CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 129/1994

Date of Decision: 11/8/98

Ashok Yeshwant Koli, — Petitioner/s

Mr. Madan Phadnis, — Advocate for the Petitioner/s

V/s.

Admiral Superintendent, Naval Dockyard & Another, — Respondent/s

Shri V. S. Masurkar, — Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not ? No

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 129 OF 1994.

Dated the 11th day of August, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Ashok Yeshwant Koli,
Residing at -
B.I.T. Chawl, No. 3,
2nd Floor, Room No. 8,
428, Mahadeorao Rokade Street,
Bombay - 400 009. ... Applicant

(By Advocate Mr. Madan Phadnis)

VERSUS

1. Admiral Superintendent,
Naval Dockyard(Lion Gate),
Bombay.

2. The Flat Officer,
Commanding-in-Chief,
(Western Naval Command),
Naval Dockyard,
Shahid Bhagat Singh Road,
Bombay - 400 001. ... Respondents.

(By Advocate Shri V.S. Masurkar)

: ORDER :

{ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN {

This is an application filed under Section 19 of the Administrative Tribunals Act. The respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant was formerly working in the HSK Grade-I in the Naval Dockyard at Bombay. For an incident

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that took place on 29.09.1987, a disciplinary enquiry was held against the applicant. He denied the charges. Shri S.S. Rathore, Commander, was appointed as an Inquiry Officer. After recording the evidences against all the charges levelled by the respondents, the Inquiry Officer submitted his report on 20.05.1988 stating that all the three charges framed against the applicant are proved. The Disciplinary Authority while accepting the report of the Inquiry Officer, passed an order of removal from service against the applicant. The applicant's appeal to the competent authority came to be dismissed. Then the applicant filed O.A. No. 625/89 challenging the order of the Disciplinary Authority and the Appellate Authority. The O.A. came to be allowed by a Division Bench of this Tribunal by order dated 04.09.1991 on a technical ground, namely - that a copy of enquiry report had not been furnished to the applicant before the Disciplinary Authority took a decision. This Tribunal, therefore, set aside the orders of the Disciplinary Authority and the Appellate Authority and directed the Disciplinary Authority to proceed further after giving a copy of the enquiry report to the applicant, and giving him an opportunity to give his representation against the enquiry report. In pursuance of the order of this Tribunal, the Disciplinary Authority forwarded a copy of the enquiry report and asked his say. The applicant gave a reply. Then the Disciplinary Authority, namely - the Admiral Superintendent, Naval Dockyard, passed an impugned order dated 24.08.1992 holding that

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all the three charges are proved against the applicant and penalty of removal from service was imposed (vide the order which is at page 277 of the paper book). The applicant challenged that order before the Appellate Authority, namely - the Vice Admiral, Flag Officer, Commanding-in-Chief, Western Naval Command, Bombay. The appeal came to be dismissed by the Appellate Authority by a speaking order dated 26.07.1993 (vide page 316 of the Paper Book). Being aggreived by the orders of the Appellate Authority and the Disciplinary Authority and the Inquiry Report, the applicant has approached this Tribunal challenging the same on various grounds.

3. It is an admitted fact that on 29.09.1987 there was a mob rioting in the premises of the Naval Dockyard by the workers who were demanding enhanced bonus from that month itself and the mob turned violent at one stage. The whole incident took place between 10.00 a.m. and 1.00 p.m. It is also not disputed that during the mob rioting there was a large scale damage to the premises of the Naval Dockyard, number of vehicles came to be damaged and some persons were hurt. The police later rushed to the spot and conducted a panchnama and after investigation, filed charge-sheet against some of the employees before the Court of Magistrate. The applicant was not involved as an accused in the criminal case.

4. The department issued a charge-sheet against the applicant and mentioned three articles of charges

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followed by the details of imputations against him. The charges against the applicants are :-

(i) That on 29.09.1987 between 0945 hours to 12.30 hours (noon) the applicant was found missing from his place of duty and thereby committed misconduct.

(ii) That between 10.00 a.m. and 11.55 a.m. on the same day, the applicant was found instigating the workers, throwing stones in front of ADS's office which resulted in damaging Government property and loss to the State.

(iii) That on the same day, the applicant committed gross misconduct in causing damage to Government property between 12.00 hours (noon) and 1.00 p.m.

Then there are imputation of allegations where the details and particulars of allegations are given.

5. During the enquiry, four witnesses were examined on behalf of the department. The applicant examined two witnesses on his behalf. As already stated, the Inquiry Officer held that the charges are proved, which are confirmed by the Disciplinary Authority and the Appellate Authority.

