OA.1189/95

9-4-99.

MA.282/99 is disposed of. Order vide MA ~~Sheets~~ Sheets. No costs.

HRRN
MJ)

HRSJP
MJ)

5/6/99.

MA.410/99 is dismissed. order vide MA sheet. No costs.

HRRN
MJ)

HRSJP
MJ)

27.4.2000

MA 368/2000 disposed of. Order on separate sheets. No costs.

HB
M

30/6/2000

The MA No. 680 is dismissed, as in MA docketed

HRRN
MJ)

HRSJP
MJ)

OA 1169/95. 4

DATE	OFFICE NOTE	ORDERS OF THE TRIBUNAL
Before Registrar 12-3-96. No representation on either side. For memo and RS call on 9/4/96. Regr. Na No representation. For memo in RS. call 4-6-96 4.6.96 No representation. For memo and RS call on 25.6.96. Regr. 25.6.96 No representation. for memo and RS call on 30.7.96. Regr. 30.7.96 Memo & R.S. filed. For rejoinder if any, call on 6.8.96. Regr. 6.8.96 No representation No rejoinder file. Keep the case in the list of 1995 cases and take steps per directions. Regr.	24-9-97 At the request of the respondent counsel, list on 23/10/97. Rejoinder if any in the meanwhile. HGSJP HRRN M(A). 24-10-97. List this O.A. for final hearing before admission on 19.11.97. If any addl. affidavit to be filed respondents file a MA, stating on addl. affidavit if any. No further adjournment will be given. HGSJP M(J)	

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A. No. 1189 of 1995

M. Gopala Krishna Murthy. Applicant (S)

VERSUS

The principal Accountant General Audit-I. A.P. Hyd & 2others Respondent (S)

DATE	OFFICE NOTE	ORDERS OF THE TRIBUNAL
16-10-95		Admit. List for finalising hearing on 1-12-95. Reply if any in the meanwhile. HRBy MCAJ VC 16-10-95
	Before Registrar. 14-12-96. Notices to R-2 & R3 Served. R-1 not returned but deemed to have been served. For memo and RS call on 2-1-96. Regr.	
2/1/96	No representation on either side. For memo and RS call on 6/2/96. Regr.	
Admit Notice 16/10/95	6.2.96 No representation on either side. For memo & R.S. call on 12.3.96. Regr.	

OA. 1189/95

DATE	OFFICE NOTE	ORDER

19-11-97.

Heard Mr. K. Venkateswara Rao for the applicant and Mrs. Sakthi for Mr. G. Parameshwara Rao for the respondents.

The file containing the proceedings right from the day the applicant was dismissed till the appellate order was issued should be produced at the time of next hearing.

List it on 10-12-97.

HBSJP
M(J)

HRRN
M(A)

11.12.97

Heard Mr. K. Venkateswara Rao, for the applicant and Smt. Shakti for Mr. G. Parameswara Rao, for the respondents.

Judgement Reserved.

HBSJP
M(J)

HRRN
M(A)

avl/

5-1-98

Judgement Pronounced. OA dismissed, order vide Separate Sheets. No costs.

HBSJP
M(J)

HRRN
M(A)

(76)

OA.1189/95.

Date	Office Note	ORDER
		29-9-98. Judgement pronounced. OA is allowed. Order vide separate sheets. No costs. HBSJP MIJ HRRN MIJ 18.1.99: M.A., 932/98 is disposed of. No costs. HBSJP MIJ HRRN MIJ SSJ

OA 1189/95.

Date	Office Note	ORDER

7/9/98.

RA. 18/98.

RA disposed of: order vide separate sheets.

RA by order dt. 7-9-98 the earlier order dt. 5-1-98 is set aside.

The respondents authorities are directed to produce the file relating to the opinion of the CPC and also the departmental instructions ~~on~~ or instructions issued by DoP&T in the matter of seeking information/opinion of the CPC and its binding ~~Pending~~ nature.

List this OA for hearing on 21-9-98.

HBSJP
M(J)

HRRN
M(A)

21/9/98:

Heard Mr. K. Venkateswara Rao for the Applicant and Ms. Shakti for Mr. G. Parameswara Rao for the Respondents.

Reserved for Judgment.

HBSJP
M(J)

HRRN
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

ORIGINAL APPLICATION NO. 1189 of 1995

Shri M. Gopala Krishna Murthy Applicant(S)

VERSUS

The Principal Accountant General
Audit-I A.P. Hyd & 2 others
Respondent(S)

The application has been submitted to the Tribunal by Shri K. Venkateswar Rao Advocate under section 19 of the Administrative Tribunal Act, 1985 and the same has been scrutinised with reference to the points mentioned in the check list in the light of the provisions in the Administrative Tribunal (Procedure) Rules, 1987.

The application is on order and may be listed for admission on 9-95

Scrutiny Asst. 29/9/95

DEPUTY REGISTRAR(JUDL)

10. Has the impugned orders Original/duly attested legible copy been filed ? — Yes

11. Have legible copies of the annexures duly attested been filed ? — Yes

12. Has the Index of documents been filed and pagination done properly ? — Yes

13. Has the applicant exhausted all available remedies ? — Yes

14. Has the declaration as required by item No.7 of Form I been made. — Yes

15. Have required number of envelopes (file size) bearing full address of the respondents been filed ? — Yes

16. (a) Whether the relief sought for, arise out of single cause of action ? —

(b) Whether any interim relief is prayed for ? —

In case an MA for condonation of delay is filed, is it supported by an affidavit of the applicant ? —

Whether this case can be heard by Single Bench ? —

Any other point ? —

scrutiny with initial of the ? — May be filed
Cr
28/9/95

28/9/95
Scrutiny Asst.

Officer.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Dairy No. 2924/95

Report on the Scrutiny of Application

Presented by Mr. K. Venkateswar Rao Date of presentation 26/9/95

Applicant (S) R. Gopalakrishna Murthy

Respondent (S) The Principal Accountant General, Audit-I, Hyd & 2 ors

Nature of grievance Removal from Service

No. of applicants 1 No. of Respondents 3

CLASSIFICATION

Subject ..... (No.) Department General (No)

1.	Is the application in the proper form ? (Three complete sets in paper books form in two compilations)	Yes
2.	Whether name, description and addresses of all the parties been furnished in the cause title ?	Yes
3.	(a) Has the application been duly signed and verified ?	Yes
	(b) Have the copies been duly signed?	Yes
	(c) Have sufficient number of copies of the application been filed ?	Yes
4.	Whether all the necessary parties are impleaded.	Yes
5.	Whether English translation of documents in a language other than English or Hindi been filed ?	-
6.	Is the application on in time ? (See Section 21)	Yes
7.	Has the Vakalatnama / Memo of Appearance / authorisation been filed ?	Yes
8.	Is the application maintainable ? (u/s 2, 14, 18, or U.R. 8 etc)	Yes
9.	Is the application accompanied IPO/DD, for Rs. 50/- ?	Yes

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

INDEX SHEET

O.A.NO. 1189 of 1995

CAUSE TITLE M. Gopala Krishna murthy

VERSUS

The Principal Accountant General. Audit-I
AP. Hyd & 2 others

Sl.NO.	Description of documents	Page NO.
1.	Original Application	
2.	Material Papers	
3.	Vakalat	
4.	Objection Sheet	
5.	Spare Copies	
6.	Covers	

T. Reply statement filed by Mr. G. Parameswara Rao on 14/2/96.
8. Rejoinder filed by Mr. K. Venkateswara Rao on 18/9/97

Reg:- To quash the impugned orders dated 31.8.94 and 4.9.95 by holding the said orders of removal from service as illegal.

Removal from service

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

Bench case

BENCH CASE O.A.NO. 1189 OF 1995

General (B)

GENERAL

Between:-

M.Gopala Krishna Murthy. ... APPLICANT

A N D

The Principal Accountant General Audit-I, A.P., Hyderabad and others. ... RESPONDENTS

Central Administrative Tribunal
RECEIVED
26 SEP 1995
9924
Hyderabad Bench

CHRONOLOGICAL EVENTS

S.No.	Description of the documents	Pg.Nos.
1.	Applicant's placed under suspension from 23.10.1990.	
2.	Charge Memo.was issued on 19.11.91.	3
3.	Inquring authority's report was made available to the applicant on 15.4.94.	4
4.	Representation on the inquiry report on 29.4.1994.	4
5.	Punishment of removal was awarded on 31.8.1994.	4
6.	appeal was preferred on 10.10.94.	5
7.	Appeal was rejected on 4.9.1995.	5

V Venkateswara Rao
Counsel for the Applicant

Received
N Shakti
28/9/95
for G.P.Rao

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

O.A.NO. 1189 OF 1995

INDEX

S.No.	Description of the Documents	Pg.Nos.	A.Nos.
1.	APPLICATION	1 to 14	
2.	Prl.A.G.(A4)I/Co.Ordn.Cell/DC.1/ 8-118/117, dt.4.9.1995.	15 to 20	1
3.	Appeal against the order of removal dated 10.10.94.	21 to 29	2.
4.	Prl.A.G.(A4)-I/Coordn.Cell/DC-I/ 8-118/94-95, dt.31.8.1994.	30 to 32	3.
5.	Representation on the Inquiry Reqport dt.29.4.1994.	33 to 37	4.
6.	Sr.DAG(A)/A4/I/C.Cell/DC-1/8-118 KW/ 94-95/601, dated 15.4.93	38 to 57	5.
7.	Written brief dated 29.8.95 submitted by the applicant	58 to 70	6.
8.	Written brief of Presenting Officer dated 12.8.1993.	71 to 76	7.
9.	Deposition of Shri A.R.K.Nageswara Rao, K.Satyanarayana Rao, and General examination Of Sri M.G.K.Murthy.	77 to 83	8.
10.	Memorandum No.CC/DC-I/8-118/90-91/ 45, dated 19.11.1991.	84 to 97	9.
11.	Final Progress Report for Nellore District dt.29.10.1990.	98 to 99	10.
12.	AG-I Lr.No.IA4-LA1/Prog/582, dt.23.10.1990.	100	11.
13.	AG(A4/I/Coord.Cell/DC/8-118/90-91, dt.23.10.1990.	101	12.

Hyderabad,

Dt.

Counsel for Applicant

OFFICE USE ONLY:

1. Date of Filing:

2. Registration No.:

Signature of the Registrar.

