from the fact that applicant was prematurely retired by Chief Controller vide order no.8/2/75-Admn(G) Part-II dt.12.12.1975 on the plea that he had attained the age of 50 years. These arbitrary, mala fide orders were challenged in Writ petition no.1502 of 1976 in Lucknow Bench and realising that orders were wrongly passed, the Chief Controller cancelled his orders vide his orders dt.11.6.1976:-

"The Chief Controller of Imports & Exports is pleased to direct that the order No.8/2/75-Admn(G) dt.12.12.1975 retiring Sri G.I.Punvani from service shall be treated as cancelled. Sri Punvani was under suspension at the time of premature retirement and as such will continue to remain under suspension "

That as per CCS(C&A) Rules 1965 and Law of Suspension, since the applicant was prematurely retired, then the order of suspension must a fortiori come to an end and on cancellation of premature retirement fresh suspension orders were to be issued but orders of continuance of suspension were illegal, once the relationship of master and servant had ceased. The Hon'ble Supreme court has held this view also refer "(1974) 4 SCC-396 " = AIR. 1974 S.C.1281, H.L.Mehra v Union of India hence the continued suspension was illegal, but maliciously the suspension was deemed to have continued till retirement.

(t) That further crystal clear malice is borne out of the fact that although criminal prosecution in 8 cases was continuing but in violation of CCS(CCA) Rules, 1965 simultaneously a Departmental Inquiry was ordered vide no.1/72/79-Vig/804 dt.27.6.1980 against applicant and his 2 assistants on absolutely same identical alleged charges that 13 licences had been issued in violation of Import Policy as contained in paras 18, 19 and 21 of Import Policy Red Book for April 69 to March 1970(A.M.70). Rule 14 of CCS(CCA) Rules, 1965 lays down that departmental inquiry may precede prosecution or be held after prosecution and this is also confirmed in Govt. of India's instructions vide M.H.A. O.M.No.F-39/30/54-Ests dt.7.6.1955 and no.39/8/64-Ests(A) dt.4.9.196 that Departmental Inquiry should not be held simultaneously on same identical facts or allegations as the Inquiry Officer cannot sit in Judgment against Judicial Orders.

(u) That most vital malice of Chief Controller is borne out of the fact that the alleged charges on which Departmental Inquiry was ordered and is also mentioned in Inquiry report dt.2.2.1981 KM in para 4.2 " In the statement of imputations for article of charge there is a mention that relevant provisions of Import Policy required to be followed by Shri Punvani for having issued the 13 licences were given in paras 18,19 and 21 of the Red Book of M-70 "

and the Inquiry Officer has completely EXONERATED the applicant of the article of charge vide his concluding para 4.14 of his report para 4.14."As discussed before that all the applications considered by Shri Punvani were for Imports from Rupee payment areas, as such paras 18,19 and 21 of the Import Policy Book at Ex-S.1 were not applicable in these cases and actions on the part of Shri Punvani in issuing licences in the 13 cases did not amount to violation of Import policy during April 1969 to March 1970 as given in paras 18,19 and 21 of the Import Policy Book ".

but the Chief Controller being disciplinary authority has imposed major penalty of COMPULSORY RETIREMENT on applicant as also penalties on his 2 assistants on the charge as mentioned in the article of charge inspite of complete EXONERATION from the alleged article of charge vide his order no.1/72/79-Vig/1085 dt.18.8.1982 enclosed as Annexure no.A-8, Compulsory retiring applicant wef. 18.8.1982, also in violation of Rule.14 of CCS(CCA) Rules, 1965, mentioning the Type of cases which may merit action for imposing one of the major penalties, copy is enclosed as Annexure no.A-9. Thus the Chief Controller has imposed major penalty of compulsory retirement on applicant who was Exonerated of charge as mentioned in articles of charge, which charge only was being inquired by the Inquiry Officer, who could not go beyond the alleged charge as also the Chief Controller has imposed major penalty in utter violation of Rule 14 of CCS(CCA) Rules because of malice borne against the applicant. The penalty imposed thus is illegal and malacious.

(v) That compulsory retirement does not amount to penalty within Rule 11 of CCS(CCA) Rules and it involves no civil consequences as has also been held by Hon'ble Supreme Court in Union of India v J.N.Singha, AIR,1971-S.C-42, and accordingly the department sent

Annx-A-8.

Annx.A-9.

papers to claim pension vide no. ESTT/PEN/GO/GIP/1863 dt.14.1.1983 and all necessary forms duly completed were sent to JCCI&E, Bombay vide registered A.D.no.4732 dt.14.2.1983. Thereafter the applicant even sent full particulars of his complete service particulars wef.6.3.1948 Through an affidavit dt.13.9.1984 to the Chief Controller, New Delhi and to Jt. Chief Controller, (JCCI&E), Bombay in reply to his letter NO. ESTT/PEN/GO/GIP/5863 dt.27.4.1984 through which service particulars prior to 9.4.1969 were asked for.

Ann. A-1

(w) That the Chief Controller vide his letter no.6/X 698/62-Admn(G)/1667 dt.1.4.1985 accepted the total service of applicant from 6.3.1948 to 18.8.1982 and intimated the JCCI&E, Bombay that at the time of compulsory retirement the applicant was not holding any permanent post in the organisation but was Quasi Permanent wef.15.7.1966, hence his pension may be finalised in terms of instructions contained in Govt. of India, Deptt. of Personnel & Administrative Reforms, O.M.No. 38(16)-Pension Unit/80 dt.20.12.1980.

(x) That thereafter the applicant personally visited Bombay office from 23.4.85 to 29.4.1985 but even his service record was not completed to finalise his pension case.

(Y) That in the meantime the Honble High Court (Lucknow Bench) quashed all the charges framed in 8 criminal cases pending before Special Judge Anti-Corruption (Central) as also all the proceedings vide order dt.25.5.1985 in Crl. Misc. Case No's 1202 of 1981 and 576, 577, 578, 579, 580, 581 and 582 of 1982 and honourably acquitted the applicant and others on merits holding that all import licences for Spare parts of certain essential machineries from Rupee payment area in terms of Para 78 of Import Policy Book known as Red Book April 69 to March 70, had been correctly issued in accordance with existing Import Policy.

(Z) That in view of above orders dt.25.5.1985 acquitting applicant and others on merits, the Suspension order which was made on the ground that criminal offence is under trial, stood automatically revoked in accordance CCS(CCA) Rules as also principles laid down by Hon'ble Supreme Court refer (1980) 3 SLR-220-Sunder Lal v State of Rajasthan

(Za) That after orders by Hon'ble High Court dt.25.5.1985, the applicant kept reminding the Chief Controller, Jt. Chief Controller, Bombay and the

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Secretary, Ministry of Commerce as also Minister of Personnel, Public Grievances & Pensions to order payment of Pension, other consequential benefits, increments as due from 2.1.1973 = Rs.1120/-, from 1.1.74 = Rs.1160/-, 10.1.1975 = Rs.1200/- maximum in the scale 650-30-740-35-810 EB-35-880-40-1000 EB-40-1200, thereafter in Sm. Scale Rs.1100-50-1600, TA/DA of 24 pending bills from May 1975 to 18.8.1982 for the journeys performed in attending Court of Spl. Judge Anti-Corruption(Central), Lucknow as also Departmental Inquiry Officer at New Delhi from Bombay, the Headquarters of applicant during suspension (which were not paid for want of funds, as per remarks in the file) and other benefits as due. The Chief Controller intimated vide his letter no.6/698/62-Admn(G)/1024 dt.7.10.1985 that case for pension is under consideration with Ministry of Commerce and communication will be sent to JCCI&E, Bombay as and when decision is arrived at. The JCCI&E, Bombay vide his letter no. ESTT/PEN/GO/GIP/2366 dt.14.2.1986 intimated that matter is still under consideration with Chief Controller and vide letter dt.21.5.1986 intimated that case for settlement of pensionary benefit is still under active consideration with Ministry of Commerce, thereafter JCCI&E, Bombay sent Telex dt.5.1.1987 (Annexure A-3). The applicant wrote letter dt.13.2.86, 14.11.86 and these were forwarded to Chief Controller by Grievances & Pensions Ministry dt.11.3.86 and 18.1.87 but no decision was ever received, hence letter dt.5.10.88 was sent to this Ministry again but no acknowledgement has even been received, hence this case.

Annex-A-3

Annex-A-4.

Annex-A-8

W.P.1403/83
still pending

(Ab) That on receipt of Compulsory retirement orders dt.18.8.1982 (Annexure-A-8) Immediately an appeal was filed with the Secretary, Ministry of Commerce dt.25.9.1982 as also Writ Petition no.1403/83 on 10.3.1983 before (Lucknow Bench) on which the following orders were passed "List in the week commencing 24.4.1983 to enable the Counsel to seek instructions in the matter. It is expected that appeal filed by petitioner dated 25.9.1982 ~~XXXXX~~ (Annex-18) shall be disposed off". Thereafter application for Interim relief and amendment dt.11.5.84 was given on which following orders were passed; Heard Counsel for the Union of India, prays for and is allowed time to file the C.A. by the 3rd week of July 1984, when the case shall

be listed. No extension of time will be allowed to file C.A. Also allowed to make amendments " sd. dt.11.5.84. There after moved for early hearing, but unfortunately case could not be taken up and is still pending.

(As) That appeal dt.25.9.1982 against order dt.18.8.1982 Compulsory retiring the applicant has still not been disposed off, inspite of orders dt.10.3.83 of Hon'ble Hlg Court. The applicant has sent several reminders to the Secretary, Ministry of Commerce and also inviting his kind attention to their order no.C/13011/41/71-Vig dt.9.10.1985, enclosed as Annexure-A-10 passed in favour of both assistants SarvaShri K.C.Bhatia and J.K.Jain who were also awarded penalty in view of departmental inquiry, setting aside the penalty imposed. This is a clear case of DISCRIMINATION and malice against the applicant by Chief Controller and Secretary, Ministry of Commerce, who besides not deciding appeal of applicant are not even paying his pension and other benefits. Reminders sent are dated 16.1.1987, 12.9.87, 22.1.88, 2.2.88, 17.2.88, 3.3.88 and 5.10.88, but no decision has still been made maliciously.

Annex-A-10.

7. Details of remedies exhausted.

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

Annex-A-4.

Representations made since 1982 to 5.10.88, but with no result, excepting intimating that matter is under active consideration regarding pension but no reply has been sent in respect of pending appeal dt.25.9.1982.

8. Matters not previously filed or pending with any other Court.

THE applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

Writ petition no.1403/83 is still pending refer para Ab above where in request has been made to quash the orders of Compulsory retirement dt.18.8.1982, to quash the findings of Inquiry Auth-

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ority given in para 4.13, to treat the applicant in continued service till 31.1.1983 (the actual date of retirement), to pay him the total difference of pay & allowances as due from date of suspension i.e 6.6.1975 till date of retirement along with full pay & allowances from 18.8.1982 to 31.1.1983, to pay all other dues, allow him the promotion due from time to time when his juniors were promoted, as also post of Asstt. Chief Controller/Dy Chief Controller which were due, but for wrongful suspension and to pay all consequential reliefs flowing out of his continuity of service i.e. Seniority, confirmation promotion etc. and quashing the order dated 2.5.1983 passed by Shri. Joginder Singh Director Vigilance, an officer Junior to the Disciplinary authority as also not authorised to deal and decide any appeal of applicant.

9. Reliefs sought. In view of facts mentioned in para 6 above, applicant prays for the following reliefs :-

(i) To direct the authorities to immediately pay the pension to the applicant along with all consequential benefits as due to retired persons. Pension is property as held by Hon'ble Supreme Court in D.S. Nakara v Union of India (1983) 1 SCC 305. Pension as due on pay of Rs.1600/-basic would be Rs.913/- plus 50% relief, total Rs.1369-56 initially and thereafter according to further relief as sanctioned by Govt. from time to time and thereafter revised pension w.e.f. 1.1.1986 and as would be due from time to time along with 18 % interest on total amount of pension.

~~xxx~~ Because the applicant has 34½ years of continued Govt. service, even Compulsory retirement involves no civil consequences, even Govt. servants who have not been confirmed in any post have been allowed full pension as per instructions of Govt. of India, MHA No. 38(16)-Pension Unit/80 dt. 30.12.1980 revised vide Ministry of Personnel, Public Grievances and Pension No. 20/80/87-P&PW Temporary dt. 31.5.1988 vide which even Govt. servants with 10 years service have been allowed pension.

(ii) To direct the authorities to immediately pay the difference of full pay and allowances w.e.f. 6.6.1975 (date of suspension) till 18.8.1982 and full pay & allowances from 18.8.1982 to 31.1.1983 (date of actual retirement).

(127)

- (A) Because the continuance of suspension order could not be ordered when orders of premature retirement were cancelled vide CCI&E, New Delhi No.8/2/75-Admn(G)/ dt.11.6.1975(refer para 6(S) page 7 above) and fresh suspension orders could be issued, as the relationship of Master and Servant had ceased on passing of orders of Premature Retirement vide CCI&E dt.12.12.1975 and order of continuance of suspension order was void, illegal and bad in law.
- (B.) Because the order of suspension AUTOMATICALLY ceases to be operative as soon as criminal proceedings terminate in acquittal as the suspension was made on the plea that criminal cases had been filed (refer para 6^(Y)(Z) page 9) the Hon'ble Supreme Court has also held this view refer (1980) 3 SLR-220, Sunder Lal v State of Rajasthan., AIR 1964, SC-42, Pratab Singh v State of Punjab, AIR ~~1963~~, 1963, SC-~~XX~~ 687, Khemchand v Union of India, wherein it is held "Immediately after such acquittal or discharge in the criminal case the delinquent should be deemed to have been reinstated and is accordingly entitled to his full pay & allowances since the date of his suspension"(ibid). The applicant was honourably acquitted by Hon'ble High Court(Lucknow Bench) VIDE orders dt.25.5.1985 quashing proceedings in all 8 criminal cases as also the charges framed in these cases.

(111) To direct the authorities to declare the applicant permanent wef. 15.7.1969.

- (A) Because the applicant was declared Q.P.wef 15.7.1966 and automatically had to be confirmed after 3 years as he had not been given any adverse remarks ever and he was not holding lien on any other permanent post, which certificate was furnished on 30.4.1972(refer para 6(i), page 4.)
- (B) Because persons Junior to applicant had been made permanent i.e. Sarva Shri.R.K.Jaiswal, G.B. Srivastava etc.(refer para 6(K), page 4-5)
- (C) Because even the UPSC has shown applicant as Regular refer Annexure A-6.

A29

- (iv) To direct the authorities to immediately pay the amount pending of 23 TA/DA bills due for attending C.B.I. cases from Bombay to Lucknow and Departmental Inquiry at New Delhi, appx. Rs. 35,000/-., along with interest.
- (A) Because Govt. servants are entitled to get TA/DA while attending C.B.I. cases and Departmental Inquiry proceedings, and the Chief Controller, New Delhi had already directed the Jt. Chief Controller Bombay vide his letters No's. 6/698/62-Admn(G)/3649 dt. 17.5.1979, 26.9.1979, and 5.9.1986 to make payment of pending bills.
- (B) Because the payment was then held up for want/paucity of funds.
- (C) Because during personal visit of applicant to JCCI&E office, Bombay during 10.11.87 to 23.11.87 signatures for final payment of TA/DA bills was obtained by Shri. E. Nongrum, Dy. Chief (Admn) and duplicate copies of all TA/DA bills along with Court attendance certificates were also furnished.
- (v) To kindly link up pending Writ Petition No. 1403/83 and grant all the reliefs prayed for i.e. quash the compulsory retirement order dated 18.8.1982 maliciously passed.
- (A) Because the Inquiry officer has exonerated the applicant from the alleged charge mentioned in imputation of charge/article of charge which was under inquiry in concluding para 4.14 of his report dt. 2.2.1981.
- (B) Because the Disciplinary authority had to restrict itself only to article of charge mentioned and could not award any penalty on the charge on which applicant was completely exonerated.
- (C) Because the Disciplinary authority could not order any departmental inquiry simultaneously on same/identical charge when already criminal cases were pending disposal.
- (D) Because the Hon'ble High Court has acquitted applicant vide their order dt. 25.5.1984 and departmental inquiry alleged finding could not override any Judicial order.
- (E) Because already in respect of 2 assistants who were also awarded and penalty based on departmental inquiry, on the basis of High Court order dt. 25.5.1984 already the penalty imposed has been set aside vide No. C/13011/41/71-Vig dated 9.10.1985 (Annexure-A-10)
- (F) Because crystal clear malice is evident from order of Disciplinary

Annex-A-10.

Annx-A-8.

inary Authority dated 18.8.1982, ~~ex~~ awarding Major penal when even the alleged malacious finding of Inquiry Officer mentioned in last line of para 4.13 did not mention any definite violation of Import Policy, and it did not fall in any category of "Type of cases which may merit action for imposing one of the Major Penalties" as mentioned in Annexure to Rule-14 of CCS(CCA) Rules, 1965 (Refer Annexure-A-9) and it was incumbent upon the Disciplinary Authority to follow the rules and procedure laid down in CCS(CCA) Rules while imposing Major penalty, Rule 15 "Action on the inquiry report" wherein Govt. of India's instructions have also been mentioned i.e. G.I.M.H.A., Deptt. of Personnel & A.R.O.M. No. 134/81-ADV-I dated 13.7.1981, which had to be followed, and reasons have to be recorded in support of a decision according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. Held by Hon'ble Supreme Court in Mahavir Prasad v State of U.P. A.I.R. 1970, S.C-1302, whereas in his order dt. 18.8.1982 (Annx-A-8) there is no self contained speaking and reasoned order conforming to the aforesaid legal requirements.

Annx-A-9

(G) Because even the Appellate authority, the Secretary, Ministry of Commerce has still not decided the appeal dated 25.9.1982 (refer para 6 (Ab-Ac) page 10-11 above) although appeals of 2 assistants have been decided in view of Hon'ble High Court orders dt. 25.5.84 and penalty imposed on them set aside vide no. C/13011/41/71-Vig dt. 9.10.1985 (Annexure-A-10 refers)

Annx-A-10

- (vi) To order grant of Special adequate compensation for unnecessary harassment and mental torture caused to applicant from 8-9.12.197 till malacious order of compulsory retirement and to order action against authorities for failure to observe 'proper procedure' refer Rule-15, CCS(CCA) Rules, Govt. of India Instructions (Srl. no. 6), G.I.M.H.A. O.M. No. F.2/9/59-Ests(A) dt. 27.5.1961 as amended dt. 30. ~~May~~, 1962.
- (A) Because the departmental inquiry was unwarranted, since already criminal prosecution on identical charges was pending disposal.
- (B) Because, the Chief Controller being the Head of Department and Import Policy maker knew well that paras 18, 19, 21 of Red Book M-70 were not applicable to Licensing Scheme for Import of Spare

Parts from Rupee Payment Area which scheme was governed under para 78 of Red Book M-70 and maliciously had allowed the CBI to file criminal cases and there after maliciously ordered departmental inquiry on wrong charge, of which even the Inquiry Officer exonerated the applicant vide para 4.14 of his report dt.2.2.1981, but the Chief Controller still imposed penalty on a charge of which applicant had been exonerated.

- (C) Because the applicant was harassed and mentally tortured from 1971 to 18.8.1982 and even till today by not paying his pension, gratuity, other consequential benefits, TA/DA of 23 bills, increments as due from 1.1.1973, refund of C.G.H.S. account, benefit of Promotion as due from time to time, with higher pay as due, pay and allowances of leave not availed as also L.T.C. not availed, balance of full pay & allowances from date of suspension i.e. 6.6.1975 as suspension stood automatically revoked on Compulsory retirement, as also on being acquitted by Hon'ble High Court in criminal cases on which plea the suspension was ordered and even otherwise the continuance of suspension was illegal, against rules and law, as after orders of Premature retirement dt. 12.12.1975 (refer para 6(S), page 7 above) the suspension fortiori came to an end and on cancellation of these orders, only fresh orders of suspension could be passed but could not be ordered to continue as relation of master and servant had already ended.

10. Interim order, if any prayed for.

Pending final decision on the application, the applicant seeks is of following interim orders:-

To kindly order immediate payment of PROVISIONAL pension and GRATUITY due from 18.8.1982 along with interest @ 18% as pension being applicants property has been held up only to torture and harass applicant and to monetarily cripple him and also order immediate payment of all TA/DA bills held up on plea of paucity of funds.

11. Desire to have oral hearing.

12. Particulars of Bank Draft in respect of the application fee.

Bank : State Bank of Saurashtra. Demand Draft no. dt. 23.3.1989 for Rs. 50/- favouring Registrar, C.A.T. (Lucknow)

13. List of enclosures.

1. Application pages

1 to 17.

2. Bank Draft for Rs. 50/- application fee.

3. Paper Book

4. Photostat copies of documents relied upon

VERIFICATION.

I, Govind Punwant s/o Late Dr. Idarnal age 64 years was

working as Controller of Imports & Exports in the office of Jt.

Chief Controller of Imports & Exports, New O.G.O. Building, New

Marine Lines, Bombay 400020 resident of 5, Mall Avenue, Lucknow

226001 do hereby verify that the contents of paras 1 to 12 are

true to my personal knowledge and that I have not suppressed any

material fact.



Signature of the applicant.

Date. 23.3.1989.

Place. Lucknow.

To

The Registrar,

C.A.T. (Lucknow Bench)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH.

132

G.I. PANVANI..

VS

APPLICANT.

UNION OF INIA, THROUGH THE SECRETARY
MINISTRY OF COMMERCE AND OTHERS.....

RESPONDENTS

Application

PAPER BOOK.

....

1 to 17.
page.

1. Annexure-A-1. Letter dt.1.4.1985 against which appeal filed as inspite of directions to pay pension, pension still not received since 18.8.1982, also malaciously stated that applicant not permanent. 18.
2. " A-2 JCCI&E, Bombay letter dt.22.2.1985, seeking directions for payment of pension, etc. 19.
3. " A-3. Telex message by JCCI&E, Bombay dt.5.1.1987 to CCI&E, New Delhi to send instructions for payment of pension, etc. 20
4. " A-4. Applicant's letter dt.5.10.1988 to Minister, Personnel, Public grievances & Pension, reminding that pension and other benefits still not received, also copy to, Secretary, Ministry of Commerce, to order immediate payment of pension & decide appeal. 21.
5. " A-5. Order dt.20.10.1970 declaring applicant Q.P. wef 15.7.1966. 22.
6. " A-6. Seniority list of Central Trade Service dt. 27.6.1981 issued by CCI&E, New Delhi, showing seniority wef 19.11.1979, applicants srl.no.20 with remarks, that D.P.C.'s recommendation in sealed envelope. U.P.S.C. Has shown applicant as regular. 23,24.
7. " A-7. Order of applicant's suspension dt.2.6.1975 issued on the plea that a case in respect of criminal offence is under trial. 25.
8. " A-7(a) Order dt.11.6.1976 cancelling Premature retirement order of applicant, but wrongly ordering continuance of suspension, without issuing fresh suspension order. 26.
9. " A- 8. Order dt.18.8.1982 of CCI&E, New Delhi, imposing penalty of Compulsory Retirement on alleged charge of which exonerated by Inquiry Officer vide report dt.2.2.1981, para 4.14 refers. 27-28
10. " A-9. Types of cases which may merit imposing Major Penalty. 29.
11. " A-10. Order of Ministry of Commerce dt 9.10.1985, setting aside penal ty imposed against 2 assistants, based on Orders of Hon'ble High Court(Lucknow Bench) dt.25.5.84. 30.
12. " A-11 Departmental Inquiry report dt.2.2.1981(21 pages) exonerated applicant vide para.4.14(page.11 refers) 31/ 51
13. " A-12 Orders of Hon'ble High Court dt.25.5.1984 acquitting applicant and his 2 assistants, quashing all charges framed & proceedings of 8 crl cases (23+2 pages). 52/ 77

[Signature]
APPLICANT.

No. 6/698/62-Admn(G)/1667
Government of India
Ministry of Commerce

OFFICE OF THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS

New Delhi, the 1-4-85

To

The Joint Chief Controller of Imports & Exports,
B O M B A Y.

Subject:- Pensionary benefits to Shri G.I.Punwani, Ex-Controller of Imports and Exports.

Sir,

I am to refer to your letter No.Estt/Pen/GO/GIP/7264, dated 22-2-85 on the above mentioned subject. The points made in your letter under reference have gone through. It is true that Shri Punwani was not holding a permanent post in this Organisation at the time of his compulsory retirement from Government service on 18-8-82. However, he was declared as quasi-permanent in the post of Assistant Controller of Imports & Exports in this Organisation vide this office Notification No.19/13/68-Admn(A) dated 20-10-70. The pension case of Shri Punwani may please be examined and processed in consultation with the Regional Pay and Accounts Office, (Imports and Exports), Bombay in terms of the instructions contained in the Government of India (Department of Personnel & Administrative Reforms) O.M.No.38(16)-Pension Unit/80, dated 20-12-80. These instructions are available in the Swamy's Pension Compilation of C.C.S.(Pension) Rules, 1972 as amended upto 1-6-1983.

2. As regards the brakes in service of Shri Punwani for the period from 1-4-50 to 15-11-50, you are requested to examine the case in terms of Rule 28 of the C.C.S.(Pension) Rules as quoted above. It has been observed that the Service Book of Shri Punwani is not available in your office. You are requested to deal with his pension case on the basis of affidavit submitted by him in connection with his rendering continuous Government service from 6-3-48 to 18-8-82 duly verified by the Civil Court of Lucknow to admit the services for the purpose of finalising his pensionary benefits. As per Court's orders, his case may be finalised as early as possible under intimation to this office.

Yours faithfully,

(S. BANERJEE)

Controller (Administration),
for Chief Controller of Imports & Exports.

✓ Copy to Shri G.I.Punwani, 5, Mall Avenue, Lucknow with reference to his letter dated 1-3-85 for information.

Attended
Shri Punwani
Advocate

आमि-क-संज्ञा पुन व्यवहार में कृपया
इस की. का हवाला दोजिए।
Please quote this number in all
future Correspondence.

आर का ता : "कानिम्पेक्स्ट्रा"
Tele. Address: "CONIMPEXTRA"

टेलीफोन } 298040
Telephone }

भारत सरकार

वाणिज्य मंत्रालय

आयात और निर्यात के संयुक्त मुख्य नियंत्रक का कार्यालय

"सेन्ट्रल गवर्नमेन्ट आफिसिंग, न्यू बिल्डिंग",

साउथ ईस्ट विंग, न्यू मरीन लाइन्स, चर्चगेट,

बम्बई-400 020

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE

OFFICE OF THE

JOINT CHIEF CONTROLLER OF IMPORTS & EXPORTS

"CENTRAL GOVERNMENT OFFICES, NEW BUILDING",

SOUTH EAST WING, NEW MARINE LINES, CHURCHGATE

BOMBAY-400 020

सं/No. ESTT/PEN/GO/GIP/7264

दिनांक/Dated 20th February '85 1985

The Chief Controller of
Imports & Exports,
Udyog Bhavan,
New Delhi.

(Attention: Shri S. Banerjee,
Controller(Administration))

Sub: Pensionary benefits to Shri G.I.Punwani,
Ex-Controller of Imports and Exports.

Sir,

I am to refer to your letter no.6/698/62-Admn(G)/435 dated 18/1/85 on the above subject and to say that efforts have been made to locate the service records of Shri G.I.Punwani but the records are not available. You will recall that the service records were handled by the audit departments prior to 1976 and it seems the same has not been received in this office. However, on the basis of affidavit submitted by Shri Punwani which has been addressed to you, it has been taken for granted that CCI&E has accepted the service particulars submitted by Shri G.I.Punwani that he has rendered continuous government service from 6/3/48 to 18/8/82 as duly verified by Civil Court. The original affidavit has been sent to you and a copy has been endorsed to us. On perusal of the affidavit it has been noticed that Shri Punwani has many brakes in service, in order to consider his case for pension it may be confirmed that the service particulars furnished by Shri Punwani has been accepted and brakes in service have been condoned. Then the pension case in terms of Rule 59(iv) of C.C.S Pension Rule 1972 can be submitted to RPAO for finalisation.

In addition to the above, you had intimated to this office vide your letter no.6/698/62/Admn(G)/5119 dt.30.7.83 that Shri Punwani was not confirmed in the post of Asstt.Controller/Controller in our organisation as per record available with you. But at the same time he was declared quasi-permanent with effect from 15.7.8966 in the post of Asstt.Controller. In view of the above the auditors may not admit his pension case as Shri Punwani has not been confirmed in any post in our organisation. Unless he is declared permanent in any post his case cannot be considered for pensionary benefits in terms of Rule 13 of C.C.S (Pension)Rule-1972. You are therefore requested to consider his case again and verify his service particulars after condoning the delay and advise this office so that his pension case can be finalised at the earliest.

Yours faithfully,

S/L-

(M.D.ATHAVALE)

Controller of Imports & Exports
For Jt.Chief Controller of Imports & Exports

Accepted
Advocate

TELEX MESSAGE

DATE 16/12/1986

5/1/1987

485

FROM SHRI R.K. JAISWAL, DY. CHIEF CONTROLLER (ADMN) TO
SHRI SHANKERCHAND, DY. CHIEF CONTROLLER OF IMPORTS & EXPORTS,
NEW DELHI

FILE NO: ESTT/PEN/GO/GIP

YOUR KIND ATTENTION IS INVITED TO THIS OFFICE TELEX MESSAGE
NO: ESTT/PEN/GO/GIP DATED 20/11/1986 AND ALSO LETTER NO: 6/698/82
ADMN (G)/2099 DT 27/3/86 REGARDING DECISION IN THE PENSION CASE
OF SHRI G.I. PUNWANI, COMPULSORIY RETIRED CONTROLLER OF IMPORTS
& EXPORTS (-) THE REGIONAL PAY & ACCOUNTS OFFICE, BOMBAY AND
SHRI PUNWANI, BOTH ARE PRESSING HARD FOR EARLY SETTLEMENT OF
THIS LONG OUTSTANDING PENSION CASE (-) YOUR IMMEDIATE ACTION
APPRECIATED (-)

8/11
DE. CHIEF CONTROLLER (ADMN),
FOR JT. CHIEF CONTROLLER OF IMPORTS & EXPORTS.

ESTT/PEN/GO/GIP 235X

Dated 18/12/1986

5/1/1987

Copy by post in Confirmation forwarded to:-

Shri Shankarchand,
Dy Chief Controller of Imports & Exports,
Office of the C.C.I. & E.,
New Delhi

With a request to kindly expedite his instructions in
the matter in order to finalise the long outstanding pension
case of Shri Punwani, who has been repeatedly reminding this
office for finalisation of his case.

8/11
Deputy. Chief Controller of Imports &
Exports

for Jt. Chief Controller of Imports & Exports.

Copies also forwarded to:-

1) Shri E.D. Abraham, the Regional Pay & Account Officer
Bombay with reference to his letter No RPAO/Com/Bom/Gen/Pen/
GIP/3525-27 dated 10-12-86 for information,

2) Shri G.I. Punwani, 5, Mall Avenue, Lucknow-226001 with
reference to his letter dt. 4-12-86 for information.

Controller (Admn)

For Jt. Chief Controller of Imports &
Exports.

Admn
Punwani
Admn

A26

Tel. 47462

Res.:—5, Mall Avenue,

Lucknow—226001

Dt. 5.10.1988

Major G. I. Punvani (Retd.)

Ex. Controller of Imports & Exports

Member Ex. Servicemen Cell U.P.C.C. (I.)

Chairman : NAINITAL HOTEL CO. (P.) LTD.

(Prop. of Royal Hotel, Nainital)

Mallital, Nainital—263001

(Tel. 2007)



Regd. A.D

Shri. P. Chidambaram,
Minister of Personnel, Public Grievances & PENSIONS,
Govt. of India, NEW DELHI.

NON RECEIPT OF PENSION & OTHER BENEFITS ALTHOUGH RETIRED 6 Yrs
BACK (18.8.1982) BY CHIEF CONTROLLER OF IMPORTS & EXPORTS.

Sir,

I wrote to your Hon'our vide my letter dt. 13.2.1986 and 14.11.1986 on the above subject and your office has ONLY acted as post office by forwarding my petition to Chief Controller of Imports & Exports vide your D.O. letter No. 3225/86/(P&PW dt. 11.3.86 and D. 3225/86-P&PW(I) dt. 8.12.86. Copy of letter dt. 18.1.87 was also endorsed to no avail.

2. I have already intimated you that I am being unnecessarily harrassed which is so obvious and evident from the fact that even your above D.O. letters have not been replied.

3. Although in the Departmental Inquiry I was completely exonerated but because of Malice borne by the Chief Controller I was compulsorily retired and to add fuel to fire although Compulsory retirement is NOT a punishment as laid in CCS(CCA) Rules, 1965 and even Temporary Govt. Servants retiring on superannuation on completion of 20 years temporary service are entitled to get Pension, Min of Home Affairs Memo No. 38(16)-Pension Unit/80 dt. 30.12.1980, BUT till today NO PENSION has been paid to me NOT even PROVISIONAL.

4. That even the Hon'ble High Court vide its order dt. 25.5.1984 in Crl. Misc Case No. 1202 of 1981, completely acquitted the applicant and his 2 assistants on merits of the case holding that Import Licences for Spare Parts of certain essential machineries from Rupee Payment Area were correctly issued, hence although in Deptt. Inquiry applicant has been exonerated, and in view of High Court Judgement, the charge stands nullified, but still the penalty imposed has not been set aside.

5. That in view of the High Court Judgement dt. 25.5.84, the penalty imposed in case of 2 assistants Sarva Shri. K. C. Bhatia and J. K. Jain has been set aside by Ministry of Commerce Vide No. C/1301/41/71-Vig dt. 9th Oct, 1985 (Copy enclosed), but appeal of applicant made to the Secretary, Ministry of Commerce dt. 25.9.1982 has still not been decided by the Secretary himself so far inspite of several applications, last being dt. 19.2.1988. Why this DISCRIMINATION in my case ?

6. Time and again the Hon'ble Prime Minister in his speeches has stated that Pension shall be paid from the next month of retirement and these have appeared in all newspapers, for that purpose Ministry of Public Grievances & Pensions has been established.

7. This is my last application to/whereafter I shall be constrained to take up the matter in newspapers as also seek legal remedy, but it will prove your Ministry as redundant and ONLY a post office.

Thanking you and hoping for immediate payment of Pension to applicant

Yours faithfully,

(G.I. PUNVANI)

Copy to Shri. A. N. Verma, IAS, Secretary, Ministry of Commerce, Udyog Bhawan, New Delhi-110001, with the request to order immediate payment of Pension as also decide appeal as has been done in case of Assistants.

Advocate

(TO BE PUBLISHED IN PART III SECTION I OF THE GAZETTE OF INDIA)
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS
NEW DELHI.

No.19/13/68-Admn.(A)/

Dated. 20-10-1970.

NOTIFICATION

Shri G.I. Punvani has been appointed in a quasi-permanent capacity in the post of Assistant Controller of Imports and Exports with effect from the 15th July, 1966 in the Import and Export Trade Control organisation.

(R.T. REBELLO)

CHIEF CONTROLLER OF IMPORTS AND EXPORTS.

To

The Manager,
Government of India Press,
FARIDABAD.

Endst.No.19/13/68-Admn.(A)/ 2569 Dated. 20-10-1970.

Copy forwarded to:-

1. The Jt. Chief Controller of Imports and Exports, (CIA), New Delhi with the Q.P. Certificate in duplicate of Shri G.I. Punvani, with the request that the original copy of the Q.P. certificate may be sent to Shri Punvani and the other copy to the concerned audit.
2. The Ministry of Foreign Trade for information.
3. Shri G.I. Punvani, Controller of Imports and Exports, Office of the Dy. Chief Controller of Imports and Exports, Kanpur.
4. Admn.(G) Section.

M. K. S.

Punvani
Advocate

(132)

OFFICE OF THE JOINT CHIEF CONTROLLER OF IMPORTS & EXPORTS,
BOMBAY.

Circular No.34/81

Dated: 7 July 1981.

A copy of letter No.11/4/81-Admn(G)/3827 dt- 27-6-81 from the Chief Controller of Imports & Exports, New Delhi. forwarding the Seniority List of Officers of Grade I, II and III of the Central Trade Service as on 19-11-79, in this organisation is circulated to all concerned.

Factual errors or omission if any may please be intimated to Admn Section by 10-7-81.

If no objection, is received by that date, the Seniority List will be treated as final.

(Signature)
(S.S. MANI)
CONTROLLER (ADMN)

FOR JT. CHIEF CONTROLLER OF IMPORTS & EXPORTS.

Copy of letter No.11/4/81-Admn(G)/3827 dt- 27.6.81 from The Chief Controller of Imports & Exports, New Delhi.

Sub- Seniority List of Officers of Grade-I-III of the Central Trade Service as on 19.11.1979.

Sir,

I am to forward herewith copies of the draft seniority lists of officers of Grade I - Grade III of the Central Trade Service working in this organisation as on 19.11.1979. It is requested that the lists may be immediately circulated to the officers concerned to enable them to point out factual errors or omissions if, any, in these lists. It may be brought to their notice, that in case no errors/omissions are communicated to us and no representation is received in this office within 10 days from the date of issue of this letter, it will be assumed that the lists are in order and will be treated as final and no representation in this behalf will be entertained thereafter.

(Signature)
Advocate

OFFICE OF THE CHIEF CONTROLLER
 SENIORITY LIST OF GRADE III OFFICERS OF THE CENTRAL TRADE SERVICE -
 ASSISTANT CHIEF CONTROLLER OF IMPORTS AND EXPORTS AS ON 19.11.1979.

S.NO.	NAME	DATE OF BIRTH	DATE OF APPOINTMENT AS CONTROLLER ON A REGULAR BASIS.	DATE OF APPOINTMENT TO GRADE III OF THE CENTRAL TRADE SERVICE	REFERENCE OF THE UPSC LETTER FOR REGULAR APPOINTMENT AS CONTROLLER IN GRADE III OF THE	REMARKS

20. Shri G.I.Punwani 19.1.1925 15.7.1963 19.11.1979 1/1041/61-R(H) F.11/21/77- dt. 29.9.1962 AUIV Detsd 2.9.1979. CTS

Under suspension. Recommendation of DPC regarding appointment in Grade III in the sealed cover.

21. Shri R.K.Jaiswal 30.7.1929 14.6.1963(AM) --do-- 1/998/62-R(T) dt.6.12.1962 --do--

Official time as DCCIEE on d-hoc basis.

22. Shri S.L.Chohan 20.5.1930 26.9.1963 --do-- --do--

on deputa- tion to Iron and Steel Org- nisation.

23. Shri C.G.Fernandez 25.5.1933 15.10.1963 --do-- F.1/1229/-62 (RH) dt.20.8.1963. --do--

24. Shri C.B. Srivastava 1.3.1928 23.9.1963 --do-- F.1/998/62-R (H) dt.10.1.1963. --do--

25. Shri H.P.Dass 1.3.1932 28.9.1963 --do-- F.1/998/62-R(H) --do-- dt.4.2.1963

Official time as DCCIEE on d-hoc basis.

Handwritten signature and initials

25

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
G.I.PUNWANI VS UNION OF INDIA & OTHERS (ANNEXURE NO. 4-7).

Confidential

AMO

(5)

No.1/2/72-Vig/648
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS
(UDYOG BHAVAN)
NEW DELHI

Dated the 2nd ^{June} May, 1975.

O R D E R

Whereas a case against Shri G. I. Punwani, Controller of Imports & Exports in respect of a criminal offence is under trial.

NOW, THEREFORE, the undersigned in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri G. I. Punwani under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri G. I. Punwani, Controller of Imports & Exports shall be Bombay and the said Shri G. I. Punwani shall not leave the headquarters without obtaining the previous permission of the undersigned.

(B. D. KUMAR)

CHIEF CONTROLLER OF IMPORTS & EXPORTS

✓ Copy to Shri G. I. Punwani, Controller of Imports & Exports, Office of the Joint Chief Controller of Imports & Exports, Bombay. Orders regarding subsistence allowance admissible to him during the period of his suspension will be issued separately.

Recd original
6/6
5 P.M.

Attested
Punwani
Advocate

AW

No. 8/2/75-Admn(G)/
Government of India
Ministry of Commerce
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS.

New Delhi, the 11th June, 1976.

ORDER

Sub: Pre-mature retirement of Shri G.I. Punwani
Controller of Imports and Exports in the Import
and Export Trade Control Organisation.

.....

Reference his representation dated 11.1.76
against pre-mature retirement from service.

2. The Chief Controller of Imports and Exports
is pleased to decide that the Order No. 8/2/75-Admn(G)
dated 12.12.1975 retiring Shri G.I. Punwani from service
shall be treated as cancelled. Shri Punwani was under
suspension at the time of pre-mature retirement and as
such will continue to remain under suspension.

[Signature]

(P.K. KAIL)
CHIEF CONTROLLER OF IMPORTS & EXPORTS.

Shri G.I. Punwani,
C/o Office of the Joint Chief
Controller of Imports and Exports,
BOMBAY.

16.

Noted
[Signature]
Advocate

27

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
G.I.PUNWANI VS UNION OF INDIA & OTHERS (ANNEXURE NO.-A-8).

(A42)

No.1/72/79-Vig./ 1085
Government of India
Ministry of Commerce
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS
UDYOG BHAVAN : NEW DELHI - 110011.

.....

Dated, the 18th August, 1982.

M E M O R A N D U M

Whereas, departmental proceedings under Rule 14 of the CCS(CCA) Rules, 1965 were instituted against Shri G.I. Punwani, Controller of Imports & Exports (under suspension), office of the Joint Chief Controller of Imports & Exports, Bombay, vide Memorandum No. 1/73/79-Vig./491 dated 16.4.1980, on the following articles of charge ;

Article of charge No.I : That the said Shri G.I. Punwani while functioning as Asstt. Controller of Imports & Exports in the Office of Dy. Chief Controller of Imports & Exports at Kanpur during the said period between May, 1969 and January, 1970 committed misconduct and failed to maintain absolute integrity and devotion to duty in as much as he issued actual user import licences for the import of spare parts for agricultural tractors and other machine parts of the value of Rs.24,50,000/- against the laid down policy of the Government to various parties of Kanpur and HarDOI, details of which are given in the Appendix I;

And, he, thereby, contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article of charge No.II : That the said Shri G.I. Punwani while functioning in various capacities during the period October, 1955 and December, 71 failed to maintain devotion to duty in as much as he purchased and sold immovable properties and entered into various transactions in respect of movable properties of the value exceeding Rs.1000/- each as detailed in the Appendix II either in his own name or in the name of members of his family without obtaining the requisite sanction or sending intimation to the prescribed authority as required of him under the rules,

And, he, thereby, contravened Rule 15(1) (2) of the Central Civil Services (Conduct) Rules 1955 r/w its corresponding rule 18(2)(3) of the Central Civil Services (Conduct) Rules, 1964.

Attested
G.I. Punwani
Advocate

p.t.o.

HUB

- 2 -

And whereas, the inquiry were entrusted to Shri R.W. Muhuri, Commissioner for Departmental Enquiries ;

And whereas, the Inquiry Officer submitted his report dated 2.2.81 concluding that both the Articles of charge against Shri Punwani have been proved to the extent mentioned in the inquiry report ;

And whereas, the undersigned on a careful consideration of the aforesaid inquiry report agrees with the findings of the Inquiry Officer in respect of Articles of charge Nos. I & II with the modification that the charge relating to non-intimation about transactions of movable property to his previous employer, mentioned in Article of charge No. II and discussed in para 7.9 of the inquiry report, is held as not proved;

And whereas, the undersigned has come to the conclusion that in view of the above, Shri G.I. Punwani is not a fit person to be retained in service and the penalty of compulsory retirement should be imposed on him ;

Now, therefore, the undersigned imposes the penalty of compulsory retirement on Shri G.I. Punwani, Controller of Imports & Exports with immediate effect.

A copy of the report of the Inquiry Officer is enclosed.

Encl. Enquiry report-

Mani Narayanaswami
(MANI NARAYANASWAMI)
CHIEF CONTROLLER OF IMPORTS & EXPORTS.

✓ Shri G.I. Punwani,
Controller of Imports & Exports,
Office of the Joint Chief Controller
of Imports & Exports,
BOMBAY.

Attended
Shri Punwani
Advocate

22
Ann

RULE 14] PROCEDURE FOR IMPOSING MAJOR PENALTIES

76 G.G.S. (CLASSIFICATION, CONTROL AND APPEAL) RULES [RULE 14

mind to the cases necessitating disciplinary action and to determine with care and deliberation the nature of action to be taken in each case.

The types of cases involving moral turpitude and failure to maintain integrity are indicated in the Annexure. The list is only illustrative and not exhaustive and is intended to serve as a guide. In all such cases, proceedings for imposing one of the major penalties would be justified.

G.I. (1) stipulates that prosecution should be the general rule in all cases involving loss of substantial public funds. It has been clarified in G.I. (2) that loss exceeding Rs. 2,000 would constitute a case involving loss of substantial public funds. In such cases immediate report to the police is obligatory. Same action is required to be taken in cases of armed burglary, highway robbery, assaults on the officials on duty by members of public or where there is likelihood of the accused absconding.

These instructions may kindly be brought to the notice of all concerned. All the disciplinary authorities may also be cautioned that failure to take appropriate disciplinary action against delinquent officials will be viewed adversely.

[D.G., P. & T., Letter No. 6/19/72-Disc. I, dated the 29th November, 1972.]

ANNEXURE

Types of cases which may merit action for imposing one of the major penalties.

1. Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.,

- (a) possession of disproportionate assets;
- (b) obtaining or attempting to obtain illegal gratification;
- (c) misappropriation of Government property, money or stores;
- (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

2. Falsification of Government records.

3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

4. Misuse of official position or power for personal gain.

5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

6. False claims on the Government—like T. A. claims, reimbursement claims etc.

(8) Whether charges can be dropped at the stage of initial written statement of defence.—A question has been under consideration whether Rule 14 (5) (a) of the CCS (CCA) Rules, 1965, permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused Government servant under Rule 14 (4) *ibid*. The question has been considered in consultation with the Ministry of Law and the position is clarified as under:

- (a) The disciplinary authority has inherent power to review and modify the charges and some of the charges.

RULE 14] PROCEDURE FOR IMPOSING MAJOR PENALTIES

all the charges after the receipt and examination of the written statement of defence submitted by the accused Government servant under Rule 14 (4) of the C.C.S. (C.C.A.) Rules, 1965.

(b) The disciplinary authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further cause to proceed with.

2. It may, however, be noted that the exercise of powers to drop the charges after the consideration of the written statement of defence by the accused Government servant will be subject to the following conditions:—

- (a) In cases arising out of investigations by the Central Bureau of Investigation, the C.B.I. should be consulted before a decision is taken to drop any of, or all the charges on the basis of the written statement of defence submitted by the accused Government servant. The reasons recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

- (b) The Central Vigilance Commission should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of, or all the charges on the basis of the written statement of defence submitted by the accused Government servant.

[G.I., M.H.A., O.M. No. 11012/2/79-Estt. (A), dated the 12th March, 1981, and O.M. No. 11012/8/82-Estt. (A), dated the 8th December, 1982.]

INQUIRY

✓(9) Inquiry mandatory if charge is not accepted.—Proceedings initiated under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, cannot be closed by imposing one of the minor penalties after due consideration of the defence submitted by the accused officer. It is obligatory to hold a formal inquiry before coming to a decision about the quantum of penalty.

[Rule 100 of P. & T. Manual, Volume III.]

INQUIRY OFFICER

(10) Unless unavoidable the disciplinary authority should refrain from being Inquiry Officer.—According to Rule 14 (5) of the C.C.S. (C.C.A.) Rules, 1965 the disciplinary authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry Officer for the purpose. However, it should be possible in a majority of cases, and the more serious ones at any rate, to ensure that the disciplinary authority himself does not conduct the inquiry. It may still be not practicable to ensure in all cases that the disciplinary authority himself would not be the Inquiry Officer. Such a course may be necessary under certain circumstances particularly in small field formations where the disciplinary authority as well as the Inquiry Officer may have to be one and the same person. It has accordingly been decided that unless it is unavoidable in certain cases as mentioned above, the disciplinary authority should refrain from being the Inquiry Officer and appoint another officer for the purpose.

[G.I., Dept. of Personnel and A.R., O.M. No. 35014/1/76-Estt. (A), dated the 29th July, 1976.]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
G.I.PUNVANI VS UNION OF INDIA & OTHERS (ANNEXURE NO.-10).

ALUS

No.C/13011/41/71-Vig.
Government of India
Ministry of Commerce

New Delhi, the 9th Oct, 1985

MEMORANDUM

Subject:- Appeal of Shri J.K.Jain, UDC against the order of Chief Controller of Imports & Exports dated 27th August, 1982.

The undersigned is directed to refer to appeal of Shri J.K.Jain dated 5.11.82 against the order of Chief Controller of Imports and Exports, dated 27th August, 1982.

2. It was alleged that Shri J.K.Jain wrongly entertained various applications for the issue of import licences for spare parts for agricultural tractors and other machine parts of huge value, and was instrumental in the issue of import licences to the concerned parties against the laid down policy of the Government.

3. Departmental proceedings were initiated against Shri J.K. Jain and penalty of reduction of three stages in the time scale of pay for the period of two years was imposed on Shri J.K. Jain.

4. Shri J.K.Jain filed an appeal dated 15.11.1982 against the order of Chief Controller of Imports and Exports imposing the above penalty.

5. The appeal of Shri J.K. Jain was examined along with the relevant records of the subject and after examining the above the appellate authority have decided to set ^{aside} the penalty imposed on Shri J.K. Jain.

(N.S. HEMCHANDRAN)
DIRECTOR

Shri J.K. Jain,
U.D.C.,
O/o Dy.CCI&E,
Kanpur.

through Shri Shankar Chand, Dy. CCI&E, O/o CCI&E,
Udayog Bhawan, New Delhi.

Shri J.K. Jain
Admitted

(Annex-A-11)

No. 70 RWA 41(5)
 Government of India
 Central Vigilance Commission

....

Sub : Departmental inquiry against S/Shri G.I. Punwani,
 Controller and K.C. Bhatia, J.K. Jain, UDCs, Office
 of the Chief Controller of Imports & Exports

...

R E P O R T

Under order No.1/72/79-Vig/804 dated 27.6.80 issued by the Chief Controller of Imports & Exports, Ministry of Commerce & Civil Supplies, I was appointed as the Inquiring Authority to inquire into the charges framed against S/Shri G.I. Punwani, Controller, and K.C. Bhatia, UDC and J.K. Jain, UDC. Under order No.1/72/79-Vig/823 dated 27.6.80 it has been directed that the disciplinary proceedings against all the officers shall be taken in a common proceeding.

2. Shri G.I. Punwani has been charged under two articles of charge and S/Shri K.C. Bhatia and J.K. Jain have been charged under one article of charge. Under article I of charge Shri G.I. Punwani has been charged as follows:-

"That the said Shri G.I. Punwani while functioning as Asstt. Controller of Imports & Exports in the office at Dy Chief Controller of Imports & Exports at Kanpur during the said period between May, 1969 and January, 1970 committed misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as he issued actual user import licences for the import of spare parts for agricultural tractors and other machine parts of the value of Rs. 24,50,000/- against the laid down policy of the Govt. to various parties of Kanpur and Haridwar, details of which are given in the Appendix I.

And, he, thereby, contravened rule 3 of the Central Civil Services (Conduct) Rules, 1964."

Altered
 Punwani
 Abstract

3. Defence of Shri G.I. Punwani

3.1 Shri Punwani in his defence had stated that under Import Trade Control Policy for the period April 68 to March 69 imports from rupee payment area of spare parts of certain essential machinery were allowed. He has also pointed out that a public notice for this was issued and the same was followed up by General Licencing Instructions. Shri Punwani had submitted that the same scheme continued during the period April 69 to March 70. It has been also submitted by Shri Punwani that Small Scale Industries are actual users and that garages and workshops are actual users. Shri Punwani has further pointed out in his defence that actual users were entitled for spare parts under the scheme. It has been submitted by Shri Punwani in his defence that ~~actual~~ provision for licence under the scheme was intended to meet the requirement of actual users for servicing and maintainance purpose. It has been also submitted by Shri Punwani that the import licences were to be issued for the value applied for and that no list of spare parts was to be furnished. Shri Punwani has also pointed out that general licencing instruction issued on 4.6.69 stipulated that goods imported shall be used only for servicing and maintainance of machinery installed in the licence holder factory.

3.2 Shri Punwani has stated that all the 13 cases concerned had applied on form 'B' accompanied by Treasury Challen for Rs. 50/- and all were registered SSI units. He has also pointed out that tractor parts could be allowed

Attested
Shri Punwani
Adm. Secy

33
AUG

Pl. No. 24/69

order of 8.11.69
Amended 13.5.69

State licences
issued till then

D.O. letter
dt 30-8-69.

under licencing scheme for the period April 69 to March 70. Shri Punwani has further pointed out that there was also no question to see the end product manufactured by the applicant. Shri Punwani further submitted that no lapse on the part of Kanpur Office has been pointed out by the inspecting units. Shri Punwani in his defence has also mentioned that HO was also informed about the procedure followed and that the clarification received from the Chief Controller confirmed that the licences may be issued for the value applied for on production of declaration from the applicant that the spares sought to be imported were required for servicing and maintenance of machinery installed in his factory. Shri Punwani has pointed out that after receipt of above clarification no licence was issued for tractor and motor vehicle spare parts. Shri Punwani has pointed out that paras 18,19,21 of Import Policy Book (Ex.S-1) pertains to other licencing scheme of spare parts. In his arguments Shri Punwani has pointed out that SW-1 has confirmed that para 17 to 24 of the concerned Import Policy Book were applicable to priority industry and not applicable for cases as mentioned in para 78 of the Import policy Book.

Shri M. M. Mohan

4. Assessment of evidence:

There is no dispute to the fact that Shri Punwani while functioning as Asstt. Controller of Imports and Exports in the office of the Dy Chief Controller of Imports & Exports at Kanpur during the period 1969 had issued import licences to the 13 parties for the value mentioned

Att. to

Punwani
Advocate

34
AND

against the names of the parties as at Appendix I of article I of the charge. The defence of Shri Punwani is that all these licences have been issued within the framework of Import Policy concerned.

4.2 In the statement of imputations for article of charge there is a mention that relevant provision of the Import Policy required to be followed by Shri Punwani for having issued the 13 licences were given in paras 18, 19 and 21 of the Red Book of AM-70.

4.3 The 13 licences issued by Shri Punwani are at Ex.S-33 to S-43. The perusal of these exhibits will show that all the applicants had applied for imports from rupee payment areas. The period of issue of these licences is from May 69 to October 69, and one in January 70. The relevant import trade control policy applicable during the period is at Ex.S-1. The provisions relating to the imports from rupee payment area have been given at para 78 of Ex.S-1 (page 15). The salient features of this para are that applications for actual users for spare parts mentioned in Appendix 32 would be considered by the licencing authorities direct and not through sponsoring authorities. It is also mentioned that it was not necessary for the applicants to furnish with the applications the list of spare parts sought to be imported and that will be issued with general description as given in Appendix-32.

4.4 Appendix 32 shows that the spare parts that could be imported from rupee payment area related to the machinery of electric supply undertakings, spare parts

licences
shall be S-33 to 45

Ad Book

Imp

Attested
Shri Punwani
Advocate

357
PUC

of motor vehicles, spare parts of refrigerators and air conditioning machineries and others, spare parts of irrigation machineries, spare parts for heavy machineries etc., spare parts for agriculture tractor and for tractor, drawn agricultural implements excluding undercarriage parts for crawler tractors and spare parts of machine tools. Para 78 of the import policy mentioned that items listed in Appendix was to be allowed only to the extent of 5 per cent of the face value of the licence subject to maximum Rs.10,000/-. Appendix 3 lists amongst other spare parts of machine tools accessories.

includes
= 5% of 10000/-

4.5 Paras 18, 19 and 21 of the Import Trade Control Policy (Ex.S-1) relate to the import of spare parts by priority industries. The provision in these paras have nothing to do with the imports from rupee payment area as provided in para 78.

Para 18, 19 and 21 relate to the manner of application, valid of import licence for permissible spare parts and value for which the import licences can be issued etc. Whereas para 78 relates to how the applications have to be submitted for imports from rupee payment area and how these applications are required to be considered and how import licences have to be issued. Thus it is quite clear that for imports from rupee payment area provision as given in the para 18, 19 & 21 of import trade control policy for the period April 69 to March 1970 were not applicable.

4.6 A perusal of the applications and other relevant papers in the 13 individual cases as at Ex.S-33 to Ex.S-45 where licences had been issued by Shri Punwani will show that all the applicants were registered with SSI Units and all of

Attended by
Shri Punwani
Advocate

A50

then have prayed for imports from rupee payment areas. As such these applications were required to be processed under provision as at para 78 of Ex.S-1. Ex.S-2 is the hand book of rules and procedure on import trade control. This hand book is dated 1st April 1969 and as such provision in the hand book was applicable during the period when licences were issued by Shri Punwani. In this hand book one of the categories of actual users is industrial (pages 6 of Ex.S-2).

It has been also stipulated in this hand book that small scale industries are actual users (industrial) (page 41 of Ex.S-2).

It is also seen that form of application prescribed for imports for raw materials, components and spare parts by small scale industries would be form 'B' (page 54 of Ex.S-2). It is also evident from chapter 9 of Ex.S-2 that actual users (non industrial) include garages and workshops.

4.7 All the 13 cases show that all of them were registered small scale industries in UP and as such they are actual users as understood within the provision of the hand book as at Ex.S-2. Thus the applications that have been considered by Shri Punwani for issuing licences were actual users.

4.8 Apart from the import trade control policy and the hand book the other considerations that are required to be given for issuing licences are available from the public notice and general licencing instruction issued from the CCIEE.

4.9 Shri Punwani in his defence has submitted that the Public Notice as at Ex.S-3 and the general licencing instruction as at Ex.S-4 issued in pursuance of import trade control policy for the period AM 68-69 were also applicable for the period April 69 to March 70. Ex.S-3 which is a public notice dated

PM.93/68
27-5-68
GLI 52/68
25-7-68

Attested
Shri Punwani
Advocate

27.5.1968 is on the subject of import of spare parts of machinery from rupee payment area during April 68 to March 69. The salient provision of this public notice have been incorporated in para 78 of Ex.S-1 which was the policy applicable during the period when licences were issued by Shri Punwani. In the general licencing instruction dated 25th July (Ex.S-4) on the subject of import of spare parts of machinery from Rupee Payment Area during April 68 to March 69, it was made clear that import licences may be issued for the value applied for. It also stipulated that one of the licence conditions was to be that the licence could be utilised for the import of spare parts in terms of the Ministry of Commerce Public Notice No.93-MC(PM)/68 dated 27.5.68. This public notice is at Ex.S-3 as already mentioned. In the general licencing instruction No.GLI 34/68 dated 4.6.69 (Ex.S-6) on the subject of import of spare parts of machinery from Rupee Payment Area during April 69 to March 70, it was made clear that one of the licencing conditions was that the goods imported shall be used only for the servicing and maintenance of the machinery installed in the licence holder factory and that it was not to open to the licensee to import under this licence any component required for fabrication of machinery. Some of the licences issued by Shri Punwani were issued before the issue of this general licencing instruction as at Ex.S-6.

4.10 In the month of August Dy CCISE Kanpur where Shri G. I. Punwani was posted in 1969 had written a letter (Ex.S-8) to Shri Minocha, Dy CCISE, New Delhi seeking instruction on the

61152/8
Do. dt
20-8-69
Shri Minocha
New Delhi

issue of licences according to para 78 of the current policy book (Ex.S-1). In this letter doubts were expressed that it was rather difficult to ensure that the imports were required by the actual users only for servicing and maintenance purpose. It also stated that the office is merely going by the statements made by the parties. In this letter the point was also raised that to fulfil service and maintenance needs the same are required to be made in certain workshop, which was not owned by the applicants. In reply (Ex.S-7) Shri Minocha clarified that in the case of spare parts of Agriculture Tractor, equipment and motor vehicle parts the intention was that the import of such spares should be allowed for servicing and maintenance of the equipments which are in possession of the applicants and that the provision will not be applicable to workshops. This clarification from the HQ at New Delhi was dated 27th November 1969.

4.11 From the above it is thus clear that the instructions were not available with regard to how the actual users aspect would be verified or how they have to be understood and whether servicing and maintenance needs have to be met from the applicants own resources.

4.12 However, a perusal of the licence case files will show that all the applicants though registered as small scale industry in UP were industries for industries like brass and copper earth clips and brass buckets (Ex.S-33 and S-35) for brass textile spare parts (Ex.S-36) trap and fancy room fittings (Ex.S-38), for agricultural implements (Ex.S-37), manufacturer for biscuits, cakes etc. (Ex.S-40), bakery units (Ex.S-41 and S-42), trunk works (Ex.S-39 and S-43), metal products (Ex.S-44),

wire products (Ex.S-45). It is also seen that applicants (Ex.S-33 to S-35) who are manufacturers of brass clips and brass buckets have applied for imports of spare parts for irrigation machinery, agriculture tractors, and machine tools. Applicants in Ex.S-36, S-37 and S-38 had prayed for imports for spare parts allowed under Appendix 32 which had listed spare parts for various descriptions like mining machinery, motor vehicles, refrigeration machinery, irrigation machinery, agriculture tractors and machine tools. The applicant at Ex.S-40 which is manufacturer of brass biscuits, cakes etc. had prayed for spare parts as allowed under Appendix 32. They have described them as garrage owners. Applicants at Ex.S-41 and Ex.S-42 which are bakery units have also applied for spare parts as per Appendix 32. Applicants at Ex.S-39 and S-43 are Trunk Works but they have applied for spare parts in general as given in Appendix 32 and for Agriculture Tractors respectively. The applicants as at Ex.S-44 and S-45 whose industry is of wire products had applied for spare parts for agriculture tractors. All such applications have been considered by Shri Punwani and he had issued licences. Applications will also show that their capital investments on account of machinery and equipment and land and buildings in most of the cases were below Rs.50000/-. Whereas import licences issued in all these cases have ranged between the amount of Rs.1.50 lakhs to Rs.3 lakhs excepting that two cases at Ex.S-38 and S-42 which were issued in the month of January 70 and October 1969. In one of these cases (Ex.S-38) the application was for spare parts worth Rs.3 lakhs where capital investment made by the industry was for Rs.20000/- on account of machinery equipment and in the other case (Ex.S-42), the application was for spare parts worth Rs.2 lakhs, whereas the

Attested



Advocate

ASU 40

capital investment for the machinery and equipment was stated by the applicant to be worth Rs.12000/-.

4.13 It is true that licences were required to be issued under the existing policy for the value applied for but the very fact that the licences were required by the actual users and that they were required to apply in a particular form where they had stated details about the nature of the industry, description of goods manufactured, production capacity, actual production in preceding two years, estimated production in ensuing year and capital investment as given in part II of the application suggest that in considering such applications these informations were required to be gone into. The cavalier fashion in which Shri Punwani had issued the licences without considering whether the applicants were actual users of the spare parts applied for or whether the value of the spares applied for could be justified in the context of applicants' own statement on investment in the industries, will clearly indicate that Shri Punwani in issuing the licences had not applied his mind and if para 78 of the policy book (Ex.S-1)

under which the licences were issued is read with the hand book of rules and procedure as at Ex.S-2, any prudent man will understand that spares for the items listed at Appendix 32 of Ex.S-1 could be only for the tools and machineries being used by the applicant in his industry. Shri Punwani has not considered these applications in that understanding at all.

