

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 23rd DAY OF SEPTEMBER, 1988

Present : Hon'ble Sri L.H.A.Rego

Member (A)

APPLICATION No. 717/88

Ashok M.Sarvi,  
Superintendent,  
Central Excise,  
Belgaum.

...

Applicant

( Sri M.Narayanaswamy

...

Advocate )

vs.

1. The Secretary,  
C.B.E & C,  
New Delhi.

2. The Collector,  
Central Excise,  
Belgaum.

3. The Additional Collector,  
Central Excise,  
Belgaum.

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Respondents

( Sri M.S.Padmarajaiah

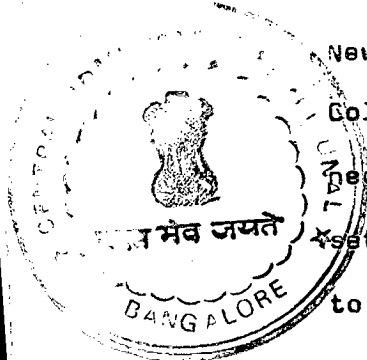
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This application having come up before hearing  
today, Hon'ble Member (A) made the following :

ORDER

The applicant prays herein, that the respondents  
be directed to expunge the adverse remarks entered in his  
Annual Confidential Report (ACR) for the year 1986; that  
the decision of the Central Board of Excise & Customs,  
New Delhi (CBEC) communicated to him by the Additional  
Collector(AC) under his letter dated 1.2.1988 (Annexure N)  
negating his request to expunge the said remarks be  
set aside and, that he may be granted such other reliefs  
to which he is entitled.



*[Signature]*

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2. These are the facta probanda - the material facts. The applicant entered service in the Department of Central Excise on 12.3.1980 as Superintendent Gr.B. At the material time, he was serving as Superintendent (Technical), in the Preventive and Intelligence Unit (PIU), in the Headquarters Office of the Collector of Central Excise, Belgaum(HQ).

3. The applicant states, that in recognition of his meritorious service, he was sanctioned advance rewards by the Collector of Customs, Central Revenue, Bangalore for the period from 1985 to 1987(Annexure A to E 4).

4. As an officer posted in the PIU, he was required to gather intelligence, in regard to smuggling of excisable goods and evasion of excise duty. On 11.7.1986, he accompanied Sri C.V.Shivaram (since deceased), the then Deputy Collector(P&E), Belgaum, along with two Inspectors of the Department of Central Excise, in a departmental car<sup>4</sup>(AMBASSADOR), bearing Registration No. CTL 323, to Gulbarga, for the purpose of investigation, pursuant to information received from the Directorate of Revenue Intelligence, Bangalore (DRI B) about concealment of excisable, gold & other articles, at a village near Gulbarga. After attending to this work, the party proceeded to Bijapur on 12.7.1986 and halted there for the night. They left for Belgaum the next day, at about 1800 hrs in the departmental car. The authorised driver viz. Sri Iqbal Ahmed (the Driver)

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was at the wheel, when the party set out on its return journey to Belgaum. After travelling for about 4 Km, it is stated, that the applicant took over the wheel and directed the Driver to sit behind. The respondents have stated in their reply, that the Driver was unwell and had just returned from a spell of leave. Sri Shivaram was seated in front, to the left of the applicant, when he took over the wheel from the Driver. He did not seem to have demurred, when the applicant took over the wheel and directed the Driver to sit behind.

4. The vehicle had barely covered some distance when the applicant, who was at the wheel, in the process of giving berth to a tempo, coming from the opposite direction, is said to have lost control of the vehicle, which swerved to the end of the road, skid and overturned a number of times, grievously injuring both the applicant and Sri Shivaram. Sri Shivaram was declared dead before he was removed to the hospital at Bijapur, for treatment. Soon after, the Driver filed a First Information Report (FIR), at the Bijapur Road Police Station on 13.7.1986, which was registered as C.R.102 of 1986. The Driver had stated therein, that the accident had resulted owing to rash and negligent driving by the applicant.

5. Thereon, the Collector of Central Excise, Belgaum (Sri Mahendra Prasad) (CEE B, for short) by his Order dated 3.2.1987 (Annexure G), directed that disciplinary action be initiated against all those involved in the said accident, among whom was the applicant,



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and designated the Deputy Collector (P&E) Headquarters Office, Belgaum as the disciplinary authority(DA), for the purpose of the proceedings, stating further, that the procedure prescribed in Rule 16 of the C.C.S.(CCA) Rules 1965, shall be followed.

