

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 14 SEP 1988

APPLICATION NO.

872

/88(F)

W.P. NO.

Applicant(s)

Shri T.D. Sathyakumar
To

Respondent(s)

V/s The Director, Aeronautical Development
Establishment (ADE), Bangalore & 2 Ors

1. Shri T.D. Sathyakumar
C/o Shri M. Sunder
141/12, Siddharthanagar
7th Cross, Dr T.C.M. Royan Road
Bangalore - 560 053
2. Shri M.S. Bhagwath
Advocate
No. 68, Sharada Colony
KHB Layout, Basaveswaranagar
Bangalore - 560 079
3. The Director
Aeronautical Development Establishment(ADE)
R & D Organisation
Ministry of Defence
C.V. Raman Nagar
Bangalore - 560 093
4. The Director General
Research & Development Organisation
Ministry of Defence
DHQ PO
New Delhi - 110 011
5. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 5-9-88

Encl : As above

for DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 5TH DAY OF SEPTEMBER, 1988

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 872 OF 1988.

T.D. Sathyakumar,
No. 2, 14th Cross,
Chinnappa Garden,
Benson Town,
Bangalore-560 046.

.. Applicant.

(By Sri M.S. Bhagwat, Advocate)

v.

1. The Director,
Government of India,
Ministry of Defence,
Research & Development
Organisation, Aeronautical
Development Establishment,
C.V. Raman Nagar,
Bangalore-560 093.
2. The Director General
Research & Development
Organisation, Ministry of Defence,
South Block, DAQ P.O., New Delhi.
3. The Government of India,
Department of Ministry of Defence
by its Secretary,
New Delhi.

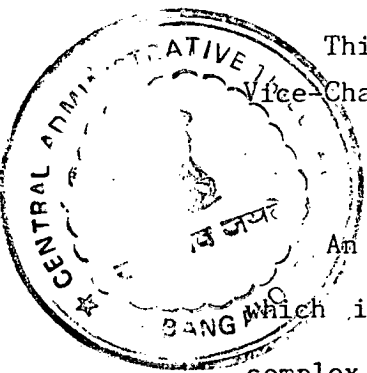
.. Respondents.

(By Sri M.S. Padmarajaiah, CGSSC)

This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

An otherwise simple case, attributive to the inapt manner, with which it was dealt with by the authorities, has avoidably become complex with the result that we have mercifully heard this case for full two days on 1st and 2nd September, 1988 and again for another three full hours to-day before commencing our dictation. It is open



Court. In order to appreciate the complexities that have so arisen and the questions raised in the case, it is first necessary to notice the facts which are not also in dispute.

2. Sri T.D.Sathyakumar, applicant before us, a member of a scheduled caste with the educational qualification of a pass in Secondary School Leaving Certificate ('SSLC') and a Certificate Course in Industrial Training Institute ('ITI'), joined service on 6-10-1976 as a Turner in the Aeronautical Development Establishment ('ADE'), Bangalore, a defence establishment in the country. He completed his probation on 6-10-1979 and was continuing in that capacity.


3. While he was working as a Turner, he applied for the post of a 'Precision Mechanic Tradesman' since redesignated as 'Tradesman-A' in the same establishment to which he was selected and appointed from 28-6-1980, from which date he was continuing in that post.

4. When working as Tradesman-A, the applicant absented himself from duty unauthorisedly from 10-9-1986 and onwards. On that, the Director of ADE, who is the Appointing and Disciplinary Authority ('DA') in his Memorandum No.ADE/7801/TDS/EST(Con) dated 20-12-1986 ('Charge Memo') (Annexure-A) initiated disciplinary proceedings against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the Rules') on the charge appended to the same. The charge levelled against him reads thus:

That the said Shri T.D.Sathyakumar, while serving as Tradesman-A in the Aeronautical Development Establishment has committed acts amounting to unauthorised absence and wilful neglect of duties.

That the said Sri T.D.Sathyakumar by the above act has exhibited lack of integrity and conduct unbecoming of a Government Servant, thereby violating Rule 3 of the CCS (Conduct) Rules, 1964.

5. The DA forwarded the aforesaid memorandum to the applicant



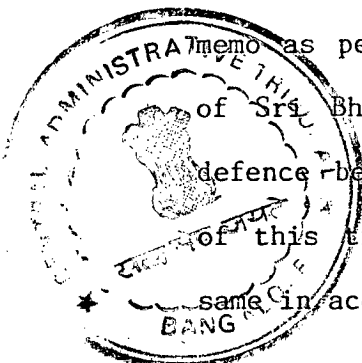
the DA to dispense with the inquiry on the sole premise that the charge memo had not been delivered. We must read this Rule and the words relied on, as only where it has not been possible to deliver the charge memo on the delinquent and not otherwise. If the construction suggested by Sri Padmarajaiah is accepted; then without any doubt; that would only lead to startling results. On any principle, we cannot uphold such a construction.

26. On the foregoing discussion, we hold that the decision of the DA to dispense with the inquiry is vitiated, illegal and, therefore, calls for our interference. On what we have so far held, an inquiry has necessarily to be held on the charges levelled against the applicant.

27. Whatever were the difficulties, the DA had earlier faced in effecting service of the charge memo on the applicant, fortunately for all, it is now seen that the applicant had personally received the same on 4-12-1987, on a letter addressed by him to the DA, an authenticated copy of which also he has annexed to his application before us. We must, therefore, treat that service as due service of the charge memo on the applicant and regulate all other matters on that basis only.