I thus find that his action in issuing 13 licences concerned amounts to violating spirit of provisions in para 78 of Ex.S-1

To prove this is wrong

Wrong

This is based on premise only

Then why H.O. did not improve any condition

Please see these suggestions are correct go but the instructions as laid by H.O.

Being prudent - but he suggested - but he did not allow to reduce the value.

Marked
Shri Punwani
Advocate

41

4.14 As discussed before that all the applications considered by Shri Punwani were for imports from Rupee Payment Areas as such paras 18, 19, 21 of the Policy Book at Ex.5-1 were not applicable in these cases and actions on the part of Shri Punwani in issuing licences in the 13 cases did not amount to violation of import policy during April 69 to March 1970 as given in paras 18, 19 and 21 of the Import Policy Book.

Findings Negative

5. Now I shall discuss Article II of charge brought against Shri Punwani. Under Article II of charge Shri G.I. Punwani has been charged as under:-

"That the said Shri G.I. Punwani while functioning in various capacities during the period October 1955 and December 71 failed to maintain devotion to duty inasmuch as he purchased and sold immovable properties and entered into various transactions in respect of movable properties of the value exceeding Rs.1000/- each as detailed in the Appendix II either in his own name or in the name of members of his family without obtaining the requisite sanction or sending intimation to the prescribed authority as required of him under the rules.

And, who, thereby, contravened Rule 15(1)(2) of the Central Civil Services (Conduct) Rules 1955 r/w its corresponding rule 18(2)(3) of the Central Civil Services (Conduct) Rules, 1964."

6. Defence of Shri Punwani:

Shri Punwani in his defence has submitted that he was functioning as Managing Officer in the Ministry of Rehabilitation Govt. of India and was selected in the Territorial Army and was granted commission on 18.3.55. He has submitted that he was embodied in the Territorial Army and was relieved by his department on 11.2.60. Shri Punwani further pointed out that his services as Managing Officer were terminated by Chief Settlement Commissioner with effect from 13.5.61 by giving a notice of less than a month. He has further stated that he was selected by UPSC as Asstt. Chief Controller of Imports & Exports and for this purpose he was relieved by Territorial Army by

Attested
Punwani
Admitted

July 63 for only 23 days to join as Asstt CCI&S at Bombay. After that period he again joined his territorial army unit and on 31.3.69 he was relieved by Territorial Army and then he joined as Asstt. CCI&S at Kanpur on 9.4.69. Shri Punwani further submitted that on joining as Civilian Officer he filed his statement of moveable properties on 1st appointment and submitted to his department.

6.2 Shri Punwani in his defence further commented that all the properties were purchased against compensation claims given by Ministry of Rehabilitation. He has further pointed out that under the Government Rules displaced persons were authorised to associate compensation claims of friends and relatives. In his written brief Shri Punwani has submitted that all the transactions prior to 30.4.61 when his services were terminated as Managing Officer were through compensation claims duly adjusted by the Head of Office namely Regional Settlement Commissioner and that all the transactions were in his knowledge as the price was adjusted from the compensation claims. He has further submitted that the transactions during the period 1.5.61 to 31.3.69 took place when he was with the Territorial Army. He has also pointed out that the CCS (Conduct) Rules were not applicable to commissioned officer of Territorial Army. With regard to the property at Aliganj, Lucknow Shri Punwani has submitted that the bid money was less than Rs.1000/-. With regard to plot No.C-9 in Mahanagar Extn.Area,

Shri Punwani has submitted that it was purchased by his wife in 1967 and that his wife was an employee of Govt. of UP. With

Noted
Shri Punwani
Advised

regard to Royal Hotel at Nainital, Shri Punwani has submitted that this was purchased by his son who was an adult and who negotiated the deal by tender with Hon'ble High Court through Administrator General, U.P..

Assessment of evidence

7.1 There is no dispute with regard to the transactions as mentioned at Appendix II to the charge sheet issued against Shri Punwani. It is so obvious from a perusal of his reply to the charge sheet dated 23.5.80, defence statement submitted by Shri Punwani during the course of hearing and his defence written brief submitted after the hearing was over. Shri Punwani at the time of preliminary hearing has mentioned that he still stuck to his defence as given through his reply to the charge-sheet. It is also found that with regard to the property at Aliganj, Lucknow the money concerned is less than Rs.1000/-. There is also no dispute to the fact that during the period from 27.10.55 to 30.4.61 Shri Punwani was with the Ministry of Rehabilitation, Govt. of India. During this period transactions regarding Grove land property at 262/2, Aliganj, Lucknow, 419-T, Civil Lines, Lucknow, HZ/H-II/223, Bagh Alinabibi Lucknow, GN-3/469, Talabgagni Sukul, Lucknow, Eight Government Quarters at Sandilla and 5-1411, Lucknow had taken place with ~~xxx~~ which Shri Punwani was fully involved either in making the purchase himself involving the amount more than Rs.1,000/- or associating himself with the purchase involving more than Rs.1000/- excepting Aliganj, Lucknow property, which has been mentioned earlier.

Shri Punwani
Advocate

158-44

7.2 Though Shri Punwani has submitted that all the transactions were through compensation of claims duly adjusted by Head of Office namely Regional Settlement Commissioner and that all these transactions were in his knowledge and that all these transactions stand intimated to Income-tax Authorities, it is obvious from the statements of Shri Punwani that there have not been any formal intimation by him or that Shri Punwani had involved himself in these transactions with prior knowledge of the competent authority.

Services terminated
CES (Contract) Rules
not applicable
C-19.5
118-entirely
to involve any
handling

7.3 It is also in the admission of Shri Punwani that he has also involved himself in the transactions regarding Lucknow, plot No.69, Butlerganj, 15-Saunders Road, Lucknow, 35-Baruni Khandaik, Lucknow, 524/11, New Hyderabad, Lucknow, Plot No.C-9, Park Area, Mahanagar Extn Lucknow and No.105/42, Jagatnaraian Road, Lucknow during the period from 1.5.61 to 31.3.69 during which he was with the Territorial Army. These transactions as admitted by Shri Punwani had not been reported to the Territorial Army authorities.

7.4 The evidence of SW-3 who was investigating Officer for the case has stated in his evidence that he was informed by Territorial Army Head Office that under special Army Order it is essential for the territorial army officer to take prior sanction for the acquisition of immovable property and officer is to take prior sanction of disposal of immovable and movable properties. He has further stated that the Territorial Army Officer was also required to intimate all transactions of movable properties in the territorial army. Special Army order was not produced in evidence and as such requirement on the part of Shri Punwani with regard to

Attested
Shri Punwani
Admitted

159 45

transactions with which he had been associated during his period with the territorial army could not be appreciated. In this connection I would also mention that Shri Punwani in his letter dated 23.8.71 as it is found in Ex.6-73 has also admitted that he had not filed any return of the property when he was in the army. But he has stated that while in the army he was not fully aware of the rules on the subject and hence information regarding acquisition of properties was not given to the army. There is also no dispute from Shri Punwani regarding acquisition of agriculture land either in his own name or in the name of his family member. These transactions had taken place between 1967-71. In his defence Shri Punwani has submitted that agriculture land was purchased from Shri R.K. Sumha in 1970 and the agriculture land in plot 74 from Shri Bhog Nath and agriculture land purchased from Shri Jagbhan Singh were intimated through only property return. With regard to agriculture land as mentioned in item No.13(G)(H)(I) as mentioned in Annexure II to the charge sheet, Shri Punwani has submitted that these are the assets acquired by his son and his son being an independent SSC and not being dependent on him he was not supposed to intimate about his assets.

7.5 From above it is obvious that with regard to agriculture lands, Shri Punwani has acquired them in his own name or in the name of his family member without previous knowledge of the prescribed authority.

7.6 It is also found that Royal Hotel transaction involved Shri Vivek Punwani and not Shri G. Punwani and as such this transaction cannot be regarded in absence of any other evidence that the same was purchased by Shri Punwani.

Allosted 18/10/71
Shri Punwani
Delivered

7.7 There is no dispute to the transaction regarding movable properties as at Appendix II to the statement. But Shri Punwani's defence is that all these transactions were during the time when he was in the territorial army. The reply of Shri Punwani dated 23.5.80 in response to the chargesheet will show that he had not intimated these transactions as there was no rule for the same.

*MS. 8 Nov 80
in District
Chargesheet
as this was incorrect*

7.8 There is also no dispute by Shri Punwani with regard to purchase and sale of his compensation claims as mentioned in Annexure II of the charge sheet. The defence of Shri Punwani is that compensation of claims was allowed by Ministry of Rehabilitation not only in the case of displaced persons but also other could associate. This will obviously suggest that there has been no intimation of the same by Shri Punwani to his department.

*Charge -
Held not proved
Malicious
Exaggerated
in evidence*

7.9 However, the fact remains that Shri Punwani has not either formally intimated the prescribed authority about the transactions nor he had involved himself with the transactions as mentioned in Annexure II of the chargesheet with previous knowledge of the prescribed authority. His defence that transactions stand intimated to the income tax authorities cannot be regarded as the substitute for formal intimations to the authorities or having made the transactions with previous knowledge of the authority. Though the evidence is not definite

*clearly reveals
that malicious
intention - which was
to some how or other
find fault.*

*Attended
Shri Punwani
Advocate*

about Territorial Army Officers being required to intimate the transactions to the authorities or involving oneself in the transactions with previous knowledge of the authorities, the fact remains that Shri Furwani while serving in the Territorial Army has not intimated the transactions nor he had made them with previous knowledge of the authority.

Malaviya
Suggesting

8. Now I shall discuss the case of Shri Bhatia.

9. Shri Bhatia has been charged as under:-

"That the said Shri K.C. Bhatia while functioning as Licencing Assistant in the Office of Dy Chief Controller of Imports and Exports at Kanpur during the period between May 1969 and January 1970 committed misconduct and failed to maintain absolute integrity and devotion to duty in as much as he wrongly entertained various applications ~~from~~ for the issue of import licences for spare parts for agricultural tractors and other machine parts of huge value, details of which are given in the Appendix, and also instrumental in the issue of import licences to the concerned parties against the laid down policy of the Government.

And he, there y, contravened Rule 3 of the Central Civil Services(Conduct) Rules, 1964"

10. Defence of Shri Bhatia

Shri Bhatia in his defence has submitted that actual users has been defined in the Hand Book of Rules & Procedures. He has also submitted that SSI Units are actual users. It has been also submitted that applications processed by him were SSI Units. He has further pointed out that all the applications were processed under para 78 of AM-78 red book and not under the paras 18 to 21 of the red book. He has also pointed out that paras 18-21 of the Import Policy Book were not applicable in the cases processed by him. It has been also

Attended
Shri Furwani
Advocate

submitted that applications were to be treated for the value applied for and that licences were to be issued with general description as given in Appendix 32 of the red book in terms of public notice dated 27.5.68.

11. Assessment of evidence

The statement of defence as submitted by Shri Bhatia will obviously suggest that there is no dispute with regard to the processing of eight cases at his level as given at Annexure II to the chargesheet. All these applications were for imports from Rupee Payment Area and as such they were not required to be processed under para 18-21 of the Policy Book as at Ex.S-1. These paras are applicable for priority industries and are not applicable for imports under para 78. It is so obvious from the reading of these paras at Ex.S-1.

11.2 As discussed while discussing the case of Shri Punwani that there are instructions that licence should be issued for the value applied for. It is also found from the eight cases dealt by Shri Bhatia as at Ex.S-33 to S-35, S-38, S-40, S-44 & S-45 that the applications were for import from Rupee Payment Area and all are found to be registered as SSI Units. As such I do not find anything wrong on the part of Shri Bhatia to put up these applications for order to his superior officers. In this context I would also like to mention that processing the case by Shri Bhatia for orders of Shri Punwani, who was his superior officer, cannot amount to entertaining the applications wrongly as there was nothing in the policy for which the applications could not be processed as done by Shri Bhatia.

Attested
[Signature]
[Signature]
[Signature]

11.3 The irregularities that had happened with regard to these cases were to the extent that the officer passing orders for issue of licences has not applied his mind to the extent whether the value for which the licences have been ordered to be issued could not be justified judged by the criterion of the investment made by the SSI units and whether the units can be actual users of the machineries applied for. I have observed while discussing the case of Shri Punrani that the industries with which the applicants were concerned had nothing to do with the use of the spare parts of the machineries for which the units had applied. I would also like to observe that Shri Bhatia in processing the case and putting up the same to his officer has not pointed out that the parties did not deserve to be considered for issue of licences for not being competent and justified to use the same. Lapse on the part of Shri Bhatia in my view is to this extent.

12. Now I shall discuss the case against Shri J.K. Jain.

12.1 Shri J.K. Jain has been charged as under:

"That the said Shri J.K. Jain while functioning as UDC in the office of Dy Chief Controller of Imports & Exports at Kanpur during the period between May 1969 and January 1970 committed misconduct and failed to maintain absolute integrity and devotion to duty in as much as he wrongly entertained various applications for the issue of import licences for spare parts for agricultural tractors and other machine parts of huge value, details of which are given in the Appendix, and was instrumental in the issue of import licences to the concerned parties against the laid down policy of the Government.

And, he, thereby, contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964."

13. Defence of Shri J.K. Jain

The defence of Shri Jain is the same as has been submitted by Shri K.C. Bhatia and as such I do not want to reproduce the same again.

Extraneous
order of
S.M. Amal
13-5-69

in some
of the
14-5-69

Advocate

14. Assessment of evidence:

A reading of statement of defence of Shri J.K. Jain will suggest that there is no dispute with regard to his processing the four cases as mentioned in Annexure II to the chargesheet. All these applications were for imports from Rupee Payment Area and as such they were not required to be processed under para 18-21 of the Policy Book as at Ex.5-1.

These paras are applicable for priority industries and are not applicable for imports under para 78. It is so obvious from the reading of these paras at Ex.5-1.

14.2 As discussed while discussing the case of Shri Punwani that there are instructions that licence should be issued for the value applied for. It is also found from the cases dealt by Shri Jain as at Ex.5-36, 5-37, 5-39 and 5-43 that the applications were for imports from Rupee Payment Area and all are found to be registered as SSI Units. As such I do not find anything wrong on the part of Shri Jain to put up these applications for order to his superior officers. In this context I would also like to mention that processing the case by ~~Shri Jain~~ for orders of Shri Punwani who was his superior officer cannot amount to entertaining the applications wrongly as there was nothing in the policy for which the applications could not be processed as done by ~~Shri Jain~~ Shri Jain.

14.3 The irregularities that had happened with regard to these cases were to the extent that the officer passing orders for issue of licences has not applied his mind to the extent

whether the value for which the licences have been ordered

Noted
Shri Jain
Advocate

185
51

to be issued could not be justified judged by the criterion of the investment made by the SSI Units and whether the units can be actual users of the machineries applied for. I have observed while discussing the case of Shri Punwani that the industries with which the applicants were concerned had nothing to do with the use of the spare parts of the machineries for which the units had applied. I would also like to observe that Shri Jain in processing the case and putting up the same to his officer has not pointed out that the parties did not deserve to be considered for issue of licences for not being competent and justified to use the same. Lapse on the part of Shri Jain in my view is to this extent.

Findings

Shri G.L. Punwani

Article I of charge has been proved to the extent as observed in para 4.1.2.

Article II of charge has been proved to the extent as observed in para 7.9.

Shri K.C. Bhatia

Article I of charge has been proved to the extent as observed in para 11.3.

Shri J.K. Jain

Article of charge framed against Shri Jain has been proved to the extent as observed in para 14.3.

Place : New Delhi

Dated : 2.2.1991.

(R.N. Mehuri)

Commissioner for Departmental Inquiries

11/12/91

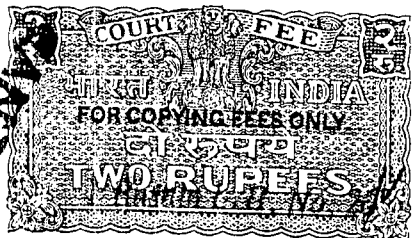
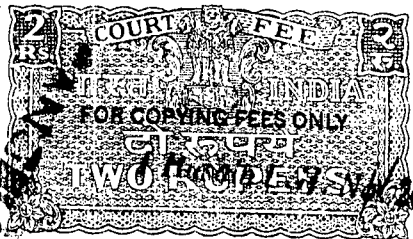
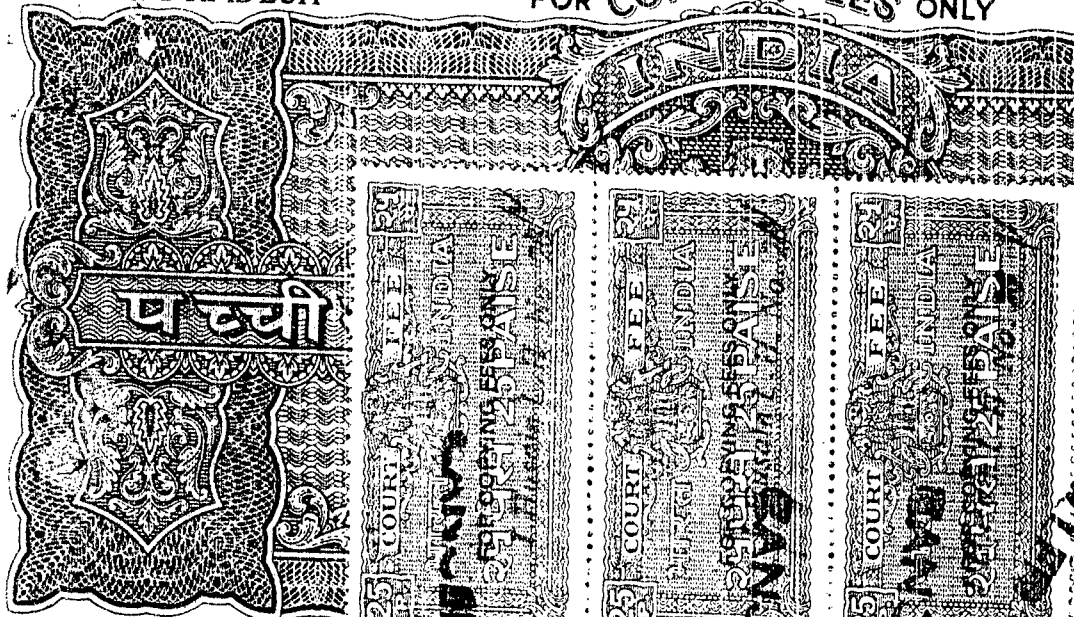
Shri Punwani

Admitted

UTTAR PRADESH

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Attested
Punwani
A. K. S.



5/7/84

53
ACR

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALAHABAD
LUCKNOW BENCH, LUCKNOW.

Criminal Misc Case No. 1202 of 1981.

G.I. Punvani son of late Dr. Idanmal
Punvani r/o Mall Avenue, Lucknow.

.. Applicant.

Verus

The State

... Opp. Party.

Criminal Misc Case against the order dated
4th March 1981 passed by Sri R.S. Mathur Special
Judge Anti Corruption (Central) Lucknow, U/s
5(2) R/w Section 5(1)(B) of Corruption Act 1947
and Section 120-B I.P.C.

Lucknow Dated- 25.5.1984.

Hon'ble K.M. Goyal, J.

For order see my judgement of date in Crl. Rev.
286 of 81.

TRUE COPY

[Signature]
Section Officer

Copying Department.

High Court, Lucknow Bench,
LUCKNOW.

Sd/- K.M. Goyal.

25.5.84.



[Signature]
Advocate

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129

IN THE HIGH COURT OF JUDICATURE AT ALMABAD
(LUCKNOW BENCH), LUCKNOW.

Criminal Revision No. 256 of 1981.

Shame Elahi son of Abdul Gaffar of
M/S Shan Commercial Service, Prince Road,
Moradabad, U.P.

Revisionist- Applicant.

Versus

1. State of U.P.
2. G.I. Punwani, Controller,
Import & Export, Kanpur, r/o 5, Mall Avenue,
Lucknow.

Opposite - Parties

Cr.P.C.

u/s 397/40/ read with sec 482/
Criminal Revision against the order dated
4th March 1981 passed by Sri R.S. Mathur,
Special Judge (Anti Corruption (Central)
U.P. and against charge dated 4.3.1981.

Lucknow Dated: 25.5.1984

Hon'ble K.N. Goyal, J.



Attorney
Punwani
for the

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Connected with:-

Crl. Revision No. 256 of 1981,	Shan Ilahi	v	State.
Crl. Misc Case No. 882 of 1981,	K.C. Bhatia	v	State.
Crl. Misc Case No. 883 of 1981,	J.K. Jain	v	State.
Crl. Misc Case No. 1202 of 1981,	G.I. Punwari	v	State.
Crl. Misc Case No. 576 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 577 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 578 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 579 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 580 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 581 of 82,	G.I. Punwari	v	State.
Crl. Misc Case No. 582 of 82,	G.I. Punwari	v	State.

Lucknow Dated 25.5.84.
Hon'ble K.N. Goyal, J.

① As many as eight criminal cases no's 34 to 41 of 1975 are pending in the Court of the Special Judge Anti-Corruption (Central) U.P., Lucknow. These are ten applications under section 482 Cr.P.C and one Criminal Revision directed against the proceedings. The accused persons have in these petitions prayed for quashing the charges framed against them and for quashing of the prosecution. The cases have arisen in the following circumstances.

② Shri G.I. Punwari who is petitioner in most of these cases and will be hereafter referred to as Punwari, was Assistant Controller of Imports and Exports posted at Kanpur during the period April, 1969-March, 1970 period is referred to "AM-70", the letters 'A' and 'M' standing for April and March respectively. He was the competent authority under the Import and Export Act, 1947, for grant of Import licences. During the period "AM-70" he granted a number of licences for import of spare parts, inter alia, of agricultural tractors and agricultural implements etc to a number of applicants. These applicants did not even own any agricultural tractor or any factory or workshop, in which any occasion for manufacture, maintenance or servicing of tractor etc by the applicants could arise. Some of them were manufacturers of brass utensils, others were manufacturers of plastic articles or persian wheels and buckets. Punwari was assisted by two dealing assistants K.C. Bhatia and J.K. Jain. The prosecution case is that Punwari, Bhatia and Jain, in conspiracy with the applicants for licences maneuvered to grant licences to these applicants for articles in respect of which they were not "actual users". This is said to have been done for causing undue favour to the applicants. A licence is "property". This pecuniary advantage was conferred on the applicants by the issuance of licences in illegal manner. The charges that have been levied against them are under section 5(1)(d) of the Prevention of Corruption Act, 1947

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Advocate

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read with section 5(2) of that Act and section 120-B of the Indian Penal Code.

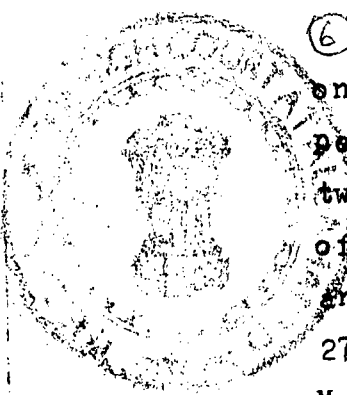
(3) After investigation by the C.B.I., charge sheets were filed against the accused persons in the Court of the Special Judge Anti-Corruption (Central) U.P., Lucknow and it is this that the cases are pending in that court. These petitions have been filed by the three officials mentioned above, besides one of the grantees of licence. It is undisputed before me that sanction for prosecution has been given by the competent authority in so far as these officials in petition are concerned.

(4) The contention of the petitioners is that the licences were granted in accordance with the various instructions of higher authorities which were in force at relevant periods and that the officials who are accused have not violated any of the instructions. It has been contended in the alternative that at the worst the officials may have been guilty of misinterpreting the instructions but it cannot be said that they deliberately or with dishonest intention did so. If the interpretation placed by them on the instructions was not strictly correct but bonafide then too they would be entitled to protection on section 7 of the Import and Export Control Act, 1947. It is their contention that continuation of the prosecution in these circumstances is nothing but abuse of the process of the court in as much as it would be causing unnecessary harrassment to the petitioners.

(5) Criminal case No. 34 of 1975 has given rise to petition No. 883 of 1981 on behalf of Bhatia and Jain and petition No. 1202 of 1981 on behalf of Punwani. In this case two licences were granted, one to M/s Saran Industrial Corporation and the other to Govind & Co. Both these business concerns were engaged in manufacture of plastic goods and yet licences were granted for import of Spare Parts of Agricultural Tractors etc. Each licence was of the value of Rs.4 lacs. Both these licences were granted on 15.5.69.

(6) Criminal case No. 35 of 1975 has given rise to two petitions; one is petition No. 882 of 1981 on behalf of Bhatia and the other is petition No. 577 on behalf of Punwani. The case relates to grant of two licences. One was for goods of the value of Rs. 5 lacs in favour of M/s Niranjana Lal Tachand who was manufacturer of persian wheels and buckets. This was granted on 7.5.69. The other was granted on 27.6.69 and was for goods of the value of Rs.2 lacs in favour of M/s Bhagwati Industries who was manufacturer of persian wheels and buckets.

(7) It may be mentioned in connection with these two cases No.34 and 35 of 1975 that the two licences mentioned in case No.34 were for import



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from Yugoslavia as well and the licence in case No. 35 of 1975 in favour of Niranjana Lal Tarachand was also for import from Yugoslavia. The prosecution case is that on the dates these licences were granted Yugoslavia had been deleted from the list of countries constituting the Rupee Payment Area (R.P.A.).

(8) Criminal case No. 36 of 1975 has given rise to petition No. 578 of 1982 by Punwani. In this case licence was granted on 5.12.69 for goods of the value of Rs. 20,000/-. It is undisputed that these goods were not actually imported by the licence holder. The licence was granted in favour of Mohammad Yunis who was manufacturer of brass hardware.

(9) Criminal case No. 37 of 1975 has given rise to petition No. 580 of 1982 by Punwani. In this case licence was granted on 31.12.69 for goods of the value of Rs. 20,000/- in favour of Wahid Ali Khan who was also a dealer in brass hardware.

(10) Criminal case No. 38 of 75 has given rise to petition No. 579 of 1982. In this case the licence was granted to Haji Subhan Khan on 25.2.70 for goods of the value of Rs. 40,000/-. This licence was also a dealer in brass hardware.

(11) Criminal case No. 39 of 75 has given rise to petition of 576 of 1982 by Punwani. In this case the licence was granted to Latif Khan Metal Industries which was also manufacturer of brass hardware. The licence was granted on 9.2.70 for goods worth Rs. 40,000/-.

(12) Criminal case No. 40 of 1975 has given rise to petition No. 582 of 1982 by Punwani. In this case the licence was granted to Mohammad Ibrahim, again a dealer in brass hardware on 13.11.69 for goods worth Rs. 20,000/-.

(13) Criminal case No. 41 of 1975 has given rise to petition No. 581 of 1982 by Punwani and Cr. Revision No. 256 of 1981 by Shane Ilahi. The licence was granted to Shane Ilahi who was also a dealer in brass hardware. This licence is dated 17.9.69 and was for goods worth Rs. 30,000/-.

(14) It may be seen that Shane Ilahi is the only dealer who has approached this court, while the other dealers who are being prosecuted in respect of the licences respectively secured by them have not come to the Court at this stage. Wahid Ali Khan, the accused in Criminal case No. 37 of 1975 and Latif Khan, the accused in criminal case No. 39 of 1975 have died and the cases have abated as against them.

(15) It may be noted here that the licence holders in Cr. case No. 37 to 41 of 1975, like the licence holders in criminal case No. 36 of 1975, as noted earlier, have not actually imported any goods for which they were granted licences.



M. K. V. V.
Punwani
Advocate

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Contd. from page 5.

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- (2) Licences will not be valid for import of spare parts of agricultural tractors and for tractor drawn agricultural implements mentioned in Appendix 4-D/Part-II.
- (3) Import of ball and roller bearings mentioned in Appendix 14 and rollers, needle rollers mentioned in remarks column against S.No. 9(g)/II will not be allowed as spares or as CKD parts.
- (4) The requirements of high carbon steel plain discs other than those mentioned in Appendix 4-D Part II and coulter, scalled, outway discs will be met from the stock imported by S.T.C."
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Sharma
Schwartz

the Sponsoring Authorities. It will not be necessary for the applicants to furnish with their import applications the lists of spare parts sought to be imported. Import licences will be issued with general description of goods as given in Appendix-32, and will be valid for import of all the spare parts covered by the description of goods given in the licence, except that items listed in Appendix-3, will be allowed only to the extent of 5 per cent of face value of the licence, subject to a maximum of Rupees ten thousand, within the overall value of the licence, the import of a single item not exceeding Rs.1,000 in value".

(20) It is undisputed that none of the items for which licences were granted was listed in Appendix-3. Thus the last part of this paragraph is not applicable. The reference to "Sponsoring Authority" means the officials of the Industries Department of the State ~~Government~~ ^{Government whose} recommendation was required for other categories.

Appendix-32 reads as follows,

APPENDIX 32

(Para 78 of Section I)

List of spare parts of certain essential machinery which will be allowed import by actual users from Rupee Payment Area.

Part & S.No. of the
I.T.C. Schedule.

Description.

PART II

36(5)

Spare parts of mining and quarry machinery and spare parts of machinery required for Electric Supply Undertakings.

PART IV

293, 295 & 297.

Spare parts of Motor Vehicles: The following items of spare parts of motor vehicles will not be permitted:-

- (i) Distributor assembly and parts thereof.
- (ii) Items covered by List I and II of Appendix 26.

PART V

65(5)(ii)

Spare parts of Refrigeration and Air-conditioning machinery other than domestic refrigeration.

65(5)(iii)

Spare parts of irrigation machinery, spare parts of conveying machinery and spare parts of machinery when required for industries and undertakings other than cinema and refrigeration and also other than spare parts of machinery falling under Sl. No. 65(I-4)(vii)(a) and (b) of Part V.

74(iii)

Spare parts for agricultural tractors and for tractor drawn agricultural implements excluding under-carriage parts for crawler tractors.

PART VI

Spare Parts of Machine Tools.

Note: Banned and restricted spare parts will not be allowed to be imported under this provision.

(2)

We are concerned in this case only with actual users (Industrial).

They are defined in para 69 of the Hand Book as follows:-

"69(1) Definition - Actual users (Industrial) are those who require raw materials, components, accessories, machinery and spare parts for their own use in an industrial manufacturing process.

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174

- (2) Categories of actual users. - Broadly, speaking there are three categories of industrial actual users, viz., (i) scheduled industries borne on the registers of the Directorate General of Technical Development, (ii) scheduled industries not borne on the registers of the Directorate General of Technical Development and non-scheduled industries other than small scale industries, and (iii) small scale industries".
(Emphasis supported)

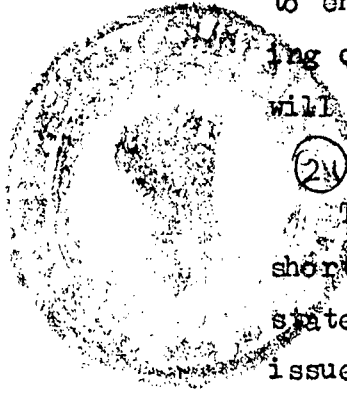
Admittedly only these industries were recognised which are duly registered as such with the Industries Department.

(22) The contention of the petitioners is that all that was required by paragraph 69(2)(iii) was that the persons who may apply in the category of actual users should be "small scale industries". The applicants who were granted licences in these cases were all undisputedly registered with the Industries Department as small scale industries. This, according to the petitioners was enough to entitle them to apply for import licences as "actual users" from R.P.A. The Government was following a "free licensing policy", and it was for this reason that it was not insisted on that the person who may be granted licences for import should be engaged in the manufacture of the very goods in respect of which import licences were sought. In support of this contention the petitioners have relied on the following instructions: *in the matter*

(23) On 27.5.68, in M-69, a Public Notice was issued. This is annexure-4 to petition No.883. It says, in para 3, that it was not necessary for the applicants to furnish with their import application list of Spare Parts sought to be imported. Import licences will be issued with the general description of goods as given in Appendix-32 of the Red Book for the period M-69 and these licences will be automatically valid for the import of all the Spare Parts covered in the description of goods given in the licence, except that which exception is not applicable, the items appearing in Appendix 3 to the Red Book will be allowed only to the extent of 5 per cent, omitting the words not relevant to the controversy before us. Para 4 of this Public Notice adds that in order to enable the Customs authorities to identify these licences for allowing clearance of goods, the licences issued under this Public Notice will bear the following indication at their top:-

(24) "ISSUED UNDER FREE LICENSING SCHEME"

This was reiterated in the General Licensing Instructions (for short, GLI) No.52/68 dated 25.7.68. In para 2 of this GLI it was stated, inter alia, that under these provisions import licences may be issued "for value applied for". In para 3 it was added that no list of Spare Parts need be attached to the licences and the licences may be issued with the general description of goods and I.T.C. classification as given in Appendix-32 (supra). The contention of Punwani in petition No.1202 of 81 is that in view of these instructions even in M-69



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licences were being issued by his predecessor Shri Budhran for import of spare parts of tractors etc worth several lacs even to persons who were not engaged in manufacturing, maintenance of servicing tractors but were manufacturing other articles. One of the licensee was Shreeji Industries of Agra, ~~Papaper~~ manufacturer who was granted licence for import of "tractor spares" worth, Rs. 2,35,000/-. This is mentioned on page 123 at serial no. 48 of the weekly Bulletin of Licences for the period 23.3.69 to 31.3.69 published by Government of India, Ministry of Foreign Trade and Supply, which was produced before me. This is Volume XXXIV no. 26 dated 9.5.69. This publication further indicates that issuance of each licence was intimated by licensing authorities to C.C.I. & E. and their details were regularly consolidated and published containing the heads "name and address of licensee, date of licence, country from which import was allowed, value, and ITC description". A specific averment in this connection has been made in para 19 and 20 of the petition. In para 19 it has even been suggested that this licence to Shreeji Industries was issued in pursuance of C.C.I. E's own suggestion. In the counter-affidavit filed by the Investigating Officer in the case on behalf of the State the averments in these paragraphs were dismissed as "not relevant to the facts of the case". The averments were however not denied as being untrue.

(25) G.L.I. No. 23/69 dated 16.4.69 laid down that applications received till 31.3.69 may be dealt with in accordance with the policy for A.M. 69. However, face value restrictions for A.M. 70 would be issued later on. Undisputedly, the existing instructions of A.M. 69 were to continue during A.M. 70 as well, subject to any amendments that may be issued from time to time.

(26) Punwari had joined this office for the first time only on 9th April, 1969. He says that he being new at the job wanted to make sure about the correct procedure in regard to grant of licences. On 25.4.69 the dealing assistant Bhatia put up a note before Punwari mentioning that the applications were being received under para 78 of the current Red Book for import from RPA in respect of spare parts of motor vehicles, refrigeration and air conditioning machinery, agricultural tractors etc. The value applied for was some times in lacs of rupees. According to Bhatia, it was not clear from the Red Book if the licences were to be issued after seeing the "end products". He added that some applications had been received from units which were presently engaged in manufacturing plastic goods but had added in the applications that they proposed to repair or replace tractor parts etc. He sought confirmation as to whether licences could be issued in these cases. In his opinion, expressed in the last sentence, no embargo had been placed in the import policy in this regard. On this note of Bhatia, Punwari noted a query. He asked Bhatia as to what was being done during A.M. 69. Bhatia replied

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Punwari
Debate

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that during A.M.69 they had been issuing licences for import of spare parts from RPA to the applicants engaged in the manufacturing of engineering items like agricultural implements, engines etc. only and not to other industries like plastics etc. Punwari did not agree with that and noted that in A.M.69 licences were being issued to other too, -this assertion of his is borne out by the pleadings and documentary evidence, and as such they could be issued to all applicants who applied for the items. In other words, he indicated that licences could be issued, even to those who were not presently engaged in manufacture of agricultural implements etc., for import of spare parts and components of agricultural implements etc. However Punwari did not take a final decision to this effect on his own but submitted his note to the immediately higher officer Sri O.N.Anand who was Dy. Chief Controller of Imports & Exports, also based at Kanpur. Sri Anand thereupon endorsed his decision as follows:-

"Instructions contained in para 78 are clear. Please follow these strictly. There is no question of end products. The instructions do not want us to do them.

(2) We have been doing this during A.M.-69."

(Emphasis supplied)

(27) This note of Sri Anand is dated 13.5.1969. Sri Anand is not alleged to be in league with the accused persons. He is one of the prosecution witnesses. His instructions were binding on his subordinates.

(28) In the office of the Dy.C.C.I.E at Kanpur the policy circulars on behalf of the Head of Office used to be issued by Sri P.C.Bhatnagar, Assistant Controller (Policy). Although Sri Bhatnagar was thus of the same rank as Punwari, namely, Assistant Controller, instructions which were issued by Sri Bhatnagar were on behalf of Dy.C.C.I.E. and as such those instructions were binding on Punwari. On 23.5.69, vide annexure-12 to petition no.1202 of 1981, a policy circular no.24/69 was issued over the signature of Sri Bhatnagar containing the following "clarifications received from the C.C.I.E. " with regard to import of spare parts of machinery mentioned in appendix 32 of the Red Book by actual users (for short A.U.) from R.P.A.

"1.A.U. applications for AM-68 for import of spare parts from rupee area in respect of machinery listed in appendix 32 of Red Book (Vol.I) may be considered by switching them over to AM-69 period in terms of GLI No.52/68 dated 25.7.1968.

2. A.U. licence from rupee area in respect of S.No.74(iii)/V may be issued inspite of the remarks in the Red Book against this S.No. as this provision relates to individual tractor owners who want to import from sources other than rupee area.

3. Components are those which are meant for the manufacture/ fabrication of a complete machine or equipment, whereas spare parts are intended for servicing and maintenance of the



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manufacturer to diversify his business and to plan
brassware or plastic ~~manufacturer to diversify his business and to plan~~ 65
in future to engage in manufacture etc., of agricultural implements after
receipt of the articles from abroad under the import licence sought.

It had also been provided that applications for import from RPA were not
required to be "sponsored" by the District Industries Officer as was
required for other applications. This provision also indicated that the
actual or potential need of the applicants was not to be verified on the
spot. There was moreover no agency at the disposal of the licensing
officials for such verification of actual need, the "sponsoring" autho-
rities" being excluded from the process. It was through GLI dated 4.6.69-
annexure 3 to petition no.883 of 81 that for the first time some sort of
instructions were stipulated in regard to such imports from RPA. In this
GLI it was mentioned that the provision in para 78 (supra) pertaining to
import of spare parts of machinery listed in Appendix 32 by actual users
from RPA was intended "to meet the requirements of actual users only for
servicing and maintenance purposes". Accordingly it was directed that
the following conditions may also be endorsed on the licence issued in
such cases :-

"(i) This licence can be utilised for import of spare parts in
terms of paragraph 78 of section I of the Import Trade
Control Policy (Red Book Vol.I) for the period April 1969-
March 1970.

(ii) The licence is issued subject to the conditions that the
goods imported under it shall be used only for servicing
and maintenance of machinery installed in the licence
holders factory. It shall not be open to the licensee to
import under this licence any components required for
fabrication of machinery."

30 However in this GLI too it was made clear that "import licences
may be issued for the value applied for" and further that "no lists of
spare parts may be attached to the licences" and that Import licences
may be issued with the general description of goods and ITC classifica-
tion as given in Appendix 32 to the current Red Book (Vol.I)."

31 It may be mentioned here that Yugoslavia was also originally part
of the RPA. But in this GLI it was mentioned that Yugoslavia was not to
be treated as covered by RPA countries and that requests for imports
from Yugoslavia may continue to be referred to the Head-Quarters
(Import Policy Cell) for short I.P.C. for disposal instructions as per
letter no. IPC (GENL.4)/69 dated 29.4.69. This letter, it was agreed
before me by both the parties, is the same as letter dated 1.5.69 which
is annexure-1 to the petition no.882 of 1981. (It was signed on 29.4.69
and issued on 1.5.69). This was a Secret letter from the C.C.I.E in
which it was stated that pending issue of instructions in regard to
licensing for imports from Yugoslavia it had been decided that
Yugoslavia may not be included in the list of R.P.A. countries and

Attended
S. J. Duman
Adk. 10/10/69

that requests received for issue of licences for imports from Yugoslavia may be referred to C.C.I.E. Cell at New Delhi for disposal instructions. The contention of the accused officials is that this annexure-1 which was a "secret" document was never communicated to them and as such they could not be presumed to have had any knowledge thereof. It was only through GLI dated 4.6.69 that they learnt for the first time about the exclusion of Yugoslavia from RPA. The endorsements on annexure-1 dated 1.5.69 show that this communication from New Delhi was received by Dy. C.C.I. & E. on 12.5.69 and thereafter it was noted by Sri P.C. Bhatnagar, the Assistant Controller (Policy) on 12.5.69 and 22.5.69. There is only an oral statement of Sri O.N. Anand to the effect that he had conveyed the intimation contained in the secret letter of 29.4.69 to Punwari "soon after". The exact date on which it was allegedly conveyed to Punwari has not been stated in the oral statement recorded under section 161 Cr.P.C. On behalf of Punwari it has been rightly pointed out that whenever any order was circulated a circulation slip on which the signatures of the official concerned were obtained at the time each such official received a copy of the order. No such distribution or circulation slip has been produced in respect of this letter of 29.4.69/1.5.69.

(32) Sri Bireshwar Nath, learned Additional Government Advocate, has pointed out that a similar communication (GLI No.16/69) issued as far as on 10.3.69 had already excluded Yugoslavia from the list of RPA countries for the time being. This is Annexure D 2 to list of documents supplied to the accused in Criminal cases 34 and 35 of 75. But the endorsements made at Kanpur on the copy of this GLI also show that it had remained in the custody of Sri O.N. Anand until 21.5.69 and was seen even by Sri P.C. Bhatnagar only on 22.5.69. This too does not appear from the endorsements, to have been communicated to Punwari.

(33) The GLI of 4.6.69 noted earlier was communicated to Punwari on 11.6.69, vide distribution slip which forms part of the prosecution documents. It merely directed that certain conditions were to be endorsed on the licences that may be issued under this category, but did not say anything about verification either of the applications before issue of licence or of the utilisation of the articles imported under the licence, or about any agency for such verification.

(34) Thereupon Punwari raised queries on these points and put up a draft letter for issue by Sri O.N. Anand to Delhi office. This is annexure 13 to petition no.1202. Sri Anand after recasting this draft wrote a D.O. letter dated 30.8.69, vide annexure 14 to petition No.1202, to Sri Mirocha, Joint C.C.I.E. seeking clarifications. The relevant parts read as follows :-

"Attention is invited to para 78 of section I of Current Red Book and GLI 34/69 dated the 4th June 1969, regarding the

Attested.

 Advocate

import of spares from R.P.A. during M-69-70. It is stated in para 2 of GLI referred to above, that this provision is intended to meet the requirement of AU only for servicing and maintenance purposes. It is also stated therein that the import licences may be issued for the value applied for.

2. This office has been issuing licences for value applied for but it has been observed that certain parties are requesting for grant of huge value licences which it appears may not be required for the servicing and maintenance etc.

3. In the instructions, referred to above, the details of the evidence required to be produced by the parties, while making the applications have not been given. In the absence of those, it is rather difficult to ensure that those are required by the actual users only for servicing and maintenance purposes. This office is merely going by the statement made by the parties.

4. However, after receipt of the GLI, referred to above this office is asking for the following evidences:-

- a) SSI Regn. No. allotted by the State Director of Industries.
- b) Declaration stating that these are required for servicing and maintenance purposes.

5. The point at issue is whether,

- a) We should ask for any other documentary evidence.
- b) Issue licences for value applied for even when apparently it may be on the very high side.

Pending receipt of clarification on these points, this office has curtailed the value in respect of units who apparently would not require licences for the value applied for. However, in case of bigger and well known units, licences are being given for the value applied for. It is considered that some check is to be imposed while granting such licences.

6. Attention is also invited to condition No. 2 referred to in para 5 of GLI referred to above. This condition may be difficult to fulfil as servicing and maintenance of tractors, air-conditioning machinery etc is done in certain workshops, who service and maintain the machinery which is not owned by them. Therefore to say that the imported goods shall be only used in licence holders factory will not be appropriate. This may also be looked into, "

(Emphasis supplied)

35 Before and after issuance of this D.O. letter, Punward did issue licences on the basis of the earlier interpretation, viz., that as long as the applicant was a registered SSI unit ("small scale industries") and the articles sought to be imported were Appendix 32 items from HPA countries, the licence was to be issued for the value applied for

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Punward
Adhikari

irrespective of whether the applicant was registered as SSI unit for the particular item sought to be imported or not. What is however significant from this D.O. of 30.8.69 is that this was not without the knowledge and at least tacit approval of his official superior Sri. O. N. Anand who, as noted earlier, is not said to have been in league with him in committing any irregularity. Not only Sri Anand but even the headquarters officers were kept in the picture about it.

(36) A headquarters inspection team also stayed at the Kampur office from 7th to 12th August, 1969 and examined the licences issued by Punwari. It did not find any fault on this score with the licences issued.

(37) A meeting of Port Officers was also held on 29.9.69 which was attended by officers from Kampur as well. At that meeting various doubts were to be cleared. The Kampur office raised the following point, vide item no. 66-see Annexure 15 of petition no. 1202 :-

"66. In the case of free licensing of spare parts to actual users from rupee payment countries, the term 'actual user' and the purpose 'maintenance & servicing' have not been defined. No essentiality certificate in such cases is prescribed. Can licences in such cases be issued on the basis of declaration of the applicants? Is there any upper limit for such licences? Are any documents other than T.R. & application required for issue of such licences."

(Emphasis added)

(38) The minutes of this meeting are dated 12.11.69. They show that all that was endorsed against this item was that necessary clarification was being issued. In other words, no clarification was given at the meeting on 29.9.69, not even in the recorded minutes on 12.11.69. Nor was it suggested that the doubts raised were absurd and that the policy was quite clear. It was also not said that issuance of licences of this category was to be discontinued until clarification was given.

(39) Then on 27.11.69/5.12.69, vide Annexure 16 to petition no. 1202, the headquarters replied to Sri Anand's D.O. of 30.8.69. This reply was as follows :-

"2. Licences to actual users for import of spare parts as per instructions contained in G.I. No. 34/69 dated 4.6.69 may be issued for value applied for on production of a declaration from the applicant that the spares sought to be imported are required for servicing and maintenance of machinery installed in his factory, if the applications are otherwise in order. However, in regard to spare parts of agricultural tractors, import may be allowed on the basis of Rs. 1500/- (Rupees fifteen hundred) per tractor. The position will be reviewed after sometime having regard to the licensing done by the regional licensing authorities

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and if considered necessary, the question of restricting the licensing will be considered.

3. In regard to the point raised in para 6 of your D.O. under reply, it may be clarified that in the case of spare parts of agricultural tractors and tractor drawn agricultural implements and motor vehicle parts, the intention is that the import of such spares should be allowed for servicing and maintenance of the equipments which are in possession of applicant.

4. It has been brought to our notice by the Inspection Unit at Headquarters that licences for import of spare parts of machineries from rupee payment area had been issued to workshop by your office in terms of the said G.I. This provision will not be applicable to garages and workshops."

(Underlining mine)

(40) On 9.12.69 a Policy Circular No. 56/69 was issued reincluding Yugoslavia in RPA but directing that applications for Yugoslavia alone were to be referred to headquarters.

(41) Sri Bireshwar Nath, learned Additional Government Advocate, has however contended that the expression "actual user" and also the expression "spare parts" should themselves lead to the inference that the persons who could use these spare parts in their own machinery could be treated as actual user and should alone be entitled to import, under this category. This is an over-simplification of the matter. If the matter was so simple as that, what was there to prevent either Sri O.N. Anand when the matter was placed before him by Punwari in May, 1969 itself, or again in August, 1969 when Punwari put up before him a draft letter seeking clarification from Delhi, or C.C.I.E. or Joint Controller or Dy. Controller dealing with the policy at Delhi from saying so immediately when clarification on this point was sought from them.

What was the meaning of Sri O.N. Anand's directive that the "end product" was not to be seen? If the expression "actual user" was to mean only that the applicant should use the articles sought to be imported for the thing he was going to manufacture in his own factory, i.e. in the manufacture of particular end product, then the directive that the end product was not to be seen should be considered as clearly contrary to the intentment of the scheme. The inspecting officers from Delhi who made the inspection in August must also have seen that the persons to whom the licences were being given were not engaged in any industry in which spares allowed to be imported could be used. This is apart from the fact that a copy of every licence was sent to Delhi and the list of licences issued were being published from Delhi every week. Not only this, if the matter was so simple as that, when the same was raised by the officers of Kanpur at the Port Officers Meeting in September why were they not immediately snubbed by their superior officers at Delhi

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for raising a frivolous query when the matter was so obvious? Sri Anand in his D.O. of 30.8.69 had also added that the interpretation now canvassed on behalf of the petitioners was being followed by them at Kanpur. He was thus obviously a party to this interpretation. Even earlier in May, 69 on Punwari's note he had observed that in A.M. 69 also the same policy was being followed, vide annexure-5 to the petition no. 882 of 81. The observations of Punwari and Sri Anand that they had been doing this during A.M. 69 were not without foundation. Numerous instances have been mentioned, in para 19, 20, 21, 22 and 24 of petition no. 1202 of 81 of the other licences issued which could only be justified on the basis of the interpretation now canvassed by the petitioners. Those licences were issued in A.M. 69 by Sri Bhudhraj out of which atleast one was on the basis of a letter of C.C.I.E dated 4.2.69. These paragraphs also mentioned numerous other licences issued by Punwari himself but in respect of which the C.B.I. has not imputed any illegality to Punwari and his dealing assistants.

(u2) It is undisputed that no action was initiated against the petitioners on the basis of any complaint of C.C.I.E. Indeed the matter started through a "source report" received by the C.B.I. about lavish living and possession of disproportionate assets on the part of Punwari. It was on the basis of this source report that F.I.R. was lodged against Punwari on 3.12.71 until then no higher officer of the C.C.I.E. department had taken exception to any of the licences issued by Punwari. It was only thereafter that they took action against some licensees taking the view that the licences had been wrongly granted. The much belated clarification that was given on 5.12.69 by C.C.I.E. through annexure-16 to petition no. 1202 of 81 did for the first time impose a limit of Rs. 1500/- for tractor in regard to spare parts of agricultural tractors. Until then, as noted earlier, the policy throughout was that the licences were to be issued for the value applied for. Indeed, even this letter of 5.12.69 refers to the earlier GLI. no. 34/69 dated 4.6.69 and adds that according to that GLI the licences were to be issued for the value applied for on mere production from the applicant that spares sought to be imported were required for servicing and maintenance of machinery installed in the applicants factory if the applications were otherwise in order. Even in this letter of 5.12.69 no other restriction was imposed in regard to other spare parts mentioned in Appendix-32 except that they will not be issued to garages and workshops. It merely noted that according to the report of the inspection unit licences had been issued by the Kanpur office even to workshops. No other objection was raised in regard to the licences issued to, for instance manufacturers of plastic goods or brass utensils etc. for import of spares of tractors etc.

(u3) There is also considerable force in the contention of the petitioners that there was nothing to prevent even a manufacturer of

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Holmes & Co.

brass hardware from planning to start production of other articles in future with the help of articles sought to be imported under the free licensing policy.

(14) Whatever restrictive language was used from time to time was only with regard to declaration to be asked for from the applicants or to endorsement of condition of licence in the licences. Nothing was ever whispered about scrutiny or spot verification of applications with a view to ensuring that the declaration so made was correct. Moreover, whenever any clarification was issued it could operate only prospectively and not in respect of the licences issued earlier. It was never suggested in any of the communications issued subsequently to the grant of licences in question that any licences already granted which may not be consistent with the restrictions sought to be imposed subsequently should be cancelled or recalled or even that they should not be renewed after the expiry of the period in question. Not only this, in the report of the head quarters inspection made at Kanpur in August, 69 exception was made to any action taken for deletion of banned items while revalidating licences. Articles for which licences had already been granted were not to be deleted on the ground that their import had been subsequently banned.

(15) It is not disputed before me that so far as the licences, granted after the receipt of letter dated 5.12.69 from Delhi, were concerned the same had been granted for appendix -32 articles excluding spare parts of tractors and of motor vehicles.

(16) In the light of all the surrounding circumstances mentioned above, including the previous practice, the attitude of the superior officers and the officials at Delhi and the wording of various clarifications and directions issued by the superior officers, both at Kanpur and Delhi, there seems no good ground to reject the contention of the petitioners that the expression "actual users" in the special context of import, from RPA, under the free licensing scheme, of spare parts detailed in appendix -32 was wide enough to cover all units registered as SSI, and that it was not required that the applicant units should have been registered from before as SSI units for manufacture of the particular articles in which those spares could be used or that they should already have been in possession of requisite plant and machinery in which those spares could have been used. A bare declaration from the applicants that they propose to use the articles in their factory was to be deemed to be sufficient and until under the pecuniary limit imposed in respect of tractor parts by letter dated 5.12.69, the licences were to be granted for whatever value was mentioned by

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Advocate

the applicants. Even after 5.12.69, in so far as other spare parts mentioned in appendix-32 were concerned, licences were expected to be granted for the value applied for. The pecuniary limit imposed for the first time was confined to tractor parts which in consequence were specifically excluded from the licences subsequently granted by the petitioner Punwani.

(U7) Though at first blush the argument of the learned Additional Government Advocate, namely, that the expression 'actual user' should normally mean only the person who was likely to use the articles sought to be imported for manufacture of articles which were already being manufactured by the applicants, does appear attractive, this is clearly not the sense in which the higher officers of the Department of Import Trade Control understood the matter at the relevant time. If Punwani and his subordinate assistants were under misapprehension about the true meaning of the expression then they were not alone in error; their higher officers were equally labouring under the same misapprehension, particularly Sri O.N. Anand.

(U6) Indeed, if we take into account the fact that trade with RPA countries was based on barter there seems nothing inherently absurd about the interpretation canvassed by the petitioners. In a barter trade the more you import from the "Socialist" countries of the Eastern Bloc the more you are able to export to them. The Eastern Bloc countries are, it is well known, often in short supply of consumer goods, which India is able to export to them. But their difficulty is that they cannot accept consumer goods from India of a higher value than the value of goods which India may be able to import from them. It was generally in the context of these economic factors that a liberal import policy has been followed in regards to trade with RPA countries. Such liberal import policy clears the ground for greater export of consumer goods from India to those countries. A restrictive policy would have a dampening effect on export promotion in so far as the consumer goods for which a great market exists in the Eastern Bloc are concerned. This seems to be the background in which the various instructions were issued from time to time emphasising that such applications were to be treated most liberally and without any meticulous scrutiny. The approach of the investigating agency seems to have been that because Punwani, according to their information, was living beyond his means and was possessed of disproportionate assets he must have granted licence illegally. Assuming, for the purposes of this case, that the information of the C.B.I. that Punwani was living and was possessed of property of greater value than he could reasonably account for, it did not necessarily follow that he must have been flouting the instructions in regard to grant of licences. He could conceivably

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 Punwani
 Advocate

secure ~~illegal~~ gratification even while granting licences liberally in accordance with the Government's own liberal licensing policy. Inspite of numerous instructions by the Government for not placing undue obstacles, officials in his position could always place obstacles or raise objections and could extort money merely for not raising objections. It may however be clarified that in most of these cases although the charges framed do mention that Punwani, Bhatia and Jain obtained pecuniary advantage for themselves and for others, namely, for the grantees of licences, it was conceded before me by the learned Additional Government Advocate that there was absolutely no evidence about passing of illegal gratification from the grantees of licences to the officials. There is only one case in which Punwani is being prosecuted for corruption on the ground that he was in possession of disproportionate assets i.e Criminal Case No. 33 of 75 which has given rise to petition No. 203 of 81. That case would be dealt with seperately as no arguments have yet been heard in that case. It should accordingly be clarified that no observations in the instant case will have the effect of prejudicing the merits of that case which is yet to be examined.

(U9) The learned Special Judge has mentioned in his order and the learned Additional Government Advocate has also suggested in his arguments, that any instruction of Sri O.N. Anand or any higher officer could not over ride the instructions contained in the Red Book and the Hand Book. This contention does not deserve to be accepted. Firstly, para 100 of Hand Book which has already been quoted itself contains a saving provision in respect of any special orders that may be issued by the higher authorities. The provisions in the Hand Book were thus subject to special orders of higher authorities. Secondly we are not to consider, as the court would do in a writ petition, whether the licences were issued ^{on} strictly legal grounds or not and whether the instructions of the higher officer could over ride the instructions contained in the ~~Red Book~~ ^{Red Book} and the Hand Book. It is enough, so far as the accused officials are concerned, if they acted in accordance with the orders or with the views of their immediately higher officers who are not alleged to be in conspiracy with them and on whose evidence the prosecution is itself relying. If as sub-ordinate officials these accused acted in accordance with the views expressed by the higher officials they cannot be said to have acted in bad faith. Reverting to the facts of the individual cases, it is clear that licences covering Yugoslavia among RPA countries were granted in three cases which are mentioned in Criminal Cases no. 34 and 35 of 75 only on 7.5.69 and 15.5.69. Till these dates the accused-officials had no knowledge about Yugoslavia having been excluded from RPA for the time being. The licences granted thereafter did not include Yugoslavia. In regard to the licences granted in

*Shri
Advocate*

these two criminal cases it has been contended by the learned Additional Government Advocate that either the licences had been revalidated or letters of authority had been issued in respect of those licences even after exclusion of Yugoslavia came to the knowledge of Punwari after the clarification dated 5.12.69 whereby a limit of Rs.1500/- per tractor was imposed. We have already seen that there was nothing in the instructions to suggest that the limit was to be imposed even in respect of licences earlier granted, at the stage of revalidation or at the stage of granting of letters of authority. There is moreover no charge in respect of revalidation or issuance of letters of authority after 5.12.69. It is true that a charge can be added to or amended at any stage by the court, but having regard to the various official documents already referred to, it is not required in the interest of justice to add such a charge.

(50) The licences in these cases were cancelled and the firms in question were debarred in pursuance of proceedings initiated after the F.I.R. was lodged by the C.B.I. against Punwari. The applicants for licences had no doubt mentioned that they were manufacturing plastic goods, Persian wheels, buckets etc. but they had added that they proposed to manufacture tractors and agricultural implements as well. So far as the licensing authorities were concerned this declaration was enough in view of what has been discussed earlier. Thus Punwari cannot be said to be guilty of granting licences illegally and in bad faith in these cases or of illegally revalidating or issuing letters of authority in contravention of any instructions of higher officials.

(51) In Criminal Cases No. 37, 38 and 39 of 75 the licences were issued after 5.12.69 but in these licences the articles allowed to be imported were mentioned as "spare parts" (permissible type) excluding agricultural tractors etc. Thus the upper limit of Rs.1500/- per tractor was not attracted in these cases. The licences worth Rs.20,000/-, 40,000/- and 40,000/- only and they were not actually availed by the licence holders.

(52) In Criminal Cases No. 36, 40 and 41 of 75 the licences were granted before the receipt of letter dated 5.12.69 by the Kamrup Office. In view of the various clarifications given and being sought, as noted earlier, these licences could also not be said to have been issued in bad faith and illegally and an dishonest misinterpretation of the rules and rules and clarifications. These licences were also not actually availed and the articles were not imported by the grantees of licences.

(53) The case of Bhatia and Jain who were only subordinates stands even on a stronger footing than that of Punwari.

Advocate
Punwari

21
 (54) The learned Additional Government Advocate has also contended that at the stage when only a charge has been framed it is not for this court to consider the evidence meticulously. The prosecution witnesses are still to be examined. This is for the trial court to appreciate their evidence in the light of the documents and in the light of such evidence as the accused persons may choose to prefer. In this connection the learned Additional Government Advocate has placed reliance on the following authorities :-

- (a) Kurukshetra University v State of Haryana (A.I.R.1977 S.C., 2229).
- (b) R.P.Kapur v State of Punjab (A.I.R.1960 S.C., 866).
- (c) State of Bihar v Ramesh Singh (A.I.R.1977 S.C., 2012).
- (d) Superintendent & Remembrancer of Legal Affairs, West Bengal v Aril Kumar Bhunia (A.I.R. 1980 S.C., 52).
- (e) L.V.Jadhav v Shankarrao Abasaheb Pawar (A.I.R.1983 S.C.1219).

(55) The first of these cases, namely, Kurukshetra University v State of Haryana (A.I.R.1977 S.C.2229) (supra) deals with the jurisdiction of the court when the same is invoked for quashing the first information report. In other words what is sought to be quashed in such a case is the investigation itself. This decision is thus of no assistance so far as the present case is concerned in which the investigation has already been concluded and it is the prosecution which is sought to be quashed.

(56) R.P.Kapoor's case (supra) is no doubt the leading case on the subject. It was laid down in this decision that the power under section 561-A of the old Cr.P.C. (corresponding to section 482 of the new Cr.P.C.) is to be invoked in a limited field. Their Lordships pointed out that there were three categories of cases in which this power can be invoked. The first was where there is a legal bar to the institution or continuance of the prosecution, such as want of sanction. The second was where the allegations accepted at their face value in their entirety do not make out the ingredients of the offence. This case is also not attracted to the instant case. The third category mentioned by their lordships was divided into two sub-categories. The first sub-category was where the allegations do constitute an offence but there is no legal evidence in support thereof. The second sub-category was where the allegations do constitute an offence but the evidence clearly or manifestly fails to prove the charges. With regard to these two sub-categories it was pointed out that the High Court should not embark on an enquiry in the question whether the evidence sought to be adduced by the prosecution is reliable or not. It appears to me that the instant case is clearly covered by the third category. Here the question of appreciation of evidence does not arise as the matter is covered by documentary

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34 evidence. The only thing to be done is to interpret the official documents. The oral evidence merely goes to prove or link or connect or explain those official documents. Even if all the officials who are to be examined by the prosecution were to be believed, they cannot depose anything contrary to what is recorded in the official documents. If a case rests merely on interpretation of such official documents and such interpretation goes to show that the prosecution was not justified, the court cannot shirk its duty to examine the contention of the accused persons in that behalf.

(57) In Ramesh Singh's case (supra), it was a case of bride burning which rested on circumstantial evidence; the oral evidence was yet to be adduced and it was held that the High Court was not justified in going into the sufficiency of that evidence. Guril Kumar (supra) was also a case relating to appreciation of oral evidence. In that case however the legal question raised was examined by their lordships of the Supreme Court, namely, whether the conduct of the accused in having parted with the custody of firearms in favour of M. Dutt amounted to delivery of possession or not. On the view taken on the legal question their lordships differed from the High Court. Thus, examination of any legal issue even at the stage of framing of charge was not ruled out.

(58) In Jadhav's case also the legal issue relating to the prohibition of dowry was examined by their lordships. Again they differed from the view taken by the High Court. Thus in all these cases their lordships have indicated that where the matter rests on the appreciation of evidence, the evidence alluded to in all such cases being oral evidence, the High Court should not interfere at this preliminary stage. But wherever issues of interpretation of law have arisen it has never been suggested that such issues should not be considered. In the instant cases the issues raised are those of law based on interpretation of the official documents. As laid down by their lordships in R.P. Kapur's case (supra) the case would fall in the third category viz, where the allegations are not supported by any legal evidence and the evidence sought to be adduced clearly or manifestly fails to prove the charge.

(59) It may be added again, even at the cost of repetition, that in the instant case there is no evidence of actual passing of money between the traders and the officials. The charge against them is only based on violation of the official instructions while granting licences and thereby conferring undue and pecuniary advantage to the traders. In this view of the matter the validity of the charge could certainly be examined without appreciation of the oral evidence



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which is yet to be adduced but on documentary evidence interpreted in the light of the statements recorded under section 161 Cr.P.C. which have already been supplied to the accused under section 173.

