

1696 (7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD.

JA-445 of 1992

Between:

V. Vijay Kumar son of Late Sri V. Komaraiah, aged 35 years, working as Superintendent, E/M Grade II in CE AF Hakimpet, Secunderabad

.. Applicant.

and

Union of India represented by:

1. The Secretary to Government, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Head Quqrter Kashmir House, EHO/PO, New Delhi.
3. The Chief Engineer, Southern Command, Pune.
4. Garrison Engineer, Air Force, Hakimpet, Secunderabad 14.

.. Respondents.

Address for service of notices: K.S.R. ANJANEYULU, B.A., LL.B. Advocate, 1-1-365/A, Jawaharnagar, Bakaram, HYDERABAD 500 020.

Details of the Applications:

1. Particulars of the order against which application is made:

This application is against order No: 130806/1/MZ/658/EIO dated 5th of July, 1991 (Annexure 28) passed by the Chief Engineer, Southern Command, Pune, awarding penalty of compulsory retire^{ment} from service.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal under Section 14(1) of the Administrative Tribunal Act as the applicant was working at Sec underabad at the time of imposition of penalty is also

3. Limitations:

The applicant declares that the application is within the limitation period described in Section 21 of the Administrative Tribunal Act. The date of the impugned order is 5.7.1991 (Annexure 29) the applicant submitted his appeal to the Engineer-in-Chief on 29.7.1991 (Annexure 29) and six months elapsed thereafter. The appeal is not disposed off and the applicant is put to extreme hardship.

4. Facts of the case:

4.1. The applicant humbly submits that he was appointed as Superintendent E/M Grade II (Permanent) in MES on 30.8.1977. He was completed 15 years of service without any adverse comments regarding his work. He has been attending his duties faithfully with devotion and has not come to adverse notice at any time. He belongs to Schedule ^U Caste Community.

4.2. It is submitted that the Garrison Engineer vice his memo No: 103/VVK/109/E1 dated 15.5.1987 (Annexure 1) issued memorandum of charges under rule 14 CCS, (CCA) Rules alleging that the applicant

- a. failed to report to CWE (AF) Secunderabad on attachment as ordered.
- b. Refused to accept the movement order on his promotion/posting to CE Projects (Fy) Madras as per the posting order. In reply there to the applicant submitted his representations dated 9th June, 1987 (Annexure 2) to the GE (AF) explaining the sequence of the events stating that the charges are untenable and unsustainable and even requested that an inquiry may be conducted in the matter. Thereafter no charge memo was served on applicant.

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4.3. The GE (AF) vide his memo No: 103/VVK/142/Elc dated 17.7.1987 (Annexure 3) directed the applicant to attend court of Inquiry on 28.7.1987. It was stated in the said order Sri Anand Prakash was the Inquiry Officer and K.P. Srinivasan was the Presenting Officer to whom copies were marked. As it stood thus, the officiating Chief Engineer, Madras Zone, issued Memo No: 1013/VV/25 Elc dated 24.7.1987 (Annexure 4) appointing K.C. Sanker, ASW, Office of CE MZ Madras as I.O. It is herein submitted the GE (AF) Secunderabad was disciplinary authority who issued the charge memo and also appointed IO and PO. The officiating Chief Engineer, Madras Zone has no jurisdiction to appoint the IO as he is not the disciplinary authority that issued the charge memo. Therefore the appointment of Sri K.C. Sanker as IO is illegal, inoperative and invalid. As such the proceedings conducted by the K.C. Sanker as IO are vitiated and the punishment based on vitiated proceedings are vitiated and liable to be set aside on this ground alone. Thereafter the GE (AF) vide his memo No: 103/VVK/154/El dated 12.8.1987 (Annexure 5) issued orders appointing Sri Anand Prakash as PO who was originally appointed as IO as per his letter dated 17.7.1987 (Annexure 3). Even according to (Annexure 5) Sri K.C. Shanker appointed as IO by offg. CE of Madras continues to be there. It is submitted that there is no cancellation of appointment of Sri Ananda Prakash, IO and also Sri K.C. Shankar was appointed as IO by Offg. CE Madras Zone. It may be seen that Sri Anand Prakash was appointed as PO. The applicant submitted representation dated 9.10.1987 (Annexure 6) clearly pointing out that appointment of Sri Anand Prakash has not been cancelled by the GE (AF) Secunderabad. The same was also confirmed by GE (AF) Secunderabad vide