28. Sri Bhagwat prays for 15 days time to file the statement of defence of the applicant who is also present in Court to the charge memo as permissible by Rule 14 of the Rules. We grant this request of Sri Bhagwat and direct the applicant to file his statement of defence before the DA within 15 days from this day. On the expiry of this time, the DA shall then hold the inquiry and complete the same in accordance with the Rules.

29. Sri Bhagwat next contends that this Tribunal having found



that the impugned orders were illegal, must necessarily direct reinstatement of the applicant with all backwages as if he had diligently attended to his duties from 10-9-1986 till his reinstatement to service.

30. Sri Padmarajaiah opposes this and strongly urges denial of all back wages till he is reinstated to service, for which he seeks time at least till 3-10-1988.

31. We have earlier noticed that the charge against the applicant was that he had not reported for duty from 10-9-1986.

32. In his application, the applicant had vaguely averred that he reported for duty on more than once, but was not taken to duty, which as usual, is vaguely denied by the respondents in their reply.

33. In the course of the prolonged hearing of this case, we asked the applicant whether he had reported for duty on and from 10-9-1986 and whether he had applied for leave of absence on any day thereafter. In answer to the same, he admitted before us that he had not done either. When we asked him the reasons for the same, he stated some incoherent reasons. We naturally left it there, as pressing the same any further was really unnecessary for us.

34. We have no doubt that if the applicant had reported for duty nobody would have prevented him from performing his duties in the establishment. We are of the view that the applicant had absented himself from duty from 10-9-1986 and onwards. When that is so, then we find no justification to direct the payment of backwages till he is reinstated and reports for duty. We have consistently denied backwages to those who do not perform public service. Even the observation in Tulsiram Patel's case at para 129 supports the same. We see no justification to award backwages to the applicant.

mentioned addressed by Registered Post/Ack.due.
No.57, Pipe Line, Kasthuribanagar,
Mysore Road, Bangalore-560 026.

WHEREAS the said memorandum was also returned undelivered by the postal authorities.

Whereas an inquiry was made through the Police Authorities to find out the whereabouts of Shri T.D.Satyakumar who have stated that the address given by him as noted above is a vague one.

Whereas on the basis of the above, it is considered that it is not reasonably practicable to communicate with the individual.

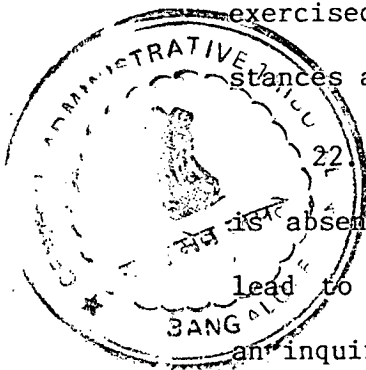
NOW, THEREFORE, Shri T.D.Satyakumar is hereby called upon to report to this Establishment within one month from the date of issue of this notice failing which action against him will be taken under Rule 19(ii) of CCS(CC&A)-Rules, 1965.

Sd/- Dr.K.G.Narayanan."

We notice with regret that the DA in this notice only calls upon the applicant to report for duty and does not fix a date, time and place for holding an inquiry as he should have and really intended to do. We are pained to say that everything had been done rather mechanically and without really reflecting on what is to be done and more so what has to be done next. This is the one and only reason for dispensing with the inquiry under the Rules. Whether this can attract clause (b) of sub-Article (2) of Article 311 of the Constitution is the principal question that calls for determination.

21. The power conferred is not ordinary but is extraordinary. The greater the power, higher is the responsibility on the authority. Every extraordinary power must be exercised with full reflection, responsibility and awareness. The extraordinary power has to be exercised on a conscious examination of all the facts and circumstances and not mechanically or as a matter of course.

22. When a charge memo is not served and the charged officer is absent, those facts by themselves without anything more, do not lead to a situation that it is not reasonably practicable to hold an inquiry into the truth or otherwise of the charge levelled against the delinquent. The Constitution, the Rules or any legal principle of which we are aware, do not recognise any such principle. In the absence



of service of charge memo and the consequent absence of the delinquent, an inquiry into the truth or otherwise of the charge levelled is perfectly possible and feasible and can be held. We fail to see as to why an inquiry in such a situation is not possible at all.

23. The non-holding of an inquiry, does not necessarily follow from the non-service of the charge memo and even the absence of the charged person at the inquiry. If other circumstances did not make it possible to hold an inquiry, that is another matter and that has to be ascertained and decided on its own facts and in such a situation, this Tribunal would be loath to hold otherwise. But, that is not the position in the present case. What is held, pleaded and supported before us is that as a matter of law, it was not possible to hold the inquiry and that legality or otherwise is now being examined by us. On such an examination, we find it difficult to sustain what has been done by the DA and upheld by the AA rather mechanically.

24. Sri Padmarajaiah in sustaining the decision of the DA strongly relies on Rule 14(20) of the Rules, which reads thus:

"14(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

He lays great emphasis on the words "has been delivered" occurring in this Rule.