6. In compliance with the above Order, Sri D.S.Sra, the DA, served a Memo dated 25.2.1987 on the applicant, informing him of the proposal of the Department, to initiate disciplinary proceedings against him, under Rule 16 of the C.C.S.(CCA) Rules, 1965. Along with this Memo, a statement of imputations of misconduct and/ or misbehaviour, on which action was proposed to be taken, was enclosed. The applicant was given an opportunity to make such representation thereon, if he so desired.

7. In the meanwhile, the Directorate of Revenue Intelligence, New Delhi (DRI ND), had inquired into a complaint received by it on 22.8.1986, in regard to the above accident and one Sri B.R.Tripathi, Dy Director DRI ND submitted his report, after due investigation, to CCE B, with a copy thereof to the Chairman CBEC. The Deputy Director, DRI ND, had, inter alia, observed in his report, that the applicant cannot absolve himself from gross negligence shown by him, leading to a major accident; that he did not maintain absolute integrity and devotion to duty and therefore, he should be proceeded against, for imposition of major penalty under the Conduct Rules. He had also suggested, that the applicant deserved to be placed under suspension immediately, in public interest.

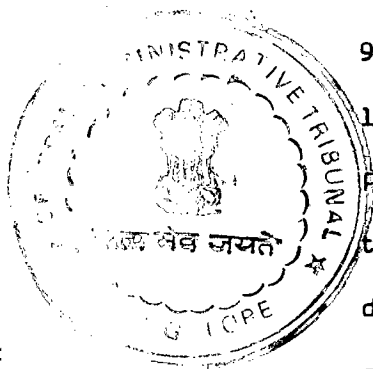
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The Chairman, CBEC, had among other things observed on the said Report of Sri Tripathi, that 'even assuming that the applicant took the wheel, he should have driven at a moderate speed, taking into account the road conditions, particularly when he was under the influence of alcohol'. He further remarked, that the Collector ought to have ordered a preliminary inquiry and suspended the applicant, who was responsible for the above accident. The CCE B is seen to have pursued the matter, with the Chief Vigilance Officer, CBEC, New Delhi, for advice from the Chief Vigilance Commissioner, as to the course of action to be taken, against those responsible for the accident, including the applicant, who was said to be responsible for the accident, leading to the death of Sri Shivaram.

8. CCE B was, however, informed by the Directorate of the Revenue Intelligence, New Delhi on 14.1.1987, that there was a case for proceeding against the applicant in the matter, but as there was no vigilance angle involved, it would not be necessary to consult the Chief Vigilance Commissioner and therefore, he may proceed further in the matter.

9. In the Final Report of the Police, on the FIR lodged with them, countersigned by the Superintendent of Police, Bijapur on 7.10.1986, it was, inter alia, recorded, that the investigation revealed, that the applicant was not driving the car negligently and that the Driver in a subsequent statement given by him before the Police, had resiled



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from the facts stated by him earlier on 13.7.1986, in the FIR. From the second statement of the Driver, recorded before them, the Police seem to have inferred that the applicant was driving the car at a moderate speed. The Vehicle Inspector of the Regional Transport Office, Bijapur, had remarked, that the accident was not due to any mechanical defect of the vehicle. The applicant however, does not seem to have been medically examined the applicant on the date of the accident i.e. on 13.7.86, to ascertain whether he was in a state of inebriation.

10. Sri D.S.Sra, <sup>sd</sup> ~~By XXXXXXXXXX (P&E) XXXXXXXXXX~~ then Additional Collector Customs & Excise, Belgaum and holding charge of the post of Dy. Collector (P&E), in addition, <sup>sd seen</sup> is to have acted, both as the Inquiry Officer (IO) and Disciplinary Authority (DA). By his Order of 1.5.87 (Annexure J) he recorded his findings as follows :

" NOW THEREFORE, after taking into account the representation of Shri A.M.Sarvi, the Police and Medical Reports and the facts and circumstances of the case, the undersigned is satisfied that the allegations against Sri A.M.Sarvi, Superintendent are not proved and I do not hold him guilty for the contravention of provisions of Rule 22 of the C.C.S. (Conduct) Rules, 1964 read with Rule 3(1)(iii) of the CCS(C) Rules and Rule 3(1), (ii) and (iii) ibid and I do not propose to take any action under Rule 16 of CCS(CCA) Rules, 1965 and drop the charges."