(60) It is thus clear that the accused officials who are petitioners, cannot, on the evidence sought to be adduced, be held guilty of dishonestly misinterpreting the official instructions relating to grant of licences or of granting licences in violation thereof. If the charge against the officials fails the charge against the dealer Shane Ilahi cannot survive either.

(61) In the result these petitions and the revision are allowed and the charges framed against the petitioners are quashed and the proceedings for their prosecution are also hereby quashed.

TRUE COPY

Sd. K. N. GOYAL.

Dt. 25 May, 1984

Section 308
Copying Department.
High Court, Lucknow Bench,
LUCKNOW

572/84



Attested

[Signature]
Advocate

188

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

.....

COUNTER AFFIDAVIT

IN

REGISTRATION NO. 77 OF 1989(L)

G. I. PUNVANI. PETITIONER.

VERSUS

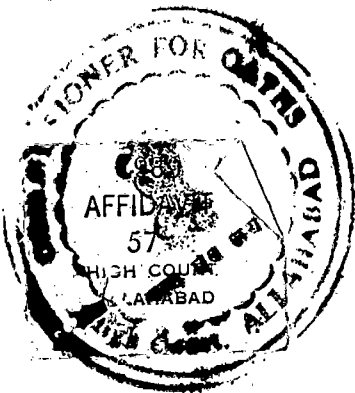
1- Union of India through the Secretary,
Ministry of Commerce, Government of
India, Udyog Bhawan, New Delhi-110001.

2- Chief Controller of Imports & Exports
Ministry of Commerce, Udyog Bhawan,
New Delhi-110001.

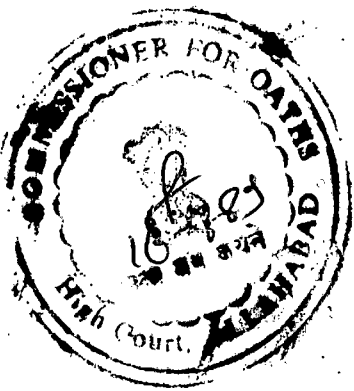
3- Joint Chief Controller of Imports &
Exports Central Govt. Offices,
New Marine Lines, Bombay -400020

.....RESPONDENTS.

Affidavit of Shri *Sagna Kall*
aged about 53 years, Son of
Shri *Kate Keshari Kall*-
Office of Deputy Chief Controller of
Imports and Exports, Kanpur.



18/8/89
18/8



18/8/89

I, the deponent abovenamed do hereby solemnly affirm and state as under:-

1. That the deponent is working in the office of ^{Joint} Deputy Chief Controller of Imports and Exports Kanpur and has been authorised to file the present affidavit on behalf of the respondents in the aforesaid case. He is, as such, well acquainted with the facts of the case deposed to below.

2. That the contents of the petition have been read by the deponent and he has fully understood the same.

3. That the contents of paragraph nos. 1 to 5 of the petition are matters of record and as such requires no reply by means of this affidavit.

4. That in reply to the contents of paragraph no. 6(a) of the petition it is submitted that the respondents have no official records to admit or deny the averments made by the applicant in this paragraph except that the applicant had submitted an affidavit in which he had made a declaration to the effect that he was appointed



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to the post of Assistant Refugee Officer at Ahmedabad on 6-3-1948 and that his services were terminated with effect from 1-4-1950. A copy of the order of termination is annexed as ANNEXURE NO. 'I' to this affidavit.

5. That in reply to the contents of paragraph no.6(b) of the petition it is submitted that as submitted hereinabove the respondents do not have any official records on the basis of which comments could be offered by the respondents on the averments made by the applicant in this paragraph. However, from the photo copy of letter dated 16-11-1950 of the District Relief & Rehabilitation Officer, Dehradun submitted by the applicant it appears that in response to an application dated 7-11-1950 of the applicant he was offered an appointment to the post of S.I. in the grade of B.110-5-160 on temporary basis terminable at any time without notice. Similarly, the applicant has also submitted a copy photocopy of a certificate dated 12-4-1952 purportedly issued by the Deputy Custodian, Muzaffar Nagar to the effect that the applicant was working as Assistant Custodian since 9th August, 1951. He has also submitted a photocopy of notification No.27/10/55-5111 dated 30th January, 1956 issued by the Ministry of Rehabilitation appointing the



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applicant among others to the post of Managing Officer with effect from 28-10-1955.

6. That in reply to the contents of paragraph 6(c) of the petition it is submitted that the applicant may be put to strict proof to substantiate the averments made in this paragraph. However, the applicant has submitted a photocopy of a certificate dated 19th October, 1959 issued by the Officiating Commander 111 Infantry Battalion (Territorial Army) to the effect that the applicant has been granted Territorial Army Commission and posted to that unit w.e.f. 18th March, 1955 and subsequently promoted to the rank of Lieutenant with effect from 18th March, 1958. From the photocopy submitted by the applicant of another letter from the office of the Regional Settlement Commissioner, U.P. dated 11th February, 1960 it transpires that the applicant was relieved of his duties in that office w.e.f. 11th February, 1960 to report for duty at the 111 Infantry Battalion of Territorial Army and his services as Managing Officer in the office of the Chief Settlement Commissioner were terminated w.e.f. 1st May, 1961 consequent on the reduction of the establishment of that office as stated in the photocopy of the Office Memorandum No. 39/ARC/61 dated 13th April, 1961 issued by the Office of the Chief Settlement



Commissioner, New Delhi a ~~xx~~ photocopy of which was submitted by the applicant to this office and annexed hereto as ANNEXURE NO. 'II' to this Affidavit.

7. That in reply to the contents of paragraph 6(d) of the petition it is submitted that it is admitted that on the basis of the assessment made by the Special Selection Board constituted by the Ministry of Home Affairs for considering the cases of surplus officers of the Department of Rehabilitation for absorption in alternative post under the Central Government, the U.P.S.C. recommended on 2-11-1962 the applicant for appointment to the post of Assistant Controller of Imports and Exports and he joined his duties on 15-7-1963 in the Office of the Joint Chief Controller of Imports and Exports, Bombay after release from Territorial Army. His services were subsequently placed at the disposal of the Territorial Army (107 Infantry Battalion) with effect from the afternoon of the 14th August, 1963. The applicant was reverted to his civil post of Assistant Controller of Imports and Exports on the afternoon of the 31st March, 1969 by the National Cadet Corps Directorate (U.P.) Lucknow where the applicant had proceeded on deputation



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from the Territorial Army. A copy of his reversion from NCC is annexed as ANNEXURE NO. 'III' to this affidavit.

8. That in reply to the contents of paragraph 6(e) of the petition it is submitted that on the basis of the photo copies of various communications submitted by the applicant, it appears that the applicant was with Territorial Army/National Cadet Corps from 11-2-1960 to 14-7-1963 and 13-8-1963 to 31-3-1969. The respondents have no knowledge of the remaining averments made in this paragraph and the applicant may be put to strict proof of the same.

9. That in reply to the contents of paragraph 6(f) of the petition it is submitted that the applicant was released by National Cadet Corps after availing joining time from 1-4-1969 to 8-4-1969, the applicant joined the post of Assistant Controller of Imports and Exports at Kanpur on 9-4-1969.



10. That in reply to the contents of paragraph 6(g) of the petition it is submitted

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that the applicant has no locus standi to raise the issue in this paragraph at this late stage before this Hon'ble Tribunal as the final seniority in the grade of Assistant Controller of Imports and Exports after careful consideration of all the representations received on the basis of draft seniority list ~~was~~ was issued on 3rd March, 1975. However, it is denied that any discrimination was made against the applicant in determining his interse seniority in the grade of Assistant Controller of Imports and Exports. The instructions of the Ministry of Home Affairs as contained in Notification No. 31/1/67-Estt(B) dated 4-10-1967 and Department of Personnel Notification No. 8/20/69-Estt.(C) dated 26-8-1971 relate to fixation of seniority of only Released Emergency Commission Officers and Short Service Commission Officers of the Armed Forces appointed against the vacancies reserved for such officers and these instructions are not applicable to the applicant as he was neither a Released Emergency Commission Officer nor a Short Service Commission Officer nor was appointed against the vacancies reserved for such officers. Even otherwise the above said instructions were effective only from 29-1-1966 whereas the applicant whose temporary services in the Office of the Chief Settlement Commissioner were



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terminated w.e.f. 1-5-1961 joined the organisation of the Respondent on 15-7-1963.

11. That in reply to the contents of paragraph no. 6(h) of the petition it is admitted that the applicant was granted a quasi-permanent status w.e.f. 15-7-1966 on completion of 3 years service including the service rendered by him in Territorial Army after his appointment to a Civil post in this organisation on 15-7-1963.

12. That in reply to the contents of paragraph no. 6(1) of the petition it is submitted that confirmation in a service/post depends inter-alia on the availability of the permanent posts, eligibility of persons concerned for confirmation, seniority, suitability of persons within the zone of consideration for confirmation etc. The obtainment of a certificate from an officer within the zone of consideration for confirmation that he is not holding a lien on any permanent post in any other office perse does not confer a right to confirmation. Such a certificate is required for termination of the lien of the officer in another permanent post



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as under the rules a government servant cannot substantively hold two posts or a lien on two posts. It is submitted that the applicant was not holding a lien on any permanent post in any organisation prior to joining the organisation of the Respondent. The applicant was considered for substantive appointment to the post of Assistant Controller of Imports and Exports by a Departmental Promotion Committee chaired by a member of UPSC but as the applicant was not clear from the vigilance angle, he was not appointed substantively to the post of Assistant Controller of Imports and Exports. It is further submitted that unless specific order/Notification of substantive appointment is issued by the Government a Government servant cannot claim to have been appointed substantively merely on the grounds that he was eligible for confirmation or a permanent post was available or his juniors have been confirmed or as he has been considered for confirmation.



13. That the contents of paragraph no. 6(j) of the ~~com~~ petition are vehemently denied and it is submitted that no step-motherly treatment was ever given to the applicant at any point of time nor he was discriminated against in the matter of fixation of seniority. As submitted hereinbefore the benefit of service in the Armed Forces in the matter of fixation of seniority was available only

and only to the Released Emergency Commission Officers Short Service Commissioned Officers and the applicant was not such an officer. In any case the applicant is not entitled to raise this issue before this Hon'ble Tribunal after a lapse of almost 14 years as the final seniority list was circulated on 3rd March, 1975.

14. That in reply to the contents of paragraph no.6(k) of the petition it is submitted that as submitted hereinbefore mere furnishing of a certificate by an officer that he is not holding a lien on any permanent post in any other office does not entitle him to be declared permanent on a post or ipso-facto confer on him a substantive status. Confirmation in a service/post depends inter alia on the availability of the permanent posts, eligibility of persons concerned for confirmation, seniority, suitability of persons within the zone of consideration for confirmation etc. There was no ~~mal~~ maliciousness in showing the applicant as one not holding a permanent post in the letter dated 1-4-1985 referred to by the applicant as it is a fact that the applicant was not substantively appointed to the post of Assistant Controller of Imports and Exports in the organisation of the respondent. The substantive



appointment of officers junior in seniority to the applicant does not automatically make the applicant permanent in a post. As submitted hereinbefore the applicant was considered for substantive appointment by the Departmental Promotion Committee but he was not so appointed as he was not clear from vigilance angle. It is admitted that the applicant was considered for induction in Grade III of the Central Trade Service at its initial constitution by a Departmental Promotion Committee at the UPSC but he was not inducted as he was not clear from the vigilance angle. It was not a condition precedents that an officer should hold a substantive appointment in the grade of Assistant Controller of Imports and Exports/ Controller of Imports and Exports before being considered for induction in the Central Trade Service. The word 'regular' does not connote substantive appointment but only distinguishes continuous appointment from adhoc appointment. As submitted hereinbefore the applicant has not been appointed substantively either in the Grade of Assistant Controller of Imports and Exports/ Controller of Imports and Exports or Assistant Chief Controller of Imports and Exports (Grade III of CTS) and in the absence of any Order/ Notification of substantive appointment the applicant cannot claim that he was a permanent employee of the organisation of the Respondent.



15. That the contents of paragraph no.6(1) of the petition are not admitted. It is denied that the CBI instituted inquiry against the applicant to put him under mental tension. The CBI have powers to make investigations on the basis of their source information and it was not essential for the Respondent to make a ~~xxx~~ oral or written complaint to CBI for instituting an inquiry/ investigation against the applicant.

16. That the contents of paragraph no.6(m) of the petition are not admitted. It is vehemently denied that the applicant was transferred from Kanpur to Madras with a view of harassing him. It is denied that by convention officers of the rank of Controller are not transferred except on the grounds of corruption and indiscipline. In fact officers of the level of Controller of Imports and Exports and above are liable to be transferred to any regional office of the respondent and it was made known to the applicant in his ~~offer~~ offer of appointment dated 22-11-1962 that he will be liable to serve in any part of India. The transfer of the applicant from Kanpur to Madras was made in public interest.



17. That in reply to the contents of

paragraph no.6(n) of the petition it is submitted that the averment made in this paragraph are denied. However, it is admitted that the applicant remained on leave from 17-7-1972 to 11-8-1974.

18. That in reply to the contents of paragraph no.6(o) of the petition it is submitted that it is correct that the applicant's transfer to Madras was cancelled and was posted to Bombay where he joined his duties w.e.f. 12-8-1974. The allocation of work to officers in an office depends on various factors and the applicant cannot aver that allocation of additional work to him or change in the allocation of work was done with a view to harrassing him.

19. That the contents of paragraph no.6(p) of the petition are not admitted. As submitted hereinbefore no harassment was ever meted out to the applicant. The benefit of Army Service in the matter of fixation of seniority was available only to the Released Emergency Commission Officers and Short Service Commission Officers who had served in the Armed Forces and as the applicant was neither a Released Emergency Commission Officer nor a Short Service Commission Officer, he was not



eligible/entitled for the benefit in the matter of fixation of seniority. The CBI filed criminal cases for prosecution of the applicant among others and for this purpose sanction for prosecution from the Chief Controller of Imports and Exports was not required.

20. That in reply to the contents of paragraph 6(q) of the petition it is submitted that the applicant cannot raise the issue mentioned in this paragraph before this Hon'ble Tribunal as the issue does not relate to 'service matters' as defined in the Central Administrative Tribunal Act, 1985.

21. That in reply to the contents of paragraph no. 6(r) of the petition it is stated that it is denied that suspension of the applicant was based on malicious treatment as a criminal offence against him was under trial at the relevant time.

22. That in reply to the contents of paragraph no. 6(s) of the petition it is admitted



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that the applicant was pre-maturely retired under the provisions contained in FR 56(j) and this order was subsequently cancelled. It is denied that the order of pre-mature retirement was issued with malice or arbitrarily or mala fide. It is denied that under the CCS(CCA) Rules, 1965, it was obligatory for the respondent to pass a fresh order of suspension on the cancellation of the order of his pre-mature retirement. The cancellation of the order of premature retirement had the effect of restoring the temporarily suspended relationship of master and servant as in law the cancellation of the order of premature retirement made the order of premature retirement dated 12-12-1975 nonest and therefore it was not necessary to pass a fresh order of suspension of the applicant. It is denied that the continuance of the suspension of the applicant was illegal or malicious.



23. That the contents of paragraphs nos. 6(t & u) of the petition are wrong. It is denied that the departmental enquiry ordered vide No.1/72/79-VIg/804 dated 27.6.1980 against the applicant was based on malice. The enquiry was

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ordered by the Competent Authority under CCS(CCA) Rules, 1965. Pursuant to the enquiry, penalty of compulsory retirement was imposed on him by the Competent Authority i.e. Chief Controller of Imports and Exports vide Memo No. 1/72/79-Vig/1085 dated 18-8-1982, having regard to facts and circumstances of the case. The applicant preferred an appeal to the Appellate Authority against the said order dated 18-8-1982. The Appellate Authority rejected the appeal vide Order No. C/13011/41/71-Vig. dated 2-5-1983, and confirmed the penalty of compulsory retirement imposed on the applicant by the disciplinary authority. It is denied that the said penalty has been imposed in violation of Rule 14 of CCS(CCA) Rules, 1965. It is also denied that penalty imposed is illegal or malicious.



24. That the contents of paragraph no. 6(v) of the petition are not admitted. It is denied that compulsory retirement of the applicant vide Order No. 1/72/79-Vig/1085 dated 18th August, 1982 does not amount to penalty within Rule 11 of CCS(CCA) Rules, 1965.

25. That the contents of paragraph nos. 6(w & x) of the petition are not admitted.

It is denied that the total service of the applicant from 6-3-1948 to 18-8-1982 has been accepted as qualifying service for grant of pensionary benefits. The issue of letter No. 6/698/62-Admn(G) dated 1-4-1985 is admitted.

A copy of the said letter is annexed as ANNEXURE NO. 'IV' to this affidavit. The

O.M. No. 38/(16)-Pension Unit/80 dated 30-12-1980 is applicable only to those temporary Government servants who have rendered not less than 20 years temporary service and retire on and only on attaining the age of superannuation or on being declared to be permanently incapacitated for further Government service by the appropriate medical authority. The applicant did not retire on attaining the age of superannuation but was compulsorily retired before attaining the age of superannuation and therefore he is not entitled to grant of pensionary benefits under the above said O.M.



26. That in reply to the contents of paragraph 6(y) of the petition it is admitted that the Hon'ble Allahabad High Court (Lucknow Bench) in its judgment dated 25-5-1984 held that the accused officials cannot on the evidence sought to be adduced, be held guilty of dishonestly

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misinterpreting the official instructions relating to grant of licences or of granting licences in violation thereof and quashed the charges framed and proceedings for prosecution initiated against the applicant.

27. That in reply to the contents of paragraph no.6(z) of the petition it is stated that the averment made in this paragraph are denied. It is submitted that the Central Bureau of Investigation have filed a Special Leave Petition on 11-9-1984 in the Hon'ble Supreme Court of India against the judgment and order dated 25-5-1984 of the Hon'ble High Court of Allahabad (Lucknow Bench) A copy of the said SLP is annexed herewith as ANNEXURE NO. 'V' to this affidavit.



28. That in reply to the contents of paragraph no.6(za) of the petition it is stated that as submitted hereinbefore the Central Bureau of Investigation have filed a SLP on 11-9-1984 in the Hon'ble Supreme Court of India against the judgment and order dated 25-5-1984 of the Hon'ble High Court of Allahabad (Lucknow Bench). Under the

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CCS(Pension) Rules, 1972 one of the primary conditions for eligibility to pension and retirement /death gratuity is that the person should hold a substantive appointment to a service/post under the Government. Rule 13 of the CCS(Pension) Rules, 1972 stipulates:-

"Subject to the provisions of these rules, qualifying service of a Government servant shall commence ~~from~~ the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:-

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post".

The above rule clearly stipulates that a government servant must hold a substantive appointment under the government to ~~ex~~ become eligible and entitled for grant of pensionary



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benefits. As submitted hereinbefore, the applicant was not appointed substantively to any post at any point of time, either in the organisation of the respondent or in his previous employment in the office of the Regional Settlement Commissioner U.P. ~~Quasi-permanent~~ status is conferred under CCS (Temporary Service) Rules, 1965 and is quite distinct from permanent status enjoyed by the government servants who were appointed substantively. The quasi-permanent status is in no way at par with permanent status. The applicant is therefore not eligible for any pensionary benefits under the CCS (Pension) Rules, 1965. In so far as his T.A. claims for journeys performed in attending the court of Special Judge Anti Corruption (Central) at Lucknow is concerned the relevant extract of instructions as contained in Ministry of Home Affairs O.M. No. S.45/4/93-Estts. A dated the 8th January, 1959 read with C.L.313 to EGFR (G.I.M.F. File No. F.23(1) E.II(A)/76) is reproduced below:-

"2(a)- Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant - Government will not give any assistance to a government servant for his defence in any proceedings, civil or criminal, instituted against him, by the State in respect of



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matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence."

An extract of Government of India in Ministry of Finance O.M.No.F.5(13)-IV/59, dated 28th February, 1959 as modified by O.M.f of even number, dated the 22nd July, 1960 is also reproduced below:-



"(1) Reimbursement of travelling allowance for journeys undertaken for appearing before Police/In Court as suspect/accused:- The Government of India have had under consideration the question whether, and if so at what rates, travelling allowance should be

allowed to Government. can

(i) Where a Government servant, whether he is under suspension or not, performs journeys to attend Police/ Special Police Establishment enquiry in connection with a case in which he is suspected to be involved.

(ii) Where a Government servant undertakes journeys during suspension for appearing in a court of law, as an accused, and is later on acquitted by the Court and reinstated in service or would have been reinstated in service but for death or his having attained the age of compulsory retirement or being allowed to retire voluntarily.

As regards cases of the first type, it has been decided that travelling allowance as for a journey on tour may be allowed to a Government servant for such journeys provided that they are performed under the direction of or with the approval of, the Head of Office in which he is for the time being employed or was employed before suspension.

As regards cases of the second type it is observed that travelling ~~and~~ expenses in respect of these journeys cannot form



part of the claims for reimbursement of costs to be considered by the Union Public Service Commission under Article 320(3)(d) of the Constitution. In view of this, it has been decided that in respect of these journeys, travelling allowance as for a journey on tour, based on the grade to which the Government servant belonged before suspension may be reimbursed by the Administrative Ministry concerned, provided the legal expenses incurred by him in defending such proceedings are reimbursed to him, in full or in part, under the aforesaid Article of the Constitution. In cases where the journeys were performed by the Government servant by rail/steamer in a class lower than the class to which he was entitled before suspension, the fares of the class actually used, in addition to his other entitlements of travelling allowance as tour, may be paid to him."



As submitted hereinbefore, the Central Bureau of Investigation have filed an SLP before the Hon'ble Supreme Court of India which is still pending and therefore a decision on the T.A. claims of the applicant can be taken by the Government after disposal of the SLP and only and only if the applicant is acquitted of

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the criminal charges and a decision is taken under Article 320(3)(d) of the Constitution of India to reimburse in full or in part, the legal expenses incurred by the applicant in defending the criminal proceedings against him. The grant of other benefits will also depend on the outcome of the SLP pending before the Hon'ble Supreme Court of India.

29. That in reply to the contents of paragraph nos. Ab & Ac) of the petition it is submitted that the Appellate Authority has already considered the appeal preferred by the applicant and has rejected the same and confirmed the penalty of compulsory retirement imposed on him by the disciplinary authority as submitted hereinbefore. A copy of the order made by the Appellate Authority is annexed as ANNEXURE NO. 'VI' to this affidavit. The applicant cannot agitate that his appeal against the order of his compulsory retirement preferred under the CCS(CCA) Rules, 1965 remains pending. In one of his future representation dated 19-2-1988, the applicant has admitted receipt of the Appellate Order dated 2-5-1983. In para 8 of the application also the applicant has referred to the Appellate Order dated 2-5-1983 and it is a conclusive proof that the appeal of the applicant



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against his compulsory retirement has been disposed off and is not pending. The applicant has averred that he has also filed a Writ Petition No. 121403 of 1983 on 10-3-1983 against the order of his compulsory retirement and that the same writ petition is still pending. In any case as far as the Government is concerned the order of Compulsory retirement of the applicant is final as the appeal submitted by him against that order has been disposed off by dismissal and the Appellate Authority has upheld the order of compulsory retirement vide order No. C-13011/41/71-Vig. dated 2-5-1983. As submitted hereinbefore the applicant has never been discriminated against and in view of the CCS(Pension) Rules, 1972 the applicant is not entitled to any pensionary benefits as he did not hold any substantive appointment in any post/service before his compulsory retirement before attaining the age of superannuation.



30. That the contents of paragraph 7 of the petition requires no reply.

31. That the averments made in paragraph 8 of the petition are misconceived.

32. That in reply to the contents of paragraph 9 of the petition it is submitted that in view of the submissions made hereinbefore the applicant should not be granted any of the reliefs prayed for by him. and the grounds mentioned in relief are all misconceived and not admitted. It is submitted that the applicant never held any substantive appointment in a post/service in the organisation of the respondent. In his employment in other organisations prior to joining the organisation of the respondent the applicant held only temporary appointments and his services were terminated on account of reduction in establishment of those organisations. The applicant also did not retire on attaining the age of superannuation but was compulsorily retired from service before attaining the age of superannuation as he was not considered a fit person to be retained in service by the Appointing Authority. In view of the submissions made hereinabove, the applicant is neither eligible nor entitled to grant of pensionary benefits under the CCS(Pension) Rules, 1972. The applicant is seeking plural remedies contrary to the provisions of the Central Administrative Tribunal Act, 1985. The applicant is agitating for finalisation of his pensionary benefits in this application and the other reliefs



AIR

prayed for by him like linking up with this application his Writ Petition No.1403 of 1983 for quashing the order of compulsory retirement dated 18-8-1982 , claim of payment of difference of full pay and allowances between the date of his suspension and compulsory retirement and full pay and allowances from the date of his compulsory retirement till the date of his attaining the age of superannuation, issue of a declaration that the applicant is a permanent employee with effect from 15-7-1969 etc are not consequential to the applicants' case for grant of pensionary benefits.



33. That in reply to the contents of paragraph 10 of the petition it is submitted that for the submission made hereinbefore, the applicant's prayer for grant of interim reliefs merits dismissal.

34. That the present petition is misconceived and is liable to be dismissed with costs.

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I, the deponent abovenamed do hereby declare on oath that the contents of paragraphs nos. 1, 2 _____

_____ of this affidavit are true to my personal knowledge, those of paragraphs nos. 3 to 34 _____

_____ of this affidavit are based on perusal of papers on records, those of paragraphs nos. _____

_____ of this affidavit are based on legal advice, which I believe to be true. Nothing material has been concealed and no part of it is false therein.

So help me God.

[Signature]
.....
(Deponent).



Revised
By Special Agents
100 COMMISSIONER
Allahabad
Lucknow Bench

571124
16-8-89

[Signature]

Solemnly affirmed before me on 16th day of August 1989 at 10.25 AM. by Sri Sagua (the deponent) who has been identified by Sri. R.C. Yadav Clerk to Sri. Ashok Mohan, Advocate
R.C. Yadav

I have satisfied myself by examining the deponent that fully

Free-Copy.

Government of India
Ministry of Relief and Rehabilitation.
(Transit Camp Branch)

No. TAA-(2)-DGE

New Delhi, the 3rd March 48.

Mr. G.I. Purvani has been appointed selected for the post of Assistant Refugee Officer at Ahmedabad.

The terms of appointment are as follows:-

- (1) The post carries a pay of Rs 225- P.M. plus other usual allowances admissible to Central Government Employees.
- (2) The post is purely temporary and the appointment may be terminated at any time without notice.
- (3) He will be required to serve in any part of India to which he may be posted, without additional emoluments.
- (4) After a trial in case he is found unable to cope with the work he will be discharged. Promotion to higher pay may be available if his work is found exceptionally good.

If he accepts the appointment he should report for duty by 8-3-48 to the Director of Evacuation, Bombay, R.A., Base Postal Depot, Marine Line Street, Bombay 1.

Sd. (M.R. Thadani)
Director of Relief.

True copy.

J. S. A. & Co.

L. S. A. & Co.
Directors of Evacuation
Bombay

ORDER.

No. RHE/29.
Ahmedabad, 30th March 1950.

In view of the reorganisation of the existing establishment in local Relief Camps, in pursuance of Government Rehabilitation Resolution No. R.94/9343-D, dated 15th March 1950, the services of Mr. Chunilal Talwar now officiating Camp Commandant, Kuber Nagar and Mr. G.I. Purvani now in charge of Relief Camp having become surplus will be terminated with effect from 1st April 1950.

Sd. P.N. Dany,
COLLECTOR OF AHMEDABAD.



COPY

No 3 2/ARO/61
Government of India
Ministry of Rehabilitation
Office of the Chief Settlement Commissioner

Jaisalmer House, New Delhi
Dated the 13th April 1961

Office Memorandum

Subject :- TERMINATION OF SERVICES OF SHRI G I PUNWANI
MANAGING OFFICER, OFFICE OF THE REGIONAL
SETTLEMENT COMMISSIONER UP

The undersigned is directed to state that Shri G I PUNWANI who is at present attached to 107 Infantry Battalion (TA) and is holding the rank of Captain, was holding a post of Managing Officer in the Settlement Organisation before proceeding on training with the Territorial Army. Due to reduction in the number of posts of Managing Officer in this Organisation, the services of the Officer would have been terminate with effect from 1st May 1961. Shri PUNWANI may kindly be informed that after his present assignment with the Territorial Army, he will not revert to the post of Managing officer in the Settlement Organisation.

Sd/- K. M. MATHEW
Under Secretary to the Government of India

The Territorial Army Directorate
Ministry of Defence, NEW DELHI

TELEPHONE : PW 129

PRIORITY/REGISTERED/SUB

No CC04 B/G/T-1
HEADQUARTERS
BENGAL BIHAR AND ORISSA
INDEPENDENT STATE
FORT WILLIAM

TO

107 Inf Bn (TA)

Subject :- CIVIL APPOINTMENTS : TA OFFICERS

1 A copy of Government of India, Ministry of Rehabilitation letter No 3/9/ARG/61 dated 13 Apr 61 regarding termination of services of Capt G I PUNWANI, Adjutant of your unit, as Managing Officer in the Settlement Organisation, Ministry of Rehabilitation, NEW DELHI, is forwarded herewith for information of the officer.

2 Please acknowledge.



15 MAY 1961

Encl. 1.000

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TELEPHONE : 28019
TELEGRAM : CAME

NATIONAL CADRE CORPS STREETOP
(UTTAR PRADESH)
BHOOLA NAG, LUCKNOW
12 Apr 69

NO. 902/01/ADM

To

The Assistant General
Utter Pradesh
ALLAHABAD

PAY AND ALLOWANCES : CAPT OI PURVANI (TA-40509)
ASSISTANT GENERAL IN CHARGE OF IMPORTS AND EXPORTS
AT KANUN

Sir,

Capt O I PURVANI who was on deputation with National Cadre Corps has reverted on 31 March 1967 (AM) to his Civil appointment as Assistant Controller of Imports and Exports in the office of Dy Chief Controller of Imports and Exports at KANUN.

2 The officer has been paid by CLV (C) upto 31 Mar 69.

3 The officer was allowed to cross his Efficiency Bar by the Chief Controller of Imports and Exports vide No. 6/636/6-ADM (C) 2553 dated 24 Jan 67 where the officer's pay was fixed at Rs 670.00 plus usual allowances i.e. DA, CCA, HRA etc with effect from 15 Jul 1965.

4 The officer has earned 3 increments thereafter upto 15 Jul 1968 and you are kindly therefore requested to issue necessary authority of payment to the officer.

Yours faithfully,

(M. PATEL)
Major

Assistant Director

Director, National Cadre Corps

Copy to be

S. NO. WK

Annexure IV

66

No. 6/693/62-Adm(G)/1666 to 1667

Government of India
Ministry of Commerce

OFFICE OF THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS

New Delhi, the 1-4-85

To

The Joint Chief Controller of Imports & Exports,
B O B A Y.

Subject:- Pensionary benefits to Shri G.I. Punwani, Ex-Controller of Imports and Exports.

Sir,

I am to refer to your letter No. Estt/Pen/GO/CIP/7264, dated 22-2-85 on the above mentioned subject. The points made in your letter under reference have gone through. It is true that Shri Punwani was not holding a permanent post in this Organisation at the time of his compulsory retirement from Government service on 18-8-82. However, he was declared as quasi-permanent in the post of Assistant Controller of Imports & Exports in this Organisation vide this office Notification No. 19/13/60-Adm(A) dated 20-10-70. The pension case of Shri Punwani may please be examined and processed in consultation with the Regional Pay and Accounts Office, (Imports and Exports), Bombay in terms of the instructions contained in the Government of India (Department of Personnel & Administrative Reforms) O.M. No. 38(16)-Pension Unit/80, dated 20-12-80. These instructions are available in the Summary's Pension Compilation of C.C.S. (Pension) Rules, 1972 as amended upto 1-6-1983.

2. As regards the brakes in service of Shri Punwani for the period from 1-4-60 to 15-11-80, you are requested to examine the case in terms of Rule 28 of the C.C.S. (Pension) Rules as quoted above. It has been observed that the Service Book of Shri Punwani is not available in your office. You are requested to deal with his pension case on the basis of affidavit submitted by him in connection with his rendering continuous Government service from 6-3-48 to 18-8-82 duly verified by the Civil Court of Lucknow to admit the services for the purpose of finalising his pensionary benefits. As per Court's orders, his case may be finalised as early as possible under intimation to this office.

Yours faithfully,

(S. BANERJEE)
Controller (Administration),
for Chief Controller of Imports & Exports.

Copy to Shri G.I. Punwani, 5, Mall Avenue, Lucknow
reference to his letter dated 1-3-85 for information.



Annexure III.

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TELEPHONE : 28019
TELEGRAM : CAMEZ

NATIONAL CADET CORPS STATIONARY
(UTTAR PRADESH)
BROOKS ROAD, LUCKNOW
12 APR 69

NO. 982/0/ADM

To

The Assistant General
Vijay Prakash
ALLAHABAD

PAY AND ALLOWANCES : CAPT G I PURVANI (TA-40509)
ASSTANT GENERAL IN CHARGE OF DEPT. OF DEPT. AND EXPORTS
AT KANUN

Sir,

Capt G I PURVANI who was on deputation with National Cadet Corps has reverted on 31 March 1967 (AN) to his Civil appointment as Assistant Controller of Imports and Exports in the office of Dy Chief Controller of Imports and Exports at KANUN.

1 The officer has been paid by CL (O) upto 31 Mar 69.

2 The officer was allowed to cross his Efficiency Bar by the Chief Controller of Imports and Exports vide No. 6/636/6-ADM (O) 2553 dated 29 Jun 67 where the officer's pay was fixed at Rs 630.00 plus usual allowances i.e. DA, CCA, HRA etc with effect from 15 Jul 1965.

3 The officer has earned 3 increments thereafter upto 15 Jul 1968 and you are requested to issue necessary authority of payment to the officer.

Yours faithfully,

(M. PATEL)

Majors

Assistant Director

Director, National Cadet Corps

Copy to :-

1. The Chief Controller of Imports & Exports
Government of India,
Ministry of Commerce,
Vijay Bhawan, NEW DELHI

2. Dy Chief Controller of Imports & Exports
1/194, Swarnop Nagar,
KANUN - 2

3. Dy Asstt General
Commerce Works and Misc
Mayapuri Building, Noida Road - Noida Estate -

- with the request to
authorize him (M) to
issue early payment
authority to the
officer.

- For information and
necessary action.

For info and necessary action.



Alid

Annexure V

652

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 1984.

(From the Judgement and Order dated 23.5.1984 of the
High Court of Judicature at Allahabad passed in
Criminal Revision No.256 of 1961).

IN THE MATTER OF:

State of U.P.

.. PETITIONER.

Versus

Shane Elahi son of Abdul
Gafoor.

.. RESPONDENT!

PAPER BOOK.

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: MR! R.N.PODDAR



I N D E X

853
(AP)

1. Office Report of Limitation

'A'

2. List of Deats

'B'

3. Judgement and Order dated the High Court of Judicature at Allahabad dated 25.5.1984 passed in Criminal Revision No.256 of 1981.

APPEALED FROM

1 - 48

APPEALED FROM

4. Special Leave Petition with affidavit.

49 - 62



854
APR 20

LIST OF EVENTS

11.12.70
3.12.71

First Information Reports under section 5(1)
(d) read with Sec. 5(2) of the Prevention of Corruption
Act, 1947 and Sec. 120-B I.P.C. lodged against the
accused persons.

18.4.75
22.4.75

Charge sheets in original cases giving rise to
Criminal Revision No.256 of 1981 and Cr.Misc. cases
Nos. 997 of 1981, 983 of 1981, 202 of 1981 and 576 of
1982 to 582 of 1982, filed in the Court of Special
Judge (Anti-Corruption) Lucknow under Sec.5(1)(D)
read with 5(2) of the Prevention of Corruption Act,
1947 and Sec. 120-B I.P.C.

4.3.81

Charges framed by the Court of Special
Judge (Anti-Corruption) Lucknow in the criminal case
giving rise to the Criminal Revision and the Criminal
Misc. cases referred to above.

25.5.84

The High Court of Allahabad allowed the
revision application and Cr.Misc. cases and
quashed the charges.



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW.

Criminal Misc Case No. 1202 of 1981.

G.I. Punvani son of late Mr. Idarnal

Punvani r/o Mall Avenue, Lucknow.

.. Applicant.

Versus

The State

... Opp. Party.

Criminal Misc Case against the order dated
4th March 1981 passed by Sri R.S. Mathur Special
Judge Anti Corruption (Central) Lucknow. U/S
5(2) R/w Section 5(1)(B) of Corruption Act 1947
and Section 120-B I.P.C.

Lucknow Dated- 25.5.1984.

Hon'ble K. N. Goyal, J.

For order see my judgement of date in Cri. Rev.
256 of 81.

TRUE COPY

Section Officer

Copying Department.

High Court, Lucknow Bench,
LUCKNOW

84/- K. N. Goyal.

25.5.84.



IN THE HIGH COURT OF JUDICATURE AT ALMABAD
(LUCKNOW BENCH), LUCKNOW.

A122

Criminal Revision No. 256 of 1981.

Shams Mahi son of Abdul Gaffar of
M/S Shan Commercial Service, Prince Road,
Moradabad, U.P.

.....

Revisionist Applicant.

Versus

1. State of U.P.
2. G.L. Punwari, Controller,
Import & Export, Kanpur, r/o 5, Hall Avenue,
Lucknow.

.....

Opposite - Parties

U/S 397/401 read with section 482 Cr. P. C.
Criminal Revision against the order dated
4th March 1981 passed by Sri R.S. Mathur,
Special Judge (Anti Corruption (Central)
U.P. and against charge dated 4.3.1981.

Lucknow Dated: 25.5.1984

Hon'ble K.H. Goyal, J.



A123

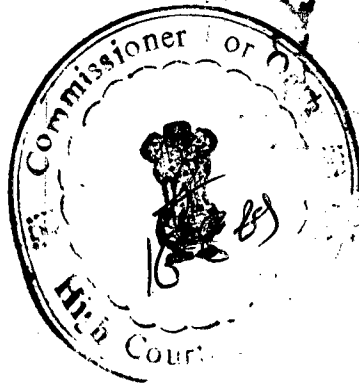
connected with :-

Crl. Revision No. 256 of 1981,	Shan Ilahi	v	State.
Crl. Misc Case No. 832 of 1981,	K.C. Bhatia	v	State.
Crl. Misc Case No. 883 of 1981,	J.K. Jain	v	State.
Crl. Misc Case No. 1202 of 1981,	G.I. Punwami	v	State.
Crl. Misc Case No. 576 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 577 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 578 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 579 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 580 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 581 of 82,	G.I. Punwami	v	State.
Crl. Misc Case No. 582 of 82,	G.I. Punwami	v	State.

Lucknow Dated. 25.5.84.
Hon'ble K.N. Goyal, J.

As many as eight criminal cases no's 34 to 41 of 1975 are pending in the Court of the Special Judge Anti-Corruption (Central) U.P., Lucknow. These are ten applications under section 482 Cr.P.C and one Criminal Revision directed against the proceedings. The accused persons have in these petitions prayed for quashing the charges framed against them and for quashing of the prosecution. The cases have arisen in the following circumstances.

Shri G.I. Punwami who is petitioner in most of these cases and will be hereafter referred to as Punwami, was Assistant Controller of Imports and Exports posted at Kanpur during the period April, 1969-March, 1970. Period is referred to "AM-70", the letters 'A' and 'M' standing for April and March respectively. He was the competent authority under the Import and Export Act, 1947, for grant of import licences. During the period "AM-70" he granted a number of licences for import of spare parts, inter alia, of agricultural tractors and agricultural implements etc to a number of applicants. These applicants did not even own any agricultural tractor or any factory or workshop, in which any occasion for manufacture, maintenance or servicing of tractor etc by the applicants could arise. Some of them were manufacturers of brass utensils, others were manufacturers of plastic articles or persian wheels and buckets. Punwami was assisted by two dealing assistants K.C. Bhatia and J.K. Jain. The prosecution case is that Punwami, Bhatia and Jain, in conspiracy with the applicants for licences maneuvered to grant licences to these applicants for articles in respect of which they were not "actual users". This is said to have been done for causing undue favour to the applicants. A licence is "property". This pecuniary advantage was conferred on the applicants by the issuance of licences in illegal manner. The charges that have been levied against them are under section 5(1)(d) of the Prevention of Corruption Act, 1947.



256

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with section 5(2) of that Act and section 13-B of the Indian Penal Code.

After investigation by the C.B.I., charge sheets were filed against the accused persons in the Court of the Special Judge Anti-Corruption (Central) U.P., Lucknow and it is this that the cases are pending in that court. These petitions have been filed by the three officials mentioned above, besides one of the grantees of licence. It is undisputed before me that sanction for prosecution has been given by the competent authority in so far as these officials in petition are concerned.

The contention of the petitioners is that the licences were granted in accordance with the various instructions of higher authorities which were in force at relevant periods and that the officials who are accused have not violated any of the instructions. It has been contended in the alternative that at the worst the officials may have been guilty of misinterpreting the instructions but it cannot be said that they deliberately or with dishonest intention did so. If the interpretation placed by them on the instructions was not strictly correct but bona fide then too they would be entitled to protection on section 7 of the Import and Export Control Act, 1947. It is their contention that continuation of the prosecution in these circumstances is nothing but abuse of the process of the court in as much as it would be causing unnecessary harassment to the petitioners.

Criminal case No. 34 of 1975 has given rise to petition No. 883 of 1981 on behalf of Bhatia and Jain and petition No. 1202 of 1981 on behalf of Punwari. In this case two licences were granted, one to M/s. Sahar Industrial Corporation and the other to Gowind D. Both these business concerns were engaged in manufacture of plastic goods and yet licences were granted for import of Spare Parts of Agricultural Tractors etc. Each licence was of the value of Rs. 4 lacs. Both these licences were granted on 15.5.69.

Criminal case No. 35 of 1975 has given rise to two petitions; one is petition No. 882 of 1981 on behalf of Bhatia and the other is petition No. 577 on behalf of Punwari. The case relates to grant of two licences. One was for goods of the value of Rs. 5 lacs in favour of M/s. Niranjan Lal Tachard who was manufacturer of persian wheels and buckets. This was granted on 7.5.69. The other was granted on 27.6.69 and was for goods of the value of Rs. 2 lacs in favour of M/s. Bhagwati Industries who was manufacturer of persian wheels and buckets.

It may be mentioned in connection with these two cases No. 34 and 35 of 1975 that the two licences mentioned in case No. 34 were for import

from Yugoslav as well and the licence in case No. 35 of 1975 in favour of Miran Lal Farachand was also for import from Yugoslavia. The prosecution case is that on the dates these licences were granted Yugoslavs had been deleted from the list of countries constituting the Free Payment Area (R.P.A.).

Criminal case No. 36 of 1975 has given rise to petition No. 578 of 1982 by Punward. In this case licence was granted on 5.12.69 for goods of the value of Rs. 20,000/-. It is undisputed that these goods were not actually imported by the licence holder. The licence was granted in favour of Mohammad Yunis who was manufacturer of brass hardware.

Criminal case No. 37 of 1975 has given rise to petition No. 580 of 1982 by Punward. In this case licence was granted on 31.12.69 for goods of the value of Rs. 20,000/- in favour of Wahid Ali Khan who was also a dealer in brass hardware.

Criminal case No. 38 of 75 has given rise to petition No. 579 of 1982. In this case the licence was granted to Haji Subhan Khan on 25.2.70 for goods of the value of Rs. 40,000/-. This licence was also a dealer in brass hardware.

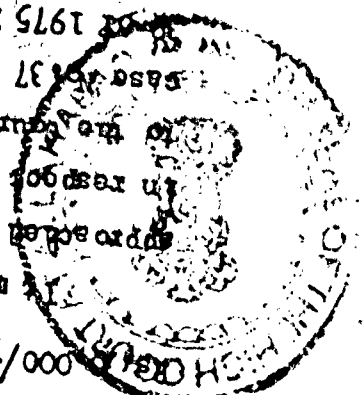
Criminal case No. 39 of 75 has given rise to petition of 576 of 1982 by Punward. In this case the licence was granted to Latif Khan Metal Industries which was also manufacturer of brass hardware. The licence was granted on 9.2.70 for goods worth Rs. 40,000/-.

Criminal case No. 40 of 1975 has given rise to petition No. 582 of 1982 by Punward. In this case the licence was granted to Mohamad Ibrahim, again a dealer in brass hardware on 13.11.69 for goods worth Rs. 20,000/-.

Criminal case No. 41 of 1975 has given rise to petition No. 581 of 1982 by Punward and Cr. Revision No. 256 of 1981 by Shano Ilihi. The licence was granted to Shano Ilihi who was also a dealer in brass hardware. This licence is dated 19.9.69 and was for goods worth Rs. 20,000/-.

It may be seen that Shano Ilihi is the only dealer who has approached this court, while the other dealers who are being prosecuted in respect of the licences respectively secured by them have not come to the court at this stage. Wahid Ali Khan, the accused in Criminal case No. 37 of 1975 and Latif Khan, the accused in Criminal case No. 38 of 1975 have died and the cases have abated as against them.

It may be noted here that the licence holders in Cr. case Nos. 37 to 41 of 1975, like the licence holders in Criminal case No. 35 of 1975, as noted earlier, have not actually imported any goods which they were granted licences.



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The main contention of the respondents is that none of the persons in whose favour the licences were granted was an actual user in as much as none manufactured or dealt with the goods in question were granted to the applicants as belonging to the category of "actual user".

In original case No. 37, 38 and 39 of 1975 licences were issued after exclusion of tractors and motor vehicle parts but were allowed for other

Spare Parts mentioned in Appendix-32 (which will be noted presently).

The instructions relating to grant of licences are contained in what is particularly known as the "Red Book" which is really a collection of instructions relating to "Import Trade Control Policy" for a particular year. We are concerned only with the Red Book for 1970. This is

supplemented by an "Import Trade Control Hand Book of Rules and Procedure, 1969", which will hereinafter be referred to as "the H.B.", para 100 of the H.B. lays down :-

"No two standing anything contained in this chapter, the Chief

Controller of Imports and Exports or the licensing authority

may by issuing Public Notice or Trade Notice, evolve any

special procedure for issue of Import licences to actual users in respect of any licensing period or commodity or any category of

actual users. In such cases, the provisions of this book

regarding the procedure for submission of applications and

processing of applications will be applicable only to the

extent indicated by the G.C.I.C.E. or the licensing authority".

(Rights supplied)

The items for which the licences were given are mentioned in Section II Part V of the Red Book at serial 74(111) which reads as follows:-

Spare Parts for agricultural - B.I. (I) Requests from individual tractor owners for special requirements of

Import Trade

Schedule (IX)

Control

74(111)

tractor drawn agricultural

tractors and for

values if they are not

in a position to procure

their requirements from

established importers.

The applications should be made direct to the

regional licensing

authorities concerned.

For details of the

conditions of the

control, see on the reverse side.

As all the licences in question were granted in respect of imports from R.P.A. the provisions in para 76 of the Red Book dealing with the subject may also be reproduced below:-

"76. Applications from actual users for spare parts mentioned in Appendix-32 will be considered by the licensing authorities concerned. For import from R.P.A. such applications should be made to the licensing authorities direct, and not through



A/28

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Contd. from page 3.	I	(2)	Licensees will not be valid for import of spare parts of agricultural tractors and for tractor driven agricultural implements mentioned in Appendix 4-B/ Part-II. (3) Import of ball and roller bearings mentioned in Appendix 14 and rollers, needle rollers mentioned in remarks column against S.No. 9(a)/ II will not be allowed as spares or as CKD parts. (4) The requirements of high carbon steel plain discs other than those mentioned in Appendix 4-B Part II and coulters, sculled, cutting discs will be met from the stock imported by S.T.C.



...to be issued in the form of a licence, and will be valid for the period of 12 months from the date of issue.

Importation of goods as set out in Appendix-32, and will be valid for the period of 12 months from the date of issue, and will be valid for the period of 12 months from the date of issue, and will be valid for the period of 12 months from the date of issue.

APPENDIX-32

(Para 76 of Section I)

List of spare parts of certain essential machinery which will be allowed import by actual users from Rupee Payment Area.

PART II

36(5)

Spare parts of mining and quarry machinery and spare parts of machinery required for electric supply undertakings.

PART IV

293, 295 & 297.

Spare parts of motor vehicles, including items of spare parts of motor vehicles which will not be permitted.

(1) Distributor assembly and parts thereof.

(11) Items covered by List I and II of Appendix 26.

Spare parts of both generation and aluminium forming machinery other than domestic refrigeration. Spare parts of irrigation machinery, spare parts of conveying machinery and spare parts of machinery which required for industries and undertakings other than cinema and refrigeration and also other than spare parts of machinery falling under Sl. No. 65(I-4) (VI) (a) and (b) of Part V.

Spare parts for agricultural tractors and for tractor drawn agricultural implements excluding undercarriage parts for crawler tractors.

Spare Parts of Machine Tools.

Note: Banned and restricted spare parts will not be allowed to be imported under this provision.

We are concerned in this case only with actual users (Industrial) and those who require them.

They are defined in para 69 of the Act as follows:

69(1) Definition.-Actual users (Industrial) and those who require them.

Material, components, accessories, machinery and spare parts for their own use in an industrial manufacturing process.



65(5) (11)

PART V

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- (2) Categories of actual users.—Broadly, speaking there are three categories of industrial actual users, viz., (i) scheduled industries borne on the registers of the Directorate General of Technical Development, (ii) scheduled industries not borne on the registers of the Directorate General of Technical Development and non-scheduled industries other than small scale industries, and (iii) small scale industries".

(Emphasis supported)

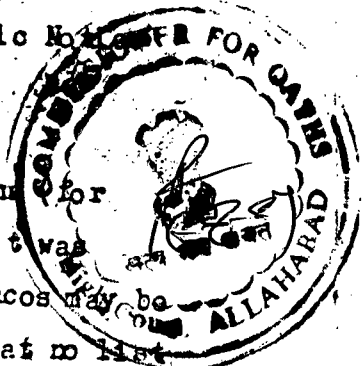
Admittedly only these industries were recognised which are duly registered as such with the Industries Department.

The contention of the petitioners is that all that was required by paragraph 69(2)(iii) was that the persons who may apply in the category of actual users should be "small scale industries". The applicants who were granted licences in these cases were all undisputedly registered with the Industries Department as small scale industries. This, according to the petitioners was enough to entitle them to apply for import licences as "actual users" from R.P.A. The Government was following a "free licensing policy", and it was for this reason that it was not insisted on that the person who may be granted licences for import should be engaged in the manufacture of the very goods in respect of which import licences were sought. In support of this contention the petitioners have relied on the following instructions *matter in the*

On 27.5.68, in M-69, a Public Notice was issued. This is annexure-4 to petition No.883. It says, in para 3, that it was not necessary for the applicants to furnish with their import application list of Spare Parts sought to be imported. Import licences will be issued with the general description of goods as given in Appendix-32 of the Red Book for the period M-69 and these licences will be automatically valid for the import of all the Spare Parts covered in the description of goods given in the licence, except that which exception is not applicable, the items appearing in Appendix 3 to the Red Book will be allowed only to the extent of 5 per cent, omitting the words not relevant to the controversy before us. Para 4 of this Public Notice adds that in order to enable the Customs authorities to identify these licences for allowing clearance of goods, the licences issued under this Public Notice will bear the following indication at their top:-

"ISSUED UNDER FREE LICENSING SCHEME"

This was reiterated in the General Licensing Instructions (for short, GLI) No.52/68 dated 25.7.68. In para 2 of this GLI it was stated, inter alia, that under these provisions import licences may be issued "for value applied for". In para 3 it was added that no list of Spare Parts need be attached to the licences and the licences may be issued with the general description of goods and I.T.C. classification as given in Appendix-32 (supra). The contention of Punjab in petition No.1202 of 81 is that in view of these instructions even in M-69



AP-30 412

licences were being issued by his predecessor Shri Budhran for import of spare parts of tractors etc worth several lacs even to persons who were not engaged in manufacturing, maintenance or servicing tractors but were manufacturing other articles. One of the licencees was Shreeji Industries of Agra, a paper manufacturer who was granted licence for import of "tractor spares" worth, Rs. 2,35,000/-. This is mentioned on page 123 at serial no. 48 of the weekly Bulletin of Licences for the period 23.3.69 to 31.3.69 published by Government of India, Ministry of Foreign Trade and Supply, which was produced before me. This is Volume XXIV no. 26 dated 9.5.69. This publication further indicates that issuance of each licence was intimated by licensing authorities to C.C.I. & E. and their details were regularly consolidated and published containing the heads "name and address of licensee, date of licence, country from which import was allowed, value, and ITC description". A specific avowment in this connection has been made in para 19 and 20 of the petition. In para 19 it has even been suggested that this licence to Shreeji Industries was issued in pursuance of C.C.I. E's own suggestion. In the counter-affidavit filed by the Investigating Officer in the case on behalf of the State the avowments in those paragraphs were dismissed as "not relevant to the facts of the case". The avowments were however not denied as being untrue.

G.L.I. No. 23/69 dated 16.4.69 laid down that applications received till 31.3.69 may be dealt with in accordance with the policy for A.M. 69. However, face value restrictions for A.M. 70 would be issued later on. Undisputedly, the existing instructions of A.M. 69 were to continue during A.M. 70 as well, subject to any amendments that may be issued from time to time.

Punwani had joined this office for the first time only on 9th April, 1969. He says that he being new at the job wanted to make sure about the correct procedure in regard to grant of licences. On 25.4.69 the dealing assistant Bhatia put up a note before Punwani mentioning that the applications were being received under para 78 of the current Red Book for import from RPA in respect of spare parts of motor vehicles, refrigeration and air conditioning machinery, agricultural tractors etc. The value applied for was some times in lacs of rupees. According to Bhatia, it was not clear from the Red Book if the licences were to be issued after seeing the "end product". He added that some applications had been received from units which were presently engaged in manufacturing plastic goods but had added in the applications that they proposed to repair or replace tractor parts, etc. He sought confirmation as to whether licences could be issued in these cases. In his opinion, expressed in the last sentence, no embargo had been placed in the import policy in this regard. On this note of Bhatia, Punwani noted a query. He asked Bhatia as to what was being done during A.M. 69. Bhatia replied

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44
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~~... parts from R.P.A. to the applicants engaged in the manufacture of agricultural items like agricultural implements, engines etc. only and not to other industries like plastics etc. Punwari did not agree with that and noted that in A.M. 69 licences were being issued to other too, -this assertion of his is borne out by the pleadings and documentary evidence, and as such they could be issued to all applicants who applied for the items. In other words, he indicated that licences could be issued, even to those who were not presently engaged in manufacture of agricultural implements etc., for import of spare parts and components of agricultural implements etc. However Punwari did not take a final decision to this effect on his own but submitted his note to the immediately higher officer Sri O.N. Anand who was Dy. Chief Controller of Imports & Exports, also based at Kanpur. Sri Anand thereupon endorsed his decision as follows:-~~

"Instructions contained in para 78 are clear. Please follow these strictly. There is no question of end products. The instructions do not want us to do them.

(2) We have been doing this during A.M.-69."

(Emphasis supplied)

This note of Sri Anand is dated 13.5.1969. Sri Anand is not alleged to be in league with the accused persons. He is one of the prosecution witnesses. His instructions were binding on his subordinates.

In the office of the Dy.C.C.I.E at Kanpur the policy circulars on behalf of the Head of Office used to be issued by Sri P.C. Bhatnagar, Assistant Controller (Policy). Although Sri Bhatnagar was thus of the same rank as Punwari, namely, Assistant Controller, instructions which were issued by Sri Bhatnagar were on behalf of Dy.C.C.I.E. and as such those instructions were binding on Punwari. On 23.5.69, vide annexure-12 to petition no.1202 of 1981, a policy circular no.24/69 was issued over the signature of Sri Bhatnagar containing the following "clarifications received from the C.C.I.E. " with regard to import of spare parts of machinery mentioned in appendix 32 of the Red Book by actual users (for short A.U.) from R.P.A.

"I.A.U. applications for M-68 for import of spare parts from rupee area in respect of machinery listed in appendix 32 of Red Book (Vol.I) may be considered by switching them over to M-69 period in terms of GLI No.52/68 dated 25.7.1968. A.U. licence from rupee area in respect of S.No.74(iii)/V may be issued in spite of the remarks in the Red Book against this S.No. as this provision relates to individual tractor owners who want to import from sources other than rupee area.

3. Components are those which are meant for the manufacture/fabrication of a complete machine or equipment, whereas spare parts are intended for servicing and maintenance of the



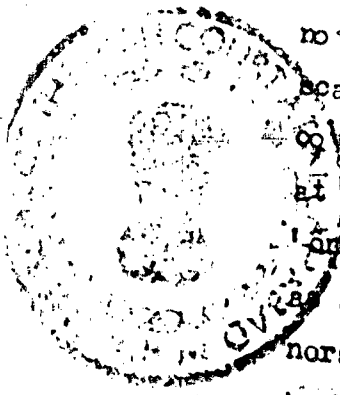
existing machinery"

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(Raphael supplied)

It may be noted that serial no. 74(111)/V of the Red Book has been reproduced earlier.

The expression "ond product" means the article which was to be ultimately manufactured by the applicants for licences. If the ond product was to be ignored as irrelevant, it is contended by the petitioners, then the officials were not expected to see whether or not the goods sought to be imported were genuinely needed for manufacture or maintenance of the goods in the manufacture or maintenance of which the applicant in a given case was already engaged. This interpretation of the officials was reinforced by the provision in GLI 52/68 dated 25.7.68 read with Public Notice dated 27.5.68 to the effect that export in regard to items mentioned in Appendix 3, licences were to be issued "for the value applied for". If there had been any intention to verify the genuineness of the need of the applicant for manufacture or use in his own factory, workshop or farm there would have been some provision for verification of the need in terms of its quantum or value too, and the officers could not have been required to grant licences for the value applied for. The further provision that even lists of actual articles sought to be imported need not be furnished in the application or indicated in the licence, and it was enough to specify the "general description of goods as given in Appendix-32", also fortifies the underlying policy of not subjecting such applications to a meticulous scrutiny. The key words in the said Public Notice and G.L.I. were "Free licensing policy". The reason for such liberality was that trade with HPA was based on barter i.e. balancing of imports against exports and did not involve any expenditure of foreign exchange. The authorities were therefore keen that no unnecessary objections were raised by officials while processing such applications. Corruption can as well be the motivating factor behind raising frivolous objections to an application as behind wrongly passing an inadmissible application, and it was for this reason that the authorities were at pains to emphasise in various manners as aforesaid that the applications were to be liberally processed by the licensing officials. If this background be kept in the mind then, the petitioners contend, not without force - and one should not find any difficulty in accepting the contention that any "small scale industry" qualified as an "actual user" for any article whatsoever covered by Appendix 32, irrespective of whether or not that industry was at the time of the application engaged in the manufacture, etc., of the "ond product", in which the article sought to be imported could be used as a spare part or component. An alternative contention of the petitioners is that even if it be assumed that the expression "actual user" implies that the article sought to be imported would be actually used by the importer in his own factory there was nothing to prevent, say, a



business of plastic manufacturer to diversify his business and to plan in future to engage in manufacture etc. of agricultural implements after receipt of the articles from abroad under the import licence sought.

It had also been provided that applications for import from RPA were not required to be "sponsored" by the District Industries Officer as was required for other applications. This provision also indicated that the actual or potential need of the applicants was not to be verified on the spot. There was moreover no agency at the disposal of the licensing officials for such verification of actual need, the "sponsoring authorities" being excluded from the process. It was through GLI dated 4.6.69-annexure 3 to petition no.883 of 81 that for the first time some sort of instructions were stipulated in regard to such imports from RPA. In this GLI it was mentioned that the provision in para 78 (supra) pertaining to import of spare parts of machinery listed in Appendix 32 by actual users from RPA was intended "to meet the requirements of actual users only for servicing and maintenance purposes". Accordingly it was directed that the following conditions may also be endorsed on the licence issued in such cases :-

- (i) This licence can be utilised for import of spare parts in terms of paragraph 78 of section I of the Import Trade Control Policy (Red Book Vol.I) for the period April 1969-March 1970.
- (ii) The licence is issued subject to the conditions that the goods imported under it shall be used only for servicing and maintenance of machinery installed in the licence holders factory. It shall not be open to the licensee to import under this licence any components required for fabrication of machinery."

However in this GLI too it was made clear that "import licences may be issued for the value applied for" and further that "no lists of spare parts may be attached to the licences" and that Import Licences may be issued with the general description of goods and ITC classification as given in Appendix 32 to the current Red Book(Vol.I)."

It may be mentioned here that Yugoslavia was also originally part of the RPA. But in this GLI it was mentioned that Yugoslavia was not to be treated as covered by RPA countries and that requests for imports from Yugoslavia may continue to be referred to the Head-Quarters (Import Policy Cell) for short I.P.C. for disposal instructions as per letter no. IPC (GEN.4)/69 dated 29.4.69. This letter, it was agreed before by both the parties, is the same as letter dated 1.5.69 which is annexure-1 to the petition no.882 of 1981. (It was signed on 29.4.69 and issued on 1.5.69). This was a Secret letter from the C.C.I.B in which it was stated that pending issue of instructions in regard to licensing for imports from Yugoslavia it had been decided that Yugoslavia may not be included in the list of R.P.A. countries and



that requests received for issue of licences for imports from Yugoslavia may be referred to C.C.I. & E. Cell at New Delhi for disposal instructions. The contention of the accused officials is that this annexure-1 which was a "secret" document was never communicated to them and as such they could not be presumed to have had any knowledge thereof. It was only through GLI dated 4.6.69 that they learnt for the first time about the exclusion of Yugoslavia from RPA. The endorsements on annexure-1 dated 1.5.69 show that this communication from New Delhi was received by Dy. C.C.I. & E. on 12.5.69 and thereafter it was noted by Sri P.C. Bhatnagar, the Assistant Controller (Policy) on 12.5.69 and 22.5.69. There is only an oral statement of Sri O.N. Anand to the effect that he had conveyed the intimation contained in the secret letter of 29.4.69 to Punwari "soon after". The exact date on which it was allegedly conveyed to Punwari has not been stated in the oral statement recorded under section 161 Cr.P.C. On behalf of Punwari it has been rightly pointed out that whenever any order was circulated a circulation slip on which the signatures of the official concerned were obtained at the time each such official received a copy of the order. No such distribution or circulation slip has been produced in respect of this letter of 29.4.69/1.5.69.

Sri Bireshwar Nath, learned Additional Government Advocate, has pointed out that a similar communication (GLI No.16/69) issued as far as on 10.3.69 had already excluded Yugoslavia from the list of RPA countries for the time being. This is Annexure D 2 to list of documents supplied to the accused in Criminal cases 34 and 35 of 75. But the endorsements made at Kanpur on the copy of this GLI also show that it had remained in the custody of Sri O.N. Anand until 21.5.69 and was seen even by Sri P.C. Bhatnagar only on 22.5.69. This too does not appear from the endorsements, to have been communicated to Punwari.

The GLI of 4.6.69 noted earlier was communicated to Punwari on 11.6.69, vide distribution slip which forms part of the prosecution documents. It merely directed that certain conditions were to be endorsed on the licences that may be issued under this category, but did not say anything about verification either of the applications before issue of licence or of the utilisation of the articles imported under the licence, or about any agency for such verification.

