

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT  
HYDERABAD.

C.A.NO. 799/92.

DATE OF JUDGMENT: 22-12-95.

BETWEEN:

D.V. Raja Rao

.. Applicant.

AND

1. The Addl. Secretary (Budget)  
Min. of Finance, Govt. of India,  
Dept. of Economic Affairs, New Delhi.
2. The National Savings Commissioner,  
Govt. of India, 12, Seminary Hills,  
Nagpur - 440 006.
3. The Regional Director,  
National Savings, Govt. of India,  
Min. of Finance, Govt. Pool Complex,  
Kothi, Hyderabad-1.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI S. Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS: SHRI N.R. Devaraj,  
Sr./Addl. CGSC.

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI S.B. Gerthi, MEMBER (ADMN.)

J U D G E M E N T

(as per Shri Justice V.Neeladri Rao, Vice-Chairman)

Respondent No.3, the Regional Director, National Savings, Government of India, Hyderabad issued Charge-memo. No.83/9(1)83-A1 dated 4-12-86 to the applicant with the following two charges:

Article-I

That Shri D.V.Raja Rao while functioning as Distt. Savings Officer of Medak district with headquarters at Sangareddy during the period from 1972 to 1982 functioned as the Secretary of the unregistered private body known at the "B.H.E.L.Pay Roll Savings Development Form" and in that capacity he opened and operated the POSB account of this forum without obtaining permission of or even otherwise giving intimation about it to his department. Thus, the said Shri D.V.Raja Rao, D.S.O. failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant in contravention of Rules 3(1)(ii) and 3(1)(iii) of the C.C.S.(Conduct) Rules, 1964.

Article-II

That the said Shri D.V.RSaja Rao while functioning as Dist. Savings Officer at the place and during the period mentioned above, withdrew an amount of Rs.68,682-07 in his capacity as the Secretary of the above said forum from its POSB account No.560801 standing at the Sub Post Office, Administrative Building, BHEL, Ramachandrapuram, for which he failed to render any account or proper explanation. Thereby, the said Shri D.V.Raja Rao, Dist.Savings Officer, failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant in contravention of Rules 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

When the applicant denied the charges by statement dated 27-12-86, R.3 appointed the Deputy Regional Director, Hyderabad as the Inquiry Officer, and an officer from C.B.I. as the Presenting Officer. After the enquiry, the Inquiry Officer held both the charges as proved and the same was submitted to R.3. The latter agreed with the findings of the Inquiry Officer and having felt that major punishment had to be awarded and as he was not competent to award such punishment to the applicant, the same was submitted to R.2, the National Savings Commissioner, Nagpur. By order dated 13-1-88, R.2 agreed with the findings of the Inquiry Officer and imposed punishment of compulsory retirement. The appeal thereon was rejected by R.1, the Additional Secretary (Budget), Ministry of Finance, Govt. of India, New Delhi by order dated 20-7-92. It is challenged in this O.A.

...dated 14-7-83 and 30-7-83 addressed to Shri M.N.Rao that he could not account for Rs.50,000/- and he would immediately pay Rs.4,000/- and he may be given time to pay the balance. When he had not paid the same Shri M.N.Rao reported to the CBT. The latter conducted an enquiry and held that the applicant had not given account in regard to an amount of about Rs.68,000/- drawn by <sup>him</sup> (the applicant) from the account in the name of the Forum and on that basis R.3 issued the charge memo. dated 4-12-86. The applicant had stated in his statement dated 27-12-86 (Annexure-III) that his superior knew that he was the hony. secretary and in fact the Asst. Regl. Director, NSO was the Vice-Chairman of the Forum and the same were referred to in the minutes that were being supplied to the high officials of the NSO and also the special invitees from the NSO to the various functions conducted under the aegis of the Forum and he was never informed that his working as hony. secretary of the forum is in violation of the rules. His refutations with reference to charge No.2 are as under:

"The amount withdrawn from the said account was for the utilisation of the forum for its activities, with the knowledge of the chairman and as per his instructions. Myself rendering the full account is not possible since chairman of the forum did not account the amount spent by him from time to time as explained in Annexure-I, Article-I.

Myself admitting the guilt through the letters dt.14-7-83 and 30-7-83 was to avoid danger to my life at that time, since I was threatened for dangerous consequences by the chairman's men. To avoid danger and to escape the danger only the above letters were written as dictated by the chairman's men."