11. It is seen therefrom, that he gave the applicant a clean acquittal, in the departmental proceedings. Neither the CCE B, nor the higher authorities, demurred on this

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decision of the DA. In the charge-sheet framed against the applicant, it was stated, that there was evidence Prima facie, to show, that he was guilty of contravention of Rule 22 of the CCS(Conduct) Rules, 1964 read with Rule 3(1)(iii) of the CCS(C) Rules, 1964.

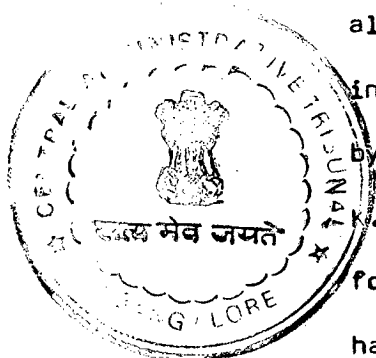
12. The applicant alleges, that in his ACR for the year 1986, Sri D.S.Sra, Addl Collector (P&E), who was also the IO & DA, had adversely commented on him as under as Reporting Authority -

"6. Discipline : He was involved in a car accident.  
Just adequate."

Sri Mahendra Prasad, CCE B, as Reviewing Authority commented in col 12 thereof as follows :

"12. Overall assessment of performance and qualities :-  
His involvement in a departmental car accident indicates lack of proper responsibility and discipline on his part."

13. The applicant is seen to have preferred a representation thereon, to the CCE B, on 27.3.1987 (Annexure L) pleading that the said adverse remarks, were without warrant and therefore they should be expunged. He also referred to his meritorious service record. He had also again represented to the CCE B on 21.5.1987 (Annexure M), inviting <sup>the</sup> attention specifically, to his clean acquittal by the DA, in the disciplinary proceedings. In reply, Sri K.P.Misra, Additional Collector of Excise, Belgaum, informed him, by his letter dated 1.2.1988 that the CBEC had carefully considered his representations and had found it not possible, to expunge the adverse remarks



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recorded in his ACR for 1986 and that his representations were therefore, rejected.

14. The applicant alleges, that neither a copy of the order of the CBEC in this regard, was furnished to him nor was he apprised of the grounds, on which his representations were rejected. He, therefore submits, that his representations were disposed of arbitrarily, in violation of the principles of natural justice and without appreciating the evidence on record, on account of which he was constrained to approach this Tribunal for redress.

15. Sri M.Narayana Swamy, learned counsel for the applicant, contended, that his client was fully exonerated by the DA and there was no taint of any guilt attached to him as imputed and therefore <sup>he then</sup> was no justification whatsoever, for the adverse remarks in his ACR for the year 1986. He asserted, that the adverse remarks were malicious and without any foundation, in the background of his client having been cleanly acquitted by the DA/IO in the disciplinary proceedings and therefore, they should have no place in his ACR and be effaced.

16. The respondents have submitted their reply resisting the application.

17. Sri M.S.Padmarajaiah, C.G.S.S.C., appearing for the respondents, countering the arguments of Sri Narayana-swamy, contended, that it could not be said on the basis of the "relevant material" on record, that the applicant was not responsible for the serious accident, resulting

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by him against the applicant in Col.6 of the ACR for the year 1986, are not only without warrant but also self-contradictory. The Reporting Authority has remarked in the said ACR against Column 6: "Discipline", that though the applicant was involved in a car accident, his discipline was just adequate. These remarks are clearly antithetical and therefore ex facie, need to be expunged straightaway, even though they cannot in the true sense be said to be adverse.

21. As to the adverse remarks entered in the ACR, by the Reviewing Authority viz., Sri Mahendra Prasad, the CCEB, it is astonishing, that he should have referred to the applicant having been involved in the above departmental car accident and glibly inferred therefrom, that he lacked responsibility and discipline and that too, when the disciplinary proceedings initiated against the applicant, at his own instance, in regard to the very same accident, were not concluded. These adverse remarks were entered by Sri Prasad on 30.1.1987 i.e., nearly 4 months before the DA wholly acquitted the applicant of the charges, in the disciplinary proceedings, by his order dated 1.5.1987 (Annexure-G). Thus, in fact, the CCE B as Reviewing Authority, had pre-judged the guilt of the applicant, in the manner of Jedburgh or Jeddart justice i.e., "sentenced first, tried afterwards". These adverse remarks entered by the CCE B (Sri Mahendra Prasad) were thus wholly unfounded and based on prejudice, in the background of the findings of the DA, who had given the applicant clean acquittal, in the disciplinary proceed-