Thereupon Punwari raised queries on these points and put up a draft letter for issue by Sri O.N. Anand to Delhi office. This is annexure 13 to petition no.1202. Sri Anand after recasting this draft wrote a D.O. letter dated 20.8.69, vide annexure 14 to petition no.1202, to Sri Mircha, Joint C.C.I. & E. seeking clarifications. The relevant parts read as follows :-

"Attention is invited to para 78 of section I of Current Rate Book and GLI 34/69 dated the 4th June 1969, regarding the



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import of spares from R.P.A. during M-69-70. It is stated in Para 2 of GLI referred to above, that this provision is intended to meet the requirement of AU only for servicing and maintenance purposes. It is also stated therein that the import licences may be issued for the value applied for. 2. This office has been issuing licences for value applied for, but it has been observed that certain parties are requesting for grant of huge value licences which it appears may not be required for the servicing and maintenance etc.

3. In the instructions, referred to above, the details of the evidence required to be produced by the parties, while making the applications have not been given. In the absence of those, it is rather difficult to ensure that those are required by the actual users only for servicing and maintenance purposes. This office is merely going by the statement made by the parties.

4. However, after receipt of the GLI, referred to above this office is asking for the following evidences:-

- a) SSI Regn. No. allotted by the State Director of Industries.
- b) Declaration stating that these are required for servicing and maintenance purposes.

5. The point at issue is whether,

- a) We should ask for any other documentary evidence.
- b) Issue licences for value applied for even when apparently it may be on the very high side.

Pending receipt of clarification on these points, this office has curtailed the value in respect of units who apparently would not require licences for the value applied for. However, in case of bigger and well known units, licences are being given for the value applied for. It is considered that some check is to be imposed while granting such licences.

6. Attention is also invited to condition No. 2 referred to in Para 5 of GLI referred to above. This condition may be difficult to fulfil as servicing and maintenance of tractors, air-conditioning machinery etc is done in certain workshops, who service and maintain the machinery which is not owned by them. Therefore to say that the imported goods shall be only used in licence holders factory will not be appropriate. This may also be looked into.

(Emphasis supplied)

Before and after issuance of this D.O. letter, Punjab did issue licences on the basis of the earlier interpretation, viz. "as long as the applicant was a registered SSI unit ("small scale industries") and the articles sought to be imported were Appendix 32 items from RPA countries, the licence was to be issued for the value applied for



irrespective of whether the applicant was registered as SEI unit for the particular item sought to be imported or not. What is however significant from this D.O. of 30.8.69 is that this was not without the knowledge and at least tacit approval of his official superior Sri. O. N. Anand who, as noted earlier, is not said to have been in league with him in committing any irregularity. Not only Sri Anand but even the headquarters officers were kept in the picture about it.

A headquarters inspection team also stayed at the Kanpur office from 7th to 12th August, 1969 and examined the licences issued by Punward. It did not find any fault on this score with the licences issued.

A meeting of Port Officers was also held on 29.9.69 which was attended by officers from Kanpur as well. At that meeting various doubts were to be cleared. The Kanpur office raised the following point, vide item no. 66-see Annexure 15 of petition no. 1202 :-

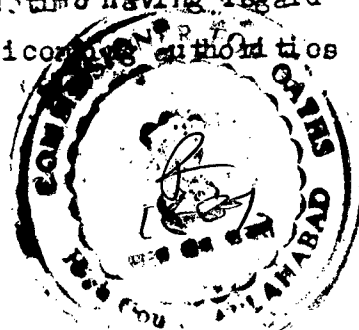
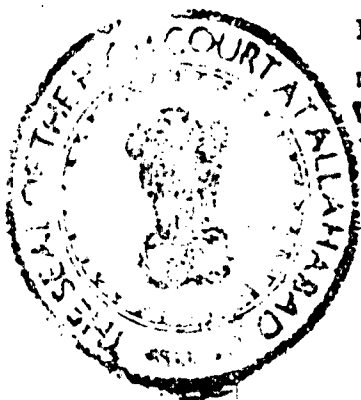
"66. In the case of free licensing of spare parts to actual users from rupee payment countries, the term 'actual user' and the purpose 'maintenance & servicing' have not been defined. No essentiality certificate in such cases is prescribed. Can licences in such cases be issued on the basis of declaration of the applicants? Is there any upper limit for such licences? Are any documents other than T.R. & application required for issue of such licences."

(Emphasis added)

The minutes of this meeting are dated 12.11.69. They show that all that was endorsed against this item was that necessary clarification was being issued. In other words, no clarification was given at the meeting on 29.9.69, not even in the recorded minutes on 12.11.69. Nor was it suggested that the doubts raised were absurd and that the policy was quite clear. It was also not said that issuance of licences of this category was to be discontinued until clarification was given.

Then on 27.11.69/5.12.69, vide Annexure 16 to petition no. 1202, the headquarters replied to Sri Anand's D.O. of 30.8.69. This reply was as follows :-

"2. Licences to actual users for import of spare parts as per instructions contained in G.L. No. 34/69 dated 4.6.69 may be issued for value applied for on production of a declaration from the applicant that the spares sought to be imported are required for servicing and maintenance of machinery installed in his factory, if the applications are otherwise in order. However, in regard to spare parts of agricultural tractors, import may be allowed on the basis of Rs. 1500/- (Rupees fifteen hundred) per tractor. The position will be reviewed after some time having regard to the licensing done by the regional licensing authorities



and if considered necessary, the question of restricting the licensing will be considered.

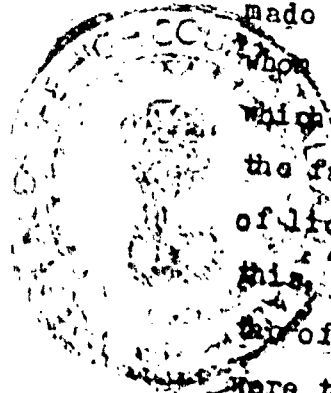
3. In regard to the point raised in para 6 of your D.O. under reply, it may be clarified that in the case of spare parts of agricultural tractors and tractor drawn agricultural implements and motor vehicle parts, the intention is that the import of such spares should be allowed for servicing and maintenance of the equipments which are in possession of applicant.

4. It has been brought to our notice by the Inspection Unit at Headquarters that licences for import of spare parts of machineries from rupee payment area had been issued to workshop by your office in terms of the said GLI. This provision will not be applicable to garages and workshops."

(Underlining mine)

On 9.12.69 a Policy Circular No. 56/69 was issued re-including Yugoslavia in RPA but directing that applications for Yugoslavia alone were to be referred to headquarters.

Sri Bhoshwar Nath, learned Additional Government Advocate, has however contended that the expression "actual user" and also the expression "spare parts" should themselves lead to the inference that the persons who could use these spare parts in their own machinery could be treated as actual user and should alone be entitled to import, under this category. This is an over-simplification of the matter. If the matter was so simple as that, what was there to prevent either Sri O.N. Anand when the matter was placed before him by Punwari in May, 1969 itself, or again in August, 1969 when Punwari put up before him a draft letter seeking clarification from Delhi, or C.C.I.E. or Joint Controller or Dy. Controller dealing with the policy at Delhi from saying so immediately when clarification on this point was sought from them. What was the meaning of Sri O.N. Anand's directive that the "end product" was not to be seen? If the expression "actual user" was to mean only that the applicant should use the articles sought to be imported for the thing he was going to manufacture in his own factory, i.e. in the manufacture of particular end product, then the directive that the end product was not to be seen should be considered as clearly contrary to the intentment of the scheme. The inspecting officers from Delhi who made the inspection in August must also have seen that the persons to whom the licences were being given were not engaged in any industry in which spares allowed to be imported could be used. This is apart from the fact that a copy of every licence was sent to Delhi and the list of licences issued were being published from Delhi every week. Not only this, if the matter was so simple as that, when the same was raised by the officers of Kanpur at the Port Officers Meeting in September why were they not immediately snubbed by their superior officers at Delhi?



for raising a frivolous query when the matter was so obvious? Sri Anand in his A.O. of 30.8.69 had also added that the interpretation now canvassed on behalf of the petitioners was being followed by him at Kanpur. He was thus obviously a party to this interpretation. Even earlier in May, 69 on Punward's note he had observed that in A.M. 69 also the same policy was being followed, vide annexure-5 to the petition no. 882 of 81. The observations of Punward and Sri Anand that they had been doing this during A.M. 69 were not without foundation. Numerous instances have been mentioned, in para 19, 20, 21, 22 and 24 of petition no. 1202 of 81 of the other licences issued which could only be justified on the basis of the interpretation now canvassed by the petitioners. Those licences were issued in A.M. 69 by Sri Bhudhraj out of which atleast one was on the basis of a letter of C.C.I.E dated 4.2.69. These paragraphs also mentioned numerous other licences issued by Punward himself but in respect of which the C.B.I. has not imputed any illegality to Punward and his dealing assistants.

It is undisputed that no action was initiated against the petitioners on the basis of any complaint of C.C.I.E. Indeed the matter started through a "source report" received by the C.B.I. about lavish living and possession of disproportionate assets on the part of Punward. It was on the basis of this source report that F.I.R. was lodged against Punward on 3.12.71 until then no higher officer of the C.C.I.E. department had taken exception to any of the licences issued by Punward. It was only thereafter that they took action against some licensees taking the view that the licences had been wrongly granted. The much belated clarification that was given on 5.12.69 by C.C.I.E. through annexure-16 to petition no. 1202 of 81 did for the first time impose a limit of Rs. 1500/- for the value applied for. Indeed, even tractors. Until then, as noted earlier, the policy throughout was that the licences were to be issued for the value applied for. Indeed, even this letter of 5.12.69 refers to the earlier GLI no. 34/69 dated 4.6.69 and adds that according to that GLI the licences were to be issued for the value applied for on more production from the applicant that spares sought to be imported were required for servicing and maintenance of machinery installed in the applicants factory if the applications were otherwise in order. Even in this letter of 5.12.69 no other restriction was imposed in regard to other spare parts mentioned in Appendix-32 except that they will not be issued to garages and workshops. It merely states that according to the report of the inspection unit licences had been issued by the Kanpur office even to workshops. No other objection was raised in regard to the licences issued to, for instance manufacturers of plastic goods or brass utensils etc. for import of spares of tractors etc.

There is also considerable force in the contention of the petitioners that there was nothing to prevent even a manufacturer

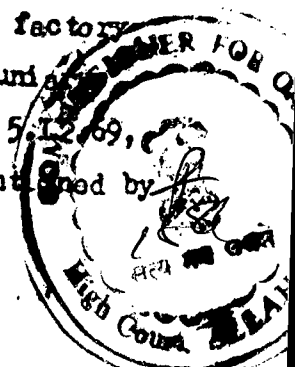


brass hardware from planning to start production of other articles in future with the help of articles sought to be imported under the free licensing policy.

Whatever restrictive language was used from time to time was only with regard to declaration to be asked for from the applicants or to endorsement of condition of licence in the licences. Nothing was ever whispered about scrutiny or spot verification of applications with a view to ensuring that the declaration so made was correct. Moreover, whenever any clarification was issued it could operate only prospectively and not in respect of the licences issued earlier. It was never suggested in any of the communications issued subsequently to the grant of licences in question that any licences already granted which may not be consistent with the restrictions sought to be imposed subsequently should be cancelled or recalled or even that they should not be renewed after the expiry of the period in question. Not only this, in the report of the head quarters inspection made at Kanpur in August, 69 exception was made to any action taken for deletion of banned items while revalidating licences, Articles for which licences had already been granted were not to be deleted on the ground that their import had been subsequently banned.

It is not disputed before me that so far as the licences, granted after the receipt of letter dated 5.12.69 from Delhi, were concerned the same had been granted for appendix -32 articles excluding spare parts of tractors and of motor vehicles.

In the light of all the surrounding circumstances mentioned above, including the previous practice, the attitude of the superior officers and the officials at Delhi and the wording of various clarifications and directions issued by the superior officers, both at Kanpur and Delhi, there seems no good ground to reject the contention of the petitioners that the expression "actual users" in the special context of import, from HPA, under the free licensing scheme, of spare parts detailed in appendix -32 was wide enough to cover all units registered as SSI, and that it was not required that the applicant units should have been registered from before as SSI units for manufacture of the particular articles in which those spares could be used or that they should already have been in possession of requisite plant and machinery in which those spares could have been used. A bare declaration from the applicants that they propose to use the articles in their factory was to be deemed to be sufficient and until under the pecuniary limit imposed in respect of tractor parts by letter dated 5.12.69, the licences were to be granted for whatever value was mentioned by



the applicants. Even after 5.12.62, in so far as other spare parts mentioned in appendix-32 were concerned, licences were expected to be granted for the value applied for. The pecuniary limit imposed for the first time was confined to tractor parts which in consequence were specifically excluded from the licences subsequently granted by the petitioner Punwari. 53
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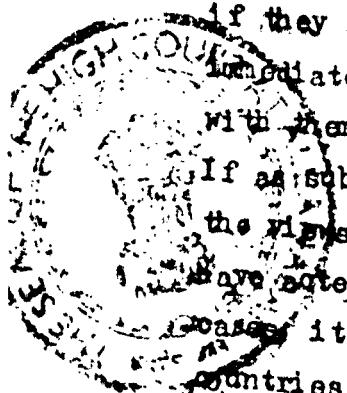
Though at first blush the argument of the learned Additional Government Advocate, namely, that the expression 'actual user' should normally mean only the person who was likely to use the articles sought to be imported for manufacture of articles which were already being manufactured by the applicants, does appear attractive, this is clearly not the sense in which the higher officers of the Department of Import Trade Control understood the matter at the relevant time. If Punwari and his subordinate assistants were under misapprehension about the true meaning of the expression then they were not alone in error; their higher officers were equally labouring under the same misapprehension, particularly Sri O.N. Anand.

Indeed, if we take into account the fact that trade with RPA countries was based on barter there seems nothing inherently absurd about the interpretation canvassed by the petitioners. In a barter trade the more you import from the "Socialist" countries of the Eastern Bloc the more you are able to export to them. The Eastern Bloc countries are, it is well known, often in short supply of consumer goods, which India is able to export to them. But their difficulty is that they cannot accept consumer goods from India of a higher value than the value of goods which India may be able to import from them. It was generally in the context of these economic factors that a liberal import policy has been followed in regards to trade with RPA countries. Such liberal import policy clears the ground for greater export of consumer goods from India to those countries. A restrictive policy would have a dampening effect on export promotion in so far as the consumer goods for which a great market exists in the Eastern Bloc are concerned. This seems to be the background in which the various instructions were issued from time to time emphasising that such applications were to be treated most liberally and without any meticulous scrutiny. The approach of the investigating agency seems to have been that because Punwari, according to their information, was living beyond his means and was possessed of disproportionate assets he must have granted licence illegally. Assuming, for the purposes of this case, that the information of the C.B.I. that Punwari was living and was possessed of property of greater value than he could reasonably account for, it did not necessarily follow that he must have been flouting the instructions in regard to grant of licences. He could have reasonably

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secure illegal gratification even while granting licences liberally in accordance with the Government's own liberal licensing policy. In spite of numerous instructions by the Government for not placing undue obstacles, officials in his position could always place obstacles or raise objections and could extort money merely for not raising objections. It may however be clarified that in most of these cases although the charges framed do mention that Punwani, Bhatia and Jain obtained pecuniary advantage for themselves and for others, namely, for the grantors of licences, it was conceded before me by the learned Additional Government Advocate that there was absolutely no evidence about passing of illegal gratification from the grantors of licences to the officials. There is only one case in which Punwani is being prosecuted for corruption on the ground that he was in possession of disproportionate assets i.e. Criminal Case No. 33 of 75 which has given rise to petition No. 1203 of 81. That case would be dealt with separately as no arguments have yet been heard in that case. It should accordingly be clarified that no observations in the instant case will have the effect of prejudicing the merits of that case which is yet to be examined.

The learned Special Judge has mentioned in his order and the learned Additional Government Advocate has also suggested in his arguments, that any instruction of Sri O.K. Anand or any higher officer could not over ride the instructions contained in the Red Book and the Hand Book. This contention does not deserve to be accepted. Firstly, para 100 of Hand Book which has already been quoted itself contains a saving provision in respect of any special orders that may be issued by the higher authorities. The provisions in the Hand Book were thus subject to special orders of higher authorities. Secondly we are not to consider, as the court would do in a writ petition, whether the licences were issued/strictly legal grounds or not and whether the instructions of the higher officer could over ride the instructions contained in the writ petition and the Hand Book. It is enough, so far as the accused-officials are concerned, if they acted in accordance with the orders or with the views of their immediately higher-officers who are not alleged to be in conspiracy with them and on whose evidence the prosecution is itself relying. If as sub-ordinate officials these accused acted in accordance with the views expressed by the higher officials they cannot be said to have acted in bad faith. Reverting to the facts of the individual cases, it is clear that licences covering Yugoslavia among RPA countries were granted in three cases, which are mentioned in Criminal Cases no. 34 and 35 of 75 only on 7.5.69 and 15.5.69. Till these dates the accused-officials had no knowledge about Yugoslavia having been excluded from RPA for the time being. The licences granted thereafter did not include Yugoslavia. In regard to the licences granted in



These two criminal cases it has been contended by the learned Additional Government Advocate that either the licences had been revalidated or letters of authority had been issued in respect of those licences even after exclusion of Yugoslavia came to the knowledge of Punwari after the clarification dated 5.12.69 whereby a limit of Rs.1500/- per tractor was imposed. We have already seen that there was nothing in the instructions to suggest that the limit was to be imposed even in respect of licences earlier granted, at the stage of revalidation or at the stage of granting of letters of authority. There is moreover no charge in respect of revalidation or issuance of letters of authority after 5.12.69. It is true that a charge can be added to or amended at any stage by the court, but having regard to the various official documents already referred to, it is not required in the interest of justice to add such a charge.

The licences in these cases were cancelled and the firms in question were debarred in pursuance of proceedings initiated after the F.I.R. was lodged by the C.B.I. against Punwari. The applicants for licences had no doubt mentioned that they were manufacturing plastic goods, persian wheels, buckets etc. but they had added that they proposed to manufacture tractors and agricultural implements as well. So far as the licensing authorities were concerned this declaration was enough in view of what has been discussed earlier. Thus Punwari cannot be said to be guilty of granting licences illegally and in bad faith in these cases or of illegally revalidating or issuing letters of authority in contravention of any instructions of higher officials.

In Criminal Cases No. 37, 38 and 39 of 75 the licences were issued after 5.12.69 but in these licences the articles allowed to be imported were mentioned as "spare parts" (permissible type) excluding agricultural tractors" etc. Thus the upper limit of Rs.1500/- per tractor was not attracted in these cases. The licences worth Rs.20,000/-, 40,000/- and 40,000/- only and they were not actually availed by the licence holders.

In Criminal Cases No. 36, 40 and 41 of 75 the licences were granted before the receipt of letter dated 5.12.69 by the Kanpur Office. In view of the various clarifications given and being sought, as noted earlier, these licences could also not be said to have been issued in bad faith and illegally and an dishonest misinterpretation of the rules and rules and clarifications. These licences were also not actually availed and the articles were not imported by the holders of licences.

The case of Bhatia and Jain who were only subordinates stands even on a stronger footing than that of Punwari.

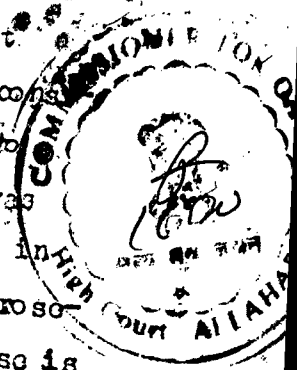
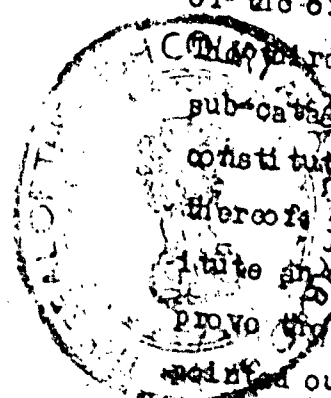
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The learned Additional Government Advocate has also contended that at the stage when only a charge has been framed it is not for this court to consider the evidence meticulously. The prosecution witnesses are still to be examined. This is for the trial court to appreciate their evidence in the light of the documents and in the light of such evidence as the accused persons may choose to prefer. In this connection the learned Additional Government Advocate has placed reliance on the following authorities :-

- (a) Kurukshetra University v State of Haryana (A.I.R.1977 S.C., 2229).
- (b) R.P.Kapoor v State of Punjab (A.I.R.1960 S.C., 836).
- (c) State of Bihar v Ramesh Singh (A.I.R.1977 S.C., 2012).
- (d) Superintendent & Remembrancer of Legal Affairs, West Bengal v Anil Kumar Bhunia (A.I.R. 1930 S.C., 52).
- (e) D.V.Jadhav v Shankarrao Abasaheb Pawar (A.I.R.1983 S.C.1219).

The first of these cases, namely, Kurukshetra University v State of Haryana (A.I.R.1977 S.C.2229) (supra) deals with the jurisdiction of the court when the same is invoked for quashing the first information report. In other words what is sought to be quashed in such a case is the investigation itself. This decision is thus of no assistance so far as the present case is concerned in which the investigation has already been concluded and it is the prosecution which is sought to be quashed.

R.P.Kapoor's case (supra) is no doubt the leading case on the subject. It was laid down in this decision that the power under section 561-A of the old Cr.P.C. (corresponding to section 432 of the new Cr.P.C.) is to be invoked in a limited field. Their Lordships pointed out that there were three categories of cases in which this power can be invoked. The first was where there is a legal bar to the institution or continuance of the prosecution, such as want of sanction. The second was where the allegations accepted at their face value in their entirety do not make out the ingredients of the offence. This case is also not attracted to the instant case. The third category mentioned by their lordships was divided into two sub-categories. The first sub-category was where the allegations do constitute an offence but there is no legal evidence in support thereof. The second sub-category was where the allegations do constitute an offence but the evidence clearly or manifestly fails to prove the charges. With regard to these two sub-categories it was pointed out that the High Court should not embark on an enquiry into the question whether the evidence sought to be adduced by the prosecution is reliable or not. It appears to me that the instant case is clearly covered by the third category. Here the question of appreciation of evidence does not arise as the matter is covered by documentary



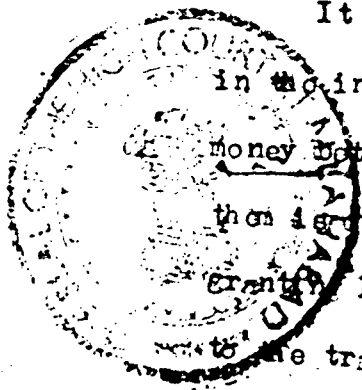
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evidence, the only thing to be done is to interpret the official documents. The oral evidence merely goes to prove or link or connect or explain these official documents. Even if all the officials who are to be examined by the prosecution were to be believed, they cannot depose anything contrary to what is recorded in the official documents. If a case rests merely on interpretation of such official documents and such interpretation goes to show that the prosecution was not justified, the court cannot shirk its duty to examine the contention of the accused persons in that behalf.

In Ramesh Singh's case (supra), it was a case of bride burning which rested on circumstantial evidence; the oral evidence was yet to be adduced and it was held that the High Court was not justified in going into the sufficiency of that evidence. Anil Kumar (supra) was also a case relating to appreciation of oral evidence. In that case however the legal question raised was examined by their lordships of the Supreme Court, namely, whether the conduct of the accused in having parted with the custody of firearms in favour of M. Dutt amounted to delivery of possession or not. On the view taken on the legal question their lordships differed from the High Court. Thus, examination of any legal issue even at the stage of framing of charge was not ruled out.

In Jadhav's case also the legal issue relating to the prohibition of dowry was examined by their lordships. Again they differed from the view taken by the High Court. Thus in all these cases their lordships have indicated that where the matter rests on the appreciation of evidence, the evidence alluded to in all such cases being oral evidence, the High Court should not interfere at this preliminary stage. But whenever issues of interpretation of law have arisen it has never been suggested that such issues should not be considered. In the instant cases the issues raised are those of law based on interpretation of the official documents. As laid down by their lordships in R.P. Kapur's case (supra) the case would fall in the third category viz, where the allegations are not supported by any legal evidence and the evidence sought to be adduced clearly or manifestly fails to prove the charge.

It may be added again, even at the cost of repetition, that in the instant case there is no evidence of actual passing of money between the traders and the officials. The charge against them is only based on violation of the official instructions which grant licences and thereby conferring undue and pecuniary advantage to the traders. In this view of the matter the validity of the charge could certainly be examined without appreciation of the oral evidence



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which is yet to be adduced but on documentary evidence interpreted
in the light of the statements recorded under section 161 Cr.P.C.
which have already been supplied to the accused under section 173.

It is thus clear that the accused officials who are petitioners, cannot, on the evidence sought to be adduced, be held guilty of dishonestly misinterpreting the official instructions relating to grant of licences or of granting licences in violation thereof. If the charge against the officials fails the charge against the dealer Shano Ilahi cannot survive either.

In the result these petitions and the revision are allowed and the charges framed against the petitioners are quashed and the proceedings for their prosecution are also hereby quashed.

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Sd. K. N. GOYAL. XL
Dt. 25 May, 1984

[Signature]
Section Officer
Copying Department,
High Court, Lucknow Bench
LUCKNOW

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[Signature] & (M.C. 4145)

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Dt. 25 May, 1984

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Entry 8 (Myl.)





The humble petition of
the petitioner above named

The Hon'ble the Chief Justice and
His Companion Justices of the
Supreme Court of India

TO
PETITION UNDER ARTICLE 136 OF THE
CONSTITUTION OF INDIA
...Respondents/Accused.

4. J.K. Jain, UDC office
of the Dy. CCE, R/O 120/331,
Lajpat Nagar, Kanpur.
Applicant of Misc. No. 883
of 81
3. K.C. Bhatia, Asst. Officer
of the Dy. CCE, Kanpur
R/O 117/474, Pandu Nagar,
Kanpur
Applicant of Misc.
case No. 882/81
2. G.I. Punwant, Controller
Imports & Exports, Kanpur
R/O 5, Mall Avenue, Lucknow
Applicant of Misc.
case No. 1202/81, 576
of 82 to 582/82
1. Shane Elahi son of Abdul
Gaffar of M/S Shah Commercial
Service Price Road,
Moradabad, UP
Applicant in Civil
Rev. No. 256/81

Versus

State of U.P. Petitioner

IN THE MATTER OF

SPECIAL LEAVE PETITION (CRIMINAL) No. _____ 1984

IN THE SUPREME COURT OF INDIA
(CRIMINAL APPELLATE JURISDICTION)

10/46

APR 7

904

MOST RESPECTFULLY SHEWETH:-

1. That this is a petition for Special Leave to appeal to this Hon'ble Court under Article 136 of the Constitution of India against the Order dated 25th May, 1984 of the High Court of Allahabad, by which Shri Justice K.N.Goyal allowed the Criminal Revision No. 256 of 1981 and Criminal Misc. Cases Nos 882 of 1981, 883/1981, 1202/1981 and 576 to 582 of 1982.

2. That the petition raises the following substantial questions of requiring adjudication of this Hon'ble Court:-

- (1) What is the scope of the Ruling in case H.K.Kapur Vs. State of Punjab (AIR 1960 S.C. 866)? Does the ruling permit the High Court in exercise of its revisional power to take up the role of the Trial Court ?
- (2) Whether after charges have been framed in a criminal case, can the High Court in exercise of its revisional power can appreciate, evaluate the evidence as also can examine the reliability or otherwise of the evidence ?
- (3) Can the statements recorded under Sec. 161 Cr.P.C. be used as substantive evidence ?



APR 25

9/5

- 51 -

(4)

Even when the Criminal case has not gone to trial in the court below, can the High Court examine the defence put forth by the accused before it and quash the charges ?

(5)

Is the High Court justified in law in deciding a criminal case without permitting the prosecution to adduce oral evidence ?

(6)

Is the judgment of the Allahabad High Court in Criminal Revision No. 256 of 1981 and connected cases bad in law ?

3.

That the brief facts giving rise to the present petition are as follows :-

(a)

Shri G.I.Punwani was working as Assistant controller of Imports & Exports at Kanpur during the period April, 1969 to March, 1970. He issued Import Licences to six manufactures of Brass Utensils of Moradabad for spare parts of motor vehicles, agricultural Implements etc. in actual users category under Free Licensing Scheme from Rupee payment Area, None of the applicants own any motor vehicles, tractor, agricultural implements etc. and they were also not manufacturing any of these items so as



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to require the spare parts for their servicing or maintenance. The import licences were for actual users and none of the licences were the actual users. Similarly during the aforesaid period S/Shri K.C.Bhatla and J.K.Jain have been working as dealing Assistants under Shri G.I.Punwani. Shri G.I.Punwani in conspiracy with these two dealing Assistants issued Import Licences to four firms of Kanpur for spare parts for tractors and agricultural implements i.e. in actual users category under Free Licensing Scheme from Rupee Payment Area, when none of the applicants owned any tractor, agricultural implements etc. and on the other hand they were engaged in manufacturing of plastic goods, Parsian wheels and buckets and did not required the spare parts of the agricultural tractors and implements as they were not manufacturing any of these items so as to require the spare parts for their servicing and maintenance. The import licences were for actual users and none of the licences were the actual users.



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A150

(b) The General Licencing Instruction (GLI-34/69) dated 4.6.69 was issued from the office of the Chief Controller of Imports & Exports, New Delhi to issue the import licences to meet the requirements of actual users for servicing and maintenance purposes only. The actual users(Indl.) are those who require raw material, components, accessories and spare parts for their own use in an industrial manufacturing process (para 69 of the Hand Book). Requests from individual tractor owners for special requirements of tractor parts was to be considered for small values if they are not in a position to produce their requirements from established importers and such applications were to be recommended by the Tehsildar Revenue Officer (Para 74(111) of Red Book).

(c) Para 78 of the Red Book provides that applications from actual users for spare parts mentioned in Appendix 32 will be considered for import from rupee payment area. Such applications were to be made to the licensing authorities direct and it was not necessary for the applicants to furnish



908-
(151)

with their import applications the list of spare parts sought to be imported but the Import Licences were to be issued with the general description of the goods as given in appendix 32. The import licence was valid for import of all spare parts covered by that description. Appendix 32 gives I.T.C. Number and description of each category of spare parts e.g.

I.T.C. No.

Description

Part - II
36(5)

Spare parts of mining and quarry machinery and spare parts of machinery required in Electric Supply Undertaking.

74(111)

Spare parts for agricultural tractors and for tractor, drawn agricultural implements excluding under carriage parts for Crawler tractor.

Part - V
65(5) (11)

Spare parts of Refrigerator and Air Conditioning machinery other than domestic refrigerator.



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The policy Circular No. 24/69 dated 23.5.69 defines the components and spare parts as follows:-

"Components are those which are meant for the manufacture/fabrication of a complete machine or equipment, whereas spare parts are intended for servicing and maintenance of the existing machinery"

(d) All the aforesaid ten licences firms applied for spare parts for machinery as per appendix 32 of the policy book including agricultural tractor, tractor drawn agricultural implements. It was clear that these units were engaged in the manufacture of art and brass utensils plastic goods, Persian Wheels & Buckets and except lathe machine they were having no other machine. Even in Lathe machine no spare parts are required. It was in the knowledge of the accused Shri Punwani, that these units are registered for art and brass ware utensils, Plastic goods persian wheels & buckets and the licences for spare-parts under the licensing scheme were to be issued for machinery installed in the factory or in the possession of the licensee. The clarification was also sought from the higher authorities but instead of waiting for the reply Shri Punwani issued the licences.



910
A153

(e)

Out of the four licences issued to the parties belonging to Kanpur, three licences were for import from Yugoslavia and by the time these licences were issued, Yugoslavia was removed from the Rupee payment Area and a circular was issued to this effect by the office of the CCI & E and Shri Punwani was aware of it but inspite of this, these three licences were issued for import of tractor parts from Yugoslavia.

(f)

The Court of Special Judge framed charges under section 120-B IPC read with 5(2) read with 5(1)(d) of P.C. Act. 1947 and 5(2) read with 5(1) (d) of P.C. Act 1947.

Accused G.I. Punwani, who was charge sheeted in all the eight cases, filed criminal Misc. Petitions by K.C. Bhatia and J.K. Jain have also filed Criminal Misc. Petition and one of the trader Shri Shane Illahi filed a revision for quashing charges framed against them. The charges have been quashed in all the cases by the impugned judgment.

(g)

It is submitted that the petitioner has not moved this Hon'ble Court or any other Court for the grant of reliefs sought therein.



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- (h) The petitioner is therefore desirous of obtaining Special Leave to Appeal to this Hon'ble Court under Article 136 of the Constitution of India against the order dated 25th May, 1984 of the High Court of Allahabad in Criminal Revision No. 256 of 1981 on the following amongst other grounds which are set out herein without prejudice to one another:-

GROUNDS

- (1) That the High Court did not correctly appreciate the law as laid down in case R.P. Kapur versus State of Punjab (A.I.R. 1960 S.C. 866) and consequently committed an error of law in quashing the charge sheets. The High Court has wrongly applied the principles laid down in Kapoor's case to the present case. If the principles as laid down by the Supreme Court in Kapoor's case above are correctly applied to this case, it would appear that the instant case does not fall within the category of the cases in which charges can be quashed. In the above Kapoor's case, it was inter alia, laid down by the Supreme Court that where there is no legal evidence



9/2 (HDS)

in support of the allegations or the evidence clearly or manifestly fail to prove the charges, charges framed against the accused could be justifiably quashed!

The High Court has wrongly held that the above principle as laid down by the Supreme court is fully applicable to the present case. There is documentary as well as oral evidence in support of the allegations or the evidence available on record does not clearly appear to be so inadequate as not to support the charges!

- (ii) That the High Court committed another grievous error in deciding the case at this state on the documents without waiting for the evidence of the witnesses in the case!
- (iii) That the High Court has embarked upon the task of interpreting the documents produced by the prosecution in the light of the statements recorded u/s 161 Cr.P.C. This clearly means appreciation evaluation of evidence which is not permissible for examining the question whether charges framed by the trial court are sustainable or not. Even otherwise, correct interpretation of the documents in issue would



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(1186)

not be possible at this stage unless the witnesses pertaining to those documents are examined in the court. The High Court has also wrongly interpreted the following note of Shri O.N. Anand, Dy.CCI&E:-

"Instructions contained in para 78 are clear. Please follow these strictly. The instructions do not want us to do so".

2. We have been doing this during April, 1969".

Correct interpretation of the above note may not be possible unless Shri Anand, who had written the above note is examined in the court during the course of trial.

(iv) That the High Court even brushed aside the statement of some material witnesses under sect/

161 Cr.P.C. recorded in the case. In case the High Court had relied upon the statement under section 161 Cr.P.C. it would have been convinced of the truth of the prosecution.



- (v) That the High Court did not apply its mind to the fact that the accused firms were entitled to get the licence for the import of the Spare parts as 'actual users'. If they were not 'actual users', they ~~can~~ could not get the licence.
- (vi) That the High Court failed to appreciate the distinction between 'components' and spare parts.
- (vii) That the High Court failed to appreciate the true implications of note dated 13.5.69 of Shri O.N. Anand.
- (viii) That the High Court unjustifiably took up the plea of the accused that the licences were issued 'in good faith' and decided the same in favour of the accused, in the absence of any cogent evidence that regard from the accused. It is rather not possible to arrive at a definite conclusion regarding the reliability or otherwise of the plea of the accused unless trial is held and the witnesses supporting that plea are examined and their evidence is appreciated in the light of the evidence which may be led by the prosecution.



P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) grant the petitioner Special Leave to appeal to this Hon'ble court under article 136 of the Constitution of India and to set aside the order of the Allahabad High Court, Lucknow Bench, Lucknow dated 25th May, 1984, in Criminal Revision No.256 of 1981, and Crl. Misc. cases No.882 of 1981, 883/81, 1202/1981 and 576 to 882 of 1982 and
- (b) To pass such other and further orders as this Hon'ble Court may deem just and proper.

AND THE ACT OF KINDNESS THE PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY.

FILED BY

(R.N.PODDAR)
Advocate for the petitioner

DRAWN BY

Mr. VIJAY K. MEHTA
Advocate



9/6
1159

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

S.L.P. (CRIMINAL) No. _____ OF 1984

In the matter of

State of U.P.

...Petitioner

Versus

Shane Elahi & Ors

...Respondents

AFFIDAVIT

I, Shri D.P. Singh, Deputy Superintendent
of Police, CBI, SPE, CIU(II), New Delhi do hereby
solemnly affirm and declare as under:-

That I have gone through the accompanying
special Leave Petition with reference thereto I say
that what is stated therein is stated on the basis
of information derived from the record of the case,
and I believe the same to be true.

DEPONENT

Verified at New Delhi

Dated this the _____ day of 1984

DEPONENT



2 MAY 1983

AKG

Dated the

ORDER

Shri C.I. Punwani, Controller of Imports & Exports (Under suspension) in the office of the Joint Chief Controller of Imports & Exports, Bombay, was compulsorily retired by the Chief Controller of Imports & Exports, vide order No. 1/72/79-Vig/1005 dated the 13th August, 1982.

The said Shri C.I. Punwani, filed appeal dated 20.9.82 before the Appellate Authority against the said order of the CCI&E. The Appellate Authority after a careful consideration of full facts and circumstances of the case and also the representations submitted by Shri Punwani has come to the conclusion that:-

- (a) The procedure laid down in the C.S(CA) Rules, 1965 had been complied with by the Inquiring Authority/Disciplinary Authority. It is provided in the explanation under rule 14(23) (i) of the C.S(CA) Rules, 1965, that if in the opinion of the Inquiring Authority the proceeding of the inquiry establish any article of charge, different from the original article of charge, it may record its findings on such article of charge and the Government servant shall be given an opportunity to defend himself against such article of charge. Shri Punwani's contention that as one of the charges having been held as proved was not included in the original show-cause Memo and the Inquiring Authority was not competent to record its findings on that charge is not, therefore, correct;
- (b) The findings of the Disciplinary Authority are warranted by the evidence on the record; and
- (c) The penalty imposed on Shri Punwani is not severe.

contd/-



In the Central Administrative Tribunal Allahabad Bench

No. *OA 77* of 1989 (L)

Petitioner/s. *G.I. Punname*
Plaintiff/s. *Get and alai*
Decree-holder/s. Complainant/s,

Vs.

Union of India & Ors
Respondent/s Opp. Parties.
Defendant/s
Judgment-Debtor/s Accused.

1/We Anokh Singh Paul, Dy Chief Controller Imports
& Export Bombay.
Nos. In the above matter hereby appoint and retain

ASHOK MOHILEY ADVOCATE HIGH COURT

to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend the same in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and or other proceedings therefrom and also in proceedings for review of judgement and for leave to appeal to Supreme Court and to obtain return of any documents filed therein, or receive any money which may be payable to me/us.

2. I/We further authorise him to appoint and Instruct any other legal practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.

3. I/We hereby authorise him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein, to appeal from any decree/order therein and to appeal, to act and to plead in such appeal or in any appeal preferred by any other party from any decree / order therein.

4. I/we agree that if/we fail to pay the fees agreed upon or to give due instructions at all stages he/they is/are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our monies till such dues are paid.

5. And I/We, the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my own acts, as if done by me/us to all intents and purposes.

Executed by me/us this

day of

19

at

Anokh Singh Paul
(अनोक सिंह पॉल)
(ANOKH SINGH PAUL)
Dy. Chief Controller of Imports & Export
Signature/Oris

Executant/s are personally known to me he has / they have / signed before me

Satisfied as to the identity of executant/s signature/s.

(where the executant/s is/are illiterate, blind or unaquainted with the language of vakalat).

Certified that the contents were explained to the executant/s in my presence in.....the language known to him/them who appear/s perfectly to understand the same and has/have signed in my presence.

Accepted

Accepted

ASHOK MOHILEY
Flat No. 3, Block No. 7
Nagar Mahapalika Flats
Hastings Road
(Nyaya Marg) Allahabad-211001
Phone : 3046

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH.

G.I.PUNVANI Vs. UNION OF INDIA & OTHERS.

SUPPLEMENTARY PAPER BOOK.

O.A. 77/89
F.F. 15.9.89

Annexure No.

pages

	Rejoinder affidavit dt. 6.9.89 with Annexures A-13 to A-33 total	73 (2)
A-13.	Appl. to CCI&E, New Delhi, intimating details of previous service with other departments, accompanied by affidavit dt. 13.9.1984...	9
14.	letter dt. 23.12.52, Min of H.A. Govt. servants joining Territorial Army, position re. Temporary to be treated as Permanent servants.	1.
15.	letter dt. 20.1.58, Min. of H.A., re: Grant of Seniority in Higher posts under 'Next Below Rule' to Govt. servants on deputation with Territorial Army, entitled to proforma promotion in their Deptt.	1.
16.	Letter dt. 22.11.62 from CCI&E, offer of appointment as Asstt. Contl. condition, post temporary, but likely to continue, 2 yrs probation.	1.
17.	Acceptance letter dt. 27.11.62 of appointment of Assistant Controller.	1.
18.	D.O. letter dt. 15.1.63, Sri. Punvani working with 107, Inf. Bn. T.A. presently, not being allowed to be released during present Emergency to join his civil post, allow him to remain seconded without actually joining his civil job, during present Emergency.	1.
19.	Notification dt. 13.6.62, Recruitment rules in Import & Export, Orgn. Number of posts, Controllers, 42, Asstt. Contl. 116	4.
20.	Seniority list of Asstt. Controllers, redesignated as Controllers upto. 10.12.71, starting from Sri. No. 48, Punvani srl. 174-47= 124 taking person who have died, resigned, retired or left -55 = 72, whereas permanent regular posts existing-158, No. 72 had to be permanent, as Juniors Sri. 177, 185 etc already confirmed...	11.
21.	Punvani allowed to cross Efficiency Bar on 15.7.1965, pay fixed allowing benefit of past service wef, 1958, although joined on. 15.7.1963, whereafter allowed deputation with Territorial Army but not allowed benefit of Seniority, although allowed in Rules.	1.
22.	Memo dt. 30.12.80, Pension Rules, relaxed and benefit also allowed to temporary Govt. servants, to get pension and gratuity without having been confirmed against any permanent pensionable post, with not less than 20 years service on attaining age of superannuation (refer Rule 35 of Pension Rules for Superannuation)...	1.
23.	D.O. From Minister of Pensions to Min. of Finance dt. 27.2.87, that decision taken, that no Govt. servant shall retire without a pension payment order & Gratuity, if no final order, PROVISIONAL payment of Pension and Gratuity be made.	1.
24.	Order dt. 23.1.1987, re Provisional payment of Pension & Gratuity.	1.
25.	Min. H.A. dt. 21.5.65 re: Seniority, confirmation and promotion of civil Govt. servants during their absence on Military service in present emergency, who are members of Territorial Army.	4.
25(A)	CCS (CCA) Rules. No. 10, Order of suspension cannot continue, after relationship of master & servant has come to an end after discharge, there cannot be continuance of a suspension which does not exist.	1.
26.	Order dt. 2.5.83, by Director Vigilance, alleging to reject appeal order of compulsory retirement dt. 18.8.82. Absolutely illegal, without jurisdiction, Director junior in rank to Disciplinary authority, and appeal dt. 25.9.82 made to Secretary and NOT 20.9.82. ONLY Secretary competent to dispose off appeal under his own signature. No authority to delegate these powers.	1.
27.	Govt. of India Instructions dt. 13.7.81 in view of Hon'ble S.C. ruling Mahabir Prasad v State of U.P. (AIR. 1970. SC-1302), on subject of disposal of appeals by competent authorities, to issue under own signatures self contained speaking order	1.

cont... 2.

SUPPLEMENTARY PAPER BOOK.

ANNEX. NO.

A. 28.

Brochure on CCS(CCA) Rules, by Min. of H.A., page 44-45, instruction re: Procedure for departmental proceedings, should decision of Court lead to ACQUITTAL, it may be necessary to review the decision taken earlier as a result of departmental proceedings. 1.

29.

CCS(CCA) Rules No. 11, pages 52-53, Case Law, Compulsory retirement, can be made on completion of 50 years, but the incumbent does not lose any of his rights acquired by him before retirement. it can be on completion of 25 years of service also. 1.

30.

Appl. dt. 11.3.87 to JCCI&E, Bombay, with copy to CCI&E, New Delhi, unnecessarily withholding payment of 24 TA/DA bills, in spite of instruction from Chief Controller. 2.

31.

Letter dt. 18.4.77, accepting TA/DA bills for journeys performed in attending CBI cases at Lucknow as per Financial rules. 1.

32.

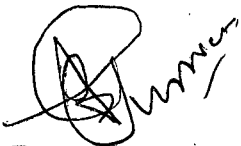
Copy of personal file of Punvani maintained in office of JCCI&E, Bombay, noting that TA/DA bills should be paid, but Maliciously withheld by JCCI&E. Also Increment of pay as due @ Rs. 1160/- wef. 10.8.74, not allowed, but paid all along at the rate of Rs. 1080/-. From 10.1.75, had earned increment to maximum Rs. 1200/- but not paid and eventually suspended wef 6.6.75, thus even for the period of duty performed increment denied maliciously. 6.

33.

Orders regarding payment of TA/DA during Disciplinary proceedings, appearing as accused while under suspension, also for inspection of documents. 1

73

Dt. 6.9.89


 Petitioner.

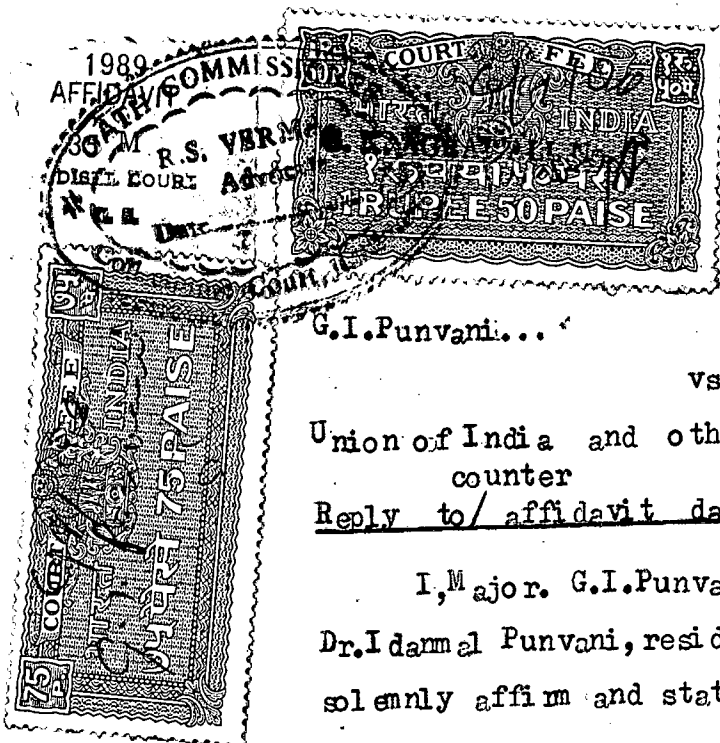
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD.
CIRCUIT BENCH LUCKNOW.

REJOINDER AFFIDAVIT

IN

O.A. NO. 77/89

F.F. 15.9.1989.



G.I. Punvani...

Petitioner

vs

Union of India and others

Respondents.

counter

Reply to/ affidavit dated. 16.8.89 filed on 28.8.1989.

I, Major. G.I. Punvani (Retd), aged about 64 years, son of Late Dr. Idarnal Punvani, resident of 5, Mall Avenue, Lucknow, do hereby solemnly affirm and state on oath as under:-

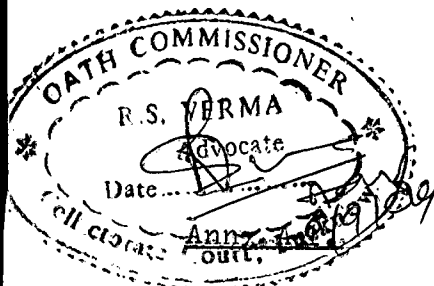
1. That the deponent being [✓]petitioner in the above noted case, is fully conversant with the facts deposed herein below.
2. That contents of para 2 and 3 of the counter affidavit need no reply and contents of para 1 to 5 of the petition are reiterated and confirmed.
3. That in reply to paras 4 to 9 of the counter affidavit, it may be stated that where service particulars are not available with the retiring department, then the retiring officer in accordance with pension rules has to furnish details of his past service through an affidavit and furnish it to that department for verification. The deponent has not only furnished details of his past service through an affidavit dated. 13.9.1984, but also enclosed copies of his appointment and relinquishment, to enable easy verification of past service rendered as Government Officer. Photostat copy of this affidavit is enclosed as Annexure A-13.

Annex-A-13.

The affidavit was furnished in response to Letter No. ESTT/PEN/GO/GIP/5863 dt. 27.8.1984, giving details of posting prior to date of appointment in Chief Controller of Imports & Exports organisation. The details of 34½ years of service from 6.3.1948 to 18.8.1982 was accepted by Chief Controller on basis of affidavit dt. 13.9.84 vide No. 6/698/62-Admn(G)/1667 dt. 1.4.1985 (filed as Annexure A-1) and directions were also issued to condone the break in service for the period 1.4.50 to 15.11.50 (7½ months) in terms of Rule 28 of C.C.S. (Pension) Rules. Contents of para 6(a) to (f) of the petition are reiterated and confirmed.

4. That contents of para 10 of counter affidavit are wrong and ^{denied,} wrong facts have been stated to misguide this Hon'ble court, where as the deponent was suspended wef. 6.6.1975 (Annexure A-7, refers)

Annex-A-7.



and copy of draft seniority list dt. 3.3.1976 was not furnished to deponent purposely with discrimination, so that deponent may not represent against the wrong seniority list. That the Territorial Army Officers were treated at par with other Army Officers. Even the temporary Govt. servants joining Territorial Army were to be treated and given same concessions as applicable to permanent Govt. servants joining the Territorial Army as per instructions contained in Ministry of Home Affairs Memo No.

Annex. A-14.

25/56/52-Ests dt. 23.12.1952, enclosed as Annexure-A-14. The T.A. Officers who were otherwise Govt. servants were also to be granted Seniority in higher post under the 'NEXT BELOW RULE' as per Min. of Home Affairs, O.M.No. 47/2/56-Estt(A) dt. 20.1.1958, thus the deponent was to be given benefit of his Army service in the matter of seniority and the instructions quoted are only to misguide this Hon'ble Court, a copy of these instructions dt. 20.1.1958 is enclosed as Annexure. A-15. The deponent did the following service with Territorial Army.

Annex. A-15.

1.11.1955 to 30.11.55 Recruit Training

1.12.1955 to 31.01.56 Annual Training

and 2 months Annual training for the years, 1956, 1957, 1958 & 1959

12.02.1960 to 14.07.1963 (joined Civil Job, Assistant Controller at Bombay office wef 15.7.63 to 13.8.63)

14.08.1963 to 31.03.1969 (worked in Emergency from 30.10.62 to 5.4.1964, with gap 15.7.63 to 13.8.63)

The deponent is thus entitled to period he worked in T.A. for benefit of his seniority, and this may kindly be accorded for purposes of pension and compensation accorded, having been denied the same during service. The contents of para 6(g) of petition are reiterated and confirmed.

5. That in reply to para 11 of the counter affidavit, it is stated that the deponent was selected by U.P.S.C. as Assistant Controller of Imports & Exports and offer of appointment was made by Chief Controller of Imports & Exports vide letter No. 27/1/59/Admn(G)/2862 dt. 22.11.1962, copy enclosed as Annexure. A-16 and the offer was accepted vide letter dt. 27.11.1962, enclosed as Annexure. A-17. Because of Emergency, the deponent was not released by the Territorial Army to take up his civil appointment and Directorate General of Employment & Training, Ministry of Labour & Employment took up case of deponent with Chief Controller to accept his joining the civil post, on the basis of selection, as due to the Emergency, his services with Army were more essential. The deponent has suffered in seniority by being released late by more than 7 months, whereas his seniority should count with total Territorial Army service, copy of letter No. DEE(SB) 66/62 dt. 15.1.1963 enclosed as Annexure. A-18. Thus his service should have been counted from 1959 and he should have been declared quasi permanent wef 1.1.1.62

Annex. A-17.

Annex. A-18.

1162

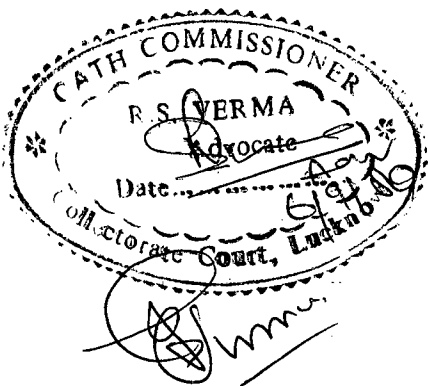
and not 15.7.1966, (Annexure A-5, refers).

Annex. A-5.

Annex. A-16.

6. That in reply to para 12 of the counter affidavit it may be stated that, it is correct that confirmation in service/post depends on eligibility of person concerned for confirmation on completion of 3 years from date of being declared quasi permanent, seniority, his annual character roll entries as exist on the date of his becoming eligible, on completion of 3 years from being declared quasi permanent. As per terms of appointment dt. 22.11.1962, Annexure A-16 refers, the probation period was 2 years, which could be extended or curtailed at the discretion of appointing authority. Although the deponent was entitled to have been declared quasi permanent wef. 1.1.1962, without conceding the date 15.7.1966, date of quasi permanency, still deponent was entitled to be confirmed on 15.7.1969. Confirmation is deemed/implied, when the probation has not been extended, there is no adverse entry communicated till retirement i.e. 18.8.1982. Even there were 42 posts of Controllers and 116 posts of Assistant Controllers, total 158 posts existed as per notification No. 2-EI(6)/58/EIV dt. 13.6.1962, laying down recruitment rules for various posts in Import & Export Trade Control Organisation, copy enclosed as Annexure A-19. That as per Seniority list up to 10.12.1971, the deponent's name was at Srl No. 174 and his position was as under:-

- srl. no. 174
 (-) 47 as list starts from No. 48
 1127
 (-) 14 resigned/terminated, srl. no's, 67, 80, 81, 107, 134, 135, 139, 148, 149, 158, 160, 166, 169, 170
 113
 (-) 6 permanent in other departments, srl. 50, 56, 83, 110
 (-) 23 retired, srl. 51, 52, 53, 54, 58, 59, 62, 63, 65, 66, 69, 86, 91, 93, 100, 104, 106, 122, 128, 136, 151, 156, 172
 87
 (-) 2 died, srl. 113, 127
 85
 (-) 13 appointed as Dy. Chief Controller, Regular, srl. 48, 49, 55, 57, 61, 74, 76, 78, 82, 84, 98, 137 and 144.
 72



Annex. A-20.

15.7.1969

Thus the deponent's number as per seniority was 72, against total 158 permanent vacancies and he was eligible to have been confirmed as permanent on 15.7.1969. The deponent had already given the certificate dt. 30.4.1972, that he was not holding lien on any permanent post in any other office. Copy of seniority list is enclosed as Annexure A-20. It is absolutely wrong statement that deponent was not clear from Vigilance Angle, the eligibility of being confirmed was to be considered as on 15.7.1969, the deponent had joined as Assistant Controller at Kanpur after release from Territorial Army on 9.4.1969, he has had UNBLEMISHED record and till date of compulsory retirement, no ADVERSE entry was ever communicated. On closing of 1969, the

deponent was given an Annual entry 'One of the outstanding Officers, who has joined recently from the Army and deserves out of turn promotion'. The respondents are put to strict proof to show that deponent was not clear from Vigilance Angle as upto 15.7.1969. The legal position is well settled, that confirmation is IMPLIED/DEEMED if a person fulfills the following:-

- a) he should have continued service of 3 years from the date of being declared quasi permanent, in case of deponent 15.7.66, CP.
- b) he should have no lien of permanency in any other department.
- c) his probation period should not have been extended.
- d) he should not have been awarded any character roll entry and same should have been communicated to him as, uncommunicated entry cannot be considered by any D.P.C.
- e) substantive posts should have been available.

That ARCHAIC rule of confirmation has always been criticised by Hon'ble Supreme Court and after completion of period of probation confirmation is implied as has been held in:-

Shiv Kumar Shamma v Haryana State Elec. Board; 1988 Supp SCC 669 (para-7) = AIR. 1988, SC-1673

M.K. Agarwal v Gurgaon Grain Bank, 1987 Supp SCC-643 (para-8)

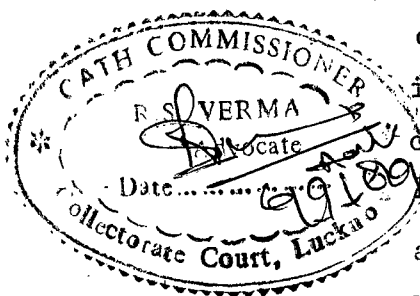
Om Prakash Mayuara v U.P. Co-Op Sugar Factories Federation, Lucknow 1986 Supp. SCC-95 = AIR. 1986, S.C.-1844

State of Gujarat v Akhilesh C. Bhargava, (1987) 4 SCC-482 (para-8) = AIR. 1987, SC-2135

and there are many other such judgements. If D.P.C. has considered any Vigilance Angle, then they have erred, as an inquiry had been started by CBI on some source information on 8/9.12.71 and no charge had been given till April 1975, when 8 cases had been filed by CBI, which proceedings and charges framed have

Annex. A-12, page. 52-77 already been quashed by Hon'ble High Court, Annexure. A-12 refers.

Matrix of the case is that, substantive vacancies existed, on 15.7.1969, when eligibility condition for confirmation of deponent occurred as laid down by service rules, the D.P.C. could not consider any uncommunicated adverse entry if any, or that some inquiry was in progress by CBI at the time of D.P.C., they had only to consider what existed upto 15.7.1969. Even the CAT in Full Bench, Hyderabad Bench, vide 1(1987) ATL-480, in several appeals decided on 2.3.1987, vide para 34 has held.. and not when the preliminary investigation is pending and no conclusion is reached about the prima facie guilt of the officer as at that stage there is no ground for treating the said officer as one "Whose conduct is under investigation". An officer can be said to be under investigation only when a charge sheet is filed in a Criminal Court or charge memo under CCA Rules is issued to the official. That vide para 41 it has been held, Thus our conclusions are:- (1) consideration for promotion, selection grade, cross-



5.

thing the efficiency bar or higher scale of pay, cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official ;

(6) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before ;

(7) in cases where a penalty is imposed on the official after the conclusion of the enquiry, his claim for promotion should be considered by a review IPC as on original date in the light of the results of the sealed cover as also the penalty imposed and his claim for promotion cannot be postponed for consideration to a subsequent date ;.

Thus the respondents are put to strict proof to state :
(1) whether any adverse entry was communicated to deponent till 15.7.1969 or for that matter even till 18.8.1982.

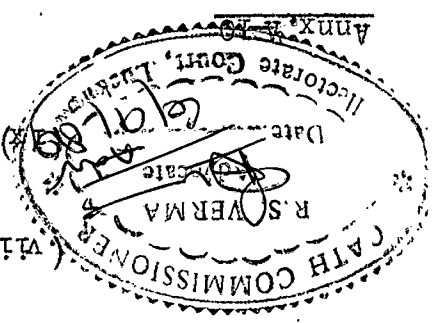
(ii) whether any disciplinary proceedings or criminal proceedings had been initiated and charge sheet given till 15.7.1969.
(iii) whether the probationary period of 2 years from date of appointment had been extended in case of deponent.

(iv) whether Junior Officers to deponent had been confirmed in discrimination of existing service rules laid for confirmation (v) whether any complaint was made by Department to CBI, that deponent had issued import licences in violation of import policy.

(vi) whether the criminal cases filed by CBI against deponent and his 2 assistants were filed directly by CBI on some alleged source information, and the charges framed as also the proceedings in these 8 criminal cases filed in April, 1975 were quashed by Hon'ble High Court vide order dt. 25.5.1984.
(vii) whether the deponent was considered for selection in Central Trade Service and vide list of seniority dt. 24.6.1981, his name was placed at sl. no. 20 in seniority as on 19.11.1979.

(viii) whether the sealed cover recommendations and sealed cover has been opened, after conclusion of enquiry by review IPC, whether the penalty imposed on 2 assistants on the basis of departmental inquiry has been set aside vide orders of Ministry of Commerce dt. 9.10.1985 (Annexure-4-10, refers, page 30) in view of orders of Hon'ble High Court dt. 25.5.84 (Annexure-4-12, pages 52 to 77 refers) and year (x) what date the alleged IPC which considered deponents confirmation case was held.

It is crystal clear case of malice and discrimination that confirms information has not been accorded to deponent as due on 15.7.1969 based on quasi-promerency status granted on 15.7.1966. It will also not be out of way to mention that deponent was allowed to cross the EFFICIENCY BAR at the stage of Rs. 590/- w.e.f 15.7.1965 vide letter 6. 6.



Annex. 4-12.

Annex-A-21.

No. 6/698/62-Admn(5)/2552 dt. 29.6.67 enclosed as Annexure-A-21)

and thereafter earned his yearly increments and reached maximum pay of Rs. 800/- in the scale of 400-25-500-30-550-BB-30-800, where after New Pay Code came in and the scale fixed was (650-30-740-35-810-~~BB-30-880~~-40-1000-BB-40-1200) and deponents pay was fixed as under Rs. -

Rs. 1080/- on 1.1.1973)
1120 2.1.73) monetary benefit pay only from 10.8.74
1160 1.1.74)
1200 10.1.75 monetary effect from 1.1.75

Thus at every state of efficiency bar the same was allowed to be crossed, there being no vigilance angle against deponent till at least 1.1.1972, when B.B. was allowed to be crossed, whereas the deponent was eligible to be continued w.e.f. 15.7.1969, this aspect clearly proves that there was no vigilance angle. That contents of para 6(i) of petition are reiterated and continued. That contents of para 13 of counter affidavit are wrong, false and vehemently denied and those of para 6(j) of petition are reiterated and continued. The following causes of step motherly treatment are enumerated below:-

(a). Seniority in higher post under the 'Next Below Rule' applicable to Govt. Servants joining Territorial Army as per Min. of Home Affairs letter dt. 20.1.1958 not allowed refer para 4 above, page 2 and Annexure-A-15.

(b) Confirmation as due on 15.7.1969 not allowed, although due and eligible, and there being absolutely no vigilance angle, and investigation by CH. w.e.f. 8/9.12.71 could not be held as vigilance angle and given retrospective effect. All yearly increments allowed and allowed to cross B.B. at every step till 10.1.1975, refer para 6 above also.

(c) Cases filed by CH. against deponent and his 2 assistants, Sarva S.K., C. Bhattacharya and J.K. Jain, but only deponent suspended, w.e.f. 6.6.75 on allegation, 'Whereas a case against Shri. G.I. Punvani, Controller of Imports & Exports in respect of criminal offence is under trial', whereas cases had also been filed against two assistants, who were co-accused. Thus discrimination shown against deponent only. Annex-A-7, refer para 17.7.1972 to 9.8.1974, the Rs. 1160/- w.e.f. 10.8.1974, not given although note to that effect put up in Bombay office file No. AMN/G/CH/77, Vol-I, for allowing increments as due.

(e) Maliciously transferred from Kanpur to Madras vide orders dt. 15.7.1972, para 6(m) of petition refers.

(f) Increments of pay as due, after availing Medical leave from 17.7.1972 to 9.8.1974, not given although note to that effect put up in Bombay office file No. AMN/G/CH/77, Vol-I, for allowing increments as due.

(g) When already criminal cases were pending, maliciously deponent-

Annex-A-7.



Annex-A-15.

mental inquiry on identical/same charge got started dt. 27.6.80, in violation of Rule 14 of CCS (CA) Rules, 1965.