25. We are of the view that the constitutional provision should not be read as circumscribed either by Parliamentary Legislation or a Rule made by the President under the proviso to Article 309 of the Constitution. On this conclusion itself, we cannot uphold this contention. Even otherwise, we cannot read this Rule and the words on which emphasis has been placed as enabling and compelling

been explained by the Supreme Court in a large number of cases and a reference to all of them is really unnecessary. In Tulsiram Patel's case Madan, J. speaking for the majority of the Constitution Bench which was specially constituted to examine the correctness of an earlier three-Judge Bench ruling in *DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY v. T.R.CHALLAPPAN* [1976 SCC (L&S) 398] overruling the same, reviewing all the earlier cases also, had explained the scope and ambit of Article 311 of the Constitution in all its facets and clause (b) of sub-Article (2) of that Article exhaustively with which we are primarily concerned. The scope and ambit of clause (b) of sub-Article (2) of Article 311 had been dealt with by his Lordship under the caption "The second proviso" from paras 128 to 139 of the report. Bearing the principles enunciated at paras 129 to 134 of the report which completely conclude the scope of clause (b) of sub-Article (2) of Article 311, we must examine and decide the correctness of the decision of the DA to dispense with the inquiry on the facts found by him in his order itself, as he had not recorded his reasons for the same separately.

20. The DA made more than one attempt to effect service of the charge memo on the applicant but failed to effect service of the same on the applicant who craftily evaded the same. On this as a last resort the DA published the notice in the 'Deccan Herald' issue dated 28-4-1988, which reads thus:

AERONAUTICAL DEVELOPMENT ESTABLISHMENT DEFENCE RESEARCH
AND DEVELOPMENT ORGANISATION, MINISTRY OF DEFENCE, JEEVAN-
BIMANAGAR P.O, BANGALORE - 560 075.

NOTICE

WHEREAS Shri T.D.Satyakumar, T.No.315, Tradesman 'A' remained absent from duty with effect from 10th September 1986 till date without prior sanction of leave.

WHEREAS disciplinary proceedings were initiated under Rule 14 of CCS (CC&A) Rules, 1965 for unauthorised absence and wilful neglect of duties against Shri T.D.Satyakumar under Director ADE Memorandum No.ADE/7801/TDS/EST(Con) dated 20th December, 1986 and the same was sent to the under-

- Provided further that this clause shall not apply-
- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
 - (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonable practicable to hold such inquiry; or
 - (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final"

The Rules only elaborate, naturally in great detail these powers.

18. Rule 19 of the Rules relied on by the DA and on which considerable reliance was placed by the respondents reads thus:

" 19. Notwithstanding anything contained in Rule 14 to Rule 18:-

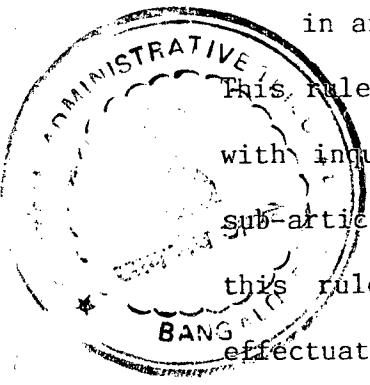
- (i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule".

This rule does not really confer an independent power for dispensing with inquiries. This rule only incorporates what is contained in sub-article (2) of Article 311 of the Constitution. We must read this rule as only incorporating the constitutional provision and effectuating the same.

19. The scope and ambit of Article 311 and all its facets have



WHEREAS the Deputy Commissioner of Police (Crime), Bangalore had stated that the address given by him as noted above is a vague one.

WHEREAS on the basis of above, a notice was published in "Deccan Herald" on 28th April, 1987 directing Shri T.D. Satyakumar to report for duty within one month from the date of issue of the said notice.

WHEREAS the said Shri T.D. Satyakumar did not report for duty till date.

WHEREAS on the basis of above, it is considered that it is not reasonably practicable to hold an inquiry in the manner provided in the CCS (CC&A) Rules, 1965 or communicate with the said Shri T.D. Satyakumar.

NOW, THEREFORE, it is hereby ordered that the said Shri T.D. Satyakumar, shall be removed from service under Rule 19(ii) of the CCS (CC&A) Rules, 1965 with effect from the date of issue of this order.

Sd/- Dr. K.G. Narayanan, Director."

On advertizing to the steps taken for service of the charge memo on the applicant, the DA in the penultimate para had stated that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules or communicate with him. In their reply, this very conclusion of the DA has been pleaded to dispense with the inquiry and the arguments of their counsel also proceeded on that basis only. We will assume that all the facts stated by the DA are correct and examine the legal contention on that basis.

17. Article 311 of the Constitution which imposes safeguards before removal of civil servants, and confers power to dispense with inquiries in certain situations reads thus:

"311(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

from every one of the infirmities noticed by the Supreme Court in Ramchander's case. Without any doubt, the order made by the AA is not a speaking order and is illegal. On this finding, we should normally set aside the order of the AA and remit the case to him for fresh disposal. But, as the order of the DA also suffers from a serious infirmity, we consider it proper to deal with its validity also, which we now proceed to do.

14. Sri Bhagwat contends that on the facts and circumstances of the case, it was not open to the DA to dispense with the inquiry and impose the penalty of removal from service on the applicant. In support of his contention, Sri Bhagwat strongly relies on the ruling of the Supreme Court in UNION OF INDIA v. TULSIRAM PATEL [1985 SCC (L&S)672] and a Division Bench ruling of the Patna High Court in GAURISHANKAR v. STATE OF BIHAR [1973 (1) SLR 695].

15. Sri Padmarajaiah contends that since the DA could not deliver the charge memo on the applicant under Rule 14 of the Rules, then the only course open to him was to dispense with the inquiry and make an order thereto under Article 311 of the Constitution and the Rules.

