

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.303 of 1990

DATE OF JUDGMENT: 8-3-1991

BETWEEN:

Mr. Ch.Narayanacharyulu

Applicant

AND

1. The Secretary,
Ministry of Defence,
South Block, DHQ P.O.,
New Delhi. 110 011
2. The Chief Of Naval Staff (for DCP),
Naval Headquarters,
DHQ P.O., New Delhi. 110 011
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam 530 014.
4. The Chief Staff Officer (P&A),
Eastern Naval Command, Naval Base,
Visakhapatnam 530 014.
5. The Area Accounts Officer,
Controller of Defence Accounts (Navy),
Visakhapatnam 530 009.

FOR APPLICANT: Mr. Ch.Narayanacharyulu, Applicant-in-person

FOR RESPONDENTS: Mr. E.Madan Mohan Rao, Addl. CGSC

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)
Hon'ble Shri R.Balasubramanian, Member (Admn.)

MENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDICIAL)

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This is a petition filed by the petitioner for the following reliefs:-

- (i) To quash the impugned order No.CE/9103/7 dated 21.3.1990 issued under Article 311 of the Constitution ~~and~~ based on the charge memo No. CE/9103/7 dated 9.10.1985.
- (ii) To declare that Article 311, 309 and CCS (CCA) Rules, 1965 are not applicable to Defence Civilians based on the law declared by the Supreme Court vide their decision reported in AIR 1989 SC 662.
- (iii) To order the respondents to restore the CDS(CCA) Rules 1952 particularly for Defence Civilians until new rules if any framed at a later date under Article 310 of the Constitution instead of allowing the respondents to follow the procedure under CCS (CCA) Rules, 1965 which is declared as illegal by the Supreme Court.
- (iv) To quash the delegation of powers presently held vide order No.CP(L)/4035 dated 4.8.1979 under Rule 9(1) of the CCS (CCA) Rules, 1965 in respect of Appointing Authorities and Ministry of Defence order No.5(18)/79/D(Lab) dated 13.9.1979 issued under Rule 12(2)(a) of CCS (CCA) Rules, 1965 in respect of Disciplinary Authorities in view of the law declared by the Supreme Court in a case reported in AIR 1989 SC 662 supra regarding the non-applicability of Article 311, 309 and CCS (CCA) Rules, 1965 framed under Article 309 of the Constitution and also on the ground that those rules were framed after 8 years of the appointment of the applicant.
- (v) To declare that the Suspension order No.CE/9103/7 dated 10.7.1985, Charge Memo No.CE/9103/7 dated 9.10.1985, Appointment of the Inquiry Officer vide Order No.CE/9103/7 dated 30.11.1985 and the appointment of the P.O., vide Order No.CE/9103/7 dated 30.11.1985, as illegal since the above orders were passed by the 5th respondent who maintains no

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Locus Standi in case of the applicant as the applicant was working under a Captain of Command Supply Office and that the Captain also maintains competency of a Disciplinary Authority to impose minor penalty on the staff working under him; and not working under the 5th respondent.

- (vi) To declare the action of the Respondents 3 and 4 as violative of Article 141 of the Constitution of India since the impugned order was issued & contrary to the law declared by the Supreme Court in the case reported in AIR 1989 SC 662; and
- (vii) to award suitable costs.

The contents of the petition are briefly as follows:-

The petitioner was appointed as an LDC on 17.11.1958 by the Commandore East Coast, Visakhapatnam. He was further promoted as UDC on 22.5.1969 by the Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam who was in the rank of Rear-Admiral at that time. While he was working in Weapon Equipment Depot, Visakhapatnam, he was transferred to the office of the Command supply Officer, Eastern Naval Command, Visakhapatnam vide Movement order dated 5.7.1985 and he joined the Command Supply Office on 8.7.1985 since 6th and 7th July 1985 were being holidays. Immediately after two days of his reporting, he was suspended on 10.7.1985 by the 5th respondent vide order dated 10.7.1985. On 9.10.1985 he was served with a charge Memo under Rule 14 of the CCS (CCA) Rules, 1965 vide order dated 9.10.1985 by the 5th respondent. Since he denied the charges, Mr. M.S.Seshadri, CGO of Naval Dockyard, Visakhapatnam has been appointed as an Inquiry Officer and a Presenting Officer was also appointed by ~~the~~ the orders of the 5th respondent dated 30.10.1985 under Rule 14(2) and 14(5)(c) of the CCS (CCA) Rules, 1965. The Inquiry Officer