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his memo No: 103/VVK/167/Elc dated 12.10.1987 (Annexure 7) wherein it was stated that his order was suppressed by J. J. S. CE Madras letter dated 24.7.1987 (Annexure 4).

4.4. It is submitted that Sri K.C. Shanker issued Memo No: KCS/Inq/II/E8 dated 6.11.1987 (Annexure 8) intimating that preliminary inquiry was fixed on 27.11.1987. It is submitted that there is no provision in Rule 14 for preliminary inquiry after charge memo is issued. The same is illegal. The applicant immediately submitted a representation dated 25.11.1987 (Annexure 9) urging that a charge memo under rule 14 ought not have been issued without preliminary inquiry being conducted and the charge is unsustainable. The Inquiry Officer, as per Memo No: KCS/Inq/16/E8 dated 26.11.1987 (Annexure 10) postponed the preliminary hearing to 14.12.1987. The said IO Sri K.C. Shanker conducted the proceedings of preliminary hearing on 14.12.1987 (Annexure 11). The applicant pleaded not guilty and submitted that preliminary inquiry should have been conducted before issue of charge sheet to arrive at the conclusion, that a prima facie case exists or not. In the instant case no preliminary inquiry was conducted as is evident from IO order dated 6.11.1987 (Annexure 8) and the charge is x invalid and to be withdrawn. The applicant also gave a representation dated 14.12.1987 (Annexure 12) stating that the issue of charge sheet without preliminary inquiry as to whether or not a prima facie case exist is untenable. There cannot be a preliminary inquiry after the charge memo issued, and the charge is unsustainable. The Chief Engineer, Secunderabad replied under his letter No: 10548/AF/9/6/ELC dated 18.2.1988 (Annexure 13) stating that preliminary inquiry is held for purpose of collection of facts in regard to the conduct

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and work of Government servant in which he may or may not be associated, so that authorities concerned may decide regarding the charges and an inquiry. The Chief Engineer failed to notice that preliminary inquiry was ordered to be conducted by the IO after the issue of charge memo as seen from (Annexure 8) the same is invalid. The applicant also submitted a representation dated 25.4.1988 quoting instructions issued by CE Southern Command, Pune with regard to preliminary Inquiry to be conducted (Annexure 14).

4.5. At this stage the Additional Chief Engineer, Madras vide his memo No: 1000/Misc/821/Elc dated 3.6.1988 (Annexure 15) cancelled the appointment of K.C. Shanker as the IO. That the C.E. Secunderabad vide memo No: 10548/AF/9/30/Elc dated 11.6.1988 (Annexure 16) issued orders appointing Sri S.K. Mahajan, EE, as IO. It is submitted that the charge memo was issued by the GE AF Secunderabad (Annexure 1) as per provisions contained in Rule 14 of CCS, CCA Rules. The disciplinary authority who was issued the charge sheet alone has to appoint an Inquiring Authority. As such the appointment of S.K. Mahajan as IO is invalid, inoperative and illegal. The proceedings conducted by Sri S.K. Mahajan are abinitio void. The punishment based on invalid proceedings is vitiated and liable to be set aside; The said IO Sri S.K. Mahajan vide his memo No: 105/VVK/6/Elc dated 15.7.1988 (Annexure 17) ordered the applicant to attend the Enquiry on 21.7.1988 as ordered. On that day the applicant was present but the PO was not present. No proceedings were recorded. The IO contacted the PO over phone from Hyderabad to CE (P) Dundigal in the

presence of the applicant. The PO confirmed that he will not be able to attend the inquiry. It may be seen from the daily order sheet dated 21.7.1988 furnished to the applicant along with the order of the dismissal clearly shows that his signature was not there, whereas PO signature was very much on the record on 22.7.1988. The applicant gave a representation (Annexure 18) to Sri S.K. Mahajan, IO stating to clarify whether the inquiry being conducted is preliminary or otherwise and also submitted that reply to his letter dated 25.4.1988 (Annexure 14) is still awaited from CE (P) FY Secunderabad.