4. The charge No.1 is to the effect that the applicant failed to maintain devotion to duty and acted in the manner

2. A decision was taken at the meeting of the Small Savings Committee for Public Enterprises held at Delhi on 3-1-72 that public enterprises have to appoint a Liaison Officer to coordinate the small savings activities in the public sector enterprises with the National Savings Organisation (NSO). It was also decided that out of 2.5% commission, 1.75% of the commission had to be given to the group leader and the balance of 0.75% had to be shared by the internal audit and the volunteers. Pursuant to the said decision communicated to the office of the NSO and also the public enterprises, a Pay Roll Savings Development Forum (PRSDF) was formed in BHEL, Ramachandrapuram, Hyderabad to promote savings among the employees of the unit. Then the Personnel Manager of BHEL was appointed as Chairman of the Forum while the applicant herein who was then the District Savings Officer, Medak district at Sangareddy was made as Honorary Secretary of the said forum. It is stated that the Chairman of the said forum authorised the Secretary i.e., the applicant, to open an account in the name of that forum in the Sub-Post Office, Administrative Building, BHEL, Ramachandrapuram for remitting 1% group bonus per cent from out of 2½% commission due to group leaders which was agreed to by group leaders (by then commission payable to group leaders was raised to 2½%), to draw the same for meeting expenses for arranging functions, seminars, enrolment campaigns, etc. and the applicant was authorised to operate the said account. The applicant was secretary of the said forum from 1972 to 1988.

3. Shri M.N.Rao, the then Additional General Manager, BHEL and Chairman of the BHEL PRSD Forum had enquired from the applicant whether the amounts drawn from that account in the name of the Forum, and then the applicant admitted by letters

3(1)(iii) of the CCS (Conduct) Rules, 1964 when he functioned as the secretary of that forum and operated the account in the name of that forum when he had not obtained prior permission or that he had not given intimation to his superiors about the operation of the said account. Thus, we exonerate the applicant in regard to Charge-I.

Charge-II:

6. Before advertng to the merits of this charge we feel that it is just and proper to refer to the vdarious contentions raised by the applicant. It was contended, inter alia, for the applicant that even though he was appointed by the National Savings Commissioner, the Joint Commissioner, National Savings was the appointing authority for the District Savings Officer, by the date of punishment and hence the Joint Commissioner is competent to impose the major penalty and ~~the~~ R.2 the National Savings Commissioner who is above the Joint Commissioner has no power to act as disciplinary authority. It is stated for the respondents that R.2 the National Savings Commissioner being the authority who appointed the applicant as DSO, ~~he~~ is competent to impose the major penalty upon the applicant.

7. The applicant was appointed as District Savings Officer by the Commissioner, National Savings. But by the date the impugned order of punishment was passed, the Joint Commissioner, National Savings was the appointing authority for the District Savings Officer. It was urged for the applicant that as the Commissioner, National Savings ~~does not seem~~ <sup>ceased</sup> to be the appointing authority for DSOs by the date the order of punishment

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unbecoming of a government servant in functioning as the Secretary of the un-registered private body known as BHEL PRSD Forum and opening and operating POSB account of that forum in that capacity without obtaining permission or even otherwise giving intimation of it to the department.

5. It is stated during the course of arguments that instructions were issued, after the enquiry was launched against the applicant in pursuance of the charge memo. dated 4-12-86, that no officer of the Savings Organisation shall operate the account of any private organisation. Thus it is clear that by the time the applicant herein <sup>is</sup> made hony. secretary of the forum, there was no executive instruction ~~issued~~ prohibiting the members of the NSO to act as the hony. secretaries of private organisations or to operate an account of such organisations. It may be noted that this forum had come into existence shortly after a decision was taken in 1972 at the Minister's level that there shall be coordination between the public enterprises and the NSO for mobilising savings. Even the Asst. Regl. Director of NSO had associated himself with this forum by agreeing to be the vice-chairman of that forum. The applicant might have felt that by being the hony. secretary of that forum he would be in a position to activate the functions of that forum so as to intensively inculcate the habit of small savings amongst the employees of BHEL, Ramachandrapuram. At best it can be stated that there was an <sup>in judgment</sup> error on the part of the applicant in agreeing to operate the account in the name of that forum and <sup>in fact</sup> the alleged misappropriation was not there, no action would have been taken against the applicant for functioning as hony. secretary of the forum and in operating the account in the name of that forum. As such it cannot be held that the applicant had violated the Rule 3(1)(ii) and