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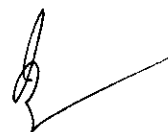
completed the inquiry on 27.5.1987. At that stage, the petitioner filed O.A.No.514/1987 before the Central Admve. Tribunal, Hyderabad Bench for quashing of the suspension order. By a Judgment, the Central Admve. Tribunal ordered revocation of suspension and accordingly the suspension has been revoked by the 5th respondent vide order dated 29.9.1987. The petitioner contends that the Presidential Order No.5(18)/79/D(Lab) dated 13.9.1979 stipulates that the officers in the rank of Commander and above are constituted as competent disciplinary authorities to impose any of the minor penalties. Accordingly, the Staff Supply Officer under whom the petitioner was working with effect from 8.7.1985 onwards is actually competent to suspend, issue charge memo under Rule 14 of the CCS (CCA) Rules, 1965 and to appoint the Inquiry and the Presenting Officers. The Command Supply Officer who was holding the rank of a Captain is fully competent to perform as a constituted disciplinary authority. But the 5th respondent who is not even maintaining Locus Standi in the case of the petitioner, has taken the role of the competent disciplinary authority. Therefore the orders passed by the 5th respondent are not valid in law since the interference of the 5th respondent in his case is illegal and unconstitutional and the orders are liable to be quashed. The petitioner also filed O.A.No.171 of 1989 on 7.3.1989 against the orders of dismissal dated 27.2.1989. The Tribunal disposed of the O.A., setting aside the order of dismissal and remitted back the case to the respondents with a direction to given an opportunity to the petitioner to raise his objection before the disciplinary authority within a period of 15 days from the date of receipt of those orders and the disciplinary authority should dispose of the matter within a period of eight



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weeks thereafter. Consequent thereto, the 4th respondent issued orders dated 5.1.1990 setting aside the penalty of dismissal and bringing the petitioner under deemed suspension. The petitioner was instructed to submit his objections on the Inquiry Officer's report. The petitioner once again appealed to the disciplinary authority to supply a copy of the Inquiry Officer's report and the same was supplied to the petitioner by the 5th respondent. The petitioner submitted his objections on 30.1.1990. Meanwhile, the petitioner filed O.A.No.103/1990 challenging the deemed ^{order} suspension/dated 5.1.1990 as illegal. He also filed O.A. No.154/1990 challenging the competency of the disciplinary authority to impose major penalties and the same was dismissed. The 4th respondent again imposed a major penalty of dismissal from service vide order dated 21.3.1990. The petitioner questions the penalty order of dismissal from service on the ground that Article 311(2) ~~and~~ of the Constitution of India and the CCS (CCA) Rules, 1965 are not applicable to the Civilian Defence officers. The petitioner further states that since he was not working under the 5th respondent at the time of suspension, and since the Command Supply Officer being a captain is fully competent to take action, interference ~~xx~~ of the 5th respondent will be construed to be uncalled for in his case and hence the suspension imposed by the 5th respondent, issue of charge memo and further appointments of the Inquiry and Presenting Officers done by the 5th respondents are all liable to be quashed. He also contends that he was not allowed to peruse the preliminary inquiry report by the respondents. So, he filed this petition for the above said reliefs.