16. We will first peruse the order of the DA which reads thus:

"ORDER

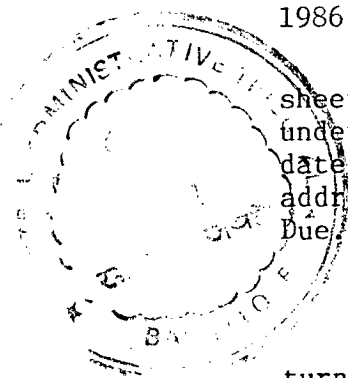
WHEREAS Shri T.D.Satyakumar, T.No.315, Tradesman 'A' has remained absent from duty with effect from 10th Septr., 1986 till date without prior intimation or sanction.

WHEREAS he has been issued with a memorandum of charge-sheet for unauthorised absence and wilful neglect of duties under Director, ADE Memorandum No.ADE/7801/TDS/EST (Con) dated 20th December, 1986 which was sent to the following address given by him by Registered Post Acknowledgment Due.

Shri T.D.Satyakumar, No.57, Pipe Line,
Kasthuribanagar, Mysore Road, Bangalore-560 026.

WHEREAS the said memorandum of charge sheet was returned undelivered by the postal authorities.

WHEREAS an inquiry was made through the Police authorities to find out the whereabouts of Shri T.D.Sathyakumar.



by registered post acknowledgment due, to the address specified therein, which was returned by Postal Authorities with an endorsement:

"Left, returned to sender".

On this, the DA made more than one attempt to effect its service on the applicant. But, in all of them, the DA failed. On that, the DA published a notice, (to which we will make a detailed reference at a later stage), in the issue dated 28-4-1987 of the "Deccan Herald", a leading English Daily of Bangalore. In response to this notice also, the applicant did not turn up for duty and also did not appear before the DA.

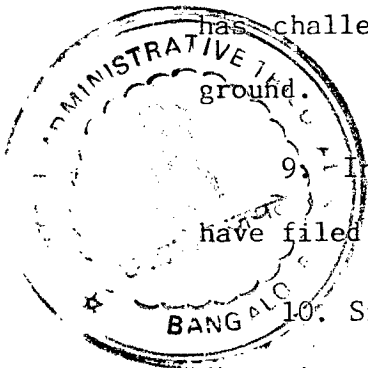
6. On the aforesaid developments and referring to all of them, the DA made Order No.ADE/7801/TDS/EST(Con) dated 10-6-1987 (Annexure-A1) in which he dispensed with the inquiry and ordered the removal of the applicant from service from the very date of that order.

7. On 4-12-1987, the applicant received a copy of that order and then filed an appeal on 9-12-1987 under the Rules before the Scientific Adviser to the Ministry of Defence and Director General of Research and Development and the Appellate Authority ('AA'). On 6-5-1988, the AA had dismissed the said appeal (Annexure-A2).

8. In this application made on 2-6-1988 under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged the orders of the AA and the DA on more than one ground.

9. In justification of the impugned orders, the respondents have filed their reply and produced their records at the hearing.

10. Sri M.S.Bhagwat, learned counsel for the applicant, contends that the order made by the AA without examining the material grounds urged by his client in support of his appeal and the requirements



5

of Rule 27 of the Rules, was not a speaking order and was illegal. In support of his contention, Sri Bhagwat strongly relies on the ruling of the Supreme Court in RAMCHANDER v. UNION OF INDIA (AIR 1986 SC 1173).

11. Sri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government appearing for the respondents, sought to support the order of the AA.

12. The order made by the AA reads thus:

"ORDER

WHEREAS the penalty of 'Removal from Service' was awarded to Shri T.D.Satya Kumar, Ex-Precision Mechanic (Tradesman 'A') by the Director ADE Bangalore vide order No.ADE/7801/TDS/EST (Con) dated 10-6-1987.

AND WHEREAS Shri T.D.Satya Kumar has submitted an appeal dated 9-12-1987 against the said order of penalty.

AND WHEREAS the departmental inquiry against the said Shri T.D.Satya Kumar has been properly conducted in accordance with the procedure laid down in the CCS(CC&A) Rules, 1965 and the appellant was given full and reasonable opportunity to explain.

AND WHEREAS on careful consideration of the submissions made by Shri T.D.Satya Kumar in his appeal and other relevant records and evidence, the undersigned is of the view that the penalty imposed by the Disciplinary Authority is correct and meets the ends of natural justice.

NOW THEREFORE, in view of the above reasons, the undersigned has come to the conclusion, that the penalty of 'Removal from Service' awarded to Shri T.D.Satya Kumar, Ex-Precision Mechanic (Tradesman 'A') is hereby confirmed.

The appeal dated 9-12-1987 submitted by the said appellant is accordingly disposed of.

Sd/- Dr.V.S.Arunachalam,
Scientific Adviser to the Minister of Defence
and Director General Research and Development."

What strikes one immediately on reading this order, is its extreme brusqueness compounded by its being peppered by a plethora of 'Whereas', prefacing almost every sentence.

13. In his order, the AA had not examined the grounds urged in the appeal and recorded his findings. The AA had not examined the requirements of Rule 27 of the Rules. The order of the AA suffers

35. We notice that the applicant has been frequently changing his residential address for reasons best known to him. In that view we directed him to file a memo giving his correct address with which he has complied. We need hardly say that it is open to the DA to effect service on the applicant on the address furnished in the memo filed before us to-day.