Rule 12(2) of the Central Civil Services  
(Classification, Control and Appeal) Rules, 1965 <sup>reads</sup> ~~reads~~  
as under:

"12. DISCIPLINARY AUTHORITIES:

(1) xxx xxx xxx

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on--

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) xxx xxx "

Rule 2(a) of the CCA Rules defines the appointing ~~autho-~~  
~~ing~~ authority and it is as under:

"2. INTERPRETATION:

In the rules, unless the context otherwise requires.--

(a) "Appointing authority" in relation to a Government servant, means--

(i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or

(iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

whichever authority is the highest authority;"

contd....

was passed, the former cannot be held as the disciplinary authority for the latter and <sup>as</sup> even, the authority superior to the disciplinary authority cannot act as disciplinary authority, the impugned order of punishment passed by the Commissioner, Natinal Savings has to be held as illegal. 1990 (14) ATC 619 (Ernakulam) (P.M.Abdul Khader Vs. UOI), ATR 1992(1) CAT 585 (Ernakulam)(N.K.Unnithan Vs. The Director, Enforecement Dte.) and ((1995) 25 ATC 125 (Lucknow)(Keshava Datta Vs. Director, Industrial Toxicology Research Centre, Lucknow) are referred to for the applicant in this context. It was held, inter alia, in Unnithan's case that as the Deputy Director was an authority subordinate to the appointing authority, he had no power to pass the order of compulsory retirement. It was ~~further~~ observed therein that once the action was initiated by the Director, it cannot be remitted to the subordinate authority for passing an order in a disciplinary case. It was held in Abdul Khader's case that an authority higher than the disciplinary authority even though higher in rank, cannot exercise the power of disciplinary authority. The judgement referred to in Keshava Datta's case has no bearing for consideration of this case.

It was held by the Apex Court in Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank ((1995) 29 ATC 373 that the appellate authority cannot act as disciplinary authority if there is no right of appeal against the order passed by the appellate authority qua disciplinary authority.

contd....



safeguard against an infringement of Article 311(1) and ensure that a person can be dealt with only by either a person competent to appoint persons of his class or the person who appointed him, whoever happens to be higher in rank. That rule is not infringed by the interpretation placed by the appellants."

The appellants therein are the Government/Department and they pleaded that the words <sup>which are</sup> ~~whosever~~ authority is the highest authority in each of the sub-clauses (i) to (iv) of Rule 2(a) but not the highest authority of all the authorities referred to in sub-clauses (i) to (iv).

Anyhow, it may be noted that only one authority is referred to in Rule 2(a)(iii), and that authority is the ~~highest~~ authority which appointed the government servant to such service/grade or post as the case may be. In this case the applicant was appointed as DSO by the Commissioner, National Savings. As such he can be treated as the appointing authority referred to in Rule 12(2)(a) for it has to be construed in the light of Rule 2(a) of CCS (CC&A) Rules. Hence the contention for the applicant that the Commissioner, National Savings is not the disciplinary authority has to be negatived.

8. The submission for the applicant is that as the Deputy Regional Director who was appointed as the inquiry officer, being a subordinate to the Regional Director, he cannot act impartially and freely and as such the enquiry is vitiated. But it is rightly observed by R.1 the appellate authority that all the Deputy Regional Directors are under the Regional Directors, and in a small organisation like the NSO

contd...

While considering the scope of Rule 2(a) of the ~~CCS CCA~~ ~~GSCA~~ Rules and the corresponding rule in Railway Servants (Discipline and Appeal) Rules, 1968 it was observed by the Apex Court in the Scientific Adviser to the Ministry of Defence Vs. S. Daniel ((1991) 15 ATC 799 ~~observed~~ that "whichever authority is the highest authority" means the highest authority in each of the sub-clauses (i) to (iv) and it is not a case of the highest authority out of the various authorities referred to in sub-clauses (i) to (iv).