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

O.A.NO. 1189 OF 1995

Between:-

M.Gopala Krishna Murthy, S/o.Late Mallikarjuna Sastry, Ex-Audit Officer, O/o.the Principal Accountant General, Audit-I, A.P., Hyderabad Resident of H.No.6-3-348/1, Dwarakapuri Colony, Punjagutta P.O., Hyderabad-500 082. Aged about 59 years ... APPLICANT

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller and Auditor General of India (Admn.)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002. ... RESPONDENTS

DETAILS OF THE APPLICATION

1. Particulars of the Applicant : Shown as above
   Address for Services : Mr. K.Venkateswara Rao, Advocate, 2-2-1136/3/1, Jayalaxminivas, New Nallakunta, Hyderabad.
2. Particulars of Respondents : Shown as above
3. Particulars of the Order:-
   1. Order No. & Date : Dis No 7 dt 31/8/94 received with order Nil
   2. Subject in brief : Communicate/Intimate Pro.Ad(Au)-2/Co-ordn.Cell/8-118/12 dated 4.9.95 Removal from service

4. JURISDICTION:- The O.A. is within the jurisdiction of this Tribunal U/s.14 of the Admn.Tribunal's Act, 1985.

5. LIMITATION:- The O.A. is within the limitation U/s.21 of the Admn.Tribunal's Act, 1985.

6. FACTS OF THE CASE:-

(A) The Applicant is aggrieved by the impugned order No. NIL dated 7.8.1995 issued by the Second Respondent communicated through letter No.Prl.AG(AU)-I/Co-Ordn.Cell/DCI/8-118/117 dated 4.9.1995 (A-I page 15) of the first respondent in illegally and unjustly rejecting the appeal of the applicant dated 10.10.94 on the order of the first respondent vide Office Order No.7 dated 31.8.1994 (A-II P-30) imposing the major penalty of removal from service which is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

/Contd... 2.,

(B) The Applicant submits that while working as Audit-Officer in the office of the Principal Accountant General Audit-I, A.P., Hyderabad, he was posted from April, 1988 onwards to supervise the work of pay fixation in 1986 Revised Pay Scales of the A.P. State Government employees. After completing the work in eleven districts, the Audit Party proceeded to Nellore during September, 1990. The Audit Party was provided accommodation in the District Collectorate. During the course of Audit, one of the Senior Auditors, Sri Jameel-ur-Rub drafted a half marging objection pointing out recovery of Rs.10,500/- due to erroneous pay fixation in the case of one Sri P.V.Lokanatham, Health Supervisor, Primary Health Centre, Thurimerla. The Audit Objection was approved by the applicant after due scrutiny and issued to the Medical Officer P.H.C. Thurimerla on 19.9.1990 for regulating the pay of the incumbant. However, the Medical Officer sent his reply to the Audit objedtion through his Senior Assistant Sri A.R.K.Nageshwara Rao on 5.10.1990. After noticing that the reply submitted by the Medical Officer is not convincing, the applicant rejected the reply in writing and returned the same to the Medical Officer for necessary action. Sri P.V.Lokanatham somehow wanted to manipulate and get the objection dropped. But however when his attempts in getting the objection dropped failed, he took a revengeful attitude and arranged a manipulated trap in collaboration with the C.B.I. authorities of Visakhapat at the Collectorate Nellore on 9.10.1990. Although the C. authorities filed a F.I.R. in the court of Special Judge f C.B.I. cases on 11.10.1990, the matter was referred to th Principal Accountant General, Audit-I, A.P., Hyderabad f taking departmental action due to inherent weakness in th case.

(C) Whileso, a charge sheet was issued by the first respondent under Rule 14 of CCS (CCA) Rules 1965 in No.C.C./DC-1/8-118/90-91/45 dated 19.11.1991 alleging that the applicant has demanded and accepted a bribe of Rs.1,000/- from Sri P.V.Lokanatham in the matter of dropping Audit Objection against his pay fixation and thereby committed gross misconduct and failed to maintain absolute integrity and conduct as a Public Servant. The Applicant submitted his explanation on 20.4.1992 denying and disputing the charge and requested to conduct an enquiry by giving personal hearing. Thereupon Sri O.P.Mishra, Commissioner of Departmental enquiries in the Central Vigilance Commission was appointed as Inquiring Authority vide order No.Prl.AG/cc/DCI/8-118/82, dated 7.1.1993 of the first respondent. The Inquiring Authority conducted Preliminary hearing at Hyderabad on 17.2.93 wherein the applicant has repeated that the charge is totally false. Later a regular hearing was conducted at Hyderabad from 21.7.1993 to 23.7.1993 wherein as many as nine (9) Prosecution witnesses and one defence witness were examined and the Inquiring Authority submitted his report dated 31.12.1993 stating that:

(a) the applicant has not demanded the alleged bribe either before or on the date of trap (9.10.1990).

(b) the money was passed and forced into his hands by Sri P.V.Lokanatham.

(c) although the money was recovered from his shirt pocket the fact that the applicant took the money willingly, wilfully and with a mensrea is not established and

(d) the audit objection could not have been dropped by the applicant to favour Sri P.V.Lokanatham because no material evidence was produced by the Medical Officer P.H.C. prior to or on the date of trap.

But unfortunately the Inquiring Authority concluded that the applicant did show a motiveless, subliminal temptation to pocket the money and this action of the applicant is bordering on passive acceptance and gave a finding that the charge was proved partially.

(D) On receipt of the Inquiry Report, the first respondent while forwarding a copy thereof in Memo.No.DAG(A)/AU-I/C.Cell/DcI/8-118/KW/94-95/601 dated 15.4.1994, directed the applicant to submit his explanation thereon. Accordingly the applicant submitted his detailed explanation on 29.4.1994 mentioning that he never yielded to the threats and temptations by Sri P.V.Lokanatham and was unfortunately made victim of his scrupulous methods in connivance with the C.B.I. and that the Inquring Authority while holding that the money was passed and thrust into his hands by the complainant and held against the prosecution, could not have come to the conclusion that the applicant had motivelessly pocketed the money. The applicant therefore requested the first respondent that he may be exonorated of the charge.

(E) Such being the case the first respondent has issued Office Order No.7 dated 31.8.1994 holding that the applicant was guilty of the charge and that the ends of Justice would be met if the penalty of removal from service is imposed on him and accordingly ordered for removal of the applicant from service from the date of the order which is wholly unjustified. The First respondent has come to the conclusion that as the money was recovered from the pocket of the applican the question or whether the acceptance was passive or otherwise does not seem very relevant and as the acceptance of the money was proved by the Inquiring Authority, any comment on the motive is not really relevant to the context. The first respondent also observed that if the applicant were to reject truly the bribe, he would have reacted in such a way as to demonstrate shock and surprise. It is under these circumstances the first respondent held the charge proved against the applicant and issued order removing him from service.

(F) The Applicant therefore preferred an appeal to the second respondent on 10.10.1994 that there was absolutely no material on record to establish that the applicant has ~~x~~ accepted illegal gratification and that the concluding~~s~~ paras of the report of the Inquiring Authority are purely based on imagination and not on the basis of any evidence on record and he accordingly requested the second respondent to set aside the order of removal from service passed by the first respondent in his Office Order No.7 dated 31.8.1994.

(G) While so, the second respondent issued the impugned Order No.NIL dated 7.8.1995 communicated by the first respondent in his Lr.No.Prl.AG/(AU)I/Co.ordn. Cell/DC-1/8-118/117, dated 4.9.1995 rejecting the appeal of the applicant by holding that the charge established against the applicant is sufficiently grave to warrant imposition of major penalty of removal from service which is clearly illegal, arbitrary, discriminatory and is in violation of Articles 14 and 16 of the Constitution and also opposed to all the cannons of equity justce and fairplay.

(H) The Applicant submits that various contention raised in his appeal have not been dispassionately considered by the appellate authority while rejecting the appeal. The applicant submits that the remarks of the appellate authority in para 4(1) of his order totally ignored the firm conclusion of the ~~xxx~~ Inquiring Authority "even though the factum of recovery of money from the applicant's Shirt pocket is clearly established, the fact that the applicant was taking the money willingly, willfully and with a mensrea is not established particularly so because the Inquiring authority found nothing on record to assail the applicant's submission that Audit objedtions once raised and reiterated firmly could not be dropped

unless the concerned department furnished fresh material so as to invalidate the objections. It is further submitted that the Inquiring Authority in his report observed that he was convinced that no evidence exists of any new material from the Medical Officer of Health Centre being furnished to the applicant on or prior to the date of trap and hence the applicant could not have dropped the objection so as to benefit Lokanatham (decoy). Regarding the observation that the applicant stretched one of his hands towards Lokanatham and on that Lokanatham had given money to the applicant, it is useful to submit that the Inquiring Authroity held in parts 8.5, 8.7 and 10.4 of his report that the evidence in this regard was nebulous and uncertain.

(I) Regarding the conclusion that the applicant did not make any complaint to the District Medical and Health Officer or to his own officers till 29.10.1990, the applicant submits that on 9.10.1990 soon after Sri Lokanatham thrust the money into his hands and later into his shirt pocket, the applicant turned towards the Telephone PBX to his left to inform the DM & HO Nellore about the malpractice of his employee Sri Lokanatham, but the CBI Inspector rushed into the room and asked the applicant to keep quiet and sit down and therefore the applicant was helpless in reporting the matter to his DM & HO, Nellore. Regarding the alleged delay in reporting the matter to his own officers till 29.10.1990, it is submitted that the applicant and other members of the Audit Party were continuously interrogated on 9.10.1990 and 10.10.1990 upto 6.30 P.M. and they were not allowed any free movement. Immediately after completion of Audit work at Nellore on 12.10.1990 the applicant drafted the report wherein he had clearly mentioned that the money value of objections in respect of Medical and Health Department could not be

included in the report as the entire file of that department was seized by the C.B.I. on 9.10.1990. The applicant genuinely felt that he should not ~~xxx~~ mention in the report of 12.10.1990 the details of what happened at Nellore on 9.10.1990 except the seizure of the file. The Audit party returned to Hyderabad availing transit on 13.10.1990 and reported to the Head Quarters office on 15.10.1990 as 14.10.1990 was Sunday. It is relevant to submit that the applicant handed over the files to the Audit Officer of the Head Quarters Section Sri A.R.Subramanian and met the Deputy Accountant General (civil) Sri R.Dharmarajan along with A.R.Subramanian and appraised him of the happenings at Nellore on 9.10.1990. The applicant was advised by the Deputy Accountant General to meet the Accountant General Sri Samir Gupta. However the applicant was not successful in meeting the Accountant General though he requested for the same on 15.10.1990. The applicant who has been a heart patient from 1981 developed heart problem on 16.10.1990 and he approached the Central Government Health Dispensary No.10 of A.G.Colony and the Doctor on duty there advised him rest for 30 days and issued a medical certificate for 30 days absence from duty from 16.10.1990. The applicant has therefor applied for the sanction of Commuted leave for 30 days from 16.10.1990 duly enclosing the medical certifica Meanwhile the Order of suspension was served on the applicant at his residence on 23.10.1990. Inspite of his illhealth the applicant with great difficulty went to the AG's Office on 25.10.1990 escorted by his brother Sri Hari Hara Prasad to seek an interview ~~xxx xx~~ with the Accountant General. However the Secretary to the Accountan General (Audit) informed the applicant that the Accountant General (Audit) was busy whole day end advised him to conta him on 26.10.1990, over phone for interview. Accordingly the applicant had contacted the Secretary to Accountant General on 26.10.1990 from the reception Gate No(1).

But however he was informed that the Accountant General was not willing to see him. It is under these circumstances that the applicant could not appraise the Accountant General of the happenings of 9.10.1990 at Nellore. On reaching home on 26.10.1990 the applicant received a Registered Letter from the Deputy Accountant General (Civil) in No.IAULAI/ Prog/90-91/582 dated 23.10.1990 asking him to explain within 3 days from the date of receipt of letter, the circumstances leading to the seizure of the file of the Medical Department by the C.B.I. authorities at Nellore. In response to this the applicant submitted his detailed reply on 29.10.1990 through his brother who personally handed over the letter to the Deputy Accountant General (Civil). It is therefore totally incorrect to say that the applicant was silent upto 29.10.1990 to make a report to his own officers. ~~It is further~~ It is relevant to submit that at no point of time either during ~~xx~~ the course of enquiry or before the imposition of penalty by the 1st respondent that point regarding the alleged silence of the applicant upto 29.10.1990 was raised. Besides it is to be submitted that the above facts would clearly establish that there was never any silence on the part of the applicant in bringing to the notice of the authorities about the happenings of events at Nellore on 9.10.1990. The applicant therefore submits that the appellate authority upheld the imposition of major penalty by the disciplinary authorities without giving the applicant an ~~xxxxx~~ opportunity to explain this particular aspect of alleged silence. Regarding the observation of the appellate authority that the applicant did not express shock or surprise and did not make hue and cry at the time of trap, the applicant submits that it depends on individual temperaments and cannot be as to how other person imagines. The Applicant submits that these words "hue and cry" were borrowed from the report of the presenting officer.