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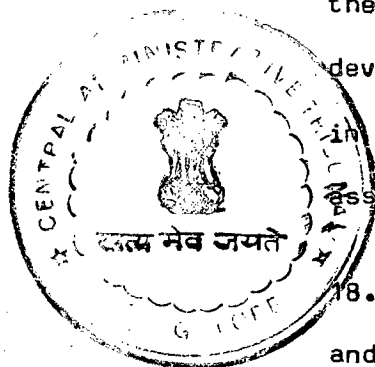


ings on 1.5.1987, with which Sri Prasad had virtually acquiesced without demur. In fact, the disciplinary proceedings appear to have been soft-pedalled by him right from the beginning, by initiating them under Rule 16<sup>or</sup> (minor penalty) of the CCS(CCA) Rules 1965, instead of under Rule 14 ibid (for major penalty), in spite of the gravity of the offence brought out in the report of the DFI NO.

22. The argument of Sri Padmarajaiah, that the authorities concerned were within their right, to enter the adverse remarks in question, in the ACR of the applicant (despite their nexus with the above accident), regardless of the outcome of the disciplinary proceedings, relating to the self-same accident, based "on other material" available to those authorities, is indeed bizarre and is in the manner of circulus in probando. This gives rise <sup>to</sup> many a question. If that "other material" was weighty enough, to justify the impugned adverse entries in the ACR, without recourse to the principle of audi alteram partem, why could it not have been made use of, in the course of the disciplinary proceedings, relating to the self-same incident, where the applicant could have been given due opportunity, to vindicate his innocence, according to the principles of natural justice? Does this imply, that there are two different yardsticks to adjudge the applicant on the same issue, one in respect of assessing his performance in his ACR and the other, in regard to the disciplinary proceedings? On the face of it, this seems ludicrous, as this would lead to self-contradiction and

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in the death of a senior officer of the department viz. Sri Shivaram. The FIR filed by the Driver on 13.7.86, revealed, he said, that the departmental vehicle driven by the applicant was moving at high speed and that he was rash and negligent in driving the vehicle, which resulted in the fatal accident. He maintained, that even though the applicant was not held guilty of the charges, in the disciplinary proceedings, in relation to the accident, the authorities concerned, were not precluded from assessing the performance of the applicant in the ACR, on the "relevant material", that was available to them. The result of the disciplinary proceedings, he contended, had in fact no nexus, with the assessment of the performance of the applicant, by the authorities concerned in the ACR. He further submitted, that a responsible officer, in strict adherence to discipline, should not have displaced the authorised driver and arrogated to himself the duty of driving the departmental vehicle, which resulted in the fatal accident, leading to the death of a senior officer of the department. This he said, betrayed, gross negligence and lack of a sense of responsibility, on the part of the applicant and thereby, failure in maintaining absolute integrity and devotion to duty. The pertinent adverse entries made in the ACR of the applicant, for the year 1986 he asserted, were justified in this background.



18. I have carefully examined the rival contentions and the relevant material placed before me. It is not disputed by the respondents, that the applicant was wholly exonerated of the charges in the disciplinary

proceedings. Even the Final Report of the Police, under Sec.173 of the Criminal Procedure Code, did not impute any guilt to the applicant, in regard to his being rash or negligent, in driving the departmental vehicle or of being in a state of inebriation. The authorised Driver is seen to have later resiled from his earlier statement dated 13.7.1986, in the FIR, when a fresh statement of his, was recorded in the course of the police investigation. It is not unlikely, that he was made a cat's paw, to extricate the applicant from the tangle. It is strange, as to why the police did not carry out any test, to detect consumption of alcohol, by the applicant, specially when there was a pointer to that effect. Presumably, on account of these lacunae, the Final Report of the Police, exculpated the applicant of the guilt in the accident. Shri Padmarajaiah could not however enlighten, as to the culmination of the criminal case registered with the police.

19. The contention of Sri Padmarajaiah, that the adverse remarks in the ACR of the applicant for the year 1986 (which show a clear nexus with the fatal accident) have no bearing on the result of the disciplinary proceedings initiated against him, in connection with that very accident, which ended in his clean acquittal, on the face of it, seems opaque.