Rule 2(a)(iii) of the CCA Rules makes it clear that even the authority which appointed the Government Servant to such service/grade or post as ~~the~~ <sup>the</sup> case may be is also an appointing authority. Thus it means that the appointing authority referred to in Rule 12(2) (a) of the CCA Rules includes the authority which appointed the government servant to such service/grade/or post as the case may be as referred to in Rule 2(a)(iii) of the CCA rules. ~~Thus~~ It is not in controversy that the Commissioner, National Savings appointed the applicant to the post of DSO, the post in which he was working by the date of appointment. Thus the Commissioner, National Savings comes within the purview of Rule 2(a)(iii) of CCARules. <sup>So</sup> ~~Thus~~ he can be considered as the appointing authority as referred to in Rule 12(2)(a) of the CCA Rules. At page 819 in Daniel's case supra it was observed as under:

"... Again it is possible that the authority empowered to make the appointment at the time when relevant proceedings in contemplation may be higher or lower in rank to the authority which was empowered to make the appointment or which made the appointment at a different point of time. The whole intent or purpose of the definition to

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the proceedings <sup>of</sup> for the inquiry did not contain the brief of the presenting officer and the defence statement of the applicant, R.3 instructed the inquiry officer to have the same. But it is argued for the applicant that R.3 has no power to give such direction without giving ~~the~~ opportunity to the applicant to explain in regard to the same. The learned counsel for the respondents <sup>valued</sup> ~~is relying~~ upon Rule 15(1) of the CCA Rules <sup>to which</sup> that it is open to the disciplinary authority to remit the matter to the enquiry officer if the latter had not followed any of the provisions under the Rule 14 and hence there is no infirmity when R.3 required the inquiry officer to comply with Rule 14(19) of the CCA Rules. There is no rule to suggest that even in such a case it is necessary for the Inquiry Officer to issue show-cause notice to the delinquent before the matter is remitted to the inquiry officer. It is not a case where anything is done by the inquiry officer behind the back of the applicant after the matter was remitted to him. After the summary brief was presented by the presenting officer the inquiry officer required the applicant to submit his defence <sup>and</sup> then it is stated that <sup>the</sup> statements dated 7-12-87 and 9-12-87 were submitted. The applicant had not even whispered in the appeal memo. that those two statements were obtained by force. Hence the contentions in regard to the above that there is an infirmity in remitting the matter to the inquiry officer after report was submitted and the statements dated 7-12-87 and 9-12-87 were taken from the applicant by force <sup>have</sup> ~~has~~ to be negatived.

it is not possible to appoint any other than those who work under the disciplinary authority as the inquiry officer. Though it is pleaded for the applicant that there are executive instructions to the effect that one who was under the disciplinary authority cannot be appointed as the inquiry officer, no such rule or instruction is brought to our notice. Hence this contention also cannot be upheld.

9. It is true that the presenting officer is from CBI. When the inquiry officer enquired from the applicant at the commencement of the enquiry as to whether he was going to engage anyone for his defence, he had taken time for engaging one but ultimately he had not engaged any. He had not made any request that he may be permitted to engage an advocate. Thus, it is not a case where a request for engaging an advocate was refused. There are no instructions to the effect that one from CBI cannot be engaged as a presenting officer. Thus, there is no basis for this contention.

10. After all the witnesses were examined, the inquiry officer submitted his report dated 28-9-87 to R.3. Even before that report was submitted, when the inquiry officer required the presenting officer to sum up his case, then he submitted that as the applicant herein admitted the charges during the enquiry there was no need to sum up his case, and thereafter the inquiry officer submitted his report. But on 5-12-87 the inquiry officer required the presenting officer to submit his brief and after it was submitted, the statements dated 7-12-87 and 9-12-87 of the applicant were given. It is urged for the applicant that it is not open for the inquiry officer to conduct any enquiry after he submitted his report and hence the statements dated 7-12-87 and 9-12-87 have to be ignored. The further plea of the applicant is that those statements were forcibly taken from the applicant. It is pleaded for the respondents that when

the cross-examination. Therein the applicant confessed that he had <sup>to account for</sup> ~~made up~~ Rs.50,000/- out of the amount withdrawn from the account of the forum and that he would immediately pay Rs.4,000/- of it and he required some time to pay the balance. But it was not even suggested to Shri M.N.Rao that the said letter was taken from him by way of coercion or undue influence.