36. When we are quashing the impugned orders, we must necessarily direct reinstatement of the applicant to service. But, on such reinstatement, as to how his service during the period of his absence should be regulated, is a matter for the DA himself to examine and decide in accordance with the Rules. We make it clear that our order does not impose any restriction on the exercise of all such powers as are available to him to deal with the applicant.

37. Sri Padmarajaiah informs us that the regular Director of the ADE was out of India and is due to return and assume his charge by the ends of this month and, therefore, pleaded that we may grant time till 3-10-1988 to reinstate the applicant. We consider it proper to grant this reasonable request of Sri Padmarajaiah.

38. In the light of our above discussion, we make the following orders and directions:

- (i) We quash the order dated 6-5-1988 (Annexure-A2) of the AA and the order dated 10-6-1987 (Annexure-A1) of the DA.
- (ii) We declare that the disciplinary proceedings initiated by the Director in his Memorandum No.ADE/7801/TDS/EST/(Con) dated 20-12-1986 against the applicant had been validly instituted under the Rules and that on receiving the statement of defence of the applicant to the same within the time permitted by us, the disciplinary proceedings shall be continued and completed in accordance with the Rules.
- (iii) We direct, the Director that is respondent-1 to reinstate the applicant to service not later than 3rd October, 1988. But, till the applicant reports for duty, all backwages due to him from 10-9-1986 and onwards shall not be paid to him and his absence for the aforesaid period for all other purposes shall



be regulated in accordance with the orders to be made by the Director in the disciplinary proceedings.

39. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



sd/-
VICE-CHAIRMAN. *Y*

sd/-
MEMBER(A) *15.12.98*

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14/9
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BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 31 OCT 1988

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Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr. Justice K.S. Puttaswamy Vice-Chairman/~~Member~~ (2) and Hon'ble Mr. L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 5-9-88 passed in A.No. 872/88(F).

Yours faithfully,

[Signature]
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J)

Issued
K. m. m.
31-10-88

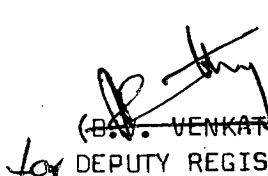
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1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
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10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 5th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanepura, Ahmedabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 001 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)


(B.V. VENKATA REDDY)
for DEPUTY REGISTRAR (J)

Issued
u. J. J. J.
31-10-88

97c

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 5TH DAY OF SEPTEMBER, 1988

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 872 OF 1988.

T.D. Sathyakumar,
No. 2, 14th Cross,
Chinnappa Garden,
Benson Town,
Bangalore-560 046.

.. Applicant.

(By Sri M.S. Bhagwat, Advocate)

v.

1. The Director,
Government of India,
Ministry of Defence,
Research & Development
Organisation, Aeronautical
Development Establishment,
C.V. Raman Nagar,
Bangalore-560 093.
2. The Director General
Research & Development
Organisation, Ministry of Defence,
South Block, DAQ P.O., New Delhi.
3. The Government of India,
Department of Ministry of Defence
by its Secretary,
New Delhi.

.. Respondents.

(By Sri M.S. Padmarajaiah, CGSSC)

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This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

An otherwise simple case, attributive to the inapt manner, with which it was dealt with by the authorities, has avoidably become complex with the result that we have mercifully heard this case for full two days on 1st and 2nd September, 1988 and again for another three full hours to-day before commencing our dictation in the open

Court. In order to appreciate the complexities that have so arisen and the questions raised in the case, it is first necessary to notice the facts which are not also in dispute.

2. Sri T.D.Sathyakumar, applicant before us, a member of a scheduled caste with the educational qualification of a pass in Secondary School Leaving Certificate ('SSLC') and a Certificate Course in Industrial Training Institute ('ITI'), joined service on 6-10-1976 as a Turner in the Aeronautical Development Establishment ('ADE'), Bangalore, a defence establishment in the country. He completed his probation on 6-10-1979 and was continuing in that capacity.


3. While he was working as a Turner, he applied for the post of a 'Precision Mechanic Tradesman' since redesignated as 'Tradesman-A' in the same establishment to which he was selected and appointed from 28-6-1980, from which date he was continuing in that post.

4. When working as Tradesman-A, the applicant absented himself from duty unauthorisedly from 10-9-1986 and onwards. On that, the Director of ADE, who is the Appointing and Disciplinary Authority ('DA') in his Memorandum No.ADE/7801/TDS/EST(Con) dated 20-12-1986 ('Charge Memo') (Annexure-A) initiated disciplinary proceedings against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the Rules') on the charge appended to the same. The charge levelled against him reads thus:

That the said Shri T.D.Sathyakumar, while serving as Tradesman-A in the Aeronautical Development Establishment has committed acts amounting to unauthorised absence and wilful neglect of duties.

That the said Sri T.D.Sathyakumar by the above act has exhibited lack of integrity and conduct unbecoming of a Government Servant, thereby violating Rule 3 of the CCS (Conduct) Rules, 1964.

5. The DA forwarded the aforesaid memorandum to the applicant



by registered post acknowledgment due, to the address specified therein, which was returned by Postal Authorities with an endorsement:

"Left, returned to sender".

On this, the DA made more than one attempt to effect its service on the applicant. But, in all of them, the DA failed. On that, the DA published a notice, (to which we will make a detailed reference at a later stage), in the issue dated 28-4-1987 of the "Deccan Herald", a leading English Daily of Bangalore. In response to this notice also, the applicant did not turn up for duty and also did not appear before the DA.