(J) Regarding the observations of the Appellate Authorty in para ~~x~~ 4(3) it is submitted that ~~x~~ under proviso to Rule 11 of CCS (CCA) Rules 1965 the penalty of removal or dismissal from service can be imposed where the charge of acceptance from any person of gratification other than legal remuneration as a motive of a reward for doing or for bearing to do any official act is established. In the instant case the applicant has no power to drop the Audit objection so as to favour Sri Lokanatham and as such the question of demand or acceptance of any illegal gratification as a motive does not arise. It is relevant to submit that Hon'ble Supreme Court held in Surajmal Vs. the State of Delhi Administration (AIR 1979 SC 1408) that in a case of bribary mere recovery of money discovered from the circumstances under which it is paid is not sufficient to convict the accused when the substantival evidence in the case is not reliable. Further in Madan Mohan Singh Vs. State of UP (AIR 1954 SC 637) and Trilok Chand Jain Vs. State of Delhi (AIR 1977 SC 666) the Supreme Court held want of motive in cases where the Public Servant cannot render any favour or disfavour to serve as motive for payment of illegal gratification. The Applicant submits that the respondents have totally ignored this crucial aspect of the matter and imposed the major punishment which is illegal, unjust. In the instant case the ~~x~~ applic cannot be said to have any motive as held by the Inquiry Off himself. In these circumstances the penalty of removal from service is not warranted. It is not therefore clear how the appellate authority came to the conclusion that the penalty of removal from service is otherwise warranted by the circumstances of the case; contrary to the mandatory provisio to Rule 11 of CCS (CCA) Rules 1965.

The Applicant therefore submits that the observation "if otherwise warranted by the circumstances of the case" in

para 4(3) of the impugned order is clearly outside the scope of the proviso to Rule 11 of CCS (CCA) Rules, 1965.

(K) The Applicant submits that the observations of the appellate Authority in para 4(4) of the impugned order tha the requirements of Rules 14(18) of the CCS (CCA) Rules 1965 were adequately met since the applicant was asked on the alleged threat or warning given by Sri Lokanatham during x his general examination and there cannot be searching examination or cross examination of the government servant who has elected not to examine himself is contrary to the letter and spirit of Rule 14(18) of CCS (CCA) Rules of 1965 and also opposed to the dictum of law laid down by Hon'ble Courts. It is relevant to submit that it has been clearly laid down in sub rule (18) of Rule 14 of CCS (CCA) Rules 1965 that the Inquiring Authority, may after the government servant closed his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing against him in the evidence. This provision being mandatory, the Inquiring Authority should necessarily put questions to the applicant by specifically referring to certain statements of the prosecution evidence and ask the delinquent to state what he has to say with reference to those statements and then leave the matter at that without putting further search and probing questions to the delinquent as held in Satyapal Aurora Vs. Director of Postal Services 1990(2) SLJ(AT) 100 Jabalpur. In the instant case the Inquiring Authority thou had put seven questions in his general examination of the delinquent, had failed to specifically question him as to the alleged bribe money has gone into the pocket of the delinquent. Therefore the Inquiry suffers from the vice o

non observance of the statutory provisions of Rule 14(18) of CCS (CCA) Rules, 1965. The applicant therefore submits that the observations of the Appellate authority that the requirements of Rule 14(18) of CCS (CCA) Rules 1965 have been adequately met by the general examination of the applicant cannot be said to be in conformity with the mandatory provisions. The Appellate Authority has disposed of the appeal by surmises and on extraneous considerations and has not given a fair deal to the applicant. The Applicant further submits that both the disciplinary authority and the appellate authority have failed to issue reasoned, self contained and speaking orders as contemplated by the rules.

(L) The applicant submits that the Inquiring Authority has clearly held that the demand of illegal gratification either prior to the laying the trap or on the date of trap is not proved. The Inquiring Authority also observed that even though the money was recovered from the shirt pocket of the delinquent, it was not established that the money was accepted willingly, wilfully and with mensrea. Further it was held by the Inquiring Authority that money was passed & and forced into the hands of the applicant by the complainant. The Applicant submits that the facts of ~~the~~ thrusting the money into his hands and acceptance of the same never go together as they are mutually contradictory. The Applicant therefore submits that the conclusions of the Inquiring authority that the delinquent had shown motiveless subliminal temptation to pocket the money which is bordering on passive acceptance is nothing but the perverse imagination of the Inquiring Authority and not at all based on the evidence on record. It is also relevant to submit that the fact that money was thrust into the hands of the delinquent goes to prove that there was no acceptance, since acceptance conveys a willing public servant soliciting the bribe and receiving the same. The Applicant submits that the cumulative effect of the deposition of SW 9 and finding ~~xxxx~~ recorded by the

Inquiring Authority conclusively establishes that the applicant was never a soliciting party. It is also relevant to submit that Sri A.R.K.Nageswara Rao, SW4 Senior Assistant of Primary Health Centre Thurimerla in his deposition has clearly admitted that right from the date of receipt of the Audit objection viz. 19.9.1990, Sri P.V.Lokanatham asked him to convince the Audit Party by giving some bribe to drop the objection raised against his pay fixation. The Applicant submits that neither the Inquiring Authority nor the Disciplinary Authority nor the appellate Authority have ever given any weight to this important aspect of evidence.

(M) The applicant submits that there cannot be any distinction between the charge as "having not been proved" and "having not been conclusively proved". The charge has to be held either as proved or not proved and there is no middle course as held in Ramdas Singh Vs. Union of India and others (1990) 13 ATC 136 Jodhpur. In the instant case the finding given by the Inquiring Authority that "the charge provedpartially" is not therefore in conformity with the law laid down in the aforesaid case. The Applicant submits that the disciplinary authority (Respondent I) having decided to accept the finding namely "partially proved" of the I.A. shoubd not have imposed any penalty much more so the penalty of removal. The Applicant submits that there is absolutely no evidence in the case to show that there is either demand or acceptance of illegal gratification. The applicant further submits that Sri Lokanathan came to the Audit Party with a pre-determined mind alongwith C.B.I. officials and others on 9.10.1990 to involve and entaggle him in the trap as the applicant had not yielded to his temptations to drop the objection. Infact the Inquiring Authority had clearly held that Sri Lokanatham and Sri Nageswara Rao chose the dubious path of approaching the Audit personnel at odd hours (after 7 P.M.) and at odd place

(Lodge) on 5.10.1990. The Inquiring Authority also held that Sri Lokanatham and Sri Nageswara Rao circumambulated to the lodge of the applicant and other members of the Audit Party on 5.10.1990 not at the latter's suggestion and invitation but as a result of their own sweet (and seedy) motive and volition. It clearly establishes that Sri Lokanatham had developed grudge against the applicant and got him implicated. The Applicant was made a victim by the scrupulous methods adopted by Lokanatham in collaboration with the C.B.I. The Disciplinary authority and the Appellate Authority have failed to take these facts into consideration. The Applicant was made a victim for maintaining high sense of duty, integrity and honesty during the last 33 years of service. The Applicant submits that the impugned orders are totally unwarranted and not based on legal propositions but only on wrong assumptions and submises both infact and law. The impugned action of the respondents is nothing but colourable exercise of point. The Applicant is therefore constrained to approach this Hon'ble Tribunal as he has no other alternative effective or remedy to prevent the gross miscarriage of justice.

7. REMEDIES EXHAUSTED:- The Applicant has no other effecti alternative remedy except to approach this Hon'ble Tribuna

8. MATTERS NOT PREVIOUSLY FILED OR PENDING:- The Applican has not filed any other O.A./W.P. in this regard and such a case is not pending in any court or authority of law.

9. MAIN RELIEF:- It is therefore prayed that this Hon'bl Tribunal may be pleased to call for the records relating office Order No.7 dated 31.8.1994 issued by the Principa Accountant General (Audit-I) A.P. Hyderabad read with Order No.NIL dated 7.8.1995 issued by the Deputy Comptr and Auditor General of India (Admn) Office of the Comptroller and Auditor General of India communicated letter No.Prl.AG(AU)-I/Co.ordn. Cell/D.C.I/8-118/117,

4.9.1995 including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution besides being opposed to all cannons of law equity and fair play and principles of natural justice and consequently declare that the applicant is entitled to be treated as on duty from the date of his suspension namely 23.10.1990 till the date of his retirement on superannuation on 30.9.94 with all consequential benefits such as Pay and Allowances and other attendant benefits including the benefit of promotions etc and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

10. INTERIM RELIEF:- It is therefore prayed ths this Hon'ble Tribunal may be pleased to fix any early date for final hearing of the O.A. in the interests of justice and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

11. COURT FEE:-

I.P.O. NO. & Date : 09 568724 dt 22/9/95

Name of the P.O. which drawn : N.Nallamala Hyd

12. ENCLOSURES:- IPO., Material Papers, Covers, Pads & etc.

Rs.50/-

I.P.O./B.C./D.D.

V E R I F I C A T I O N

I, M.Gopal Krishna Murthy,S/o.Late Mallikarjuna Sastry, EX-Audit Officer, O/o.the Principal Accountant General Audit-I A.P., Hyderabad Resident of Ho.No.6-3-348/1, Dwarakapuri Colony Punjagutta P.O. Hyderabad-082, do hereby solemnly and sincerely affirm that the contents in the above paras are true to my personal knowledge and legal advice from my counsel and I have not suppressed any material facts.

Hyderabad;

Dated :

Signature of the Applicant

K Venkateswara Rao
Counsel for the Applicant

भारतीय लेखा तथा लेखापरीक्षा विभाग
Indian Audit and Accounts Department
महालेखाकार (लेखापरीक्षा) आंध्रप्रदेश
Accountant General (Audit) I, A. P.

दिनांक/Date :

No.Prl.AG(Au)I/Co-ordn. Cell/DC I/8-118/ 117 Dated: 4 -9-95

To

Sri M.S.K.Murthy,
H.No.6-3-348/1,
Dwarakapuri Colony,
Panjagutta,
Hyderabad - 500 482.

Sir,

With reference to your appeal dated 10-10-94, I am directed to forward herewith the order of the Appellate Authority dated 7-8-95, in original.

Encl: Original order of
Dy.C & AG of India
dated 7-8-95.

Yours faithfully,

Sr.Account Officer (Legal)

Venkateshwar Rao
Advocate

सैफाबाद, हैदराबाद - 500 463
Saifabad, Hyderabad - 500 463

MGIPCBE--S2--3 AG/AP/89--19-6-89--1,50,000.

O R D E R

I have carefully considered the appeal dated 10.10.94 of Shri M. Gopala Krishna Murthy, ex-Audit Officer of the Office of the Principal Accountant General (Audit)-I, Andhra Pradesh against the penalty of removal from service imposed by the disciplinary authority.