13. The applicant had taken the plea that he used to draw the amounts from the said account and give it to the chairman as per his instructions for spending it for various activities and for purchases, etc. and inspite of his repeated requests the meeting was not convened for preparation of accounts in regard to such amounts and hence Shri M.N.Rao had <sup>ground against him and hence he</sup> ~~ground to~~ ~~mislead~~ and had given complaint to the CBI after he was transferred from Medak district. But at another stage he had taken the stand that the necessary accounts are in the <sup>possession of</sup> ~~the~~ BHEL. Though the applicant marked copies of the minutes of the meetings of the forum when Shri Menon, Personnel Manager in BHEL was the Chairman of the Forum, he had not <sup>6-6-2</sup> ~~held~~ any copy of the minutes of the meetings of the forum after Shri M.N.Rao had become the Chairman of the Forum. The applicant had not suggested to Shri M.N.Rao in the cross examination that he used to hand over all the amounts drawn from the account in the name of the forum either to <sup>Shri M.N.Rao</sup> (him) or to the person <sup>by him</sup> suggested and hence Shri M.N.Rao had to account for the same even though he had ~~taken such a step~~. <sup>drawn the amount</sup>

from the ~~Bank~~ Bank.

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11. The enquiry report was not furnished to the applicant alongwith the order of punishment. It was pleaded that the order of punishment is void as the report of the inquiry officer was not furnished to the applicant before the order of punishment was passed. But in pursuance of the full bench decision of the Central Admn. Tribunal in the case of Premnath Sharma Vs. UOI (1988(6) ATC 684) instructions were issued as per DOP&T letter No.11012/13/85-Estt.(A) dt.26-6-89 (Annexure-R1) that the delinquent had to be given opportunity to submit objections if any in regard to the findings as per the report of the inquiry officer, before the disciplinary authority passed the punishment order. <sup>The above</sup> though the instructions are prospective. The order of punishment passed by R.2 in this case is earlier to the above instructions. The Apex Court held repeatedly that the order of punishment cannot be held as void or illegal merely on the ground that copy of the report of the inquiry officer was not supplied to the delinquent to call for his objections, if any, in regard to the findings in the inquiry report before the order of punishment is passed by the disciplinary authority, if such order was passed before the date of judgement in Ramzan Khan's case (1991(1) ATR.120) <sup>1991(1) ATR.120</sup>. The order passed by R.2 in this case is far earlier to the date of that judgement. Hence this objection for the applicant is also not sustained.

12. Shri M.N.Rao, Chairman of the Forum who had given complaint against the applicant to the CBI about the alleged misappropriation was examined as a witness in the case. The letters dated 14-7-83 and 30-7-83 addressed by the applicant to Shri M.N.Rao and which were referred to at Sl.No.16 in Annexure-III (list of documents relied upon) to the charge memo. were marked <sup>to</sup> Shri M.N.Rao in the chief examination and he ~~also~~ referred to letter dated 14-7-83 in

17. When the amounts were drawn by the applicant and when there is no material to indicate that he was giving the amounts to the Chairman of the Forum or the person referred to by him, then it is reasonable to hold that it is for the applicant to explain as to what happened to the said amounts and it is not possible to anyone to explain it. Hence in absence of any other material, the confessional letter of the applicant can be taken as evidence. Thus even though there is no specific proof in regard to the extent of the misappropriation, but when on the basis of the confessional letter a finding is given to the effect that the applicant had misappropriated the amount, the same cannot be held as a finding without any evidence.

18. The last contention for the applicant is that as the amount in the account in the name of the forum does not belong to the Government nor to the BHEL, a public sector enterprise, it is not open to the disciplinary authority to initiate disciplinary proceedings against him for the alleged misappropriation unless he is convicted in regard to the same.

19. Rule 3 of the C.C.S. (Conduct) Rules, 1964 is as under:

### 3. GENERAL

(1) Every Government servant shall at all times--

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

- (ii) No Government servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior;

14. It is true that it is not possible to give an account in regard to all the amounts drawn from time to time if no note is made in regard to the amounts so drawn. But can it be beleived when it is stated that when the applicant was drawing the amounts from the account in the name of that forum knowing fully well that those amounts do not belong to him and that it will naturally be necessary to inform the other office bearers of the forum about the amounts drawn and spent. As already observed, the applicant confessed as per his letter dated 14-7-83 that he had to account for Rs.50,000/- and that he would pay the same and it was not even suggested to Shri M.N.Rao in the enquiry that the said letter was taken from him under duress. It is now argued that as Shri M.N.Rao was occupying very high position the applicant was afraid of making such a suggestion. But we cannot accede to such a submission. It is a case where the applicant was facing an enquiry for alleged misappropriation of Rs.50,000/- and odd. Can such a delinquent keep quiet from making such a suggestion if there is basis for the same?