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2. The respondents filed a counter with the following contentions:-

The respondents admit that the petitioner was appointed on 17.5.1958 as LDC by the Commandore East Coast (COMEAST), Visakhapatnam who was in the rank of Commandore and he was subsequently promoted as UDC by an order dated 17.5.1969 of the Flag Officer East Coast (FOEAST) who was in the rank of 'Rear Admiral' at that time. It is stated that the applicant did not bring out this point in the previous applications viz., O.A.No.587/1987 and O.A.No.171/89 filed before the Tribunal. It is not correct to say that none of the authorities below the rank of Rear Admiral is competent to take disciplinary action against the petitioner. The applicant was initially appointed by the COMEAST who was holding the rank of Commandore at that time. The Commandore East Coast is no longer in position at Eastern Naval Command as the Eastern Naval Command is now headed by Flag Officer Commanding-in-Chief who is of the rank of Vice Admiral, higher in two ranks than the Commandore by whom the applicant was initially appointed in May 1958. By virtue of the CCS (CCA) Rules, 1965, the Director of Civilian Personnel, Naval Headquarters is the real appointing authority for the applicant he being a Group 'C' employee. The DCP, NHQ is also of the rank of Commandore. The DCP has delegated his powers of Appointment to the 4th respondent. The President of India under Rule 12(2)(a) of the CCS (CCA) Rules, 1965 empowered both the DCP, NHQ and the CSO(P&A), HQENC, Visakhapatnam to impose the penalties mentioned in Rule 11 of the CCS (CCA) Rules, 1965 on Group 'C' and 'D' Defence Civilian employees in the Indian Navy under their control and within their jurisdiction. Taking into view all these aspects, the

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Tribunal in its Judgment dated 29.11.1989 in O.A.No.171/1989 filed by the applicant held that since it has been clarified that the applicant was appointed by the Commandore East Coast, an officer equal in rank to the DCP and the CSO(P&A), HQENC(V), and since these officers were delegated with the powers of Disciplinary Authority, they are competent to initiate disciplinary action and even impose a major penalty against the applicant. Therefore, the contention of the applicant that none of the authorities below the rank of Rear Admiral who are not constituted as competent Disciplinary/ Appointing Authorities are not competent to take ~~action~~ disciplinary action against him, is not correct. The Tribunal in para 5 of its Judgment in O.A.No.171/89 further upheld that exercise of disciplinary powers i.e., imposition of penalty of dismissal from service on the applicant by the Flag Officer Commanding-in-Chief, Eastern Naval Command is in order since FOC IN C EAST is higher than the original appointing authority i.e., DCP, NHQ and his delegatee i.e., CSO(P&A) who are both in the rank of Commandore. Hence, the contention of the applicant in this regard is not tenable. The 4th respondent suspended the applicant, issued ^{and} a charge memo, and appointed both the Inquiry and Presenting Officers. The Presidential Order dated 13.9.1979 vide item 1(a)(i) has clearly empowered the 4th respondent to act as Disciplinary Authority to impose any of the penalties both major and minor specified in clauses (i) to (ix) of Rule 11 of the CCS (CCA) Rules, 1965. The Cd.S.O under whom the petitioner was working was holding the rank of Captain (higher than Commander). The contention of the petitioner that since he was placed under the Cd.S.O., who was Captain in rank, ~~the Command Supply Officer~~ the said Cd.S.O., should have placed him under suspension, issued

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charge memo, is not correct. HQ ENC(V) is one Unit headed by the Flag Officer Commanding-in-Chief, Eastern Naval Command (Vice-Admiral) and various Chief Staff Officers/ Staff Officers are appointed to assist/advise him. In this process, the Cd.S.O., is to look after only the Budget matters, Contracts, Supply of stores etc., but not personal and administration matters relating to Command. The CSO(P&A) has categorically been empowered by the Presidential Order to act as Disciplinary Authority in respect of Civilians Group 'C' Ministerial staff in the Navy. The duties/powers of the Command Supply Officer are confined only to the matters relating to supply of stores/budget and all logistic support etc., and not matters relating to civilian staff. ✓