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6. In this O.A., the applicant has challenged the correctness and legality of the disciplinary enquiry held against him. He has raised number of grounds in challenging the departmental enquiry and the findings of the Inquiry Officer, Disciplinary Authority and the Appellate Authority.

7. On the other hand, the respondents have filed reply justifying the action taken against the applicant. It is stated that there was sufficient evidence to show that the applicant is guilty of all the three charges and the orders passed by the respective authorities do not call for any interference by this Tribunal and the orders are justified from the evidence adduced during the enquiry.

8. At the time of hearing, the Learned Senior Counsel appearing for the applicant contended that when the alleged act of the applicant amounts to a criminal offence, the department should not have proceeded with the departmental enquiry but should have reported the matter to the police for taking action under the Criminal Law. Then it was argued that criminal proceedings are taken against some of the employees but the applicant is singled out for departmental enquiry and thereby, there is discrimination. Then it was submitted that the enquiry was biased. Then there was violation of principle of natural justice. It was argued that charges II and III were vague and hence the enquiry is vitiated. Then on merits it was submitted

that the findings are perverse and there was no evidence adduced to hold that the charges are proved against the applicant. Then comment was made on the examination of witnesses and in particular, it was pointed out that leading questions were put to the witnesses and this vitiates the enquiry. Then comments were made on discrepancies of evidence regarding timings and other details. Then comment was made about examination of additional three witnesses during the enquiry. Then it was also submitted that the report of the Inquiry Officer is biased in view of the reasoning given by him in the Inquiry Report. On the other hand, the Learned Counsel for the respondents refuted all these contentions and contended that this Tribunal cannot re-appreciate the evidence as an Appellate Court. He submitted that there was sufficient evidence before the competent authority who has taken a correct view and it does not call for interference by this Tribunal. He submitted that the enquiry has been held as per rules and there are no infirmities. He also pointed out that strict rules of evidence are not applicable to disciplinary enquiries and further, the Inquiry Officer and the Presenting Officer are not legally trained people and, therefore, there are bound to be some mistakes here and there.

9. In the light of the arguments addressed before us, the point for consideration is, whether the applicant has made out a case for interferring with the order passed by the Disciplinary Authority and confirmed by the Appellate Authority?

10. One of the legal contentions raised by the Learned Counsel for the applicant is that, when a particular act of commission or ommission amounts to a criminal offence, then the department should have filed a complaint against the applicant before the police or the criminal court and should not have proceeded in a departmental enquiry. In our view, this argument has no merit. A particular misconduct may amount to a criminal offence and it is also a misconduct under the rules. In such a situation, it is open to the Disciplinary Authority either to file a criminal case or to initiate a disciplinary enquiry or both. We have come across many instances where parallel proceedings are taking place, both before the Criminal Court and the Disciplinary Authority. Sometimes parties approach this Tribunal to stay the disciplinary enquiry pending criminal case. Even in such a case, the Tribunal may not stay the departmental enquiry pending the criminal trial. We are fortified in our view by a recent judgement of the Supreme Court in the case of Depot Manager, A.P. State Road Transport Corporation V/s. Mohd. Yousuf Miya & Others reported in 1997 SCC (L&S) 548. That was a case where a criminal case had been filed against a driver of a Bus for causing an accident and there was a parallel departmental enquiry. The question was, whether the departmental enquiry should be stayed or not ? In para 8 of the reported judgement, the Supreme Court has observed that departmental enquiry is to maintain discipline in the service and efficiency in the public service. The

departmental enquiry should be conducted expeditiously and need not be stayed pending trial in the criminal case. Therefore, in our view, when an act amounts to a criminal offence, the only course open to the respondents is to file a complaint before the police and not to resort to departmental enquiry, is not supported by any rule. On the other hand, the observations of the Supreme Court in the above case clearly shows that there is no bar to proceed with the departmental enquiry even when a criminal case is pending.

The Learned Counsel for the respondents invited our attention to a case reported in 1997 SC 13 (State of Rajasthan V/s. B. K. Meena (where also the question was about having simultaneous criminal case and departmental enquiry. The Supreme Court held that there is no bar to have parallel proceedings. This decision also is sufficient to reject the contention of the Learned Counsel for the applicant that the particular act amounts to criminal offence then the department has no choice but only to proceed with the criminal case.

In this connection, we may also refer to a decision of the Supreme Court reported in A.I.R. 1964 SC 72 (Sardar Pratap Singh V/s. State of Punjab (where an identical question was raised before the Supreme Court and it was rejected by observing that it is for the Government to decide whether to institute a criminal proceedings or departmental enquiry and in either way. Article 14 of the constitution is not attracted.