4.6. The Inquiry Officer vide his memo No: 105/VVK/13/Elc dated 9.8.1988 (Annexure 19) ordered the applicant to attend the inquiry on 16.8.1988. The applicant attended the inquiry on 16.8.1988. Even on that day the PO was not present as is evident from the order sheet. The applicant gave a representation dated 16.8.1988 (Annexure 20) which was acknowledged on the every day. It is submitted that no proceedings were conducted and the signature of the applicant was also not there in the order sheet, whereas PO signature was very much on the record. That the IO vide his memo No: 105/VVK/18/Elc dated 7.9.1988 (Annexure 21) directed the applicant to attend the oral inquiry on 12.9.1988. The applicant attended the inquiry on 12.9.1988. Even on that day PO was not present as is evident from the order sheet. The signature of the applicant was not on the proceedings and these proceedings were not on the proceedings and these proceedings were not recorded in the presence of the applicant. The applicant submitted a representation to the IO on the same day i.e. on 12.9.1988 (Annexure 22)

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specifically stating that he is attending oral inquiry as ordered even though there is no clarification on the points raised by him and the same should be taken note of by the IO. It was further submitted that IO has threatened the applicant to conduct an ex parte inquiry which is untenable and in contravention of rules and established procedures for a fair trial. No proceedings were recorded as submitted earlier.

4.7. Thereafter no proceedings were held. The applicant was not examined and the IO also did not put him questions on the circumstances appearing against him. The provisions contained in 14(18) of the CCS (CCA) Rules is mandatory. The same has not been complied with. The brief of the PO has not been furnished to the applicant. The provisions of the rules 14(19) and 14(20) have not been complied with. The instructions contained in Ministry of Home OM NO: 11012/18/77-Estt. (A) dated 2.9.1978 (P 69 of Swamy's CCA CCS Rules) have been grossly violated. The inquiry was abruptly closed in utter disregard of the provisions of the CCS (CCA) Rules and the entire proceedings stand vitiated.

4.8. The report of the IO was also not furnished to the applicant before the Disciplinary authority imposed penalty. The applicant has no opportunity to point out the irregularities and illegalities to the Disciplinary authority. The disciplinary authority had been mechanically led away by the Inquiry Report. It has been clearly held that an inquiry report must be given to delinquent before imposing penalty (Principle Bench CAT 1988 (3) SLJ CAT 449 Page). The action of the respondent is in violation of principles

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of natural justice and the punishment is liable to be set aside on these ground.

4.9. The applicant filed O.A. No: 941 of 1989 in this Tribunal to set aside the order of punishment imposed by the Disciplinary authority without furnishing the inquiry report before imposing the punishment among other grounds. This Honourable Tribunal by its judgment dated 19.2.1991 (Annexure 23) ordered that by following the case of Union of India and others Vs. Mohd. Ramzan Khan, the order of the dismissal passed by the CE SC Pune and the order passed by the E-in-C Delhi, imposing the punishment of compulsory retirement were set aside the respondents were directed to reinstate the applicant into service. It was also stated that this decision may not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law from the stage of supply of the Inquiry report. Thereafter the official was reinstated without payment of wages for the intervening period. The applicant filed M.A. 921 of 1991. The same was dismissed by Judgment dated 9.8.1991 (Annexure 24) holding that this Honourable Bench is not to direct the respondents is how to treat the interregnum. The applicant was resinstated into service vide GE AF letter No: 1206/EIR dated 24.9.1991 (Annexure 25). The disciplinary authority then supplied a copy of the inquiry report as per CE Hyderabad Zone letter No: 10548/AF/9/152/ EIC dated 19.4.1991 (Annexure 26) calling upon the applicant to submit his version. The applicant submitted his detail representation on dated 6.5.1991 (Annexure 27).