6. On the aforesaid developments and referring to all of them, the DA made Order No.ADE/7801/TDS/EST(Con) dated 10-6-1987 (Annexure-A1) in which he dispensed with the inquiry and ordered the removal of the applicant from service from the very date of that order.

7. On 4-12-1987, the applicant received a copy of that order and then filed an appeal on 9-12-1987 under the Rules before the Scientific Adviser to the Ministry of Defence and Director General of Research and Development and the Appellate Authority ('AA'). On 6-5-1988, the AA had dismissed the said appeal (Annexure-A2).

8. In this application made on 2-6-1988 under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged the orders of the AA and the DA on more than one ground.

9. In justification of the impugned orders, the respondents have filed their reply and produced their records at the hearing.

10. Sri M.S.Bhagwat, learned counsel for the applicant, contends that the order made by the AA without examining the material grounds urged by his client in support of his appeal and the requirements

of Rule 27 of the Rules, was not a speaking order and was illegal. In support of his contention, Sri Bhagwat strongly relies on the ruling of the Supreme Court in RAMCHANDER v. UNION OF INDIA (AIR 1986 SC 1173).

11. Sri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government appearing for the respondents, sought to support the order of the AA.

12. The order made by the AA reads thus:

"ORDER

WHEREAS the penalty of 'Removal from Service' was awarded to Shri T.D.Satya Kumar, Ex-Precision Mechanic (Tradesman 'A') by the Director ADE Bangalore vide order No.ADE/7801/TDS/EST (Con) dated 10-6-1987.

AND WHEREAS Shri T.D.Satya Kumar has submitted an appeal dated 9-12-1987 against the said order of penalty.

AND WHEREAS the departmental inquiry against the said Shri T.D.Satya Kumar has been properly conducted in accordance with the procedure laid down in the CCS(CC&A) Rules, 1965 and the appellant was given full and reasonable opportunity to explain.

AND WHEREAS on careful consideration of the submissions made by Shri T.D.Satya Kumar in his appeal and other relevant records and evidence, the undersigned is of the view that the penalty imposed by the Disciplinary Authority is correct and meets the ends of natural justice.

NOW THEREFORE, in view of the above reasons, the undersigned has come to the conclusion, that the penalty of 'Removal from Service' awarded to Shri T.D.Satya Kumar, Ex-Precision Mechanic (Tradesman 'A') is hereby confirmed.

The appeal dated 9-12-1987 submitted by the said appellant is accordingly disposed of.

Sd/- Dr.V.S.Arunachalam,
Scientific Adviser to the Minister of Defence
and Director General Research and Development."

What strikes one immediately on reading this order, is its extreme brusqueness compounded by its being peppered by a plethora of 'Whereas', prefacing almost every sentence.

13. In his order, the AA had not examined the grounds urged in the appeal and recorded his findings. The AA had not examined the requirements of Rule 27 of the Rules. The order of the AA suffers

from every one of the infirmities noticed by the Supreme Court in Ramchander's case. Without any doubt, the order made by the AA is not a speaking order and is illegal. On this finding, we should normally set aside the order of the AA and remit the case to him for fresh disposal. But, as the order of the DA also suffers from a serious infirmity, we consider it proper to deal with its validity also, which we now proceed to do.

14. Sri Bhagwat contends that on the facts and circumstances of the case, it was not open to the DA to dispense with the inquiry and impose the penalty of removal from service on the applicant. In support of his contention, Sri Bhagwat strongly relies on the ruling of the Supreme Court in UNION OF INDIA v. TULSIRAM PATEL [1985 SCC (L&S)672] and a Division Bench ruling of the Patna High Court in GAURISHANKAR v. STATE OF BIHAR [1973 (1) SLR 695].

15. Sri Padmarajaiah contends that since the DA could not deliver the charge memo on the applicant under Rule 14 of the Rules, then the only course open to him was to dispense with the inquiry and make an order thereto under Article 311 of the Constitution and the Rules.

16. We will first peruse the order of the DA which reads thus:

"ORDER

WHEREAS Shri T.D.Satyakumar, T.No.315, Tradesman 'A' has remained absent from duty with effect from 10th Septr., 1986 till date without prior intimation or sanction.

WHEREAS he has been issued with a memorandum of charge-sheet for unauthorised absence and wilful neglect of duties under Director, ADE Memorandum No.ADE/7801/TDS/EST (Con) dated 20th December, 1986 which was sent to the following address given by him by Registered Post Acknowledgment Due.

Shri T.D.Satyakumar, No.57, Pipe Line,
Kasthuribanagar, Mysore Road, Bangalore-560 026.

WHEREAS the said memorandum of charge sheet was returned undelivered by the postal authorities.

WHEREAS an inquiry was made through the Police authorities to find out the whereabouts of Shri T.D.Sathyakumar.

WHEREAS the Deputy Commissioner of Police (Crime), Bangalore had stated that the address given by him as noted above is a vague one.

WHEREAS on the basis of above, a notice was published in "Deccan Herald" on 28th April, 1987 directing Shri T.D. Satyakumar to report for duty within one month from the date of issue of the said notice.

WHEREAS the said Shri T.D. Satyakumar did not report for duty till date.

WHEREAS on the basis of above, it is considered that it is not reasonably practicable to hold an inquiry in the manner provided in the CCS (CC&A) Rules, 1965 or communicate with the said Shri T.D. Satyakumar.

NOW, THEREFORE, it is hereby ordered that the said Shri T.D. Satyakumar, shall be removed from service under Rule 19(ii) of the CCS (CC&A) Rules, 1965 with effect from the date of issue of this order.