2. Shri Murthy has urged that his appral may be considered alongwith his letter dated 29.10.90 addressed to the Dy. Accountant General (Civil) of the Office of the Principal Accountant General (Audit)-I, Andhra Pradesh, his written brief dated 29.8.93 addressed to the Inquiring Authority and his representation dated 29.4.94 on the Inquiry Report sent by the Disciplinary Authority. He has prayed for setting aside the penalty mainly on the following grounds :

(1) The charge of accepting bribe of Rs. 1000 is manipulated and fabricated and the money was thrust in his pocket despite his resistance. When the Inquiring Authority held that the charge of demanding bribe has not been proved, its conclusion that the appellant had shown motiveless and subliminal temptation to pocket the money which is bordering on passive acceptance is a perverse imagination.

(2) Disciplinary Authority was not correct to hold that once the money was recovered from the appellant, motive is not relevant and if he were really to reject the bribe he should have reacted to demonstrate shock and surprise and absence of his reaction proves the charge. The appellant says that being a heart patient, he could not over-react. Mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict an accused. Mere recovery of money does not prove the charge of taking bribe in absence of proof of demand and acceptance. As per Rule 11 of CCS (CCA) Rules, it is mandatory to have motive in order to impose the major punishment of removal from service. In absence of proven motive, the mandatory provision of the CCS (CCA) Rules is not satisfied.

(3) The requirements of Rule 14(18) of CCS (CCA) Rules have not been satisfied and the circumstances of the discovery of the money of Rs. 1000 from him were not specifically inquired by the Inquiring Authority during the general examination.

3. I have gone through the disciplinary case records relating to the case. I have also considered the various points raised in the appeal and also whether the procedure laid down in the CCS (CCA) Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice, whether the findings of the Disciplinary Authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe.

4. None of the contentions raised by the appellant has any merit in view of the following :

(1) It is not disputed that an amount of Rs.1000 was found in the pocket of the appellant on 9.10.90 during CBI trap and it is also not disputed that the said amount was provided by Shri Lokanadham. The appellant has contended that the said money was thrust in his pocket by Shri Lokanadham despite his resistance and in support of it he has relied heavily on the evidence of SW 9, Shri K. Satyanarayana Rao who was one of the witnesses to the trap. But during re-examination the said SW 9 had deposed that the appellant stretched one of his hands towards Shri Lokanadham and on that Shri Lokanadham had given money to the appellant. He had also deposed that after receiving the money the appellant had kept it in his pocket. During re-cross examination, SW 9 did not agree to the suggestion that Shri Lokanadham, after thrusting the money into the hands of the appellant had

also thrust the money into his pocket.

(2) Further, there is no evidence that the appellant displayed any sense of shock or abhorrence at the offer of money by Shri Lokanadham to him which would have been the normal and natural reaction had the money been thrust into the hand or pocket of the appellant. The appellant also did not bring the fact to the notice of his senior officers that Shri Lokanadham had thrust something into his hands. The appellant has contended that he did not over react as he had been a heart patient and cultivated the habit of not to get excited to prevent recurrence of heart attack. This plea of cultivated equanimity has not been entered at any stage in the proceedings. This is also at variance with his written brief that there was absolutely no scope for raising hue and cry since he was asked by the CBI Inspector to keep quiet and that he could not react in a violent way since he was under shock in view of malpractice played by Shri Lokanadham in collaboration with CBI. Although the incident took place on 9.10.90, the appellant did not make any report either to the District Medical Officer or even to his own officers till 29.10.90. Had he been a victim of manipulated CBI trap as alleged by him he would not have waited for a formal letter from his office and taken 19 days to make a report on 29.10.90 which was six days after he had been placed under suspension. His explanation is that due to shock caused by the manipulated trap he had fallen ill and was on medical leave due to which he could not bring the factual details of the case to the notice of his superior officers earlier than 29.10.90. But he had in fact submitted a progress report on 12.10.90 wherein he had mentioned seizure of certain records by CBI. When he had already mentioned in his progress report dated 12.10.90 about the seizure of the records by CBI there is no reason

why he could not have given full details and mentioned that he was a victim of a manipulated trap. He made a report regarding the trap only after he received a specific inquiry dated 23.10.90. Moreover, he was on commuted leave from 16.10.90 to 22.10.90 and his silence in the matter upto 15.10.90 and again from 23.10.90 to 28.10.90 remains unexplained. His conduct during the trap and thereafter is, therefore, not consistent with his profession of innocence. It is clear beyond any manner of doubt that he had accepted the money from Shri Lokanadham.

(3) The appellant has contended that in the absence of a proven motive for acceptance of money, the mandatory requirement of Rule 11 of CCS (CCA) Rules for imposition of a penalty of removal/dismissal from service is not satisfied. The said rule makes it only obligatory on the part of the Disciplinary Authority to impose major punishment of removal/ dismissal from service in every case in which the charge of acceptance of any illegal gratification as a motive or reward for doing or forbearing to do any official act is established but does not prohibit or preclude imposition of such penalty if otherwise warranted by the circumstances of the case.

(4) The appellant has contended that the requirements of Rule 14(18) of CCS (CCA) Rules have not been satisfied and that the circumstances of the discovery of the money of Rs. 1000 from him were not specifically inquired by the Inquiring Authority during the general examination. According to Rule 14(18) of CCS (CCA) Rules, the Inquiring Authority may, after the government servant closes his case, and shall, if the government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him. This is not intended to be searching examination or cross-examination of the government servant who has elected not to

examine himself. However, during the general examination the appellant was asked questions on alleged threat or warning given by Shri Lokanadham, whether the same was reported by the appellant to his superior officers and also what transpired between him and Shri Lokanadham on 9.10.90 by way of discussion or otherwise, when Shri Lokanadham visited the appellant at the Collectorate office, Nellore and the appellant replied to these questions. The requirements of Rule 14(18) of CCS (CCA) Rules have thus been adequately met by the general examination of the appellant.

5. Having regard to the position stated above, I am satisfied that the charge of acceptance of money by the appellant is established by the evidence on record. The charge established against the appellant is sufficiently grave to warrant imposition of the major penalty of removal from service. In the circumstances, I uphold the penalty imposed by the Disciplinary Authority and reject the appeal of the appellant.

Dated,
New Delhi,
7.8.95.

(Dharam Vir)
Deputy Comptroller & Auditor General and
Appellate Authority.

AII p.21 (30)

October 10, 1994

From

M. Gopala Krishna Murty
Quarter No. D-4, A.G.s Staff Quarters
Yousufguda
HYDERABAD - 500 045 (A.P)

To

The Dy. Comptroller & Auditor General of India (Admn.)/
Appellate Authority
Office of the Comptroller & Auditor General of India
Indraprastha Estate
Bahadurshah Zaffer Marg
NEW DELHI - 110 002

Most Respected Sir,

Sub: Appeal against the order of removal from Service by the Principal Accountant General (Audit-I), A.P., Hyderabad/ Disciplinary Authority

Ref: No. Prl.AG(Au)-I/Coordn. Cell/DC.I/8-118/94-95 Dated 31.8.1994 Office Order No. 7

I humbly request that I may be permitted to bring the following few lines and facts to your notice for your most sympathetic consideration and favourable orders.

1) I submit that while working as Audit Officer in the Office of the Principal Accountant General (Audit-I), A.P., Hyderabad I was posted from April 1988 onwards to supervise the work of Pay fixation in 1986 revised Pay scales of the A.P. State Government employees. After completing the work in eleven districts, our Audit Party went to Nellore during September 1990. The Audit Party was provided accommodation in the District Collectorate. During the course of Audit, one of the Senior Auditors, Sri Jameel-ur-Rub drafted a Half Margin objection pointing out recovery of over Rs.10,500/- due to erroneous pay fixation in the case of one Sri P.V. Lokanatham, Health Supervisor, Primary Health Centre, Thurimerla. The said objection was approved by me after due scrutiny and issued to the Medical Officer, P.H.C., Thurimerla on 19.9.1990 for regulating the pay of the incumbant. However the Medical Officer sent his replies to the Audit objection through his Sr. Assistant, Sri A.R.K. Nageswara Rao on 5.10.1990. After noticing that the reply submitted by the Medical Officer is not convincing, I have rejected the reply in writing and returned the same to the Medical Officer for necessary action. Sri P.V. Lokanatham somehow wanted to

..2.

Advocate

manipulate and get the Audit objection dropped. But however when his attempts in getting the objection dropped failed, he took a revengeful attitude and arranged a manipulated trap in collaboration with CBI authorities of Visakhapatnam at the Collectorate, Nellore on 9.10.1990. Although the CBI authorities filed a F.I.R. in the court of the Special Judge for CBI Cases on 11.10.1990, the matter was referred to the Principal Accountant General, Audit-I, A.P., Hyderabad for taking departmental action due to inherent weakness in the case.

2) While so, a charge sheet was issued by the Principal Accountant General under Rule 14 of CCS (CCA) Rules, 1965 on 19.11.1991 alleging that I have demanded and accepted a bribe of Rs.1,000/- from Sri P.V. Lokanatham in the matter of dropping Audit objection against his Pay Fixation and thereby committed gross misconduct and failed to maintain absolute integrity and conduct as a public servant. I submitted my explanation on 20.4.1992 denying and disputing the charge and requested to conduct an enquiry by giving personal hearing. Thereupon, the Commissioner of Departmental Enquiries in the Central Vigilance Commission Sri O.P. Mishra was appointed as Inquiring Authority who conducted preliminary hearing at Hyderabad on 17.2.1993 wherein I have repeated that the charge is totally false. Later a regular enquiry was conducted at Hyderabad from 21.7.1993 to 23.7.1993 wherein as many as nine (9) prosecution witnesses and one defence witness were examined and the Inquiring Authority submitted his report holding that :

a) I have not demanded the alleged bribe either before or on the date of trap (9.10.1990)
b) that the money was passed and forced into my hands by Sri P.V. Lokanatham
c) that although the money was recovered from my shirt pocket, the fact that I took the money willingly, wilfully and with a MENSREA is not established and
d) that the Audit objection could not have been dropped by me to favour Sri P.V. Lokanatham because no material evidence was produced by the Medical Officer, P H C, prior to or on the date of trap.

But, unfortunately the Inquiring Authority concluded that I did show a motiveless subliminal temptation to pocket the money which is bordering on passive acceptance.

..3.

3) On receipt of the Inquiry Report, the Disciplinary Authority while furnishing a copy of the Report in Memo No. Sr. DAG(A)/Au-I/C.Cell/DC-I/8-118/KW/94-95/601 dated 15.4.1994 directed me to submit my explanation on the report of the Inquiring Authority. Accordingly I submitted my detailed explanation on 29.4.1994 mentioning that I have never yielded to the threats and temptations by Sri P.V. Lokanatham and was unfortunately made a victim by his unscrupulous methods in connivance with the CBI and that the Inquiring Authority while holding that the money was passed and thrust into my hands by the complainant and held against the prosecution, could not have come the conclusion that I have motivelessly pocketed the money. I have therefore requested that I may be exonerated of the charge.

4) Such being the case the Disciplinary Authority has issued Office Order No. 7 dated 31.8.1994 holding that I am guilty of the charge and the ends of justice would be met if the penalty of removal from service is imposed on me and accordinly ordered for my removal from service from the date of the order which is clearly unjustified. The Disciplinary Authority has come to the conclusion that as the money was recovered from my person, the question of whether the acceptance was passive or otherwise does not seem very relevant and as the acceptance of the money is proved by the Inquiring Authority any comment on the motive is not really relevant to the context. The Disciplinary Authority also observed that if I were to reject truely the bribe, I would have reacted in such a way as to demonstrate shock and surprise. It is under these circumstances, the Disciplinary Authority held the charge proved against me and issued orders removing me from service, which is highly unjustified.

5) I submit that the whole charge is manipulated and fabricated as I have not yielded to the temptations of the complainant to drop the Audit objection in his case. At the outset I submit that the Audit Officer of a field party can neither approve incorrect objection nor can he drop the objections once raised at his will. All the records relating to the objections along with replies wherever received will be sent to the Head Quarters Office, viz. Principal Accountant General, A.P., Hyderabad where they are subjected to thorough scrutiny and finally disposed of either by dropping incorrect objections or including the correct objections in the form of a report. Thus it is a matter of common knowledge that once the objection is issued nothing remains in my hand. Therefore, the story of prosecution that

..4.

K. Venkateswara Rao
Adv

I have accepted the bribe from the complainant for dropping the Audit Objection does not arise particularly in view of the reply furnished by the Medical Officer, P H C, Thurimerla on my objection.

6)(a) I submit that the Inquiring Authority has clearly held that the demand of any gratification prior to the laying of the trap or on the date of trap is not proved. The Inquiring Authority also observed that even though the money was recovered from my shirt pocket it was not established that the money was accepted willingly wilfully and with MENSREA. It was also held by the Inquiring Authority that the money was passed and forced into my hands by the complainant. I submit that the fact of thrusting the money into my hands and my acceptance of the money never go together and they are mutually contradictory. I therefore submit that the conclusion of the Inquiring Authority that I have shown motiveless and subliminal temptation to pocket the money which is bordering on passive acceptance is nothing but perversive imagination of Inquiring Authority. I submit that the money was thrust without any demand and against my will.

(b) I also submit that on the basis of the conclusion of the Inquiring Authority that there was no demand for money from me either on the date of trap or prior to that, it is crystal clear that Sri Lokanatham came to the Audit Party with a predetermined mind on 9.10.1990 along with CBI officials to involve me and entangle me into trouble as I have not yielded to his temptations. This fact was not at all considered by the Inquiring Authority. I respectfully submit that the Inquiring Authority exhibited a biased attitude in arriving at the conclusion which is purely based on imagination but not on evidence on record.

(c) I submit that the complainant is a notorious person habituated to bring the honest officers into trouble by dubious means. It is only with this motive in mind and with preplanned trap by CBI officials the complainant entered my camp office at Collectorate on 9.10.1990. It is relevant to submit that as I am dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy, I was made a victim by the unscrupulous methods by the decoy in connivance with the CBI.

...5/-

7) The Inquiring Authority's finding that the money was thrust into my hands itself goes to prove that there was no acceptance. Acceptance always conveys a willing public servant soliciting a bribe and receiving the same. In the present case, the evidence of SW 9, Sri Satyanarayana Rao, a third party witness in the case, clearly shows when he deposed an oath as under - "Mr. Lokanatham thrusted the money into the hands of Mr. Murthy (CO)". This aspect was discussed and finding was recorded by the Inquiring Authority as under - "I am inclined to agree with the CO's defence that the money was passed and thrust into his hands by Sri. Lokanatham", vide para 10.4 and 10.7 of the Inquiring Authority's report. Thrusting and acceptance ill go together. Thus the Inquiring Authority found that I did not accept any illegal gratification. The cumulative effect of the evidence of SW 9 and the finding recorded by the Inquiring Authority conclusively establish that I was never a soliciting party. The Inquiring Authority also disbelieved the allegation that I counted the currency. This part of the case is discussed in detail by the Inquiring Authority in para 10.8 of his report.

8) I further submit that Sri A.R.K. Nageswara Rao, Sr. Assistant, PHC, Thurimerla, in his deposition has clearly admitted that right from the date of receipt of Audit objection, Sri P.V. Lokanatham asked him to convince the Audit Party by offering some bribe at his expense to drop the objection raised against his pay fixation. This statement has apparently not been considered by Inquiring Authority while arriving at the conclusion.

I therefore once again submit that there was absolutely no material on record to establish that I have demanded and accepted the illegal gratification. The Inquiring Authority's report is purely based on imagination but not onbasis of any evidence on record.

9)(a) I submit that it is unfortunate that the Disciplinary Authority came to the conclusion that "once the money was recovered from the person of Charged Officer, the debate on whether the acceptance was passive or otherwise does not seem very relevant, and once the acceptance of the money is proved by the Inquiring Authority himself, and any comment on the motive is not really relevant to context." In this connection I submit that admittedly there is absolutely no motive on my part to accept the illegal gratification. On the other hand it is the complainant who has thrust a wad of currency notes into my hands and requested me to to drop the objection on the basis of G.O. issued in January 1990. I did not like it and pushed back the money

into his hands. However as the complainant came with a predetermined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I was under shock in view of the malpractice played by Sri Lokanatham but did not over react as I have been a heart patient since 1981 and cultivated the habit not to get excited at any moment to prevent recurrence of heart attack. Therefore I decided to report the malpractice of the complainant to the D.M. & H.O., Nellore and turned towards the telephone (PABX Board). But I could not do so on account of the CBI Inspectors' entering the premises even without the prearranged signal as deposed by S.W. 9. Though I tried to explain the events to CBI Inspectors, they did not allow me to do so but asked me to keep quiet and sit down. I submit that the mere recovery of the money divorced from the circumstancesunder which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable as held by the Supreme Court in Surajmal Vs Delhi Administration AIR 1979, SC - 1408.

(b) The Disciplinary Authority has unfortunately erred in failing to see that the motive is very much relevant in any charge of illegal gratification. Mere recovery of money does not prove the charge in the absence of proof of demand and acceptance. These well known principles were unfortunately not taken into consideration by the Disciplinary Authority in arriving at his conclusion for awarding a major penalty of removal from service. I respectfully submit that the conclusions arrived at awarding the major penalty of removal were not only against the principle of natural justice but also in gross violation of statutory provision of Rule 11 in Part V of the CCS (CCA) Rules, 1965 which is reproduced below for your kind perusal.

> "Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed"

It is thus obvious that in order to impose the major punishment of removal from service (viii) or dismissal from service (ix) it is mandatory to have MOTIVE or reward for acceptance of the illegal gratification. Thus, the observations of the Disciplinary Authority "in this case, acceptance of the money is proved by the Inquiring Authority himself and any comment on the motive is not really relevant to the context, it is humbly submitted, is against the very mandatory requirement in CCS (CCA) Rules, 1965.

..7.

(a) Rule 14(18) of the CCS (CCA) Rules, 1965 requires that the Inquiring Authority shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. This means that when the public servant does not get into the witness-box and offer himself as a witness to defend himself, the Inquiring Authority shall question him about the circumstances appearing against him in the evidence and then only such circumstances can be read and interpreted against him. In my case, the Inquiring Authority apparently noticed that the aspect as to how the alleged bribe money has gone into my pocket was not told by any of the witnesses and while conducting general examination of the public servant on the last day of Inquiry, i.e. 23.7.1993 the Inquiring Authority did not question the public servant specifically in this regard though he put seven (7) questions on various aspects. Without questioning me the Inquiring Authority could not have interpreted the circumstances against me in para 10.9 of his report to conclude that I did show motiveless and subliminal temptation to pocket the money.

(b) I respectfully submit that the Inquiring Authority fell into the error of interpreting the circumstances against me without putting them to me under Rule 14 (18) of CCS (CCA) Rules, 1965 and concluded that the charge was proved partially. Based on these incorrect findings of the Inquiring Authority, the Disciplinary Authority imposed the most serious penalty of removal from service depriving me of all benefits of my service of over thirty six (36) years. Considering this important aspect I request that the Inquiring Authority's report and Disciplinary Authority's decision based thereon should be rejected and I may be fully exonerated of the charge.

11) It can be observed from the report of the Inquiring Authority and the final order of the Disciplinary Authority that the Disciplinary Authority differred from the opinions, conclusions and findings of the Inquiring Authority as mentioned below in brief:

a) In para 10.4 of the report the Inquiring Authority agreed that the money was passed and forced into the hands of the Charged Officer by Sri Lokanatham based on the deposition of the independent witness, SW 9 that the money was thrust into the Charged Officer's hands. The Disciplinary Authority, however, observed that the issue that settles the whole question is whether the money proffered was received by the Cherged Officer and that the non-contesting of the fact of recovery of the money from the Charged Officer's shirt pocket confirms the receiving of money and its acceptance by the Charged Officer. As thrusting and acceptance do not go together the Disciplinary Authority and the Inquiring Author[illegible] differ in this regard

b) The Inquiring Authority observed in para 10.8 of his report that the fact of receiving the money by the Charged Officer willingly wilfully and with a mensrea is not established. He therefore observed in para 10.9 that the Charged Officer did show motiveless, and subliminal temptation to pocket the money and this act of the Charged Officer was bordering on passive acceptance. The Disciplinary Authority observed in para 4 of his order that the debate whether the acceptance was passive or otherwise does not seem very relevant and any comment on the motive is not really relevant to the context. How the Disciplinary Authority differed from the Inquiring Authority here is very clear.

c) In paras 8.5, 8.6, 8.7, 9.2, 10.4 and 10.6 of his report the Inquiring Authority's remarks reveal that he is not definite in regard to the acceptance of the money by the Charged Officer. The Disciplinary Authority observed in his Order that the acceptance of the money was proved by the Inquiring Authority himself. Here also how the Dispiplinary Authority differed from the Inquiring Authority is clearly seen.

d) As the charge of the acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act is not established by Inquiring Authority, the remarks of the Disciplinary Authority, in para 6 of his order, that he has concluded that the Charged Officer is guilty of charge and his view that the ends of justice would be met if the penalty of removal from the service is imposed on the Charged Officer is unfortunate especially because the requirements of the first proviso to rule 11 of CCS (CCA) Rules, 1965 are not satisfied.

e) The remarks of the Disciplinary Authority in para 4 of his order that if the Charged Officer were to reject truely the bribe, he would have reacted in such a way as to demonstrate shock and surprise are based on his personal imagination and are not at all raised by the Inquiring Authority.

In Government of India instructions no.1 under rule 15 of CCS(CCA) Rules, 1965 it is clearly mentioned that as orders passed by the Disciplinary Authority are in exercise of quasi judicial powers it is necessary that self-contained, speaking and reasoned ordersshould be issued while passing the final orders in disciplinary cases. No reason has been given by the Disciplinary Authority in this case substantiating how he differred from the Inquiring Authority on various aspects as discussed above.

..9.

(b) I respectfully submit that I was made a victim by the unscrupulous methods adopted by decoy Sri. Lokanatham in collaboration with CBI authorities. I also submit that I became a victim for maintaining high sense of duty, integrity and honesty. It is not uncommon in these days to make an honest officer suffer and victimise when he does not yield to temptations. I may humbly state that my case is an excellent example for this. I have put in about 33 years of service prior to suspension and I also served the department with all honesty sincerety and devotion. I have a big family to maintain and no children of mine are employed till now. I have to perform the marriage of my fourth daughter besides I have to maintain my aged mother.

(c) I am deprived of my promotion as Sr. Audit Officer from 1.7.1989. In normal course I should have retired at the maximum of Rs.4,000/- in pay scale of Sr. A.O. I sufferred mentally and also this became a stigma in my life. In brief I submit that I sufferred a monetary loss of about Rs. 3 lakhs for no fault of mine.

(d) In view of the above I humbly pray the Appellate Authority to kindly consider my case most sympathetically and generously by setting aside the order of removal from service passed by the Principal Accountant General vide his Officeorder No. 7 dated 31.8.94 with all consequential benefits for which act of kindness my family and I shall remain ever grateful to your goodselves.

(e) In conclusion I request that this appeal of mine may kindly be considered most sympathetically alongwith : a) my reply dated 29.10.90 addressed to the Dy. Accountant General (Civil) of my office (b) my written brief dt. 29.8.1993 addressed to the Inquiring Authority and (c) my representation on the Inquiry Report sent to the Disciplinary Authority on 29.4.1994.

(f) I look forward to receiving the favourable orders from your goodselves at the earliest.

Thanking you Sir, with profound regards.

Yours faithfully,

(M. Gopala Krishna Murty)

Copy submitted to:

The Principal Accountant General (Audit-I)/
Disciplinary Authority
Andhra Pradesh, Hyderabad
- for kind information please.

कार्यालय प्रधान महालेखाकार (ले प.)
Office of the Principal Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-५०० ४६३
Andhra Pradesh, Hyderabad-500 463.

No.Prl.AG(Au)-I/Coordn.Cell/DC.I/8-118/94-95/ Dated 31-8-1994.

OFFICE ORDER NO.7

WHEREAS disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were instituted against Shri M.G.K. Murthy, Audit Officer vide this office Memo.No.CC/DC-I/8-118/90-91/45 dated 19-11-1991 on the following articles of charge:

Statement of articles of charge framed against Shri M.G.K. Murthy, Audit Officer, Pay Fixation Party (CP-65), office of the Principal Accountant General(Audit)-I, Andhra Pradesh, Hyderabad.

That the said Shri M.G.K. Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9-10-1990 at 10-30 hours at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy Shri P.V. Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule 3(1) of Central Civil Services (Conduct) Rules, 1964.

A statement of imputations of Misconduct or Misbehaviour on which the Article of charge were based, together with a List of Documents by which, and a List of Witnesses by whom, the charges were proposed to be sustained, were also forwarded to him along with the abovesaid Memorandum dated 19-11-1991.

2. Shri M.G.K. Murthy, Audit Officer denied the charge and requested to be heard in person vide his letter dated 20th April, 1992. Accordingly, Shri A.K. Handa, Commissioner for Departmental Inquiries, was appointed as the Inquiring authority to inquire into the charges vide Order No.3 dated the 1st May, 1992.

3. AND WHEREAS the Inquiring authority vide his Report No.F No.13 OPM 28(45) dated 31st December, 1993 gave a finding that he (Inquiring Authority) had come to conclude that the Charged Officer did show a motiveless, subliminal temptation to pocket the money, and this action of the Charged Officer was bordering on passive acceptance and hence personally pronounced that the charge proved partially.

4. AND WHEREAS a copy of the report of inquiry was sent to Shri M.G.K. Murthy, Audit Officer vide, this office Memo. No.Sr.DAG(A)/Au-I/C.Cell/DC-1/8-118/KW/94-95/601 dated 15th April, 1994 and he was given an opportunity of making such submissions on the report of inquiry as he desired. His submissions on the Report of inquiry were received vide his letter dated 29th April, 1994. The said representation of Shri M.G.K. Murthy has been carefully considered. The various points raised by him examined in the light of the records of the case are given below:

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The main charge against Shri M.G.K. Murthy is that "in abuse of his position as public servant on 9-10-1990 at 10-30 hours at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy Shri P.V. Lokanadham in the matter of his dropping audit objection against his pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct."

While the Inquiring Authority could not countenance the complaint of Lokanadham that the Charged Officer had demanded any gratification prior to the laying of the trap on 9-10-1990, he further found that the conclusion was inescapable on the basis of material evidence adduced that the Charged Officer had not demanded the alleged bribe on 9-10-1990 either.

However, in respect of the charge that Shri M.G.K. Murthy had accepted bribe on 9-10-1990, the Inquiring Authority concluded that the Charged Officer had not given any proof of how the money landed in his shirt pocket. That it was not forcibly placed there by Shri Lokanadham is borne out unfalteringly by SW-9. So taking all things into consideration he had concluded that the Charged Officer did show a motiveless, subliminal temptation to pocket the money, and this action of the Charged Officer was bordering on passive acceptance. On this basis the Inquiring Authority found that the charge proved partially as discussed in the report.

I have carefully gone through the representation of Shri M.G.K. Murthy with regard to the findings of the Inquiring Authority. With regard to the charge of demand of illegal gratification, Shri Murthy submits that he was dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy and he was made a victim by the scrupulous methods by the decoy in connivance with the C.B.I..

With regard to the second ingredient pertaining to acceptance, the Charged Officer states that the Inquiring Authority was inclined to agree with the Charged Officer's defence that the money was passed and thrust into his hands by Shri Lokanadham. After finding against the prosecution with regard to the demand on the date of trap and also on earlier dates and also having found that the Charged Officer had not accepted the illegal gratification as the money was thrust into his hands, the Inquiring Authority could not have come to the wrong conclusion that the Charged Officer had motivelessly pocketed the money and thus held that the charge was partially proved. The Charged Officer further contends that having found that the money was thrust into his hands, the Inquiring Authority could not have come to the conclusion that the Charged Officer had accepted the money motivelessly.

The Charged Officer further states that the money was thrust back into his packet by the decoy Shri Lokanadham as he came on 9-10-1990 with a determined mind to cause trouble to him since his repeated requests to drop the objection was not conceded to by him. The Charged Officer contested the observation of the Inquiring Authority that he had not adduced any evidence as the statements made by him during the course of inquiry and earlier constituted evidence on his behalf. Charged Officer repeated once again that he never yielded to any temptation as was clear from the inquiry itself.

In a charge of this nature the important point is

whether the proffered bribe is accepted by the Charged Officer or not. The issue that settles the whole question is whether the money proffered was received by the Charged Officer. Even the Charged Officer did not contest the fact that the money was recovered from his pocket. Once the money was recovered from the person of the Charged Officer, the debate on whether the acceptance was passive or otherwise does not seem very relevant. In this case acceptance of the money is proved by the Inquiring Authority himself and any comment on the motive is not realy relevant to the context. If the Charged Officer were to reject truly the bribe he would have reacted in such a way as to demonstrate shock and surprise. Continued interaction with the complainant would be out of the question. Based on the available evidence the contention of the Charged Officer that the "money was thrust back into my pocket by the decoy shri Lokanadham - - - - - - with a determined mind to cause trouble to him since his repeated request to drop the objection was not conceded to by him" does not appear convincing enough.

5. AND WHEREAS on careful consideration of the report of the Inquiring Authority and other records of the case in the light of the submissions made by Shri M.G.K. Murthy in his observations on report of the inquiry and during his personal hearing, the undersigned has decided to accept the findings of the Inquiring Authority.

6. NOW, THEREFORE, after considering the record of inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Shri M.G.K. Murthy, Audit Officer, is guilty of the charge. The undersigned is of the view that ends of justice would be met if the penalty of removal from service is imposed on him.

Accordingly, in exercise of the powers conferred on me by Rule 12 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time read with Sub-Rule (4) of Rule 15 thereof I hereby order the imposition of penalty of removal from service which shall not be a disqualification for future employment under the Government. Shri M.G.K. Murthy, Audit Officer(under suspension) be removed from service from the date of these orders.

7. A copy of this order may be added to the Confidential Rolls of Shri M.G.K. Murthy, Audit Officer.

Krishna 31/05/94

(K. KRISHNA DAS)
Principal Accountant General
(Audit)-I,
Disciplinary Authority.

A IV / 0133

COPY

From:
M. Gopala Krishna Murthy
Audit Officer
D-4, A.G. Staff Quarters
Yousufguda P.O.
HYDERABAD - 500 045.

To:
The Principal Accountant General
Audit-I A.P.(Disciplinary Authority)
HYDERABAD - 500 463.

Respected Sir,

Representation on the Inquiry Report dated: 31-12-1993 forwarded to me by the Sr. D.A.G.(Administration) in his letter No.Sr.D.A.G.(A)/AU-1/C.Cell//DC-1/8-118 KW/ 94-95/601 dated: 15.4.1994.

***** ***** ***** *****

In the reference cited, I was called upon to make representation or submission, if any, on the report of the Inquiry Authority to the Disciplinary Authority within 15 days of receipt. I received the report on 18-4-1994 and I enclose my representation on the conclusions reached by the I.A. for the kind consideration of the Disciplinary Authority and request for the issue of favourable orders early.

Thanking you,

Yours faithfully,

Place:Hyderabad
Dated: 29-4-94

(M. Gopala Krishna Murthy)

Venkateswarlu
Advocate

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REPRESENTATION OF THE CHARGED OFFICER ON THE INQUIRY REPORT

The main ingredients of the charge and allegations levelled against me are:

(a) Demand of illegal gratification and

(b) Acceptance of illegal gratification from one Sri. P.V.Lokanatham working as Health Supervisor in the P.H.C. Thurimerla of Nellore District. The I.A. has discussed the ingredients in detail. I am refraining from repeating the aspects discussed by the I.A. However, I am submitting some aspects which reinforce the findings given by the I.A.

The I.A. discussed the demand aspect in two facets namely:

(1) Demand prior to the date of trap i.e., 9-10-1990 and

(2) Demand on the date of trap

In respect of both these facets the I.A. found that there was no demand by me vide paras 7.24 and 8.9 of the I.A's report. A close scrutiny of the facts establishes that neither I nor any other member of the Audit Party could validly cancel or efface the objection. The objection raised in respect of the excess pay drawn in the case of Sri. P.V. Lokanatham(decoy) can be admitted only on compliance by the Medical Department to which the decoy belongs. There cannot be any motive as I, having raised the objection, cannot withdraw the same. As was observed by the I.A. the objection raised by me was affirmed even after receipt of reply from the Medical Officer of the P.H.C. So to say, the objection raised by our Audit Party with my approval was confirmed by me irrevocably. The question of rendering help or showing official favour to the decoy does not arise. In Madan Mohan Singh vs State of U.P. 1954 S.C.(Page-637) and in Trilok Chand Jain vs State of Delhi 1974 S.C.(Page-666), the Supreme Court of India have held want of motive in cases where the public servant cannot render any favour or disfavour to serve as a motive for payment of illegal gratification.

Advocate

The findings given by the I.A. in this regard finally conclude that alleged demand for illegal gratification either before or on the date of trap has not been made out by the prosecution. It is relevant to submit that as I am dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy, I was made a victim by the unscrupulous methods by the decoy in connivance with the C.B.I.

The second ingredient pertains to acceptance. The I.A's finding that the money was thrust into my hands will itself goes to prove that there was no acceptance. Acceptance always conveys a willing public servant soliciting a bribe and receiving the same. In the case under reply, the evidence of SW9 clearly shows when he depose an oath as under - "Mr. Lokanatham thrusted the money into the hands of Mr. Murthy(CO)". SW9 is a third party witness in this case. This aspect was discussed and finding was recorded by the I.A. as under - "I am inclined to agree with the CO's defence that the money was passed and thrust into his hands by Sri. Lokanatham". Vide para 10.4 and 10.7 of the I.A's report. Thrusting and acceptance ill go together. Thus the I.A. found that I did not accept any illegal gratification. The cumulative effect of the evidence of SW9 and the finding recorded by the I.A. conclusively establish that I was never a soliciting party. The I.A. also disbelieved the allegation that I counted the currency. This part of the case is discussed in detail by the I.A. in para 10.8 of his report.

The I.A., having found against the prosecution, the demand on the date of trap and also on the earlier dates and also having found that I have not accepted the illegal gratification by the fact that the money was thrust in my hands, could not have come to wrong conclusion that I have motivelessly pocketed the money and so holding that the charge was partially proved.

I respectfully submit that the I.A. was breathing hot and cold. The I.A. having found that I have not demanded payment of illegal gratification on the date of trap or earlier and also having found that the money was thrust into my hands, the I.A. could not have come to the conclusion that I have accepted the money motivelessly. Thi findings go ill-together. Having found that there was neither demand nor acceptance, the two ingredients of the charge, the I.A. could not have held that I have motivelessly pocketed the money. It needs to be appreciated at this juncture that both SW9 and the I.A. have reached the conclusion that the money was thrust into my hands. As already contended above, thrusting and acceptance ill go together.

It has been the burden of my song all along that the money was thrust back into my pocket by the decoy Sr. Lokanatham as he came on 9-10-1990 with a determined mind to cause trouble to me since his repeated requests to drop the objection was not conceeded to by me. I repeatedly stated this in my defence as per the requirements of Rules 14(4) and 14(16) of C.C.S.(C.C.A.) Rules 1965. These are statutory replies and they constitute evidence on my behalf. I did not examine any oral evidence. The answers I gave, the material I elicited during cross examination and answers given by me constitute in the eye of law, evidence under Section 3 of the Indian Evidence Act. My statements consistedly representing how the money was thrust into my pocket fulfill the role of my evidence. The observation by the I.A. that I had not adduced any evidence does not stand to reason and as the same is ill-founded the statement made by me during the course of Inquiry and earlier constitute Evidence on my behalf.

Advocate

Having found both the ingredients of the charge namely demand and acceptance have not been proved at all, it should not enable the I.A. to observe that the charge is partially proved holding that I have kept the money in my pocket motivelessly and having been subliminally tempted.

It is always expected of the Inquiring Authority to categorically and indisputably give a finding all that is wanting in this Inquiry.

I may bring to your kind notice that I am to reach the age of superannuation by September of this year and I was kept under suspension for about 43 months for no fault of mine. I may be pardoned in bringing to your kind notice that I joined service as U.D.C. and have earned promotions at the relevant dates and have sincerely discharged the duties to the best of my ability and for the matter of that for having raised an objection of over drawal of pay by an employee, I was victimised by his unscrupulous activity in vindictively dealing against me.

In the light of various facts mentioned in my representation, which are supported by circumstantial and material evidence, I humbly submit that I am quite innocent and I am put to all these troubles for the simple reason that I have not dropped the objection even after repeated requests by the decoy. I repeat once again that I never yielded to any temptation as is clear from the Inquiry itself. I am innocent, honest, truthful and obedient Government Servant and always tried to maintain high standard of integrity.

I request the Principal Accountant General to consider all the points raised by me in this representation with all sympathy and do justice.

(M. Gopala Krishna Murthy)

रजिस्ट्री डाक द्वारा
By Registered Post

S. 185-(Large)

CONFIDENTIAL

भारतीय लेखा तथा लेखापरीक्षा विभाग
Indian Audit and Accounts Department
महालेखाकार (लेखापरीक्षा) आंध्रप्रदेश
% Prl. Accountant General (Audit) I. A. P.

सत्यमेव जयते

No.Sr.DAG(A)/Au-I/C.Cell/DC-I/8-118KW/94-95/ दिनांक Dated 15th April, 1994

601

18/4/94
12.30 P.M.

To

Sri M.G.K.Murty,
Audit Officer,
D-4, A.G.Colony,
Yousufguda P.O.
Hyderabad--500 045.

Sir,

The report of the Inquiry Officer is enclosed. The disciplinary authority will take a suitable decision after considering the report. If you wish to make any representation or submission you may do so in writing to the Disciplinary authority within 15 days of receipt of this letter.

Yours faithfully,

(S.Balaramakrishna)
Sr.Dy. Accountant General (Admn)

Encl:AA

सैफाबाद, हैदराबाद-500 463
Saifabad, Hyderabad 500 463

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CONFIDENTIAL

F.No.13 OPM 28(45)
Government of India
CENTRAL VIGILANCE COMMISSION
****

DEPARTMENTAL INQUIRY AGAINST
SHRI GOPALA KRISHNA MURTHY,
AUDIT OFFICER, OFFICE OF AG/HYDERABAD
*****

R E P O R T
***

Vide Order No.Prl.AG/CC/DC-I/8-118/82 dated 7.1.1993 issued by Principal Accountant General (Audit I), Andhra Pradesh, Hyderabad I was appointed Inquiring Authority to inquire into the charges against Shri MGK Murthy, Audit Officer, AP/Hyderabad. Shri YTR Prasad, Inspector of Police, CBI/Visakhapatnam was appointed Presenting Officer in this case.

2.0 BRIEF HISTORY

2.1 Preliminary hearing in this case was fixed by my predecessor on 23.6.92 which could not be held due to hospitalisation of CO. On receipt of my appointment order as Inquiring Authority the preliminary hearing was held on 17.2.1993. Regular hearing was held from 21st to 23rd July 1993 in my camp at Hyderabad and case concluded.

3.0 CHARGE

3.1 Shri MGK Murthy has been charged under :-

"That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.1990 at 10.30 hrs. at Collectorate Office, Nellore, demanded

Ishwarah
Advocate

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and accepted a bribe of Rs.1,000/- from the decoy. Shri PV Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to main absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964."

4.0 Both the prosecution case and defence case have been elaborately dealt with in the assessment of evidence portion of the report and hence not being separately mentioned here.

4.0 ASSESSMENT OF EVIDENCE

4.1 The charge levelled against the CO is that he abused his position as public servant by demanding and accepting a bribe of Rs.1,000/- on 9.10.1990 from one Shri PV Lokanadham in the matter of dropping an audit objection against Shri Lokanadham's pay fixation.

4.2 The basic facts of the case, on which there is no dispute, are as under:-

4.3 The CO was functioning as an Audit Officer of Pay fixation Party during 1990. He alongwith other Audit officials had camped at Nellore for routine audit checks. In course of this work the CO inspected the service records of one Shri PV Lokanadham who was a Health Supervisor in the Primary Health Centre, Thurimerla. The CO found that the pay-fixation in respect of the said Lokanadham was not in order, and so, he issued a half margin slip dated 19.9.1990 to the effect that

K Srinivasa Rao
Advocate

there was an over-fixation of Lokanadham's pay to the tune of Rs.10,500/- for the period 1.4.1981 to 30.9.90. The CO, therefore, recommended recovery of the said amount of Rs.10,500/- from Lokanadham. The CO sent this recommendation to the Medical Officer, Primary Health Centre, Thurimerla, who in turn replied that the pay-fixation of Lokanadham was in order and the anomalies found by the CO and his audit party were not correct. This reply was personally conveyed to the CO by one Shri Nageswar Rao of that primary health Centre on 5.10.1990.

4.4 The CO endorsed his observation, on the back side of the reply, that he did not agree with the Medical Officer and, therefore, Lokanadham's pay fixation was in excess. The CO returned the paper containing his observation to the said Shri Nageswar Rao. So far so good.

5.0 PROSECUTION CASE : DEMAND (PHASE-I)

5.1 Now, the department's allegation is that on the same day, i.e. on 5.10.1990 the CO conveyed to the said Nageswar Rao that if Lokanadham would pay 1/4th of the disputed amount (i.e. Rs.10,500) as bribe, he (the CO) would drop the objection Nageswar Rao passed on this message to Lokanadham on 5.10.1990 itself. On 5.10.1990 Lokanadham is stated to have met the Audit Party at Vijaishree Lodge, Nellore, on being called. Lokanadham was asked to pay 1/4th of Rs.10,500/- for dropping the audit objections in response to which Lokanadham pleaded that he could not pay such a huge amount. Lokanadham was asked to come again on 6.10.1990 to the Lodge; Lokanadham went there on that day and explained to the CO that his pay-fixation was correct whereupon

Advocate

the CO asked him to pay at least 1,000/- on 9.10.1990 at Collectorate Office, Nellore where the CO and the audit party were camping for their work. The CO also threatened Lokanadham that unless he payed the bribe money, the recovery would be effected.

5.2 DEMAND - PHASE-II

Lokanadham submitted a complaint dated 9.10.1990 to the CBI Officers at 7AM on 9.10.1990 where he stated about the demand of bribe by the CO.

On 9.10.1990 the CBI laid the trap. On that day Lokanadham and an independent witness by the name of K Satyanarayana Rao who was an Inspector, Income-tax at Nellore, entered the record room where the CO was working. The other members of the party were standing outside the room and having a clear view of the three through a window. This was some little time after 10 AM. The CO after a snatch of some formal conversation with Lokanadham offered a seat to him; Lokanadham sat on a chair by CO's side and the independent witness Satyanarayan Rao was standing close by. The CO asked Lokanadham whether he brought the money and Lokanadham brought out the money from his shirt-pocket and gave it to the CO.

6.0 DEFENSE CASE : DEMAND - PHASE-I

6.1 The CO has denied the fact of his demanding bribe from Lokanadham. He has stated (p.4 of his brief) that Lokanadham had deputed his emissary, Nageswar Rao, on 5.10.1990 to him and this emissary had requested him to drop the objection against Lokanadham. The CO draws our attention to the deposition of Nageswar Rao (p.7 of his brief), who appeared as SW-4, to the effect that he (Nageswar Rao) went to the Lodge at the instance

Advocate

of Lokanadham who had asked him to meet the Audit officer there and convince him by offering some bribe at his (Lokanadham's) expense, and upon his refusal to drop the valid audit objection, so contends the CO, Lokanadham threatened him in the presence of G. Ramakrishna (SW-6); in any case, Lokanadham and Nageswar Rao had come to the Lodge without invitation. The CO's further contention is that he did not report the threat of Lokanadham to the superior officers because it was a normal affair experienced by the audit party in all the districts in which they were working.

6.2 The CO also refers to the deposition of Dr. M. Vijaya Kumar (SW-2) who stated that Nageswar Rao was a Senior Assistant in his Primary Health Centre handling audit objections, and further that, Lokanadham did not tell, report or complain to him (SW-2) about the demand of bribe by the Audit party before 9.10.1990.

6.3 DEMAND - PHASE-II

6.3(i) The CO states (p.9 of his brief) that Lokanadham had came to the Collectorate on 9.10.1990 on his own, without invitation. Referring to the deposition of SW-9, the CO claims that he was busy and fully engrossed in his work when Lokanadham came to the Collectorate and so the question of his offering a chair to Lokanadham did not arise.

6.3(2) The CO denies having demanded any money on 9.10.1990 from Lokanadham; according to him, Lokanadham it was who had thrust a wad of currency notes into his hands on that day.

7.0 I have gone through the relevant facts and materials in

Advocate

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evidence as well as the arguments and cross-arguments.

7.1 I shall first analyse the evidence with regard to the demand of bribe supposed to have been made by the CO prior to the date of the trap, i.e. prior to 9.10.1990.