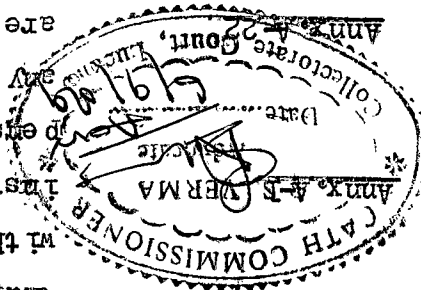
(h) In spite of being exonerated of alleged charge in the departmental inquiry vide concluding para 4.14, still major penalty imposed on the alleged charge on which departmental inquiry was held. (1) Penalty imposed on 2 assistants, set aside vide order dt. 9.10.85 (Annexure-4-10), but in respect of deponent, no order still passed.

The step motherly treatment has been fully described in para 6 (g) to (z), (Ab) to (Ac), of the petition which are reiterated and continued.

8. That in reply to para 14 of the counter affidavit, it is submitted that respondents are trying to evade the issue, as Pension is not a bounty but Govt. servant has a right to receive Pension under statutory rules, as per principles laid down by Hon'ble Supreme Court in D.S. Nigam & Others v Union of India, (1983) 1 SCC-305.

State of Kerala & others v M. Padmanabhan, AIR, S.C., 356 and several other judgments on this subject, wherein even interest on delayed payments has been ordered to be paid. As explained in earlier paras that deponent being entitled to be declared continued has been denied continuation only because of Malice and step motherly treatment. Although not conceding that deponent was not a confirmed officer automatically, but Pension and other benefits are even payable to TMRORARY Govt. servants in accordance with Govt. of India's Instructions issued by Ministry of Home Affairs, Dept. of Personnel & A.R. No. 38(16)-Pension-Unit/80 dt. 30.12.1980 who have directed that Govt. servant who has rendered not less than 20 years even temporary service has been brought within purview of CCS (Pension) Rules, 1972, and condition of substantive capacity has been dispensed with.

thus in spite of clear orders that even Temporary Govt. servants with not less than 20 years service shall be paid Pension, which instructions were given vide letter dt. 1.4.1985 (Annexure-4-1) Pension was not paid on the plea that deponent was not holding substantive permanent post. Copy of Instructions dt. 30.12.80 are enclosed as Annexure-4-22. These instructions were applicable to those temporary Govt. servants, who are in service on the date of issue of these instructions and the deponent is covered by these instructions. The Govt. of India has laid stress that retiring Govt. servants should be paid their pension and gratuity immediately from the next month of their retirement, however if full pension and gratuity cannot be paid immediately, then PPO VI-STONAL, pension and gratuity must be paid, a copy of D.O. No. 38/9/87/P&PW dt. 27.2.1987 from Minister of Personnel, Public Grievances, & Pensions, Sri. P. Chidambaram to Sri. Chandran Poojari, Minister



Annex-4-10.

For Finance along with copy of Office Memo dt. 23.1.1987 on the

subject are enclosed as Annexure-A-23 and 24. Thus if there was

delay in deciding the quantum of Pension and Gratuity, at least

the same should have been paid Provisionally, but because of

Malice all instructions issued have been disobeyed by concerned

authorities and Pension and consequential benefits still denied

to deponent. Contents of para 6(k) of the petition are referred

and confirmed.

9.. That in reply to para 15 of counter affidavit, it is

admitted that CBI has power to make investigation on source

information, but CBI has no power to investigate matters involv-

ing INTERPRETATION OF POLICY, which is a prerogative of the

concerned department, issuance of Import Licences in violation

of Import Policy could only be decided by Import & Export

Organization based on the Import Policy and Rules & Procedure

applicable at the time of issue of Import Licences and the same

could not be decided by CBI. If any such violation of Import

Policy in issue of Import Licences by deponent had been done

then possibly the department would have made a written compl-

aint, but in case of deponent even Sanction for Prosecution

U/s 6(c) of Prevention of Corruption Act was not accorded by

the Appointing Authority, and the CBI got Sanction from their

own Deptt. i.e. Deptt. of Personnel and Administrative Reforms,

which in no case was the Appointing or Dismissing authority of

deponent. The deponent was awarded certificate of merit for the

years 1969, 1970 for his outstanding work in issuance of Import

Licences and also earned best Annual entries like, outstanding

officer, who has recently joined from the Army and deserves out

of turn promotion, however since CBI had started some Inquiry

from 8/9.12.1971, the deponent was accorded Satisfactory Annual

entries, but never any ADVERSE entry was ever communicated, and

still retirement has had UNBLESSED record. Contents of para

6(l) of the petition are reiterated and confirmed. The Hon'ble

High Court therefore quashed all the proceedings & charges

framed, refer Annexure-A-12 (para 42, page, 70 refers)

That in reply to para 16 of the counter affidavit, the

own admission, that by convention officers of the rank of Contr-

ollers are not transferred, except on the grounds of corruption

and indiscipline. Thus only on the basis of mere inquiry by CBI

the charge of corruption was confirmed by department without even

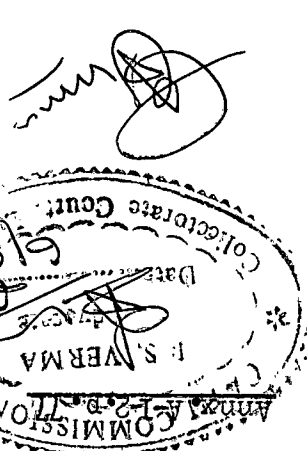
completion of inquiry or its result. What more proof of Malice

and step motherly treatment is required? The respondents are

put to strict proof to state any corruption or indiscipline of

the deponent necessitating his transfer? Contents of para 6(m)

9..



Annex-A-23 & 24.

has to be raised to prove the malice, step motherly treatment and
and those of para 6(q) and (m) reiterated and confirmed. The issue
14. That contents of para 20 of counter affidavit are denied
may kindly be accorded.

not be rectified now, except, that benefit for purposes of pension
ensuation of Rs. 1 lac. every year for this damage done, which can
Thus since promotion cannot be accorded, the deponent claims comp-
refer para 3 of these instructions enclosed as Annexure-A-25.

and these instructions are applicable to Territorial Army Officers
service in the present emergency (worked from 30.10.62 to 5.4.64)
etc to civil Govt. servants during their absence on Military
at 21.5.1965, regarding grant of Seniority, confirmation, promotion
is copy of Ministry of Home Affairs, O.M. No. F.No. 15/58/65 Coord.

to Territorial Army, reference in invited to para 4 above. Also enclosed
of Seniority benefit etc allowed to Govt. Servants joining Terr-
Annexures. A-114 and 115 have been enclosed to bring out the truth
allowed to released Emergency Commissioned Officers, hence the
respondents and wrong Office memos quoted showing only benefits
servants joining Territorial Army are/have been suppressed by

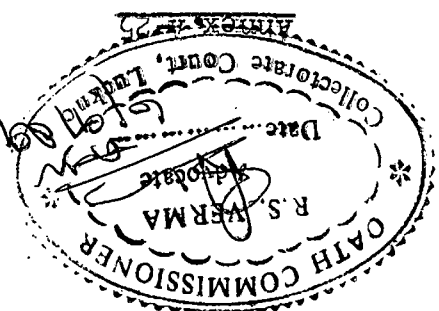
Seniority and other benefits accorded by Govt. of India to Govt.
by treatment and harassment has been admitted, even fact of
confirmed. The preceding paras crystal clear malice, step mother-
and denied and those of para 6(p) of petition are reiterated and
13. That contents of para 19 of counter affidavit are wrong.

Contents of para 6(o) of the petition are reiterated and confirmed.
in less than 3 months. This was only done to harass the deponent.
than two section or any such Controller, whose work was changed
one such Controller in Bombay office who was given work of more
not only wrong but false as they are put to strict proof to name
12. That contents of para 18 of the counter affidavit are

and confirmed.
awarded. Contents of para 6(n) of the petition are reiterated
stable and compensation of at least Rs. 2 lacs a year may kindly be
was ill for more than 2 years for which the department is respon-
to Madras, which created mental tension, hypertension and deponent
malice and step motherly treatment the deponent was transferred
of corruption or indiscipline, but being stooges of CBI, having
of vindictiveness and malice is required, that having no charge
if not, no other proof of unblemished record is necessary. No proof
strict proof to produce even one adverse entry of the deponent
of the deponent is false and vehemently denied, they are put to
from 17.7.1972 to 11.8.1974, their denied of unblemished record
respondents have admitted that deponent was on medical leave
11. That in reply to para 17 of the counter affidavit, the

of the petition are reiterated and confirmed.

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Annex-A.14.15.

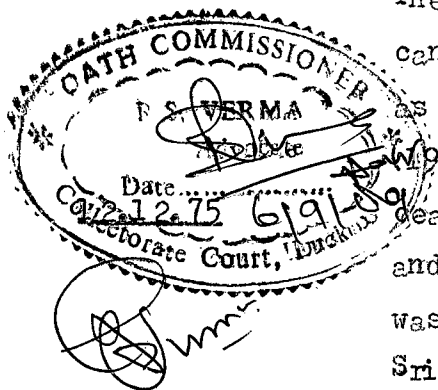
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harrasment metted out to deponent.

15. That contents of para 21 are denied and those of para 6(r) of the petition are reiterated and confirmed. No proof of malicious treatment is necessary, as the criminal cases were not only filed against the deponent but his 2 assistants Sarva Sri, K. C. Bhatia and J. K. Jain were also co-accused in the criminal cases, then why only deponent was suspended or even transferred, what was the reason of this discrimination. No adequate reply to this point has so far been given, except it is side tracked.

16. That contents of para 22 of the counteraffidavit are denied and those of para 6(s) are reiterated and confirmed. The very fact that pre-mature retirement orders were cancelled, is sufficient proof that orders being malicious and wrong were withdrawn as the Bandora's box would have opened up in the writ filed alleging that orders were malicious and arbitrarily passed. The respondents are trying to overrule even CCS (CCA) Rules, wherein explanation of Rule 10 (Suspension) has been given and case law on the subject has been quoted, snl 9 "Continuance of suspension under Rule (5)(b) and conditions thereof". "Now, when an order of dismissal is passed, the VIYOLUM JURIS between the Government and the servant is dissolved, the relationship of master and servant between them is extinguished. Then the order of suspension must be A FORTIORI come to an end. it cannot be revived by mere subsequent setting aside of the order of dismissal... The conclusion must, therefore, inevitably follow that when the order of dismissal was passed in this case, the order of suspension ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal. An order of suspension cannot continue to be in force after the relationship of master and servant has come to an end by making an order of dismissal. There can be fresh suspension of a Govt. servant but how there can be continuance of a suspension which does not exist.. as held by Hon'ble S.C. re: H.L. Mehra v Union of India & others (1974) SCC 4, 397 = AIR, 1974, SC-1281. Thus the suspension had ceased on 12.12.1975, when deponent was prematurely retired and without passing fresh orders of suspension, the continuance was illegal, void as held by Hon'ble Supreme Court in case of Sri. H.L. Mehra quoted above. There was no suspension after 12.12.1975, and the deponent has got to be paid his full pay and allowances and all other benefits accruing, ^{wise} as if no suspension even other/ ceased from 6.6.75, as the same has been acquitted by Hon'ble High Court and all other claims quashed. Deponent is entitled to full pay.

Annexure A-25

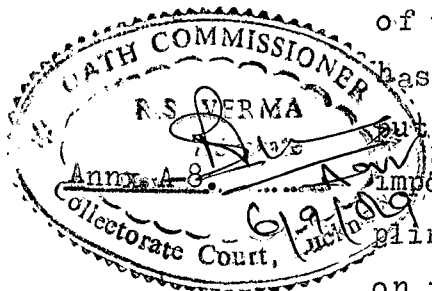


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Annx. A-8

17. That contents of para 23 of the counter affidavit are wrong, false and denied and those of para 6(t) and(u) are reiterated and confirmed. That provisions of Rule 14, CCS(CCA) Rules, 1965 are mandatory under which provision the departmental inquiry was ordered (refer Annexure A-8, page 27-28), when the provisions of this Rule have been violated by the Disciplinary Authority, then the very inquiry is illegal, vitiated and void. When already 8 criminal cases have been filed and are pending disposal, and their being instructions/orders of Govt. of India, that Prosecution must precede departmental action and that departmental inquiry should not be held simultaneously with prosecution, and it cannot be held on same identical charges, then what prompted the Chief Controller to hold departmental inquiry, when already criminal cases were pending disposal, nothing but MALICE. In this very Rule, in the commentary in Annexure, the Types of cases which may merit action for imposing one of Major penalties has been given, refer Annexure A-9, page 29. Respondents are put to strict proof to state the Type with srl no, which necessitated imposing major penalty, nothing but malice. In the explanation of Case Law connected with Rule 14, it is held that, departmental inquiry not an empty formality, it also stresses that charge sheet must be specific and must set out all the necessary particulars. Rule 14 sub clause (23), Explanation, it has been laid that if the inquiry establishes any article of charge different from the original charge, it may record findings on such charge after after giving reasonable opportunity, otherwise it shall not record its opinion. The inquiry Officer has gone beyond his jurisdiction by expressing his opinion in para 4.13 of inquiry report and that too without any diftness in his opinion but has given clear and precise opinion in respect of alleged charge vide concluding para 4.14. of his report dt. 2.2.1981, Annexure A-11, page 41, completely exonerating of alleged charge on which inquiry was held, holding that all 13 licences issued did not amount to violation of Import policy, but the Disciplinary Authority has imposed major penalty on the Article of Charge No. of which the inquiry officer has completely exonerated, the penalty has been imposed maliciously on no charge proved. Respondents are put to strict proof to show on what charge, the penalty has been imposed. (Annexure A-8, page 27-28). Under case law at Srl. 14, Disciplinary authority cannot take a view contrary to the judicial view on the same charge and on the same evidence. Thus the Hon'ble Court vide their order dt. 25.5.84 (Annexure A-12, refers), vide 26, page, 62, held "Punvani had joined this office for only on 9th April, 1969.." "However Punvani did not take any decision to this effect on his own but submitted the same to immediately higher officer Sri. O. N. Anand, who was then Controller of Imports & Exports, also based at Kanpur

Annx. A-9.Annx. A-11, p. 41.Annx. A-12.

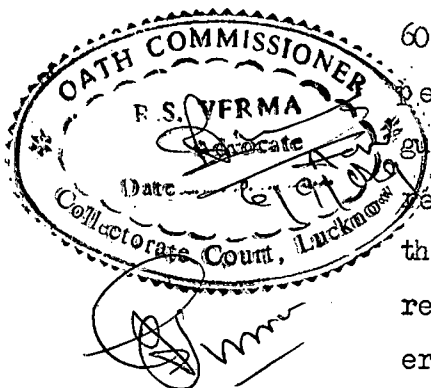
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upon endorsed his decision as follows:-

"Instructions contained in para 78 are clear. Please follow these strictly. There is no question of end products. The instructions do not want us to do them."

(2) We have been doing this during M-69".

vide para 27 "This note of Sri. Anand is dated 13.5.1969. Sri. Anand is not alleged to be in league with the accused persons. He is one of the prosecution witnesses. His instructions were binding on his subordinates." Vide para 39, page 68, contents of reply from H.Q. S dt. 27.11.69/5.12.69, have been reproduced, that licences for value applied for may be issued. Vide para 42, page 70 "It is undisputed that no action was initiated against the petitioners on the basis of any complaint of C.C.I. & E. Indeed the matter started through a 'Source report' received by C.B.I. Vide para 47, page 72 "If Punvani and his subordinates assistants were under misapprehension about the true meaning of the expression, then they were not alone in error, their higher officers were equally labouring under the same misapprehension, particularly Sri. O.N. Anand." Vide para 48, "...It may however be clarified that in most of these cases although the charges framed do mention that Punvani, Bhatia and Jain obtained pecuniary advantage for themselves and for others, namely the grantees of licences, it was conceded before me by the learned Additional Government Advocate that there was absolutely no evidence about passing of illegal gratification from the grantees of licences to the officials". Para 49, page 73, "If as subordinate officials these accused acted in accordance with the views expressed by the higher officials, they cannot be said to have acted in bad faith." Para 50, page 74, "Thus Punvani cannot be said to be guilty of granting licences illegally and in bad faith in these cases or of illegally revalidating or issuing letters of authority in contravention of any instructions of higher officials." Vide para 59, page 76, "It may be added again, even at the cost of repetition that in the instant case there is no evidence of actual passing of money between the traders and the officials". Vide para 60, page 77, "It is thus clear that the accused officials who are petitioners, cannot, on the evidence sought to be adduced, be held guilty of dishonestly misinterpreting the official instructions relating to grant of licences or of granting licences in violation thereof." Para 61, page 77, "In the result these petitions and the revision are allowed and the charges framed against the petitioners are quashed and the proceedings for their prosecution are also hereby quashed." Thus it is not open to disciplinary authority to take a view contrary to the judicial opinion on charges on a re-appraisal of the very same evidence. That the 2 assistants who were cleared on the basis of opinion of Inquiry Officer vide



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Annex. A-10.

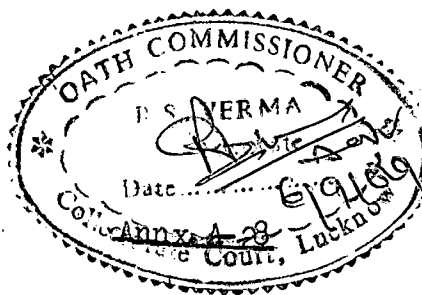
Annex. 18 of W.P.

Annex. A-26

Annex. A-27

in their case the penalty imposed has since been set aside based on Judgement of Hon'ble High Court, Annexure-A.10 refers, page-30 but in case of deponent discrimination is being shown and no order has been passed on his appeal dt.25.9.1982 by the Secretary. It is absolutely wrong that appeal dt.25.9.1982 filed as Annexure 18 to writ petition No.1403/83 has been disposed off by the Secretary, Ministry of Commerce, but Sri. Joginder Singh an Officer of CBI, who was Director Vigilance, much JUNIOR to the Disciplinary Authority, having no jurisdiction or authority has allegedly disposed off application dt.20.9.1982, by rejecting the same by his order dt.2.5.1983, annexed as A-26 herewith. That Sri. Joginder Singh has committed CONTEMPT of HON'BLE HIGH COURT by even rejecting application dt.20.9.82 and this CONTEMPT is continuing by not setting aside penalty imposed on deponent, because the Appellate authority i.e. Executive cannot sit in Judgement over Judiciary. The Govt. of India, Ministry of Home Affairs has clarified that Appellate orders shall be self contained speaking to be issued over signature of Prescribed Appellate authority, power cannot be delegated to subordinates, final order cannot be issued by a lower authority, thus if Sri. Joginder Singh has decided the so called appeal of deponent, he has disobeyed orders and principles laid by Hon'ble Supreme Court in case ret Mahavir Prasad v State of U.P. (AIR. 1970, SC-1302) and in view of this decision O.M.No.134/1/81-ADV dt.13.7.1981 was issued, which is enclosed as Annexure. A-27, which has also been filled with W.P.1403/83 as Annexure No.22, this is also mentioned in all CCS (CCA) Rules, 1965 books under Rule.15, Action on the Inquiry Report, even in the Brochure on CCS (CCA) Rules, 1965 issued by Ministry of Home Affairs giving explanation and commentary on Rule 14, Procedure for imposing major penalties, instructions have been given at page 44-45 re: Procedure for departmental proceedings prior to criminal prosecution in cases of alleged criminal misconduct of Govt. servants. It has been clearly laid down that, should the decision of the Trial Court or the Appellate Court, as the case may be, lead to the acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. Copy of these pages is enclosed as Annexure. A-28. Thus either no decision of Appeal or even the so called decision, illegal and void in eyes of law, had to be given based on Hon'ble High Court decision, and the penalty imposed shall be set aside and not may.

18. That contents of para 24 of the counter affidavit are wrong and false and are denied. The CCS (CCA) Rules, 1965, Rule 11, Penalty Explanation: The following shall not amount to a penalty within the meaning of this rule, namely:- (vii) compulsory retirement of Government servant in accordance with the provisions relating to



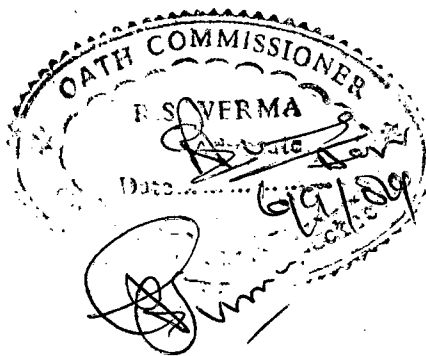
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A128

Annex-A-29
(1985)1 SCC-75

Annex-A-22

Annex-A-1
6.3.48/18.8.82



Annex-A-1

his superannuation or retirement and Superannuation pension is mentioned in Rule 35 of CCS(Pension) Rules, 1972 "A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement. The Hon'ble Supreme Court has also held the same view in Union of India v J.N. Singha, AIR, 1971. S.C-40, copy of the case law on the subject is mentioned in CCS(CCA) Rules of Swamy's compilation, pages 52-53 are enclosed as Annexure-A-29. The Hon'ble Supreme Court has even in case Hussaini v Chief Justice of Allahabad, (1985)1 SCC 75 converted order of DISMISSAL to COMPULSORY RETIREMENT to allow benefit of Pension to the party. Govt. of India has liberalised the Pension Rules, that Govt. servants who did not hold any lien on a permanent pensionable post and was eligible for only terminal gratuity has also now been allowed pension without being confirmed in any post, who has rendered not less than 20 years of service, refer Annexure-A-22. There are even instructions that Govt. servants compulsorily retired as a penalty may be granted pension not less than two thirds, although deponent's case is not on basis of penalty. Thus pension is payable even to Govt. servants not confirmed in any post, whereas in case of deponent it is IMPLIED/DEEMED confirmation as discussed in para 6 above. Contents of para 6(v) are reiterated and confirmed.

19. That in reply to para 25 of counter affidavit, it is stated that letter dt. 1.4.85, Annexure-A-1 is crystal clear, where service of deponent from 6.3.1948 to 18.8.1982 has been accepted as also brake in service from 1.4.50 to 15.11.50 (8 1/2 months), to be condoned in terms of Rule 28 of CCS(Pension) Rules. Clear instructions have been given to allow pension in terms of liberalised pension instructions of allowing pension even to Govt. servants not confirmed in any post with not less than 20 years of service, whereas deponent has 34 1/2 years of qualifying service. The respondents have admitted that pension is allowed to temporary service of not less than 20 years on attaining age of superannuation, and superannuation pension has clearly been defined in Rule 35 of CCS(Pension) Rules, 1972 2 "A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement, which under Rule 48, CCS(Pension) Rules, 1972 and F.R. 56(1), is on completion of 30 years of service. They have also admitted letter dt. 1.4.85, and this case is that inspite of instructions issued vide letter dt. 1.4.85 (Annexure-A-1), pension and other consequential benefits have not been paid and therefore the deponent is entitled to his full pension, gratuity and other consequential benefits. Contents of paras 6(w & x) are reiterated and confirmed.

20. That the respondents have admitted in para 26 of counter affidavit, that accused officials have been acquitted on merits

ADG

Annex. A-10

and it has been held that Import licences have not been issued in any contravention of Import Policy or instructions, procedure existing at the time of issue of the licences and also in the departmental inquiry it has been held that 13 licences have not been issued in contravention of paras 18 to 21 of Import policy, then any penalty imposed is only out of malice and discrimination. In case of 2 assistants penalty imposed has been set aside on basis of Hon'ble High Court orders by Ministry dt.9.10.85, Annexure. A-10 refers, but in case of deponent no orders have been passed so far, and executive orders cannot overrule or prevail against Judicial orders of Hon'ble High Court, which amounts to contempt if executive orders are not set aside. Contents of para 6(y) are reiterated and confirmed.

21. That contents of para 27 of the counter affidavit are denied. The deponent has reasons to believe that S.L.P. has either not been admitted or was not moved, as the deponent has not received any notice of the same till date. It is difficult to accept that a S.L.P. alleged to have been filed in 1984 would remain in state of Cold storage for a period of more than 5 years before the Highest Court of the land. The orders of Hon'ble High Court dt.25.5.1984 have got to be implemented, and although the alleged suspension order dt.6.6.75, stood revoked on 12.12.75, when deponent was prematurely retired. No fresh suspension orders were issued thereafter and there is no rule by which suspension orders could be ordered to continue without issuing fresh suspension orders, refer para 16 above. Contents of para 6(z) are reiterated and confirmed.

22. That contents of para 28 of the counter affidavit are vehemently denied and those of para (29) are reiterated and confirmed. Filing of S.L.P. on 11.9.1984 does not make any difference unless some orders were passed by Hon'ble Supreme Court and para 21 above may be referred. The CCS(Pensionary) Rules 1972 have been liberalised vide O.M. 38/(16)-Pension Unit/80 dt. 30.12.1980, as admitted by respondents in para 25 of counter affidavit, that even temporary Govt. servants not confirmed with not less than 20 years service have been entitled to pension, gratuity etc, thus quoting Rule 13 or any other Rule of CCS(Pension) Rules, 1972 is misleading this Hon'ble Court. The respondents have already accepted to pay TA/DA for journeys performed in attending cases filed by CBI. at Lucknow, attending Departmental Inquiry at New Delhi, Inspection of documents at New Delhi, that is why Chief Controller had been reminding Jt. Chief Controller, Bombay for this payment vide No's, dt.17.5.79, 26.9.79, 5.9.1986, copy of 25th reminder dt.15.3.1987 enclosed as Annexure. A-30, also letter dt.18.4.1977 from Jt. Chief Controller, Bombay is enclosed as Annexure. A-31, wherein it has been stated that TA/DA claims have been accepted. The payment as per

Annex. A-30Annex. A-31

CHIEF COMMISSIONER
S. VERMA
Date: 6/9/89

Annx. A-32

noting on file No. ADMN/G/GIP/77 is enclosed as Annexure. A-32 noting on P/53/N on page 6 of noting shows that payment could not be made for paucity of funds. During 1988 in April E. Nongram Dy. Chief (Admn), Bombay had called deponent to fill certificates so that payment of TA/DA bills could be made, but till date because of Malice nothing has been paid and now respondents have come up with a new story of S.L.P. pending and till the same is not disposed off, decision to pay TA/DA claims cannot be made. There being no stay granted by Hon'ble Supreme Court for payment of pension, gratuity and other benefits, TA/DA etc, the same cannot be withheld on the plea that some alleged S.L.P. has been filed, which if filed has presumably been not admitted as no notice has been received by deponent, hence payments due have to be made to deponent.

Annx. A-27Annx. A-26

23. That contents of para 29 of the counter affidavit are denied. In para 17 above it has been brought out at length, that the Competent Appellate authority has to issue orders under his own signatures with a reasoned speaking order as per instructions of Govt. of India dt. 13.7.1981, filed as Annexure. A-27, the alleged order dt. 2.5.1983, Annexure. A-26, is bad in law, illegal and void. Further when the same charges, re-issue of Import Licences in violation of Import Policy or dishonestly misinterpreting official instructions have been quashed on merits by Hon'ble High Court, also admitted by respondents in para 28 of counter affidavit and there being clear instructions that any decision taken on basis of departmental inquiry, held on same, identical charges, that decision shall be reviewed based on Judicial orders, refer Annexure. A-28, hence the Appeal dt. 25.9.1982 has got to be disposed off by the Secretary, Ministry of Commerce, also as per orders of Hon'ble High Court in Writ Petition No. 1403/83 dt. 10.3.1983, "List in the week commencing 24.4.1983 to enable the Counsel to seek instructions in the matter. It is expected that appeal file by petitioner dated 25.9.1982 (Annex-18) shall be disposed off" It is vehemently denied that Sri. Joginder Singh is Competent Appellate Authority, as he was only a Director, whereas Disciplinary authority, Chief Controller was Additional Secretary, and no subordinate can decide appeal of orders of his superior authority. Discrimination is so very clear from order dt. 9.10.85 (Annexure. A-10) vide which penalty imposed against 2 assistants has been set aside, but in respect of deponent, it is stated that appeal has been disposed off. Pension rules liberalised dt. 30.12.1980 (Annexure. A-22) have to be complied and deponent is entitled to get his full pension, refer para 8 above. Contents of para Ab & A are reiterated and confirmed.

Annx. A-28Annx. A-10.Annx. A-22para. 8.

24. That para 30 needs no reply, contents of para 7 of petition are reiterated and confirmed.

(181)

25. That contents of para 31 are denied and those of para 8 of the petition are reiterated and confirmed.

26. That contents of para 32 of the counter affidavit are wrong and denied and those of para 9 of the petition are reiterated and confirmed. The Matrix of the case is that:

(i) That inspite of being entitled to Pension, Gratuity and other consequential benefits due on retirement have been maliciously denied to the deponent wef. 18.8.1982, the alleged malicious, illegal compulsory retirement orders (Annexure A-8). Even the TD/DA due for performing journeys for attending cases filed by CBI at Lucknow, attending Departmental Inquiry at New Delhi, inspecting records at New Delhi pertaining to Departmental Inquiry have been denied so far on the pretext of paucity of funds (Annexures A-30, 31 and 32 refer)

Annx. A-8, p. 26
and 11, para 17.

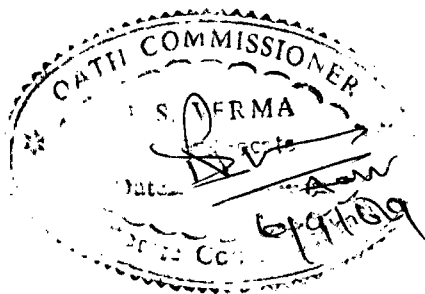
Annx. 30, 31, 32,
Page 15, para 22

(ii) That as per Govt. of India's rules, the deponent was eligible for being confirmed in the substantive post of Assistant Controller wef. 15.7.1969, i.e. after 3 years from the date of being declared quasi permanent i.e. 15.7.1966 (Annexure A-5), also his probation of 2 years as per terms of appointment dt. 22.11.62 (Annexure A-16) was over and the same had not been extended, the Efficiency Bar was also allowed to be crossed wef. 15.7.1965 (Annexure A-21) and yearly increments as due till 15.7.1972 were also allowed to him without any interruption, there being absolutely no adverse entry against deponent, for that matter even till date of alleged compulsory retirement. Because of the ARCHAIC rule of confirmation, the Hon'ble Supreme court has held that the confirmation will be deemed/implied on completion of probation and 3 years from being declared quasi permanent and it can't be held on basis of any uncommunicated adverse entries if alleged.

Annx. 5, p. 22/2
para 5

Annx-16, p 2, / 3,
para 5 & 6

Annx. 21, p-6,
para-6



para. 6, page 4

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(iii) That if there is any inquiry or investigation the benefits like, promotion, confirmation, increments etc shall not be held up on any inference of guilt, till such time charge sheet is not issued. In case of deponent his due date and eligibility for confirmation was 15.7.1969, the alleged CBI inquiry on source information started on 8/9.12.1971, this ^{view} has also been held by Full

18/8/77

para 6, p. 4

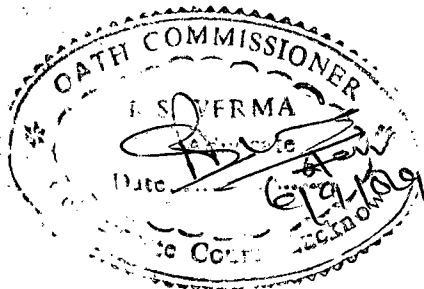
Bench of CAT, Hyderabad vide 1(1987) ATL-480, discussed in para 6 above, page 4, thus vigilance angle as alleged to have been taken by D.P.C. for not considering deponent for confirmation is wholly wrong, illegal, void and against principles laid down by all courts. The respondents are put to strict proof to show that any adverse entry till date of alleged retirement. 18.2.82 had ever been communicated to deponent. Officers much junior to deponent to name a few have already been confirmed, Sri. 177 Sri. R.K. Jaiswal and Sri. 185. Sri. Ganesh Behari Srivastava, where as deponent was Sri. 174 of the seniority list enclosed as Annexure A. 20. The deponent thus became confirmed Assistant Controller w.e.f. 15.7.1969 on implied basis as there were ~~116~~ 116 substantive vacancies and number of deponent was 72 refer, para 6 above, page 3.

Annx. 20, p. 3,
para 6.

(iv) That deponent was entitled to seniority and promotion on basis of his previous Govt. service as also instructions of Govt. of India dt. 23.12.1952, 20.1.1953 and dt. 21.5.1965, allowing benefit of Seniority under the 'Next Below Rule', promotion, confirmation and other allied benefits to Territorial Army Officers called out for service, refer Annexures. A-14, 15 and 25 (para 4 & 13 above) but the benefits were denied to deponent, except only he was allowed to draw pay accepting his past service from 15.7.1968 Scale . 400-25-500-30-590-EB-30-800, new pay code- 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200.

para 4, 13

15.7.58	400		
15.7.59	425		
15.7.60	450	650	
15.7.61	475	680	
15.7.62	500	710	
15.7.63	530	740	pay fixed @530/- (15.7.63, joined as Asstt Controller at Bombay)
15.7.64	560	@ 35= 775	
15.7.65 EB	590	810	allowed to cross EB in old scale.
15.7.66	620	845	
15.7.67	650	@40 880	
15.7.68	680	920	
15.7.69	710	960	
15.7.70	740	1000	
15.7.71	770	1040	allowed to cross EB.
15.7.72	800		



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1080

went on medical
17/7

A183

refer para 6,
page 6 above.

Annx. 32, p. 15,
para - 22
pay Rs. 1160/-
pay Rs. 1200/-

Annx. 6, p. 24
para, 9, p. 8

On leave being sanctioned by Chief Controller vide No. 6/698/62-Admn(G) dt. 12.8.1976, the increments as due should have been allowed, with monetary benefit from 10.8.1974, when deponent joined on return from leave. The office put up note for allowing increments as due, but Jt. Chief. Bombay, who bore malice and wanted to cripple deponent financially, did not approve note dt. 1.3.1978, refer Annexure. A-32 and till date the deponent has not received pay @ Rs. 1160/- as due from 12.8.1974 should have been and from 1.1.75 @ Rs. 1200/-, whereas he has been paid @ Rs. 1080/- for the period from 12.8.74 to 18.8.1982. All this is outcome of malice.

(v) That the deponent was also considered for Central Trade Service and was selected as Asstt. Chief Controller wef 19.11.79 he was placed in seniority at Sri. No. 20, both his Juniors, Sri. R.K. Jaiswal and G.B. Srivastava have been placed at Sri. 21 and 24 respectively and both were also confirmed, Sri. Jaiswal was drawing basic salary of Rs. 3750/- at the time of retirement i.e. 31.7.87 and the deponent would have drawn the maximum of the scale of minimum Dy. Chief Controller, although by getting seniority of his past Territorial Army service he should have been Jt. Chief Controller. The sealed envelope has not been opened inspite of several requests, which should be opened.

(vi) That under CCS (CCA) Rules, Departmental Inquiry cannot be held simultaneously on same identical charges, and in case any decision has been taken on Departmental Inquiry, then the same is to be reviewed in terms of Judicial decision. In case of 2 assistants, penalty imposed already withdrawn on the basis of Hon'ble High Court order dt. 25.5.84, vide order dt. 9.10.85, Annexure. A-10 but because of malice against deponent, penalty in his case still not set aside.

(vii) That clear discrimination and malice has been shown in case of deponent that without any vigilance angle or corruption charge transferred from Kanpur to Madras. Although criminal case even 2 assistants were co-accused, but because of malice only the deponent suspended.

(viii) That pension is not bounty but valuable right of Govt.

Annx-10, p. 6, 7,
20, paras & page,
5, 7 & 15.-11,
para. 17.

para. 10, page. 8

para. 15, page. 10

COMMISSIONER
S. PERMA
991109

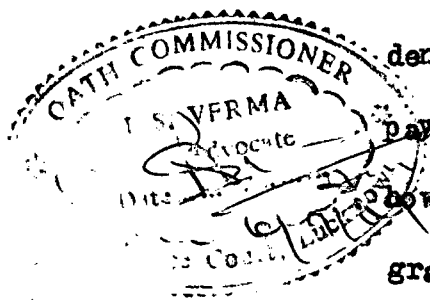
11/24

Annx. 22, para, 8,
page, 7para, 8, page
7-8para. 19, page. 15para. 16, page. 10para. 11, page. 9para. 13, page. 9

servant and is now even payable to every temporary employee with not less than 20 years of qualified service, and the condition of being confirmed has been dispensed with by Govt. of India vide order dt. 30.12.1981, Annexure. A-22 refers, and where quantum can not be decided, immediately provisional pension and gratuity should be paid, refer Annexure. A-23 and 24. Thus pension and gratuity is payable to deponent in terms of order dt. 1.4.85 Annexure. A-1 as also admitted by respondents in para 25 of counter affidavit as also all consequential retirement benefits, TA/DA, increments as due, salary of promotions as would have been due as also full pay and allowances for the period of suspension which stood revoked from date of premature retirement i.e. 12.12.75, and then from 6.6.75, as acquitted in criminal cases, while the suspension was only on account of criminal cases filed. Also entitled for compensation of Rs. 2 lacs a year for 2 years of Medical leave, compensation of Rs. 1 lac a year for not having given Seniority as due to Territorial Officers, also entitled to heavy compensation for having been harassed by false cases filed by CBI on absolutely false charges by misinterpreting ^{import} policy to some how or other torture the deponent as also for unwarranted departmental inquiry and causing Social Stigma, mental tension and other irreparable injury.

27. That contents of para 33 of counter affidavit are vehemently denied, the Govt. has made provision for payment of provisional payment, where some difficulty is temporarily felt by any department however now in case of deponent he is to be paid his full pension, gratuity etc in view of liberalised pension rules dispensing with condition of confirmation to some substantive post, hence full pension, gratuity and other consequential retirement benefits, TA/DA increments and other benefits may kindly be ordered to be paid to deponent. Contents of para 10 of petition are reiterated and confirmed.

28. That contents of para 34 of counter affidavit are denied, the petition may kindly be allowed with all reliefs as also the heavy compensation as asked for along with heavy costs incurred



2.

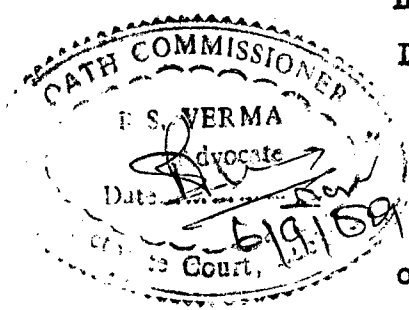
in inquiries, cases etc since 1971 to 1982.

1005

Lucknow.

Dt. 6.9.1989.

[Signature]
Deponent.



VERIFICATION.

I, deponent above named do hereby verify that contents of paras 1 to 28 of this rejoinder affidavit are true to my personal knowledge. Nothing material has been concealed, and no part of it is false, so help me GOD.

Lucknow.

Dt. 6.9.1989.

[Signature]
Deponent.

I know the deponent who has signed before me.

[Signature]
Advocate.

Case 355/89
personally appeared before me in office to dep
at 3 PM by Major G. L. Puri (Retd)
who is identified by Shri A. Suble
Clerk to Shri. *[Signature]*
I have satisfied my self by examining the
deponent that he understands the contents of
this affidavit who has been read out and
explained to him and charged Rs. 100.00

[Signature]
R. S. VERMA
Advocate
Oath Commissioner
Collectorate Court, Lucknow

G.I. Furvazi,
5, Mall Avenue,
Lucknow. 226001.

To,
The Chief Controller of Imports & Exports,
Udyog Bhawan, NEW DELHI. 110001.

Lucknow. dt. 14.9.1984.

Annexure A-13

SUB. PAYMENT OF PENSION, GRATUITY, LEAVE SALARY IN LIEU OF LEAVE NOT
AVAILABLE, LEAVE TRAVEL CONCESSION NOT AVAILABLE & OTHER BENEFITS AS
DUE ON ACCOUNT OF COMPULSORY RETIREMENT.

Sir,

Enclosed please find my declaration giving details of Government
service put in by me for purposes of claiming Pension.

2. As would be evident that I have continued Government Service from
6.3.1948 to 18.8.1982(FN), when compulsorily retired. This works out
to 34 years 15 months 10 days and even if period from 1.5.1950 to
15.11.1950 is deducted still the service comes to 33 years 10 months
and 25 days, which is qualifying service for full retirement benefit.

3. On compulsory retirement the Suspension stood **AUTOMATICALLY**
revoked because one cannot be given TWO punishments, further even
otherwise the Suspension was due to filing of Criminal Cases, and
the Hon'ble High Court of Judicature at Lucknow (Lucknow Bench)
vide order dt. 25.5.1984 have **QUASHED THE CHARGES AND THE PROCEEDINGS**,
copy is enclosed as Annexure 13 to the affidavit

Even the Hon'ble Supreme Court and Various High Courts have laid down
directives on this subject:-

- a) "Where a Govt. servant has been suspended pending a criminal invest-
igation or trial, the order of suspension automatically ceases to be
operative as soon as criminal proceedings terminate by an acquittal
or discharge of the Government Servant"

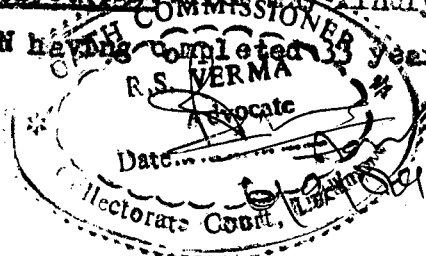
(Devendra v State of Uttar Pradesh A.I.R. 1962 S.C. 1334)

- b) "Immediately after such acquittal or discharge in the criminal case, the
delinquent should be deemed to have been reinstated and is accordingly
entitled to his full pay and allowances since the date of his suspension."

(Pratap Singh v State of Punjab, AIR 1964 S.C. 72 and Khanchand V
Union of India, AIR 1963 S.C. 327)

- c) Now, where an order of dismissal is passed, the **VINCULUM JURIS** between
the Government and the servant is dissolved; the relationship of master
and servant between them is extinguished. Then the order of suspension
must be fortiori come to an end. Once the suspension has come to an
end by an order of dismissal, which was effective when made, it cannot
be revived by mere subsequent setting aside of the order of dismissal
in the absence of a statutory provision or rule to that effect. The
conclusion must, therefore, inevitably follow that when order of dismiss
sal was passed in this case, the order of suspension ceased to exist
and it did not revive thereafter by the subsequent setting aside of
the order of dismissal". (H.L. Mehra v Union of India, 1975 AIR, 34, 699)

Thus I am entitled to my full pay (less subsistence allowance paid) fr
6.6.1975 to 18.8.1982(FN) kindly be paid immediately and
also FULL PENSION having completed 33 years of Govt. Service.



4. That action under Rule 13(PENALTIES) has been wholly wrong as Major Penalty(EXTREME PENALTIES) is to be imposed not as a matter of course, but on the ground of MISCONDUCT rendering person UNFIT and Unsuitable for continuing in service. Whereas from the IMPUTATION OF CHARGE, I have been wholly exonerated vide para 4.14. As for NEW charge NO OPPORTUNITY was ever afforded which is evident from the INQUIRY report dt.2.2.1981. Even in the para 4.13, the Inquiry Officer has himself admitted the fact that UNDER THE EXISTING instructions/policy, licences were to be issued for value applied for, then under what authority could a CONTROLLER reduce the value and any REDUCTION would have amounted to Violation of instructions. The Inquiry Officer has without any application of mind said that Part II of Application Form B, suggests that in considering such applications the information was to be gone through. Whereas in this licensing scheme the application were NOT to be sent through the SPONSORING Authority and PART-II of application Form B clearly reveals that (TO BE FILED IN BY THE APPLICANT FOR USE BY THE SPONSORING AUTHORITY) The Inquiry Officer has not pointed out any SPECIFIC violation but suggested something abstract :-

" I THUS FIND THAT HIS ACTION IN ISSUING 13 LICENCES CONCERNED MOUNTS TO VIOLATING THE SPIRIT OF PROVISIONS IN PARA 78 of Ex. S.1"

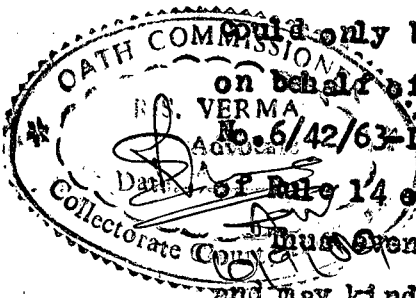
That the Spirit is, or violation has not been pointed out and under the Principles of Natural Justice BENEFIT OF DOUBT is always given to the accused. Whereas the report itself is contradictory as in Para 4.14. the Inquiry Officer has held "...ACTION ON THE PART OF SHRI PUNVANI IN ISSUING LICENCES IN THE 13 CASES DID NOT AMOUNT TO VIOLATION OF IMPORT POLICY DURING APRIL 69 TO MARCH 1970 as given in paras 18,19 and 21 of the Import Policy Book".

Further the Inquiry Officer conveniently FOR REASONS BEST KNOWN TO him has not brought the Order dt.11.5.1969 issued by Shri O.N. Anand for issue of licences without seeing the end product as was being done in past, in the assessment of evidence, whereas this was a VERY IMPORTANT document and was on record as D-3, as when licences had been issued in compliance/execution of written orders of Head of Office, there could be no Departmental Inquiry even as provided Under Rule 3 of CCS(Conduct) Rules, 1964 (Rule 3(iii)). Thus the Inquiry itself was UNWARRANTED.. Also other VIOLATION has been committed that SP Official could only be a departmental witness, but COULD NOT PRESENT THE CASE on behalf of PROSECUTION. There is a clear BAR(Authy. D.G.PAT, Letter No. 6/42/63-Misc, dt 23.8.1963) this is clear from the commentary given of Rule 14 of CCS(C.C & A) Rules, 1965.

Thus even the Major penalty imposed on an abstract finding is wrong and may kindly be corrected and order of Compulsory Retirement withdrawn. Thanking you and request for immediate issue of orders of payment of Pension and all other dues outstanding and all benefits as due.

Encl.14, including copy of Judgement authenticated by Oath Commissioner & copy of affidavit, declaring total Govt. service.

Your faithfully,
(G. K. PUNVANI).



3.

RAD no 3937

JA 5-4-84 GPO

A-13
H/100

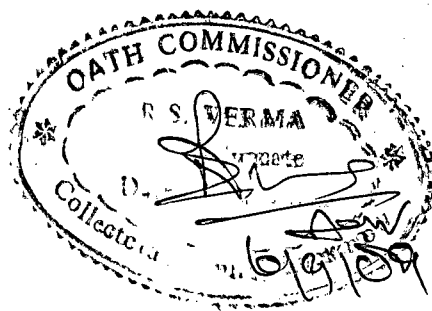
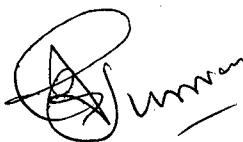
Copy to Jt. Chief Controller of Imports & Exports,
C.G.O. Offices, New Marine Lines, BOMBAY-400020 with reference
to his letter No. ESTT/PEN/GO/GIP/5863 dt. 27.8.1984, as
desired all past service particulars with Ministry of
Rehabilitation, Govt. of U.P., With Territorial Army etc are
sent herewith along with an AFFIDAVIT, declaring the past
service which is more than 33 years as also I am already
confirmed as is clear from the Seniority List of Central
Trade Officers, where my No. stands at Srl No. 20. Also allow
me all other dues.

Thanking you.

Yours faithfully,

All enclosures duly authenticated
by Oath Commissioner. Also ^{certified} copy of
Order of High Court dt. 25.5.84 enclosed.

(G.I. PUNVANI)



Annexure H-13

A109

BEFORE THE CHIEF CONTROLLER OF IMPORTS & EXPORTS
UNHOD BHAWAN, NEW DELHI.

AFFIDAVIT.

DECLARATION UNDER CENTRAL CIVIL SERVICES (PENSION) RULES, 1972 FOR
CONSIDERATION OF QUALIFYING SERVICE FOR PURPOSES OF RETIREMENT PENSION.

I, Govind Punvani aged about 59 years s/o Late Mr. Idarnel
r/o 5, Mall Avenue, Lucknow. 226001, do hereby solemnly affirm on
Oath as under:-

1. That the deponent is the applicant for Retirement Pension due to him, due to compulsory retirement from service on superannuation and is fully conversant with the facts deposed hereunder:-
2. That the deponent is a Displaced Person from West Pakistan (Hyderabad-Sind) duly registered at Daryapur Refugee Camp, Ahmedabad bearing Refugee Registration Srl No.9 dt.30.5.1948.
3. That the deponent was selected as Assistant Refugee Officer by Government of India, Ministry of Relief & Rehabilitation vide appointment letter No. TAA(2)ME dt.3.3.1948 (copy enclosed as Annexure No.1) and joined his duties at Ahmedabad under orders of Director of Evacuation, Bombay as Dy. Camp Commandant & Supply Officer, City Relief Camps, Ahmedabad on 6.3.1948.
4. That due to re-organisation of existing establishment in local Relief Camps in pursuance of Government Rehabilitation Resolution No. R 94/7343-D dt.15.3.1950, the services of the deponent were terminated with effect from 1st April 1950 vide orders of Collector of Ahmedabad No. MIB/29 dt.30.3.1950 (Copy enclosed as Annexure No.2)
5. That the deponent after retrenchment, shifted to Dehra-Duad (Uttar Pradesh) and was appointed as Senior Inspector, Rehabilitation Department, Government of U.P. (Copy of appointment letter No. 245/2/54/IV dt.16.11.1950 enclosed as Annexure No.3). The deponent worked from 16.11.1950 to 8.8.1951 in this capacity.
6. That the deponent was selected as Assistant Custodian of Evacuee Property, Rehabilitation Department, Government of Uttar Pradesh and joined as Assistant Custodian at Muzaffarnagar on 9.8.1951 (Copy of certificate issued by Deputy Custodian, Muzaffarnagar dt.12.4.1952 is enclosed as Annexure No.4). The deponent worked in this capacity from 9.8.1951 to 27.10.1955.

8. That deponents services were integrated by Government of India, Ministry of Rehabilitation w.e.f. 28.10.1955 and the deponent was designated as Managing Officer, Acquired Evacuee Properties vide Government of India, Ministry of Rehabilitation, Notification No. 27/10/55. S. II dt. 20.1.1956, (Copy enclosed as Annexure No. 5)

9. That the deponent while working as Assistant Custodian of Evacuee Properties had applied for a Commission in the Territorial Army and was selected and granted the Territorial Army Commission w.e.f. 18.3.1955 and was posted as 2nd Lieutenant to 111, Infantry Battalion (TA), Allahabad vide Army Head Quarters, Military Secretary Branch, New Delhi No. 29223/9/AS-3-C dt. 10/11.6.1955 (Copy enclosed as Annexure No. 6), certificate by Commanding Officer dt. 19.10.1959).

10. That the deponent had been granted the Commission while working as Assistant Custodian of Evacuee Properties, but since his services had been integrated by Government of India, Ministry of Rehabilitation and he was required to undergo Military Training, hence he was relieved by the Head of Office, i.e. Regional Settlement Commissioner, Uttar Pradesh to undergo Recruit and Annual Training from 1.11.1955 to 31.1.1956 vide letter No. RSCUP/1-5(12)/60-845 dt. 18.1.1960 (Copy enclosed as Annexure No. 7)

11. That due to exigencies of service and threat by Pakistan, the deponents Unit was embodied for service and the Territorial Army requisitioned the services of deponent and the Regional Settlement Commissioner, UP, relieved the deponent to join the Territorial Army and Administrative Lien of deponent was allowed to be retained in the Settlement Organisation till he served under Territorial Army. (Copy of letter No. RSCUP/1-5(12)/60-2073 dt. 11.2.1960 enclosed as Annexure No. 8). The deponent joined the Unit on 12.2.1960 and remained embodied and served Territorial Army till 11.1.1962 and served in various capacities.

12. That while serving with Territorial Army, the Chief Settlement Commissioner sent letter No. 3/9/AS/61 dt. 13.4.1961 to Territorial Army Directorate intimating that due to reduction of the number of posts of Managing Officers, services of deponent will be terminated w.e.f. 1st May 1961 and this letter was sent to the deponent by Head Quarters Bengal, Bihar & Orissa (Indep) Sub Area through his Unit, 107 Infantry Battalion (TA), although the deponent was continuing in the Territorial Army (Copy of letter No. 000419/G/TA-1 dt. 11.5.1961 enclosed as Annexure No. 9).

13. That the Ministry of Home Affairs, Govt. of India, due to the retrenchment in Settlement Organisation of Managing Officers issued directions to all the Ministries for absorption of Retrenched staff

vide Office Memorandum No.14/3/59 dt. 3.12.1959 with the directions that "Period of service rendered by the discharged employees of the Rehabilitation Ministry under the State Government would also be taken into account and added to the service rendered by them under the Central Government, provided at the time of discharge they were in the employment of the Central Government". In view of this the deponent was interviewed by the Union Public Service Commission and was selected by the Special Selection Board on 24th October, 1962 as Assistant Controller of Imports & Exports and intimation of this appointment was communicated by Chief Controller of Imports & Exports vide No.27/1/59/Adm(G)/2362 dt.22nd November, 1962, and the Offer was accepted by the deponent vide No.10/3/PM dt.27.11.62.

14. That due to Chinese aggression, the deponent could not be spared to join his Civil Job, but with great difficulty was relieved by Territorial Army to join his job to keep him on the post of Assistant Controller of Imports & Exports, in the office of the Jt. Chief Controller of Imports & Exports, Bombay. The deponent joined on 15.7.1963 and necessary notification was issued by Chief Controller vide No.6/698/62-Adm(G)/2311 dt.7.8.1963. However the deponent was required back for Territorial Army service and was relieved on 12.8.1963 and his services were placed at the disposal of the Territorial Army, Ministry of Defence and Office Order No.G-168/1963 was sent by Chief Controller vide No.6/698/62-Adm(G)/3174 dt.29.8.1963 (copy enclosed as Annexure No.10).

15. That the deponent was eventually relieved by the Territorial Army, while posted in the National Cadet Corps Directorate on 3.1.1969 to join his civil post as Assistant Controller of Imports & Exports at Kanpur in the Office of the Dy. Chief Controller of Imports & Exports in accordance with orders the Chief Controller issued vide No.6/698/62-Adm(G)/1110 dt.18.3.1969 and copy of the M.N.C. Directorate letter No.962/01/Adm dt.12.4.1969 is enclosed as Annexure No.11.

16. That the deponent was transferred from Kanpur office to Office of the Jt. Chief Controller of Imports & Exports, Bombay vide orders of Chief Controller No.1/7/73-Adm(G) dt.9.8.1974 and he joined at Bombay on 12.8.1974 and copy of Office order No.1/7/74 dt.12.8.1974 issued by J.C.C.I. & E, Bombay is enclosed as Annexure No.12.

17. That the deponent also opted for New Pay Code vide his letter dt.22.1.1975 to Sr. Dy. Accountant General, Commerce, Works & Misc, Bombay and was granted the New Pay Code and his pay fixed accordingly, w.e.f 15.7.1974 @ Rs.1080/- and the next increment was due w.e.f 15.7.1975, which as also subsequent increments as



due have not been paid to me.

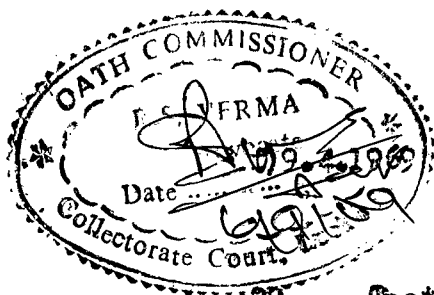
18. That the deponent was placed under suspension w.e.f 6.6.1975 in accordance with orders of Chief Controller under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide CCI&E order No.1/2/72-Reg/648-655 dt.2.6.1975

19. That due to suspension the deponent was paid subsistence allowance w.e.f 6.6.1975 till date of compulsory retirement, 18.8.1982(FW), but no increase in subsistence allowance was made on account of increments as were due from 15.7.1975 and thereafter every year till the date of retirement.

20. That the Chief Controller of Imports & Exports, has compulsorily retired the deponent w.e.f 18.8.1982(F.W). Although the deponent has been retired due to superannuation, (but he should have been retired at the ^{last date} of the month in accordance with the Financial Rules for Government Servants.)

21. That the order of compulsory retirement is very clear, that the suspension stood revoked and the service rendered prior to compulsory retirement is to be treated as full qualifying service for retirement. The deponent has completed more than 33 years of qualifying service as stated in paras above and is entitled for FULL RETIRING PENSION, the qualifying service is as under:-

- a) 6.3.1948 to 30.3.1950 as Assistant Refugee Officer, Ministry of Rehabilitation, Govt. of India, (retrenched)
- b) 16.11.1950 to 8.8.1951 Senior Inspector, Rehabilitation Deptt. Govt. of U.P. (non-gazetted)
- c) 9.8.1951 to 27.10.1955 Assistant Custodian of Evacuee Property Rehabilitation Deptt. Govt. of U.P.
- d) 28.10.1955 to 30.4.1961 Managing Officer, Acquired Evacuee Properties, Ministry of Rehabilitation, services from State Govt. integrated.
- e) 12.2.1960 to 31.3.1969 Commissioned Officer, Territorial Army embodied for service during this period (with break from 15.7.63 to 12.8.1963 joined civil job of Asstt. Controller to keep LHM, thereafter on deputation with Territorial Army and served in various capacities)
- f) 17.8.1982 Assistant Controller of Imports & Export availed joining time from 1.4.69 to 8.4.69.



22. That deponent's service as Assistant Refugee Officer as also with State Govt is to be treated as qualifying service in accordance with Ministry of Home Affairs, Department of Personnel & Administrative Reforms letter No.3(80)/Pen(A)/79 dt.31.3.1982 and instructions issued thereafter on the subject of Allocation of Pensionary liability in respect of Temporary service under any Government.

23. That the deponent had been declared Quasi Permanent w.e.f 15.7.1966 by Chief Controller vide No. 19(13)/68-ADM(A)/2569 dt. 20.10.1970 and published in Part III Sec I of Gazette of India.

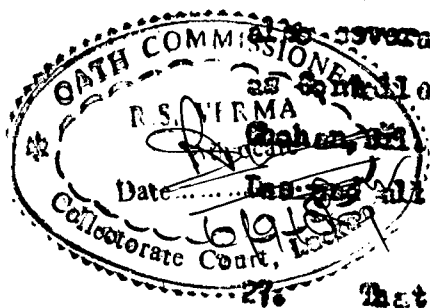
24. That the case for permanent/substantial post of Controller (Class II-Non.C.S.S) was also initiated in April 1972 when the deponent had given the declaration that he had no lien on any permanent post in any other office on 28.4.1972. This was also confirmed by Chief Controller vide letter No. 6/68/62-ADM(G) dt. 15.11.1971 addressed to Dy. Commr, Kanpur on the Subj. Annual Training Course of Territorial Army for the Year 1971-72.

25. That the deponent vide Seniority List circulated dt. 10.12.1971 was at Sri 174 of Controller, Class II Non-CSS, and continued on the same serial No. in the Seniority list circulated in January, 1973. However, the deponent was also entitled to SENIORITY and PROMOTION in accordance with Ministry of Home Affairs No. 47/2/56-Extt(A) dt. 20.1.1953 circulated as notification No. H/A/67/Extt(B) dt. 4.6.1967 on the sub-JUNCTION REQUIRING GRANT OF SENIORITY IN A HIGHER POST OR PROMOTION UNDER THE "HEAT BELOW RULE" TO GOVERNMENT SERVANTS ON DEPUTATION TO TERRITORIAL ARMY. The deponent should have been given Seniority & Promotion as was allowed in the Seniority List giving benefit for approved Military Service to Controllers Class II Non-CSS in terms of Ministry of Home Affairs No. H/A/67/Extt(B) dt. 4.10.1967 for which he had sent representation, but due to suspension, even the yearly increment due on 15th July each year was not allowed.

26. That Central Trade Service was formed and Controllers Class II were designated as Assistant Chief Controller and the deponent has also been considered and appointed to GRADE-III of Central Trade Service w.e.f 19.11.1979, which has also been confirmed by UPSC vide letter No. 11/21/71-MIV dt. 28.9.1979 and the Seniority List issued by Chief Controller vide No. 11/4/81-ADM(J)/3927 dt. 27.6.81 has been circulated therein at Sri. 20 deponent's name is included, thus the deponent has also been confirmed as Controller Grade II Non-CSS as several officers much JUNIOR to him have also been confirmed as Controller II e.g. Sri 21. Sri R.K. Jaiswal, Sri. 22 Sri. Saharlal Chohan, Sri. 24 Sri. Ganesh Behari Srivastava, Sri 25 Sri. Hari Prasad and all other till Sri No. 58 and so on.

27. That even the cases filed by CNU against the deponent have been quashed by Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) vide orders dt. 25.5.1984, quashing the Charge Framed as also the entire proceedings, copy of Judgment enclosed as Annexure No. 1.

28. That the deponent being qualified to the retiring pension, the



J.C.C.I.&S, Bombay sent all necessary forms to be completed for getting the pension, and the deponent sent all these forms duly completed on 14.2.1983 in reply to JCGI&S letter No. Estt/Pen/60/GIP/1863 dt.14.1.1983.

29. That the deponent's documents like LFC, Statement of Service, Service Card and Leave account etc were asked for by Sr. Dy. Accountant General, Commerce, Works & Misc, Bombay from Accountant General, U.P. vide letter No. GAN/IAR/GIP/3774-76 dt.21.9.1974 and all the documents were sent by A.G.U.P, which is evident from the fact that pay was fixed in accordance with New Pay Code in early 1975.

30. That the deponent has been in continuous Govt. service from 6.1.1948 to 18.8.1982 (XX), date of compulsory retirement and this whole service counts for purposes of Pension/Gratuity in pursuance of Government of India, Ministry of Home Affairs, O.M.No. 3(60)/P.H. (A)/79 dt. 11.3.1982 read with Circular letter No. Adm-3-123/10-717/79 dt.13.9.1983 issued by Finance Secretary, Govt. of U.P, which copy is enclosed as Annexure No. 14. Also break in service is to be condoned in terms of Govt. Instructions, as the same was due to RETIREMENT.

31. That the deponent being Displaced Person and also having served as Territorial Army Officer is entitled to preferential and priority treatment in all respects.

32. That under 353(Pension) Rules, 1972, Rule 56-58, it was incumbent that deponent's case for pension should have been prepared well in advance for determination of pension, two years before the date of retirement, which normally was on 1.1.1983 and the pension was payable under Rule 67, 69 and 83.

33. That the deponent is entitled to full pension and other benefits as due along with interest from 18.8.1983 till date, the delay being attributed to Deponent.

VERIFICATION.

I, the above noted deponent do hereby verify that the contents of para 1 to 33 of the affidavit are true to my personal knowledge except bracketted portion of para 20 and 32 which are believed by me to be true on legal advice. Signed and verified this 13th day of September, 1984 within the Civil Courts compound premises at Lucknow.

Lucknow.

Dated 13th September, 1984

DEPONENT

I identify the deponent who has signed before me.

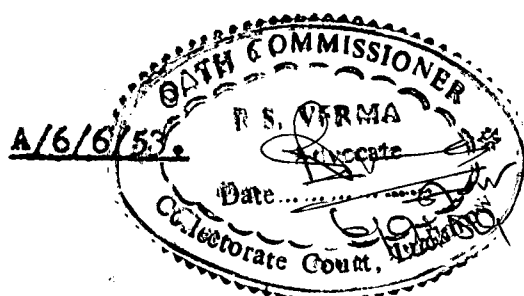
Advocate.

23-12-52

Subject:- Government servants joining the Territorial Army-
Position of temporary Government servants and
persons on work-charged establishment who are
embodied in the Territorial Army.