3. The FOC IN C was delegated with the powers of both Appointing Authority and Disciplinary Authority even prior to the issuance of the Presidential Order dated 13.9.1979. The competency of FOC IN C has already been upheld by the Tribunal in ~~one~~ its decision in O.A.No.171/89 to act as Disciplinary Authority, he being higher in rank than the Disciplinary Authority. Though it might be a fact that the applicant was promoted as UDC by the then FOC IN C which was held by an Authority of the rank of Rear Admiral, this in no way nullifies the competency of the FOC IN C/ CSO(P&A). It is however a fact that the order of Dismissal from service dated 27.2.1989 was set-aside by the Tribunal, purely on the technical ground of non-supply of a copy of the Inquiry Officer's report to the applicant prior to issue of final punishment orders. It is a fact that Article 311 of the Constitution of India is not applicable to the

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members of the Defence Services or holders of posts connected with Defence. Article 311 provides certain rights to certain categories of Government servants. Such Government servants cannot be dismissed or removal by an authority subordinate to the Appointing Authority and they cannot be dismissed, removed and reduced in rank except after an enquiry into charges framed and reasonable opportunity of being heard in respect of the charges. Thus certain procedure is to be followed such as conducting of inquiry, giving a reasonable opportunity etc., as per the Article 311. But those safeguards provided in Article 311 of the Constitution have been held to be inapplicable to the Defence Civilians by the Supreme Court in a Judgment reported in AIR 1989 SC 662. The procedure followed in case of the applicant is the one laid down in the CCS (CCA) Rules, 1965 which have been framed under Article 309 of the Constitution. The Tribunal in Para 7 of its Judgment dated 29.11.1989 in O.A.No.171/89 held that as the provisions of Article 311 of the Constitution are not applicable to the members of the Defence Forces or holders of Posts connected with the Defence, they have no remedy at Law if their services are terminated invoking Article 310 of the Constitution. The Tribunal also held that neither the Supreme Court nor any other Court has held that no rules can be framed under Article 309 governing the conditions of services of civilians in Defence Services. All that has been held that rules, if any, framed must conform to the provisions of the Constitution under Art. 309 ~~of the~~ and 311 of the Constitution. The procedure prescribed under CCS (CCA) Rules, 1965 has been strictly complied with in the case of the applicant. The Tribunal also held that Civilians in Defence Services can claim the right to reasonable opportunity whenever the provisions of Article 310 of the

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Constitution have not been invoked by application of CCS(CCA) Rules and the rules framed and extended to such employees would be valid rules and are deemed to have been framed to sub-serve the principle of audi-alteram-partem. ~~and the~~ The procedure followed as per CCS (CCA) Rules, 1965 and the punishment imposed on the applicant are valid and hence the contention of the petitioner ^{in this regard} is not tenable.

4. The applicant made a written request on 31.1.1987/ 6.2.1987 to the Inquiry Officer for supply of copies of the complaint of Shri Nookaraju but since the supply of copies of the complaint vitiates the inquiry and the Inquiry Officer categorically stated that the complaint of Shri Nookaraju was not necessary for the inquiry, he was not supplied with the same. Non supply of the complaint in no way prejudiced the case of the applicant since Shri Nookaraju himself deposed his evidence and the applicant cross-examined him. All the rules, except Rule 14(18) have been complied with, but non-examination of the individual by the Inquiry Officer as per Rule 14(18) did not cause any prejudice to the case of the applicant since he was afforded ample opportunity to defend his case and prove his innocence. The contention of the applicant that the DWs have been threatened is totally wrong. The contention of the applicant that the evidence of the DWs has not been considered totally and these witnesses were dishonoured, is absolutely incorrect. The allegation that the charges are vague is not correct. Charges were made according to the rules and law. PWs have deposed to the effect that the applicant might have removed the granted leave applications as he was the sole beneficiary of such an act. The respondents denied various allegations made by the petitioner in his petition and contended that the inquiry was done according to the rules and the contents of the petition

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are all not tenable and it is a fit case to dismiss the application of the applicant.