20. In fact, the Reporting Authority viz., Sri D.S.Sra was both the IO and DA and he had exonerated the applicant wholly in the disciplinary proceedings. The remarks entered

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virtually to "blowing hot and cold in the same breath". Even the most friendly eye, can discern, that this is flagrant defilement of justice, which cannot be countenanced on any principles<sup>of</sup> of logic, reason and law.

23. There is more than what meets the eye, as to the manner in which the disciplinary proceedings were conducted by Sri D.S.Sra, Additional Collector (P&E), then holding the charge of the post of Deputy Collector (P&E) and as to the thoroughness of the police investigation. The Deputy Director, DRI ND (Sri Tripathi) had in fact submitted a comprehensive and incisive report, after investigation into the accident. If the CCE B, in his capacity as the Appellate Authority, was not satisfied with the findings of the DA, nothing prevented him from revoking that decision and arriving at his own, if he so desired, to help bring out the unvarnished truth, duly taking into account all the material available to him, inclusive of the so called "other material" referred to by Sri Padmarajaiah, to which I have alluded earlier. The fact that he failed to do so, betrays, that he virtually acquiesced in the findings of the DA i.e., he agreed with him, that the applicant was wholly innocent of the charges. If that be so, the CCE B, as Reviewing Authority, clearly acted with whim and caprice, in making the impugned adverse remarks against the applicant in the ACR for 1986, and that too, when the disciplinary proceedings against the applicant on the very same incident, were not concluded.



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24. It is indeed tragic that a senior officer of the Department succumbed to grievous injury in this accident, the responsibility for which unfortunately, could not be fixed, for want of a proper and thorough enquiry both by the police, as well as by the Department and thereby hangs a tale unravelled! It is amazing that a person in high authority, like the Chairman CBEC, should have countenanced (vide para 8) the preposterous suggestion, that the applicant could have driven the departmental vehicle but at moderate speed, even though he was under the influence of alcohol and that too, when the authorised driver of the vehicle was on duty. Nothing could be more excusable, than this grotesque suggestion.

25. Howsoever deplorable, the various lapses, on the part of all concerned in this episode may be, I cannot but regretfully hold, in the light of the above discussion, that the impugned, adverse remarks entered in the ACR of the applicant, for the year 1986, were peremptory, prejudiced and without basis. It needs to be realised, that the ACRs constitute a vital service document, in the career of a civil servant and that entries therein, need to be made with the utmost care and circumspection.

26. In the result, I make the following order :

O R D E R

- i) The respondents are hereby directed to expunge the adverse remarks recorded in the ACR of the applicant, for the year 1986.
- ii) Consequently, the decision of the

CBE & C, ND communicated by the  
Additional Collector (P&E) Belgaum,  
to the applicant, by his letter  
dated 1.2.1988 ( Annexure - N ),  
is set aside.

27. The application is disposed of, in the above  
terms. No order as to costs.

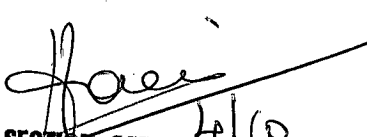
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( L.H.A. REGO ) 22.12.1988  
MEMBER(A).

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SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
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"12. Overall assessment of performance and qualities :-

His involvement in a departmental car accident indicates lack of proper responsibility and discipline on his part."

13. The applicant is seen to have preferred a representation thereon, to the CCE B, on 27.3.1987 (Annexure L) pleading that the said adverse remarks, were without warrant and therefore they should be expunged. He also referred to his meritorious service record. He had also again represented to the CCE B on 21.5.1987 (Annexure M), inviting <sup>the</sup> ~~the~~ attention specifically, to his clean acquittal by the DA, in the disciplinary proceedings. In reply, Sri K.P.Misra, Additional Collector of Excise, Belgaum, informed him, by his letter dated 1.2.1988 that the CBEC had carefully considered his representations and had found it not possible, to expunge the adverse remarks



recorded in his ACR for 1986 and that his representations were therefore, rejected.

14. The applicant alleges, that neither a copy of the order of the CBEC in this regard, was furnished to him nor was he apprised of the grounds, on which his representations were rejected. He, therefore submits, that his representations were disposed of arbitrarily, in violation of the principles of natural justice and without appreciating the evidence on record, on account of which he was constrained to approach this Tribunal for redress.