OFFICE OF THE COMMISSIONER OF INCOMETAX,
UTTAR PRADESH & VINDHYA PRADESH, LUCKNOW.
Dated Lucknow, the 4th May 1953.

Copy forwarded to all Assistant Commissioner of
Incometax, and Incometax Officers in U.P. & V.P. Authorised Represen-
tative Incometax Appellate Tribunal, Allahabad and Officer on Special
Duty and Authorised Officials, Incometax Investigation Commission
Kampur for information and guidance, in continuation of this office
endorsement C.No.36-4E/52 dated 2.8.50.



(G.P. Srivastava) Supdt.
for Commissioner of Incometax
U.P. & V.P. Lucknow.

2011
8/6

Page 9

Copy of the Government of India: Ministry of Home Affairs, O.M.No.47/2/56-Estt.(A)
Dated: 20.1.1958. received under Min. of Finance
F.No:23/1/58-Coord(127), dated 22.2.1958.

Sub: Question regarding grant of seniority in a higher post or promotion under the 'next below rule' to Government servants on deputation to Territorial Army.

.....

Government of India have had under consideration for some time the question of protecting the seniority and chances of promotion under the 'next below rule' of Government servants who join the Territorial Army and are on deputation there either on annual training or for course of Instruction or during an emergency etc. It has been decided that the period of service rendered by them with the Territorial Army may be treated as service outside the ordinary line for the purpose of proviso 2 to F.R. 30(1), accordingly they will be entitled to proforma promotion in their parent Departments, under the 'next below rule'. They will also get the seniority in the higher posts to which they would otherwise be entitled, if they had not been away for training etc. in the Territorial Army.

2. In so far as the personnel serving in the I.A. & A.D. are concerned, these orders are issued after consultation with the Comptroller and Auditor General.

..... Circular No. 60/50.

G.No.36-42 E/50.

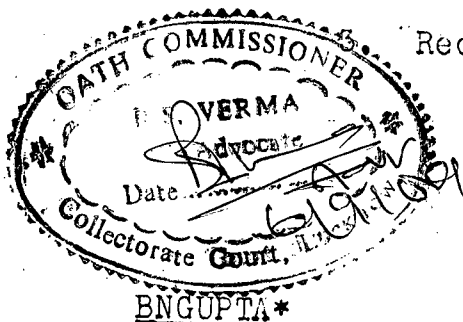
Dated Lucknow, the 22nd 3rd Mar.58

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOMETAX
UTTAR PRADESH, LUCKNOW.

Copy forwarded to all Assistant Commissioners of Incoemtax and Incometax Officers in U.P. and Authorised Representative, Incometax Appellate Tribunal Allahabad for information and guidance.

Internal Distribution for circulation

1. To all Supervisors.
2. Confidential Section.
- Record Section.



(N.D. RASTOGI) SUPDT,
(~~XXXXXX~~)
for COMMISSIONER OF INCOMETAX,
U.P., L U C K N O W

S. J. u/3

[Handwritten signature]

No. 27/1/59/Admn(G)/2862

Government of India

Ministry of Commerce & Industry

Office of the Chief Controller of Imports and Exports.

New Delhi, the 22nd Nov. 1962

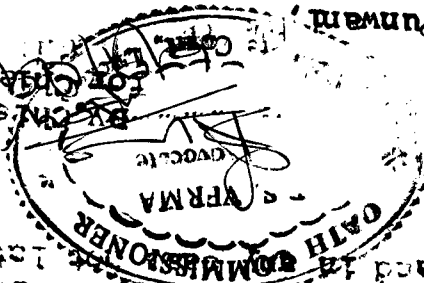
M R M O R A N D U M

Subject: Offer of appointment for the post of Assistant Controller.

On the recommendations of the Union Public Service Commission the Chief Controller of Imports and Exports hereby offers Shri G.I. Punwant (an appointment as Assistant Controller of Imports & Exports in the Import and Export Trade Control Organisation, Ministry of Commerce and Industry on the following terms and conditions:-

1. Pay Rs. 400- in the scale of Rs. 400-25-500-30-590-EB-30-800 in accordance with the rules with the concurrence of the Ministry of Finance.
2. The post is temporary but likely to continue. He will be on probation for a period of 2 years, the said period being liable to be extended or curtailed at the discretion of the appointing authority. His appointment will be terminable by the government without notice during probationary period, and thereafter at one month's notice on either side.
3. The appointment will be subject to Shri G.I. Punwant being declared fit by a competent Medical Authority if required under the Rules.
4. He will be liable to serve in any part of India.
5. Leave will be regulated by the Revised Leave Rules, 1933 and Government of India under the Fundamental Rule or Rules made in replacement thereof from time to time by the Government of India.
6. No travelling allowance for joining the appointment or on termination thereof will be admissible, unless otherwise admissible under the Rules.
7. He will be entitled to draw dearness, House Rent and other allowances as admissible, to similar government servants under the Rules in force from time to time.
8. Shri G.I. Punwant will be required to furnish a marriage declaration form, if not already done.
9. Shri Punwant will be required to take the oath of allegiance to the constitution of India if not already taken.
10. Other conditions of service will be governed by the relevant rules and orders in force from time to time.

If the above terms and conditions of service are acceptable to Shri Punwant he should convey his acceptance of the offer of appointment immediately and in writing to the Controller of Imports and Exports, not later than the 7th Dec. 1962.



Sd/- K. Rajaraman,
Chief Controller of Imports and Exports

Shri G.I. Punwant,
5 Mall Avenue,
Lucknow.

Controller of Imports & Exports
Office of the
Chief Controller of Imports & Exports
New Delhi.

Appendix A-1
Page III

Ref

Capt C I PUNWANI
Adjutant

NO 10 / 3 / PAI
107 INFANTRY BN (TA)
SILIGURI

27 Nov 62

To

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS
NEW DELHI

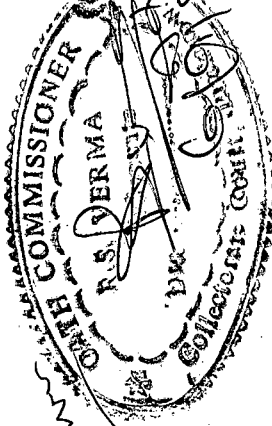
Subject:- OFFER OF APPOINTMENT FOR THE POST OF
ASSISTANT CONTROLLER

SIR,

Reference your memorandum No 37/1/59/Adm(c)/2882
dated 22 Nov 62.

I accept the offer of appointment for the post of
Assistant Controller and agree to all the conditions made
on the offer of appointment.

Yours faithfully,



CHIEF COMMISSIONER (Capt C I PUNWANI)
R.S. VERMA
Collector of Customs

(G O P I)

Annexure A-118

Dr. S.H. CHANNA,
Director of Employment
Exchange.

D. O. No CEE(SB) 66/62
DIRECTORATE GENERAL OF EMPLOYMENT &
TRAINING, MINISTRY OF LABOUR AND
EMPLOYMENT.

15th January, 1963.

My dear

Sub: Appointment of Assistant Controllers.

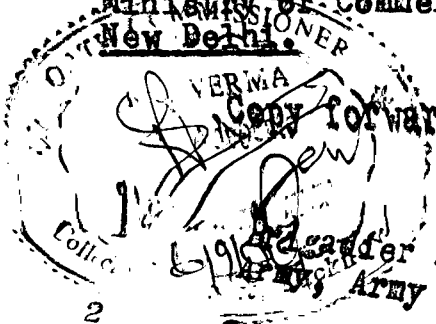
I am to invite your kind attention to your office letter No 27/1/59-Adm(G), dated 22nd November, 1962 offering an appointment of Assistant Controller on the basis of the recommendation of the U.P.S.C. to Shri G.I. Punwani. Shri has been selected after having been sponsored by the Special Selection Board set up by the Government of India in the U.P.S.C. to provide alternative employment to the surplus officers of the Department of Rehabilitation, Ministry of W.H. & R. Shri Punwani is now working with the 107 Inf Bn (TA) and he is stationed as an Adjutant in Siliguri, West Bengal. During my recent visit to Siliguri, the sub-area Commander informed me that his case has been recommended for release to the Area and the Eastern Command. However, discussions with Brigadier Verdi, Director of the Territorial Army, Army Headquarters, New Delhi revealed that they would very much urge the Ministry of Commerce & Industry that Capt Punwani on the basis of his selection by the U.P.S.C. against the post of Assistant Controller, may be taken on the post against which he has been selected but he may at least for the duration of the present emergency, be allowed to hold his present post in the Territorial Army. I am not sure how it will be possible for your Organisation to allow Capt. Punwani to remain seconded to the Territorial Army and in case, it is possible, necessary instructions in the matter may please be issued so as to avoid suspense and worry through which Capt. Punwani is passing at present. I will be grateful if you will kindly consider this case with sympathy as having rendered a number of years of service in the erst while Min. of Rehabilitation, Captain Punwani should not be made to suffer because he offered his services to the Territorial Army I may also suggest that under the present instructions issued by the Govt. of India, great importance is being attached to such offers made by different Government employees to serve with the Territorial Army. I will be thankful if you will kindly give this matter your urgent attention and advise us of the decision taken.

With regards,

Yours sincerely,

(S.H. Channa)

Shri K.T. Satarawala,
Chief Controller of Imports & Exports,
Ministry of Commerce & Industry,
New Delhi.



Copy forwarded for information to
Brigadier M.S. Verdi, Director of Territorial
Army Headquarters, New Delhi.
Captain G.I. Punwani, 107 Inf Bn (TA),
Pradhan Nagar, Siliguri, West Bengal.

OFFICE OF THE JR. CHIEF CONTROLLER OF IMPORTS & EXPORTS, B. BAY

Circular No. 61/62 dt. 16-7-62.

Copy of Notification No. 2-E.I.(6)/58-E.IV dt. 13-6-1962 laying down the recruitment rules for the various Class I and Class II posts in the Import & Export Trade Control Organization, is supplied to all officers.

(N.P.V. Nair)

Controller (Adm.),

for Jt. C.C.I.E., Bombay

GOVERNMENT OF INDIA
MINISTER, OF COMMERCE & INDUSTRY

New Delhi, the 13th June, '62.

N O T I F I C A T I O N

No. 2-E.I.(6)/58-E.IV.

G.S.R.... In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules, namely:-

1. SHORT TITLE:- These rules may be called the Import and Export Trade Control Organisation (Class I and Class II Posts) Recruitment Rules, 1962.

2. APPLICATION:- These rules shall apply to the posts specified in column 1 of the Schedule hereto annexed.

3. NUMBER OF POSTS, CLASSIFICATION AND SCALES OF PAY ETC:-

The number of posts, their classification, the scale of pay, attached thereto, the method of recruitment to the posts, the limit, and other matters relating to the said posts shall be as specified in columns 3 to 13 of the said Schedule.

Provided that the upper age limit specified in column 6 of the said Schedule for direct recruitment to the posts of Controller of Imports and Exports and Assistant Controller of Imports and Exports may be relaxed -

(a) in the case of Government servants, and

(b) in the case of scheduled castes or the Scheduled Tribes and other special categories of persons.

In accordance with the general orders of the Government of India issued from time to time.

4. DISQUALIFICATION:- (1) No person who has more than one wife living or who having a spouse living, marries in any case, in which such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment to the said posts.

(2) No woman whose marriage is void by reason of the husband having a wife living at the time of such marriage or who has married a person who has a wife living at the time of such marriage, shall be eligible for appointment to the said posts.

Provided that the Central Government may, if satisfied that there are special grounds for so ordering except any person from the operation of this rule.

SCHEDULE

(hereto annexed)

Sd/-

(Mola Ram Bhargava)

Under Secretary to the Govt. of India

RECRUITMENT RULES FOR THE POST OF VARIOUS CLASS I & II POSTS IN THE MINISTRY OF COMMERCE AND INDUSTRY (File No. 1582-60-1822)

GRADE CONTROL ORAL EXAMINATION

No. of posts of & Classification	Scale of pay Rs.	Whether selection post or non-selection post	Age limit for direct recruits	Educational & other qualifications required for direct recruits	Whether educational age and of probationary qualification any prescribed for the direct recruits will apply in the case of promotees	Period of probation whether by promotion or by transfer	Method of promotion or transfer	Whether promotion or transfer of deputation & percentage of the vacant which are to be filled by various methods	If a D.P. exists what is its position	Circumstances for which U.P.S. to be consulted in making recruit.

C.C. 1 I&E G.C.S Class I Gaze tted	2250/-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	By transfer on deputation from among suitable officers of the I.A.S. and Central Services, Class I.	N.A.	As required under the rules.

C.C. 6 C.I & E	1100-50 -1300- 50-1600-	Selection	do	do	do	2 yrs. By promotion in case upto 50% of pro- By transfer of deputation the rest.	Promotion:- Dy. G.C. I&E, with minimum of 8 yrs. service in the grade.	Class I D.P.C.	-do-

For officers belonging to IAS, IFS GSS etc. their grade pay will be applicable

1582-60-1822
100-200-1822
COMMISSIONER
B. S. VERMA
Date 10/10/61
Collectorate Court.

P.T.O.

-:2:-

3. DY. C. 12
C.I&E G.C.S
Class I
Gazetted

900-50-
1200

1200-50-
1600

4. Cont- 42
roller -do-
of Imp. 740-30-
2 Exp. 830-35-
900

N.A.

N.A.

N.A.

By promotion
which by
transfer on
deputation.

Promotion: Class -I
Controllers D.P.C.
(Non-CSS)
with a mini-
mum of 5 yrs.
service in
the grade.

Transfer on deputation:
Suitable officers of
the I.A.S. and Central
Services Class-I.

Essential:-

1. Degree of B.A. No
Recognised University
or equivalent.

2 years

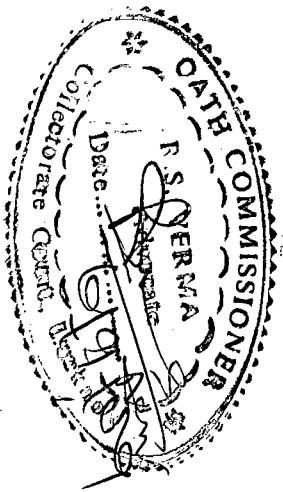
2. About 7 years' experience in a responsible supervisory capacity in Govt. service or business concern.

By direct recruitment. 50% By promotion 50%.

Promotion: Asstt. Controllers (Non-C.S.S) with a minimum of 5 yrs. service in the grade.

Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.

Desirable: Experience in work connected with imports and exports.



-:3:-

2 3 4 5 6 7 8 9 10 11 12

Asstt. Controller of Imports & Exports

116 G.O.S. Class II (Gazetted) Non-Ministerial.

400-25-500-30-590 TB-30-800

Sale-ction

35 yrs. and below

Essential:-

1. Degree of a recognised University.

2 years

By direct recruit-ment 75% of 25%.

Promotion Section Head with a minimum 3 years' service in the grade.

Class -II D.P.C As reqd. under the rules

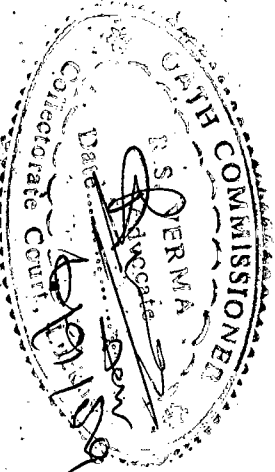
2. About 5 yrs. experience in responsible supervisory capacity in Government service or business concern.

Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.

Desirable:

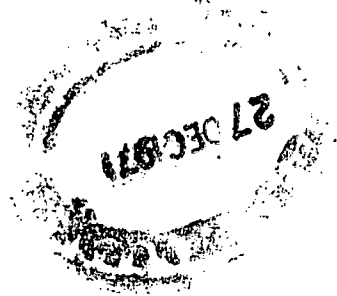
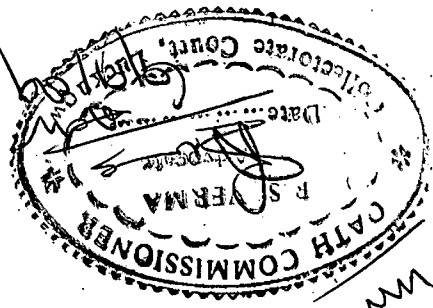
Experience of work connected with imports and exports

650-30-8-35-40-
810-1000-3.15-40-
740-35-880-
410-1200-



Und

Sd/-
(M. J. Ram Bharadwaj)
Secretary to the Govt. of India.



P.T.O.

Encl: Seniority List.
Dy. Chief Controller of Imports & Exports
for Chief Controller of Imports & Exports
(S.K. Sinha)

Yours faithfully,

In continuation of this office letter of even number, dated 16.8.1971, on the subject mentioned above, I am to say that all representations received in connection with the revision of the Seniority List of Assistant Controllers (re-designated as Controller, Class-II-Non-CSS), have been carefully considered. It is hereby notified for the information of all concerned that the seniority list (copies enclosed) is now treated as final.

Sir,

Subject:- Seniority of ex-Portuguese Administration Officers on their absorption in the grade of Assistant Controller of Imports & Exports (Re-designated as Controller of Imports & Exports - Class-II Non-CSS).

1. The Jt. Chief Controller of Imports & Exports, Bombay/Calcutta/Madras/C.L.A., New Delhi.
 2. The Dy. Chief Controller of Imports & Exports, Panaji (Goa)/Ernakulam/Kanpur/Hyderabad/Ahmedabad/Bangalore.
 3. The Controller of Imports & Exports, Pondicherry/Vizakhapatnam/Rajkot/J&K, Srinagar/New Kandla/Shillong.
- New Delhi, the 10th December, 1971.

No. 5/3/71-Adm(G)
GOVERNMENT OF INDIA
MINISTRY OF FOREIGN TRADE
OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS

19204

Signature A-20

Annexure A-21

6/598/62-Admn(G)/

29th June,

7

To

The Deputy Accountant General,
Commerce, Works & Industries,
BOMBAY.

Subject:- Crossing of Efficiency Bar -
Shri G.I. Punvani, Asstt. Controller
in the office of the J.C.C.I.&E. Bombay
and now embodied with the N.C.C. Directorate,
Lucknow.

Sir,

I am to refer to your letter No.GA/VI/G(GIP)/13750-
51-52 dated the 27th March, 1967 and to say that in
exercise of powers under T.R.25 the Chief Controller of
Imports and Exports is pleased to allow Shri G.I. Punvani,
Assistant Controller of Imports and Exports in the office
of the Joint Chief Controller of Imports and Exports,
Bombay and now embodied with N.C.C. Directorate, Lucknow
to cross the efficiency bar at the stage of Rs.590/- in
the scale of Rs.400-25-50)-50-590-25-30-200 raising his
pay to Rs.620/- per month with effect from the 15th July,
1965.

Yours faithfully,

(C.N. Uppal)
Assistant Controller,
for CHIEF CONTROLLER OF IMPORTS & EXPORTS.

RECEIVED
29.5.67.

Endt No.6/698/62-Admn(G)/955² Dt. 29.5.67.

Copy forwarded to:-

1. The J.C.C.I.&E. ~~Madras~~ *Bombay*.
2. The Director, National Gadget Corps, Ashok Marg, Lucknow -1.
3. Shri G.I. Punvani, N.C.C. Directorate, Ashok Marg, Lucknow -1.

(C.N. Uppal)
Assistant Commissioner,
for CHIEF CONTROLLER OF IMPORTS & EXPORTS.

Directorate Court, Lucknow

New Delhi, the 30th December, 1980.
OFFICE MEMORANDUM

A216

Subject:- Grant of pensionary benefits to temporary Government servants retiring on superannuation on completion of twenty years temporary service.

In terms of rule 2 of C.C.S. (Pension) Rules, 1972, a Government servant including civilian Government servant in the Defence services appointed substantively to a civil service or post in a pensionable establishment is eligible for the grant of pension and death-cum-retirement gratuity. A Government servant who at the time of ~~his~~ retirement from service does not hold ~~at~~ lien on a permanent pensionable post is not eligible for pension and death-cum-retirement gratuity but is eligible for terminal gratuity under sub-rule (1) of rule 10 of sub-rule (1) of rule 11 of the C.C.S. (TS) Rules, 1965. The question of grant of pension to Government servants who retire after long years of service without being confirmed in any post has been under the consideration of the Government. The position has been reviewed and the President is pleased to decide that a Government servant who on his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority after he has rendered temporary service of not less than twenty years shall be brought within the purview of C.C.S. (Pension) Rules, 1972 and the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case. Consequently, such a Government servant will be eligible for the grant of superannuation or invalid pension, death-cum-retirement gratuity and family pension in accordance with the provisions of the aforesaid rules.

2. For computing temporary service for the purpose of the preceding para of this Office Memorandum, the spells of service which are treated as non-qualifying under the C.C.S. (Pension) Rules, 1972 shall be ignored. Interruption (s) in service shall amount to forfeiture of past service unless such interruptions are condonable under rule 28 of the C.C.S. (Pension) Rules, 1972.

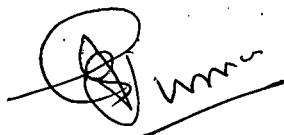
3. The provisions of sub-rule (1) of rule 10 and sub-rule (1) of rule 11 of the C.C.S. (TS) Rules, 1965 shall cease to be applicable to a Government servant referred to in para 1 of this Office Memorandum.

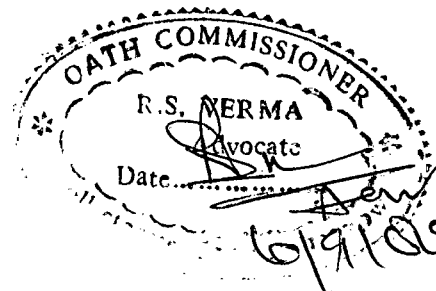
4. ~~Formal~~ Formal amendments to the C.C.S. (Pension) Rules, 1972 and C.C.S. (TS) Rules, 1965 will be issued separately.

5. The provisions of this Office Memorandum shall apply to those temporary Government servants who are in service on the date of its issue.

6. In so far as persons serving in the Indian Audit & Accounts Department are concerned these orders issue after consultation with the Comptroller and Auditor General of India.

Sd/- (T. Ramaswamy)
Joint Secretary to the Govt. of India.





Annexure A-23

D.O.No.38/9/87-P&PW

MINISTER OF STATE
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES
AND PENSIONS
INDIA
NEW DELHI

Dear Shri Poojariji,

February 27, 1987.

You may be glad to know that we have taken a decision that no Government servant shall retire without a pension payment order and an order for gratuity given to him on or before the date of his retirement. If in a rare case it is not possible to make a final order for payment of pension and gratuity, it has been decided that an order shall be passed under Rule 64 of the CCS (Pension) Rules 1972 or corresponding rule and provisional pension and provisional gratuity shall be ordered to be paid to the Government employee on the date of his retirement.

2. A copy of OM No. 38/9/87P&PW dated 23.1.1987 issued this behalf is enclosed.

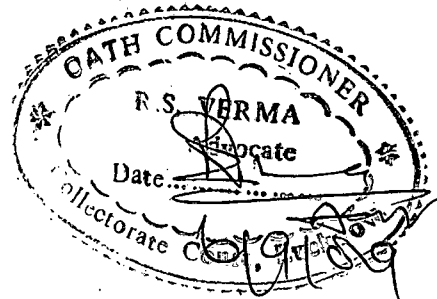
3. We believe that the Ministries/Departments would have geared up their machinery to achieve this objective. Hence, it has been decided to enforce the above order, strictly, w.e.f. 1.4.1987. The Heads of the Department/Office will be held accountable for implementing the order.

4. I am sure that I will have your fullest cooperation in implementing these orders in respect of Government servants retiring on or before 1.4.1987. It is the least that we can do to a Government servant who has served the Government loyally for a long number of years. I request you to kindly issue suitable instructions to the Heads of Department/Office under the control of your Ministry.

Yours sincerely,

Sd/-
(P. Chidambaram)

Shri Janardhan Poojari,
Minister of State for Finance,
NEW DELHI.



No. 38/9/87-P&FW

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners' Welfare
.....

New Delhi

January 23, 1987.

OFFICE MEMORANDUMSubject : Payment of provisional pension/gratuity.

The Central Civil Services (Pension) Rules, 1972 and the corresponding rules applicable to All India Services Officers, Armed Forces personnel and Railway employees provide for advance action to be taken by the Heads of Office and the Audit/Accounts Officers to ensure that the amount of pension and gratuity due to a retired Govt. employee is assessed well in time and the Pension Payment Order issued not later than one month in advance of the date of retirement. In cases where pension and gratuity cannot be settled as contemplated above, the Rules provide for the payment of provisional pension and provisional gratuity (e.g. Rule 64 of the CCS (Pension) Rules, 1972). If the Head of Office is of the opinion that the Government servant is likely to retire before his pension gratuity or both can be finally assessed and settled in accordance with the relevant Rules, he shall take expeditious steps to sanction up to 100% of pension as provisional pension and up to 100% of gratuity as provisional gratuity, in accordance with the Rules.

2. Representations have been made to the Ministry of Personnel, Public Grievances and Pension that provisional pension and provisional gratuity are not being sanctioned by the Heads of Office as provided for in the Rules. This is causing a great deal of avoidable hardship to retiring employees.

3. Government have taken a serious view of these complaints that the provisions of the statutory rules are not being observed. Heads of Office are advised to ensure that there is no occasion for complaints in future from the retiring employees and to follow the prescribed procedure in letter and spirit. Accountability in this regard will rest with the Head of the Office concerned.

4. If any central Government employee, on retirement, is not sanctioned provisional pension and provisional gratuity, pending a final determination of his/her pension and issue of the Pension Payment Order, he/she may send a complaint to the Department of Pension and Pensioners' Welfare for taking immediate action. The Government would like to ensure that retiring employees should on their retirement normally receive the final sanction of pensionary benefits. If delay in issuing a final Pension Payment Order is unavoidable, at least the benefits of provisional pension and provisional gratuity should be allowed as prescribed in the Rules.

5. These instructions do not apply to cases falling under Rule 9 of the Central Civil Services (Pension) Rules, 1972 and corresponding provisions in the Rules applicable to All India Services Officers, Armed Forces Personnel and Railway employees, etc.

The Ministry of Finance, etc. are requested to bring the contents of this Office Memorandum to the notice of all concerned for strict compliance.

Hindi version will follow.

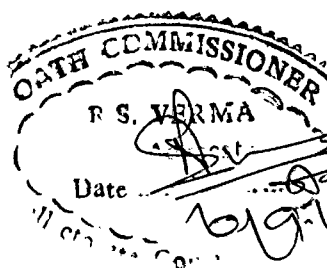
Sd/-

(I.K. Rasgotra)

Additional Secretary to the Govt. of India.

To

All Ministries/Departments of the Government of



A COPY OF THE MEMORANDUM OF UNDERSTANDING S.M.
No. 35/15/63-Bats(B), dated the 28th April, 1965 under endorsement
No. 15/58/65 Coord. (dated 21st May, 1965, Received from the
Government of India Ministry of Finance (Department of Revenue)
New Delhi, is forwarded to all Heads of Departments and Offices.

Annex-25

Sub:- Seniority, confirmation and promotion of
Civil Government servants during their absence
on military service in the present emergency.
@@@@**

The undersigned is directed to say that the question
of counting, for purposes of seniority in civil posts, the
military service rendered by civil Government servants,
who are permitted to take up such service during the present
emergency, and the procedure that should be followed in
regard to their confirmation and promotion in their parent
department/office, have been under examination for some time.
After careful consideration, the following decisions have been
taken:-

(I) Seniority

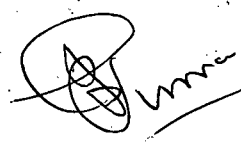
In the case of all Civil Government servants, who
are permitted to take up military service during the present
emergency, the period spent in military service/training
will be counted towards seniority in their civil posts. If
such a Government servant is promoted to a higher post in
his parent department/office during his absence on military
service, his military service from the date of such promotion
will count for seniority in the higher post.

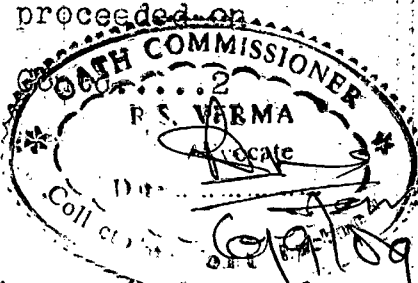
Where a minimum period of approved service is
prescribed either for the purpose of confirmation or
promotion, the period of satisfactory military service/
training of a civil Government servant will be counted
towards the prescribed minimum service.

(II) CONFIRMATION.

(a) Temporary/officiating civil Government servants
would be eligible for confirmation in their civil posts, while
they are away on military service.

(b) In cases where passing of any departmental
examination (s) is not a condition precedent to confirmation
in the civil post, a civil Government servant should be
considered for confirmation by the Departmental Promotion
Committee in his turn. For this purpose, a report on
his work and conduct may also be obtained from the
military authorities, if considered necessary. So long
as the military service is satisfactory, the report
should not be given any undue weight since it may not have
direct relevance to confirmation in the civil post. The
examination of the military report should primarily be
done with reference to the qualities, etc., required for
the civil post. If on the basis of the record for the
period up to the date of his relief for taking up military
service and after considering the report of the military
authorities, where necessary, the Departmental Promotion
Committee considers him fit for confirmation, then he
should be confirmed in the civil post from the date he
would have been so confirmed, had he not proceeded on
military service.





(c) Where the decision to confirm a civil Government servant in his turn, during his absence on military service, cannot be taken at the appropriate time and an assessment of his performance after his reversion to the parent department office is considered necessary for the purpose, a permanent vacancy in the grade concerned should be kept reserved for him. On reversion from military service, if he is adjudged fit for confirmation, within one year from such reversion, then he should be confirmed in that vacancy from the date he would have been so confirmed in his turn, if he had not proceeded on military service.

(d) The procedure set out at (b) and (c) above will also apply to cases where passing of any departmental examination (s) is a condition precedent to confirmation and the Government servant concerned had already passed such examination (s) before joining military service.

(e) In case where passing of any departmental examination (s) is a condition precedent to confirmation, a civil Government servant, who had not already passed the prescribed examination (s) before taking up military service should not be confirmed in the civil post while he is away on military service. In order to safeguard his interest, a permanent vacancy in the grade concerned should be kept reserved for him. On reversion from military service he should be required to pass the prescribed examination (s). For this purpose he should be allowed to take as many chances as he might have missed because of joining military service. If he passes the examination (s) within those chances and he is otherwise eligible, and is considered fit for confirmation then he should be confirmed in the civil post from the date he would have been so confirmed if he had passed the examination (s) in corresponding chance but for his taking up military service.

(f) The above procedure will apply also to persons recruited on probation against permanent civil posts or who are appointed to officiate in higher posts "on trial" and are permitted to take up military service during their probationary/'trial' period.

(III) PROMOTION:

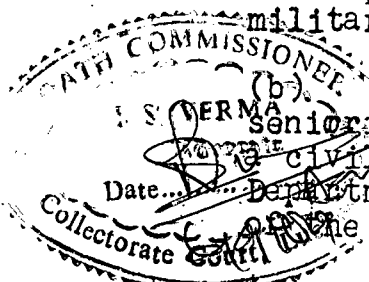
(a) As already provided in this Ministry's office memoranda No. 35/1/62-Ests (B), dated the 4th December, 1962, and the 12th September, 1963, respectively, regarding then, all civil Government servants, whether permanent or temporary, will be eligible for proforma promotion in their parent department / Office during their absence on military service.

(b) Where promotion is to be made on the basis of seniority-com-fitness, or selection on merit, the case of a civil Government servant should be considered by the Departmental Promotion Committee in his turn, on the lines of the procedure set out in paragraph (II) (b) above.

(c) The procedure at (b) above will also apply to cases where passing of any departmental examination (s) is a condition precedent to promotion to the grade concerned and a civil Government servant had passed such examination (s) before proceeding on military service.

Contd.....3

(d) In the cases referred to in (b) above, the decision to promote a civil Government servant in his turn cannot be taken at the appropriate time and an assessment of his performance after reversion to the parent



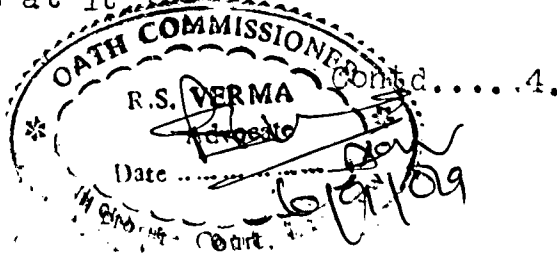
(d) In the cases referred to at (b) and (c) above, if the decision to promote a civil Government servant in his turn cannot be taken at the appropriate time and an assessment of his performance after reversion to the parent department / office is considered necessary for the purpose, he should not be promoted during his absence on military service. On reversion from military service, if he is adjudged fit for promotion within one year of such reversion, then he should be promoted to the grade concerned from the date he would have been so promoted in his turn, had he not proceeded on military service. To provide for such promotions, a sufficient number of persons promoted to that grade should be kept on an officiating basis, if necessary, so that they could be reverted in the event of promotion of the persons returning from military service.

(e) In cases where the passing of any departmental examination (s) is a condition precedent to promotion, a civil Government servant who had not already passed such examination (s) before taking up military service, should not be promoted while he is away on such service. On reversion from military service he should be allowed to take as many chances to pass the prescribed examination (s) as he might have missed because of joining military service. If he passes the examination (s) in one of those chances, he should be promoted with retrospective effect from the date he would have been so promoted if he had passed the examination (s) in the corresponding chance that he could have otherwise availed himself of, but for his joining military service. To provide for such promotions, a sufficient number of persons promoted to the grade concerned should be kept on an officiating basis if necessary, so that they could be reverted in the event of promotion of the persons returning from military service.

(f) In cases where civil Government servants are eligible for promotion in their parent department / Office through competitive examinations, which are limited to departmental candidates only, a civil Government servant who was eligible to take such an examination before taking up military service or who became eligible to take such examination while away on military service should, on his reversion from such service, be allowed as many chances to compete at such an examination as would have been available to him but for his joining military service and given the necessary age and length of service relaxations for this purpose.

If the competes successfully at the first/ Second/third available opportunity, he would be deemed to have passed the examination at the first/ second/third occasion he would have appeared had he not joined military service and should be assigned rank at the bottom of the corresponding Select List and should be promoted retrospectively with effect from the date from which he would have been promoted on the basis of such rank.

For the purpose of reckning the available opportunity an examination notified within three months from the date of joining the civil post by the Government servant after return from military service may be ignored unless he actually appears at it.



Where the names of two or more civil Government servants are so added to the same select List, their inter se ranking will be in the order of their merit at the competitive examination if they are selected for inclusion in the Select List on the results of the same competitive examination. If, however, names of two or more Civil Government servants are added to the same Select List on the basis of different examinations, their inter se ranking will be determined by the Ministry of Home Affairs in consultation with the Union Public Service Commission.

(G) Civil Government servants who on reversion from military service are promoted to higher posts in their parent department/office with retrospective effect from earlier dates, will be eligible for the difference between the civil pay and allowances and the military pay and allowances, where the former are higher, as a result of such promotion and also for the arrears of pay and allowances for the period intervening between their reversion from military service and actual promotion in their parent department/office provided that all the conditions precedent to the grant of benefit under the next below rule are fulfilled to the extent necessary.

2. Where confirmation/promotion is to be made with the approval of the Union Public Service Commission under the relevant rules, it would be obtained before a civil Government servant, who is covered by these orders, is confirmed/promoted.

3. The instructions contained in this office memorandum will apply mutatis mutandis to civil Government servants who are members of the Defence Reserves/ Territorial Army/Auxiliary Air Force and are called up for military service during the present emergency.

4. Cases not covered by these instructions will be decided on merits in consultation with this Ministry.

C I R C U L A R E.No. 103/65

Office of the Commissioner of Incometax,
U.P.-I, Lucknow.

C.No. 330-26E/62

Dated, Lucknow the 24th June, 1965.

Copy forwarded to all the Assistant Commissioner of Incometax and Charge Incometax Officers in U.P. and A.R. Incometax Appellate Tribunal, Allahabad, for information and future guidance in continuation of this office endorsement C.No. 330- 18 E/62(Cir.E.No.242/63) dated 17-10-63.

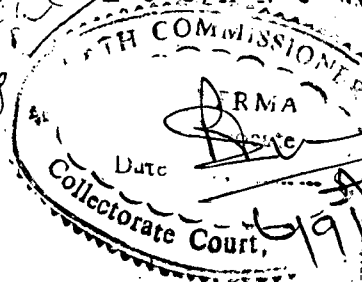
INTERNAL DISTRIBUTION

1. As usual.
2. R.K. for Files C.No. 577/48(Ins) Guard file.
3. E.C.I, III, V and VI

Prasad/
21.6

(N.D. Rastogi) Supdt.
For Commissioner of Incometax, U.P.-I,
L U C K N O W.

283/51
8251/51



not be justified under sub-rule (5) (b) of Rule 10. As regards its justification under any other provisions, it is now well settled that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision. If the power is otherwise established, the fact that the source of the power has been incorrectly described in the order would not make it invalid. The only sub-rule which could be and was relied upon by the Respondent was sub-rule (4) of Rule 10 and it was urged that under that sub-rule the order of dismissal having been set aside by the President in consequence of the decision of the Court acquitting the appellant, the appellant must be deemed to have been placed under suspension by the President from the date of original order of dismissal and he would continue to remain under suspension until further orders and it was in recognition of this position that the third part of the impugned order was made. This contention of the respondents is also without force. There are two conditions which must be satisfied in order to attract the operation of sub-rule (4). First, the order must be set aside in consequence of a decision of a Court of law and secondly the disciplinary authority must decline to hold a fresh enquiry on the allegations on which the order of dismissal was originally passed. The first condition was admittedly satisfied in the present case because the order of dismissal was set aside by the President in consequence of the decision of the Supreme Court, acquitting the appellant. The second condition was not satisfied as the enquiry revived and continued under the second part of impugned order was clearly not an enquiry on the allegations on which the penalty of dismissal was originally imposed on the appellant. Sub-rule (4) of Rule 10 had accordingly no application and it could not be invoked to justify the third part of the impugned order. The third part of the impugned order cannot be sustained even with reference to sub-rule (5) (a) of Rule 10. An order of suspension cannot continue to be in force after the relationship of master and servant has come to an end by making an order of dismissal. How can a Government servant be forbidden from performing the duties of his office when his office is no more and he has no duties to perform because he is dismissed. The order of suspension postulates the continuance of the relationship of master and servant; this postulate is not destroyed by sub-rule (5) (a) of Rule 10. This sub-rule operates only within the framework of the relationship of master and servant. Once this relationship of master and servant is dissolved, the suspension necessarily comes to an end and sub-rule (5) (a) of Rule 10 cannot possibly be construed to have the effect of continuing the suspension.

Sub-rule (5) of Rule 10 of the C.C.S. (C.C. & A.) Rules, 1965, postulates that a Government servant is suspended or deemed to have been suspended; this latter contingency would arise where a case falls within sub-rule (2) and during the continuance of his suspension "any other disciplinary proceeding" is commenced against him and provides that in such a case, a direction may be given that he shall continue under suspension until the termination of such disciplinary proceedings. The words "Government servant shall continue to be under suspension" in the juxtaposition of the opening clause clearly suggest that the basic condition for the applicability of sub-rule (5) (b) is that the Government servant should be under continuing suspension at the date when "any other disciplinary proceeding" is commenced against him and direction is given for continuance of suspension. It is indeed difficult to see how a Government servant can be directed to be under suspension unless he is under suspension at the time when such direction is given. There can be fresh suspension of a Government servant but how there can be continuance of a suspension which does not exist. Two conditions must, therefore, co-exist before action can be taken under sub-rule (5) (b); one is that the Government servant

must be under continuing suspension and the other is that during the continuance of such suspension "any other disciplinary proceedings" should be commenced against him.

[H.L. Mehra v. Union of India and others, 1975 A.S.R. (S.C.) 698; A.I.R. 1974 S.C. 1281; 1974 S.L.J. 374; (1974) 4 S.C.C. 397.]

(10) Suspension when continues/ceases.—The position of law can be said to be settled that if an employee is only suspended because of a criminal charge pending investigation and trial, then, if such Government servant is ultimately acquitted, then the order of suspension will cease to an end.

In case, thereafter the disciplinary authority thinks that a departmental enquiry under the rules is still necessary against the Government servant for his alleged misconduct, then fresh orders of suspension are to be passed. Anyhow, as both the prosecution and departmental proceedings can take place simultaneously, if the Government servant is suspended on both the counts, that disciplinary proceeding is contemplated or is pending and a law against him in respect of any criminal offence is under investigation or trial, then the suspension order will not cease to an end on mere acquittal and will subsist till the Government servant is exonerated in the departmental enquiry also.

[Sunar Lal v. State of Rajasthan, (1980) 3 S.L.R. 220.]

If in a departmental proceeding the person proceeded against is dismissed and subsequently his dismissal is set aside, the suspension would evidently terminate when the dismissal is set aside, because it was the departmental enquiry which ended in dismissal and the suspension ceased from that date. But where the person was suspended only because he was arrested and was being prosecuted in respect of a charge under the Penal Code, then an order from the officer who is empowered to suspend him would be necessary to reinstate him after his acquittal and he cannot be deemed to have been automatically reinstated after the termination of the criminal case. When, however, he had been served with charges of a departmental nature during the pendency of a criminal case and he was informed after the termination of the criminal case that his suspension would continue as charges had been framed and served upon him, therefore the criminal case had terminated, the suspension did not terminate automatically on the acquittal of the Government servant.

[Jagdish Chandra Bhasin v. State of U.P., A.I.R. 1957 All. 436.]

(11) Withholding promotion during enquiry is not punishment.—There is no right to promotion. All that a Government servant is entitled to is consideration for promotion to the higher post when he becomes due and eligible for it. It is inconceivable that a Government servant against whom departmental enquiry is pending can claim to be promoted to a higher post on this ground merely because he is likely to suffer a penalty if he is found guilty. Withholding a consideration for promotion to a higher post during the pendency of an enquiry is not a punishment at all. It is only an off-shoot of the misconduct which is alleged to have been committed by him.

[Jitendra Jayantil Joshi v. State of Gujarat, 1978 Lab. I.C. 904 (Guj).]

(12) Utmost caution to be exercised while ordering suspension.—Although suspension is not one of the punishments narrated in Rule 11, an order of suspension is only passed against the Government servant, for the reason that suspension brings to bear on the Government servant a serious and a very serious impact on the fair nature and good reputation that may have been earned and built up by a Government servant in

Annexure A-25(A)

12/11/69

Date

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2 MAY 1983

Dated the

O R D E R

Shri C.I. Punwani, Controller of Imports & Exports (Under suspension) in the office of the Joint Chief Controller of Imports & Exports, Bombay, was compulsorily retired by the Chief Controller of Imports & Exports, vide order No. 1/72/79-Vig/1035 dated the 13th August, 1982.

The said Shri C.I. Punwani, filed appeal dated 20.9.82 24.9.82 before the Appellate Authority against the said order of the CCI&E. The Appellate Authority after a careful consideration of full facts and circumstances of the case and also the representations submitted by Shri Punwani has come to the conclusion that:-

- (a) The procedure laid down in the CCS(CA) Rules, 1965 had been complied with by the Inquiring Authority/Disciplinary Authority. It is provided in the explanation under rule 14(23) (i) of the CCS(CA) Rules, 1965, that if in the opinion of the Inquiring Authority the proceeding of the inquiry establish any article of charge, different from the original article of charge, it may record its findings on such article of charge and the Government servant shall be given an opportunity to defend himself against such article of charge. Shri Punwani's contention that as one of the charges having been held as proved was not included in the original show-cause Memo and the Inquiring Authority was not competent to record its findings on that charge is not, therefore, correct;
- (b) The findings of the Disciplinary Authority are warranted by the evidence on the record; and
- (c) The penalty imposed on Shri Punwani is not severe.

The Appellate Authority has, therefore, ordered that the penalty of compulsory retirement imposed on Shri Punwani should be confirmed and his appeal rejected.

Accordingly, the appeal of Shri Punwani is rejected and the penalty of compulsory retirement imposed on him by the Chief Controller of Imports & Exports vide his order No. 1/72/79-Vig/1035 dated the 13th August, 1982 is upheld.

Shri C.I. Punwani,
5- Mall Avenue
Lucknow-226 001

(JOGENDER SINGH)
Director
6/9/83

GOVERNMENT OF INDIA'S INSTRUCTIONS.

1. Self contained speaking and reasoned order to be passed and to issue over signature of Prescribed Disciplinary/ Appellate/ Reviewing authority:-

As is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of C.C.S (C.C.A) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad v State of U.P. (A.I.R. 1970 S.C. 1302) observed that recording of reasons in support of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

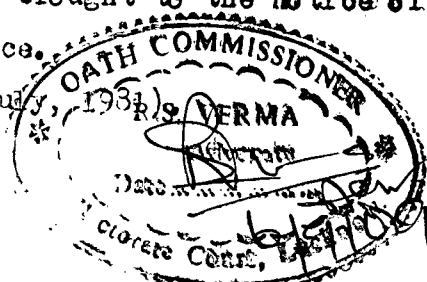
2. However, instances have come to notice of this Department where the final orders passed by the competent ~~authorities~~ disciplinary/ appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a court of law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

where,

3. Instances have also come to notice/ though the decisions in disciplinary/ appellate cases were taken by the competent disciplinary/ appellate authorities in the files, the final orders were not issued by that ~~competent disciplinary authority~~ but only by a lower authority. As mentioned above, the disciplinary/ appellate/reviewing authorities exercise quasi-judicial powers, and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

4. The contents of this O.M. may kindly be brought to the notice of all concerned for their information and guidance.

(O.M.No.134/1/81-ADV-I, dated the 13th July, 1981)



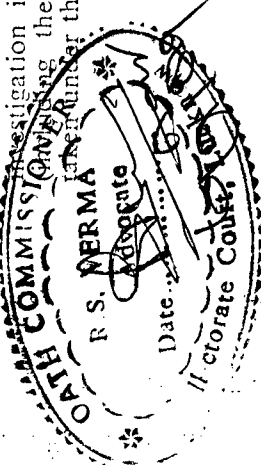
6. As regards the causes of delay mentioned in (iii) and (iv) of para 4 much improvement will be effected if, (a) it is impressed upon all concerned that both public interest as well as humanitarian considerations demand that no avoidable delay should occur in the disposal of disciplinary cases; and (b) any failure to give such cases due priority is itself regarded as a dereliction of duty and suitably dealt with.

7. As to possibility of delay occurring in the considerations of a case and tendering of their advice by the Union Public Service Commission the Ministry of Home Affairs are in correspondence with the Commission and they have every hope that satisfactory arrangements will be made to secure all possible expedition on the part of the Commission.

[M.H.A. O.M. No. 39/40/52-Est., dated the 4th October, 1952.]

(3) Procedure for departmental proceedings prior to criminal prosecution in cases of alleged criminal misconduct of Government servants.—In the Home Department Letter No. F. 31273 Public, dated the 15th November, 1935, it was laid down that in a case where it was intended to prosecute an employee for acts committed by him as a Government servant everything should be done to carry the departmental proceedings to as advanced a stage as possible before prosecution begins. It was also laid down that the finding and the penalty in the departmental proceedings should not be recorded till after the disposal of the criminal case. This matter has been reviewed. The postponement of decision in the departmental proceedings till after the criminal case is finally disposed of leads to undue delay in the completion of the proceedings. Moreover, if the officer is placed under suspension, he has to be paid subsistence allowance during the entire period of prosecution, and if there is an appeal against the conviction till the appeal is decided. If action is taken immediately after the conviction in the trial Court, difficulties sometimes arise when the conviction is appealed against. In order to avoid these difficulties, as well to ensure the earliest possible decision in such cases it has now been decided that the following procedure should normally be adopted in cases of alleged criminal misconduct of Government servants.

2. As soon as sufficient evidence is available for the purpose of investigation in cases of misconduct, whether such investigation is conducted departmentally or through the police or through the Special Police Establishment, action should be taken immediately under the Civil Services (Classification, Control and Appeal)



Rules or other appropriate disciplinary rules and disciplinary proceedings should be initiated forthwith. Such departmental proceedings need not interfere with the police investigation, which may be continued, where necessary. After the departmental proceedings are concluded, and the penalty, if any, imposed as a result thereof, the question of prosecution should be considered in the light of such material as may have become available as a result of the investigation.

3. In suitable cases criminal proceedings should thereafter be initiated. Before initiating such proceedings advice on evidence should be obtained from Government Counsel, and in more important cases from the Attorney General or the Solicitor General. Where the conduct of an officer discloses a grave offence of a criminal nature, criminal prosecution should be the rule and not the exception. Where competent authority is satisfied that there is no criminal case which can be reasonably sustained against such officer, criminal prosecution should not, of course, be resorted to but prosecution should not be avoided merely on the ground that the case might lead to an acquittal.

4. Should the decision of the Trial Court or the appellate Court, as the case may be, lead to the acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. A consideration to be taken into account in such review would be whether the legal proceedings and the departmental proceedings covered precisely the same ground. If they did not, and the legal proceedings related only to one or two charges i.e., not the entire field of departmental proceedings, it may not be found necessary to alter the decision already taken. Moreover, it should also be remembered that while the Court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold that the Government servant was guilty of a departmental misdemeanour and he had not behaved in the manner in which a person of his position was expected to behave.

5. In this connection, attention is invited to the requirements of Article 311(2) of the Constitution in regard to penalties of dismissal or removal or reduction in rank. This Article provides that no person, who is a member of Civil Service of the Union or holds a civil post under Union shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. A proposal to amend Article 311(2) is under

explain how the lapses had not contributed to the loss in any manner. The disciplinary authority is also required to give a clear finding in the punishment order on both these points. If it is not done, the order, awarding the penalty of recovery will be liable to be set aside. The Heads of Circles and Administrative Offices etc., are requested to bring these instructions to the notice of all concerned so that the disciplinary proceedings for a penalty of recovery may not suffer from a procedural flaw.

[D.C., P. & T. No. 114/16/78-Dis., dated the 13th February, 1981.]

(c) *Monetary limit.*—It is clarified for the information of all concerned that recovery from pay as a punishment for any pecuniary loss caused by a Government servant by negligence or breach of orders should not exceed one-third of basic pay (i.e., excluding dearness pay or any other allowances) and should not be spread over a period of more than three years. In other words, the recovery should not exceed one year's basic pay in any case.

[M.A., P. & T. No. 332/73-Dis., dated the 17th August, 1971.]

(d) *In the case of officials due to retire shortly.*—In case of recovery of loss imposed on a Government servant as a measure of penalty, the recovery from pay should be effected in the normal course. If during the course of recovery, the official retires from service and a balance is still outstanding for recovery, the amount so outstanding cannot be adjusted against the gratuity without following the procedure laid down in Art. 351-A, C.S.Rs. [Rule 9 of C.C.S. (Pension) Rules, 1972]. In cases where a Government servant is due to retire shortly and the amount of loss caused by a Government servant cannot be recovered in full because of his impending retirement, the final punishment order should not be passed and the case referred to the Directorate for initiation of action under Article 351-A of the C.S.Rs. along with the record of disciplinary proceedings.

[Rule 109 of P. & T. Manual, Volume III.]

CASE LAW

(i) *Compulsory retirement.*—(i) *Scope of right under Art. 311 (j).*—Now coming to the express words of Fundamental Rule 56 (j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do. If that authority *bona fide* forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st Respondent challenged the opinion formed by the Government on the ground of *mala fide*. But that same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st Respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The above-mentioned Rule 56 (j) is not intended for taking any penal action against the Government servant. That rule, merely embodies one of the facets of the 'pleasure' doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the

appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not efficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisation, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to enervate its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

[Union of India v. J. N. Singh, A.I.R. 1971 S.C. 40]

(ii) *Does not attract Art. 311.*—(i) Stigma must stem from the order itself and not be drawn out by a speculative process by reading into the order any innuendo from other circumstances or possibilities or suspicions. Merely because a person is a Government servant it does not mean that the ordinary relationship of master and servant is extinguished. The employee entered into service on the specific condition that either on his attaining the age of 50 years or 25 years of qualifying service, it will be open to the employer to consider the case of the employee for compulsory retirement. Where, therefore, on materials, the employer decides to compulsorily retire, the petitioner cannot be heard to say that the adverse remarks should be communicated and he should be given an opportunity to reform himself. In other words, the employer is no longer interested in keeping the petitioner in service. This freedom certainly the employer in the case, namely, the Government, has.

[S. Lakshminarayana v. The Secretary to the Government of Tamil Nadu, (1978) 2 M.L.J. 198.]

(iii) The relationship between the Government and its servants is essentially that of a master and servant, excepting that certain protections are afforded under Arts. 310 and 311 of the Constitution of India. From that it cannot be contended that the law of master and servant would in any way cease to have application. The employee entered service on the specific condition that either on attaining the age of 50 years or on completion of 25 years of qualifying service, he would be compulsorily retired if the employer comes to such a decision. Where, therefore, the employer on certain materials comes to that conclusion, the Court cannot say that the order of compulsory retirement casts a stigma or is in any way unjustified and therefore should not have been made. It is well known if the order does not cast any stigma, there cannot be a search for the stigma by delving into the files. Nor again would this Court be justified in saying that notwithstanding the materials, the petitioner shall be continued in service. If that were so, the freedom of employment would certainly be curtailed by the Court and that cannot be done.

[R. Srinivasan v. Government of Tamil Nadu, (1973) 2 M.L.J. 101.]

(iv) *No punitive retirement based on adverse entries in confidential records, which are later ignored for promotion.*—The condition precedent for making an order of compulsory retirement is the appropriate authority forming *bona fide* opinion to do so in the public interest.

Where the confidential report disclosed that the opinion of the reporting as well as the reviewing authority in the matter of the integrity of a Government servant was consistently in favour of the servant, the Government cannot be said to do so in the public interest.

Collectorate
Date
10/9/80

Annexure A 30

The Jt. Chief Controller of Imp. & Exp.,
New C.G.O. Building,
New Marine Lines, BOMBAY-400020.

PAYMENT OF OUTSTANDING 23 TA/DA BILLS FOR ATTENDING CBI CASES
AT LUCKNOW AND DEPARTMENTAL INQUIRY AT NEW DELHI. 24th REMINDER.

Si r,

Kindly refer to my 24 reminders on the above subject to which neither any acknowledgement has been received nor any payment has been received so far.

2. Even the Chief Controller has sent several letters in this regard, but it is not known why the payment has been withheld. Why the harassment and malicious attitude in withholding this authorised amount due to me.

- a) CCI&E.No.6/698/62-ADMN(G)/3649 dt.17.5.79, regarding TA/DA bills ,JCCI&E,Bombay is being requested to look into the matter and you will be informed in due course.
- b) CCI&E.No.6/698/62-ADMN(G)/7053 dt.26.9.79, JCCI&E,Bombay is being requested to finalise your TA/DA outstanding bills without any further delay.
- c) CCI&E No.6/698/62-ADMN(G)/4532 dt.5.9.1986,kindly to look into the matter and settle the claims early under intimation to this office.(3)According to the advice of the Ministry of Commerce,it is purely an administrative matter and no vigilance angle is involved.

3. Thus inspite of my 23 reminders ere this and above letter from CCI&E, it is not known why payment is being withheld.

4. 7 TA/DA claims were submitted on 16.2.1977 pertaining to the following journeys:-

- a) 17.5.75 left Bombay for Lucknow 1st class fare Rs.207.50 each
22.5.75 left Lucknow for Bombay. way, attended Court 20 & 21.5.75
- b) 2.7.75 left Bombay for Lucknow attended Court.5.7.75 & 1.8.75
3.8.75 left Lucknow for Bombay.
- c) 5.9.75 left Bombay for Lucknow attended 8 to 10.9.75, 21 & 22
25.10.75 left Lucknow for Bombay. Oct, 75
- d) 6.11.75 left Bombay for Lucknow attended 10,11-11.75, 26.11.75,
13.12.75 left Lucknow for Bombay. 4.12.75.
- e) 5.2.76 left Bombay for Lucknow attended, 15.4.76, 28.6.76, to
8.9.76 left Lucknow for Bombay. 30.6.76, 1 ' 2-9-76
- f) 4.10.76 left Bombay for Lucknow. attended 13.10.76 to 21.10.76
26.10.76 left Lucknow for Bombay.
- g) 25.11.76 left Bombay for Lucknow attended 4.12.76, 17.1.77 to
8.2.77 left Lucknow for Bombay. 21.1.77

Out of above 7 claims the JCCI&E, Bombay vide his letter No. ADMN/(G)/GIP/77/309 dt.18.4.1977 (Copy enclosed for ready reference) intimated "With reference to his TA claims in connection with his tour to Lucknow to attend Court Cases, Shri.G.I.Punvani is informed that out of the T.A. claims submitted by him, whatever claims are submitted by him in time in all respects have been accepted and bills will be prepared for the same, for which he is requested to sign the enclosed certificates and forward the same to this office.

5. That inspite of my sending the necessary certificate and the Court attendance certificates, unnecessary objections were raised.

cont. . . 2.

Encl. No. 1

cont..

CATH COMMISSIONER

F S DERMA

6/19/09

Probate Court

2.

by J.C. Shri M.C. Satyawadi, stating therein that I was not entitled to TA/DA as I had filed cases against CBI. In spite of the fact the office clarified that cases had been filed by CBI i.e. STATE VS G.I. PUNVANI still to unnecessary harass me such a Senior officer asked what was the meaning of State vs G.I. Punvani, it is Malicious ignorance. otherwise an IAS Officer also has to do Judicial work and how one can ask this question "What is meant by State vs G.I. Punvani" one has only to reserve his comments. However, I am enclosing the whole noting of file No. ADMN/G/GIP/77, Vol-1, II etc to prove the unnecessary malicious harassment metted out to me to financially cripple me and the same is still continuing by denying me my rightful payment of TA/DA bills. Copy of noting of file is enclosed as Enclosure No. 2.

Encl. No. 2.

6. Even accepting that only fund of Rs. 1350/- out of Rs. 40000 was available for year 1978-79, but the payment due ought to have been immediately when funds were available in F.Y. 1979-80. Not only this but the claims sent thereafter up to Feb 1982, why were the rest of the claims held? Although J.C. had ordered on 12-4-79 to make payment.

7. The JCCI&E, Bombay went to the degree of asking me to produce evidence of the journeys performed on the dates, which also luckily since I held several tickets or reservation slips was sent, although there is no provision to ask a Gazetted Officer, whose certificate is enough. If it was felt that the journeys were not performed, then an inquiry should have been instituted and all Court attendance certificates should have been declared as false. Even no TA/DA has been paid for attending CCI&E, Office for inspecting record, when necessary certificate of attendance from CCI&E, was enclosed as also when certificate of Commissioner Departmental Inquiry was also enclosed.

8. The harassment metted out to me by denying me my rightful TA/DA may kindly be got inquired and Officers/Officials guilty of harassing me punished.

9. I am once again enclosing copies of all my 23 claims with necessary certificate and also Court Certificate, photostat copies, to enable JCCI&E, office to immediately prepare my TA/1 claims if the same have been lost by Bombay office or purposely misplaced.

9. Kindly prepare my TA/DA claim and total amount along with full interest at bank rates as due from 16.2.1977, and when other claims were made be paid to me to avoid unnecessary litigation for the harassment metted out to me by crippling me financially for obvious reasons.

Thanking you.

Yours faithfully,

TA claims may kindly be prepared on pay Rs 1200/-pm which was due from 1-1-1975
see Nohing No 37/N

(G.I. PUNVANI)

Copy to :

Shri. R.L. Misra, IAS,
Chief Controller of Imports & Exports,
Udyog Bhawan, NEW DELHI-110001, to see how I have been harassed by denying me my rightful TA&DA claims due from 17.5.1975 to 16.2.1982, 3 claims were calculated to Rs. 2143/-, thus 24 claims would be appx Rs. 18000/- and the interest for 8 years, 7 years etc would appx be Rs. 22000/-, thus total of Rs. 40,000/- is due for which extra FUNDS may kindly be sanctioned to enable them to make payments.

Enclosed:-

① Copies of 23 TA/DA claims, photostat copies of Court attendance certificates and other certificate.

② Enclosures No 1 & 2.

[Handwritten signature]

THE COMMISSIONER

[Handwritten signature]
6/9/89

OFFICE OF THE
JT. CHIEF CONTROLLER OF IMPORTS & EXPORTS,
"Central Government Offices New Building,"
South East Wing, New Marine Lines,
Churchgate, BOMBAY

Annexure A-31

No. Admn/(G)/GTP/77

Dated: the 18th April, 1977

MEMORANDUM

With reference to his P.A. claim in connection with his tour to Lucknow to attend Court cases, Shri G. I. Punwani is informed that out of the P.A. claims submitted by him, whatever claims are submitted intime in all respects have been accepted and bills will be prepared for the same, for which he is requested to sign the enclosed certificates and forward the same to this office.

Encl: 4

(G. D. Srivastava)
Controller (Administration)
for Jt. Chief Controller of Imports & Exports.

To

Shri G. I. Punwani,
5, Ball Avenue,
Lucknow.

SHR.



FILE NO. ADMN/G/GIP/77 (Vol-I) OF JCCI&E, BOMBAY.

NOTING SIDE.

23/N. Shri.G.I.Punvani has submitted four TA claims in respect of his journey from Bombay to Lucknow on 17.5.75, 2.7.75, 5.9.75 and 6.11.75 to attend Court cases in the Court of Special Judge Anti Corruption (Central), Lucknow at F/PUC.

Shri.G.I.Punvani is under suspension and has to take permission before leaving H.Q's. It is not known whether he had applied to Vigilance Branch for such permission on 17.5.75, 2.7.75.

As regards his TA claims he has not produced on any occasion a certificate from Court on the days mentioned in his claims. He had submitted all the claims on 24.11.76. According to rules the TA claims should be submitted within one year, otherwise it will be debarred claim.

We may therefore inform Shri.Punvani that the claims cannot be accepted for payment after DC/JC's approval.

Sd. Contt (Admn) 15.1.77

24/N. Ref. Admn Br remarks dt.15.1.77 on prepage.

(2) Copies of the applications received from Shri.G.I.Punvani, Contl. who has been placed under suspension w.e.f. 6.6.75 for leaving H.Q's (Bombay) are furnished herewith (3 applications).

(3) As regards his leaving H.Q's on 17.5.75 ~~from 17.5.75~~ prior to the date of his suspension and information thereof for leaving H.Q's will not be applicable.

(4) If approved, we may return the file to Admn. Br. please.

Sd. Contl. (Vig). 29.1.77.

As regards X on prepage Vig.Br. has certified that necessary intimation were sent by Shri.Punvani for leaving H.Q's to attend the Court cases at Lucknow vide their noting.

As regards Y Shri.Punvani has not submitted any certificate from Court for his attendance on 17.5.75, 2.7.75, 5.9.75 and 6.11.75. Hence the claims cannot be prepared in the absence of the above certificates.

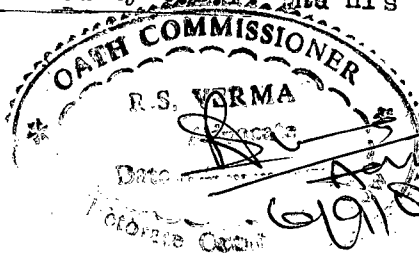
Regarding Z on prepage it is submitted for orders whether his TA claims can be treated as time barred claims under SR.194 A or can be treated as Arrear Claims. If J.C. approves to investigate the arrear claims over one year.

Sd. ~~XXXXXX~~ 29.1.77.

25/N. If J.C. approves, his claims can be treated as Arrear claims for more than one year and if J.C. gives investigation certificate, we may submit his claims to Audit when TA budget grant is sanctioned. However Court certificates will be necessary please.