Sd/- Dr.K.G.Narayanan, Director."

On advertng to the steps taken for service of the charge memo on the applicant, the DA in the penultimate para had stated that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules or communicate with him. In their reply, this very conclusion of the DA has been pleaded to dispense with the inquiry and the arguments of their counsel also proceeded on that basis only. We will assume that all the facts stated by the DA are correct and examine the legal contention on that basis.

17. Article 311 of the Constitution which imposes safeguards before removal of civil servants, and confers power to dispense with inquiries in certain situations reads thus:

"311(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation in the penalty proposed:

Provided further that this clause shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonable practicable to hold such inquiry; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final"

The Rules only elaborate, naturally in great detail these powers.

18. Rule 19 of the Rules relied on by the DA and on which considerable reliance was placed by the respondents reads thus:

" 19. Notwithstanding anything contained in Rule 14 to Rule 18:-

- (i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule".

This rule does not really confer an independent power for dispensing with inquiries. This rule only incorporates what is contained in sub-article (2) of Article 311 of the Constitution. We must read this rule as only incorporating the constitutional provision and effectuating the same.

19. The scope and ambit of Article 311 and all its facets have

been explained by the Supreme Court in a large number of cases and a reference to all of them is really unnecessary. In Tulsiram Patel's case Madan, J. speaking for the majority of the Constitution Bench which was specially constituted to examine the correctness of an earlier three-Judge Bench ruling in *DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY v. T.R.CHALLAPPAN* [1976 SCC (L&S) 398] overruling the same, reviewing all the earlier cases also, had explained the scope and ambit of Article 311 of the Constitution in all its facets and clause (b) of sub-Article (2) of that Article exhaustively with which we are primarily concerned. The scope and ambit of clause (b) of sub-Article (2) of Article 311 had been dealt with by his Lordship under the caption "The second proviso" from paras 128 to 139 of the report. Bearing the principles enunciated at paras 129 to 134 of the report which completely conclude the scope of clause (b) of sub-Article (2) of Article 311, we must examine and decide the correctness of the decision of the DA to dispense with the inquiry on the facts found by him in his order itself, as he had not recorded his reasons for the same separately.

20. The DA made more than one attempt to effect service of the charge memo on the applicant but failed to effect service of the same on the applicant who craftily evaded the same. On this as a last resort the DA published the notice in the 'Deccan Herald' issue dated 28-4-1988, which reads thus:

AERONAUTICAL DEVELOPMENT ESTABLISHMENT DEFENCE RESEARCH
AND DEVELOPMENT ORGANISATION, MINISTRY OF DEFENCE, JEEVAN-
BIMANAGAR P.O, BANGALORE - 560 075.

NOTICE

WHEREAS Shri T.D.Satyakumar, T.No.315, Tradesman 'A' remained absent from duty with effect from 10th September 1986 till date without prior sanction of leave.

WHEREAS disciplinary proceedings were initiated under Rule 14 of CCS (CC&A) Rules, 1965 for unauthorised absence and wilful neglect of duties against Shri T.D.Satyakumar under Director ADE Memorandum No.ADE/7801/TDS/EST(Con) dated 20th December, 1986 and the same was sent to the under-

mentioned addressed by Registered Post/Ack.due.

No.57, Pipe Line, Kasthuribanagar,
Mysore Road, Bangalore-560 026.

WHEREAS the said memorandum was also returned undelivered by the postal authorities.

Whereas an inquiry was made through the Police Authorities to find out the whereabouts of Shri T.D.Satyakumar who have stated that the address given by him as noted above is a vague one.

Whereas on the basis of the above, it is considered that it is not reasonably practicable to communicate with the individual.

NOW, THEREFORE, Shri T.D.Satyakumar is hereby called upon to report to this Establishment within one month from the date of issue of this notice failing which action against him will be taken under Rule 19(ii) of CCS(CC&A)-Rules, 1965.

Sd/- Dr.K.G.Narayanan."

We notice with regret that the DA in this notice only calls upon the applicant to report for duty and does not fix a date, time and place for holding an inquiry as he should have and really intended to do. We are pained to say that everything had been done rather mechanically and without really reflecting on what is to be done and more so what has to be done next. This is the one and only reason for dispensing with the inquiry under the Rules. Whether this can attract clause (b) of sub-Article (2) of Article 311 of the Constitution is the principal question that calls for determination.

21. The power conferred is not ordinary but is extraordinary. The greater the power, higher is the responsibility on the authority. Every extraordinary power must be exercised with full reflection, responsibility and awareness. The extraordinary power has to be exercised on a conscious examination of all the facts and circumstances and not mechanically or as a matter of course.

22. When a charge memo is not served and the charged officer is absent, those facts by themselves without anything more, do not lead to a situation that it is not reasonably practicable to hold an inquiry into the truth or otherwise of the charge levelled against the delinquent. The Constitution, the Rules or any legal principle, of we are aware, do not recognise any such principle. In the absence

of service of charge memo and the consequent absence of the delinquent, an inquiry into the truth or otherwise of the charge levelled is perfectly possible and feasible and can be held. We fail to see as to why an inquiry in such a situation is not possible at all.

23. The non-holding of an inquiry, does not necessarily follow from the non-service of the charge memo and even the absence of the charged person at the inquiry. If other circumstances did not make it possible to hold an inquiry, that is another matter and that has to be ascertained and decided on its own facts and in such a situation, this Tribunal would be loath to hold otherwise. But, that is not the position in the present case. What is held, pleaded and supported before us is that as a matter of law, it was not possible to hold the inquiry and that legality or otherwise is now being examined by us. On such an examination, we find it difficult to sustain what has been done by the DA and upheld by the AA rather mechanically.