15. Sri M.Narayana Swamy, learned counsel for the applicant, contended, that his client was fully exonerated by the DA and there was no taint of any guilt attached to him as imputed and therefore, <sup>by them</sup> was no justification whatsoever, for the adverse remarks in his ACR for the year 1986. He asserted, that the adverse remarks were malicious and without any foundation, in the background of his client having been cleanly acquitted by the DA/IO in the disciplinary proceedings and therefore, they should have no place in his ACR and be effaced.

16. The respondents have submitted their reply resisting the application.

17. Sri M.S.Padmarajaiah, C.G.S.S.C., appearing for the respondents, countering the arguments of Sri Narayana-swamy, contended, that it could not be said on the basis of the "relevant material" on record, that the applicant was not responsible for the serious accident, resulting



in the death of a senior officer of the department viz. Sri Shivaram. The FIR filed by the Driver on 13.7.86, revealed, he said, that the departmental vehicle driven by the applicant was moving at high speed and that he was rash and negligent in driving the vehicle, which resulted in the fatal accident. He maintained, that even though the applicant was not held guilty of the charges, in the disciplinary proceedings, in relation to the accident, the authorities concerned, were not precluded from assessing the performance of the applicant in the ACR, on the "relevant material", that was available to them. The result of the disciplinary proceedings, he contended, had in fact no nexus, with the assessment of the performance of the applicant, by the authorities concerned in the ACR. He further submitted, that a responsible officer, in strict adherence to discipline, should not have displaced the authorised driver and arrogated to himself the duty of driving the departmental vehicle, which resulted in the fatal accident, leading to the death of a senior officer of the department. This he said, betrayed, gross negligence and lack of a sense of responsibility, on the part of the applicant and thereby, failure in maintaining absolute integrity and devotion to duty. The pertinent adverse entries made in the ACR of the applicant, for the year 1986 he asserted, were justified in this background.

18. I have carefully examined the rival contentions and the relevant material placed before me. It is not disputed by the respondents, that the applicant was wholly exonerated of the charges in the disciplinary

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proceedings. Even the Final Report of the Police, under Sec.173 of the Criminal Procedure Code, did not impute any guilt to the applicant, in regard to his being rash or negligent, in driving the departmental vehicle or of being in a state of inebriation. The authorised Driver is seen to have later resiled from his earlier statement dated 13.7.1986, in the FIR, when a fresh statement of his, was recorded in the course of the police investigation. It is not unlikely, that he was made a cat's paw, to extricate the applicant from the tangle. It is strange, as to why the police did not carry out any test, to detect consumption of alcohol, by the applicant, specially when there was a pointer to that effect. Presumably, on account of these lacunae, the Final Report of the Police, exculpated the applicant of the guilt in the accident. Shri Padmarajaiah could not however enlighten, as to the culmination of the criminal case registered with the police.

19. The contention of Sri Padmarajaiah, that the adverse remarks in the ACR of the applicant for the year 1986 (which show a clear nexus with the fatal accident) have no bearing on the result of the disciplinary proceedings initiated against him, in connection with that very accident, which ended in his clean acquittal, on the face of it, seems opaque.

20. In fact, the Reporting Authority viz., Sri D.S.Sra was both the IO and DA and he had exonerated the applicant wholly in the disciplinary proceedings. The remarks entered

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by him against the applicant in Col.6 of the ACR for the year 1986, are not only without warrant but also self-contradictory. The Reporting Authority has remarked in the said ACR against Column 6: "Discipline", that though the applicant was involved in a car accident, his discipline was just adequate. These remarks are clearly antithetical and therefore ex facie, need to be expunged straightaway, even though they cannot in the true sense be said to be adverse.

21. As to the adverse remarks entered in the ACR, by the Reviewing Authority viz., Sri Mahendra Prasad, the CCEB, it is astonishing, that he should have referred to the applicant having been involved in the above departmental car accident and glibly inferred therefrom, that he lacked responsibility and discipline and that too, when the disciplinary proceedings initiated against the applicant, at his own instance, in regard to the very same accident, were not concluded. These adverse remarks were entered by Sri Prasad on 30.1.1987 i.e., nearly 4 months before the DA wholly acquitted the applicant of the charges, in the disciplinary proceedings, by his order dated 1.5.1987 (Annexure-G). Thus, in fact, the CCE B as Reviewing Authority, had pre-judged the guilt of the applicant, in the manner of Jedburgh or Jeddart justice i.e., "sentenced first, tried afterwards". These adverse remarks entered by the CCE B (Sri Mahendra Prasad) were thus wholly unfounded and based on prejudice, in the background of the findings of the DA, who had given the applicant clean acquittal, in the disciplinary proceed-

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ings on 1.5.1987, with which Sri Prasad had virtually acquiesced without demur. In fact, the disciplinary proceedings appear to have been soft-pedalled by him right from the beginning, by initiating them under Rule 16<sup>for</sup> (minor penalty) of the CCS(CCA) Rules 1965, instead of under Rule 14 ibid (for major penalty), in spite of the gravity of the offence brought out in the report of the DRI ND.