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11. Another serious contention which was pressed into service by the Learned Counsel for the applicant is that, for certain employees of Naval Dockyard, the department launched criminal prosecution but in respect of the applicant only, departmental enquiry is initiated and therefore, it is discrimination and violation of Article 14 of the Constitution of India. Reliance was placed on the decision of the Supreme Court reported in 1952 SCR 284 (Habib Mohamed & Others V/s. State of West Bengal). That was a case where the question was about the constitutional validity of the West Bengal Special Courts Act, 1950. Under that Act, the Government had reserved rights to refer certain cases to the Special Court for trial. The majority opinion of the Supreme Court was that, such powers given to the Government under that Act of selecting certain cases to be referred to the Special Courts is discriminatory and violates the provision of the Constitution. In our view, this decision is wholly inapplicable to our present case.

12. For one thing, in this case the department did not lodge a complaint against any particular official. The F.I.R. lodged in this case is only regarding the incident of rioting on 29.09.1987 without mentioning any names of the employees or name of any accused. Therefore, the department has not preferred a complaint regarding some persons, as contended by the Learned Counsel for the applicant. It was a general complaint against the mob. But during investigation, the police examined number of witnesses and filed a charge-sheet against

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few of the employees. Therefore, it is the police who have filed the charge-sheet against some of the employees on the basis of the evidence collected by them. The department started disciplinary enquiry against the applicant. Therefore, it is not a case of departmental discriminatory between the applicant and other employees. There is no foundation for this argument. The police, after investigation, were able to get some accused and the department had some evidence against the applicant regarding this particular incident. It is not a case of the department initiating action in two different forums against two sets of employees.

13. It was submitted that additional name of one witness was given in the charge-sheet but during enquiry three more witnesses were examined. It was, therefore, argued that the enquiry is vitiated. He did not bring to our notice any rule on this point. On the other hand, we have perused the rules and there is a clear provision for examining additional witnesses.

The Departmental enquiries are conducted under Central Civil Services (CCA) Rules, 1965. The procedure for enquiry is mentioned in Rule 14. Then we have rule 14 (15) which clearly gives power to the Inquiring Authority to permit the presenting officer to produce the evidence not included in the charge-sheet. Then it is further mentioned that in such a case, the delinquent may be given three days time before the production of new evidence. Therefore, there is no bar

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for examining additional witnesses not mentioned in the charge-sheet. The only thing is, the delinquent should be given sufficient advance information so that he could prepare his case for cross-examining the new witnesses. In this case, the new witnesses have been examined. The delinquent was represented by Shri V.G.K. Nair from a different department, namely - Income-tax Department. The additional witnesses have been cross-examined in detail. No objection was taken before the Inquiry Officer for examining the new witnesses. There is nothing on record to show that the applicant or his Defence Assistant did not have sufficient time to prepare their case. No such time was taken before the Inquiry Officer. The enquiry was conducted in 1988. Now after 10 years, it is too late in the day to raise an objection on this ground. If there was a mandate in the rule that no additional witnesses should be examined except those mentioned in the charge-sheet, then the matter would be different. But here the rule itself provides for examination of additional witnesses. The fact that the applicant and his Defence Assistant participated in the enquiry and cross-examined the witnesses in detail, shows that they have not been prejudiced in any way.

14. It was argued that leading questions are put to witnesses and therefore the enquiry is vitiated. Nodoubt, in the Evidence Act we get the manner of examination of witnesses, cross-examination, re-examination, bar to put leading questions, etc. The Inquiry Officer who conducted the enquiry is not a legal expert. He is not

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well versed in legal procedures. No advocates were present during the enquiry. Both, the Presenting Officer and the Defence Assistant were government officials and not legally trained people. It is well settled that strict rules of evidence does not apply to domestic enquiry or departmental enquiry. We have already referred to the judgement of the Apex Court reported in 1997 SCC (L&S) 548 on a different point above. In the same decision , it is observed in para 8 that in a criminal trial evidence has to be adduced as per the Evidence Act. Converse is the case of departmental enquiry. It is further observed as follows :-

> "That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position ... .. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act." (Underlining is ours).

On this point, we must also refer to the observations of the Supreme Court in the case already referred to earlier - namely 1997 SC 13 wherein in para 17 of the reported judgement it is specifically mentioned that the standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both - the Criminal case and the Departmental enquiry are entirely distinct and different.