5. The applicant-in-person Shri Ch.Narayanacharyulu argued for himself and Shri E.Madan Mohan Rao, Addl. CGSC argued for the respondents. In this application the main contention of the applicant is that he is not governed by Articles 309 and 311(2) of the Constitution and that the CCS(CCA) Rules, 1965 are not applicable to Defence Civilians. While advancing the arguments in the earlier petition~~he~~ he had only urged that the documents were not supplied to him before the punishment order was given. In the earlier O.A.No.171/89 he had not raised this legal issue of the applicability^{or otherwise} of the CCS(CCA) Rules, 1965. ~~the issue~~. We find from the judgment dated 29.11.89 in O.A.No.171/89 that the learned counsel for the respondents therein had raised this issue and argued that even if there were ^{infirmities} ~~informalities~~ in the conduct of the enquiry against the applicant, ^{they did not matter since} the CCS(CCA) Rules, 1965 were not applicable to him. The respondents therein relied on the ground that the rules framed under Articles 309 and 311(2) of the Constitution were not applicable to the applicant. After dealing with this aspect in considerable detail this Tribunal held:

"Civilians in defence services can claim the right to a reasonable opportunity whenever the provisions of Article 310 have not been invoked by application of the CCS(CCA) Rules. The rules framed and extended to such employees would be valid rules and are deemed to have been framed to subserve to the principle of 'audi alteram partem' and the equality clauses framed in the Constitution."

Summarising the whole issue vide para 11 this Tribunal had observed: ~~in~~ O.A.171/89,

"From the various cases cited as discussed in the preceding paras, the following legal propositions would emerge in regard to the rights of civilian employees in the defence service:

- (i) These employees are not entitled to the benefits of Article 311 of the Constitution of India when their services are sought to be terminated under Art.310 of the Constitution.

They cannot also claim rights, similar or analogous to the rights conferred under Art.311 even by virtue of the service rules since the service rules must conform to the provisions of the Constitution. Any rule which eradicates or limits the powers of the President/Governor under Article 310 would be ultra vires.

(ii) The power under Article 310 can be exercised by any minister or officer under the rules of business framed either under the Article 77(3) or under Article 116(3) or in exercise of powers vested in them by rules framed in this behalf, that is, the pleasure of the President or the Governor can be exercised by a minister/officer on whom the President or the Governor confers or delegates the power.

(iii) The right to opportunity by reason of applicability of the principles of natural justice is expressly excluded to defence employees and civilian employees in the defence services when their services are terminated exercising the 'pleasure doctrine' by virtue of Article 310 read with Article 311 of the Constitution of India.

(iv) Where the power under Article 310 of the Constitution has not been delegated by the President and the appointing authority/disciplinary authority seeks to remove such an employee, without affording him a reasonable opportunity, the exercise of such a power would be contrary to the rule 'audi alteram partem'/principles of natural justice and would be arbitrary and violative of Article 14 of the Constitution. The procedure prescribed by the Govt., in such cases viz., applying the CCS(CCA) Rules is a valid procedure and subserves or satisfies the test of audi alteram partem. Consequently, non-compliance of the rules in such case would be illegal and ultra vires of Article 14."

6. In that O.A. this Tribunal finally ordered:

"The applicant has raised various other contentions (as already stated in para 6) namely that no reasonable opportunity was given to him, that the evidence has not