22. The argument of Sri Padmarajaiah, that the authorities concerned were within their right, to enter the adverse remarks in question, in the ACR of the applicant (despite their nexus with the above accident), regardless of the outcome of the disciplinary proceedings relating to the self-same accident, based "on other material" available to those authorities, is indeed bizarre and is in the manner of circulus in probando. This gives rise <sup>to</sup> many a question. If that "other material" was weighty enough, to justify the impugned adverse entries in the ACR, without recourse to the principle of audi alteram partem, why could it not have been made use of, in the course of the disciplinary proceedings, relating to the self-same incident, where the applicant could have been given due opportunity, to vindicate his innocence, according to the principles of natural justice? Does this imply, that there are two different yardsticks to adjudge the applicant on the same issue, one in respect of assessing his performance in his ACR and the other, in regard to the disciplinary proceedings? On the face of it, this seems ludicrous, as this would lead to self-contradiction and

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virtually to "blowing hot and cold in the same breath". Even the most friendly eye, can discern, that this is flagrant defilement of justice, which cannot be countenanced on any principles<sup>of</sup> of logic, reason and law.

23. There is more than what meets the eye, as to the manner in which the disciplinary proceedings were conducted by Sri D.S.Sra, Additional Collector (P&E), then holding the charge of the post of Deputy Collector (P&E) and as to the thoroughness of the police investigation. The Deputy Director, DRI ND (Sri Tripathi) had in fact submitted a comprehensive and incisive report, after investigation into the accident. If the CCE B, in his capacity as the Appellate Authority, was not satisfied with the findings of the DA, nothing prevented him from revoking that decision and arriving at his own, if he so desired, to help bring out the unvarnished truth, duly taking into account all the material available to him, inclusive of the so called "other material" referred to by Sri Padmarajaiah, to which I have alluded earlier. The fact that he failed to do so, betrays, that he virtually acquiesced in the findings of the DA i.e., he agreed with him, that the applicant was wholly innocent of the charges. If that be so, the CCE B, as Reviewing Authority, clearly acted with whim and caprice, in making the impugned adverse remarks against the applicant in the ACR for 1986, and that too, when the disciplinary proceedings against the applicant on the very same incident, were not concluded.

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24. It is indeed tragic that a senior officer of the Department succumbed to grievous injury in this accident, the responsibility for which unfortunately, could not be fixed, for want of a proper and thorough enquiry both by the police, as well as by the Department and thereby hangs a tale unravelled! It is amazing that a person in high authority, like the Chairman CBEC, should have countenanced (vide para 8) the preposterous suggestion, that the applicant could have driven the departmental vehicle but at moderate speed, even though he was under the influence of alcohol and that too, when the authorised driver of the vehicle was on duty. Nothing could be more excusable, than this grotesque suggestion.

25. Howsoever deplorable, the various lapses, on the part of all concerned in this episode may be, I cannot but regretfully hold, in the light of the above discussion, that the impugned, adverse remarks entered in the ACR of the applicant, for the year 1986, were peremptory, prejudiced and without basis. It needs to be realised, that the ACRs constitute a vital service document, in the career of a civil servant and that entries therein, need to be made with the utmost care and circumspection.

26. In the result, I make the following order :

O R D E R

- i) The respondents are hereby directed to expunge the adverse remarks recorded in the ACR of the applicant, for the year 1986.
- ii) Consequently, the decision of the

CBE & C, ND communicated by the  
Additional Collector (P&E) Belgaum,  
to the applicant, by his letter  
dated 1.2.1988 ( Annexure - N ),  
is set aside.

27. The application is disposed of, in the above  
terms. No order as to costs.


Sd/-

( L.H.A. REGO )  
MEMBER (A).

22.12.1988

kms/an.

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SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE