

ANNEXURE - I

----- List of Papers in Original Application No. -----

Sl.No.Of Papers.	Date of Papers or Date of Filing.	Description Of Papers.
		<u>Part - I</u> Original Judgement O.A. & Material Papers. Counter. Reply Counter.

PART - I, PART -- II, PART --- III
 Destroyed.

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

RECORD SECTION INDEX SHEET

O.A.No. 383 / 199 3.

- a) Applicant(s) John, Emmonny Duke
Versus
- b) Respondent(s) GM, Indian Naval Canteen Quarters, Navy
Nagar, Colaba, Bombay 4200

Sl.No. Description of Documents. page No.

Part I

Order Sheet		1-6
Original Application	16.4.93	7-16
Material Papers		17-68
Order dt.	11.8.93	69-73
Counter Affidavit.		
Reply Affidavit.		
Order dated.	10.9.96	74-91

Part II

Duplicate Order Sheet.

" Application.

" Material Papers

" Order dt.

" Counter Affidavit.

" Order dated.

Part III

Vakalat 16.4.93

Notice Papers. 28.6.93
2.7.93

Memo of Appearance. 10.6.93

6/12/96.

2

C.A. 383/96

OA. 383/96

10-9-96

MINUTE

The learned counsel for the applicant stated that the reply affidavit to the counter affidavit of the respondents has been filed on behalf of the applicant in the Registry on 27-2-1996. The same is not on record. The learned counsel for the applicant, however, undertakes to file a fresh copy of the rejoinder after serving a copy on the learned counsel for the respondents. At the request of the parties the case is adjourned to Tuesday (3-9-1996)

OA is dismissed with
no cost. Vide the orders
on separate sheet.

✓
MAM
M(A)

ABCS.J
K

2007
V.O.
Alahabad
Bench.

MMR
(A)

222

30--8--1996.

O.A.383/96.

MINUTES.

The learned counsel for the applicant stated that the reply affidavit to the counter affidavit of the Respondents has been filed on behalf of the applicant in the Registry on 27--2--1994. The same is not on record. The learned counsel for the applicant, however, undertakes to file a fresh copy of the rejoinder after serving a copy on the learned counsel for the respondents. At the request of the parties the case is adjourned to Tuesday (3-9-1996)

G. 30/8
HHRP
M(A)

Bch
BCS, J
V.C.
Allahabad
Bench.

SSS.

3-9-96

Heard Mr. D. Dhilleswara Rao
for the Applicant and Mr. N.V.
Raghava Reddy for R-1 and R2.

On the preliminary question
of maintainability of this O.A.,
before this Tribunal, orders
reserved.

Bh
HHRP
M(A)

Bch
HBCS. J
VC

OA 384/93

a. d. l. t. b. 12/94

27 2/94

54/89

PI3 15¹⁰/92 unsatisfactory

See 3 Rule

OA 388/93

1981 SC 487

Apr 12

Par 9

Chairman aa - but by 84 p 3 off

1992 (20) AIC 332

1996 Andhra Pradesh Decision 21

403 vs. J V Subrahmaniam

Pl. B

Decision 15¹² 95

4

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. NO./A. NO. 383/93 199

Applicant (S)

Versus

Respondent (S)

Date	Office Note 10-10-93	Orders
15.9.93	Before the Registrar for counter	Put up on 5.11.93 for further proceedings. Counter if any mean while.
5.10.93 8.11.93	Before the D.R. (V) for counter	Even after granting sufficient time for filing counter, the counter is not filed. Hence Post before court for order.
		Finally 6 weeks time is granted for filing counter. List the D.A in usual course.
		HTCSR M(J) 16.1.96 No one is present for applicant. List on 22.1.96. HARRN H(A) D.O. HARRIS VC D.R.J.

GA-383/93

3

Date	Office Note	Orders
24.11.96		<p>When 23/2/96</p> <p>HAN MCOI By HNS</p> <p>AMS</p> <p><u>27-08-96.</u></p> <p>Smt. V. Sarada for Mr. D. Dhilleshwar Rao, for the applicant and Mr. N. R. Devaraj, for the respondents. Mr. D. V. Sitharame Murthy for R-3.</p> <p>It is represented by the applicant's counsel that this case may be posted on 30-8-96 as Mr. D. Dhilleshwara Rao is out of station. List it on 30-8-96.</p> <p>HRRN M(A)</p> <p>HBCS.J HVC</p>

6

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. NO./E.A. NO.

383/1993

John Onmoony Luke

Applicant (S)

General Manager

Versus

Indian Naval Canteen

Respondent (S)

Bombay 43

Date	Office Note	Orders
26-4-93		DM on 27/4/93. HPTT n (B) By order. HVRJ VC Registrar.
27-4-93		Post on 3-5-93. HPTT n (A) By order. HVRJ VC Registrar.
10-6-93		Post on 10-6-93. (HPTT) (HVRJ) M (A) VC By order. Registrar.
		Post on 16-6-93. Print the name of Mr. N.V. Raghava Reddy instead of Mr. Devaraj for the Respondents.

HPTT
n (A)

HVRJ
VC

By order, Mr. Registrar.

④-2-
OA 283/93

Date	Office Note	Orders
<p>6-93</p> <p>17/1/93</p>		<p>Post on 17-6-93.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><u>HPTT</u> HM(A)</p> <p>order //</p> <p>16693 20/7/93</p> </div> <div style="text-align: center;"> <p><u>HVNRT</u> VC</p> </div> </div> <p><u>Amit</u>. par in usual course for final hearing for counters in the meanwhile.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><u>Hoss</u> m/s</p> </div> <div style="text-align: center;"> <p><u>Hoss</u> VC</p> </div> </div>
<p>29.7.93</p>	<p><u>Service</u></p> <p>R-1 served RAs 283 NSNR.</p> <p>Memog Affixed for RA 102 Valued filed for R-3.</p> <p><u>Before the D.R. (J)</u> for counters</p>	<p>Put up on 15.9.93 for further Proceedings. counters if any in the meanwhile.</p> <p style="text-align: right;"> <u>28/7/93</u> Dy. 28/7/93 (J) </p>

29/8

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH - HYDERABAD

ORIGINAL APPLICATION NO.

383 OF 1993

Shri J. O. Luke Applicant(s)

Versus

C.M. J.N.C.G. Road; Bombay

to 2 Gu.

Respondent (s)

This Application has been submitted to the Tribunal

by Mr. D. Dhillon Advocate under section 19 of the Administrative Tribunals Act, 1985 and same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunal (Procedure) Rules, 1987.

The application has been in order and may be listed for admission on - 4/93

3/12
Scrutiny Officer.

823/4/93
Deputy Registrar (J)

8. Has the index of documents been filed and has the paging been done properly? y
9. Have the chronological details of representations made and the outcome of such representations been indicated in the application? y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? y
11. Are the application/duplicate copy/spare copies signed? y
12. Are extra copies of the application with annexures filed.
 - a) Identical with the original
 - b) Defective
 - c) Wanting in Annexures
No / Page Nos
 - d) Distinctly Typed? y
13. Have full size envelopes bearing full address of the Respondents been filed? y
14. Are the given addresses, the registered addresses? y
15. Do the names of the parties stated in the copies, tally with those indicated in the application? y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true? y
17. Are the facts for the case mentioned under item No. 6 of the application.
 - a) Concise? y
 - b) Under distinct heads? y
 - c) Numbered consecutively? y
 - d) Typed in double space on one side of the paper? y
18. Have the particulars for interim order prayed for, stated with reasons? y 2/6/14

Check Sheet

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

INDEX SHEET (DUPLICATE)

APPLICANT (S) *J. O. Hameed*

RESPONDENT (S) *Mr. J. N. S. ; Mr. H. S. & 2 others*

Particulars to be examined	Endorsement as to result of examination
1. Is the applicant competent to file this application?	9
2. a) Is the application in the prescribed form?	5
b) Is the application in paper book form?	5
c) Have prescribed number of complete sets of the application been filed?	5
3. Is the application in time ?	9
If not by how many days is it beyond time ?	7
Has sufficient cause for not making the application in time stated?	7
4. Has the document of authorisation/Vakalatnama been filed?	4
5. Is the application accompanied by B.D. / I.P.O. for Rs. 50/-? Number of B.D. / I.P.O. to be recorded.	5
6. Has the copy/copies of the order (s) against which the application is made, been filed?	9
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed?	5
(b) Have the documents referred to in (a) above duly attested and numbered accordingly?	5
(c) Are the documents referred to in (a) above neatly typed in double space?	5

P.T.O.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

INDEX SHEET (ORIGINAL)

O.A. NO. _____ 383 of 1993

CAUSE TITLE John Donnoony Luke

VERSUS

General Manager, Indian Naval Canteen Service
Bombay & 2 others

Sl.No.	Description of Documents	Page No.
		1 to 12
2.	Material papers	14 to 51
3.	Vakalat	1
4.	Objection Sheet	1
5.	Spare Copies 3 (three)	
6.	Covers 3 (three)	est
7.	counter filed.	—

Right to stand on Grounds Compulsorily retiring the Applicant from Service

Compulsory Retirement

Final copy

APPENDIX A FORM

FORM - I

(SEE RULE - 4)

Deputy

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT: 1985.

OA 383 OF 1993

Title of the case -

John Onnonny Luke

...Applicant.

AND

1. The General Manager,
Indian Naval Canteen Service,
Navy Nagar, Colaba,
BOMBAY-5.
2. The Member Secretary,
IN Canteen Control Board,
Naval Head Quarters,
DHQ P.O.,
NEW DELHI - 110 011.
3. Area Manager,
Indian Naval Canteen Service,
Naval Base P.O.,
Visakhapatnam-14.



... Respondents.

I N D E X

Sl.No.	Description of documents relied upon	Page No.	Annexure
01.	Application	1 to	-
02.	Orders compulsory retirement	2	9 of Chrono- gical events

RECEIVED COPY

N.R. Devaraj
Sr. CESC

Allotted to:

For use in Tribunal's Office:

Date of filing - .04.1993

Signature of the Applicant

Signature
for Registrar.

(8)

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

O.A.NO.

383

OF 1993

Between:-

John Onnoony Like.

--Applicant.

and

1. The General Manager, Indian Naval Canteen Service, Navy Nagar, Colaba, Bombay.
2. The Member Secretary, In Canteen Control Board, Naval Road, Quarters, DHO. P.O. New Delhi,
3. Area Manager, Indian Naval Canteen Services, Naval Road P.O. Visakhapatnam. .. Respondents.

CHRONOLOGICAL EVENTS

SL.NO.	DATE:	PARTICULARS.	Page NO.
01.	3-10-1986	Letter of Appointment as Salesman INCS, Visakhapatnam	2.
02.	22-4-1988	Confirmation as Salesman from 10-4-88 with original seniority with effect from 10-10-186	1.
03.	20-8-1991	Charge Sheet.	5.
04.	1-9-1992	Enquiry officer report.	28.
05.	13-10-1992	Statement of charged officer	3.
06.	24-12-1992	Representation of Charged Officer to the General Manager.	2.
07.	15-10-1992	Representation of the charged Officer to the General Manager along with chits.	6.
08.	12-3-1991	Statement of Manager Area Office INCS-5 xxxxxx Order xxxxxx xxxxxx applicant.	1.
09.	27-3-1991	Suspension order issued to the applicant.	1.
10.	27-3-1991	Statement of the charged Officer taken by inducement by the Area Manager P.H-3	1.
11.	17-2-1993	Orders of Compulsory retirement issued by General Manager INCS Head Office Bombay.	2.
12.	26-2-1993	Forwarding letter by Area Manager SG to The Charged Officer.	1.

HYDERABAD:

DT/ 21.04.1993.

Counsel for Applicant.

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

OA No. 383 of 1993

BETWEEN:

John Onnoony Luke

... Applicant.

A n d

1. General Manager, Indian Navel
Canteen Service, Navy Nagar, Coloba
Bombay - 400 005

2. The Member Secretary, Indian Navy
Canteen Control Board, Navel Hqrs.
D.H.Q.P.O., New Delhi - 110011.

3. Area Manager, Indian Navel Service,
Naval Base PO - Visakhapatnam.

... Respondents.

DETAILS OF APPLICATION

1. Particulars of the Applicant:

- i. Name of the Applicant : John Onnoony Luke
- ii. Name of the Father : Late Onnoony Lukose
- iii. Age : 35 years
- iv. Designation and Office Address : Salesman, INCS Visakhapatnam.
- v. Address for service of notices. : M/s. D.DHILLESWARA RAO
1-3-183/40/68/C/2
Gandhinagar, Hyderabad.

2. Particulars of the Respondents:

- i. Name of the Respondents : As stated above.
- ii. Designation and Office : ..do..
- iii. Address for service of Notices. : ..do..

3. Particulars of the order against which the application is made.

The application is made against the following Order:

- i. Order No. : HO/301/JOL Dt.17.2.1993 of the General Manager through Area Manager (SG) Received on 2.3.93.
- ii. Date : 17.2.93
- iii. Passed by : General Manager, Indian Naval Canteen Service, Head Office, Bombay.
- iv. Subject in brief:

The applicant is praying for a direction from this Honourable Tribunal, to quash the above impugned orders dt 17.2.93 of the area Manager, Indian Naval Canteen Service, INCS Building Navy Nagar, Coloba, Bombay-400 005.

4. Jurisdiction of the Tribunal:

The applicant declares that this OA is filed well within the jurisdiction of this Hon'ble Tribunal prescribed under Sec.14(1) of the Adminiv. Tribunal Act, 1985. In as much as their relief being sought for by the applicant is for

the period during which the applicant functioned as an employee in Government of India Amenable to the jurisdiction of this Honourable Tribunal.

5. Limitation:

The applicant further declares that this application is within the limitation prescribed under sec.21 of the Administrative Tribunal Act, 1985 as such the OA is within the time.

6. Facts of the case:

a) The applicants submits that he was working as Salesman in INCS, Visakhapatnam, from 26.4.1985¹⁰ and confirmed as Salesman with effect from 10.4.1985¹⁰ with original seniority from 10.10.1986 till the date of compulsory retirement from INCS Service ie., 2.3.1993^{17.2.73 (P.V.)}. The entire period of service rendered by him has been without any blemish in the service and to the utmost satisfaction of his superior authority.

b) The applicant submits while he was discharged duties satisfactorily he was given a charge sheet with article of charges framed against the applicant, the charge was being that the applicant was lacking of integrity and gross misconduct and the order of the compulsory retirement of the applicant are issued not in accordance with the CCS(CCA) rules 1965 and the impugned orders are quite arbitrary, capricious manifestly unjust, illegal and therefore void ab initio under the following grounds:

i) The impugned orders prima facie shows that the disciplinary authority simply stated that after taking into consideration all aspect there is a case and the entire documentary evidence on record simply agreed with the findings of the inquiry authority and inflicted major penalty of compulsory retirement on the applicant which itself ipso facto is not a speaking order nor self contain nor a reasoned order in as much as no reasons of this decision by the General Manager which is obligatory as it ensures that the decision is reached according to law and he is not a result of caprice, whim or fancy or reached on ground of policy of expediency and the necessity of record reasons is greater if the order is subject to judicial scrutiny. This is supported by the decision of the Supreme Court of India in the case of Mahaveer Prasad Vs. State of UP (AIR 1979 SC 1302) based on which a Government of India issued instructions through GIMHA DR & AR., OM No.134/1/81-AVU-1 Dt.13.7.1981 which is incorporated under Rule 15 of the CCS (CCA) Rules 1965.

ii) According to the regulation number 0704 the authority competent to impose is the board as specified in regulation No.0703 on any employee in Group I to IV and sub-regulation B of regulation 0704 of the Indian Naval Canteen Service Regulation (Short title INCSR), The General Manager may exercise the power of the board and impose any of the penalties except the penalty of compulsory retirement specified in regulation 0703 on any employee in group II to IV and the applicant being a sales-man comes under Group III under regulation No.0501, of INCSR. And as such the order of compulsory retirement inflicted on the applicant are without the authority of the law and hence they are liable to be squashed.

iii) The applicant submits that the PW.2 the Manager Grade-I who was in charge of the stationery items including liquor books sent for service officers INCS who actually the main accused in this case but he along with others made a conspiracy to send me out of service and he obtained statement dated 12.3.91 which was not marked as exhibit at all even though it was filed at the time of enquiry and PW.2 issued some chits under his own signature to issue the Rum Bottles on the un-authorized books given to the charged officer i.e., the applicant and the evidence of other witnesses was not taken into the consideration and the applicant at this juncture respectfully submit that he was involved in the case of alleged theft of eight liquor books to draw the liquor retail shop and self service section of INCS Visakhapatnam wherein it is alleged that liquor drawn in their tyone occasions and therefore the applicant i.e., charged officer alleged to have exhibited lack of integrity requiring action. Under the regulations INCSR. This material evidence was neither taken into cognizance of either by the enquiry officer or by the General Manager which is itself very fatal to the prosecution case.

iv) The applicant also submit that the PW.2 who is the main witness in his answer to question number 45 page 7 clearly stated on thorough searching by me I could find neither the above missing books nor any other document. When we came out (myself Mr.K.Venkateswara Rao Manager Greet to), Mr. V.D. Eswara Rao had approached us with a piece of paper saying that he have to found a piece paper which some numbers on it but he did not know what they are" this was happened during the course of search by PW.2 who is the custodian of the liquor books and when he could not find anything in the place where the liquor books stored how could another person Mr.DD Eswara Rao who did not conduct any search could get a slip on which some numbers were written and this writing alleged to be in the hand writing of the charged officer i.e., the applicant beyond anybody's comprehension much less the compre-

comprehension of the charged officer the applicant and further the inquiry officer did not consider the fact of taking the statement of charged officer dt. 12.3.91⁶⁸ as document admissible for the purpose of without amending the main article of charge "imputation of mis-conduct" and also the daily order sheets did not contain the material evidence of ordering the supply of liquors on chits given to the charged officer with the signature of PW.2 who is the Manager and custodian of the liquor books which also fatal to the prosecution to the case.

v) The applicant respectfully submits that when either Government servants were involved in this case of missing either liquor books, they were charged separately and punishments were imposed individually and among the eight charged offenders seven of them were imposed with very minor punishments like stoppage of increments where as the applicant was discriminated against, as he was suspended and was not paid higher subsistence allowances was not granted and further more the applicant was compulsorily retired and the issuance of individual charge memos instead of common charge memo is against the rule 18 of CCS (CCA) Rules 65 and the applicant was given a major penalty only on the statement of acceptance of his delinquency on inducement by his superior the PW2 who is the custodian of the stationery and liquor books which offends article 16 of the Constitution of India.

vi) The applicant respectively submit that the monthly stock verification certificates in the registers were not considered by the enquiry officers even though they were produced to the enquiry committee and on the other hand original stock register was not produced but a register alleged to be in the stock register without particular page where the stock of enquiry relate into the stock of liquor books were supposed to be written was torn away on the objection raised by the applicant before the enquiry officer was not considered which itself speaks volumes that the enquiry is obviously was given, where the complaints by the charged officer were not taken into consideration and ~~xxx~~ utilised against the applicant which is self incriminating which offends Article 20 of the Constitution of India.

vii) The applicant further submits that in the daily order sheets, that submissions made by the charged officers and the decisions taken over the submissions of the charged officers are required to be entered by the inquiry officer then and there itself but this rule of procedure was not followed by the inquiry officer even though the charged officer file the complaint that the charged officer was not having belief over the inquiry and the presenting officer, on the complaints

dated 31.1.92 which itself proves beyond all reasonable doubts the the inquiry officer and the presenting officer are biased.

viii) The applicant humbly submits that employees of the canteen department of Indian Navy or civil Servants as per CCS(CCA) Rules 1965, and it is supported by the decision reported in 1977 SLJ 645 and 1978 (i) SLR 84.

ix) The further submitted that originally the Chairman of the Canteen control Board was competent to impose punishment of compulsory retirement as per 0704 (d) of INC SR and if any amendment is made to that effect that the General Manager is competent authority to impose punishment of compulsory retirement, the amendment cannot made applicable to the charged officers as it constitutes the change of condition of civil servant and hence it violates the rights of the civil servant which is supported by the decisions reported in AIR 1979 SC 1912, 1979 SLJ 532 1979(2) SLR 291 and 1980 (1) SCJ 183 and therefore the punishment of the compulsory retirement imposed by the General Manager is constitutional.

x) It is further submitted according to annexure III of the charge memo only eleven documents were cited in the charge memo. where as 41 documents were filed by the presenting officer and got them marked as Exhibits is contra to the rule 14 of CCS (CCA) Rules 65, and the inquiry officer relied on those additional thirty documents, presented by the presenting officer which are not within the knowledge of the charged officer and any decision basing on the documents not supplied to the charged officer and making them as exhibits suo-moto by the inquiry officer is itself shows the bias signature of the inquiry officer as such conduct of the inquiry officer is quite against to the principles of natural justice this supported by the decisions reported 1988 (1) ATLT (CAT) (SN), 1982 (2) SLJ 694 and 1982 Lab IC 72.

XI. The applicant further place that is being paid from defence estimates and therefore he is governed by the rules framed under Article 310, and the CCS (CCA) rules framed under Article 310, and the CCS (CCA) Rules 1965, promulgated under article 309 of the constitution of India and also subject to Article 311 are not applicable to the applicant and therefore the punishments given under the said rules is quite illegal and the order of punishments are liable to be quashed. This is supported by the decision reported in AIR 1989 SC 662.

xii) The applicant further respectfully submits that when any division Bench of Tribunal gives a Judgement it is binding till such time such decision is reversed by the Supreme Court. This is based on provisions under Article 141 of the Constitution.

of India, this is supported by decision of the Tribunal reported in ATR 1986 (1) CAT 233 (Bombay).

xiii) The applicant further submits that this Honorable Tribunal is having jurisdiction to interfere even at any intermediate stage of departmental proceedings this is supported by the case reported in 1981 (2) SLR 185, 1981 (2) SLJ 224 and 1982 (1) SLJ 673.

xiv) The applicant further submits that the first Respondent ought to have not imposed such a major punishment of compulsory retirement without authority of law and therefore the impugned orders are quite capricious, arbitrary and violates the principles of natural justice and therefore illegal and as a last resort the applicant is approaching this Honorable Tribunal for redressal of his grievances any further delay in this matter will jeopardise the future of the applicant and his family.

7. Details of the remedies exhausted:

The applicant declares that he has no other alternative effective remedy except to approach this Honorable Tribunal by way of filing this CA

8. Matters not previously filed or pending with any other Court:

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

9. Relief Sought for:

In view of the facts mentioned in para 6 of the application, the applicant prays for the following reliefs:

It is prayed that the Honorable Tribunal may be pleased to issue an order or direction to quash the impugned orders passed for the compulsory retirement of the applicant issued through Order No. HO/301/JOL Dt. 17.2.1993 of the Respondent No. 1 through Area Manager (SG) received on 2.3.1993 as illegal and to pass such other and further orders as this Honorable Court may deem fit and proper in the circumstances of the case.

.. 70 ..

10. Interim relief:

Pending final disposal of the OA the applicant further prays that this Honourable Tribunal may be pleased to suspend the impugned orders dated 17.2.1993 and to continue the applicant in service as usual in the interest of justice.

11. Particulars of IPO in respect of the application fee.

- a. No. of IPO 805890060
b. Name of the Issuing PO C.P.O.
c. Date of issue of PO 16/4/93
d. PO at which payable.

Rs. 50/-
L.P.O./B.C./D.D./Removal

12. List of enclosures:

- i. Vakalat
ii. IPO/DD
iii. Material papers.

VERIFICATION

I, John Onnoony Luke, S/o Late Onnoony Lukose, Aged about 35 years compulsorily retired as Salesman in Indian Naval Canteen Service, Visakhapatnam, and residing at Visakhapatnam, do hereby verify that the contents of paras 1 to 6 are true and correct to my personal knowledge and belief and rest of paras from 7 to 13 are believed to be true on legal advice from my counsel. Hence verified on this day of April, 1993 at Hyderabad.

John Onnoony Luke
Applicant.

Hyderabad.

Dated 16.4.1993.

To
The Registrar, Central Adminiv.
Tribunal, Hyderabad.

[Signature]
Counsel for the Applicant.

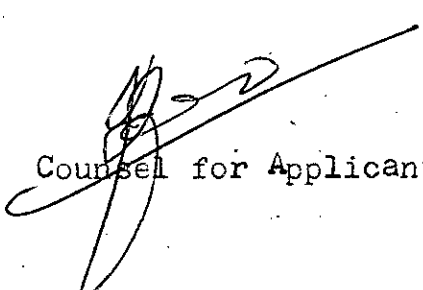
Declarations

1. The applicant hereby declares that she is a party to CA/RP/WP..... pending before this Tribunal or disposed of by this tribunal/erstwhile tribunal/High Court of AP in which the same issue or similar controversy is/has been raised.

The applicant is not aware that she is a party to any CA/RP pending before this tribunal or that any CA/RP/WP has been disposed of by this tribunal/erstwhile tribunal/High Court of Andhra Pradesh, in which the same issue or similar controversy has been raised.

2. The applicant hereby further declares that persons likely to be effected are impleaded as respondents in this application/not impleaded as respondents in this application for the following reasons.

Note: Any one applicant authorised by the other applicant may sign the declaration.


Counsel for Applicant.


Applicant.

17

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

O.A.NO. OF 1993

Between:-

John Onnoony Luke .. Applicant.

and

The General Manager, IndianNavel
Canteen Service, Navy Nagar, Coloba
Bombay-400 005. and 2 others. .. Responents.

MATERIALPAPERS

S.NO.	DATE.	DESCRIPTION.	P.NO.
1.	3-10-1986:	Ref.NO.HO/305/Jl.	1.
2.	22-4-1988:	Ref.NO.HO/307/Jol	4.
3.	7-4-1977:	Ref.NO. V/301	5.
4.		Ref.NO.HO/301	6.
5.		Article-I	7.
6.	1-9-1992	Memorandum	14.
7.		List of Wtinesses	38.
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9.	27-3-1991:	Ref.NO.V/301/JL	46.
10.	27-8-1991	Representation	47.
11.	17-2-1993.	Ref.NO.HO/301/JOL	49.
12.	26-2-1993	Ref.NO.V/301/JOL	51.

HYDERABAD:

DATE:

COUNSELFOR THE APPLICANT.

(18)

INDIAN NAVAL CANTEN SERVICE

Navy Nagar, Colaba,
BOMBAY-400 005.

Date: 03 Oct 86.

Ref.No: HO/305/JL

Shri John Luke,
C/o Area Manager,
INCS VIRAKHAPURAM.

LETTER OF APPOINTMENT

1. Reference your application dated 17 Sep 86 for employment in the Indian Naval Canteen Service.

2. You are hereby offered the appointment of Salesman on the following terms and conditions :-

(a) Undertaking. You will be required to serve in any establishment of this organisation whether in India or abroad, ashore or afloat and abide by the terms and conditions of service as applicable to all employees of this organisation. The terms and conditions of service will be according to the regulations of this organisation as decided by the Indian Naval Canteen Control Board and are subject to alteration and amendments from time to time without any previous notice to the employees. The existing terms and conditions of service are available with the Area Manager. These should be read and signed by you on your taking up the appointment.

(b) Scale of Pay. This appointment carries a scale of pay of Rs.260-6-290-ES-6-326-8-366-EB3-390-10-400 and you will be started on Rs.260/- per mensem plus allowances as admissible.

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- (c) Medical Fitness. This appointment is subject to your being declared medically fit. For entry you are required to produce a certificate of fitness from a Service Medical Officer. You will be confirmed subject to your being declared medically fit by a Service Medical Officer, under the arrangements of the Organisation.
- (d) Probation. You will be on probation for a period of twelve months in the first instance. This period may be extended further if considered necessary.
- (e) Notice. Your service may be terminated without assigning any notice on either side during the probationary period. Thereafter, your service may be terminated by giving one month notice on either side or pay in lieu thereof. When you have put in 3 years or more your services may be terminated by giving 3 months notice on either side or pay in lieu thereof.
- (f) No travelling allowance/daily allowance will be admissible on your first reporting for duty.
- (g) This appointment will further be subject to your producing the following certificates :-
- (1) A character certificate signed by a Gazetted Officer of the Central or State Governments;
 - Or
 - (2) A Certificate signed by the Officer of the Armed Forces.
 - (3) A Certificate signed by the Officer of the Organisation where you are employed.
- (h) You will be required to carry out the duties assigned to you from time to time by the General Manager/Exec. Manager or any other authority senior to you.

(20)

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3. If the above terms and conditions are acceptable you should report for duty to the Area Manager, INCS, Visakhapatnam on 10 Oct 36 * acknowledging receipt of this letter.

4. If you fail to report for duty by the due date without adequate explanation in advance, it will be construed that you are unwilling to accept and this offer of appointment will accordingly stand automatically cancelled.

5. You are requested to endorse on all copies of this letter in token of your having read and understood the terms and conditions.

*or the date of receipt of this letter whichever is later.

for INDIAN NAVAL CANTEN SERVICE

GENERAL MANAGER

CC.to:- 1. The Member Secretary,
I.N.Canteen Control Board,
Naval Headquarters,
NEW DELHI.

2. The Area Manager,
Indian Naval Canteen Service,
VISAKHAPATNAM.

X Your letter V/317/JL
X dated 22 Sep 86 (noted)
XX refers.

II

I have read and understood the contents of this letter and accept the appointment.

Place: Visakhapatnam

Date: 10/10/1986.

Signature:

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Indian Naval Canteen Service
Head Office

81

Tel: 4952117
INCS Building,
Navy Nagar, Colaba,
BOMBAY - 400 005.

Ref. No. HO/307/JOL

Date 22 April, 1988

Shri John O Luke,
Prob. Salesman,
INCS, VISAKHAPATNAM.

C O N F I R M A T I O N

We are pleased to inform that you are confirmed
as Salesman with effect from 10 April, 1988 with the
original seniority of 10 October, 1986.

(VK Mohan) .
General Manager

cc.to:- The Area Manager, INCS Visakhapatnam.
Your letter V/307 dated 11 April, 1988
(notal) refers.

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INDIAN NAVAL CANTEEN SERVICE

INCS Building

Area Office

Naval Base, P.O.

Visakhapatnam - 530 014

Ref: No. V/301

Tel: 7 4 7 7

Shri John C Luke,

Salesman

Indian Naval Canteen Service,

Visakhapatnam-530 014

CHARGE SHEET

Letter No. HO/301 dated 20 Aug 91, received from the General Manager, INCS Bombay, addressed to you, together with its enclosures, is forwarded, in original, for your further action.

for INDIAN NAVAL CANTEEN SERVICE

(Chandra Shekhar)

Encl: As above (6 sheets) Area Manager (SG)

Copy to :-

The General Manager

INCS Bombay - 400 005.

ACKNOWLEDGEMENT

I hereby acknowledge receipt of letter No.V/301 dated 27 Aug 91 together with letters/documents contained in it.

Signature _____

Name : JOHN O LUKE

Date: Aug '91.

Designation: Salesman

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INDIAN NAVAL CANTEEN SERVICE : HEAD OFFICE

Tel: 2152117

INCS Building,

Navy Nagar, Colaba,

Bombay, 400 005.

Ref: No.HO/301

Shri John O Luke

Salesman,

INCS VISAKHAPATNAM.

CHARGE SHEET

1. You are hereby required to submit your defence through the Area Manager (S.G.), INCS, Visakhapatnam, to the Article of Charges placed at Annexure-1, not later than 10 days from the date of receipt of this communication, explaining why disciplinary action should not be taken against you, as required under the rules in force.

2. Should you fail to submit your defence within the stipulated period mentioned above, it will be presumed that you have no defence to offer and disciplinary action will be taken against you as per rules.

3. Statement of imputations is placed at Annexure-2.

for INDIAN NAVAL CANTEEN SERVICES

(VK Mohan)

Encl: **

General Manager

cc: The Area Manager (S.G.) INCS VISAKHAPATNAM.

STATEMENT OF IMPUTATIONS OF MISCONDUCT IN RESPECT OF THE
ARTICLES OF CHARGES FRAMED AGAINST SHRI JOHN O LUKE,
SALESMAN, INCS VISAKHAPATNAM

ARTICLE - I

Shri John O Luke, Salesman, has been working as Cashier in Textile Section of INCS Visakhapatnam. Shri DCM Patnaik, Manager Grade II - Manager Area Office was the custodian of Liquor Books. The said Liquor Books are issued to officers for purchase/drawal of liquor from the INCS as per their entitlement. The said liquor books were kept by Shri DCM patnaik, Manager Grade II in the INCS Record Room where other stationery items like registers, pencils, carbons etc., held under his charge. He also stores for issue by his Assistant Accountant to the sections as and their demand.

Sometime in February 1974, Shri DCM Patnaik, Assistant Accountant, Assistant of Shri DCM Patnaik found that, in the Record Room, there were some liquor books kept in the room and from them appeared some liquor books were issued to some persons handled the liquor books. Then he checked, count of and verified the liquor books with the stationery ledger and found that the following liquor books meant for some officers were missing (0/099 and 0/1000). Keeping/maintaining this as a confidential matter, they requested Mr. [Name] [Designation] INCS, who checks the liquor books and leaves in the bills. The [Name] [Designation] Sales bills. Then they started thorough checking of the

liquor bills on 11 Mar 91. They thoroughly verified the bills of Feb and Mar 91 and found that all numbered bills were coming regularly i.e., the liquor was drawn on these missing liquor books.

In order to locate the missing books, Mr. DCM Patnaik, Manager Grade II, searched the Liquor Retailshop on 12 Mar 91 with the help of Shri V.D.Eswara Rao, Salesman. Mr Patnaik could find neither the missing liquor books nor any suspicious things there. In the meanwhile, Shri V.D.Eswara Rao, Salesman, approached Mr Patnaik and gave him a slip of paper on which the numbers of the missing liquor books were written in the handwriting of Mr John O Luke. Mr DCM Patnaik, along with Mr. V.D.Eswara Rao, salesman, immediately rushed to the residence of Shri John O Luke, as he was not coming to office since 2 days. On being interrogated by Mr Patnaik, Mr. John O Luke, in the presence of both Mr. Patnaik and Mr. V.D.Eswara Rao, Stated that :-

(i) he himself had taken out the Liquor books unauthorisedly from the stores, and that

(ii) he had been using them to draw the liquor for himself.

When Mr. Patnaik asked Mr. John O Luke to handover the books to him, he replied that these were burnt.

Mr. Luke, later on at 1700 hrs in the evening of the same day i.e., 12 Mar 1991 came to office and called on

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Cdr Chendra Shekhar, IN(Retd), Area Manager(SG) and accepted that he had stolen the books and drawn the liquor unauthorisedly with the help of staff working in the Section. Mr John O Luke regretted his inability to write a detailed statement due to constraints of his power of expression. Therefore, Mr Luke was asked to narrate his statement and the statement was recorded by Mr DCM Patnaik, Manager Grade II - Manager Area Office. CDR. Chendra Shekhar, IN(Retd.), Area Manager(SG) INCS told Shri John O Luke that whatever he wanted to say he would say voluntarily and there was no compulsion or advice from the Area Manager (SG) or any other person. Then Mr Luke dictated the statement, which was taken down/written by Mr DCM Patnaik in the presence of Shri K.Venkateswara Rao, Manager Grade III, Manager Retailshops. The said voluntary statement given on 12 Mar 91 by Shri John O Luke was signed by him, clearly confirming/emph signing that he said statement was recorded by Mr DCM Patnaik on the information given by him and he (Mr. John O Luke) had read it and further confirmed that to be his statement which had been given purely voluntarily and without any influence, pressure, threat or coercion.

In the aforesaid voluntary statement given on 12 Mar 91 as stated above, Mr John O Luke voluntarily stated the following facts :-

- (a) Somewhere in the middle of Jan '91 he went to the Record Room with some other person from the Area Office for collecting some forms.

(Contd...4)

(b) While taking the forms he (Mr. John O Luke) taken out certain number of liquor books from the rack where the liquor books were stocked. Those books were of green cover meant to be used by Service officers.

(c) After removing the books, he kept them with him in his Section till 08 Mar 91, carried them home on 8 Mar 91 and destroyed all the books at his residence at Door No.61-2-5/3, Ramakrishnapuram, Malkepuram (Po), Visakhapatnam-530 011 by burning.

(d) During the period he was holding the books, he had drawn liquor on 31 leaflets in the books with the help of the Salesmen employed in Liquor Retailshop and Self Service Section namely, Shri AP Velayudhan, Salesman (SG), Shri M.Satyanarayana Salesman (SG), Shri A. Pushpanadham, Shri MR Sundaran, Salesman, Shri V.D.Eswara Rao, Salesman and Shri B. Prabhakara Rao, Salesman.

Thus Shri John O Luke, salesman, INCS, Visakhapatnam did steal from INCS Record Room 8 in number blank liquor books bearing serial numbers 0/0822, 0/0823, 0/0824, 0/0825, 0/0994, 0/0998, 0/0999 and 0/1000 meant for service officers.

ARTICLE - II

As stated ibid in the imputations for Article I, when missing of some liquor books bearing Nos. 0/0822, 0/0823, 0/0824, 0/0825, 0/0994, 0/0998, 0/0999 and 0/1000 meant for

(Contd...5)

service officers and drawal of liquor on those books was detected, a search was made by Shri DCM Patnaik and Shri V.D.Eswara Rao, Salesman, Whereupon a chit bearing serial numbers of the missing liquor books was found in the handwriting of Shri John O Luke. Shri DCM Patnaik, along with Shri V.D.Eswara Rao went to the residence of Mr. John O Luke and Mr. John O Luke accepted, in the presence of Mr. Patnaik and Mr. Eswara Rao that he himself had taken out the liquor books unauthorisedly from the Record Room of INCS and that he had been using them to draw the liquor for himself and further that those books were burnt.

Later on, in the evening of the same day i.e., 12.3.91 Shri John O Luke came to office and also gave a statement in front of Cdr. Chandra Shekhar, IN (Retd), Area Manager (SG) Shri DCM Patnaik, Manager Grade II- Manager Area Office and Shri K. Venkateswara Rao, Manager Grade II- Manager Retailshops. In the said statement dated 12.3.91 signed by Mr. John O Luke, he has clearly accepted that he had taken out the liquor books from the Record Room unauthorisedly, he had drawn liquor using those books and finally on 8.3.91 took the books to his residence and burnt them.

Thus Mr. John O Luke, Salesman, unauthorisedly used the 8 liquor books, by presenting the leaflets therefrom in the Liquor Retailshop and Self Service Section of INCS Visakhapatnam

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and drawing liquor on 31 occasions Viz. on book no. 50/0922
0/0823, 0/0824, 0/0825, 0/0994, 0/0998, 0/0999, and 0/1000.

ARTICLE - III

As stated in detail in the statement of imputations for Article I ibid, when Shri DCM Patnaik and Sri VD Eswara Rao went to the residence of Shri John O. Luke and questioned him, he accepted in their presence that he himself had taken out the liquor books unauthorisedly from the Record Room of INCS and that he had been using them to draw the liquor for himself and further that those books were burnt.

Later on, in the evening of the same day Viz. dt. 12.3.91 Shri John O Luke came to the office and also gave a statement in front of Sdr. Chandra Shekhar, IN (Retd.), Area Manager (SG), Sri DCM Patnaik, Manager Area Office and Shri K. Venkateswara Rao, Manager Retailshops. In the aforesaid statement, signed by Shri John O Luke, he confirmed/emphasized that the said statement was recorded by Shri DCM Patnaik on the information given by him and he (Mr. John O Luke) had read it and further confirmed that statement to be his statement which had been given purely voluntarily and without any influence, pressure, threat or coercion. In the said ~~voluntary~~ voluntary statement dated 12.3.91, Shri John O Luke confessed that somewhere in mid Jan 91 he had taken out certain number of liquor books from the Record Room of INCS, meant to be used by service Officers, retained them in his Section till 8.3.91 and carried

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them home and destroyed them by burning. He had also confessed that during the period he was holding the books, he had drawn liquor on 31 leaflets in the books with the help of the Salesman working in Liquor Retailshop and Self Service Section namely Shri A.P. Velayudhan, Salesman (SG), Sri M. Satyanarayana, Salesman (SG) Shri A. Pushpanadham, Salesman, Shri MR. Sunderan, Salesman, Shri V.D. Eswara Rao, Salesman and Shri B. Prabhakara Rao, Salesman.

Thus Sri John O. Luke, Salesman, INCS Visakhapatnam, sometime on or after 8.3.1991 burnt 8 in number liquor books bearing serial Nos. 0/0822, 0/0823, 0/0824, 0/9825, 0/0994, 0/0998, 0/0999, and 0/1000.

(VK Mohan)

20 Aug 91.

General Manager, INCS.

Indian Naval Canteen Service

Head Office



Tel. : 495 21 17
INCS Building,
Navy Nagar, Colaba,
BOMBAY-400 005.

Ref. No. : HO/301/JOL

Date : 01 Sep 92

Shri John O Luke,
Salesman,
INCS VISAKHAPATNAM.

M E M O R A N D U M

1. The INCS Head Office has received the Inquiry Officer's report on the charges levelled against you. The articles of charges and the statement of imputations were forwarded to you vide our letter HO/301 dated 20 Aug 91. Having examined the inquiry report, we concur with the findings of the Inquiry Officer and find you guilty of all 3 charges as brought out by the Inquiry Officer in his report. In this connection, a copy of the Inquiry Officer's report is forwarded herewith.

2. If you wish to make any representation or submission, you may do so in writing to the disciplinary authority viz, the General Manager, INCS, within 15 days of the receipt of this letter.

for INDIAN NAVAL CANTEN SERVICE .

[Signature]
V.K. Mohan,
General Manager

Encl:-*

cc.to:- The Area Manager (S.G.), INCS VISAKHAPATNAM.

vkm/rr

ARTICLE - III

That the said Shri John O Luke, while functioning as Salesman in the Indian Naval Canteen Service, Sometime on or after 8.3.91 burnt 8 in number liquor books bearing serial 0/0822, 0/0823, 0/0824, 0/0825, 0/0994, 0/0998, 0/0999 and 0/1000.

Shri John O Luke, by his above act, committed gross misconduct requiring action under INCSSR 0702.

7. Details of witnesses examined and documents filed are contained in Annexure I & II to these proceedings.

8. Evidence recorded for the disciplinary Authority:-

(a) Shri John Milton (PW-1) maintains the ledger for liquor book and the register for liquor books meant for service officers (Q.12 & 13) on 8.3.91 PM PW-1 found that 8 liquor books were missing from stock and brought this to the notice of his immediate superior Shri DCM Patnaik, Manager Gr.I on 11.3.91 since Shri Patnaik was on leave till that date (Q.19 to 21). He found that the Serial No. of liquor books missing were 0/0822, 823, 824, 825, 0/0994, 998, 999 and 1000 (Total 8 books) A/Q No.20 refers. Along with the manager Shri DCM Patnaik, PW-1 verified the sales register (Form-II) and found that some of the missing book Nos were reflected in the sales register A/Q 24 to 28 are relevant. PW-1 thought that somebody must have stolen the books from the record room (A/Q.30) The missing books bearing S.Nos.0822, 823, 824, 825, 0994, 998, 999 & 1000 were held ledger charge since 18.7.89 (Q.No.36)

(b) PW-2 (Shri DCM Patnaik, Manager Gr.I) deposed at Q.42 that he came to know of the missing books on 11.3.91 at about 1000 hrs thus confirming PW-1's statement at Q.19 to 21. As per A/Q 44 PW-2 immediately took action to have a through check of stock-holding against ledger balances and got confirmation that 8 in No. liquor books bearing S.No.0822, 823, 824, 825, 0994, 998, 999 & 1000 were missing. Miss Savitri concerned Asst. Accountant checked the liquor summaries and found that the serials of the missing books were regularly reflected in the sales summaries except for S.No.0999. A/Q 45 indicates that PW-2 reported that the matter to the Area Manager at 1700 hrs on that day (11.3.91) and was directed by AM to make a through check and report results on the following day.

(c) A/Q 45 indicates that PW-2 swung in to action on 12.3.91 (at 1000 hrs), informed the Manager Retail Liquor Shop Shri K Venkateswara Rao, about the missing books and started a search in the Retail Liquor Shops to locate the missing books. He was assisted in the search by Shri KV Rao, Manager Retail Liquor Shop and Shri VD Eswara Rao, Salesman. PW-2 could not locate the missing books or any other document. But while he was coming out of the Retail Liquor Shop Shri VD Eswara Rao, Salesman who was assisting PW-2 in the search produced a slip of paper (PW EX.1) containing some numbers scribbled on it, this document (PW Ex.1) is "Kerala State Lottery Ticket with some numbers scribbled on it". PW-2 on seeing the scribbled numbers identified the handwriting as that of Shri John O Luke (the Charged Officer). He could do so since Shri John O Luke had been working with PW-2 for the last 5 years (Approx). As Shri John O Luke was on leave PW-2 decided to visit the Charged Officer at his residence and did so accompanied by Shri VD Eswara Rao. Shri John O Luke confessed to PW-2 that he had stolen the liquor books meant for officers from the record room, drew liquor on those books unauthorisedly. When required by PW-2 to return the books (Containing counterfeit) Charged officer pleaded inability to return the same as he had already burnt them on 8.3.91. PW-2 required Charged Officer to report the matter to Area Manager. Shri John O Luke visited the Area Office on 12.3.91 where the Area Manager has called for a factual statement as to what had actually happened. Area Manager also stated that there was no compulsion on Shri John O Luke to make any statement. As John O Luke was unable to express himself fully, at his request, his statement, as dictated by him was recorded by PW-2 in the presence of Area Manager and Shri KV Rao, Manager Liquor Shop. Then subsequently PW-2 gave a written statement dated 19.3.91 marked PW Ex.2(A/Q.46) (A/Q 47) indicates that the statement dictated by John O Luke was a purely voluntary statement there being no pressure or compulsion on him. At Q.50 PW-2 identify the statement of Shri John O Luke dated 12.3.91 as the one recorded by him as the John O Luke dictation. This document was marked as PW Ex.3 vide Q.50A.

Contd....4

(d) The document marked as PW Ex.3 indicated that the Charged Officer (Shri John O Luke) went to the Record Room some time in middle of Jan '91 to collect some forms with some one from the Area Office whose name he could not remember. While collecting the forms "he took certain number of books from the rack where they were stocked. He had taken them from the rare side of the rack". The document goes on to reveal that after removing the books from the record room the delinquent officer kept them with him till 8.3.91, carried them home on that day and destroyed the same at his residence door No.61.2.5/B, Ramakrishna Puram, Malkapuram, Visakhapatnam - 1 by burning. During the period he was holding the books he drew liquor on these books with the help of Salesman employed on liquor counter namely A Pushpanadham, VD Eswararao and MR Sundaram. These salesmen were fully aware that these books were unauthorised. He had to give ~~xx~~ ~~xxxx~~ ~~xxxxxx~~ ~~xxxx~~ 4 bottles to each Salesman on each operation of drawal of liquor. The Salesman paid for the bottles at the retail rates. He used the liquor for drinking and for meeting ~~for~~ some obligations to his friends on payment. This document contains a certification by the charged officer that the statement was made voluntarily and without any influence, pressure, threat or promise. The same was ~~xxx~~ witness by Shri K Venkateswara Rao, Manager Gr.II. At Q.49 PW-2 testified that these missing books were not issued to any officer as the books were issued according to serial Nos. and the issue did not reach the serial no. of the missing books by the time the loss was detected.

7 (e) PW-3 Shri VD Eswara Rao, deposed at Q.91 that he did not remember to have verified that bills before issuing liquor to John O Luke but believed him as a colleague. He also denied having received any liquor bottle from the Charged Officer but when confronted with his written statement dated 12.3.91 (PW Ex.25) he admitted having received 2 bottles of liquor as remuneration for preparing the bills. P

(f) PW-5's Shri K Venkateswarao's Answer at Q.114 indicates that he came to know about the missing books on 12.3.91 from Shri DCM Patnaik (PW-2).

(PW-5) accompanied PW-2 in checking the Retail Liquor shop and both of them were assisted by Shri VD Eswara Rao, Salesman. PW-5 also corroborates at Q.119 and 121 the statement of PW-2 at Q.45 that Shri Eswara Rao produced a slip containing some numbers scribbled on it (PW Ex.1). He also confirmed that the hand writing on the chit (PW Ex.1) is that of the charged officer thus corroborating the statement of PW-2 at Q.45. PW-5 was present in the Office of Area Manager on 12.3.91 at 1700 hrs when a statement dictated by John O Luke was written down by Shri DCM Patnaik in the presence of himself and Area Manager. He was an attesting witness to document PW Ex.3, at Q.129 & 130 & 131 PW-5 confirmed that the charged officer had voluntarily confessed to having stolen the liquor books from the record room and having drawn liquor on them with the help of counter salesman. Q.131 indicated that S/S Pushpanadham, VD Eswara Rao & M Sundaram were the salesman with whose help the charged officer drew liquor. PW-5 submitted a written statement dated 22.3.91 (PW Ex.6) to the Area Manager regarding the results of his action.

(g) PW-6 Shri AP Velayudhan confirmed (Q.161 & 162) that he was asked to explain regarding issue of liquor on bill No.0994 A 998A, 998G, 999D, 1000A. Witness admitted having prepared the bills at PW Ex.7 to 12 and also submitted a written explanatory statement PW Ex.13 on 22.3.91. As per PW Ex.13 witness was not aware that any liquor books were missing and hence did not take extra care in preparing the bills. He promised to be more careful in future in checking liquor books. PW-6 did not make necessary entries on the concerned bill books (pertaining to PW Ex.7 to 12) as he believed his friend & Colleague Shri John O Luke who drew liquor on these bills (Q.173 & 174). PW-6's Answers at Q.167 & 176 indicate that the witness was through with the procedure for issuing liquors i.e. with all the checks and entries he should make on the bill books. Q.174 indicates that it was Shri John O Luke who submitted the bill books at PW Ex.7 to 12. Q.175 & 177 indicate that it was not in order to issue liquor in the absence of the authorised officer but he did not insist on this point as a matter of courtesy.

(h) PW-7 B. Prabhakara Rao deposed at Q.187 regarding the procedure for issuing of liquor to officers. This substantially corroborates evidence of PW-6 on this point. As per Q.187 & 189 the salesman concerned should check that an officer produces his liquor book. The salesman should check on the drawer's entitlement. He should also check his Rank, Designation, and Specimen Signature. Q.188 indicates that the officer should come personally to draw the liquor. As per Q.189 his identity & Specimen Signature can be verified with the particulars on the bill book itself. Issue of liquor should also be recorded at the appropriate page provided for in the liquor books (Q.191) PW-7 confirm that bill No.0998J dated 4.3.91 0825C dated 4.3.91 & 0998S dated 16.1.91 (PW Ex.14, 13 & 16) were prepared by him (Q.196) but did not remember who had drawn the liquor on the bills (Q.197). Witness submitted 2 written statements dated 30.3.91 (PW Ex.17) and 9.4.91 (PW Ex.18) to the Area Manager according to which some of his colleagues namely Shri V. Eswara Rao, Shri K Srinivas, Asst. Accountant and Mr VS John approached him in the past for issue of liquor and with signed liquor books & officers' chits. PW Ex.18 dated 9.4.91 contains the witness's plea to be excused for his negligence in making the bills without verifying the particulars.

(i) PW-8 Shri M Satyanarayana outlined the procedure for issue of liquor bills at Q.208 & 209. As per his Answers, the liquor book contains on its top cover, particulars of the officer to whom it is issued. The last cover page indicates the entitlement. The top page also carries the Area Manager's Signature. PW-8 would issue liquor after verifying the above particulars. But where the front page of the liquor book is missing and if any manager Gr.I sends the books through cue of the salesman he had to write the bills. There was no rule on this subject (Q.212). A/Q 218 indicates that the witness prepared bill Nos. 0994C, 0998E, 0998C, 0998E, 0999E, and 0999F (PW Ex.18 to 23). Q.219 indicates that John O Luke brought the above books with Manager's Chit. He deposed that he is working under Mr Patnaik Senior Manager of INCS. Witness innocently wrote the bills without asking further questions. Q.221 indicates that Mr DCM Patnaik sent a chit to him through John O Luke. The chits were addressed to John O Luke (Q.222).

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The chits were not addressed to the Salesman but to John O Luke directing him to collect liquor Q.223. Witness knew that Mr DCM Patnaik is not authorised to draw liquor on those books Q.226. Mr John O Luke asked witness to write the bills (Q.227). Witness gave a written statement dated 23.3.91 (PW Ex.24) to the Area Manager. As per PW Ex.24 witness felt that he was cheated by his colleague John O Luke. Witness stated in his own written statement (PW Ex.24) that the front and last covers of the books were torn off. Though it was his duty to check the books he could not do so due to tremendous pressure of work at the counter. Witness made a mistake in believing his colleague Mr John O Luke and pleaded to be pardoned. Q.240 indicates that the statement given by witness on 23.3.91 was a voluntary statement.

(j) PW-9 Shri A Pushpanadham testified at Q.245 & 246 that he gave a statement on 13.3.91 (Marked PW Ex.25) as he was required to explain for making wrong bills Q.247. Witness admitted at A/Q 249 & 250 that bill Nos. 0822A, 0823A, 0823B, 0824B, 0825A, 0825B, 0825E, 0994F, 0998I, 0998K, 1000B, 1000E, 0998H, 09999G (PW Ex.26 to 39) were prepared by him. Q.252 indicates that the witness knew the full procedure of checking identity of the persons, ~~max~~ and ~~mk~~ making entries in the liquor books etc. At Q.253 he testified that the officer should be personally present at the counter to draw liquor. Q.257 indicates that he wrote bills for Mr John O Luke on the later showing the Manager's chits. The Chit were not addressed to witness, but were addressed to John O Luke (Q.258). It was not correct to issue liquor on the chits but he issued seeing a superior's chit. John did not offer any remuneration to him (Q.260). A/Q 262 indicates that the statement given by him on 13.3.91 (PW Ex.25) was due to pressure exerted by Mr K Venkateswara Rao. He gave the statement dated 13.3.91 (PW Ex.25) believing in Mr KV Rao's words. In PW Ex.25 witness confessed that John O Luke used to approach him for making bills. He used to give witness 2 bottles for each book without demand. Q.270 indicates that no reference was made in PW Ex.25 to the alleged influence of Shri KV Rao.

(k) PW-10 Mr MR Sundaram stated at 275 & 276 that Mr KV Rao asked him for an explanation as to how he made an unauthorised bill ie. from a liquor book not issued with the managers signature. Q.276 to 279 indicate that the witness is acquainted with the procedure of preparing bills. Q.280 to 283 indicate that witness prepared bill No.08223 dated 5.3.91 as the concerned officer was present along with Mr John O Luke. Q.287 indicates that witness didnot verify the officers particulars from the liquor presented & as the officer himself was present. Witness gave a statement on 13.3.91 (PW Ex.41) Voluntarily Q.289. Q.288 indicate that John O Luke did not offer any remuneration for writing bills. In PW Ex.41 witness admitted that he did not check the particulars on the liquor book as an officer Major Balachandran Nair from INHS Kalyani was physically present. He pleaded tobe excused for his lapse in not making proper check of the particulars.

(1) PW-11 Cdr Chandra Shekhar (Retd.) IN deposed at length (Q.292) how the discrepancy in the liquor books was brought to the notice by Manager Gr.I Mr DCM Patnaik on 11.3.91 and how he had ordered further investigation. He testified that John O Luke made a voluntary statement that he had stolen the liquor book from the record room, used them to draw liquor. Witness cautioned Mr John O Luke that he is not bound to make any statement, nor does the witness require him to make any. But if Shri John O Luke desired to make a voluntary statement, he was welcome to do so. The statement dictated by Shri John O Luke was taken down by Shri DCM Patnaik in the presence of witness and Shri K Venkateswara Rao, Manager Gr.II. Witness identify PW Ex.3 dated 12.3.91 as the photostat copy of a statement made by shri John O Luke in his presence (Q.293). At Q.305 (during ~~exams~~ crossexamination) witness explained that a certain anomaly was noticed in the records pertaining to the stock ledger of liquor books and money credited on account of sale of liquor books which created a false ~~in~~ impression that 8 in No. liquor books were in excess. But the concerned employees of INCS could not sortout ~~anomaly~~. When the anomaly was reported to witness and the theft of books was noticed the anomaly got resolved. There was no excess of liquor books but the sale

proceeds of liquor books showed an excess credit by an amount equal to the value of 8 liquor books. Witness took necessary follow up action by informing the General Manager, INCS, Bombay of the facts & circumstances of the case.

9. Evidence recorded for Defence:- The Charged Officer did not produce any defence witness. He has submitted his written statement of defence, explanatory statement and defence argument(Written).

2 (b) PW-1 Shri John Milton deposed that he found some liquor books were missing from stock on the afternoon of 8.3.91 and ascertained the S.Nos. of missing books (Q.19 & 20). But during cross examination he deposed that he found shortage of 8 books at the end of Jan '91 and Feb '91 but failed to give a satisfactory answer as to why he failed to report the shortage to his official superiors immediately.

(c) PW-3 Shri VD Eswara Rao, denied that he was approached by Shri DCM Patnaik on 12.3.91 to join him in the search ~~for~~ for missing liquor books. Neither Mr. DCM Patnaik nor Mr K Venkateswara Rao asked him for any assistance on 12.3.91 (Q.66 & 67). He also denied having found any chit carrying scribbled numbers on it.(Q.68) witness also denied having visited the residence of Shri John O Luke along with Mt Patnaik on 12.3.91. Q.80 to 86 indicate that the witness is thoroughly conversant with the procedure for making liquor bills. Witness could not identify the salesman signature on bill No.1000 dated 17.2.91 (Q.87) but admitted that the handwriting on the bill appeared to be his. Witness did not remember whether he verified the officer's particulars on the bill but wrote the bill believing Mr John O Luke as a friend. A/Q 93 indicates that witness was not offered any liquor bottles as remuneration making the bills.

(d) At A/Q 179 PW-6 Mr AP Velayudhan deposed that he did not take any remuneration nor was he offered any by Shri John O Luke.

(e) PW-7 Shri B Prabhakara Rao did not remember who drew liquor on bill No. 2222, 2223, 2224, 2225, 2226, 0998S, 0998J, and 0825C witness did not make any bills for John O Luke during Jan to Mar '91.

(f) PW-8 Shri M Satyanarayana testified that even in case of liquor books without front and last cover pages he would make bills in any Manager Gr.I sends a chit through any of his colluges. Witness answer at Q.219 indicates that Shri John O Luke brought some books to him with the manager's chit and asked him to prepare the bills. Shri John O Luke told him that the books belongs to Manager Gr.I. He Prepared the bills on seeing the Manager's chits (Q.219 & 224). Witness did not verify as the books ^{as} and chits were sent by Mr Patnaik through John O Luke. PW Ex.24 (Statement dated 23.3.91) submitted by witness also referes to some liquor books brought to him without front and last page covers. Q.230 indicates that witness was asked by Shri TVVS Murthy, Accountant(SG) to make a statement that Mr John O Luke offered him some bottles. But he did not make such a statement

(g) PW-9 Shri A Pushpanadham at Q.256 stated that Shri John O Luke approached him to make bills showing some Manager's chits. These chits ^{were} addressed to John O Luke (Q.258). John O Luke did not offer him any remuneration for making the bills (Q.260). Statement dated 13.3.91 (PW Wx.25) made by witness that he was given 2 bottles of each book was made under pressure from Shri K Venkateswara Rao, Manager Shri K Venkateswara Rao, assured witness that he would be saved if he gave a statement as desired by him. Witness did not this in his statement dated 13.3.91 (Q.269 & 270).

(h) PW-10 Mr MR Sundaram stated that he did not verify the parcitulars of the officer on the liquor book as the officer himself was present alongwith Mr John O Luke did not offer him any remuneration for writing the bills (Q.288).

(i) The Charged Officer in his written statement of Defence dated 20.1.92 broughtout that the keys of the record room were in the custody of PW.1 & PW.2.

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1.28
No case was made out that somebody broke open the record room. According to him this circumstances eliminates all chances of theft. The Charged Officer contended that the PW Ex.3 is alleged confessional statement was dictated by the Area Manager taken down by Mr DCM Patnaik. Charged Officer also alleged that he was forced to sign the statement under threat. In his statement dated 20.2.91 the Charged Officer alleged that the liquor books were given to him by Mr Patnaik and that only with the influence of Mr DCM Patnaik the bills could be written. He has contended that all the Salesman involved denied having received or offered any remuneration. He drew attention to deposition of PW.7 at Q.194 & 202 that he had not made any issues to John O Luke during Jan '91 to Mar '91. The Charged Officer also contended that he destroyed the evidence at the instance of Mr DCM Patnaik. (Page 2 of his written argument of defence).

1.28
(j) In his explanatory statement dated 20.1.92 (Encl. B to the proceedings) the Charged Officer relied on deposition of PW.3 (Mr VD Eswara Rao) that he was not approached by PW.2 for assistance in searching the liquor books. At Q.68 PW.3 denied having found any "Chit" (PW Ex.1). The accused Officer argued that there was no logic in saying that he was unable to give a consistance written statement as he is well educated. His contention was that PW Ex.3 was a document which was dictated by the Area Manager taken down by Mr DCM Patnaik and he was forced to sign (His Clarification on Q/A.47 refers).

10. Analysis and Assignment of evidence:-

(a) The evidence on records indicates that PW-1 found on 8.3.91 that 8 in No. liquor books bearing S.Nos. 0822, 0823, 824, 825, 0994, 998, 999 and 1000 were missing from stock (Q.192 20). He reported the matter to his official superior Shri DCM Patnaik Manager Gr.I who also carried out a cheque and

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25 (112)

ascertain the serial Nos. of the missing books. These books were held on charge since 18.7.89 (Q.36) and were not issued to any officer (Q.49) on checking with the sales register (for liquor) it was ascertained that the bills from the missing book were used for drawing liquor. Shri DCM Patnaik PW-2 reported the matter to the Area Manager on 11.3.91 and under the latter's instruction started an investigation in to the matter. PW-2 took the assistance of Shri VD Eswara Rao, (PW-3) and Shri K Venkateswara Rao (PW-5) to search the premises of the retail liquor shop on 12.3.91. During search PW-3 and Shri VD Eswara Rao found a chit with some numbers scribbled on it (PW-Ex.1) which is a "Kerala State lottery ticket". Both PW-2 and PW-5 identified the scribbled numbers to be in the hand writing of Shri John O Luke the Charged Officer. As Shri John O Luke was on leave for few days prior to 12.3.91 PW-2 & PW-3 proceeded to Shri John O Luke residence. On inquiry from PW-2 the Charged Officer confessed having stolen the liquor books from record room. He also confessed to having drawn liquor on these books and to having destroyed the liquor books on 8.3.91.

1247

1247

(b) As required by PW-2 the Charged Officer reported to the Area Manager, INCS(V) in the afternoon of 12.3.91 (PW Ex.3). Depositions of PW-2, PW-5 & PW-11 go to indicate that this document PW Ex.3 which appears to be a confessional statement of the accused was a voluntary statement, free from any threat coercion influence or promise. As per PW Ex.3 the Charged Officer made a clean confession describing how he had stolen the liquor books from the record room and how with the help of some salesman namely S/S A Pushpanadham, VD Rao, and MR Sundaram he could draw the liquor. The confessional statement (PW Ex.3) indicates that on each occasion of drawal the accused officer had given 4 bottles to the concerned salesman who had paid for the bottle for the retail rates. The statement further adds that the salesman were aware that these books presented by the charged officer were unauthorised and not issued to any officer validly. The Charged Officer disputed the validity of this document. He denied

having dictated the document. His contention was that the document was dictated by PW-11 Area Manager and written down by PW-2. The Charged Officer was forced to sign the document. The reliability and probative value of the document is further discussed in the succeeding paragraphs.

(c) As regards actual drawal of liquor, it was admitted by PW-3 that the writing on bill No.10007, dated 17.2.91 appeared to be his though he could not confirm the salesman signature (Q.88). Though he denied having received any liquor bottles as remuneration from the Charged Officer he admitted that document PW Ex.5 dated 12.3.91 was his written statement. As per the statement PW-3 received 2 bottles on payment for writing the bills. PW-3 believed the Charged Officer in good faith as a colleague, and pleaded to be pardoned.

(d) PW-6's Shri AP Velayudhan's evidence shows that he prepared PW Ex.No.7 to 12. Though he was aware that the concerned officer should draw liquor personally, he believed John O Luke as a colleague and issued liquor without insisting on the officer's presence. PW-6 did not receive any remuneration from the Charged Officer PW-6 admitted PW Ex.13 as the written statement given by him where in he pleaded he had made a mistake in not taking extra care while dealing with liquor issues.

(e) PW-7 B Prabhakara Rao admitted having made the bills marked PW Ex.14,15 & 16. He admitted PW Ex.17 & 18 as his statement where in he had admitted his negligence in not following the due procedure while issuing liquor and pleaded to be excused.

(f) PW-7 Shri M Satyanarayana admitted having prepared bills at PW Ex.19 to 23. He had issued liquor to John O Luke when the latter produced some Chits from Manager Gr.I. The Chits were not addressed to PW-7 but were addressed to charged officer. Witness knew that Manager Gr.I is not authorised to draw liquor. Witness admitted PW Ex.24 as the written statement submitted by him on 23.3.91 where he had admitted that he made a mistake by believing John O Luke.

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(g) PW-9 Shri A Pushpanadham confirmed at Q.250 that PW Ex.26 to 39 were prepared by him. Witness knew that it was not in order to prepare bills without the officer being physically present. He issued liquor to John O Luke when the latter produced Manager's Chits. which were not addressed to witness as salesman but were addressed to John O Luke. Witness knew it was not correct procedure to issue liquor on chits. The Charged Officer did not offer any remuneration. When confronted with PW Ex.25 dated 13.3.91 where in witness admitted having received 2 bottles for each book without any demand witness deplied that PW Ex.25 was given under pressure from Shri K Venkateswara Rao, Manager Gr.II.

(h) The evidence of PW-8 and PW-9 deserves close scrutiny both have pleaded that they issued liquor to the charged officer on seeing the "Chit" from Manager I produced by John O Luke. Both have admitted that the chits were not addressed to the salesman but to the charged officer. Both knew that it is ~~xxx~~ irregular to issue liquor without verification of the drawing officers particulars. Both have admitted issuing liquor without proper check. It may be mentioned here that PW-8 in his written statement PW Ex.24 pleaded guilty but advanced tremendous pressure of work as an excuse for his failure to check liquor issue properly. But he did not make any reference to the alleged chits issued by the manager as the reason for issuing liquor without verification. PW-9 prepared as many as 14 liquor memos (PW Ex.26 to 39) while admitting it was not proper to issue liquor on chits without officers presence, denied having received any remuneration for making the bills. But when confronted with his written statement PW Ex.25 dated 13.3.91, admitting illegal remuneration of 2 bottles for each book he alleged that the statement was made under pressure from Mr KV Rao, Manager Gr.II. He did not make any reference to chits issued by Manager as alleged in his oral evidence.

(i) It would appear from the evidence of PW.8 & 9 both oral and documentary that the charged officer represented to the 2 witness, that the liquor books belonged to officer, who were ~~xxx~~ his close friends and that he was

(115)

requested by them on their behalf and that the books were signed. The representation made by the Charged Officer to the two statements salesman is obviously false and fraudulent as the liquor books in question were not issued to any officer. The reference to Chits issued by Manager Gr.I appears to be a second thought on the part of these two witness to save their own skin. Issue of liquor on books which did not have the front and last page should have put them doubly on the alert. PW-8 & PW-9 admitted negligence and carelessness in ^{their} duties. PW-9 admitted in PW Ex.25 having received bottles for each book without demand. Obviously this plea of carelessness has been advanced as the lesser of the two evils is "Carelessness" & "Acceptance of illegal gratification". The fact that there was no mention of these chits in these two exhibits (PW Ex.24 & 25) clearly indicates that reference to these chits in the oral evidence of the witness is a concocting and an effort to create an excuse for their clandestine activities. It is quite reasonable to expect that no prudent person would act on chits which were not addressed to him except under circumstances which indicate an illegal gain. Though the charged officer cross examined these two witness at length none of the alleged chits were filed for the defence or by the witness themselves who have a stake in proving their innocence.

(j) PW-10 Shri MR Sundaram admitted having made bill No.0822B (PW Ex.40). He made the bill when the concerned officer was physically present. He admitted that PW Ex.41 dated 13.3.91 was his statement made without pressure.

(k) PW-11 Cdr Chandra Shekhar testimony at Q.292 goes to confirm the testimony of PW-2 at Q.45. PW-11 cautioned charged officer that he was not bound to make any statement. His deposition confirms that "PW Ex.3" was the dictation of the charged officer written down by the PW.2 in the presence of PW.5 and PW.11.

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(116)

(1) The following points of recorded evidence call for special detailed evaluation:-

(1) The first point is about document PW Ex.1 as per evidence of PW.2 (Q.45) and PW.5 (Q.114 to 122 & 139) a "Chit" i.e. a Kerala State Lottery Ticket was found around the Retail Liquor Shop during a joint search of that premises on 12.3.91. This Chit was found by Shri Kware Rao (PW.3) and handed over to PW.2. The chit contained some numbers scribbled on it. These numbers happened to tally with the S.No.s of the missing liquor books. PW.2 and PW.5 could identify that the numbers were in the hand writing of Charged Officer. This is an important clue that led to the implication of the Charged Officer.

But PW.3 who was stated to have found the chit during a joint search with PW.2 & PW.5 denied having found any chit. He had also denied having joined them in the search. Thus PW.2 and PW.5 stand contradicted by PW.3.

It may be mentioned that PW.3 though a prosecution witness has the colour of an accomplice having admitted in his written statement (PW Ex.5) dated 12.3.91 that he had received 3 bottles on payment from the charged officer for writing the bills. He admitted PW Ex.5 as his statement at Q.No.94. This statement was given on the same day i.e. 12.3.91 as the one given by the charged officer (PW Ex.3) ~~xxx~~ implicating PW.3 as an accomplice. The deposition of PW.3 from Q.66 to 94 is full of evasive & incomplete answers his typical answers being "I donot remember" (Q.72, 73, 77, 79 & 91) "The writing looks like mine" (Q.88) At Q.93 when asked whether he was offered any remuneration for preparing the bills, he replied in the negative; but when confronted with PW Ex.5 he accepted (Q.95.) The above evasive statement and contradictions, coupled with his ^{own} role as a salesman who helped the accused officer in the latter's clanderstine activities clearly marke PW.3 as an unreliable witness who is unwilling to tell the truth. So his denial of having found PW Ex.1 and handed the same to PW.2 is not credible.

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In I considered evidence of PW,2 & PW,5 on this point as true and reject the evidence of PW,3.

(Now)

(ii) A Crucial document in the Inquiry is PW Ex,3 dated 12.3.91. This document was executed by the accused on the same day on which the investigation started giving no scope for after thoughts & fabrication of stories. Statement of PW,2 (Q,45 & 47) PW,5 (Q,125/128) PW,11(Q,292) clearly indicate that the statement was dictated by the charged officer, and was taken down at his request by PW,2 in the presence of PW,5 & PW,11. It contains an averment by the accused who signed the document that it was his free, voluntary statement without any influence, promise threat or coercion. The same was attested by PW,5. As against this, the accused contended in his written statement of defence, explanatory statement in respect of adverse pieces of evidence and his written argument that this document PW.Ex,3 was extracted from him under threat, that the document was dictated by PW,11, and taken down by PW,2 in the presence of PW,5. The accused cross examined PW,2 PW,5 & PW,11 but chose to be silent on the voluntary of coercive circumstances under which he signed the document.

Is this statement is true?

(iii) This document is ~~was~~ a confessional document clearly indicating the modus operandi i.e. how the accused availed an opportunity to enter the record room on the ostentious purpose of collecting forms, how he snatched some books from a rare rack where they were stacked. The books were retained with the accused till 08.3.91 when they were destroyed. the documents asserts that the accused drew liquor with the help of some salesman mentioned there in who were remunerated at the rate of 4 bottles to each occasion of drawal of liquor. The salesman were aware of the unauthorised nature of the books presented by the accused but co-operated with the accused for illegal gain. The accused ~~the~~ consumed the liquor drawn and also met obligations to friends on payment.

Though the accused pleaded that PW Ex,3 dated 12.3.91 were signed under pressure, the nature of pressure ~~were~~ was not specified. In a criminal case handled by police authority an accused may make a confession

Confession

Before the police (Extra Judicial) for fear of imprisonment physical torture or other third degree police methods in dealing criminals. There may be some inducement offered. Such things are not conceivable in a departmental inquiry. No physical consignment or torture can be thought of in such cases. No case of offer of inducement was made out by the accused. This contention of the accused is only a retracted confession. A conviction based on a retracted confession is still legally permissible if other circumstantial evidence exists. It may be noted that even before execution of PW Ex.3 before PW.11 & PW.2 & PW.5 the accused confessed his guilt before PW.2 vide A/O No.45 and he voluntarily agreed to give a statement to that effect. Q.292 indicates that PW.11 had adequately cautioned the accused that he was under no obligation to make any statement. Moreover PW.3 & PW.9 in their written statements at PW Ex.5 & PW Ex.25 admitted having received remuneration from the accused in the ^{clandestine} ~~signed~~ activity of making bills on unauthorized liquor books and pleaded to be excused.

4 { Under the above circumstances the contention of the accused that PW Ex.3 was extracted from him under threat is not tenable.

rr clear { (ix)iv) Another point raised by the accused in his written defence statement and written argument is how it could be possible for any one to steal from the record room when the keys of that room are under the custody of PW.1 & PW.2 and there was no proof of the record room having been broke open? The answer to this question was given perhaps unwittingly by the accused himself in his statement dated 12.3.91 (PW Ex.3) which gave a clear picture how theft could occur in the circumstances described above.

(v) As regards the chits allegedly issued by the Manager Gr.I evidence of PW.8 & 9 thus clearly establish that liquor was drawn on bills represented by Ex.18 to 23 and 26 to 29 (as per as these two witness were concerned). It was also established

(vide Q.49) that the books were not issued to any officer and as such unauthorized. The untenability of the "Chit" plea has been dealt with in sub paras 10 (h & i).

(vi) The accused in his written statement of defence raised certain points comparing a departmental inquiry to criminal proceedings in a court of law. While ^{there} are some similarities between departmental inquiries and criminal proceedings there are important differences. In his written statement the Charged Officer contended that the suspension order issued by the Area Manager and General Manager were illegal being violative of the provisions of the INCS service ~~regulations~~ rules mentioned there in. It is the duty of the INCS authority to decide on the legality or otherwise of the suspension order. It is beyond the scope of the inquiring authority.

The second point raised by the Charged Officer in his written argument is that the alleged preliminary inquiry was conducted behind the back of the Charged Officer and hence illegal. It may be stated that it is not always necessary to hold a preliminary enquiry if the facts are clear. Moreover when the disciplinary authority chooses to hold a preliminary inquiry it is not legally necessary to associate the Charged Officer with the inquiry. It is merely a fact finding exercise for the benefit of the disciplinary authority to enable it to decide whether a prima-facie case is established or not. In this particular case there was no fact finding inquiry as such since the facts were clear to the disciplinary authority. Some of the workers found to be involved in the clandestine activity of the Charged Officer were merely required to account for their lapses. The statements of such persons namely PW.3 & PW.6 to 10 were supplied to the charged officer alongwith the charge sheet. When they were presented as departmental witness the charged officer cross examined them on their statement. Hence there is no illegality or any lacuna in this respect.

The third point raised ⁱⁿ the written argument for the defence is that no oath was administered to witness and as such their testimony is invalid & inadmissible.

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In a departmental inquiry administration of oath is not necessary. In fact an inquiring authority is not authorised to administer oath.

The Fourth point raised was that the most crucial document PW Ex.3 was extracted from the charged officer under threat. From the examination of the evidence recorded for both the sides, it is observed that for reasons stated in the foregoing paragraphs the statement of the accused was a voluntary statement though he retracted it later. The legality, validity and scope of a retracted statement as regards the innocence or guilt of a charged officer has also been discussed and decided above. A retracted confession statement can be acted upon if other supporting evidence exists. Yet another point raised in the written defence argument is that no "Mediator's Report" was prepared on detecting the loss. The mediators report may be a requirement under the criminal procedure code but not under the rules pertaining to departmental inquiries.

Another contention raised in the defence argument is that PW Ex.1 Kerala State Lottery Ticket containing some scribbled numbers is a forged document & that the hand writing of the accused has not been proved. The finding of the PW Ex.1 by Shri VD Eswara Rao, PW.3 was established by the evidence of PW.2 & PW.5 though contradicted by PW.3 - for reasons already stated above PW.3 is an unreliable witness as he himself had a role in the illegal activity of drawing liquor from the INCS on unauthorised books. As regards identity of hand writing of PW Ex.1, evidence of a handwriting expert is not always necessary. PW.2 & PW.5 who have deposed that they were acquainted with the handwriting of the accused for the last 5/6 years (as superior officers of the accused) identified the handwriting of the accused on PW Ex.1.

Yet another point raised the defence argument is that the "Stock Register of the liquor book or extract from the same was given to the charged officer". This statement is not correct. These documents were made available to the charged officer vide U.3, proceedings dated 26.11.92.

When will
evidence in
PW Ex.1, how
to be
to be
document

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The Charged Officer argued that the officers to whom liquor books were issued are important witnesses and they were not examined and this had prejudiced his defence. This argument is not at all tenable. The 8 books in question were not issued to any officer vide A/O, 49. These were stolen by the Charged Officer from the record room and production of any officer as a witness does not arise.

With reference to the deposition of PW, 10 (MR Sundaram) it was argued that the concerned officer Major MRB Nair was physically present when the liquor bill was made. From the proceedings dated 20.1.92 it is observed that the S.No. of the liquor book issued to Major MRB Nair was 0503 dated 11.9.90 whereas the bill signed by PW, 10 was 0822B dated 5.3.91. This bill happens to be one from one of the 8 missing books. It is clear that the liquor was issued to the charged officer on this bogus bill though the officer might be present there. Moreover the presenting officer dropped the witness Major MRB Nair. On page 29 of the written defence argument the charged officer contended that as per evidence of PW, 11 there were no surplus books and as such the whole case falls to the ground. The argument is fallacious. The Charged Officer did not under-sign the situation. PW, 11 has very succinctly explained the position at A/O 305. It would appear from this statement that no liquor book were used to draw liquor than the actual No. of books issued. The excess credit appearing the sales account was exactly equal to ^{the value} 8 books. Therefore these 8 books representing the extra 8 books actually used were unauthorized, i.e. they were stolen from the record room and put in to use.

Statement of defence dated 20.1.92 page 54 reads "To reveal the source of books reaching into my possession is that Mr DCM Patnaik, Manager Gr. I, INCS offered the same to me telling only to go and get me written these books. x x x x x It was only with the influence of Mr DCM Patnaik that the bills could get written by the salesman at the counter. The last

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35 (52)

2 paragraphs of the defence statement page 50B read "Once the incident came to the notice of the authority Mr DCM Patnaik rushed to my house and asked me to destroyed the evidence left ~~behind~~ behind which I obliged". "From the above stated details I may be allowed to state that I was being only a pawn in the ~~hands~~ ^{from the above state} hands of my superior and a well calculated conspiracy has been made against me to cover up the manager's involvement in this incident".

In his written statement of defence as extracted above and in his 30 page written argument the charged officer implicated Mr DCM Patnaik Manager as one who has connived at, encourage and directed the whole clandestine operation of drawing liquor from the INCS(V). To support his contention regarding involvement of Mr DCM Patnaik he filed alongwith his written argument of defence three chits dated 01.6.90, 19.11.90 and 01.12.90; out of these chits the first one is addressed as "Dear Luke". It carries only an initial. It does not give any information who is the author of the chit or the designation of the person issuing the chit. It was not addressed to any salesman authorising issue of liquor. The remaining two chits were not addressed to any body nor is the initial decipherable. No designation of the author of the chit is indicated. The Charged Officer did not present these chits as defence documents at the time of cross examination of PW.2 Shri DCM Patnaik though he ~~existed~~ carried out an exhausted cross examination. Hence the authenticity of these documents is not established. The present inquiry covers the period Jan 91 to Mar '91. As the documents/chits enclosed to the written arguments of defence pre-date the inquiry period they cannot be taken into account.

What ever may be the relevance and authenticity of these documents, both the written statement of defence and written argument of defence contain an admission by the accused that he did draw liquor on these unauthorised books. Merely implicating Mr Patnaik as a co-conspirator or describing him as a

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Exhibit of
chits argued
by EC

Explanatory
EO with
chits

Yes, but not
it is not
understand
the same

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(53)

L. G. Hall

Kingpin in the conspiracy does not absolve the accused of the facts of his clandestine activities as contained in the charges framed against him and admitted by him now. It is to be noted here that the loss of 8 books was first detected by Mr John Milton and Assistant of Mr DCM Patnaik. If Shri Patnaik were really the main spring of the conspiracy he could have ^{suppressed} this information at his level. Instead he immediately reported the matter on 11.3.91 (The day he got the information) to the Area Manager and started investigation under the Area Manager's instruction. So I am not inclined to believe that Shri DCM Patnaik is in any way involved in this murky affair.

concluded

11. To sumup, in view of foregoing, my findings on charges framed against the accused are as under:-

Wherein

Charge 1:- A loss of 8 liquor books meant for officers was detected on 8.3.91 by PW.1 this was brought to the notice of PW.2 on 11.3.91 (PW.2 being on leave from 8 to 10.3.91). The S.Nos. of missing books were found to be 0/0822, 0823, 0824, 0825, 0994, 0996, 0999 and 1000. During investigation on 12.3.91 a chit (A Kerala State Lottery Ticket) was found by PW.3 which he handed over to PW.2. PW.2 & PW.5 identified that the scribbled numbers of the handwriting of Shri John O Luke the Charged Officer. The numbers and the chit were the same as the S.Nos. of the missing books. As Shri John O Luke on leave on that day PW.2 and PW.3 visited his residence at Door No.61-2-5/3, Ramakrishna Puram, Malkapuram, Visakhapatnam-11. On inquiry by PW.2 Charged Officer admitted having stolen the books and destroyed them by ~~burning~~ burning on 8.3.91 (Q.45). Subsequently on the evening of 12.3.91 the Charged Officer in his confessional statement dated 12.3.91 (PW Ex.3) admitted having stolen the 8 liquor books from the record room and gave a vivid account how he did it. The voluntary nature of the above confessional statement though denied by the charged officer has been amply established by the evidence of PW.2, PW.5 and PW.11 and by the statements of witness PW.6 to 10. It was also established that these 8 books were held on charge since 18.7.89 and were not issued to any officer (Q.36 & 49).

Contd...24

FINDING:- I find that Charge I is proved

CHARGE II:- The Charged Officer admitted at his residence on 12.3.91 having drawn liquor on stolen liquor books (Q.45). He gave a written statement PW Ex.3 on 12.3.91 before the Area Manager PW.11 in the presence of PW.2 & 5. This exhibits PW.Ex.3 indicates that the Charged Officer drew liquor on 8 liquor books. Depositions of witness PW.3, PW.6 to PW.10 conclusively confirm that the Charged Officer did draw liquor on the various bills from the 8 liquor books during the period Jan '91 to Mar '91.

FINDING:- I find that Charge II is proved

CHARGE III:- Deposition of PW.2 (Q.45), statement of PW.5 & PW.11, the voluntary statement given by the accused at PW Ex.3 conclusively prove that the accused did destroy the 8 stolen liquor books by burning them on 8.3.91. He is also admitted to having destroyed the evidence by burning in his written statement of defence dated 20.1.92. (at page 50/B)

FINDING:- I find that Charge III is proved

(PSM MURTY)

Inquiring Authority

38

Annexure I
256

LIST OF WITNESSES

<u>S.No.</u>	<u>Name & Designation</u>	<u>PW Witness No.</u>
1.	Shri John Milton, Asst. Acctt. INCS(V)	PW.1
2.	" DCM Patnaik, Manager Gr.II "	PW.2
3.	" VD Eswara Rao, Salesman "	PW.3
4.	Miss. Savitri, Asst. Acctt. "	PW.4
5.	Shri K Venkateswara Rao, Manager Gr.II	PW.5
6.	" AP Velayudhan, Salesman(SG) "	PW.6
7.	" B Prabhakar Rao, Salesman "	PW.7
8.	" M Satyanarayana, Salesman(SG) "	PW.8
9.	" A Pushpanadham, Salesman "	PW.9
12.	x Cdr Chandra Shukhar	
10.	" MR Sundaram, Salesman "	PW.10
11.	Cdr Chandra Shukhar, IN(Retd. Area Manager, INCS(V)	PW.11

NOTE: Major MR Balachandran Hair, MR 03790, INHS Kalyani Visakhapatnam whose name has been mentioned as prosecution witness to be examined on behalf of the Administration, has been dropped by P.O. as his examination is considered not essential.

DEFENCE WITNESSES

NIL

Sundar
25

37

Annexure
(56)

LIST OF EXHIBITS

<u>S.No.</u>	<u>Description of Document</u>	<u>Exhibit No.</u>
1.	Slip containing S.No. of Stolen liquor books	PW.Ex.1
2.	Report dated 19.3.91 from Shri DCM Patnaik, Manager Gr.I	PW.Ex.2
3.	Statement dated 12.3.91 of Shri John O Luke, Salesman	PW.Ex.3
4.	Cash Memo bearing No.0/1000F dt. 17.2.91, made by Shri KM VDE Rao, Salesman	PW.Ex.4
5.	Statement dated 12.3.91 of Shri VD Eswara rao, Salesman	PW.Ex.5
6.	Statement dated 22.3.91 of Shri KV Rao, Manager Gr.II	PW.Ex.6
7.	Cash Memo No.0/0994A dt.25.1.91 of Shri AP Velayudhan, Salesman	PW.Ex.7
8.	Cash Memo 0/0998A dt.17.1.91 -do-	PW.Ex.8
9.	-do- 0/0998G dt.1.2.91 -do-	PW.Ex.9
10.	-do- 0/0999D dt.19.1.91 -do-	PW.Ex.10
11.	-do- 0/1000A dt.25.1.91 -do-	PW.Ex.11
12.	-do- 0/0999B dt.13.1.91 -do-	PW.Ex.12
13.	Statement dt.22.3.91 of Shri AP Velayudhan Salesman (SG)	PW.Ex.13
14.	Cash Memo No.0/0998 J dt.4.3.91 of Shri B Prabhakarao, Salesman	PW.Ex.14
15.	Cash Memo No.0/825 C Dt.4.3.91 -do-	PW.Ex.15
16.	-do- 0/0998S dt.16.1.91 -do-	PW.Ex.16
17.	Statement dt.30.3.91 of Sri B Prabhakararao, Salesman	PW.Ex.17
18.	-do- 9.4.91 -do-	PW.Ex.18
19.	Cash Memo No.0998B dt.18.1.91 Sri M Satyanarayana, Salesman	PW.Ex.19
20.	-do- 0/0998C dt.19.1.91 -do-	PW.Ex.20
21.	-do- 0/0998E 29.1.91 -do-	PW.Ex.21
22.	-do- 0/0999E 29.1.91 -do-	PW.Ex.22
23.	-do- 0/0999F 23.1.91 -do-	PW.Ex.23
24.	Statement dt.23.3.91 of Sri MS Narayana, Salesman	PW.Ex.24
25.	Statement dt.13.3.91 of Sri A Pushpa-nadham, Salesman	PW.Ex.25

Contd...2

[Signature]

26.	Cash Memo No.0/0822A dt.22.2.91 of Sri A Pushpanadham, Salesman				PW.Ex.26
27.	-do-	0/0823A	22.2.91	-do-	PW.Ex.27
28.	-do-	0/0823B	not Visible	-do-	PW.Ex.28
29.	-do-	0/0824B	23.2.91	-do-	PW.Ex.29
30.	-do-	0/0825A	19.2.91	-do-	PW.Ex.30
31.	-do-	0/0825B	21.2.91	-do-	PW.Ex.31
32.	-do-	0/025E	not visible	-do-	PW.Ex.32
33.	Cash Memo No.0/0994Fdt. 10.2.91 of Shri A Pushpanadham				PW.Ex.33
34.	-do-	0/0998I	8.2.91	-do-	PW.Ex.34
35.	-do-	0/0990K	4.3.91	-do-	PW.Ex.35
36.	-do-	0/1000S	9.2.91	-do-	PW.Ex.36
37.	-do-	0/0998H	7.2.91	-do-	PW.Ex.38
38.	-do-	0/0999G	1.2.91	-do-	PW.Ex.39
39.	-do-	0/0822B	5.3.91 of Shri MR Sundaram, Salesman		PW.Ex.40
40.	-do-	0/1000E	6.3.91 of Shri A Pushpanadham		PW.Ex.37
41.	Statement dated 13.3.91 made by Shri MR Sundaram (ie. PW.10)				PW.Ex.41

LIST OF DEFENCE EXHIBITS

1.	Charged Officer Statement dt.27.3.91	PW.Ex.1
2.	Chit. Dated.01.6.90	PW.Ex.2
3.	Chit dated 19.11.90	PW.Ex.3
4.	Chit dated 01.12.90	PW.Ex.4

[Handwritten signature]

The General Manager,
INCS, Nanyangan,
Colaba, Bombay 5.

From

John O Luke, Salesman (075),
INCS, N. Welbore (58)
Visakhapatnam 14.

U1

Respected Sir,

This is with reference to your letter NO. HO/301/70 dated 01/Sept 1992 pertaining to the enquiry report and findings of the enquiry board submitted to you. At the charged offices I cite all the charges are baseless and unfounded and aiming at saving a particular person from being punished. Anticipating the partial attitude of the enquiry board I had written a letter dated 07/12/91 to you doubt over the reliability of the board.

If you kindly go through the reports of the enquiry conducted, you may find that the charges framed and the findings are feeble and malicious and fully partial. Except the fact that I have got written some liquor books handed over to me by PW-2-SRI. D. C. M. Patnaik on behalf of him with the help of salesmen at the counter, Inquiry authority has failed to prove anything more of my involvement in this affair.

(a) The inquiry authority has established in his analysis that the said mining liquor books were in operation since three months before the detection. In that case it is difficult to believe that nobody could find the shortage during the three monthly verifications. From this you will find that PW-2 Mr. D. C. M. Patnaik was well aware of the shortage and suppressed it for continuous three months and reported to area manager only after it was brought out by somebody else. Consequently by sensing the danger PW-2 rushed my house to inform of the developments. As a manager, there was no need of such a hurried visit unless he had handed over the books to me.

(b) The prime evidence shown for my involvement deputed by inquiry authority is a chit that is a Kerala state lottery ticket having some numbers scribbled on it. The inquiry authority has flatly refused the authenticity of the chits written by PW-2-Mr. D. C. M. Patnaik in collusion liquor citing "It carries only initials. It doesn't give any information who is the author of the chit or the designation of the person of the person." Please refer page NO: 22 para 2 of the enquiry report.

CCN. 10. 11. 92

2

(Here with enclosed these 13) Xerox copies of these chits (49)
two among these chits bearing no name or address of any salesman
for which he (PW-2) said reason that who oblige, write by them only)
It is paradoxical that same person has blindly
accepted as the prime evidence a mere piece of paper said to
be found by some body having some numbers on it. This is a
strong case of inquiry officer's lack of integrity. In the same
para he contends that the chits by PW-2 Mr. D.C.M. Padrick
submitted pre dated the inquiry period. Chidmally it will
be pre dated since the chits was written during the course
of the offence committed.

Again the inquiry authority in his analysis
has ascertained that PW-7 Mr. B. Prabhakar Rao having
categorically stated that he didn't make any liquor bills
for the delinquent in the missing liquor books during Jan-
to March '91. But he admitted writing bill nos: 0998 &
0998J 0825 apparently from the missing liquor books. The inquiry
authority failed to unravel the mystery shrouds behind how
the controversial liquor books reached him. The inquiry board
never proved that the delinquent has paid or collected
liquor. Even the inquiry will be force without establishing
the identity of the kingpin behind all these affairs. This
is a major omission committed by the inquiry authority
so as to give a slip to the real culprit on his escape.

The so-called so-called crucial document in the
inquiry ie- PW-Ex-3 was signed under tremendous pressure.
The inquiry authority being an advocate seems to know only
about the police third degree method to get a statement.
There are some other ways also. The delinquent is
absolutely not willing to give a statement against his con-
science. This is evident from the terms used and the
instruction taken from PW-2 Mr. D.C.M. Padrick in writing, though
I am fully conversant in writing. This representation itself
is submitted particularly in my own handwriting to prove the
hollowness of the contention that the delinquent was not able
to write.

To sum up in view of the foregoing deficiencies found in the inquiry.

For charge 1 The findings are false and not according with the truth

For charge 2 I admit that I have made bills on liquor books handed over to me by PW-2 Mr. D. C. M. Patnaik on behalf of him only in retail shop in complex with the help of salesman at counter. (Not in pick-n-pay)

For charge 3 The delinquent destroyed at the instance of PW-2. Mr. D. C. M. Patnaik 8 in nos liquor books handed over by him in his presence

In conclusion, the entire process of this affair was committed collectively and much to my chagrin I was punished singularly though I am only among them. I request that though the presiding officer and inquiry authority had intentionally overlooked the matter, as I mentioned above you may kindly look into it and do justice. My involvement and my presence in this affair was because of my particular situation during that period and humbly requesting to pardon me. My wife, children and my ailing mother fully dependent on me. The agony and sufferings undergone me and my family for the last 20 months are innumerable. Therefore I request and pray to you sir, my case please be excused and sympathy may be shown to my family. I earnestly swear that I will never commit such mistake in my future career. I sincerely regret the damage caused to the reputation of the organization due to this particular case. Anticipating your kind sympathetic reply.

Thanking you sir

Yours faithfully

Sanjay Kumar

15/10/1991

Sanjay Kumar

15/10/1991

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6

Dear Duke

Please check circulation
don bottles (see from line)
eight (including) in the given
weeks before 1500th. Some
more books managed
for circulation must
be for all home.

W. O. K. 1940

Would be most
obliged if you could
pl. arrange for
the cuts before 1500th.
which is very urgent
pl.

W. O. K. 1940

Please organise
for one Hercules.
and 1 full part to
the officers' club
collection

W. O. K. 1940

-45-

the bottles at the retail rates. ^{12/3/91} each occasion
I had drawn full quota of an officer
i.e. 12 bottles. I have used the liquor for
drinking and for some obligations to friends
on payment.

The above statement was hearded
by me and the information given by
Sri John O Luke, Salesman INCS (V) in
presence of Manager, Retail Shops
Mr. K. Venkateswara Rao Manager G.II.

D. E. M. Patnaik 12/03/91
(D. E. M. PATNAIK)
Manager Area Office
INCS (V).

The above statement recorded by Mr. D. E. M. Patnaik
on the information given by me. I had read this
statement and confirmed to be my statement which has
been given purely voluntarily and with out any influence
or promise. True & correct version.

John O Luke
(John O Luke, Salesman
INCS (V)
12/3/91)

K. Venkateswara Rao 12.3.91
(K. VENKATESWARA RAO
Manager R/shops)

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INDIAN NAVAL CANTEEN SERVICE

Area Office

INCS Building
Naval Base, P.O.

VISAKHAPATNAM - 530 014.

Tel: 7477

Ref.No. V/301/JL

Date 27 Mar '91

Shri. John O Luke,

Salesman

Indian Naval Canteen Service

VISAKHAPATNAM- 530 014.

ORDER

Whereas a disciplinary proceeding against Shri John O Luke, Salesman, Indian Naval Canteen Service, Visakhapatnam, is contemplated.

2. Now, therefore, the undersigned, in exercise of the powers conferred by Rule INCSR 0702, hereby places the said Shri. John O Luke, Salesman, under suspension with immediate effect.

3. It is further ordered that during the period that this order shall remain in force the Headquarters of Visakhapatnam and you shall not leave the Headquarters without obtaining the previous permission of the undersigned.

for INDIAN NAVAL CANTEEN SERVICE

(Chandra Sekhar)
Area Manager (SG)

Copy to :-

47
64
To

The Area Manager

IN.C.S., Naval Base,

Visakhapatnam.

Sub: Reference to my first statement given
regarding unauthorised draw of liquor.

...

Sir,

With reference to my earlier statement given on
12.3.91 regarding unauthorised draw of liquor against officers
book lost from the record room I may be allowed to state some
true pictures of the incident.

When you asked me to write an account of the in-
cident I was mentally disturbed for it, so you assigned Mr.
Patnaik to do the job on behalf of me. So infact the contents
of the earlier statement is of Mr. Patnaik's version not of mine
and not accordance with the truth.

I was compelled not to disclose the neat facts
regarding the loss of books under constant pressure from Mr.
D.C.M. Patnaik Manager II. Once the matter came to light
Mr. Patnaik came to my residence on 11.3.91 and assured me
of all possible help to prevent from all the actions against
me provided I give a statement as given earlier as to cover
their involvement and to evade law.

This all started happening when I spoke to Mr. Patnaik
during a normal check about my poor financial condition. Exploiting
this weakness he promised me of giving some liquor books which
will enable me to operate at my disposal in a fifty fifty basis.
~~XX~~ He also assured me of
covering up the matter in case of any trouble I was tempted
to accept this offer due to my grave financial situation.
This is got an isolated incident in INCS since there are
some more books eg., Book No.1000, 525 operated in this manner

48

(bills)

: 2 :

probably unnoticed by you in this molace. More over if you will examine the bills dating back from 1985 to your surprise you will find that the allegations levelled against me are mere simple and worthless when comparing with the other corrupt practices prevailed.

I earnestly feel that I am being cheated, victimised and become scapegoat of my mistake I did intentionally. If I was not tempted by the above mentioned party, neither I would have neither access to the liquor book nor I would have stranded in this crisis.

Thanking you,

Yours faithfully,

(John.O.Luke)

Salesman, INCS,

Visakhapatnam.

Visakhapatnam

27.3.1991

C.C. to: G.M. Incs Controlled board,

C.N.C. EASTERN NAVAL CO. BOARD,

C.N.S., Command Control Officer,

NAU and C.B.O., PSA

Leading English Daily.

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INDIAN NAVAL CANTEN SERVICE
Head Office

Tel.: 215 31 17
INCC Building,
Navy Nagar, Colaba,
BOMBAY-400 005.

Ref:- No. HQ/301/JOL

Date 17 Feb '93

Shri John C Luke,
Salesman,
INCC VIKRANT-PATNA.

C R E R

1. Shri John C Luke, Salesman, INCC Vikrant Patna in charge of sales vide letter No. 1 to Indian Naval Canteen Service, Head Office letter HQ/301 dated 10 Sep 91.

2. Shri J. C. Luke, Salesman, INCC Vikrant Patna, COO (Genl.), was appointed as Inquiry Authority to enquire into the Articles of charges framed against the said Shri John C Luke vide Head Office letter HQ/301 dated 10 Sep 91.

3. Shri J. C. Luke, Salesman, INCC Vikrant Patna, the Inquiry Officer has found Shri John C Luke guilty of all the charges laid against him involving lack of integrity and gross misconduct.

4. Shri J. C. Luke has been given an opportunity by forwarding a copy of Inquiry Officer's report to him to make any representation/submission in writing within 15 days to the General Manager, Indian Naval Canteen Service, vide INCC Head Office letter HQ/301/JOL dated 01 Dec 92, before deciding the case.

5. Shri J. C. Luke vide his letter dated 15 Oct '92 addressed to the General Manager, Indian Naval Canteen Service, accepted his guilt and requested to be pardoned.

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AND WHEREAS after taking into consideration all aspects of the case and the entire documentary evidence on record, the General Manager, Indian Naval Canteen Service, hereby agrees with the findings of the said Inquiry Authority and finds as under :-

- (a) Shri John C Luke has been given adequate opportunity to defend himself during the inquiry and by forwarding Inquiry Officer's report.
- (b) The documentary evidence produced during the inquiry has amply proved that the said Shri John C Luke is guilty of the Articles of charges framed against him involving lack of integrity and gross misconduct.

NOW THEREFORE, the General Manager, Indian Naval Canteen Service, in exercise of power vested under Rule 0703 (b) (iii) of INCOR, hereby orders the imposition of the penalty of "CUM- PULCRUM DEGRADATION FROM INCS SERVICES", with full terminal benefits as admissible, on Shri John C Luke, Sailor, InCS Visakhapatnam.

FOR DIRECTOR, INDIAN NAVAL CANTEN SERVICE

(VK Mohan)
General Manager

- CC.to:- 1. The Chairman,
for Member Secretary,
INCCS, NEW DELHI.
2. The Area Manager (I.G.),
Indian Naval Canteen Service,
VISAKHAPATNAM.

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(B)

INDIAN NAVAL CANTEEN SERVICE
Area Office

Reply Should be Addressed
to the Area Manager
Tel.7477

Naval Base
VISAKHAPATNAM

Ref.No. V/301/JOL

Date 26 Feb '93

Shri John O Luke
Door No.61-2-5
Ramakrishnapuram
Malkapuram (PO)
Visakhapatnam-530 011

ORDER

Order No.HO/301/JOL dated 17.2.93 received from
the General Manager, INCS, is forwarded, in original.

2. You are to acknowledge receipt of this letter
together with above order.

for INDIAN NAVAL CANTEEN SERVICE

(Chandra Shekar)
Area Manager (SG)

Encl:-As above.

Copy to:-

The General Manager
INCS BOMBAY-400 005.

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Date: 16-4-93

O.A. Regd. No. 1028/93

To

Mr. D. Shikhar Rao
Advocate

Sir,

I am to request you to rectify the defects mentioned below in your application within 14 days from the date of issue of this letter; failing which your application will not be registered and action Under Rule 5 (4) will follow.

1. Index of material papers duly page numbered and signed by the counsel should be filed.
2. Chronology is not clear - Next copy should be filed.
3. Copy of the impugned order should be attached to the Affidavit.
4. Date of the order given in Para 3 (1) and in Para 9 needs correction.
5. Where ever material papers are referred to in O.A. page nos. should be furnished.



Reply
O/S selisankar
K U
24/4/93

Ansolkar
Deputy Registrar (Judl)

(69)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH: AT HYDERABAD.

O.A.No. 383 of 1993

Between:

John Onnoony Luke ..Applicant

A N D

The General Manager,
Indian Naval Canteen Service,
Bombay-400 005 and 2 Others. .Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENTS

I, Chandra Shekhar, Son of Late Sri Sankatha Prasad, Hindu, aged 46 years, residing at Visakhapatnam now temporarily come down to Hyderabad, do hereby solemnly and sincerely affirm and state as follows:

1) I am the Area Manager (SG), Indian Naval Canteen Service, Naval Base, Visakhapatnam, the 3rd respondent herein. I am well acquainted with facts of the case.

2) The material allegations in the Application are all not true or correct and are not admitted and hereby denied. This respondent may not be deemed to have admitted such of those allegations as are not specifically adverted to here.

3) I am restricting this Counter Affidavit only to the issue of jurisdiction. I expressly reserve my right to file a detailed Affidavit traversing the several allegations and contentions with regard to the merits of the case. The same may not be deemed to have been admitted.

4) I am advised to submit that the Honourable Central Administrative Tribunal has no jurisdiction over this matter as Indian Naval Canteen Service is a private organisation and hence the employees of Indian Naval Canteen Service are not

1st page.

Corrections: NIL NB

Chandra Shekhar
Deponent

As per Chapter-I of the Navy Order

Indian Naval Benevolent Association is a

organisation and is registered under the Societies

Act. Similarly, Indian Naval Amenities Fund

is dealt in Chapter-IV of Navy Order Special of 1977 mentioned

above. Para-27 specifically mentions that while preparing

the forecast of expenditure, the items which are provided

from public fund are not to be included'. In other words,

only expenditure that can be incurred from this fund is for

Non-governmental or private requirement of the troops. It

would be further noticed from Chapter-IV of Navy Order

Special 5/77 that one of the sources of income of Indian

Naval Amenities Fund is the entire profits of Indian Naval

Canteen Service. Therefore, the purpose of the Indian Naval

Canteen Service is to augment private funds in the Navy

for expenditure on welfare activities for which no public

fund can be spent. In order to achieve the above mentioned

objectives, Indian Naval Canteen Service was established

under Navy Instructions 14/75, a Xerox copy of which is

placed at Annexure. The Indian Naval Canteen Service has

its own constitution and service regulations. It does not

partake in share of public fund for meeting its requirement

It is in the nature of autonomous body constituted under

NI 14/75 for supply of stores to officers and sailors of

Indian Navy. Under its constitution, the trading capital

is drawn from net surpluses of the trading income remitted

2nd page:

Corrections: NIL

Dependent

Qua

Indian Naval Amenities Fund, which is a Non-Public Naval Fund set up at Naval Head Quarters, to be used for such benevolent or amenities purposes as the Chief of Naval Staff deemed fit. No Ministry or any other department of Government of India has any control over this fund. The employees of Indian Naval Canteen Service are not governed by any Government Rules nor does the C.C.S. (C.C.A.) Rules apply to them. The administration of the I.N.C.S. is vested absolutely in the Indian Naval Canteen Control Board consisting of Naval and Civilian Officers rendering honorary service without any remuneration. All property and rights of I.N.C.S. are held by this Board 'on trust for the object of the organisation'. It is the Board which creates and abolishes posts, and also appoints the General Manager, who is the Chief Executive of I.N.C.S., and all Group-I Officers. All other Staff are appointed by the General Manager, either directly or by delegation. All terms and conditions of service are exclusively contained in and regulated by I.N.C.S. Regulations. The C.C.S. (C.C.A) Rules have no application in respect of service in the I.N.C.S.

The I.N.C.S. is a private body and the accounts of the Organisation is not subject to Audit of the Auditor General of India and the funds do not constitute to public exchequer, as is the case of all departments of Union of India covering under its all ministries. The constitution of I.N.C.S. is independent and the fundamental rules do not ipso facto apply though the constitution has adopted some of the fundamental rules applicable to Govt. Servants. Hence, this Tribunal has no jurisdiction to entertain this petition.

3rd page:

Corrections: NIL

NB

Julius
Deponent

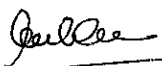
72

:: 4 ::

The Honourable Central Administrative Tribunal, Ernakulam Bench held in the case of Sri Radhakrishnan Vs. Chief of Naval Staff and 4 Others O.A.No.1806 of 1991 dated 28.2.1992 that the Honourable Central Administrative Tribunal has no jurisdiction over the matters of I.N.C.S. employees and that the applicant's grievances cannot be brought within the purview of Section 14(2) of the Administrative Tribunals Act, 1985 treating I.N.C.S. as Department or Instrumentality of the Government of India. Therefore, Honourable Central Administrative Tribunal has no jurisdiction in this matter.


For all the aforesaid reasons the above O.A. may be dismissed.

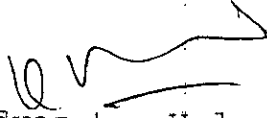
Solemnly affirm on this 29th day of July, 1993 and Deponent signed his name in my presence at Hyderabad.


Deponent

Before me,

4th and last page.

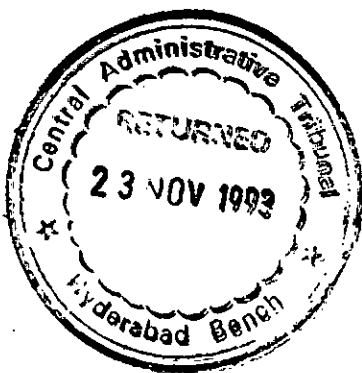
Corrections. NIL 


Advocate, Hyderabad.

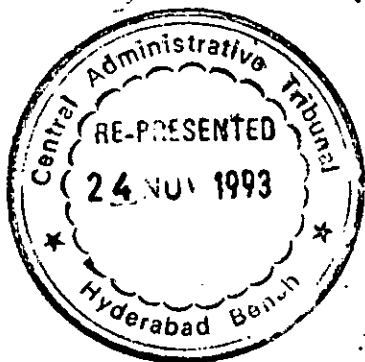
Returned

- ① Endorsement of corrections will should be made under each page.
- ② Attestation of the advocate should be obtained on the last page.
- ③ Volant of the 3rd respondent should be filed.

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12/8/93
S.D.(S)



Objections ① & ② Complied with.
As regards objection ③, it is submitted
that Volant of the 3rd Resp was
filed much earlier to the filing
of Counter i.e. on. 14.7.93.
Hence Complied
all objections - N.Srinivas
23.11.93.



CENTRAL ADMINISTRATIVE TRIBUNAL::
AT HYDERABAD.

O.A.No. 383 of 1993



COUNTER AFFIDAVIT FILED ON BEHALF
OF RESPONDENTS.

R-3

Received copy
K. Vinaya KUMAR

Copy
10/8/93

Received
11/8
N.V. Raghav Reddy
S.D. (S)

M/S. D.V. SITHARAM MURTHY &
R. BRIZ MOHAN SINGH

COUNSEL FOR RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

~~R.A./M.A./S.A. NO.~~

II COURT

ORIGINAL APPLICATION NO.

383 OF 1993

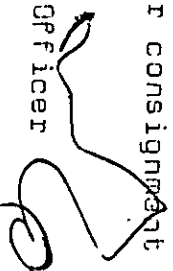
~~TRANSFER APPLICATION NO.~~
~~CERTIFIED~~

~~OLD PETITION NO.~~

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 11/01/26
Counter Signed.
Court Officer/Section Officer



Signature of the Dealing Asst.

74

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDRABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 383 of 1993..

DATE OF DECISION: 10th SEPTEMBER, 1996.

JOHN ONNOONNY LUKE

APPLICANTS

Versus

The General Manager, Indian
Naval Canteen Service, Bombay and RESPONDENTS
others...

FOR INSTRUCTIONS

1. whether it be referred to the
reporters ~~or not?~~ yes

2. Whether it be circulated to
all the Benches of C.A.T.
~~or not?~~ yes

12
MEMBER ()

B.C. Saksena
B.C. SAKSENA, J
Vice Chairman/Member (J)
Allahabad Bench

(75)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..

O.A.No.383/93.

Date: September, 1996.

Between:

John Annoonny Luke .. Applicant.

And

1. General Manager, Indian Naval Canteen Service, Navy Nagar, Colaba Bombay - 400 005.
2. The Member Secretary, Indian Navy Canteen Control Board, Naval Headqrs. D.H.Q.P.O. New Delhi - 110011.
3. Area Manager, Indian Naval Service, Naval Base PO - Visakhapatnam. .. Respondents.

Counsel for the Applicant: Mr. D.Dhilleshwara Rao.

Counsel for the Respondents: Mr. N.V.Raghava Reddy,
Additional Standing counsel
for the Respondents.
Mr. D.V. Sita Ram muany. for R-3

Coram:

HON'BLE SHRI JUSTICE B.C.SAKSENA, (VICE-CHAIRMAN, ALLAHABAD BENCH)
MEMBER, J

HON'BLE SHRI R.RANGARAJAN, MEMBER (A)

..

O R D E R.

(PER HON'BLE SHRI JUSTICE B?C.SAKSENA)

Through this O.A., the applicant who was appointed as a Salesman in Indian Naval Canteen Service (for short INCS) Visakhapatnam challenges the Order dated 17-2-1993 of the General Manager imposing punishment of compulsory retirement.

2. The Respondents have filed their counter raising a preliminary objection and they have reserved their right to file a detailed affidavit traversing the similar

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allegations and contentions with regard to the merits of the case.

3. The preliminary objection is that this Tribunal has no jurisdiction over this matter as the Naval Canteen service is a private Organisation and the Employer of the Indian Naval/Service is a private organisation and hence the employees of Indian Naval Canteen Service are purely private employees. It has further been pleaded that INCS is a part of non-public funds (private funds) for the welfare activity of the Navy. In support of the preliminary objection certain facts have been stated in the short counter which would be considered while dealing with the submissions of the learned counsel for the parties on the preliminary issue. The Respondents maintain that the applicant's grievance cannot be brought within the purview of Sec.14(2) of the Administrative Tribunals Act treating INCS as Department of instrumentality of Government of India. The applicant has filed rejoinder affidavit to meet the preliminary objection. The learned counsel for the applicant submitted that INCS is an "Other Authority" within the meaning of Article 12 of the Constitution of India.

4. Section 14(1)(a) of the Administrative Tribunals Act which is relevant for purpose of deciding

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the issue before us reads as under:

"S.14. JURISDICTION, POWERS AND AUTHORITY OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL --

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to --

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian."

The provisions of Sec.14(2) and (3) of Administrative Tribunals Act which are also relevant read as under:

"S.14(2): The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section(3) to local or other authorities within the territory of India under the control of the Government of India and to corporations or Societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

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Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

- (3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to --"

These provisions would go to show that unless the Central Government issues a Notification in respect of local or other authorities within the territory of India under the control of Government of India or corporations or societies owned or controlled by the Government, not being a local or other authority or corporation or society owned or controlled, the Tribunal cannot exercise the power in respect of the grievance raised by the employees of a local or other authorities aforesaid.

5. The learned counsel for the applicant submitted that INCS should be treated as other Authority within the meaning of Article 12 of the Constitution

of India since it is getting assistance from the Defence and the management and policies of the Canteen Service are under the control and direction of the Board consisting of the Flag Officer Commanding-in-Chief, Western Naval Command, Bombay, the Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam, the Flag Officer Commanding, Southern Naval Area, Cochin, the General Manager, Indian Naval Canteen Service, Bombay, the Area Managers, INCS Bombay, Cochin & Visakhapatnam. He submits that the regulations of INCS clearly envisage that the organisation is established under the Orders of Government of India. He further submitted that the age of superannuation of the employees of INCS is 58 years on par with the Central Government employees and the salaries are also on par with the Central Government employees and Pay Commission recommendations are also implemented and medical facilities are also available at the Defence Hospital which is exclusively for service personnel and INCS Employees. ~~Union~~

6. The learned counsel for the Respondents on the other hand cited a decision of the Ernakulam Bench of the Central Administrative Tribunal reported in 1992(20)ATC 332 (R.RADHAKRISHNAN V. CHIEF OF NAVAL STAFF). In the O.A., before the Ernakulam Bench

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the Applicant was working as a Special Grade Salesman in the INCS. A similar objection as in the present O.A., was raised before the Ernakulam Bench and was considered. After noticing the provisions of Sec.14 and the composition, purpose and objectives of the the Bench INCS/ came to the conclusion that such an organisation cannot be brought within the purview of Sec.14(2) over which the Tribunal would have any jurisdiction unless a notification is issued by Government of India to bring the same within the purview of the Act. Since admittedly no such notification has been issued under Section 14(2) of the Act so far bringing the INCS within the purview of the Act, it was held that the O.A., was not maintainable. Before the Ernakulam Bench a copy of the resolution of the Ministry of Defence dated 31-3-1977 was also produced and was considered. The said resolution indicated that the Canteen Stores Department had been integrated with the Ministry of Defence and made it as part of Government Department. The Bench, however, was not impressed and took the view that the said resolution does not in any way show that INCS has been integrated as a Government Department because the applicant was admittedly ~~is~~/not working in the Canteen Stores Department and he was an employee of INCS

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attached to the Naval Service. The contention based on the resolution was therefore not accepted.

We are in respectful agreement with the view taken by the Ernakulam Bench in R.RADHAKRISHNAN V. CHIEF OF NAVAL STAFF (Supra). In the absence of any notification under Sec.14(2) a grievance of an employee of INC would not fall within the purview of the jurisdiction of this Tribunal, even if it could be held to be an 'Other Authority' under the control of Government of India. On the pleadings on record, it is difficult to accept that INCS is an instrumentality of Government of India.

7. The learned counsel for the applicant submitted that under sub-sec.(3) of Sec.14, the Central Administrative Tribunal has been empowered to exercise all the jurisdiction, powers and authority exercisable immediately ~~before~~ on the date this ~~the~~ Bench of the Tribunal came into existence by all Courts except the Supreme Court. The submission of the learned counsel for the applicant was that since before the constitution of this Bench of the Tribunal the matter could have been dealt with by the High Court under Article 226 of the Constitution of India, this Tribunal to the exclusion of the jurisdiction of the High Court can deal with this O.A. We are not impressed.

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8. The learned counsel for the applicant on the one hand maintains that INCS is an "Other Authority" under Article 12 of the Constitution. Even if that is accepted, unless a notification under Sec.14(2) of the Central Administrative Tribunals Act is issued, bringing the INCS within the jurisdiction of this Tribunal ~~is agreed~~ ^{A/T.} the provisions of the Act. will not apply. The Tribunal cannot exercise jurisdiction since under sub-sec.(3) of Sec.14 it has been provided that the jurisdiction would be exercisable except as otherwise expressly provided in the Act. The exception is Section 14(2). For want of notification, the provisions of sub-sec(3) of Sec.14 would clearly stand excluded.

9. The learned counsel for the applicant cited the Supreme Court Decision in AJAY HASIA V. KHALID MUJIB (A.I.R.1981 S.C. 487). In the said decision the question under consideration was "Whether a Corporation is an instrumentality or agency of the Government?" The Supreme Court held -- "~~that~~ it must be held to be an 'authority' within the meaning of Art.12." ~~and~~ The said decision is wholly unhelpful for the purpose of issue under consideration. Even if INCS could be said to be an authority within the meaning of Article 12 of the Constitution of India the jurisdiction of this Tribunal cannot be extended to Employees of INCS unless a notification under Sec.14(2) of the Act has been issued which was admittedly not issued so far.

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10. The pleadings on behalf of the applicant are wholly perfunctory and they do not squarely meet the preliminary objection. The plea taken by the applicant that INCS is getting financial assistance and the Management and Policies of the Canteen service are under the control and direction of the Board were considered and repelled by the Ernakulam Bench in R. RADHAKRISHNAN V. CHIEF OF NAVAL STAFF (Supra). The applicant, as an employee of the INCS, cannot claim to have been appointed to any Civil service of the Union or Civil post under the Union or to a post connected with Defence or in Defence service. He does not meet the requirements stipulated in Sec. 14(1)(a) of the Central Administrative Tribunals Act. As noted by Ernakulam Bench in the case before it, "the INCS has been established under the Orders of the Government with the main object of carrying out the business of purchase and providing foodstuff, provisions of all kinds including beer and liquor, cigars, cigarettes, tobacco, stationery and such other articles to the officers, and Sailors of the Navy and sell the same to Members of the Naval Forces. The Naval Canteen is controlled by the Indian Naval Canteen Control Board constituted under the orders of the Chief Naval Staff and consisted of a Chairman and few members representing various branches of the Navy. The Indian Naval Canteen Board is working as a trust

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for carrying out the objects envisaged in the memorandum." Even so, in our opinion the Ernakulam Bench has rightly held that the grievance raised before it was not a service matter pertaining to or in connection with the affairs of the Union and coming within sub-sec.(1) (a) of Section 14 of the C.A.T.Act. //

11. The respondents in their counter affidavit have pleaded that as per Chapter I of the Navy Order Special 5/77, the Indian Naval Benevolent Association is a charitable organisation and is registered under the Societies Registration Act. It is pleaded that similarly Indian Naval Amenities Fund is dealt with in Chapter-IV of Navy Order Special of 1977 aforesaid. On the basis of Para 27 of the said Order the Respondents have pleaded that expenditure that can be incurred from the fund is ^{for} ~~a~~/non-Governmental or for private requirements of the troops. It has further been indicated that one of the sources of the income of the Indian Naval Amenities Fund is the entire profits of Indian Naval Canteen Service. Therefore, the purpose of the Indian Naval Canteen is to augment private funds for expenditure on welfare ^{for} activities ~~of~~/which no public fund can be spent. It has further been contended that INCS has its own constitution and service regulations. It does not partake in share of public fund for meeting its

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requirements. It is in the nature of autonomous body constituted under NI 14/75 for supply of stores to officers and sailors of Indian Navy. No Ministry or any other Department of Government of India has any control over the Indian Naval Amenities Fund. The Employees of the INCS it is stated are not governed by any Government Rules nor CCS(CCA) Rules apply to them. The Administration of INCS is vested absolutely in the Indian Naval Control Board consisting of Naval and Civilian Officers rendering honorary service without any remuneration.

12. It has further been pleaded that INCS is a private body and ~~the~~ is not subjected to Audit of the Auditor General of India and the funds do not constitute to public exchequer as in the case of all Departments of Union of India covering under all its ministries.

13. We wish that the learned counsel for the parties ~~parties respondents~~ had cited the relevant decisions of the Hon'ble Supreme Court on the question of Canteens ~~employees~~ being treated as employees of the Departments having the Canteens. In this context reference ^{may be} ~~was~~ made to a Supreme Court decision reported in 1996(33)ATC 194 (S.C.) (UNION OF INDIA (RAILWAY BOARD) Vs. J.V.SUBBIAH).