15. R.2 the authority who passed the order of punishment, and R.1 the appellate authority referred to the said confessional letter of the applicant to hold that charge No.II is proved. Then it cannot be stated that there is no evidence in regard to the allegation of misappropriation.

16. Of course, the witness from Sub-Post Office stated that the entries to the extent of Rs.24,000/- in regard to the withdrawal from thart account are in the handwriting of the applicant. But the applicant had not even p.leadetd that anyone else operated this account during the period of 10 years i.e. from 1972 to 1982 even though he stated that someone else worked as District Savings Officer during the period of his leave, deputation, etc. The entire ledger in regard to this account was marked in the Annexure (it was referred to as Sl.No.14 in the Annexure-III to the Charge-memo.).



such an act or omission is going to affect the reputation of such delinquent in regard to integrity or devotion to duty as a public servant, then disciplinary action can be taken even if such alleged act or omission is not in discharge of his duties as a government servant. The following observations of Lopes L. J. in Pearce Vs. Fosteer ((1886) 17 QBD 536) were referred to with approval by the Apex Court in the above judgement (at p.1279).

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

21. It is for the master to determine and decide as to whether it is not desirable to continue the employee's service, in view of the acts or omissions of the employee and it is immaterial as to whether those acts or omissions are in the course of employment or in discharge of his duties or outside the same.

22. In the case of Govinda Menon referred to supra, the concerned IAS Officer was a member of the Board of Revenue and also Commissioner of Hindu Religious Endowments, and the acts complained of are in discharge of his duties as Commissioner, Hindu Religious Endowments. The contention on behalf of Shri Govinda Menon was that as he was not under the administrative control of the Government when he was discharging the duties as Commissioner, Hindu Religious Endowments, the government has no power to take disciplinary action in regard to the <sup>alleged</sup> illegal acts. But that plea was repelled. By following the judgment in Govinda Menon's case it was held by the Kerala High Court in Natarajan Vs. Divisional Supdt. , Southern Railway (1976(1) SLR 669) that ~~as~~ the railway authorities had power to take

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter;

(iv) A Government servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.

EXPLANATION-I: A Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of clause (ii) of sub-rule (1).

EXPLANATION-II: Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

While referring to Rule 3 of the All-India Services (Conduct) Rules, 1954 which is similar to the Rule 3 of the CCS (Conduct) Rules, 1964, the Apex Court held in S. Govinda Menon Vs. UOI (AIR 1967 SC 1274) that there is no reason "why disciplinary action should not be taken against him for that act or omission even when the act or omission relates to an activity in regard to which there is actually no master and servant relationship. To put it differently the test is not whether act or omission was committed in the course of discharge of duties as servant of the government. The test is whether the act or omission has some reasonable connection with the nature and conduct of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant."

20. It is thus held that if at the time of alleged act or omission, the delinquent is an employee of the government and if

R.2 the disciplinary authority held that misappropriation is a very serious offence and he failed to make good of the amount and as such the applicant does not deserve to be continued in government service. Hence it cannot be stated that it is not a case where disciplinary action should not have been taken when the misconduct alleged is not in the course of the official duties of the applicant. As such even this contention is not tenable.

25. In the result, the O.A. is dismissed. No costs. //

Sd/- HABG  
M(A)

प्रमाणित प्रतिलिपि  
CERTIFIED TO BE TRUE COPY

Sd/- HUNKS  
NC

*[Signature]*  
उपस्थायक अधिकारी  
J. T. OFFICER  
नैतिक न्यायाधिकार दफ्तर  
Corrupt Practices Tribunal  
हैदराबाद शाखा  
HYDERABAD BRANCH

To

1. The Additional Secretary (Budget)  
Ministry of ~~Revenue~~ Finance, Govt. of India,  
Dept. of Economic Affairs, New Delhi.
2. The National Savings Commissioner,  
Govt. of India, 12, Seminary Hills, Nagpur-6.
3. The Regional Director, National Savings,  
Govt. of India, Ministry of Finance, Govt. Pool Complex,  
Koti, Hyderabad-1.
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