established his guilt, that some of the charges are trivial, etc. We do not propose to go into these contentions. It is open to the applicant to raise all of them before the Disciplinary Authority in his objections to the Enquiry Officer's report which opportunity we now direct should be afforded to him. The applicant is directed to raise his objections to the Enquiry Officer's report, before the Disciplinary Authority within 15 days from the date of receipt of this order and the Disciplinary Authority will dispose of the matter within eight weeks thereafter. With these directions, the order of the Disciplinary Authority No.CE/9103/7 dated 27.2.1989 is set aside. The Enquiry Officer's report has formed a part of the material papers filed by Respondents' counsel and furnished to the applicant. As such the question of further supplying a copy of the enquiry report to the applicant in order to give him an opportunity to make his representation would not arise. The manner as to how the period viz. from the date of impugned order dated 27.2.1989 till culmination of the proceedings, should be treated would depend upon the ultimate result and it is left to the Disciplinary Authority to finally determine how the period should be treated in accordance with the rules. The application is allowed with these instructions, but in the circumstances without costs."

7. ~~Respondent's application~~ The petitioner once again appealed to the Disciplinary Authority to supply a copy of the Enquiry Officer's report (although it had been held that the same was available with him) and ~~respondent~~ the 5th respondent again supplied him a copy of the Enquiry Officer's report. The petitioner submitted his objections on 30.1.90. Meanwhile the petitioner filed O.A.No.103/90 challenging the deemed suspension order dated 5.1.90 and the same was dismissed. He also filed O.A.No.154/90 challenging the competence of the Disciplinary Authority to impose major penalty and the same was also dismissed. The 4th respondent again imposed the

To

1. The Secretary, Ministry of Defence,
South Block, BHQ P.O., New Delhi - 11.
2. The Chief of Naval Staff (for DCP)
Naval Headquarters, DHQ P.O. New Delhi - 11.
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
visakhapatnam -14.
4. The Chief Staff Officer (P&A)
Eastern Naval Command, Naval Base,
visakhapatnam - 14.
5. The Area Accounts Officer,
Controller of Defence Accounts (Navy)
visakhapatnam-9.
6. One copy to Mr.Ch.Narayanacharyulu. Party-in-person
E/1, Pallavapark, Kancharapalem, visakhapatnam.
7. One copy to Mr.E.Madanmohan Rao, Addl. CGSC.CAT.Hyd.Bench
8. One ~~xxxx~~ copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.
Hyd
- 9 One spare copy.

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major penalty of dismissal from service vide order dated 21.3.90. The applicant questions this penalty order on the ground that Article 311(2) of the Constitution and the CCS(CCA) Rules are not applicable.

8. We find that the issues regarding competence of the various authorities and the applicability or otherwise of the CCS(CCA) Rules, 1965 have all been settled in O.A.No.171/89 and when the applicant had not either sought for a review or gone in appeal it is not open to him to reopen those issues now. In-so-far as this case is concerned if he was not satisfied with the order of punishment dated 21.3.90 the next course open to him ^{was} ~~is~~ to prefer an appeal to the competent appellate authority which he had not done. The applicant has not exhausted the remedies available to him before approaching this Tribunal. Even though the time limit for preferring an appeal is well over we direct the applicant, if he wants, to prefer an appeal within 45 days from the date of receipt of this order. We also direct the appellate authority to dispose of the appeal within three months of receipt of such an appeal ~~made~~ within the time limit allotted to the applicant. ~~In case~~ If the applicant wants a personal hearing the appellate authority should also hear him.

9. We ^{dispose of} ~~dismiss~~ the application with the directions given above with no order as to costs.


(J.Narasimha Murthy)
Member(Judl).


(R.Balasubramanian)
Member(Admn).

Dated 8/12 March, 1991.


Deputy Registrar(J)

13-3/91
A/SR
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XEROX
CHECKED BY 14/17

TYPED BY

APPROVED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.B.N.JAYASIMHA : V.C.

AND

THE HON'BLE MR.D.SURYA RAO : M(J)

AND

THE HON'BLE MR.J.NARASIMHA MURTY:M(J)

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

Dated: 8 - 3 - 1991.

ORDER / JUDGMENT:

M.A./R.A./C.A. NO.

in

T.A.No.

W.P.No.

O.A.No. 303/90

Admitted and Interim directions
issued.

Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected.

No order as to costs.