4.10. The applicant in his representation submitted that the charge memo was not served on the applicant. The contention of the IO that the applicant did not ask for

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documents and that the applicant was given ample time and opportunity for preparing his case and so the case were proceeded ex parte was contrary to facts and proceeding were vitiated. The Inquiry Officer ordered the applicant to attend enquiry on 21.7.1988. The applicant attended the enquiry as admitted by him in para 2.1. of his report. No proceedings were conducted in his presence on that day and his signature was not taken. The PO was also not present on that day. The applicant does not know as to when the POs signature was taken. The so called proceedings were not conducted in the presence of the applicant. The IO had stated in para 4 of his report that the DO and PO were present. If it is so he would have obtained the signature of DO along with the PO. The applicant therefore states that no proceedings were conducted on 21.7.1988.

4.10. The IO admitted that the applicant attended the inquiry on 16.8.1988. It is true that the applicant attended the inquiry on that day and no proceedings were conducted on that day, and his signature was not at all there. The applicant does not know as to when the proceedings were recorded and as to when the PO signature was taken. It is strange to find that the signature of PO is stated to have obtained while it is admitted that the applicant was also present in the inquiry and his signature was not there. The proceedings of the IO dated 16.8.1988 are wholly untrue and recorded behind the back of the applicant. It may also be seen that these proceedings were never endorsed to the applicant or his signature was taken any where to show that these were delivered to him at any time.

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4.11. The IO admitted in his inquiry report that the applicant attended on 12.9.1988. It may be seen from the daily order sheet enclosed to his report that even PO has not signed. The signature of the applicant was also not there, and even the PO was not there. In fact no inquiry were held. It was noted in the daily order sheet as Sd/- for PO. It was stated in the order sheet that the PO and DO were present which is false and incorrect. The proceedings are recorded behind the back of the applicant and are untenable. The proceedings are vitiated, the findings based on vitiated proceedings are also vitiated.

4.12. The applicant submits that no proceedings were conducted on 21.7.1988, 16.8.1988 and 12.9.1988. And all these three days PO has not attended the inquiry. It is pertinent to note that the daily order sheets/proceedings were never prepared in his presence, and the copies of the daily order sheets were not marked to him and his signature were also not there.

4.13. The findings of the IO in para 4 that the PO as has produced oral and documentary evidence in support of the charge is far from truth and contrary to evidence on record. The PO was not present on any one of these days. The applicant signature was also not there, on the proceedings as he is evident from the daily order sheets. The contention of the IO that the applicant did not present any written statement of Defence is false. It may be seen that the signature of the applicant was not there and even the signature of the PO was not there, it was merely shown as signed for PO. Even assuming without admitting that an inquiry is conducted, the entire amount of the inquiry

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has to be gone through. The notices to the witnesses to be send, that the PO should examine the prosecution witnesses and should be made available for ~~xs~~ cross examination. That the IO cannot say that the inquiry was proceeded exparte while admitting that the applicant was present in the inquiry. The findings of the IO in para 6 that the case was proceeded exparte is contradictory and untenable. The PO never produced any oral or documentary evidence in the presence of the applicant and in fact the PO himself was not presented on any of these days. There was no arguments or evidence adduced by the PO in the presence of the applicant. The findings of the IO, are wholly unsustainable and based on no evidence. The inquiry is therefore vitiated having been in utter disregard of the procedure and rules.

4.14. The conention of the IO that the applicant did not report to CWE AF on attachment is untenable. The action of the GE AF Secunderabad in attaching the applicant with CWE AF Secunderabad is incorrect as there is no provision in the rules for attachment of Civilian employees. Move on temporary duty or permanent posting alone is permissible. There is no evidence adduced in the inquiry to show that the applicant did not accept the movement order. The findings of the IO are wholly unjustified, improper and based on no evidence.