Sd. Contl. (Admn) 31.1.77.

26/N. DC' (Admn) query above. The Court cases attended by him at Lucknow pertain to the enquiry conducted by C.B.I. and his tours in such cases



should be reimbursed by Govt. as otherwise admissible under rules. Sd.1.2.77.

wrongly after 26/N number given 23/N
23/N Shri.G.I.Punvani Contl. under suspension has submitted his TA claim with respect of his journeys from Bombay to Lucknow and back in connection with Court cases. Since he has not produced prescribed certificates for the bill, we may call for the same. Draft Memo placed below for approval. Sd.14.4.77.

24/N. Shri.G.I.Punvani, Controller (under suspension) has submitted the tour TA particulars in connection with his tour to Lucknow to attend Court cases No.33 to 41 of 75 "STATE V G.I.PUNVANI & Others" may be seen at F/PUC.

He has produced necessary Court certificates which may be seen at F/X.

A tour TA bill No.G-154/77 dt.27.5.77 for Rs.2148/- is prepared and placed below for Cont(Admn) signatures and J.C's countersignature at F/ A & B.

27.5.77

The tour TA bill of Shri.G.I.Punvani Contl.(under suspension) may be signed by Contl.(Admn) and J.C. may kindly countersign the bill at F's A & B please.

27.5.77

Sd. Contl.(Admn).1.6.77

Sd. D.C.(Admn).1.6.77.

Is all this to be treated as on tour or is it private work?
 Is he giving details of his stay away from Bombay.

Sd.M.C.Satyawadi, J.C. 8.6.77

25/N. J.C's remarks on prepage may be seen. The TA/DA are drawn in favour of Shri.G.I.Punvani in respect of his journeys to Lucknow to attend Court cases which are to be considered as Official work and hence TA/DA is admissible for this.

As regards the details of his stay from out of Bombay, they are given in his TA particulars which may be seen at F/Q.

The ~~XXX~~ Jt.Chief may be requested to countersign the TA bills at A & B.

9.6.77

Sd. Contl(Admn) 9.6.77

J.C. may kindly countersign.

Sd. D.C(Admn) 10.6.77.

Discuss with J.C. 12.6.77.

26/N. I recall that the cases stated to be going on in the Court concerning Shri.Punvani have been filed by Shri.Punvani himself and not by Govt. As such, it appears quite ridiculous for Govt. to pay him for going and attending such cases. Could you check all details of these cases from the Vigilance Section and then examine in the light of the above the rules on the subject?

to D.C(Admn)



Malicious remarks

Ref. J.C's order above.

This is a case regarding his TA/DA claimed for attending the Court in connection with the cases filed against him by the C.B.I.

As per certificates issued by the Special ~~JUDGE~~ Court, it is stated that they have clearly stated therein that he has attended the Court in cases No's 33 to 41 of 1975 "STATE V SHRI.G.I.PUNVANI & OTHERS" and as such, Shri.Punvani has not given the certificates of the cases which he filed against the Govt. Here it is also emphasised that Shri.Punvani has attended the Court from May, 75 to April 77 and claiming for his TA/DA does not mean that he has taken passages every time from Bombay to Lucknow and vis-a-vis as per certificates of the ~~Court~~ Court. He has (27/N) definitely informed this office that he was staying/camping at Lucknow to pursue the cases. In view of the above, we have to see the date of his journey performed by him given in proforma (prescribed) for claiming TA/DA. This has to be verified by the Gazetted Pay Bill Branch. However regarding his claiming TA/DA for 20.5.75 to April 77, the position of his intimation to this office is given here under:-

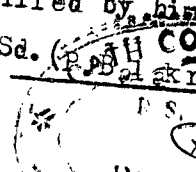
(1) 20.5.75, This office has received an intimation from Court of Lucknow in a Summon and served on him to attend Court.

(2) from 5.7.75

to 22.4.77. Shri.Punvani has submitted an intimation on 7.6.75, 24.6.75, 20.12.75, 1.10.75, 1.10.76, 15.2.77, 22.5.77, 12.7.77 and 21.7.77. Shri.Punvani was retired prematurely from Govt. Service w.e.f 15.12.75 and reinstated in service on 11.6.76 and there will be no intimation for the very period. However, it will be observed that Shri.Punvani has covered his period of absence from H.Q's by giving the above intimation in general, but we have no machinery to check whether he was really at H.Q's or not. Further, Special Judge Anti-Corruption, Lucknow will not give any certificate unless he attended the Court. Actually Jt.Chief has ordered in the Admn file (P.26/N) to verify from the Vigilance Sec, whether Shri.Punvani attended the Court which was filed by the Govt. or by himself. The cases attended by Shri.Punvani at Lucknow filed by Govt. and in that case he is authorised to get the TA/DA. It is confirmed that Shri.Punvani has attended the Court for hearing of the cases filed by the Govt., but verification of his claim TA/DA to be dealt by the Gazetted Pay Bill Branch/Audit on support of the documents submitted by him.

Sd. Contl. (Vig). 5.8.77.

From the details available on the file, it is seen that Controller Shri.Punvani attended Court cases No. 33 to 41 of 75 "State v Shri G.I.Punvani" and not cases filed by himself.

Sd.  COMMISSIONER
P.S. VERMA
Vig. 16.8.77

Date.....

to J.C.

Sd.(K.Jayarajan) 17.8.77.

Forwarded to Contl.(Admn)

Sd.(P.Balakrishnan) Contl.(Vig)
17.8.77.

30/N. In view of the D.C(Admn) remarks dt. 3.9.77 at P. 28/N, the file was sent to Vig. Br for further clarification and X on prepage may be seen.

It is clear that the cases attended by him for which TA bill is prepared and placed below are not his cases against Govt.

Sd. Contl (Admn) 15.9.77.

D.C. (Admn), Please discuss what is the meaning of "Stae v Punvani"

Sd. J.C. dt. 2.9.77.

31/N. Necessary rules i.e SR.153-A, 154 regarding journeys ~~XXXXXX~~ during Suspension to give evidence or to attend the Court of Law is placed below at Z/A of the Supplementary Rules for discussion with J.C. as desired by him.

D.C(Admn) may kindly see rules S.R.153-A and 154 P/419(FA). J.C. has desired to discuss the case with him.

to D.C. (Admn)

Sd. Contl. Admn, 26.9.77.

33/N. J.C's orders and Vig.Br. reply may be seen on prepage and the above. In view of this J.C. may be requested to countersign the TA bills of Shri.G.I.Punvani at A & B.

23.12.77.

As per J.C's order on prepage, the clearance has been obtained from Vigilance Br. vide their remarks above. J.C. may kindly countersign the TA bill of Shri.Punvani at F's A & B please.

Sd. Contl. (Admn), 24.12.77.

D.C. and Contl. (~~XXXX~~) (Vig) will bring (F's A & B) up with these papers.

Sd. J.C. . 3.1.78.

34/N. The case has been discussed with D.C(Vig) and J.C.

Shri.G.I.Punvani may be directed to produce evidence to show that he actually performed rail journeys on the dates in the bills.

Sd. Contl. 3.2.78.

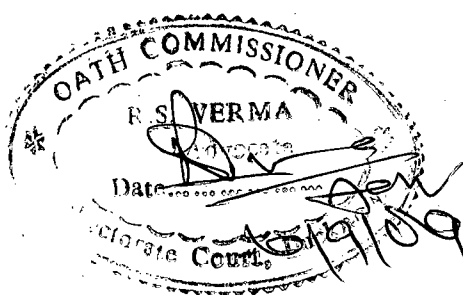
37/N. Shri.G.I.Punvani, Contl (under suspension) has assumed the charge of Controller of Imports & Exports in our office on 12.8.74 (F.N) on transfer from DCCI&E, Kanpur.

Before joining to this office he has been granted leave as under vide CCI&E sanction letter dt. 12.8.76 at page 183/C.

(1) E.L. for 12 days wef.	...	17.7.72 to 28.7.72
(2) H.P.L. for 19 days w.e.f..		29.7.72 to 16.8.72.
(3) Commuted leave for 20 days wef...		17.8.72 to 5.9.72 and
(4) Extra Ordinary Leave for 703 days from	KX 6.9.72 to 9.8.72	with Medical certificate.

DCCI&E, Kanpur has not paid leave salary and allowances for the above period and they have requested to our office to draw the same

[Handwritten signature]



Following tours are claimed in the bill in question.

(1) 5.2.76 (2) 4.10.76 (3) 25.11.76 & (4) 15.2.77.

Other than the certificates produced from the Court that he had attended on these days no other documentary evidence is available or submitted by him to verify that the journeys were actually performed as claimed on the bill.

Submitted for J.C.'s information.

Wherever there is clear documentary evidence, we may allow the claims as per rules, for the rest endorse as at 'B' above.

Sd. J.C. 12.1.79

The funds ~~are~~ available are Rs.1350/- out of Rs.40,000/- sanction for the year.

P/53/N. Since the claims are more than one year old, we may work out total amount and to put up to J.C. for approval and investigation of arrear claim pl.

Sd. Contl (Admn). 6.11.79.

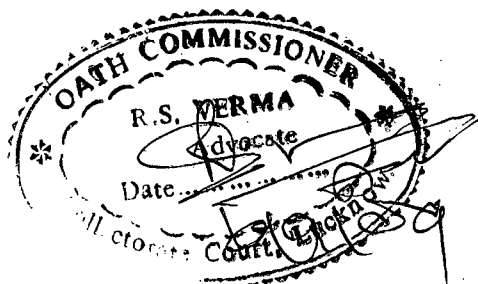
PART-III of FILE.

Page No.

17. Reminder No. 10 dt. 22.7.1980 to pay for 17 TA/DA bills.
18. Certificate of attendance at New Delhi on 9.7.80, of No. 18
19. TA/DA claim No. 18
21. Reminder No. 6 to CCI&E, copy to JCCI&E, Bombay dt. 10.9.79 that 16 bills outstanding.
22. TA/DA bill No. 17 dt. 16.10.79 for journey on 22.9.79, etc.
28. Reminder No. 11 dt. 13.9.80, enclosing Court attendance certificates dt. 12.3.80, 1.5.80, 13.6.80, 5.7.80 and 23.8.80.
32. Reminder No. 13 dt. 22.12.80, that 19 outstanding bills may kindly be paid and TA/DA bill No. 20 enclosed for attendance at New Delhi on 9.12.1980.
43. Reminder No. 15 to CCI&E, New Delhi with copy to JCCI&E, Bombay dt. 12.9.1981, to pay 19 outstanding TA/DA bills.
47. Reminder No. 14 dt. 23.3.81 for payment of 19 outstanding TA/DA bills also enclosed Court attendance certificate ~~XX~~ for 9.1.81, 23.1.81 and 21.2.81 and 2cd to 4th Mar, 81.

(Thus inspite of clear orders of J.C. dt. 12.1.1979, and almost 24 reminders, last being dt. 11.10.1986, on receipt of CCI&E No. 6/698/62/Admn(G)/4532 dt. 5.9.1986, still payment of 24 TA/DA bills has not been made, and I have been unnecessarily harrassed, when the necessary certificate was given along with bills, even evidence of actual travel on dates furnished by way of 1st class ticket, reservation tickets, or Air Tickets, but payment has not been received till date and No Vigilance angle is involved as certified by CCI&E vide dated 6.9.1986, payment along with interest may kindly be made immediately).

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Annexure A-33

APPENDIX II

Orders regarding grant of Travelling Allowance, etc., to various persons during disciplinary proceedings

(1) Reimbursement of travelling allowance for journeys undertaken for appearing before Police/Court as a suspect/accused.—The Government of India have had under consideration the question whether, and if so at what rates, travelling allowance should be allowed to Government servants in the following two types of cases :—

(i) Where a Government servant, whether he is under suspension or not, performs journeys to attend Police/Special Police Establishment enquiry in connection with a case in which he is suspected to be involved.

(ii) Where a Government servant undertakes journeys during suspension for appearing in a Court of Law, as an accused, and is later on acquitted by the Court and reinstated in service or would have been reinstated in service but for death or his having attained the age of compulsory retirement or being allowed to retire voluntarily.

As regards cases of the first type, it has been decided that travelling allowance as for a journey on tour may be allowed to a Government servant for such journeys provided that they are performed under the direction of, or with the approval of, the Head of Office in which he is for the time being employed, or was employed before suspension.

As regards cases of the second type, it is observed that travelling expenses in respect of these journeys cannot form part of the claims for reimbursement of costs to be considered by the Union Public Service Commission under Article 320 (3) (d) of the Constitution. In view of this, it has been decided that in respect of these journeys, travelling allowance as for a journey on tour, based on the grade to which the Government servant belonged before suspension may be reimbursed by the Administrative Ministry concerned, provided the legal expenses incurred by him in defending such proceedings are reimbursed to him, in full or in part, under the aforesaid Article of the Constitution. In cases where the journeys were performed by the Government servant by rail/steamer in a class lower than the class to which he was entitled before suspension, the fares of the class actually used, in addition to his other entitlements of travelling allowance as on tour, may be paid to him.

[C.I., M.F., O.M. No. F. 5 (151-IV/59, dated the 20th February, 1959 as modified by O.M. of even number, dated the 22nd July, 1960.)]

(2) Travelling Allowance to a Government servant charged to appear before the Inquiry Officer.—A question has arisen regarding the admissibility of travelling allowance to a Government servant against whom an oral enquiry is held under the C.C.S. (C.C.A.) Rules, 1965 and who is required to proceed from one station to another to appear before the officer conducting enquiry. The President has been pleased to decide that in such cases the Government servant concerned may be allowed T.A. as on tour under S.R. 154.

2. No travelling allowance will, however, be admissible to the charged person if the enquiry is held at a place other than his headquarters expressly at his own request.

[C.I., M.F., O.M. No. F. 5 (99) dated the 20th November 1967.]

(3) Travelling Allowance to a Government servant under suspension to attend departmental enquiry.—A Government servant under suspension who is required to perform journey to attend the departmental enquiry may be allowed travelling allowance as for a journey on tour from his headquarters to the place where the departmental enquiry is held or from the place at which he has been permitted to reside during suspension to the place of enquiry, whichever is less. No travelling allowance will, however, be admissible if the enquiry is held at the outstation at his own request.

NOTE.—His travelling allowance will be regulated by the grade to which he belonged prior to his suspension.

[Supplementary Rule 153-A.]

It has been decided that the competent authority can change the headquarters of a Government servant under suspension, if this is in the interest of public service; and that the travelling allowance of the Government servant in such cases should be regulated by the grade to which he belonged prior to the suspension, vide Note below S.R. 153-A.

[C.I., M.F., O.O. No. 2018-E. IV(B)/60, dated the 30th July, 1969 to the A.G., C.R.]

(4) Travelling Allowance to the delinquent for perusal of documents.—The Government of India have had under consideration the question whether and, if so, at what rates, T.A. should be allowed to Government servants who undertake journeys to outstations to peruse official records for the preparation of their defence in connection with the disciplinary proceedings instituted against them. It has been decided that T.A. as for a journey on tour without any allowance for halts on journey or at the outstations may be allowed to the Government servants, whether on duty or on leave or under suspension, for the journeys undertaken by them to the stations where the official records are made available. The T.A. will be allowed from the headquarters of the Government servant or from any other place where the Government servant may be spending his leave or where the suspended officer has been permitted on his own request to reside, but not exceeding what would be admissible had the journey been undertaken from the headquarters of the Government servant. The grant of travelling allowance will be subject to the following further conditions :—

(i) the inquiring officer certifies that the official records to be consulted are relevant and essential for the preparation of the defence statement;

(ii) the competent authority certifies that the original records could not be sent to the headquarters station of the Government servant or the bulk of the documents relied on for the possibility of copies being made out, and sent; and

(iii) the Head of office, under whose administrative control the Government servant is, certifies that the journey was performed with his approval.

2. It has also been decided that, in the case of officers not under suspension at the time of undertaking the journey, the period spent in transit to and from the minimum period of stay required at the place where official records are made available for perusal should be treated as duty or leave, according as the officer is on duty or on leave at the time. In case of officers under suspension, who are subsequently reinstated in service, the period will be treated as duty, leave or otherwise in accordance with the orders passed by the competent authority under F.R. 54 (1).

[C.I., M.F., O.M. No. F. 5 (79)-Para. IV/59, dated the 20th October, 1959.]

In the Central Administrative Tribunal, Circuit Bench,

Lucknow.

Supplementary Counter Affidavit

In

Registration (O.A.) No. 77 of 1989.

Sri G. I. Punwant Petitioner

Versus.

Union of India and others. Respondents.

Affidavit of Sri Sagar Lal

aged about 52 years, son of late

Sri. Keshri Lal,

Dy. Chief Controller of

Imports & Exports, Kanpur

Deponent.

I, the deponent, abovenamed, do hereby

solemnly affirm and state as under:-

1. That the deponent is working as Deputy

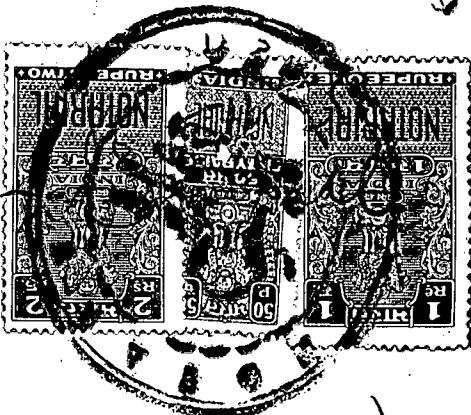
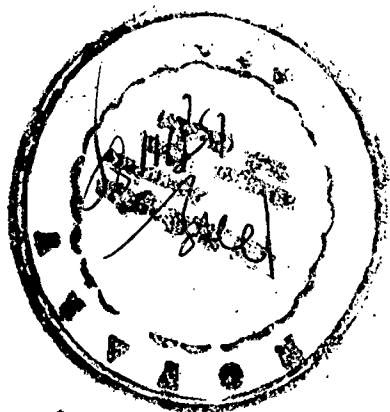
Chief Controller of Imports & Exports, Kanpur and

has been authorised to file the present supplementary

counter affidavit on behalf of the respondents

in the aforesaid case. He is, as such, well acquainted

with the facts of the case deposed to below.



1483

2. That the deponent has read the contents of

the rejoinder affidavit and has fully understood the

same.

3. That the petitioner has filed a detailed

rejoinder affidavit in which he has tried to confuse

the issue and has submitted new facts. Therefore,

it has become necessary to file the present supplementary

counter affidavit.

4. That in reply to the contents of para no.3

of the rejoinder affidavit the averments made in para

no.4 to 9 of the counter affidavit are reiterated

and reaffirmed as correct. It is submitted that

however, it is vehemently denied that total service

of the applicant from 6.4.1948 to 18.8.1982 has been

accepted as qualifying service as averred by the

applicant. ^{vide} letter no.6/698/62-Admn(G) dated

1.4.1985. In fact, the purport of the aforesaid letter

was to advise the office of the Joint Chief Controller

of Imports & Exports, Bombay that the question of the

eligibility of the applicant for grant of pensionary

benefits under the Rules should be examined in

consultation with the Regional Pay and Accounts Office

(Imports and Exports), Bombay and if the applicant

is found eligible for grant of pensionary benefits

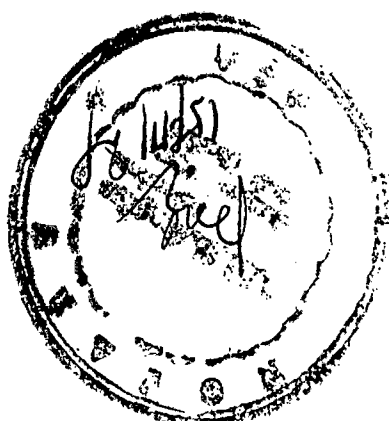
under the Rules, the question of condonation of

the break in his service should be examined in terms of

Rule-28 of the CCS (Pension) Rules. It is reiterated

that the applicant's case does not fall within

the ambit of department of Personnel and Administrative



4234

Reforms O.M.No.38(16)-Pension Unit/80 dated 30.12.80 and therefore, he is not eligible for grant of pension and other retirement benefits. It is further reiterated that the above said Rules are applicable only and only to such Government servants who retire on attaining the age of superannuation and not to those who retire before attaining the age of superannuation.

3.

5. That in reply to the contents of para no.4 of the rejoinder affidavit it is submitted that the

averments made by the respondent are based on the Rule position and the respondents have no reason whatsoever or intention, even remotely, to make wrong averments or misguide the Hon'ble Tribunal. It is reiterated that the seniority of the applicant has been fixed correctly and the applicant has not been discriminated against in the matter of fixation of his seniority. As already submitted in the counter affidavit, the concessions available under Department of Personnel O.M. No.8/20/69-Estt.(C) dated 26.8.1971 relating to fixation of seniority are applicable only to released Emergency Commissioned Officer/Short Service Commissioned Officer and not to officers who have served in the Territorial Army/N.C.C.. The instruction contained in Ministry of Home Affairs O.M.No.25/56/52-Estts.dated 23.12.52 also do not help the applicant in so far as his service in the Territorial Army before his appointment in the organisation of the respondent is concerned. In



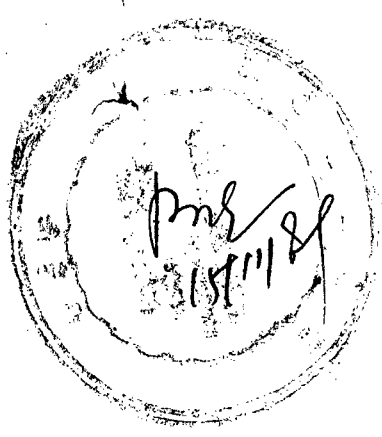
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AD-210

.4.

terms of these instructions, if the Civil post held by a Government servant at the time of joining the Territorial Army is abolished while the Government servant is continuing to serve in the Territorial Army, the Government servant is to be treated to have ceased to be in civil employment from the date the civil post is abolished. The applicant was holding a post of Managing Officer in the office of Regional Settlement Commissioner(U.P.) when he was relieved of his duty on 11.2.1960 to serve the Territorial Army. The Civil post of Managing Officer held by the applicant was abolished with effect from 1.5.1961 due to reduction in the number of posts of Managing Officer in the Settlement Organisation and the applicant ceased to hold that post from that date and, therefore, the applicant is not eligible to get the benefits allowed under the said O.M. of the Ministry of Home Affairs for the period of service rendered by him in the Territorial Army prior to his appointment in ^{the} organisation of the Respondent as at the time of his appointment in the organisation of the respondent he was not holding any civil post. The applicant joined the organisation of the respondent on 15.7.63 and was relieved of his Civil post on 12.8.63 to serve the Territorial Army from where he returned to his civil post on 31.3.69. The period of absence from civil post from 13.8.63 to 31.3.69 has been treated on duty in terms of the Ministry of Home Affairs O.M. dated 23.12.52. The applicant was not eligible



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12/11/1

.5.

for consideration for promotion to a higher post during the period of his service with the Territorial Army from 13.8.63 to 31.3.69 and therefore, the instructions contained in Ministry of Home Affairs O.M.No.47/2/56-Estt(A) dated 20.1.58 are not applicable to the applicant. The averments made in para no.10 of the counter affidavit are reiterated as correct.

6. That in reply to the contents of para no.5 of the rejoinder affidavit it is submitted that the averments made by the applicant that he has suffered in seniority due to the 7 months delay in his release from the Territorial Army for joining the civil post and that his service should have been counted from 1959 and he should have been declared quasi permanent from 1.1.1962 is not tenable. In terms of the General principles laid down by the Government from time to time for determination of seniority the relative seniority of Direct recruits and of the departmental promotees is determined according to the rotation of vacancies between direct recruits and promotees based on the quotas of the vacancies reserved for each category in the Recruitment Rules maintaining the order of their selection for appointment to the post for which the seniority list is prepared. Persons appointed as a result of an earlier selection are placed senior to those appointed as a result of a subsequent selection. The seniority of the

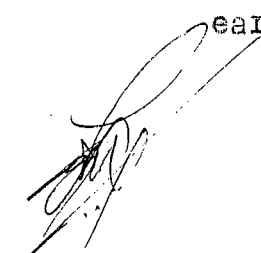


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(ADN)

.6.

applicant in the grade of Assistant Controller has been determined strictly in accordance with the principles laid down by the Government in this regard. In terms of the then existing Recruitment Rules, 75% of the vacancies in the grade of Assistant Controller were required to be filled by direct recruitment through U.P.S.C. and the remaining 25% by promotion of departmental candidates. The rotation of vacancies between direct recruits and departmental promotees was 3 : 1 and as may be evident from the seniority list annexed by the applicant as annexure- A-20, the seniority of direct recruits and departmental promotees has been determined according to the rotation of the vacancies. In accordance with the principles that persons appointed as a result of an earlier selection shall stand senior to persons appointed as a result of a subsequent selection, the applicant in the seniority list has been placed senior to all those persons who were appointed as a result of selection made subsequent to the selection of the applicant and that is why the applicant on selection by U.P.S.C. though joined the organisation of the respondents on 15.7.63 has been placed senior to the persons who on selection by the U.P.S.C. joined the organisation of the respondents earlier to the date of joining of the applicant.



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.7.

It is thus evident that the delay of 7 months in the release of the applicant by the W.C.C. Directorate had no adverse effect on the fixation of his seniority and he has not suffered in seniority on that account. The applicant was appointed in a quasi-permanent capacity to the post of Assistant Controller of Imports & Exports with effect from 15.7.66 on completion of three years service in that post and since he was not an employee of the organisation of the respondents prior to 15.7.63 any service rendered by the applicant in any post in any other organisation cannot be taken into account for conferment of a quasi-permanent status in the organisation of the respondents. The averments made in para no.11 of the counter affidavit are reiterated as correct.

15/11/84

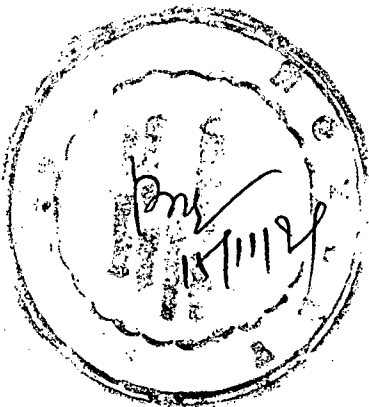
7. That in reply to the contents of para no.6 of the rejoinder affidavit it is submitted that there is no provision for confirmation on completion of three years' from the date quasi-permanent status is conferred on a Government servant. As submitted in the counter affidavit, the applicant was considered for confirmation by a Departmental Promotion Committee chaired by a member of U.P.S.C. but he was not appointed substantively as he was not clear from vigilance angle. In terms of Ministry of Home Affairs C.M.No.1/10/64-Estt.(D) dated 14th January, 1965 the Government on the basis of recommendations of the Committee on

ADW3

.8.

Prevention of Corruption issued instructions that before confirming a person, it should be the invariable practice to obtain integrity clearance from the vigilance unit of the Ministry/Department concerned. A copy of the said O.M. is being filed and marked as Annexure-SCA1 to this affidavit.

It is submitted that in terms of the O.M. referred to above vigilance clearance is essential before confirmation. The judgment dated 2.2.1987 of the Hyderabad Bench of the Hon'ble Central Administrative Tribunal is not applicable in the case of the applicant as he is not a party in the cases to which the judgment relates and it has been rendered much after the date the confirmation of the applicant was withheld. It is within the jurisdiction of the C.B.I. to make suo-moto investigation-s against a Government servant without receipt of a formal complaint from his office. It is admitted that the applicant was allowed to cross efficiency bar with effect from 15th July, 1965 at the stage of Rs. 590/- in the pre-revised scale of pay of Rs. 400-25-500-30-590-EB-30-800. The above scale of pay of the applicant was revised with effect from 1.1.1973 and as per rules the Crossing of Efficiency Bar is not subject to the normal procedure of consideration by a D.P.C. where a pay of a Government servant is fixed at a stage higher than the efficiency Bar stage in the revised scale of pay. In other words in cases of refixation of pay the provisions of F.R. 25 are not applicable and therefore the



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.9.

applicant cannot argue that he was clear from vigilance angle since his pay in the revised scale of pay has been fixed at a stage higher than the efficiency bar stage. The remaining averments made in this paragraph relate to the criminal cases filed against him, disciplinary proceedings and his compulsory retirement and have no nexus with the applicant's case for grant of pensionary benefits. The applicant is seeking plural remedies by making averments not connected with the grant of pensionary benefits and therefore do not merit any consideration by this Hon'ble Tribunal in view of Rule-10 of Central Administrative Tribunal (Procedure) Rules, 1987. The averments made in para no.12 of the counter affidavit are reiterated as correct.



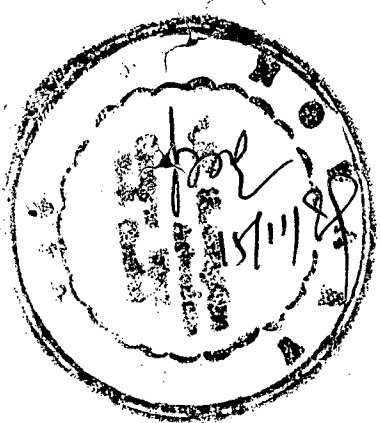
8. That in reply to the contents of para no.7 of the rejoinder affidavit it is submitted that the applicant has never been given step-motherly treatment or discriminated against in matters relating to his seniority etc.. The instructions contained in Ministry of Home Affairs O.M.No.47/2/56-Estt.(A) dated 20.1.58 annexed as Annexure-A15 by the applicant is applicable only and only in those cases where a Government servant on deputation to Territorial Army is promoted to a higher post in his parent office but he cannot assume charge of the

Notary

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L.10.

higher post to which he has been promoted due to his deputation with the Territorial Army. In such cases the provision of 'Next Below Rule' are to be made applicable and the seniority in the higher post temporarily lost by the Government servant due to his deputation to the Territorial Army is restored on his assumption of charge of the higher post on release from the Territorial Army on the expiry of the term of deputation/annual training/course of instruction/embodiment etc.. The applicant while employed in the organisation of the respondent was relieved on 12.8.1963 to serve the Territorial Army and he reverted back to the Organisation of the respondent on 1.4.1969. During the period of service of the applicant in the Territorial Army from 13.8.68 to 31.3.69 the applicant was neither eligible for promotion to a higher post nor was he so considered and therefore, the question of operation of the 'Next Below Rule' for grant of proforma promotion and seniority in the higher post as envisaged in the Ministry of Home Affairs O.M. referred to above does not arise. There is no bar under the Rules to initiate departmental proceedings simultaneously with prosecution proceedings. As submitted hereinbefore the remaining averments made by the applicant in the paragraph do not merit any consideration in view of Rule-10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

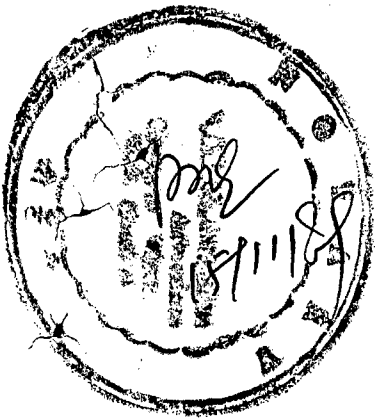


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.11.

9. That in reply to the contents of para no.8 of the rejoinder affidavit it is submitted that as submitted in para no.25 of the counter affidavit, the provisions of Department of Personnel and Administrative Reforms, O.M. No.38 (16)-Pension Unit/80 dated 30.12.80 are not applicable in the case of the applicant. The condition precedent for the applicability of this O.M. is that the Government servant must either retire from service on attaining the age of superannuation or on being declared to be permanently incapacitated for further Government service. It is submitted that the applicant neither retired from Government service on attaining the age of superannuation nor was he declared permanently incapacitated for further Government service. In contrast the applicant was compulsorily retired from Government service before attaining the age of superannuation and therefore he is not eligible for grant of pension even as a temporary government servant under the said O.M..



10. That in reply to the contents of para no.9 of the rejoinder affidavit the averments made in para no.15 of the counter affidavit are reiterated and reaffirmed as correct. The applicant cannot raise the issue relating to the validity of the criminal investigation made by the C.B.I. before this Hon'ble Tribunal.

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.12.

11. That in reply to the contents of para no.10 of the rejoinder affidavit it is submitted that the applicant is trying to mislead the Hon'ble Tribunal by misquoting ^{Scans} the averments made in paragraph 16 of the counter affidavit. It has been denied in the counter affidavit that the transfers of officers of the level of Controller are made only on grounds of corruption and indiscipline but the applicant in his averment in this paragraph misquotes, with ulterior motive that the respondent has admitted that by convention officers of the rank of Controller are not transferred except on the grounds of corruption and indiscipline. In his averment, he has conveniently chosen not to read the words "It is vehemently denied" from the second sentence of ^{Scans} paragraph-16 of the Counter affidavit to misguide the Hon'ble Tribunal. The averments made in para no.16 of the counter affidavit are reiterated and reaffirmed ^{Scans} as correct.



12. That in reply to the contents of para no.11 of the rejoinder affidavit, the averments made in para no.17 of the counter affidavit are reiterated and reaffirmed as correct.

13. That in reply to the contents of para no.12 of the rejoinder affidavit, the averments made in para no.18 of the counter affidavit are reiterated and reaffirmed as correct.

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.13.

14. That in reply to the contents of para no.13 of the rejoinder affidavit it is submitted that the benefits allowed in the Ministry of Home Affairs O.M.No.35/15/63-Estt.(8) dated 28th April, 1965 have not been denied to the applicant. It is submitted that the services of the applicant as Managing officer in the office of Chief Settlement Commissioner were terminated with effect from 1.5.1961. On selection to the post of Assistant Controller of Imports & Exports as a 'direct recruit', the applicant joined the organisation of the respondent on 15.7.63. He was relieved of his duties in the organisation of the respondent on 12.8.63(A.N) for serving the Territorial Army where he served upto 31.3.69(A.N). His seniority in his civil post of Assistant Controller of Imports and Exports determined at the time of his appointment was maintained during his service in the Territorial Army and the period of service in the Territorial Army from 13.8.63 to 31.3.69 has been counted as period spent on duty. Since, the applicant was not eligible for consideration for promotion during the period of his service in the Territorial Army from 13.8.63 to 31.3.69 the question of grant of proforma promotion or seniority in the higher posts as envisaged in the O.M.referred to above does not arise. The averments made in para no.19 of the counter affidavit are reiterated and reaffirmed as correct.



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.14.

15. That in reply to the contents of para no.14 of the rejoinder affidavit, the averments made in para no.20 of the counter affidavit are reiterated and reaffirmed as correct.

16. That in reply to the contents of para no.15 of the rejoinder affidavit it is submitted that the applicant cannot raise issues which are not connected directly to his prayer for grant of pensionary benefits under Rule-10 of the Central Administrative Tribunal (Procedure) Rules, 1987. The averments made in para no.21 of the counter affidavit are reiterated and reaffirmed as correct.



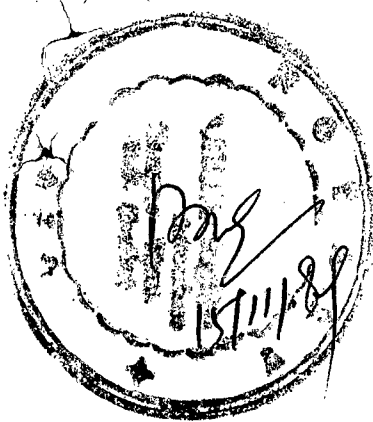
17. That in reply to the contents of para no.16 of the rejoinder affidavit it is submitted that the kind attention of the Hon'ble Tribunal is drawn to para-10 of the Annexure-25-A submitted by the applicant in which it is stated that the position of law can be said to be settled that if an employee is only suspended because of a criminal charge pending investigation and trial, then, if such Government servant is ultimately acquitted, then the order of suspension will cease to an end. It is submitted that the applicant was put under suspension with effect from

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2.6.1975 as a case against him in respect of a criminal offence was under trial. The prosecution proceedings were quashed by the Hon'ble Allahabad High Court (Lucknow Bench) only on 25.5.1984 and therefore, legally the order of suspension of the applicant continued automatically notwithstanding his pre-mature retirement under F.R.56(j) and subsequent cancellation of the orders of pre-mature retirement. In any case the order dated the 11th June, 1976 under which the order dated 12.12.1975 of the retirement of the applicant was cancelled specifically stated that the applicant was under suspension at the time of his pre-mature retirement and as such he will continue to remain under suspension and therefore the applicant cannot argue that the above order is legally not tenable and issue of a fresh and separate order of suspension was mandatory. The averments made in para no. 22 of the counter affidavit are reiterated and reaffirmed as correct.



18. That in reply to the contents of para no. 17 of the rejoinder affidavit it is submitted that a Special Leave petition has been filed on 11.9.1984 by the C.B.I. before the Hon'ble Supreme Court of India against the judgment and order dated 25.5.1984 of the Hon'ble High Court of Allahabad (Lucknow Bench). In any case the applicant is barred under Rule-10 of the Central Administrative Tribunal (Procedure) Rules, 1987 to raise the issue

16.

relating to the disciplinary proceedings in this application. The averments made in para no. 23 of the counter affidavit are reiterated and reaffirmed as correct.

19. That in reply to the contents of para no. 18 of the rejoinder affidavit it is submitted that it is admitted that under Rule-35 of the C.C.S. (Pension) Rules a superannuation pension is required to be granted to a Government servant who is retired on his attaining the age of compulsory retirement. The applicant did not retire on attaining the age of compulsory retirement, i.e., on completion of the age of 58 years and therefore, he is not entitled to a superannuation pension under Rule-35 of the CCS (Pension) Rules. The compulsory retirement pension under Rule-40 of the CCS (Pension) Rules also cannot be granted to the applicant as he was not eligible for such pension on the date of his compulsory retirement as he did not hold a substantive appointment in any service/post at the time of his compulsory retirement. It is admitted that in terms of Department of Personnel and Administrative Reforms O.M. No. 38(16)-Pension Unit/80 dated the 30th December, 1980 pensionary benefits are to be granted even to temporary Government servants who have rendered temporary service of not less than 20 years at the time of retirement provided and provided that such Government servants retire



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.17.

on attaining the age of superannuation or on being declared by the appropriate medical authority to be permanently incapacitated for further government service. The applicant did not retire on attaining the age of superannuation ,i.e., on completion of 58 years of age but retired before attaining the age of superannuation on imposition of the penalty of compulsory retirement and therefore, he is not entitled to the pensionary benefits admissible to temporary government servants. The averments made in para no.24 of the counter affidavit are reiterated and reaffirmed as correct.



20. That in reply to the contents of para no.19 of the rejoinder affidavit it is submitted that as stated hereinbefore the applicant is not entitled to pensionary benefits under Rule-35 of the CCS(Pension)Rules. The applicant is also not entitled to grant of pensionary benefits admissible to temporary government servants on completion of 20 years of qualifying service as he did not retire on attaining the age of superannuation but was compulsorily retired before attaining the age of superannuation. Under F.R.56 every government servant has to retire from government service on the afternoon of the last day of the month in which he attains the age of 58 years and if this is r/w Rule-35 of the CCS(Pension)Rules it is clear that pension under Rule 35 of CCS(Pen)Rul

Secretary

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is granted only and only to those Government servants who retire on account of the age limit prescribed under F.R.56 provided he is otherwise eligible for grant of superannuation pension under Rule-13 of the CCS(Pension) Rules. The applicant did not retire on attaining the age of superannuation and therefore, he is not entitled to grant of 'superannuation pension'. The provisions of Rule-48 of the CCS(Pension) Rules and/or F.R.56 are also not attracted in the case of the applicant for he has not been retired under these provisions but the penalty of compulsory retirement was imposed on him. In any case, the service rendered by the applicant cannot be reckoned as 'qualifying service' for grant of pensionary benefits under the CCS (Pension) Rules for the reasons explained in the preceding paragraphs. The averments made in para no.25 of the counter affidavit are reiterated and reaffirmed as correct.

21. That in reply to the contents of para no.20 of the rejoinder affidavit it is submitted that the averments made in para under reply are denied. It is submitted that the applicant cannot make such inferences from the admission of the factum of the order dated 25.5.84 of the Hon'ble Allahabad High Court (Lucknow Bench). It is vehemently denied that the penalty of compulsory retirement imposed on the applicant was out of malice or discrimination. As submitted hereinbefore

15/11/89

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the C.B.I. have filed a Special Leave petition in the Hon'ble Supreme Court of India against the judgment dated 25.5.84 of the Hon'ble Allahabad High Court (Lucknow Bench).

22. That in reply to the contents of para no.21 of the rejoinder affidavit it is submitted that as stated hereinbefore the competent authority vide Order No.8/2/75-Admn.(G) dated 11th June, 1976 besides cancelling the order of pre-mature retirement also made an order that the applicant will continue to remain under suspension and therefore the applicant cannot ~~be~~ argue that his suspension continued without an order. The averments made in para no.27 of the counter affidavit are reiterated and reaffirmed as correct.



23. That in reply to the contents of para no.22 of the rejoinder affidavit it is submitted that as stated hereinbefore the applicant is not entitled to the pensionary benefits allowed to temporary government servants under DP & AR's O.M. No.38(16)- Pension Unit/80 dated 30.12.80 as he did not retire on superannuation but was compulsorily retired before attaining the age of superannuation. The averments made in para no.28 of the counter affidavit are reiterated and reaffirmed as correct.

not merit any consideration by this Hon'ble Tribunal

affidavit the application of the petitioner does

counter affidavit and in the present supplementary

as correct. In view of the submissions made in the

counter affidavit are reiterated and reaffirmed

that the averments made in para no. 32 of the

no. 26 of the rejoinder affidavit it is submitted

27. That in reply to the contents of para

reiterated and reaffirmed as correct.

of para no. 31 of the counter affidavit are

no. 25 of the rejoinder affidavit, the contents

26. That in reply to the contents of para

this affidavit.

rejoinder affidavit needs no reply by means of

25. That the contents of para no. 24 of the

reaffirmed as correct.

of the counter affidavit are reiterated and

retirement, etc.. The averments made in para no. 29

his appeal against penalty of compulsory

relating to the penalty imposed on him, disposal of

Rules, 1987 to raise in this application issued

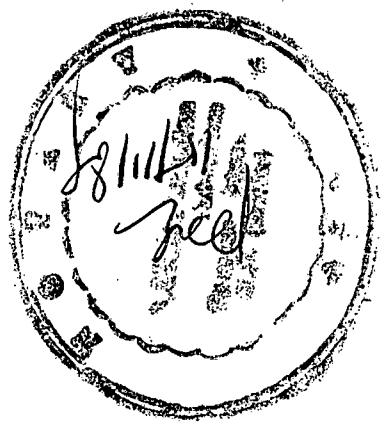
of the Central Administrative Tribunal (Procedure)

that the application is barred under Rule-10

no. 23 of the rejoinder affidavit it is submitted

24. That in reply to the contents of para

20.



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.21.

and is liable to be rejected.

28. That in reply to the contents of para no.27 of the rejoinder affidavit the averments made in para no.33 of the counter affidavit are reiterated and reaffirmed as correct.

29. That in reply to the contents of para no.28 of the rejoinder affidavit the averments made in para no.34 of the counter affidavit are reiterated and reaffirmed as correct. In view of the submissions made hereinabove and in the counter affidavit the application of the petitioner deserves to be dismissed with costs.

I, the deponent, abovenamed, do hereby verify and declare that the contents of paras nos...1 and 2 ——— Notary

of this affidavit are true to my personal knowledge; those of paras nos.. 3 to 29 ——— Notary

of this affidavit are based on information received from perusal of the papers on record; those of paras nos... ——— Notary

of this affidavit are based on legal advice which all the deponent believes to be true; that no part of this affidavit is false and that no part of this affidavit is false and nothing material has been concealed in it.

So help me God.

Deponent



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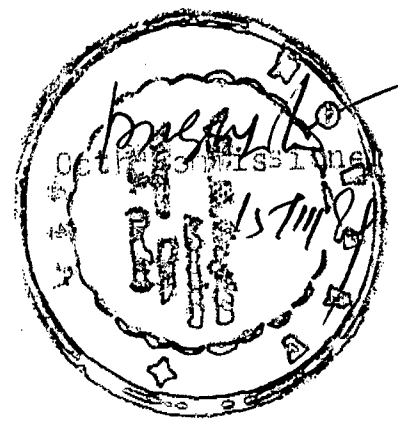
.22.

I, G.P.Trivedi, Licensing Assistant in the Office
of Jt. Chief Controller of Imports & Exports, Kanpur
do hereby declare
that the person making this affidavit and
alleging himself to be Sri Sagua Lall
is the same person who is personally known to me.
Solemnly

G.P. Trivedi
Licensing Assistant
xxxxxxx

Solemnly affirmed before me on this 15th
day of Nov, 1939 at 3.30 p.m. by the
deponent who is identified by the aforesaid clerk.

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



15/11/39 3.30 PM
before me
Identified
15/11/39

4258

In the Central Administrative Tribunal, Circuit Bench
Lucknow.

..

Annexure-SCA1

In

Supplementary Counter Affidavit

In

Registration (C.A.) No. 77 of 1989.

Sri G.I. Punwani ..

.. Petitioner

Versus.

Union of India and others..

. Respondents.

...

MC.F.1/10/64-Estt(D)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

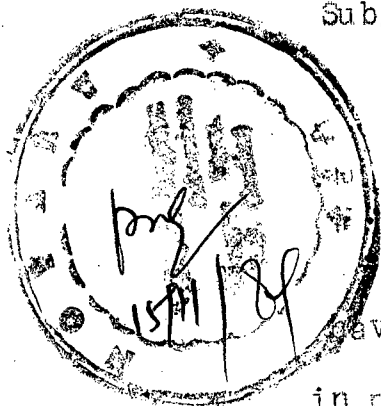
NEW DELHI, the 14th January, 1965.

Office Memorandum

....

Subject:- Confirmation and promotions-Suggestion to
obtain integrity clearance before an
officer is considered for confirmation
or promotion.

...



The Committee on prevention of Corruption
have inter alia made the following recommendation
in para 9.23 of their Report:-

"(vi) It should be the invariable practice
to obtain integrity clearance from
the vigilance organisation matters
relating to confirmation and
promotion."

AD59

.2.

2. The Vigilance Unit in each Ministry will, normally, have all the information bearing on the integrity of officers who are to be considered for confirmation or promotion. If the Vigilance Unit in each Ministry remains alert and advises the officer in charge of Administration of the inquiries under way, there should be no need to make specific reference to the Unit to clear all those who are within the range of consideration for confirmation/promotion on each particular occasion. It has, therefore, been decided that the Vigilance Units the Central Bureau of Investigation, and the Administrative Vigilance Division of the Ministry of Home Affairs should ensure that the appropriate authorities have before them relevant information on the basis of which, confirmation or promotion may be denied or postponed.

3. The Ministry of Finance, etc. are requested to bring the above decision to the notice of the authorities under their control.

4. In so far as the persons serving in the Indian Audit and Accounts Department are concerned these orders have been issued after consultation with the Comptroller and Auditor General.



TO.

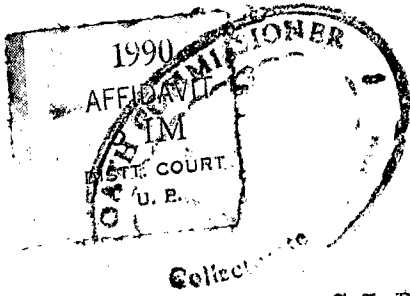
DEPUTY

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

SUPPLEMENTARY REJOINDER AFFIDAVIT
IN.

OA.No.77/89

F.F.12.4.1990.



G.I.Punvani ..

.. Petitioner

vs

Union of India and others ..

.. Respondents..

Reply to Supplementary Counter Affidavit filed on 13.2.90.

I, Govind Punvani, aged about 65 years, son of Late Dr. Idarnal Punvani, resident of 5, Mall Avenue, Lucknow, do hereby solemnly affirm as under:-

1. That the deponent being petitioner in the above case, is fully conversant with the facts deposed herein below.
 2. That paras 1 and 2 of Supplementary Counter Affidavit (SCA) need no reply.
 3. That contents of para 3 of SCA are wrong and denied, the confusion is being created by respondents, the facts connected and concerned with the petition have been mentioned.
 4. That contents of para 4 of SCA are wrong and denied and those of para 3 of Rejoinder Affidavit are reiterated and confirmed.
- Under the pension rules, where the department does not have details of previous service of a Govt. servant, then the Govt. servant has to furnish details through an affidavit, and in case of deponent he has even furnished copies of all appointment letters of his previous service and hence the Chief Controller vide his letter dt.1.4.1985, (Annex-A-I), also filed by respondents as Annex-IV, directed that pension of Sri.Punvani may please be examined in consultation with Regional Pay and Accounts Officer (Imports & Exports), Bombay. In para 2 of this letter, clear directions have been issued accepting the total continuous government service from 6.3.1948 to 18.8.1982. You are requested to deal with his pension case on the basis of affidavit submitted by him in connection with his rendering continuous Government service from 6.3.48 to 18.8.82.

Annex-A.1 (page-18)

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A262

duly verified by the Civil Court of Lucknow to admit the services for the purpose of finalising his pensionary benefits. As per Courts orders, his case may be finalised as early as possible under intimation to this office" Thus total service of deponent was accepted from 6.3.1948 to 18.8.1982, as qualifying service for purposes of pension.

5. That contents of para 5 of SCA are denied and those of para 4 of R.A. reiterated and confirmed. Discrimination has been shown in respect of deponent in:

- a) matter of seniority.
- b) matter of suspension.
- c) matter of withdrawal / setting aside of penalty imposed.
- d) and in several other matters as deposed in previous affidavits.

6. That contents of para 6 of SCA are denied and those of para 5 of R.A. reiterated and confirmed. No proof regarding delay in release from Territorial Army is necessary as offer for appointment for the post of Assistant Controller was made dt. 22.11.1962,

Annex-A-16.

Annexure.A-16 refers, acceptance of offer was made dt. 27.11.1962

Annex-A-17.

Annexure.A-17, refers, however since due to Emergency, deponent was not released, the Director of Employment Exchange wrote D.O. letter dt. 15.1.1963 to Chief Controller that deponent may be deemed to remain seconded to the Territorial Army for the duration of present Emergency (Chinese Aggression), Annexure.A-18, refers, thus the delay in release has had effect on Seniority of 7 months in case of deponent, as his Seniority has been considered wef.

Annex-A-18.

15.7.1963, instead of November, 1962, when the deponent had accepted offer of the post.

7. That contents of para 7 of SCA are wrong and denied and those of para 6 of R.A. are reiterated and confirmed. There is clear provision in rules that on completion of 3 years from being declared Q.P. the Govt. servant is considered for confirmation and deponent became due for confirmation wef 15.7.1969, having been declared Q.P. wef 15.7.1966. It is absolutely false that there

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was any Vigilance angle to withhold confirmation, but malaciously due to some alleged inquiry by CBI started from 8.12.1971, the confirmation has been held up, which was due on 15.7.1969 and respondents are put to strict proof to show any such Vigilance angle to this Hon'ble Court. Also it is vehemently stressed that deponent has never been given any adverse entry in his Character roll, nor any such entry has been communicated till 18.8.1982. A mere inquiry by CBI cannot be considered as any offence of deponent. All the A.C.R's of the deponent would reveal that he was given integrity clearance every year and respondents are put to proof to produce all his A.C.R's to show, when his integrity was doubtful. The Govt. of India vide O.M.No. 22011/1/3/77-Estt(A) dt.14.7.1977, has clarified that even where Officer whose conduct is under investigation, but no conclusion has been reached about the prima facie guilt, there should not be a ground for treating the said official AS ONE WHOSE CONDUCT IS UNDER INVESTIGATION, and his promotion or confirmation cannot be withheld, this O.M. is mentioned in explanation to Rule 10 of CCS(CCA) Rules, 1965, photo stat copy is enclosed as Annexure.A-34. Untill the competent Authority arrives at such a conclusion, where departmental action is contemplated or prosecution is proposed, the officer may be treated on a par with others in the matter of promotion, confirmation etc.. The deponent became eligible for CONFIRMATION wef 15.7.1969 and his ACR. for 1969 is outstanding, evn for 1970 is outstanding, the confirmation has been withheld malaciously with discrimination, when Junior's have been confirmed. The Judgement dt. 2.2.1987 of the Hyderabad Bench of Hon'ble Central Administrative Tribunal has laid guide lines, which are applicable to all and the Govt. has to follow those principles and are applicable in case of deponent and confirmation has been malaciously withheld. If integrity had been doubtful, the deponent would not have been allowed to cross efficiency bar, which is a conclusive proof, that deponent's integrity was clear. If the integrity was not clear then why the respondents are not producing that document and all ACR's from 1969 to 1982 should be produced



Annex-A-34.

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proving

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substantiate their claim of doubtful integrity of deponent. The compulsory retirement has direct nexus with pension. The compulsory retirement has been malaciously made, without any offence or violation of any provision of Import Policy being pointed out on the contrary, the deponent has been exonerated of the charge on which the departmental inquiry was conducted, the concluding para 4.14. of the Inquiry report dt. 2.2.1980 is crystal clear

Annex-A-11, page. 41
(page 41 of report)

proof of complete exoneration of deponent, refer Annexure. A-11. The order of Compulsory retirement is also illegal as neither 3 months notice nor 3 months Pay & allowances in lieu of such notice, which is a mandatory provision of F.R. 56(j) have been complied with and on this only ground also the order of compulsory retirement is to be quashed, as has been held by this Hon'ble Tribunal in O.A. 700 of 1986 order dt. 4.7.1989 in case of Sri. D.N. Arya,

Annex-A-8, page, 27.

vs Union of India, thus ~~the~~ the order dt. 18.8.82, Annexure. A-8 of Compulsory retirement is illegal and invalid, then the deponent would be deemed to have retired on Superannuation i.e. 31.1.1983 and would be entitled to pension and other consequential benefits.

8. That contents of para 8 of SCA are wrong and denied and those of para 7 of RA are reiterated and confirmed. The deponent has all along been given stepmotherly treatment as also discrimination shown in his case as mentioned in para 5 above. That it is laid down in Rule 14 of CCS (CCA) Rules that Departmental proceedings should not be held simultaneously with prosecution, even Govt. of India's Instructions given by M.H.A.O.M. No. F. 39/30/54-Estt dt. 7.6.1955 and No. 39/8/64-Ests(A) dt. 4.9.1964, given after Rule 14 CCS (CCA) Rules are clear on the subject. A Provision under Rule 10 (4) was inserted by notification of M.H.A. No. 35012/2/80-Ests(A) dt. 7.9.1981. In explanation to Rule 14, it has been mentioned, "If the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations" (G.I.M.H.A.O.M. No. F. 43/57/64-AVD(III) dt.

ADG

Annex-A-9, page. 29

29.11.1966 as amended by G.I.G.S (Department of Personnel) O.M.No. 371/3/74-AVD-III dt.19.9.1975). Even the case of deponent did not merit action for imposing one of the major penalties, refer Annexure A-9, refers. In the explanation to Rule 14 ² it has been mentioned (14) "Disciplinary authority cannot take a view contrary to the judicial view on the same charge and on same evidence." Based on orders of Hon'ble High Court dt. 25.5.84, Annexure A-12, the appeal of 2 Assistants was accepted and penalty imposed on basis of Annexure A-10, page 30. Departmental Inquiry set aside, refer Annexure A-10, but in case of deponent, maliciously appeal dt. 25.9.1982, still not decided, inspite of orders of Hon'ble High Court dt. 11.5.84 in W.P. 1403/83, now converted as No. 1136/87 (T), refer its Annexure-18 (pages 83-86). Thus the Departmental Inquiry was unwarranted and illegal, when already prosecution was pending on same alleged identical charges.

9. That contents of para 9 of S.C.A. are wrong and denied and those of para 8 of R.A. are reiterated and confirmed. The order of Compulsory retirement is illegal being violative of provisions of F.R. 56(j) and discussed in para 7 above, the deponent would retire on superannuation and is entitled to pension etc.

10. That contents of para 10 of SCA are wrong and denied and those of para 9 of R.A. reiterated and confirmed.

11. That contents of paras 11, 12 and 13 of SCA are denied and those of paras 10, 11 and 12 of R.A. are reiterated and confirmed. The deponent has unblemished record and his A.C.R's are proof, ~~which~~ which the respondents are avoiding to produce as their malice would be proved from perusal of A.C.R's of deponent.

12. That contents of para 14 of SCA are wrong and denied and ~~those~~ those of para 13 of R.A. are reiterated and confirmed.

13. That contents of para 15 of SCA are denied and those of para 14 of R.A. are reiterated and confirmed.

14. That contents of para 16 of SCA are wrong ² and denied and those of para 15 of R.A. are reiterated and confirmed. Clear discrimination and malice has been shown in case of deponent, that although criminal cases were also filed against 2 Assistants, Sarva-

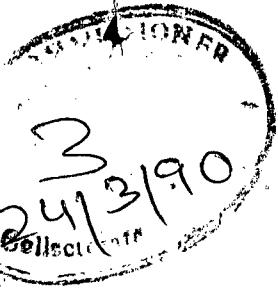
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sri.K.C.Bhatia and J.K.Jain, but none was suspended, except deponent also based on orders of Hon'ble High Court dt.25.5.1984, appeal of both Assistants was decided, setting aside the penalty imposed, but in case of deponent, the appeal has still not been decided by the Secretary, Ministry of Commerce (Competent Authority) and maliciously, even pension, which is not a bounty is being denied to deponent.

15. That contents of para 17 of SCA are wrong and denied and those of para 16 of R.A. reiterated and confirmed. The explanation to Rule 10 CCS (CCA) Rules under heading ^{Case law 9} (9) Continuation of Suspension under ~~XXXXXX~~ Rule (5) (b) and conditions thereof, is abundantly clear that on order of Premature retirement the VIYOLUM JURIS ^{and} between Govt./servant is dissolved, the relationship of master and servant between them is extinguished, then the order of suspension must be a FORTIORARI come to an end and it can not be revived by mere subsequent setting aside of the order of premature retirement in the absence of a statutory provision or rule to that effect. Thus continuance of order of suspension, without issue of FRESH suspension order was illegal and was bad in law, and against provisions of CCS (CCA) Rules.

16. That contents of para 18 of SCA are denied, the S.L.P filed on 11.9.1984 against orders dt.25.5.1984, could not be pending till date otherwise the CBI would have given an application for its early disposal. The Inquiry Officer or Disciplinary authority cannot sit in judgement over Judiciary. Contents of para 17 of R.A. are reiterated and confirmed.

17. That contents of para 19 ^{and 20} of SCA are wrong and denied and those of para 18 ^{and 19} of R.A. reiterated and confirmed. As stated in earlier paras, confirmation has been maliciously withheld and respondents are put to strict proof to produce any A.C.R. of the deponent, where his integrity has been withheld, deponent was eligible for confirmation wef 15.7.1969. The very order dt.18.8.1982 of compulsory retirement is illegal and bad in law, being against the mandatory provisions of F.R. 56(j) for non issue of 3 months notice or payment of 3 months pay & allowances, simultaneously with



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4267

issue of order of compulsory retirement and this very Tribunal has held in case O.A. 700 vide their order dt. 4.7.1989, that wherever the mandatory provisions of F.R. 56(j) have not been complied with the order of compulsory retirement has been held to be invalid and illegal and quashed and applicant held to be in continuous service and entitled to all consequential benefits thereof.

18.. That contents of paras 21 and 22 of the SCA are denied and those of paras 20 and 21 of R.A. are reiterated and confirmed.

19.. That contents of para 22 of SCA are denied and those of para 21 of R.A. are confirmed, the orders of suspension had to be issued a fresh on withdrawal of orders of Premature retirement and could not be ordered to continue, this has been discussed in para 15 above.

20.. That contents of paras 23, 24, 25 and 26 are denied and those of paras 22 to 25 of R.A. are reiterated and confirmed, the appeal dt. 25.9.1982 had to be disposed off, its nondisposal is violation of orders of Hon'ble High Court dt. 11.5.84, as discussed in para 8 above. Nondisposal is clear act of malafide and is arbitrary and discriminatory. Instructions for disposal of appeals have been issued by Govt. of India dt. 13.7.1981 and Annexed as No. A-27.

21.. That contents of para 27^{28 and 29} of SCA are denied and those of para 26^{27 & 28} of R.A. are reiterated and confirmed. All reliefs prayed for merit to be allowed:-

Annex A-27.

Annex A-8

(a) Compulsory retirement order dt. 18.8.1982, Annexure A-8 of O.A. 77/89 (page 27-28) and Annexure-15 of 1136/87 (T), page 55-56, being invalid and illegal, may be quashed, discussed in para 7 and 9 above.

(b) Once the illegal order of Compulsory retirement is quashed, the deponent would be deemed to have continued in service and automatically retires on Superannuation i.e. 31.1.1983, and even without being confirmed becomes entitled to Pension and other consequential benefits ^{which} have been maliciously and with discrimination withheld so far, to which he is lawfully entitled.

(c) Even the suspension made being illegal, he is entitled to full pay & allowances wef 6.6.1975 till age of superannuation.

4268

- (d) Entitled to be confirmed wef. 15.7.1969, having unblemished record, never any adverse report communicated, a mere inquiry by CBI started on 8.12.71, could not effect withholding of confirmation and discrimination shown as Officers junior to deponent already confirmed.
- (e) Compensation be paid for all promotions due to deponent as his juniors were promoted, as promotions can only be worked out on paper.
- (f) All TA/DA bills withheld so far be immediately paid.
- (g) All increments as due be ordered to be allowed and payment made as due.
- (h) All consequential benefits be allowed.
- (i) On all delayed payments interest @ 18 % as charged by banks be allowed.
- (j) Cost of suit and heavy compensation for wrongful, malicious harassment may also be awarded, as prayed in para 11 of R.A.

That all reliefs prayed for may kindly be allowed.

OATH COMMISSIONER
24/3/90
Lucknow

Lucknow.

Dt. 24.3.1990


Deponent.

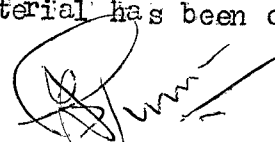
VERIFICATION.

I, the deponent named above do hereby verify that contents of paras 1 to 20 of this affidavit are true to my personal knowledge and those of para 21 of this affidavit are based on legal advice, which the deponent believes to be true, that no part of this affidavit is false and nothing material has been concealed.

So help me GOD.

Lucknow.

Dt. 24.3.1990.


Deponent.

I identify the deponent above named who has signed before me.

Advocate.

24/3/90
2.20
Advocate
self

Lalitha
Advocate
24/3/90

mentioned in Appendix-32 would be considered by the licensing authorities DIRECT and NOT through Sponsoring Authorities", the Part-II of form-B, annexed as Annexure-17, would clearly show that (TO BE FILLED IN BY THE APPLICANT FOR USE BY THE SPONSORING AUTHORITY), thus the columns of part II were redundant for this licensing scheme, and even if wrongly filled by any applicant were not to be considered by licensing authorities, thus there was no cavalier fashion in which licences were issued by deponent, but were issued in accordance with existing instructions. The Enquiry Officer has wrongly stated in para 4.13 "Shri Punvani had issued licences without considering whether the applicants were actual users.." The Enquiry Officer has himself held that all 13 applicants were actual users, as in para 4.6, he has held "It has been stipulated in this hand book, that small scale industries are actual users (Industrial) (page 41 of Ex.S.2)" It is also evident from chapter 9 of Ex.S.2, that actual users (non-industrial) includes garages and workshops". Vide para 4.7, he has held "All the 13 cases show that all of them were registered small scale industries in U.P. and as such they are actual users as understood within the provision of the hand book as at Ex.S.2. Thus applications that have been considered by Shri. Punvani for issuing licences were actual users". Having categorically held that all 13 cases considered for issuing licences were actual users in para 4.7. and 4.6, then how in para 4.13 he states whether the applicants were actual users, this reveals the inconsistency and non-application of mind by the Enquiry Officer, thus there is no violation whatsoever as held by Enquiry Officer himself, then the sweeping remark passed in para 4.13, establishes only one motive i.e MALICE.