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In this connection, we may also refer to some more decisions of the Supreme Court on the point. In A.I.R. 1977 SC 1512 (State of Haryana V/s. Ratan Singh (the Supreme Court observed that strict rules of evidence are not applicable to departmental enquiries and even hearsay evidence is admissible. Then, even in another case of Maharashtra State Education Board V/s. K.S. Gandhi reported in 1991 (2) SLR 682 (SC), the Supreme Court observed that strict rules of evidence are not applicable in departmental enquiries.

15. Then the Learned Counsel for the applicant commented on discrepancies in the evidence regarding the incident, regarding timings, etc. He also referred to some contradictions. He also commented on the report of the Inquiring Authority referring to P.W.1, P.W.2, and P.W.-3, as the responsible officers and from this it was contended that the Inquiry Officer is prejudiced. In our view, this argument has no merit.

Then it was submitted that two documents were produced at a later stage and not alongwith the charge-sheet. We have already seen how the rules itself provides for adducing additional evidence at a later stage. It applies to both, oral evidence and documentary evidence.

Then it was argued that the photos referred to by one of the witnesses are not produced during the enquiry. We are not for a moment concerned as to what

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evidence should have been adduced before the Inquiry Officer. The question is, whether there was sufficient evidence before the Inquiry Officer from which inference of misconduct could be arrived at. Time and again the Supreme Court has ruled that the Tribunal or Court cannot sit in appeal over the findings of the Inquiring Authority or the Disciplinary Authority. If we are sitting in appeal, then we can re-appreciate the evidence, consider the discrepancies and contradictions in the evidence and then take a different view. That is not the province of judicial review at all. We are only concerned with the illegality or irregularity in the decision making process and not with the ultimate decision. Though the Learned Counsel for the applicant took us through evidence and read many passages from the evidence to support his argument about contradictions, discrepancies ~~discrimination~~, etc., we are not persuaded to accept his argument in view of the law laid down by the Apex Court about the limited jurisdiction of Courts and Tribunals on question of facts while exercising judicial review.

In 1998 (1) SC SLJ 74 (Union Of India & Others V/s. B. K. Srivastava (the Bench of this Tribunal at Allahabad had set aside the findings of the Disciplinary Authority by re-appreciating the evidence. The Supreme Court allowed the appeal and set aside the order of the Tribunal. In para 6, the Supreme Court observed that the Tribunal was not right in its approach and it has acted more as a Court of appeal which it was not entitled to do so. In para 7 at page 78, the Supreme Court again observed as below :

> "The Tribunal could not sit in appeal against the orders of the Disciplinary and Appellate Authorities in exercise of its power of judicial review."

Again in para 8 it has observed as follows :-

> "There has been lawful exercise of power by the Disciplinary and Appellate Authorities. There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is no part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose."

In another recent judgement in 1998 (1) SC SLJ (78) (Union Of India & Others V/s. A. Nagamalleshwar Rao) the Supreme Court has again reiterated the principles that the approach of the Tribunal in interfering with the orders of the Disciplinary Authority was erroneous, as it had proceeded to examine the matter as if it was hearing an appeal. In the last part of para 5 at page 80, it is observed as follows :-

> "It is really surprising that inspite of the clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the Inquiry Officer as if it was a court of appeal."

16. After having discussed about the scope of Judicial review, let us consider the contentions of the applicant's counsel on merits.

The argument that charges 2 and 3 are vague does not appeal to us. The object of the charge is to give the delinquent notice of what case he has to meet. The fact that there was a rioting on 29.09.1987 is not disputed. Large scale violence and damage to government property and vehicles has not been disputed before us. The prosecution case is that the applicant took the lead in the mob and instigated the workers to commit rioting. Charges 2 and 3 indicates that the applicant was indulged in instigating the workers in causing damage to the government property on that date during the relevant hours. Hence, we are not impressed by the argument that the charges are vague and the applicant did not know what case he has to meet.

Then it was argued that there are number of discrepancies and contradictions in the evidence including timings of the incident. The Learned Counsel for the applicant referred to number of passages in the evidence in support of his argument. He even contended that the findings recorded by the concerned officers are perverse and not based on evidence.