4.15. It is also submitted that the brief of the PO was not furnished to the applicant and enquiry declared closed on 12.9.1988 which did not bare the signature of applicant or signature of PO. It clearly shows that the daily order sheet was prepared behind the back of the applicant. No

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witnesses were examined in the enquiry. The witnesses were dropped was also not recorded in any of the order sheets. There were no inquiry conducted. If any inquiry were conducted behind the back of the applicant the same is invalid and cannot be used against the applicant. The findings of the IO based on vitiated proceedings are void abinitio. The whole inquiry is vitiated and is null and void.

4.16. The CESC Pune vide hismemo No: 130806/1/MZ/658/EID dated 5.7.1991 (Annexure 28), without considering my representation, mechanically passed the penalty of "Compulsory Retirement".

a. The contention of the Discipline authority sufficient opportunity was given to the applicant in the inquiry is vague and false. There is no reply to various contentions raised in the representation.

b. Admittedly no charge memo was served on the applicant. Merely reading and recording not guilty will not do. The contention of the Discipline authority that the proceedings were held and the signatures were not obtained as required fully establish the fact that no inquiry was held and no proceedings were recorded in the presence of the applicant. The discipline authority ought to have fairly held that no proceedings were held and even stated to be held they are invalid, inoperative and vitiated.

c. The very fact that the signature of the applicant was not there on any of the so called proceedings clearly show that any proceedings stated to have been held

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behind the back of the applicant. It may be seen that the order sheet dated 16.8.1988 does not bare the signature of the applicant. These proceedings were not conducted in the presence of the applicant.

d. It is admitted that the Honourable Court directed to reinstate the applicant, where the applicant is reinstated it should be taken to its logical conclusion that an official is deemed to be working and the period is to be regularised and he should be paid pay and allowances and the same cannot be denied. The Central Administrative Tribunal in its judgment in M.A.No: 921 of 1991 (Annexure 24) held that the period from the date of removal to the date of reinstatement should be accounted for. It is not for the court to direct the respondents as to how to treat the interregnum.

e. The proceedings dated 12.9.1988 did not bare the signature of PO or the applicant. The disciplinary authority cannot be ignore it. The proceedings cannot be stated to have been closed abruptly. It is incorrect and untrue to state that the applicant left the proceedings abruptly. It has been admitted that the witnesses were listed in the charge sheet for proving service of movement order dated 11.11.1986. It is also admitted that the witnesses were dropped. They were never examined and made available for cross examination.

f. There is no evidence adduced in the inquiry to show that the applicant disobeyed any orders of the superiors. The allegation is baseless and untenable. It is respectfully submitted that the order of the disciplinary authority imposing the punishment of compulsory retirement is wholly

unjustified and unsustainable and liable to be quashed.

4.17. As against the said order of compulsory retirement that the applicant submitted his appeal on 29.7.1991 (Annexure 29) to the Engineer-in-Chief Army Head Quarters, New Delhi, in his appeal he has stated the full facts of the case and also submitted that the order of the compulsory retirement is unsustainable in law. The Discipline authority failed to consider several of the points raised in his representation dated 6.5.1991 (Annexure 28). These points have also been discussed to show that the findings of the Discipline authority are erroneous in paras 4.16 above which may kindly be considered at this point. The same are not being repeated to avoid duplication. The applicant specially brought out various grounds at paras 13 to 19 of his appeal, which may kindly be taken as part and parcel of this representation for objective consideration.

4.18. Even though appeal was submitted on 29.7.1991 and more than ten months elapsed, the applicant is not favoured with any reply. He is therefore compelled to file this application for redressal of his grievances.

5. Grounds for relief with legal provision:

5.1. The applicants submit that the proceedings are bad in law and vitiated. The respondents failed to notice that the memorandum of charges have been returned by the applicant on 9.6.1987 (Annexure 2). The memorandum of charges has not been served on the applicant thereafter. Therefore the entire proceedings are liable to be quashed.