6. That contents of para 7 and 8 of the supplementary counter affidavit are absolutely wrong and vehemently denied and those of ~~para~~ ^{para} 3 (60-E & 60-F) and para 4 of amendment application and grounds O, P, Q, R and S are reiterated and confirmed.

8293

7. That Supplementary counter affidavit filed on 12.4.90 cannot be taken on record or considered as the same has been filed almost after 7 years without showing the reasons of delay, also the contents are wrong and false as under:-

- (a) That appeal is dt. 25.9.1982 filed as Annexure-18 and the Hon'ble High Court vide orders dt. 10.3.1983 on filing the Writ Petition ordered "List in week commencing 24.4.83 to enable the counsel to seek instructions in the matter. It is expected that appeal filed dt. 25.9.82 (Annexure 18) shall be disposed off", thus Shri Joginder Singh has disposed off applications dt. 20.9.82 and 24.9.82 as Director (Vig), who is otherwise a D.I.G. of CBI and ^{has disposed} not the appeal
- (b) dt. 25.9.82, ^(b) also he is not the competent authority to decide any appeal against orders of Disciplinary Authority, who holds rank of Addl. Secretary, whereas Shri Joginder Singh is only ^{equevalant} Director with rank of Dy. Secretary. Under MANDATORY provisions of Rule-14 of CCS(CCA) Rules, the appeal is only to be decided by the competent authority (Secretary, Ministry of Commerce) by himself, and there is no provision of delegation of authority for deciding the appeal, and it is also MANDATORY that appeal has to be a speaking reasoned order under own signatures and not under any delegation. Govt. of India has also issued instructions to this effect, based on Hon'ble Supreme Court orders in Re; Mahabir Prasad v State of U.P., (AIR-1970, S.C-1302) by Ministry of Home Affairs, Deptt. of Personnel & Administrative Reforms O.M.No. 134/1/81-ADV-I dt. 13.7.1981, enclosed as Annexure No. 22,
- (c) thus the alleged ~~xxxxx~~ order dt. 2.5.83 pertains to disposal of some other applications and not the appeal dt. 25.9.82, signed by an Officer having no jurisdiction to decide appeal.
- (d) Also the Hon'ble High Court vide their order dt. 25.5.84 in Re. G.I. Punvani & others v State of U.P. filed as Annexure A-12 in OA. 77/89 and by respondents as Annx-VI in OA. 77/89

A27W

has held the following:-

page.4 of order:"The main contention of the prosecution is that none of the persons in whose favour the licences were granted was an actual user in as much as none manufactured or dealt with the goods in question were granted to the ~~category~~ applicants as belonging to the category of "Actual Users" and in last para of this page the salient features of this licencing scheme have also been given, in page 7 in last para it is stated that licences may be issued for value applied for in page 9 ,it has been clarified that licences were issued by deponent ONLY after written orders of Head of Office Sri.O.N.Anand dt. 13.5.1989 "Instructions contained in para 78 are clear.

Please follow these strictly. There is no question of end products. The instructions do not want us to do them.

(2) We have been doing this during A.M.69.

page 10. The expression "end product" means the article which was to be ultimately manufactured by the applicants for licences. This interpretation of the officials was reinforced by the provision in GLI.52/68 dt.25.7.68 read with Public Notice No dt.27.5.68 to the effect that expect in regard to items mentioned in Appendix-3, licences were to be issued for value applied for. It was for this reason that the authorities were at pains to emphasise in various manners as aforesaid that the applications were to be liberally processed by the licensing officials.

(Note:The Enquiry Officer also vide para 4.11 of his report dt.2.2.81(annex-15) has stated"From the above it is thus clear that the instructions were not available with regard to how the actual users aspect would be verified or how they have to be understood and whether servicing and maintenance needs have to be met from the applicants own resources") When the Enquiry Officer himself has agreed

A225

that the Instructions were not available as to how aspect of actual users would be verified, then he should not have made any comment on prudness or cavalier fashion of the deponent.

Page.10 "it was for this reason that the authorities were at pains to emphasise in various manners as aforesaid that the applications were to be liberally processed by the licensing officials"

Page.11. "There was moreover no agency at the disposal of the licensing officials for such verification of actual need the 'Sponsoring Authorities' being excluded from the process. However in this GLI too it was made clear that 'Import licences may be issued for value applied for'"

Page 13 & 14. D.O. Letter dt. 30.8.69 reproduced

Page.14. Reply to D.O. dt. 30.8.69 sent by Chief Controller dt. 27.12.69 ^{5.12.69} and reproduced.

Page.15. "What was the meaning of Sri.O.N.Anand's directive that the 'end product' was not to be seen? If the expression 'actual user' was to mean only that the applicants should use the articles sought to be imported for the thing he was going to manufacture in his own factory, i.e in the manufacture of particular end product, then the directive that the end product was not to be seen should be considered as clearly contrary to the intendment of the scheme"

Page.16. "It is undisputed that no action was initiated against the petitioners on the basis of any complaint of C.C.I & E. No higher officer of the C.C.I. E department had taken exception to any of the licences issued by Punvani. The Policy throughout was that the licences were to be issued for value applied for. Indeed, even letter of 5.12.69 refers to the earlier GLI.No. 34/69 dt. 4.6.69 and adds that according to that G.L.I. the licences were to be issued for value applied for on mere production from the applicant that spares sought to be imported were required for servicing and maintenance of the machinery installed in the applicants factory if the applications were other wise in order"

1298

Page.16. "Even earlier in May 69 on Punvani's note he had observed that in A.M.69 also the same policy was being followed vide Annexure-5 to the petition no.882 of 81. The observations of Punvani and Sri.Anand that they had been doing this during A.M.69 were not without foundation. Numerous instances have been mentioned in para 19.20, 21 and 22 and 24 of petition no.1202 of 81 of the other licences issued which could only be justified on the basis of the interpretation now canvassed by the petitioners. These licences were issued in A.M.69 by Sri.Budhraj out of which at least one was on the basis of a letter of C.C.I.E. dt.4.2.69. These paragraphs also mentioned numerous other licences issued by Punvani himself but in respect of which the CBI has not imputed any illegality to Punvani and his dealing assistants."

Page.18. "If Punvani and his subordinate assistants were under misapprehension about the true meaning of the expression then they were not alone in error, their higher officers were equally labouring under the same misapprehension, particularly Sri.O.N.Anand." "In barter trade the more you import from the 'Socialist' countries of the Eastern Block the more you are able to export to them." This seems to be the background in which the various instructions were issued from time to time emphasising that such applications were to be treated most liberally and without any meticulous scrutiny."

Page.19. "It may however be clarified that in most of these cases although the charges framed do mention that Punvani, Bhatia and Jain obtained pecuniary advantage for themselves and for others, namely, for the grantees of licences, it was conceded before me by the learned Additional Government Advocate that there was absolutely no evidence about passing of illegal gratification from the grantees of licences to the officials." It is enough, so far as the accused-officials are concerned, if they acted in accordance with the

orders or with the views of their immediately higher officers who are not alleged to be in conspiracy with them and on whose evidence the prosecution is itself relying. If as subordinate officers these accused acted in accordance with the views expressed by the higher officials, they cannot be said to ~~have~~ have acted in bad faith.

Page 22-23. "It may be added again, even at the cost of repetition that in the ~~instant~~ instant case there is no evidence of actual passing of money between the traders and the officials. The charge against them is only based on violation of the official instructions while granting licences and thereby conferring undue and pecuniary advantage to the traders. In this view of the matter the validity of the charge could certainly be examined without appreciation of the oral evidence, which is

Page.23. yet to be adduced but on documentary evidence interpreted in the light of the statements recorded under section 161 Cr.P.C., which have already been supplied to the accused under section 173.

It is thus clear that the accused officials who are petitioners, cannot on the evidence sought to be adduced, be held guilty of their dishonestly misinterpreting the official instructions relating to grant of licences or of granting licences in violation thereof. If the charge against the officials fails the charge against the dealer Shane Ilahi cannot survive either.

In the result these petitions and the revision are allowed and the charges framed against the petitioners are quashed and the proceedings for their prosecution are also hereby quashed." Sd.K.N.Goyal. J. dt.25.5.84.

Thus the Hon'ble High Court has quashed the charges framed and the proceedings on MERITS and the Inquiry Officer or Disciplinary Authority etc cannot sit in judgement over the Judiciary as has been clearly mentioned in Rule 14, CCS(CCA) Rules, wherein it has

(728)

been mentioned that departmental enquiry should not be held simultaneously with the police enquiries. If the facts or allegations had come to be examined by a Court of competent jurisdiction and the court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. In Rule 14 it is clearly mentioned 'Provided that the finding on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge."

page 73, Swamy's

page 77, Swamy's

page 76, Swamy's

page 98, Swamy's

7(e) There is clear violation of Rule 14 CCS(CCA) Rules in as much as the Types of cases which may merit action for imposing one of the major penalties has been mentioned as Annexure and also filed as Annexure no. A-9 to OA. 77/89 and the deponents case does not fall under any of cases mentioned. Also at Case Law (14) Disciplinary Authority cannot take a view contrary to the judicial view on the same charge and on the same evidence. Also there is no clear and definite finding by Inquiry Officer. In Rule 15 CCS CCA, Rules, Govt of India's Instructions dt. 13.7.1981 have been mentioned based on Hon'ble Supreme Court Judgement, that Self-Contained speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authority, also annexed as annexure No. 22, whereas there is total violation by Inquiry Officer, Disciplinary Authority and even so called Sri. Joginder Singh. Hence it has also been suggested that action against authorities for failure to observe 'proper' procedure be taken.

Annex-22, page 107
Swamy's

8. That the amendment application of the petitioner is correct and reiterated and the respondents affidavits are misconceived and liable to be rejected and the order of compulsory retirement liable to be quashed, with heavy costs and compensation action against authorities for failure to observe proper procedure may also be considered by Hon'ble Court, the most vital fact.

Cont-10

and crystal clear DISCRIMINATION is evident from the fact that based on the Hon'ble High Court decision dt. 25.5.84, appeals of 2 assistants Sarva Sri. K. C. Bhatia and J. K. Jain, on whom also penalty was imposed based on Departmental inquiry report, both appeals were decided by Ministry of Commerce vide No. C/13011/41/71-Vig dt. 9.10.1985 and penalty imposed was set aside, this document has been filed as Annexure A-10 to OA. 77/89, but clear malice of all authorities is evident, that appeal dt. 25.9.83 of the deponent has still not been decided, ^{on} this only fact action against Inquiry Officer/Disciplinary Officer/Appellate Authority to observe proper procedure may be considered.

All reliefs prayed for may kindly be allowed.

Lucknow.
25.5.1990


Deponent.

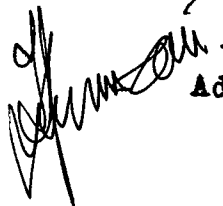
VERIFICATION.

I, the deponent named above do hereby verify that contents of para 1 to 8 of this affidavit are true to my personal knowledge and that no part of this affidavit is false and nothing material has been concealed. So help me GOD.

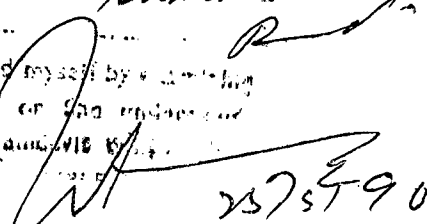
Lucknow.
25.5.90


Deponent.

I identify the deponent above named who has signed before me.


Advocate.

1076 Asst. G. J. Tarekar
Is identified by Shri. Tehmina Durrani
Link to Shri. R. S. Durrani
I have satisfied myself by examining
that the contents of this affidavit are true
and correct.


MUSHIR ALAM PANDE
Officer
Civil Court Lucknow

A250

In the Central Administrative Tribunal, Allahabad
Bench Lucknow.

...

Counter-Affidavit

In

Civil Misc. Application No. 272 of 1989. (L)

In

Registration No. 77 of 1989(L).

G.I. Punwani ..

.. Petitioner

Versus.

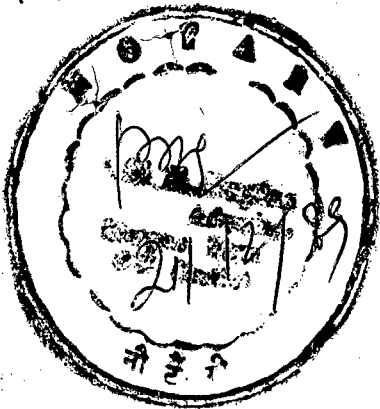
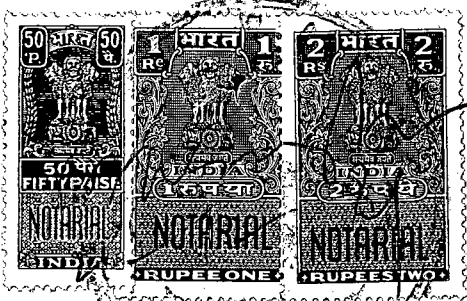
1. Union of India and others. .. Respondents.

Affidavit of Sagua Lall,
aged about 52 years, son of late
Sri Keshari Lall, Deputy
Notary
Chief Controller of Imports &
Exports, Kanpur.

Deponent.

I, the deponent, abovenamed, do hereby
solemnly affirm and state as under:-

1. That the deponent is working as Deputy
Chief Controller of Imports & Exports, Kanpur
and has been authorised to file the present affidavit
on behalf of the respondents in the aforesaid case.
He is, as such, well acquainted with the facts of
the case deposed to below.



Read
13/12/90

17201

.2.

2. That the deponent has read the contents of the application and affidavit filed by the petitioner in the aforesaid case and has fully understood the contents of the same.

3. That the present application filed by the petitioner for summoning Government records is in reference to the petition filed under Registration No.77 of 1989(L) relating to non-payment of pensionary benefits.

4. That a counter affidavit opposing the claims made by the petitioner in his petition Registration No.77 of 1989(L) has already been filed before this Hon'ble Tribunal.

5. That at the outset it is submitted that the documents /records the summoning of which has been prayed for by the petitioner for perusal of this Hon'ble Tribunal are not relevant, even remotely, to the grant of pensionary benefits to the petitioner and will not have any bearing on the adjudication of the claim for grant of pensionary benefits made by the petitioner in his petition under Registration no.77 of 1989(L).

6. That in any case it is submitted that the documents /records mentioned by the petitioner in his above said petition are unpublished official



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4282

records and are of a classified/confidential nature and their disclosure will cause great injury to public interest.

7. That it is submitted that the above averment is not being made on the ground of expediency or because it is apprehended that the documents/records, if produced, would defeat the case of the Government but because the documents/records will not help the petitioner in the adjudication of his claims for grant of pensionary benefits. In view of the facts disclosed above the application of the petitioner deserve to be rejected.

I, the deponent, above named, do hereby verify and declared that the contents of paras Nos. 1 and 2 of this affidavit are true to my personal knowledge; those of paras Nos. 3 to 7 of this affidavit are based on information received from perusal of the papers on records; those of paras Nos. ... of this affidavit are based on legal advice which all the deponent believes to be true; that no part of this affidavit is false and that nothing material has been concealed in it.

So help me God.

Deponent.



I, R.S. Patwal, Section Head in the Office of the Joint Chief Controller of Imports & Exports, Kanpur do hereby declare that the person making this affidavit and alleging himself to be Shri Sagua Lall is the same person who is personally known to me.

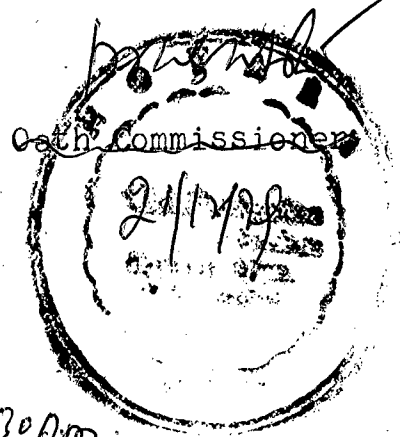
Section Head

AD 202

:: 4 ::

Solemnly affirmed before me on this 21st day of December, 1989 at 11.30 a.m. by the deponent who is identified by the aforesaid clerk.

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



Sworn to this 21st day of Dec 89 11.30 AM
before me by the deponent who is duly identified.

Madhuban Kishore Gupta
Madhuban Kishore Gupta, Advocate
Govt. Notary, KANPUR

21.12.89

A283

guilt by not producing the documents/records connected with the case. They should have no hesitation to produce records/documents for perusal of Hon'ble Court to substantiate their case. Non-production of documents/records as requested by deponent is a clear proof, that the averments made by respondents are wrong, false. The Hon'ble Court must peruse the A.O.R's of the deponent to arrive at conclusion of doubtful integrity and also to see if at any stage any adverse entry had been communicated to deponent also to see why maliciously appeal of deponent dt. 25.9.1982 is not being decided, hence all documents requested to be summoned may kindly be ordered to be summoned.

3/3/90
MISSISSAUGA

Lucknow.

Dt. 24.3.1990.


 Deponent.

VERIFICATION.

I, the deponent, abovenamed do hereby verify and declare that contents of para 1 to 4n of this affidavit are true to my personal knowledge and no part of this is false and nothing material has been concealed. So help me GOD.

Lucknow.

Dt. 24.3.1990


 Deponent.

I identify the deponent abovenamed who has signed before me.

2-55
Adv. 131k
G. L. Panwar
self -

Advocate.

Lal Bahadur Shastri
24/3/90

M.P. No. 262/91 (L)
O.A. NO. 77 of 1989 (L)

G.I. Punvani

Versus

Union of India and others

... Respondents

The petitioner abovenamed most respectfully

begs to state as under:

1. That in Case no. (Registration T.A. NO. 1336

of 1987) this Hon'ble Tribunal vide their Order dated

14.12.1990 has quashed the order of compulsory retire-

ment dated 18.8.1982. The operative portion of the

same reads as follows:-

"9. For reasons recorded above, this

petition succeeds. We quash the impugned

order dated 18.8.1982, Annexure 15 retiring

the petitioner compulsorily from service

and direct that the respondents shall

consider the petitioner to have continued

in service till he might have attained the

age of superannuation in the natural course

of things. We also direct that the respond-

ents shall pay the difference of Pay and

Allowances etc. and other pecuniary benefits

which the petitioner may have been entitled

to but for the impugned order of compulsory

retirement. Parties shall bear their costs."

A photostat copy of the order is being annexed herewith

as Annexure no. A-34.

Received today
2/5/91
Sd/-

Received copy
R.C. Yadav clerk
Sd/- R.C. Yadav
25-4-91
Advocate

Received today
for Judicial
Section
2/5/91
Sd/-

4236

A282

2.

2. That the aforesaid judgment may kindly be placed on record of the instant case.

Wherefore, it is most respectfully prayed that the copy of the judgment be placed on record and appropriate relief may kindly be granted in terms of aforesaid judgment.

Lucknow
Dated April 25 , 1991


Advocate
Counsel for the petitioner

A280

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW Circuit Bench

Registration T.A. No.1336 of 1987

(W.P. No.1403 of 1987 of the High Court)
(of Judicature at Allahabad, Allahabad)

Sri G.I. Punwani Petitioner

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr.K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

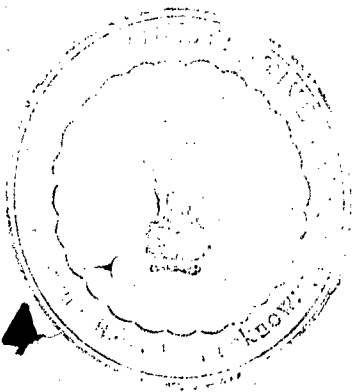
Writ Petition described above is before us under Section 29 of the Administrative Tribunals Act, 1985 for quashing an order dated 18.8.82, Annexure-15 whereby the petitioner G.I.Punwani was ordered to be compulsorily retired from service; there is a consequential prayer to direct the respondents to treat the petitioner to have continued in service till 31.1.83 when he would have attained the actual age of superannuation and also be paid difference of Pay & Allowances etc.

2. The facts of the cases are not in dispute. The petitioner was an Assistant Controller of Imports and Exports when he was considered to have committed certain acts of misconduct in issuing thirteen licenses for import of spare parts of certain machinery in violation of the Import Policy of the Govt. of India. A chargesheet dated 16.4.80, Annexure-11 was served upon him. He made representation in defence. The Inquiry Officer conducted the proceedings and ultimately on 2.2.81 he submitted

A289

the enquiry report, Annexure-16 to the disciplinary authority. The disciplinary authority, respondent No.2, Chief Controller of Imports and Exports found one of the charges not proved, agreed with the findings of the Inquiry Officer in respect of other charge and considered it appropriate to direct the retirement of the petitioner compulsorily by the impugned order dated 18.8.82, Annexure-15. Counter and Rejoinder have been exchanged and we have ^{been} taken through the record by Shri R.N.Trivedi, the learned counsel for the petitioner and Shri Ashok Mohiley for respondents.

3. Shri Trivedi has raised two points. It is urged, firstly, that the first charge related to the alleged violation of paras 18, 19 and 21 of the Import Policy of the Govt. of India but the Inquiry Officer did not find those paragraphs to be violated and nevertheless recorded a finding that the petitioner had violated the spirit of para 78 of that Policy. The disciplinary authority agreed with that finding. The argument is that once the charge of violation of paras 18, 19 and 21 of the Import Policy was found ^{not} substantiated, it was not open to the Inquiry Officer/disciplinary authority to hold that there was a violation of the spirit of para 78 of the Policy. Shri Ashok Mohiley, however, refers to the charge as drafted and contained in the Inquiry Officer's report as well as in the memorandum ^{of} charges and points out that there is no mention in the Article of charge that the petitioner had violated paras



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18, 19 and 21 of the Import Policy. Annexure-11A contains the article of charges and having set out the value of the spare parts imported, mentions that import licenses have been issued "against the laid down policy of the Govt. to various parties....". True enough this article does not state in terms that paras 18, 19 and 21 of the Import Policy had been violated. Shri Trivedi however emphasized that there can be no valid statement of charge unless it is specific and definite as required by Rule 14(3)(i) of the C.C.S. (CCA) Rules. Clause (i) of Rule 14(3) unmistakably requires that "the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge" has to be drawn up. It is plain enough that a bare statement that the license had been issued "against the laid down Policy of the Government" does not contain definiteness which is essential according to this clause. In that sense that article of the charge could also be characterised as vague which is a vitiating feature. Even so, the article of charge has to be read along with imputations of misconduct and misbehaviour. Clause (ii) of Rule 14(3) requires a statement of the imputations of misconduct or misbehaviour "in support of each article of charge" also be drawn up in addition to the definite and distinct article of charge under clause (i) of that Sub Rule. In other words, for a proper understanding and appreciation of the charges one may go to the imputations of misconduct or misbehaviour. This

A291

statement of imputations is contained in Annexure-11B. This document unmistakably mentions that the relevant provisions of the Import Policy which had been violated by the issue of the import licenses were contained in paras 18,19 and 21. A composite consideration of the statement of imputations of misconduct and the Articles of charge thus leave no manner of doubt that the disciplinary enquiry had been held for violation of the policy as contained in paras 18,19 and 21. The Inquiry Officer's report makes it absolutely clear^{and}, it is not disputed, that violation of those paragraphs of the Import Policy was not proved. That being so, it was not permissible to rely upon para 78, much less upon the "spirit" of para 78 of the Policy as a substitute for paras 18,19 and 21.

4. In this connection Shri Ashok Mohiley referred to the explanation to Rule 14 (23) of the C.C.S. (CCA) Rules. That Sub Rule lays down the contents of the report which may be prepared by the Inquiry Officer. Among them ~~are~~ the findings of each article of charge and reasons therefor. The explanation 1 is as follows :-

"If in the opinion of the inquiring authority the proceedings of the enquiry establish any Article of charge different from the original article of charge, it may record its findings on such articles of charge". Shri Mohiley contends that

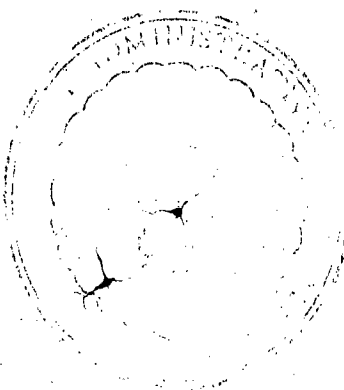
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in view of this explanation it was permissible for the Inquiry Officer to record a finding of violation of para 78 of the Import Policy even if the violation of paras 18, 19 and 21 was not established. However, before the Inquiry Officer could do so he was bound to ensure that a reasonable opportunity was given to the petitioner of defending himself against the new article of charge in view of the proviso added to the explanation which runs as follows :-

"provided that the findings on such article of charge shall not be recorded unless the Govt. servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge".

5. The expression "such article of charge" signifies the new article of charge which is not contained in the article of charge or the statement of imputations of misconduct. It is not shown that the petitioner had a reasonable opportunity of defending himself against the alleged violation of para 78 of the Import Policy.

6. Shri Trivedi further contends in this connection that what the Inquiry Officer thought to be proved was not a violation of para 78 of the Policy but ~~that~~ was the spirit of that para. There is worth in his contention that there is nothing like a 'spirit' of a para of a Policy in the context of disciplinary enquiry which is required to be held on definite charges. We are of the opinion, therefore,



A294

that it was not open to the Inquiry Officer to hold that the petitioner had violated the spirit of para 78 of the Import Policy.

7. Shri Ashok Mohiley has also invited our attention to Rule 15(4) of the C.C.S. (CCA) Rules to contend that the disciplinary authority need not give an opportunity to the delinquent employee for a proposed penalty. That question has not arisen in this case. All that we have to see is whether the disciplinary authority had arrived at a valid and legal finding of misconduct for which the petitioner had been chargesheeted. Since the disciplinary authority concurred with the findings of the Inquiry Officer on the article of charge of violation of paras 18, 19 and 21 of the Import Policy, he obviously fell into the same error into which the Inquiry Officer had fallen; he confirmed a finding of violation which was not open for him to do.

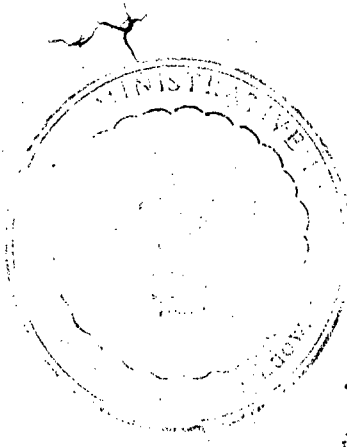


8. The second point^{correctly} urged by Shri Trivedi is that although the Inquiry Officer found another article of charge to be established namely of the petitioner's being in possession of assets disproportionate to the known sources of his income, the disciplinary authority held that charge to be not proved. That being the position, there could be no basis on which the disciplinary authority passed the impugned order, Annexure-15 dated 18.8.1982 of compulsory retirement.

A295

- 7 -

9. For reasons recorded above, this petition succeeds. We quash the impugned order dated 18.8.82, Annexure-15 retiring the petitioner compulsorily from service and direct that the respondents shall consider the petitioner to have continued in service till he might have attained the age of superannuation in the natural course of things. We also direct that the respondents shall pay the difference of Pay and Allowances etc. and other pecuniary benefits which the petitioner may have been entitled to, ^{but} for the impugned order of compulsory retirement. Parties shall bear their costs.



Member' (A)

Vice Chairman

Dated the 14th Dec., 1990.

RKM

Alloster

16/12/1990
(Mohd. Umar Khan)
Court Officer,
Central Administrative Tribunal,
Circuit Bench,
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

WRITTEN ARGUMENTS

ON BEHALF OF

UNION OF INDIA

IN

REGISTRATION OA NO. 77 OF 1989

G.I. Punwani ----- Applicant

versus

Union of India & others-- Opposite Parties

WRITTEN ARGUMENTS ON BEHALF OF UNION OF INDIA

RESPONDENTS

By means of the present petition the petitioner G.I. Punwani has sought the relief for payment of pension alongwith all consequential benefits as due to retired persons. He has alleged that he was continuously in government service for 34½ years and is entitled for full pension as per instructions of Government of India MHA No.38(16) Pension Unit/80 dated 30-12-1980 revised vide Ministry of Personnel.

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Public Grievances and Pension No. 20/70/87-

PNPW dated 21-5-1988 and various other reliefs

At the time of oral arguments he has made

arguments with regard to payment of his

pensionary benefits only. Brief facts of the

case which emerges from paragraph nos. 6-A to

6-F of his application are as under :

a) Shri Punwani migrated from Pakistan and was selected by the Ministry of Rehabilitation, Government of India and joined as Deputy Camp Commandant on 6-3-1948 at Ahmedabad and he worked there till 31-3-1950 when he was retrenched.

b) On 16-11-1950 he was selected as Senior Inspector, Rehabilitation Department and joined at Dehra Dun and was promoted as Assistant Custodian of Evacue Properties on 9-8-1951 and worked there till 27-10-1955.

With effect from 28.10.1955 his services integrated as Managing ~~XXXXXX~~ Officer (Acquired Evacue Properties).

A298

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c) With effect from 18-3-1955 he was selected for Territorial Army Commission as Second Lieutenant. On 11-2-1960 he was relieved by Rehabilitation Ministry. On 1-5-1961 his services were terminated by Rehabilitation Department as Managing Officer. On 29-9-1962 he was selected by Union Public Service Commission for the post of Assistant Controller in Exports and Imports Department. On 15-7-1963 he joined imports and Exports Deptt. On 13-8-1963 again he was relieved to join Territorial Army. On 31-3-1969 he was relieved by Territorial Army after 9 years service. On 9-4-1969 he joined Exports & Imports Department as Assistant Controller. For grant of pension under the CCS(Pension) Rules, 1972 one of the primary conditions for eligibility to pension and retirement/death gratuity is that the person should have substantive appointment to a service/post under the Government. Rule 13 of the CCS(Pension) Rules 1972 stipulates :

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" Subject to the provisions of these rules, qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating and temporary capacity providing that officiating and temporary service is allowed without interruption by substantive appointment in the same or another service or post"

The submission is that the above rule clearly stipulates that a government servant must hold a substantive appointment under the government to become eligible and entitled for grant of pensionary benefits. The applicant G.I. Punwani was not appointed substantively to any post at any point of time either in the organisation of Exports and Imports Department or in his previous employment in the office of Regional Settlement Commissioner

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Uttar Pradesh. Quasi permanent status is conferred under CCS (Temporary Service) Rules, 1965 and is quite distinct from permanent status enjoyed by the government servants who are appointed substantively. The quasi permanent status is in no way at par with permanent status * and therefore, Shri Punwani is not eligible for any pensionary benefits under the CCS (Pension) Rules, 1972.

Secondly it is submitted that the reference of OM No. 38(16)-Pension Unit/80 dated 30-12-1980 is applicable only to those temporary government servants who have rendered not less than 20 years ^{Continuous} temporary service and ~~retired only on attaining the age of superannuation~~ or on being declared to be permanently incapacitated for further government service by the appropriate medical authority. It is stated that earlier the applicant was retired on imposition of the penalty of compulsory retirement under CCS (CCA) Rules, 1964 and as such he was not eligible for grant of pension,

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pensionary benefits under the then existing rules and as such he was not granted any pension/retirement benefits.

It is true that the Hon'ble Tribunal had quashed the order of compulsory retirement of the applicant vide its order dated 14-12-90 in TA No. 1136 of 1987. However, it is submitted that the aforesaid order does not make the applicant Shri G.I. Punwani eligible for grant of pension as he has not rendered 20 years continuous temporary service in the office of Chief Controller of Imports & Export in terms of Government of India, Department of Personnel and Administrative Reforms OM No. 38(16)-Pension Unit/80 dated 30.12.1980.

2 The applicant had joined the Export and Import department w.e.f. 15-7-1963 and his normal date of superannuation is 31-1-1983. If we look to the date chart with regard to his services in the Central Government in various departments it will reveal that on 31-3-1950 his services were terminated as Deputy Camp

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Commandant, Ministry of Rehabilitation and thereafter he was selected on 16-11-1950 as Senior Inspector, Rehabilitation Department, Dehra Dun. In this period there is a break of 8 months. Again his services were terminated on 1-5-1961 as Managing Officer Rehabilitation Department and he was selected by Union Public Service Commission for Assistant Controller Exports and Imports Department on 29-9-1962 and he ~~he~~ joined on 15-7-1963. There is a break of about 22 months. In this way it is submitted that the applicant has not rendered continuous temporary 20 years/service in the Exports and Imports organisation. Therefore, he is not eligible for grant of pension. The applicant was only confirmed on the post of Assistant Controller as he was not clear from vigilance angle. In para 23 of the Written Arguments the applicant has himself mentioned that in terms of Deptt. of Personnel and Training OM dated 30-12-1980 only those temporary government servants who have rendered 20 years regular continuous

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service are entitled for grant of pensionary benefits on retirement on attaining the age of superannuation. The applicant has not rendered 20 years ^{continuous} regular temporary service in the Imports and ~~Exports~~ Department. Therefore he is not entitled for grant of pension. It is further submitted that the past services rendered by the petitioner in Territorial Army is not countable. In this connection attention is invited to Swamy's Manual on Establishment and Administration Page 270 Item 6 OM dated 22-12-1959. It is further stated under paragraph 6-G of the petition that the petitioner has referred to the instructions of Ministry of Home Affairs as contained in notification No. 31-1-1967-Estt (B) dated 4-10-1967 and Department of Personnel Notification No. 8/20/60-Estt (C) dated 26-2-1971 which relates to fixation of seniority of only Released Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces appointed against the

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vacancies reserved for such officers and these instructions are not applicable to the petitioner G.I. Punwani as he was neither a Released Emergency Commissioned Officer (b) nor a Short Service Commissioned Officer (c) nor was appointed against the vacancy reserved for such officers. This further negatives the argument of the petitioner that his stay of 9 years in the Territorial Army is to be counted for pensionary benefits. The afforesaid instructions belies the arguments of the applicant inasmuch as the persons who are Released Emergency Commissioned Officers or Short Service Commissioned Officers who have served in the Armed Forces ~~XXX~~ they are eligible for counting their past Army Service. The applicant was neither a Released Emergency Commissioned Officer nor a Short Service Commissioned Officer. In this connection Rule 19 of the CCS (Pension) Rules, 1972 is quite clear. In paragraphs 25, 28 and 32 of the Counter Affidavit we have denied and have mentioned the case of the Department

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why the petitioner/applicant cannot be granted pension.

It is further submitted that the applicant by means of this petition is seeking plural remedies contrary to the provisions of Central Administrative ^{Tribunal} Act, 1985. The applicant G.I.

Punwani is agitating not only for finalisation of his pensionary benefits by this petition but other reliefs prayed for by him for payment of salaries allowances etc. on account of decision of this Hon'ble Tribunal dated 19.12.1990 in TA No. 1136 of 1987 claim of payment of difference of full pay and allowances between the date of his suspension and compulsory retirement, full pay and allowances from the date of his compulsory retirement till the date of his attaining the age of superannuation, issue of a declaration that applicant is a permanent employee w.e.f.

15-7-1969 are not consequential to the applicant's main relief for grant of pensionary benefits as such under the Central



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Final

Administrative Act, 1985 plural remedies cannot be granted. Further it is stated that so far as the payment of various allowances are concerned on behalf of the respondents a detailed reply has been mentioned in paragraph no. 28 internal page 20, 21, 22 and 23 of the Counter Affidavit.

In view of the aforesaid facts and circumstances contention of the department to be summarised are that

- a) Petitioner was never appointed substantively. He was never cleared from the vigilance angle.
- b) Total service of the petitioner from 6-3-1948 till the date of retirement has not been accepted for grant of pensionary benefits, it was not continuous.
- c) OM dated 30-12-1980 is not applicable to the petitioner. It applies to

[Signature]

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those government servants who have rendered not less than 20 years ^{continuous} regular service and retired only on attaining the age of superannuation ^{or} declared permanent incapacitated for further government service.

dd) Condition for eligibility to pension is that the person ~~who~~ should hold a substantive appointment to a post/ service under the government. (See Rule 13 of CCS (Pension) Rules, 1972.

ee) Petition is not entitled to plural reliefs.

Dt/- 20/1/92

Ashok Mohiley
(ASHOK MOHILEY)
COUNSEL FOR THE RESPONDENTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. NO. 77 OF 1989.

G.I. Punvani Applicant

VERSUS

Union of India and others Respondents

WRITTEN ARGUMENTS ON BEHALF OF APPLICANT

The humble applicant most respectfully submits
as under:-

1. That on 30.9.1991 during the course of arguments this Hon'ble Tribunal was pleased to direct the applicant to submit written arguments and as such it is being submitted herewith.

BRIEF FACTS

2. That the applicant's date of birth is recorded as 19.1.1925 which is not disputed and accordingly the applicant stood retired from service on attaining the age of superannuation on 31.1.1983.
3. That before reaching the age of superannuation the applicant was compulsorily retired vide order dated 18.8.1982 against which the applicant filed a writ Petition No. 1403 of 1983 in the Hon'ble High Court at Allahabad. This Writ Petition was thereafter transferred to Central Administrative Tribunal.

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Allahabad under section 29 of Administrative Tribunal Act 1985 and registered as T.A. No. 1336 of 1987.

4. That the Hon'ble Central Administrative Tribunal having heard the parties allowed the aforesaid T.A. No. 1336 of 1987 on 14.12.1990 quashing the impugned order of compulsory retirement dated 18.8.82 directing that the applicant shall be treated in continuous service till he attains the age of superannuation i.e. upto 31.1.1983 and shall be entitled to all the consequential benefits. A true copy of the aforesaid judgment dated 14.12.90

Annex-A-34

✓ has already been filed as Annexure A-34 filed with application dt 25-4-1991.

5. That as the Respondents did not file any appeal against the aforesaid judgment dated 14.12.1990 Passed in TA 1336 of 1987 the judgment become final and thus the applicant become entitled to get all the benefits under the aforesaid judgment dated 14.12.1990.

6. That it is note worthy that although the applicant was compulsorily retired vide order dated 18.8.1982 yet he was neither paid the pension nor the other post retiremental benefits/dues for which he was entitled to under law. It is submitted that compulsory retirement is not a punishment in the eye of law hence if an employee is compulsorily retired from service he is entitled to get prnsion and all

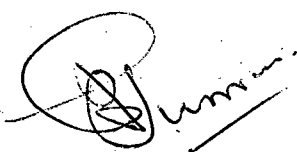


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other benefits in the same manner as he would have been getting had he stood retired on reaching the age of superannuation in natural course. But ofcourse the pension and other post retirement dues are calculated on the basis of date of compulsory retirement.

7. That being aggrieved of non payment of pension and other dues for a long time, the applicant filed the instant D.A. No. 77 of 1989 on 23.3.1989 seeking the following reliefs:-

- a) To direct the authorities to immediately pay pension with all consequential benefits with effect from 1.2.1983 (as would have retired normally with effect from 31.1.1983) compulsorily as illegally and maliciously/retired with effect from 18.8.1982. Also pay 24% interest.
- b) To pay the difference of pay and allowances with effect from 6.6.1975 (date of suspension) till 18.8.1982 and full pay and allowances from 18.8.1982 to 31.1.1983 when would have normally retired with 18% interest.
- c) To declare him permanent with effect from 15.7.1969 (Q.P. on 15.7.1966).
- d) Pay all 23 T.A./D.A. bills for attending C.B.D. cases and departmental enquiry.



A211

adequate

- e) Grant special/compensation for unnecessary harassment and mental torture from 8/9.12.1971.
 - f) to order action against the authorities for failure to observe proper procedure (Rules 15 CSS) (CCA) Rules 1965.
 - g) pending final decision order payment of provisional pension, gratuity etc. with 24% interest (penal interest).
8. That the Respondents thereafter filed Counter Reply dated 16.8.1989 on 28.8.1989 against which the applicant filed Rejoinder Reply on 15.9.1989. Thereafter the Respondents filed supplementary Counter Reply on 21.12.1989 against applicant's Rejoinder Reply dated 15.9.1989.
9. That the applicant also moved an application on 27.9.1989 summoning certain documents including documents and the record to indicate that the applicant's record of service is superb and spectacular and he was not confirmed wrongly and arbitrarily. The Respondents however, opposed the prayer on the ground that the documents and records are conclusive and confidential. The applicant submitted that the documents/records sought to be summoned are not privileged documents.

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GROUND'S AND ARGUMENTS

10. That the applicant's first prayer is for payment of pension with all consequential benefits along

A312

with 9 1/4% interest on delayed payments. The applicant submitted that he cannot be denied pension on the ground that he was compulsorily retired vide order dated 18.8.1982 as the order of compulsory retirement is not punishment in the eye of law. The applicant also submitted that there is no other order forfeiting the pension the pension of the applicant. The Respondents have admitted this averment. The relevant line from Paragraph 25 of the Counter Reply is being excerpted as under:-

"Applicant did not retire on attaining the age of superannuation but was compulsorily retired before attaining the age of superannuation and therefore he is not entitled to grant of pensionary benefits under the above said O.M.".

11. That as the order of compulsory retirement has been quashed by the Hon'ble Tribunal vide order dated 14.12.1990 hence on this basis now the pension and other benefits of the applicant cannot be forfeited. Now there is no need to submit on the point that even if the applicant has been compulsorily retired he is entitled for all the post retiremental benefits including the pensionary benefits.

12. That the other objection for not making payment of pension and post retiremental benefits to the

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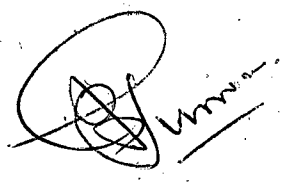
applicant has been taken by the Respondents that since the applicant did not possess 20 years of service in the present Organization i.e. Import and Export Department, Ministry of Commerce, Government of India, hence he is not entitled to get pension.

13. That the applicant vehemently denied this objection of the Respondents and submitted ~~to~~ that he has already completed more than the required length of qualifying service to get the pension and other post retirement dues. In this connection the following facts are relevant:-

i) That the Respondents have taken the plea that the applicant is not having 20 years of qualifying service for getting the pension for the first time during the course of arguments. No such objections have been taken by the Respondents earlier while submitting Counter Reply or the supplementary Counter Reply.

ii) That the applicant was initially appointed as Deputy Commandant and Supply Officer City Relief Camps Ahmedabad vide letter No. TAA

(2) DGE dated 3.3.1948 issued by the Ministry of Rehabilitation, Government of India, New Delhi and joined on 6-3-1948.

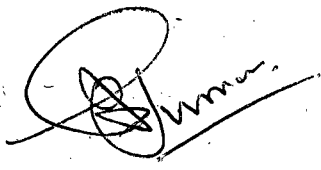


iii) That due to reorganization of the Organization the applicant declared surplus and his services were terminated with effect from 1.4.1950.

iv) That thereafter the applicant was appointed as senior Inspector in Rehabilitation Department, Government of Uttar Pradesh at Dehra Dun vide letter No. R.F.G./R/54/IV dated 16.11.1950 where he worked as such from 16.11.1950 to 8.8.1951 then he was selected as Assistant Custodian of Evacuee Property, Rehabilitation Department, Government of U.P. and he joined as such at Muzaffarnagar on 9.8.1951 and worked as such upto 27.10.1955.

v) While working as Assistant Custodian, as aforesaid, the applicant was commissioned as Territorial Army Officer and ranked as Second Lieutenant on 18.3.1955 and was posted as such to the III Inf. Bn. (TA) Allahabad.

vi) That thereafter on 28.10.1955 the services as Assistant Custodian was integrated by Central Government, Ministry of Rehabilitation and designated as Managing Officer Acquire Evacuee Properties vide gazette notification No. 27/10/55 S III dated 20.1.1956 of Government of India.



A215

vii) That on account of exigencies of service and threat from Pakistan the applicant was released by the Ministry of Rehabilitation vide letter No. dated 11.2.1960 to join Territorial Army with retention of lien on the post held by him in the Rehabilitation Department during the period of service under the territorial army. It was under the provisions of Section 33 of T.A. Act and Rules.

viii) That while the applicant was serving in the Territorial Army the Chief Settlement Commissioner sent a letter No. 3/9/ARG/61 dated 13.4.1961 to the Territorial Directorate informing that the services of the applicant have been terminated with effect from 1.5.1961 from the Rehabilitation Department due to reduction in the strength of posts of Managing Officers albeit the applicant was entitled to retain lien on the post during the period he served in the Territorial Army.

ix) That thereafter the applicant was selected

through the agency of Union Public Commission and was appointed as Assistant Controller of Import and Export, Ministry of Commerce Government of India, the present vide order dated 22.11.1961 candidate



A316

Ministry of Labour and Employment for surplus
Officer of the erstwhile Ministry of
Rehabilitation in accordance with the
instructions of Ministry of Home Affairs'
Memo No. 14/3159 dated 31.12.1959. The
applicant was thereafter appointed as
Assistant Controller in the ^{Import & Export} ~~Central Engineer-~~
^{organisation} ing vide order dated 22.11.1962 on two
years' probation. As the applicant was
asked to send his acceptance to the afore-
said appointment, the applicant sent the
same on 27.11.1962. The order of appointment
to the post of Controller dated 22.11.62
has already been filed as Annexure-16 to
the O.A.

x) That it is pertinent to state that there
was a provision of upper age limit in case
of Government Servants Recruitment Rules
for various posts in the Import and Export
Organization (Annexure-19) and total posts
of Assistant Controller and Controller are
158.

(Annex-A.19)

xi) That although the applicant was appointed
to the post of Assistant Controller vide
order dated 22.11.1962 but he continued to
serve under the Territorial Army till
15.7.1963 when he was relieved by Territo-
rial Army 107 Inf. Bn. (TA) vide letter

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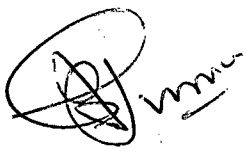
No. 61/4/41 and since then the applicant is continuing in the present Organization under the Respondents.

14. That it is crystal clear at this juncture that the applicant has completed more than 34 years of qualifying service and as such he made a declaration to that effect for getting pensionary and other post retirement benefits.

(Annex-A-13)

15. That in the Counter Reply the Respondents have stated that it is not possible for them to verify the aforesaid services rendered by the applicant in as much as the Respondents have no record of it. In reply to this objection the applicant has submitted that he has already made a declaration to that effect which is sufficient in terms of Rule 59 of the C.C.S. (Pension) Rules. Rule 59 aforesaid provides the manner of verification of service for the purpose of completion of pension papers. It is submitted that the applicant has already submitted his pension papers in accordance with Law as desired by the Respondents vide letter FSTT/PEN/GO/GIP/5863 dt 27.8.84.

16. That the aforesaid Rule 59(iv) contemplates as under:-



...

A318

"If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i), or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written statement on plain paper stating that he had in fact rendered that period of service, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish".

17. That the applicant has completed this formality to complete the pension papers. (Annex A-13)

18. That so far as the question of counting the Military service is concerned it has been provided in Rule 19 of the aforesaid pension Rules that a Government servant who is re-employed in a civil service or post before the attaining the age of superannuation and who, before such re-employment had rendered military service after attaining the age of 18 years, may, on his confirmation in a civil service or post, opt either to continue to draw the military pension or retain gratuity received on discharge from military service, and complete the required formality to count the previous military service as qualifying service.

[Handwritten signature]

19. That the applicant has served in Territorial Army

as aforesaid and hence this service of the

applicant is liable to be counted for the purpose

of pension in as much as the applicant has

completed all the required formalities contemplated

under the aforesaid Rule 19 of the Pension

Rules and did not take Military Pension or Gratuity.

20.

That according to the Respondents the applicant

has completed only 19 years and 6 months' service

in the present Organization and since it is less

than 20 years ^{condemned} hence the applicant is not entitled

to get the pension. If the military services

rendered by the applicant are counted in accordance

with law, it will be more than the required years

of qualifying service entitling the applicant

to get the pension and other post retirement

benefits.

21.

That it is relevant to mention that for the

purposes to count the military service it is not

necessary that the services rendered in the

Military should be regular as the word 'Regular'

has been omitted by G.I., M.H.A. Department of

Personnel and A.R. Notification No.6(1)-Pen.(A)/

80, dated the 30.7.1981 amending Rule 19 of the

aforesaid pension Rule.

22.

That it is submitted that Rule 13 to 32 and the

Rule 59 of D.C.S.S. (Pension) Rules are relevant

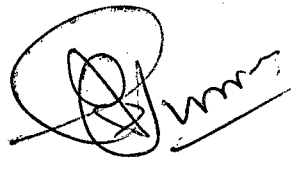
and applicable to the case of the applicant and

11329

- 13 -

which the applicant is entitled to the benefit sⁱ
of pension and other post retirement¹al dues.

23. That the ~~other~~ objection raised by the Respondents is that the services of the applicant are not confirmed hence the applicant is not entitled to get the pension and other dues pertaining to retirement¹al benefits. In reply to this objection it is submitted that the applicant was appointed in the service of the Respondents as back as in the year 1962 and since then he continued as such till the date of his retirement with full devotion and dedication with immaculate service record. It was not in the hands of the applicant to get service confirmed. It was the sole responsibility of the Respondents to confirm the services of the applicant. It is because of the ~~inclination~~^{oblivious attitude} of the Respondents the services of the applicant could not be confirmed. For the slackness of the Respondents the applicant must not suffer. Besides this, it is submitted that for getting the benefits of post retirement¹al benefits the confirmation of services ~~xxx~~ is not required. Even the temporary Government servants having 20 years of service have been made entitled to pension on reaching the age of superannuation



A321

vide order dated 30.12.1980, a true copy of
(Annex-22) which has already been filed as annexure-22
to the O.A.

24. That it is candidly clear on this juncture
that the applicant is entitled for the pension
and all consequential benefits as prayed for
along with 24% interest per annum for the
delayed payment.

25. That the applicant has further prayed for the
payment of full salary and allowances with effect
6.6.1975 to 18.8.1982. In this connection the
relevant facts are that the applicant was placed
under suspension vide order dated 6.6.1975 for
certain charges against which the ~~Secummed~~
~~Cases~~ were instituted which ultimately
(Annex-A-12) culminated into exoneration of the applicant.

It was ultimately held that the charges levelled
against the applicant were false and baseless
and as such the applicant is entitled to get
the period of suspension regularised ^{as has been directed vide order dt 14-12-90} The
(Annex-A-34) Respondents have not acted in accordance with
law to regularise the services of the applicant.
The services of the applicant during the period
of suspension are liable to be treated as on duty
and the applicant is entitled for full pay of
salary. There is no reason for the Respondents



A322

for not paying the full salary to the applicant for the aforesaid period of suspension.

26. That while under suspension the applicant was compulsorily retired from service vide order dated 18.8.1982. This order of compulsory retirement was quashed by the Hon'ble Tribunal and hence the applicant retired from service on 31.1.1983 on reaching the age of superannuation in normal course. According the applicant is entitled for full salary and allowances ~~from 6.6.75 to 18.8.82 and~~ from 18.8.82 to 31.8.1983. The Respondents have not shown any reason justifying the non-payment of full salary and allowances either for the suspension period or for the period from 18.8.1982 to 31.1.1983.

(Annex-A-34)

27. That the applicant's prayer that he be declared permanent with effect from 15.7.1969 is fully justified in view of the fact that he was appointed on two years' probation which he completed successfully. The maximum period of probation provided under Rules was two years and as such on completion of successful probation period, the applicant stood confirmed in the eye of law in as much as the applicant was not only allowed to continue in service much beyond the maximum period of probation but is allowed to continue upto the age of superannuation.

(Annex-A-19)

28. Summing up the above arguments, it is once again pointed out a

the cost of registration that the ONLY objection raised by the respondents in all their counter affidavits and supplementary counter affidavits for non payment of pension is that the-

(a) the petitioner is not eligible to get pension as he had not been continued in any post,

(b) the petitioner is not entitled to get pension as he had not reached the age of superannuation when he was compulsorily retired (refer paras, 25, 26, 28, 29 and 32 of counter affidavits at 16.8.89 and para 4 and 9 of supplementary counter affidavit at 21.2.89.

As for objection (a) it is contended the Govt. of India has already relaxed the condition of Govt. servant being continued in any post to be eligible for pension, but have made all Govt. servants eligible to get pension on reaching the age of superannuation having 20 years service (Authy: G of I, M.H.A. No. 3(16) Pension Unit/80 dt. 30.12.1980 (refer Annex-A-22). The petitioner even is entitled to be continued-

(1) having completed 2 years of probation w.e.f. 15.7.1963 at the joining period the present organization, and probation/being not been extended. (Annex-A-19)

(11) That there were 13 posts, and posts existed, petitioner being No. 72 (refer para 6 of affidavit dt. 22.10.89, filed in reply to counter affidavit dt. 16.8.89) as no juniors to him having been continued.

(111) Never, ever communicated any adverse entry, which is crystal clear (a) allowed to exercise all efficiency bars and when due and granted all increments as and when due (Annex-A-2)

(b) pressure retirement orders issued dt. 12.2.75, were withdrawn dt. 11.6.76 (Annex-A-7(A))

(c) although under suspension, but still considered by IPC and UPSC and selected in Central Trade Service w.e.f. 19.11.79 (Annex-A-6)

Thus the petitioner is entitled to be continued w.e.f. 15.7.1969. As for objection raised by respondents mentioned at (b) above, the petitioner has been allowed to reach the age of superannuation ... 17.

Annex-A-22.

Annex-A-19.

Annex-A-21.

Annex-A-7(A).

Annex-A-6.

1823

vide orders of this Hon'ble Tribunal in M-133697 dt.14.12.1990,

Annex-A-34.

(Annex-A-34).

29. Although no where the respondents have raised the objection that

petitioner is not entitled to get his pension as he has not completed 20 years of service, but even this point is being threshed out

(a) The CCS(Pension) Rules are very clear, Qualifying Service.

Rules 13 and 14, that continues service rendered under State Govt. in

Office or temporary capacity or Central Govt, shall qualify, and that is

why benefit of previous Govt service was given to petitioner in first

ten of his salary (Annex-A-2) and the Imports & Exports organization

therefore asked for service particulars prior to joining this Dept

vide letter No. BSRP/PW/CO/GIP/5863 dt.27.8.84, and particulars of

total Govt. service were furnished vide affidavit dt.13.9.85 (Annex-13)

which procedure is laid down in Rule 52 (a) (iv), para 16 above).

The Jt. Chief Controller, Bombay on receipt of this affidavit spont-

ly asked confirmation from Chief Controller vide letter dt.20.2.85

(Annex-A-2) to confirm that service particulars furnished by Punwant

have been accepted and asked for verification of service particulars.

The Chief Controller verified the service particulars and directed

Jt. Chief Controller, Bombay vide letter dt.1.4.85 (Annex-A-1) "to deal

with his pension case on basis of affidavit submitted by him in con-

nection with his rendering continuous Government service from 6.3.48 to

18.8.82 duly verified by Civil Court of Lucknow to admit the services

for the purpose of finalising his pensionary benefit". This service

from 6.3.48 to 18.8.82 was verified by Chief Controller for 34 1/2 years

and in accordance with Rule 32 (3) "The verification done under sub-

rule (1) and (2) shall be treated as final and shall not be re-opened

except when necessitated by a subsequent change in the rules and orders

governing the conditions under which the service qualifies for pension"

Thus as there has been no change in rules the verification of 34 1/2 years

of service has become FINAL.

That even otherwise the service of petitioner is more than 20 years

Rule 14 (G.I. Dept of Personnel & A.R. letter 3(20) Pm(A)/79 dt.31.3.82

counting of temporary service under State/Central Govt of those who have

been retrenched and petitioner was retrenched, Rule 19, counting of

A325

Military Service rendered before civil employment, the work REGULAR deleted before Military Service, thus even T.A. Officers eligible for their service being counted for qualifying service, refer para 18. above
Rule 29. Addition to qualifying service when a Government servant is declared surplus, and is eligible for facility of being re-deployed through the Central (Surplus Staff) Cell, through Directorate General Employment & Training, shall be entitled to have five years added to the qualifying service rendered by him. The petitioner is also entitled to this benefit, having been declared surplus by Rehabilitation Deptt. and sponsored by Dto. Genl. Training and Employment to get job of Asstt. Controller, refer Annx-A-18. Even under Rule 30,

Annx.A-18.

Addition to qualifying service in special circumstances, Agevt. servant appointed after 31.3.1960 shall be eligible to add to his service qualifying for superannuation pension, the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty five years or a period of five years, even if date of appointment is taken as 15.7.6. the petitioner is entitled to benefit of added 5 years.

30. Thus even under the pension rules, petitioner is entitled to benefit of addition of minimum of 5 years, and his service would still be more than 20 years, although having verified the service of $34\frac{1}{2}$ years vide letter dt. 1.4.85 (Annx-A-1), which became final under Rule 32, the service qualifying for pension has to be taken at more than 34 years and the petitioner is thus entitled to Full Pension and consequential benefits on retirement. He is also entitled for other reliefs prayed for which are consequential in nature.

Annx.A-1.

31. That as the respondents have proceeded against the petitioner, maliciously and implicated him in the false cases and fabricated charges to harass and embarrass the petitioner, hence he is also entitled to get the appropriate Special Compensation. It may be the pleasure of this Hon'ble Tribunal to award exemplary cost and compensation to the petitioner to set an example in such cases so that future, no person be harassed alike.

Lucknow, dt. 28.11.1991.

PETITIONER.

ADVOCATE.

Major (Retd) G. I. PUNWANI. OM PRAKASH SRIVASTAVA.

G.I. PUNVANI v UNION OF INDIA & OTHERS.

OA. 77/89

LIST OF ANNEXURES ON RECORD. Filed with Petition

Annx. No.	Contents.	Remarks.
A-1.	Letter dt. 1.4.1985 from Chief Controller of Imports & Exports (CCI&E), New Delhi to JCCI&E, Bombay, confirming Govt. service of petitioner from 6.3.1948 to 18.3.82, and directing that break in service from 1.4.50 to 15.11.50 may be condoned & pension paid. This letter is in reply to A-2.	Verification of service done shall be treated as final (Rule 32, Pension Rules)
A-2	Letter dt. 22.2.85 from JCCI&E, Bombay seeking instructions & confirmation of acceptance of service particulars of G.I. Punvani of his rendering continuous Govt. Service, so that pension case be finalised.	
A-3.	Tel ex message from JCCI&E, Bombay to CCI&E, New Delhi, dt. 5.1.87 to send instructions for payment of pension to G.I. Punvani.	
A-4	Petitioners letter dt. 5.10.88 to Minister? Public Grievances & Pension & copy to Secretary, Min. of Commerce to order payment of pension & other benefits.	
A-5	Order dt. 20.10.70 declaring petitioner Q.P. wef. 15.7.66.	
A-6.	Seniority List of Central Trade Service dt. 27.6.81, issued by CCI&E, New Delhi, showing seniority of petitioner at Sri. No. 20 wef 19.11.79, although under suspension, but still selected, as there was no ADVERSE entry against petitioner, and shown as REGULAR by UPSC.	This is clear proof, that there was never any adverse entry, hence confirmation
A-7.	Order of suspension dt. 2.6.75, issued on the plea that case in respect of criminal offence under trial.	could not be denied to petitioner
A-8(A)	Order dt. 11.6.76, cancelling premature retirement order dt. 12.12.75, wrongly ordering continuance of suspension, without issuing fresh suspension order.	This is crystal clear proof of there being no ADVERSE entry, hence confirmation could not be denied.
A-8.	Order dt. 18.8.82 of CCI&E, New Delhi, imposing the penalty of Compulsory retirement on alleged charge of which exonerated by Inquiry Officer, refer para 4.14. of report dt. 2.2.81.	
A-9.	Types of cases which merit imposing Major penalty.	Penalty imposed unwarranted, no type
A-10	Order dt. 9.10.81 of Ministry of Commerce, setting aside penalty imposed on 2 assistants, based on Order of Hon'ble High Court dt. 25.5.84, quashing all charges framed and proceedings of 8 Crl. cases, whereby petitioner and his 2 assistants acquitted.	Discrimination in case of Petitioner that his appeal against penalty imposed based on Deptt. Inquiry not decided.
A-11.	Deptt. Inquiry report dt. 2.2.81, in spite of being exonerated of charges on which inquiry made, refer para 4.14, still penalty imposed malaciously.	No other charge on which inquiry made.
A-12.	Order of Hon'ble High Court dt. 25.5.84, quashing all charges framed and proceedings of 8 crl cases.	Deptt. inquiry also instituted on same charges, but still decision not revised.

- (A327)
16-5-89 on 23-10-89
- 2.
- Annex. No. Contents. Filed with affidavit reply to Special Officer's remarks.
- A-13. Affid. dt. 13.9.84, along with Appl. to CCI&E, As per Pension Rules, where New Delhi, declaring details of previous Govt. particulars of prior service, before joining as Controller of Imports & Exports, as asked by JCCI&E, Bombay vide letter No. ESTT/PEN/GO/GIP/5863 dt. 27.8.84 to complete service book. Govt. service are not known, the details along with appointment orders have to be furnished for verification, refer rule 32.
- A-14. Letter dt. 23.12.52, re Govt. servants joining Territorial Army be treated as permanent.
- A-15. Letter dt. 20.1.58, Min of H.A., re grant of seniority to Govt. Servants on deputation with T.A.
- A-16. Letter dt. 22.11.62 from CCI&E, New Delhi, offer of appointment as Asstt. Controller, based on selection by UPSC, mentioning 2 years probation. Probation period only 2 years.
- A-17. Acceptance letter dt. 27.11.62 of appointment.
- A-18. D.O. letter dt. 15.1.63, to release Punvani from T.A. to join civil post.
- A-19. Notification dt. 13.6.62, Recruitment rules of Post of Asstt. Controller Import & Export Organisation, showing number of designated as Controller, hence total posts 158, para 6 of reply dt. 28.8.89 posts of Controllers 42 and Asstt Controllers, 116, filed on 22.10.89, shows petitioner as no. 72, was eligible to be confirmed.
- A-20. Seniority list of Asstt. Controllers, Punvani serial 174-47 = 127, less persons died & retired or left service = 55, i.e. 127-55 = 72, whereas Permanent posts sanctioned 158, and juniors had already been confirmed.
- A-21. Punvani allowed to cross E.B. on 15.7.1965, pay also fixed allowing benefit & counting previous service of Min. of Rehabilitation, and deputation from 6.3.48 to 18.8.82 of T.A. service. Vide letter 1.4.85, Annex-A-1, to tal Govt. service verified, and benefit of previous Govt. service allowed in fixing pay. Verified 34 years Govt service.
- A-22. Memo dt. 30.12.1980 from Govt. of India relaxing Pension rules by allowing pension even to persons not confirmed, with 20 years service
- A-23. D.O. from Minister of Pensions to Min of Finance dt. 27.2.87, decision taken that no Govt. servant shall retire without pension payment order.
- A-24. Order dt. 23.1.87 from Min of Public Grievances & Pensions to pay Provisional pension if delay in deciding Final Pension.
- A-25. Min. of H.A. dt. 21.5.65, orders of grant of Seniority, confirmation and promotion to Civil Govt. servants during absence on Military service in present Emergency, who are Members of T.A. Territorial Army also allowed benefit during Emergency.
- 5(A) CCS(CGA) Rule 10, Suspension cannot continue after relationship of Master & Servant came to end on 12.12.75, when prematurely retired, on cancellation of this order dt. 11.6.76 (Annex-A-7(A)), continuance of suspension could not be ordered. Thus when prematurely retired dt. 12.12.75, & cancelled this order fresh suspension order had to be issued.