24. Sri Padmarajaiah in sustaining the decision of the DA strongly relies on Rule 14(20) of the Rules, which reads thus:

"14(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

He lays great emphasis on the words "has been delivered" occurring in this Rule.

25. We are of the view that the constitutional provision should not be read as circumscribed either by Parliamentary Legislation or a Rule made by the President under the proviso to Article 309 of the Constitution. On this conclusion itself, we cannot uphold this contention. Even otherwise, we cannot read this Rule and the words on which emphasis has been placed as enabling and compelling


the DA to dispense with the inquiry on the sole premise that the charge memo had not been delivered. We must read this Rule and the words relied on, as only where it has not been possible to deliver the charge memo on the delinquent and not otherwise. If the construction suggested by Sri Padmarajaiah is accepted; then without any doubt; that would only lead to startling results. On any principle, we cannot uphold such a construction.

26. On the foregoing discussion, we hold that the decision of the DA to dispense with the inquiry is vitiated, illegal and, therefore, calls for our interference. On what we have so far held, an inquiry has necessarily to be held on the charges levelled against the applicant.

27. Whatever were the difficulties, the DA had earlier faced in effecting service of the charge memo on the applicant, fortunately for all, it is now seen that the applicant had personally received the same on 4-12-1987, on a letter addressed by him to the DA, an authenticated copy of which also he has annexed to his application before us. We must, therefore, treat that service as due service of the charge memo on the applicant and regulate all other matters on that basis only.

28. Sri Bhagwat prays for 15 days time to file the statement of defence of the applicant who is also present in Court to the charge memo as permissible by Rule 14 of the Rules. We grant this request of Sri Bhagwat and direct the applicant to file his statement of defence before the DA within 15 days from this day. On the expiry of this time, the DA shall then hold the inquiry and complete the same in accordance with the Rules.

29. Sri Bhagwat next contends that this Tribunal having found



that the impugned orders were illegal, must necessarily direct reinstatement of the applicant with all backwages as if he had diligently attended to his duties from 10-9-1986 till his reinstatement to service.


30. Sri Padmarajaiah opposes this and strongly urges denial of all back wages till he is reinstated to service, for which he seeks time at least till 3-10-1988.

31. We have earlier noticed that the charge against the applicant was that he had not reported for duty from 10-9-1986.

32. In his application, the applicant had vaguely averred that he reported for duty on more than once, but was not taken to duty, which as usual, is vaguely denied by the respondents in their reply.

33. In the course of the prolonged hearing of this case, we asked the applicant whether he had reported for duty on and from 10-9-1986 and whether he had applied for leave of absence on any day thereafter. In answer to the same, he admitted before us that he had not done either. When we asked him the reasons for the same, he stated some incoherent reasons. We naturally left it there, as pressing the same any further was really unnecessary for us.

34. We have no doubt that if the applicant had reported for duty nobody would have prevented him from performing his duties in the establishment. ~~We~~³ are of the view that the applicant had absented himself from duty from 10-9-1986 and onwards. When that is so, then we find no justification to direct the payment of backwages till he is reinstated and reports for duty. We have consistently denied backwages to those who do not perform public service. Even the observation in Tulsiram Patel's case at para 129 supports the same. We see no justification to award backwages to the applicant.



35. We notice that the applicant has been frequently changing his residential address for reasons best known to him. In that view we directed him to file a memo giving his correct address with which he has complied. We need hardly say that it is open to the DA to effect service on the applicant on the address furnished in the memo filed before us to-day.

36. When we are quashing the impugned orders, we must necessarily direct reinstatement of the applicant to service. But, on such reinstatement, as to how his service during the period of his absence should be regulated, is a matter for the DA himself to examine and decide in accordance with the Rules. We make it clear that our order does not impose any restriction on the exercise of all such powers as are available to him to deal with the applicant.

37. Sri Padmarajaiah informs us that the regular Director of the ADE was out of India and is due to return and assume his charge by the ends of this month and, therefore, pleaded that we may grant time till 3-10-1988 to reinstate the applicant. We consider it proper to grant this reasonable request of Sri Padmarajaiah.

38. In the light of our above discussion, we make the following orders and directions:

- (i) We quash the order dated 6-5-1988 (Annexure-A2) of the AA and the order dated 10-6-1987 (Annexure-A1) of the DA.
- (ii) We declare that the disciplinary proceedings initiated by the Director in his Memorandum No.ADE/7801/TDS/EST/(Con) dated 20-12-1986 against the applicant had been validly instituted under the Rules and that on receiving the statement of defence of the applicant to the same within the time permitted by us, the disciplinary proceedings shall be continued and completed in accordance with the Rules.
- (iii) We direct, the Director that is respondent-1 to reinstate the applicant to service not later than 3rd October, 1988. But, till the applicant reports for duty, all backwages due to him from 10-9-1986 and onwards shall not be paid to him and his absence for the aforesaid period for all other purposes shall

be regulated in accordance with the orders to be made by the Director in the disciplinary proceedings.

39. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN. *W*

Sd/-
MEMBER(A) *5-12-988*

Kms/np-

TRUE COPY

P. Chy 31/11/88
SECTION OFFICER
CENTRAL ADMINISTRATION
ADDITIONAL SECRETARY
EASTERN ZONE