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5.2. The IO was not appointed by the Disciplinary authority namely G.E. who issued the charge sheet. Even assuming that the charge memo was issued by the order of the C.E., S.C. Pune, the appointment of IO by C.E. (FY) Project, Secunderabad is bad in law, and without jurisdiction. The appointment of IO issued by the GE AF Secunderabad vide his letter No: 103/VVK/135/EIC dated 26.6.1987 was not cancelled ^{as stated by} in representation dated 9.10.1987 (Annexure 6). The same is in violation of Rule 14(2) and 14 (5)(a) of CCS and C.C.A. Rules. The proceedings are liable to be set aside.

5.3. The applicant was on medical leave from 29.8.1985 to 1.11.1985. The applicant reported for duty with fitness certificate on 2.11.1985 at the office of CE (AF) Secunderabad from where he proceeded on Medical leave. He was not admitted on duty by GE (AF) Secunderabad the same is arbitrary and untenable.

5.4. The applicant submitted his representation alongwith Declaration Certificate dated 2.11.1985 addressed to CE SC Pune through GE (AF) Secunderabad. The G.E. instead of forwarding to CE SC Pune returned the same to the applicant's residential address vide his letter No: 1003/1877/E1 dated 7.11.1985. That the GE acted malafide, without jurisdiction and overstepped his powers, his action is arbitrary.

5.5. The zonal CE Madras recommended vide his memo No: 10117-A/891/EIB(s) dated 6.8.1985 to retain the applicant at Secunderabad in the same division (i.e. GE (AF) Secunderabad) where vacancies exist. Whereas the GE AF Secunderabad has struck off the applicant from the strength of the office on 7.11.1985 without admitting him on duty on 2.11.1985 after his return from medical leave. The same is colourable

exercise of power exhibiting biased approach on the part of the GE (AF) Secunderabad.

5.6. There was no preliminary inquiry conducted and the applicant was not given an opportunity to show cause against the lapses, if any noticed and to arrive at a provisional conclusion that there is a prima facie, charge to inquire into under rule 14 of the CCS, CCA Rules, the charge is based on surmises and assumptions.

5.7. The order of the Disciplinary authority is bad in law as there is no compliance of Rules and instructions of the CCS (CCA) rules, wherein it is clearly laid down that there should be assessment of evidence recorded during the inquiry, the so called ex parte proceedings are untenable in law. There was no opportunity provided to the applicant to participate in the inquiry effectively, to submit his defence statement and he was also not questioned on the circumstances appearing against him. The proceedings are totally vitiated. The punishment based on vitiated proceedings is bad in law.

5.8. With regard to the enquiries held on 21.7.1988, 16.8.1988 and 12.9.1988 the applicant submitted representations with positive evidence to show that no proceedings were conducted by the Inquiry Officer in his presence and even the P.O. was not present. The record would establish the same. The Disciplinary authority had chosen to state that the Inquiry Officer did give proper warning as recorded in daily order sheet dated 12.9.1988 to file return defence statement. The disciplinary authority failed to notice that the daily order sheet dated 12.9.1988 did not contain my signature or the signature of P.O. In

fact no proceedings were held on that day. The daily order sheet and Disciplinary authority had further chosen to state that according to daily order sheets of the Inquiry officer reports the proceedings were held in the presence of applicant though his signatures were not obtained on the daily order sheets as required. The same is untenable. The finding of the disciplinary authority is one sided contrary to evidence on record and highly prejudiced. Having held that the signatures were not obtained as required by the statutory provisions ought to have consistently held that no proceedings were conducted in his presence. Even the signatures of P.O. was not there in the proceedings dated 12.9.1988. The finding of the Disciplinary authority that the proceedings were held in the presence of applicant according to daily order sheets is wholly perverse, illegal and untenable in law. The order of the punishment proceedings is liable to be set aside on this sole ground. The finding of the Disciplinary authority that the proceedings were recorded behind the back of applicant is borne by facts and ^{is contrary to} notions of judicial propriety. In a quasi judicial inquiry the mandatory provisions are to be complied with strictly and violations would vitiate the proceedings. The Disciplinary authority having held that the signatures were not obtained as required has not acted fairly and justly in stating that it is not borne by facts. His finding is not only contradictory but also perverse reducing the inquiry to a farce and empty formality. The order of punishment is to be liable to be set aside on these

5.9. The finding of the Inquiry Officer that according to daily order sheet No: 2 dated 16.8.1988 the Inquiry Officer, P.O. and D.O. were present is not borne by facts.