We have carefully examined the enquiry file produced by the Learned Counsel for the respondents. We have gone through the evidence recorded by the Inquring Officer. During the enquiry, Prosecution Witness-1, C. R. Bhandare, Assistant Manager - Boiler Ship, Prosecution Witness-2, Balwant Singh, Senior Security JCO, Lion Gate, Prosecution Witness-3, Shri R. Vaidya, Manager Boiler and Engineering Fabrication and Prosecution Witness-4, Lt. Rajeshwar Singh, Security Officer,

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Naval Dockyard, are the four witnesses who were examined during the enquiry. The evidence of P.W.-1 is regarding the first charge about missing of the applicant from the office during working hours. Then the evidence of Prosecution Witness-2 to 4 shows ~~that~~ some of the overt acts done by the applicant during rioting includes actual participation and instigating the workers. It may be that Prosecution Witness-2, Balwant Singh, identified the applicant during preliminary investigation by seeing photos but during enquiry he identified the applicant as person involved in the riot. Even otherwise, the identity of the applicant ~~is~~ as the person who took part in the rioting ~~is~~ established from other ~~record~~s ~~in~~ ~~the~~ evidence. The witnesses have ~~been~~ given detail~~ed~~ evidence ~~of~~ about the role played by the applicant on that day.

The applicant examined two witnesses on his behalf. They are Defence Witness-1, Samuel Augustine and Defence Witness-2, V.M. Koli. As far as the Defence Witness-1 is concerned, he is the President of the Union of the Naval Dockyard and admittedly, the applicant is an active office bearer of the union. In that case, the Defence Witness-1 is an interested witness. Further, he comes to the scene only from his house after getting information about mob rioting. Hence, he might have not seen the actual incident because he comes to the spot at a later stage and therefore, his evidence is of no use to exonerate the applicant. Even the Defence Witness-2 has admitted about the special muster taken on that day which corroborates the version of Defence Witness-1 about

taking special muster at 11.00 a.m. in view of disturbance outside.

It is purely a question of appreciation of evidence of Prosecution Witness 1 to 4 on the one side and evidence of Defence Witness 1 and 2 on the other.

The Inquiry Officer has written a detailed speaking order discussing the evidence and giving reasons for these conclusions and coming to a positive conclusion that the charges are proved against the applicant.

17. Accepting the report of the Inquiry Officer, the Disciplinary Authority again passed a very lengthy speaking order dated 24.08.1997 referring to the charges against the applicant, the evidence adduced during the enquiry and then discussing the same and giving his conclusions that the charges are proved and then imposed a penalty of removal from service.

Even the Appellate Authority has also passed a considered speaking order dated 26.07.1993 confirming the findings of the Disciplinary Authority.

Therefore, we find that the enquiry authority, the Disciplinary Authority and the Appellate Authority have given concurrent findings of fact by writing a detailed speaking order considering the entire evidence on record. This Tribunal cannot re-appreciate the

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evidence and take a different view, even if another view is possible. We cannot enter the realm of appreciation of evidence while exercising the judicial review. The view taken by the respective authorities is borne out by the evidence on record. Hence, we do not find any illegality or infirmity in conducting the enquiry or recording reasons by the respective authorities and the charges raised against the applicant.

18. Another argument of the Learned Counsel for the applicant is that, though the incident took place on 29.09.1987, there was nothing against the applicant till charge-sheet was issued in December, 1987. In our view, this argument has no merit. As far as the incident dated 29.09.1987 is concerned, we have two misconduct reports placed on record by two witnesses, which were prepared on 29.09.1987 itself. That means the applicant is found involved in the incident by the reports prepared on the same day. Then what is more, within few days of the incident, admittedly the applicant was placed under suspension regarding this incident. Then it is followed by charge-sheet issued in December, 1987. Hence, we are not prepared to accept the argument of the Learned Counsel for the applicant that there was nothing against the applicant on record till December, 1987.

We do not find any merit in the contention about violation of principles of natural justice. The charge-sheet has been served on the applicant. He has filed his written statement. He had engaged a

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Defence Witness to defend him in the enquiry case. He has been given ~~an~~ fair opportunity and he utilised the opportunity of cross-examining the prosecution witnesses. Then the applicant had opportunity and ~~t~~he did exercise that opportunity to examine the Defence Witnesses. Therefore, the applicant had full opportunity to defend himself ~~d~~during the enquiry and hence there is no violation of principles of natural justice. As already stated, all the three authorities have written well reasoned detailed speaking orders expressing their views on the evidence on record, including defence evidence. We do not find any illegality or infirmity in the disciplinary enquiry so as to call for interference by this Tribunal.

We are also not prepared to accept the argument on behalf of the applicant that the applicant was cross-examined by the Inquiry Officer. What we find is that the Inquiry Officer has put some preliminary question, while recording whether the applicant ~~proves~~ pleads ~~to be~~ guilty or not. It is not a cross-examination at all and there is no ~~demand~~ admission by the applicant on any matter and hence no prejudice is caused to him by the preliminary question put by the Inquiry Officer at the beginning of the enquiry.

In our view, the application has no merit and is liable to be dismissed.

19. In the result, the application fails and is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA) 11/8/98
VICE-CHAIRMAN.

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