The question before the Supreme Court was -

"Whether the officers, employees and servants appointed

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by a Coperative Society/Stores registered under the Co-operative Societies Act of a State of Societies Registration Act and organised as a welfare measure to inculcate cooperative movement, self-help and thrift among the officers and servants of Railway Administration, can be declared to be regularly appointed Railway employees?" and "whether they are Railway employees defined under the Railway Establishment Manual and entitled to all the consequential benefits?" In the aforesaid case, the employees of the State Co-operative Societies did not claim that they were appointed to a service under the supervision and control of the Railway Board but ~~could~~ claimed parity ~~with~~ with the Railway servants on the basis of a decision of Apex Court in 1999 SCC (L&S) 632 (M.M.R. KHAN V. UNION OF INDIA)

The Hon'ble Supreme Court in UNION OF INDIA V. SUBBIAH AND OTHERS (Supra) distinguished the decision in ^{M.M.R.} KHAN V. UNION OF INDIA (Supra) case on the basis that in the said case establishment of canteen was one of the mandatory requirements ^{as} a part of efficient Railway Administration. Section 46 of the Factories Act ^{was} hold to govern the situation. The ~~contention is that the~~ observations made in paragraph 17 of the said decision equally applies to ~~the~~ INSC employees. They are not governed by the CCS(CCA) Rules but on the applicant's own showing are governed by regulations framed by the Indian Naval Canteen Board. The Discipline and control over the employees of INSC are provided in the regulations.

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In Paragraph 18 Their Lordships of the Hon'ble Supreme Court were pleased to make a very relevant observation which is as under:

"If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or veil between the Railway Administration and the employees, the same principle would equally be extendable to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of government employees. Equally, other employees appointed in other Cooperative Stores/Societies organised by appropriate Government would also be entitled to the same status as government servants. Appointment to a post or an office under the State is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified."

The decision of the Hon'ble Supreme Court in RAILWAY INSTITUTE EMPLOYEES' ASSOCIATION Vs. UNION OF INDIA (1990 SCC(L&S) 323) is also appropriate to be referred to. Therein the question was "Whether the employees appointed in the Institutes or clubs maintained by the Railway employees as a welfare measure could

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be treated as Railway employees on par with Railway canteen employees (statutory or non-statutory recognised canteens)?" fact that The Hon'ble Supreme Court took note of the Institutes or Clubs though recognised by the Railway, was only a welfare measure and thus formation of the institutes or clubs was not mandatory. The same situation obtains in the case before us. The INCS has been established as a welfare own private measure. It has its funds. As observed by the Hon'ble Supreme Court in the said case if the employees working in the Institutes or clubs are recognised as Railway employees, it will have a snowballing effect on other welfare activities carried out by the Railway and similar activities carried "on by all other organisations"

14. On the material available on record, we are not satisfied that any Master and Servant relationship exists between the Ministry of Defence and the employees of Indian Navy Canteen Service.

15. In view of the discussion hereinabove, we are persuaded to uphold the preliminary objection raised by the Respondents.

16. At the hearing of the O.A., the learned counsel for the applicant wanted us to permit him to make his submissions on the merits of the challenge in regard to the impugned Order. We have indicated that it would be better to deal with the preliminary objection first and if the preliminary objection fails, the O.A., can be

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taken up for decision on merits. Since the preliminary objection is upheld, the O.A., deserves to be dismissed as not maintainable. It is accordingly dismissed.

No costs.



R. RANGARAJAN,

MEMBER (A)



B.C. SAKSENA, J

MEMBER (J)

Date: th 10 September, 1996.

Pronounced in open Court.


18/9/96
Dy. Registrar (5)

Copy to:-

1. General Manager, Indian Naval Canteen Service, Navynagar, Colaba Bombay-005.
2. The Member Secretary, Indian Navy Canteen Control Board, Navy Headquarters. DHQ PO, New Delhi.
3. Area Manager, Indian Naval Service, Naval Base PO, Visakhapatnam.
4. One copy to Sri. D.Dhilleshwara Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.V.Raghava Reddy, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. Copy to All Benches and Reporters as per standard list of CAT, Hyd.
8. One spare copy.
9. One copy to Sri D.V. Sitaram Murthy, advocate,
H.No. 1-1-591, Gandhi nagar, Near Canara Bank, Hyd-380.

Rsm/-

24/10/96

17/10/96

DA-383/93

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

Hon Mr Justice B.T. Saksena, VC
THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 10/9/96

ORDER/JUDGEMENT
R.A./C.B./M.A.NO.

in
O.A.NO. 383/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

6. Spall Copies

C.O.
M. Chakraborty
consents on record
and coram on the merits
Completed
20/10

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
श्रेष्ठ/DESPATCH
1-9 OCT 1996
हैदराबाद बेंच
HYDERABAD BENCH

3. The preliminary objection is that this Tribunal has no jurisdiction over this matter as the Naval Canteen service is a private Organisation and the Employer of the Indian Naval Canteen Service is a private organisation and hence the employees of Indian Naval Canteen Service are purely private employees. It has further been pleaded that INCS is a part of non-public funds (Private Funds) for the welfare activity of the Navy. In support of the preliminary objection certain facts have been stated in the counter statement which would be considered while dealing with the submissions of the learned counsel for the parties on the preliminary issue. The Respondents maintain that the applicant's grievance cannot be brought within the purview of Sec.14(2) of the Administrative Tribunals Act treating INCS as Department of instrumentality of Government of India. The applicant has filed rejoinder affidavit to meet the preliminary objection. The learned counsel for the applicant submitted that INCS is an "Other Authority" within the meaning of Article 12 of the Constitution of India.

4. Section 14(1)(a) of the Administrative Tribunals Act which is relevant for purpose of deciding the issue before us reads as under:

"S.14. JURISDICTION, POWERS AND AUTHORITY OF THE CENTRAL ADMINISTRATIVE TRIBUNAL--

1. Save as otherwise expressly provided in this Act, the Central Administrative Tribunal, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to--

- (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or to a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian."

contd...

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.383/93

Between:

Date of Order:10.9.96.

John Anthony Luke

...Applicant

And

1. The General Manager,
Indian Naval Canteen Service,
Navy Nagar, Colaba,
Bombay.
2. The Member Secretary,
Indian Navy Canteen Control Board,
Naval Head Quarters, D.H.Q.P.O.,
New Delhi.
3. Area Manager, Indian Naval
Service, Naval Base, P.O.,
Visakhapatnam.

...Respondents.

Counsel for the Applicant : Mr.D.Dhilleswar Rao

Counsel for the Respondents : Mr.N.V.Raghava Reddy, Addl.CSB.
Mr.D.V.Sitaram Murthy, for R-3.

CCR No:

THE HON'BLE JUSTICE SHRI B.C.SEKSENA : VICE CHAIRMAN (ALLAHABAD BENCH)

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Through this O.A., the applicant who was appointed as a
Sailor in Indian Naval Canteen Service (for short INCS)
Visakhapatnam challenges the order dated 17.2.1993 of the
General Manager imposing punishment of compulsory retirement.

2. The respondents have filed their counter raising a
file detailed affidavit traversing the similar allegations with
regard to the merits of the case.

contd...

are under the control and direction of the Board consisting of the Flag Officer Commanding in Chief, Western Naval Command, Bombay, the Flag Officer Commanding in Chief, Eastern Naval Command, Visakhapatnam, the Flag Officer Commanding, Southern Naval Area, Cochin, the General Manager, Indian Naval Canteen Service, Bombay, the Area Managers, INCS Bombay, Cochin & Visakhapatnam. He submits that the regulations of INCS clearly envisage that the organisation is established under the orders of Government of India. He further submitted that the age of superannuation of the employees of INCS is 58 years on par with the Central Government employees and the salaries are also on par with the Central Government employees and Pay Commission recommendations are also implemented and medical facilities are provided for service personnel and INCS Employees.

6. The learned counsel for the Respondents on the other hand cited a decision of the Ernakulam Bench of the Central Administrative Tribunal reported in 1992(20) ATC 332 (R. RADHAKRISHNAN V. CHIEF OF NAVAL STAFF). In the O.A. before the Ernakulam Bench the applicant was working as a Special Grade Salesman in the INCS. A similar objection as in the present O.A. was raised before the Ernakulam Bench and was considered. After noticing the provisions of Sec. 14 and the composition purpose and objectives of the INCS the Bench came to the conclusion that such an organisation cannot be brought within the purview of Sec. 14 (2) over which the Tribunal would have any jurisdiction unless a notification is issued by Government of India to bring the same within the purview of the Act. Since admittedly no such notification has been issued under Section 14(2) of the Act so far bringing the INCS within the purview of the Act, it was held that the O.A. was not maintainable. Before the Ernakulam Bench a copy of the resolution of the Ministry of Defence dated 24.3.1977 was also produced and was considered. The said resolution indicated that the Canteen Stores Department had been integrated with the Ministry of Defence and made it as part of Government Department. The Bench, however, was not impressed and took the view that the said resolution does not in any way show that INCS has been

contd...

The provisions of Sec.14(2) and (3) of Administrative Tribunals Act which are also relevant read as under:

"S.14(2). The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India under the control of the Government of India and to corporations or Societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date of with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society before that date by all courts (except the Supreme Court in relation to--"

These provisions would go to show that unless the Central Government issues a Notification in respect of local or other authorities within the territory of India under the control of Government of India or corporations or societies owned or controlled by the Government, not being a local or other authority or corporation or society owned or controlled, the Tribunal cannot exercise the power in respect of the grievance raised by the employees of a local or other authorities aforesaid.

5. The learned counsel for the applicant submitted that INCS should be treated as other Authority within the meaning of Article 12 of the Constitution of India since it is getting assistance from the Defence and the management and policies of the Canteen Services

contd...

In the said decision the question under consideration was "Whether a Corporation is an instrumentality or agency of the Government" The Supreme Court held -- " it must be held to be an 'authority' within the meaning of Art.12. The said decision is wholly unhelpful for the purpose of issue under consideration. Even if INCS if could be said to be an authority within the jurisdiction of this Tribunal cannot be extended to Employees of INCS unless a notification under Sec.14(2) of the Act has been issued which was admittedly not issued so far.

10. The pleadings on behalf of the applicant are wholly perfunctory and they do not squarely meet the preliminary objection. The plea taken by the applicant that INCS is getting financial assistance and the Management and policies of the Canteen service are under the control and direction of the Board were considered by the Hon. Ernakulam Bench in R. RAJAGOPALAN vs. CHIEF OF NAVAL STAFF (Supra). The applicant, an employee of the INCS cannot claim to have been appointed to any Civil service of the Union or Civil post under the Union or to a post connected with Defence or in Defence service. He does not meet the requirements stipulated in Sec.14(1)(a) of the Central Administrative Tribunal Act. As noted by Ernakulam Bench in the case before it, "the INCS has been established under the Orders of the Government with the main object of carrying out the business of purchasing and providing foodstuff, provisions of all kinds including beer and liquor, cigars, cigarettes, tobacco, stationery and such other articles to the officers, and Sailors of the Navy and sell the same to Members of the Naval Forces. The Naval Canteen is controlled by the Indian Naval Canteen Control Board constituted under the Orders of the Chief of Naval Staff and consisted of a Chairman and few members representing various branches of the Navy. The Indian Naval Canteen Board is working as a trust for carrying out the objects envisaged in the memorandum." Even so, in our opinion the Ernakulam Bench has rightly held that the grievance raised before it was not a service matter pertaining to or in connection with the affairs of the Union and coming within sub-sec.(1)(i) of Section 14 of the C.A.T. Act.

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integrated as a Government Department because the applicant admittedly was not working in the Canteen Stores Department and he was an employee of INCS attached to the Naval Service. The contention based on the resolution was therefore not accepted. We are in respectful agreement with the view taken by the Ernakulam Bench in *R. RADHAKRISHNAN V. CHIEF OF NAVAL STAFF* (Supra). In the absence of any notification under sec.14(2) a grievance of an employee of INCS would not fall within the purview of the jurisdiction of this Tribunal, even if it could be held to be an 'Other Authority' under the control of Government of India. On the pleadings on record, it is difficult to accept that INCS is an instrumentality of Government of India.

The learned counsel for the applicant submitted that under sub-section (3) of Sec. 14, the Central Administrative Tribunal has been empowered to exercise all the jurisdiction, powers and authority exercisable immediately on the date this Bench of the Tribunal came into existence by all Courts except the Supreme Court. The submission of the learned counsel for the applicant was that since before the constitution of this Bench of the Tribunal the matter could have been dealt with by the High Court under Article 226 of the Constitution of India, this Tribunal to the exclusion of the jurisdiction of the High Court. We are not impressed.

8. The learned counsel for the applicant on the one hand maintained that INCS is an "Other Authority" under Article 42 of the constitution. Even if that of the Central Administrative Tribunal's Act is issued, bringing the INCS within the jurisdiction of this Tribunal the provisions of the A.T. Act. will not apply sub-sec.(3) of Sec.14 it has been provided that the jurisdiction would be exercisable except as otherwise expressly provided in the Act. The exception is Section 14(2). For want of notification, the provisions of sub-sec.(3) of Sec.14 would clearly stand excluded.

9. The learned counsel for the applicant cited the Supreme Court Decision in *AJAY HASIA V. KHALID MUJIB* (A.I.R. 1981 S.C.437)

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appointed by a Cooperative Society/Stores registered under the Co-operative Societies Act of a State or Societies Registration Act and organised as a welfare measure to inculcate cooperative movement, self-help and thrift among the officers and servants of Railway employees." and "whether they are Railway employees defined under the Railway Establishment Manual and entitled to all the consequential benefits?" In the aforesaid case, the employees of the State Co-operative Societies did not claim that they were appointed to a service under the supervision and control of the Railway Board but claimed parity with the Railway servants on the basis of a decision of Apex Court in 1990 SCC (L&S) 632 (MMR. KHAN VS. UNION OF INDIA). The Hon'ble Supreme Court in UNION OF INDIA VS. SUBBIAH AND OTHERS (Supra) distinguished the decision in M.M.T. Khan vs. Union of India (Supra) case on the basis that in the said case establishment of canteen was one of the mandatory requirements as a part of efficient Railway Administration. Section 46 of the Factories Act was held to govern the situation. The observations made in paragraph 17 of the said decision equally applies to INCS employees. They are not governed by the CCS(CCA) Rules but on the applicant's own showing are governed by regulations framed by the Indian Naval Canteen Board. The Discipline and control over the employees of INSC are provided in the regulations. In paragraph 18. Their Lordships of the Hon'ble Supreme Court were pleased to make a very relevant observation which is as under:

"If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or veil between the Railway Administration and the employees, the same principle would equally be extendable to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of government employees. Equally, other employees appointed in other Cooperative Stores/ Societies organised by appropriate Government would also be entitled to the same status as government servants. Appointment to a post or an office under the State is regulated under the statutory rules

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11. The respondents in their counter affidavit have pleaded that as per Chapter I of the Navy Order Special 5/77, the Indian Naval Canteen Association is a charitable organisation and is registered under the Societies Registration Act. It is pleaded that similarly Indian Naval Amenities Fund is dealt with in Chapter-IV of Navy Order Special of 1977 aforesaid. On the basis of Para 27 of the said order the respondents have pleaded that expenditure that can be incurred from the fund is for non-Governmental or for private requirements of the troops. It has further been indicated that one of the sources of the income of the Indian Naval Amenities Fund is the entire profits of Indian Naval Canteen is to augment private funds for expenditure on welfare activities for which no public fund can be spent. It has further been contended that INCS has its own constitution and service regulations. It does not partake in share of public fund for meeting its requirements. It is in the nature of autonomous body constituted under MI 14/75 for supply of stores to officers and sailors of Indian Navy. No Ministry or any other Department of Government of India has any control over the Indian Naval Amenities Fund. The employees of the INCS it is stated are not governed by any Government rules nor CCS(CCA) Rules apply to them. The Administration of INCS is vested absolutely in the Indian Naval Control Board consisting of Naval and Civilian Officers rendering honorary service without any remuneration.

12. It has further been pleaded that INCS is a private body and is not subjected to Audit of the Auditor General of India and the funds do not constitute to public exchequer as in the case of all Departments of Union of India covering under all its ministries.

13. We wish that the learned counsel for the parties had cited the relevant decisions of the Hon'ble Supreme Court on the question of Canteen employees being treated as employees of the Departments having the Canteens. In this context reference may be made to a Supreme Court decision reported in 1996 (33)ATC 194 (S.C)(UNION OF INDIA (RAILWAY BOARD) VS. J.V. SUBBIAH). The question before the Supreme Court was- "Whether the officers, employees and servants

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can be taken up for decision on merits. Since the preliminary objection is upheld, the O.A. deserves to be dismissed as not maintainable. It is accordingly dismissed. No costs.

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either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified."

The decision of the Hon'ble Supreme Court in RAILWAY INSTITUTE EMPLOYEES' ASSOCIATION VS. UNION OF INDIA (1990 SCC (L&S) 323) is also appropriate to be referred to. Therein the question was "Whether the employees appointed in the Institutes or clubs maintained by the Railway employees as a welfare measure could be treated as Railway employees on par with Railway canteen employees (statutory or non statutory recognised canteens)?" The Hon'ble Court held that the Institute or Clubs though recognised by the Railway, was only a welfare measure and thus formation of the institutes or clubs was not mandatory. The same situation obtains in the case before us. The INES has been established as a welfare measure. It has its own private fund. In the said case if the employees working in the Institutes or clubs are recognised as Railway employees, it will have a snowballing effect on other welfare activities carried out by the Railway and similar activities carried "on by all other organisations"

14. On the material available on record, we are not satisfied that any Master and Servant relationship exists between the Ministry of Defence and the employees of Indian Navy's Canteen Service.

15. In view of the discussion hereinabove, we are persuaded to uphold the preliminary objection raised by the respondents.

16. At the hearing of the O.A., the learned counsel for the applicant wanted us to permit him to make his submissions on the merits of the challenge in regard to the impugned order. We have indicated that it would be better to deal with the preliminary objection, first and if the preliminary objection fails, the C.A.

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