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The so called order sheet No: 2 dated 16.8.1988 does not contains the signature of applicant and it was never prepared ⁱⁿ by his presence and it was not furnished to him at any time till the punishment was given. It may be seen that the proceedings were never furnished to him, even though copy was furnished to P.O. This clearly shows that these proceedings were recorded in his presence. The findings of the disciplinary authority are therefore erroneous and ~~and~~ and tainted with arbitrariness and liable to be set aside.

5.10. The finding of the Disciplinary authority that the Honourable Court has directed only to reinstate the individual and have not given any directions regarding payment of benefits or promotion as is evident from the operative part of the judgment only speaks of the ignorance of law and rules to be followed where the reinstatement is ordered by courts. The payment of salary and promotion due is automatic when official is reinstated by setting aside the punishment. Where a official is not under suspension at the time of removal compulsory retirement or reinstatement is entitled full pay and allowances including increments and promotion. (FR 54 B (4) 3 (11) 1990 (2) SLJ-CAT 243". The finding of the Disciplinary authority is therefore untenable in law and totally misconceived.

5.11. The finding of the Disciplinary authority that the prosecution case was declared closed by the Inquiry officer on 12.9.1988 is untenable and unsustainable for the specific reason that the order sheet does not contain the signature of P.O. and also the contention that the applicant left the proceedings abruptly without submitting the defence statements is without any basis, untrue and wholly

fabricated, on the face of evidence on record. The finding of the Disciplinary authority that the witnesses were dropped because the movement order was not challenged is wholly unsustainable. The charge has to be proved even in ex parte inquiry by examining the witnesses. In fact no inquiry was held, no proceedings were drafted on 19.9.1988 and to state that the movement order was not challenged is improper and untenable.

5.12. The findings of the Disciplinary authority that the applicant disobeyed the orders of the superior amply proved misconduct and misbehaviour is vague and not according to evidence adduced in the inquiry or proceedings conducted according to law. Where no inquiry is conducted and no proceedings were recorded in presence of applicant and signature was not obtained as required, the question of holding him to attract misconduct or misbehaviour will not arise. The findings based on inquiry if any, conducted behind the back and on extraneous considerations are liable to be set aside as arbitrary and illegal.

5.13. It is submitted that the appointment of Inquiry Officer by C.E. (P) FY Secunderabad is incorrect, that C.E. (P) FY Secunderabad is not the Disciplinary authority that issue the charge memo. Rule 14(2) and 14(6) of the C.C.S. & C.C.A. Rules clearly states that the Disciplinary authority shall appoint to enquire into the charges. In this case that CE (P) FY Secunderabad has not issued the charge memo. He would not have appointed the Inquiry Officer. It was C.E. SC Pune that has issued the charge memo therefore the proceedings conducted by I.O. appointed by the C.E. (P) FY Secunderabad stands vitiated. Without jurisdiction that the punishment based on vitiated proceedings are illegal.

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5.14. As discussed earlier that the ~~proceedings~~ proceedings conducted behind back of the official is untenable, more particularly when signatures are not obtained on daily order sheets as required. The requirements are not complied with. Non compliance would vitiates the proceedings. The whole inquiry is abinitio void. The applicant was on leave and he was not relieved on 30.8.1985. He has not handed ~~over~~ over the charge, merely stating that he was struck off the strength is untenable. The G.E. AF Secunderabad refused to receive his representation dated 2.11.1985 and returned the same through RLO. The action of the G.E. is wholly unjustified. He was taken on duty on 16.11.1985, this shows that the action of the G.E. not admitting him on duty earlier was improper, and he is not to be victimised on that score.

5.15. The contention that the vacancy at Secunderabad had already been filled on 1.8.1985 before the issue of the Movement order is incorrect. It may be stated that Sri R. Venkata Krishna, Superintendent E/M Grade I was brought on only on temporary duty from Madras to Secunderabad from August, 1985 without any justification. The post filled only on permanent basis on 06.02.1986. The applicant case was recommended by CEMZ Madras to retain him in G.E. AF SEC Bad under the existing vacancies in DWE AF/GE Secunderabad vide CE MZ Madras letter No: 132402/12/EIB (S) dated 6.2.1986 and filled only in the month of March, 1986. So the contention that the post was filled on 1.8.1985 is not correct.

5.16. The applicant was on medical leave from 30.8.1985. The movement order was not served on him. The G.E. AP Secunderabad issued letter dated 19.11.1985 cancelling

the Movement order issued on 29.8.1985. He was very much on duty 29.8.1985. The movement order was not served on him. The action of the GE returning his representation dated 2.11.1985 stating that the applicant was struck off Strength is arbitrary and illegal. The applicant represented on 9.11.1985 to CESC Pune against the arbitrary action of the GB. On 14.11.1985 he was asked to report for duty and he complied with the same.

5.17. The action of the G.E. AF Secunderabad attaching him to CWE AF Secunderabad is incorrect and there is no provision in the Rules for attachment of Civilian employees as held by Engineer-in-Chief AHQ New Delhi in his letter No: 788655/860/89/EID dated 3.1.1990. The action of the GgE. is therefore contrary to rules, and without authority. The Disciplinary authority failed to consider these aspects.

5.18. The provisions of C.C.S. & C.C.A. Rules 14(18) and 14(19) are mandatory. Non compliance would vitiate the proceedings (1990(2) SLJ - CAT 101). The brief of the presenting officer should have been furnished to him and the same is mandatory and the same has not been complied with. It is submitted that no notice were issued subsequent to 12th September, 1988 to comply with mandatory provision, where notices were not issued the inquiry was held to be vitiated. The whole gamut of inquiry has to be gone through in accordance with the statutory rules and procedure. The applicant has complied with the orders of the I.O. and attended on dates he was summoned. No proceedings were proceed on those dates and his signatures were not obtained as required and the proceedings stands vitiated.

5.19. The appeal of the applicant dated 29.7.1991 (Annexure 29) has not been replied and 11 months elapsed.

6. Details of remedies exhausted:

The applicant submitted his appeal dated 29.7.1991 (Annexure 29) against the order of the compulsory retirement dated 5.7.1991 (Annexure 28) passed by the C.S.SC Pune. More than 11 months elapsed. The applicant has not yet received any reply.

7. Matters not previously filed or pending with any other court:

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

8. Relief sought:

In view of the facts mentioned in para 4 above, the applicant herein humbly prays that this Honorable Tribunal be pleased to call for the records resting with the case and declare the order of CE SC Pune in his Memo No: 130806/1/M/XXIX/658/ELD dated 5.7.1991 (Annexure 28) awarding the punishment of compulsory retirement as arbitrary and illegal and the respondent be directed to reinstate the applicant with promotion to the Grade of Superintendent E/M Grade I as ordered under CE SC Pune letter No: 150101/8/84/E1 B (R-DP) dated 9.7.1985 (Annexure 30) with all consequential benefits including pay and allowances and increments in the higher scale of pay and seniority.

9. Interim order prayed for:

As the applicant was compulsorily retired and the order is ex facie illegal, the respondents may be directed to take the applicant on duty as there is no reply to his appeal dated 29.7.1991(Annexure 29).

10. Not applicable.

11. Particulars of the postal order:

Vakalat, Postal order and material papers as per index.

VERIFICATION

I, V. Vijaya Kumar son of V. Komarajah, aged 35 years, working as Superintendent E/M Grade II (Permanent) Dismissal Resident of Secunderabad, do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and paras 5 and 8 are believed to be true on legal advice and that I have not suppressed any material facts.

Signature of the applicant.

(V. V. JAYA KUMAR)

Place:

Dated:

Counsel for the applicant.