7.2 From the complaint submitted by Lokanadham at Ex.S-1 it reveals that the audit party had called him on 5.10.1990 at Vijayashree Lodge and informed him that his pay-fixation in selection/promotion grade was irregular and a recovery of Rs.10,500/- was ordered. They demanded from him 1/4th of his amount as bribe to get over the problem. When he told them that he could not pay them so much, they asked him to meet them at the Lodge and told them that he could not pay them so much; he explained to them that his pay-fixation was correct as per Govt. Memo dated 19.1.1990. Thereafter, they told him that he should pay at least Rs.1,000/- for not recommending the perported recovery of Rs.10,500/-. They further told him to hand over the above amount to them at 9.10.1990 at the Collectorate where they were condunting audit.

7.3 The 'audit party', it may be mentioned here, consisted of the CO, one Shri Ramakrishna (SW-6) and a few others.

7.4 In his statement (S-17) recorded by the CBI Inspector on 10.10.1990 Lokanadham's version is that during September 1990 the Audit Party headed by the CO had come to Nellore for auditing pay fixation of various State Government employees of Nellore district. This audit party during the course of their audit concerning the staff of the Health Centre (where Lokanadham was working) had selected 8 Service Registers and had issued half margin slips (audit objections) in the case of 3 service books

C.V. Mateswa
Advocate

including Lokanadham's and sent the same through Nageswar Rao, the dealing clerk ('Senior Assistant', by designation) of that Health Centre. To explain to the audit party about the correctness of his pay-fixation (which was being objected to by audit) Lokanadham accompanied by Nageswar Rao went to the Lodge on 5.10.1990 and remained outside. Nageswar Rao came out of the Lodge and conveyed to him the message of audit officers that he should pay 1/4th of the amount involved in the audit objection.

7.5 Lokanadham then states, to quote,

"I went in and met S/Shri Murthy and Ramakrishna in their Lodge-room. Besides, they conveyed me through Shri Nageswar Rao that I should meet them in their Lodge on the same day. In the lodge they repeated the demand of bribe for dropping the audit objection even after I explained that the pay-fixation was correctly done. I told them that I was not in a position to pay such a huge amount thereupon they asked me to meet them in the lodge the next day."

On the next day, i.e. on 6.10.1990, Lokanadham met them in their lodge in the room of the CO at 8AM. After some parley, they demanded that he should pay at least Rs.1,000/- as bribe to them on 9.10.1990 at the Collectorate.

7.6 Lokanadham who appeared as SW-1 confirmed that Ex. S-1 is a copy of his complaint; he also confirmed the contents of S-17. During cross-examination, he deposed that on the advice of Nageswar Rao he went to Vijaya Lodge on 5.10.1990 to meet the CO. He met CO and Ramakrishna in the lodge.

7.7 Nageswar Rao appeared as SW-4. He stated during cross-

examination that the replies to the half margins were handed over to 'Collectorate Nellore' on 5.10.1990. He further clarified that this was handed over to the Audit Officer on 5.10.1990. He went to the lodge as per the oral orders of the Audit Officer (CO); when he was so asked to come to the Lodge, some members of the audit party were present at the a distance.

7.8 SW-4 further states that he did not know how many persons and who were the persons present at the Lodge when he met the CO at 7.30 PM on 5.10.1990.

7.9 SW_4 goes on to state that he went to the Lodge at the instance of Shri Lokanadham who asked him to meet the Audit Officer there and convince them by offering some bribe at his (LOkanadham's) expense. In re-examination, SW-4 stated that he was to 'convince' the Audit Officer.

7.10 In his recorded statement at Ex.S-20 Nageswar Rao stated that on being asked by the CO on 5.10.1990 he had gone to meet him at 7.30 PM in his lodge. At that time Shri Ramakrishna, Assistant Audit Officer, and other party members were present. The CO, so goes the statement, returned back the half margin slip of Lokanadham writing the same objection at above6 9.30 PM on the same day, i.e. 5.10.1990. At that time, to quote, "......Lokanadham was available in the vicinity of their lodge, as they requested me to inform him (Lokanadham) to meet them. Accordingly, I informed him. Prior to 9.30 PM we were at Collectorate upto 7.30 PM and I contacted the audit party ....." The CO and Ramakrishna, according to SW-4, told that the objection could be dropped but Lokanadham had to pay 1/4 of Rs.10,500/-. SW-4 informed this to Lokanadham who immediately

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Advocate

went upto their lodge and later informed him that the same bribe demand was repeated to him by them.

7.11 G Ramakrishna, Asstt. Audit Officer, appeared as SW-6 and during his examination-in-chief (as a hostile witness)denied the suggestion that the CO had demanded Rs.1,000/- from Lokanadham in his presence, although Lokanadham had met the CO once at Vijaya Lodge in his presence. On 5.10.1990 Lokanadham and Nageswar Rao came with the reply and met with the CO when he was present. The CO passed on the reply to him, and since the reply did not concern him he handed it over to Shri Jameel-Ur-Rab, another member of the audit party, who was the author of the objection.

7.12 Jameel-Ur-Rab, Section Officer, appeared as SW-5 and deposed that the audit objection in respect of Lokanadham was prepared by him, but not at the instance of the CO, and was later on agreed to and signed by the CO and this was in accordance with the procedure. On receipt of the reply from the Medical Officer, the CO noted the remarks thereon and also signed.

7.13 A close look at all the above said facts & circumstances shows that the audit objection regarding excess payment of Rs.10,500/- to Lokanadham was sent under the CO's signature on 19.9.1990 (Ex.S-8), the reply of the Medical Officer to this dated 26.9.1990 was seen by the CO, and the returned reply signed by him on 5.10.1990 was handed over to the representative of the Medical Officer on 5.10.1990 itself. In this note the validity of the audit objection has been re-affirmed stating the the Govt. memo dated 23.3.1989 was not

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Advocate

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applicable to the case of Lokanadham.

7.14 The different versions of the events that unfolded thereafter, i.e. after this return audit note was prepared do not synchronise.

7.15 As to the demand of the bribe by the CO himself, the complaint's story is far from clear. Neither in his complaint (S-1) nor in his statement (S-17) does he affirmatively and categorically say that the demand was made by the CO on 5.10.1990. Even on 6.10.1990 when he met them (audit party) in the CO's room 'they' demanded the bribe of Rs.1,000/-.

7.16 During his deposition as SW-1 the complainant stated that he met the CO and Ramakrishna on the advice of Nageswara Rao, whereas, Nageswar Rao states that he went to the Lodge at the instance of Lokanadham. In his recorded statement (S-20) he states that the CO asked him to meet at the Lodge at 7.30 PM and at 9.30 PM he (CO) returned the half margin slip with the same objection. The question arises if the CO was going to stick to the objection, as he did, upto 9.30 PM on 5.10.1990 at what time on that day did he make the demand of the bribe, and why?

7.17 SW-4 does not, either, give any clear version of the incidents.

7.18 SW-4 no doubt confirms that Lokanadham had rushed to the Lodge on 5.10.1990 and later informed him that the same bribe demand (i.e. 1/4 of RS.10,500/-) was repeated to him by the CO & Ramakrishna. This is confirmed by Lokanadham in his recorded statement (S.17). But during his cross-examination as SW-1, Lokanadham states that the CO and not Ramakrishna, demanded the money; this in spite of his statement at s-17 that the CO and

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Ramakrishna had asked him to meet them on 6.10.1990 and they demanded the bribe of Rs.1,000/-.

7.19 The question, therefore, crops up : why does Lokanadham try to give a protective shield to Ramakrishna and not to the CO? And, if Lokanadham was in reality asked on 5.10.1990, to contact the audit officers again on 6.10.1990, why did he not intimate this to Nageswar Rao, his confidante and mediator?

7.20 In any case, Nageswar Rao was evidently ignorant about and not a witness to the meeting between Lokanadham and the CO (or whoever of the audit party) on 6.10.1990. Neither, did any other witness testify that the CO actually demanded some bribe on 6.10.1990.

7.21 Thus, as to the place of the demand, the time of the demand and the person/persons making the demand prior to the date of the trap, the evidence is far from transparent, and does not clearly and categorically establish that it was the CO who demanded the alleged bribe amount of Rs.1,000/-.

7.22 This apart, the compalinant and Nageswar Rao had no business running after the CO & others of the Audit Party and soliciting them when the audit objection had been reaffirmed on 5.10.1990. In reiterating their objection on 5.10.1990 the concerned audit officials had taken into consideration the latest Govt. Memo dated 23.3.1989 (Ex.S-3) which was also alluded to by the Medical Officer in his reply dated 26.9.1990 (S-9). In the Government Memo dated 19.1.1990 (Ex.S-14) which Lokanadham wanted to bring to the notice of the CO & others, it is nowhere brought out that OM was in modification or in supercession of the

OM dated 23.3.1989. Moreover, it appears that the OM dated 19.1.1990 was to regulate cases of pay fixation resulting from the general pay-revision of 1986. Lokanadham's case apparently was of an earlier date, i.e. of pre-1986. In any case, the circular dated 19.1.1990, if it had any relevance to the case, could have been referred to by the Medical Officer in his reply dated 26.9.1990 (S-9); if the Medical Officer did not draw on this OM by oversight or ignorance, it should have been possible for Lokanadham and the dealing clerk (Nageswar Rao) to bring the OM to the notice of the Medical Officer; if they were convinced, in the light of the instruction as contained in the OM dated 19.1.1990, about the correctness of the pay-fixation and not of the audit objection, they should have taken up cudgels with the CO or his superior officers; instead, Lokanadham and Nageswar Rao chose the devious path of approaching the audit personnel at odd hours (after 7 PM) and at odd place (Lodge) on 5.10.1990.

7.23 Moreover, the evidence tendered by Lokanadham and Nageswar Rao unhesitatingly establishes the fact that they had, on 5.10.1990, circumambulated to the Lodge of the CO and other members of the audit party not at the latter's suggestion and invitation but as a result of their own deliberate pact and of their own sweet (and seedy) motive and volition. Lokanadham's story that he had approached the CO and his colleague Ramakrishna on 6.10.1990 also remains uncorroborated and cannot be relied upon as a fact in evidence.

7.24 I cannot, therefore, countenance the complaint of Lokanadham that the CO had demanded any gratification prior to the laying of the trap.

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8.0 DEMAND ON 9.10.1990

8.1 Let's now turn to the issue whether the CO demanded anything from Lokanadham on 9.10.1990, the day the trap was executed. From the mediators' report at Ex.S-2(2) what comes out is the fact that Lokanadham and the independent witness Satyanarayan Rao had entered the record room where the audit party was present shortly after 10 AM on 9.10.1990; that other members of the said party had taken convenient positions outside the window of the record room to keep an eye on Lokanadham and Satyanarayan Rao. It was observed by this waiting party that Lokanadham was conversing with some gentleman who was sitting in a chair. Lokanadham was also offered a seat. At about 10.30 AM both Lokanadham and Satyanarayan Rao gave the pre-arranged signal.

8.2 In other words, as far as the members of the party waiting outside the record room were concerned, they did not know that the CO had demanded the money from Lokanadham.

8.3 Satyanarayan Rao on being questioned by the CBI inspector, however, stated that the CO after making some conversation with Lokanadham had asked him (Lokanadham) whether he brought the money, to which Lokanadham replied in the affirmative and after taking the bribe money from his left hand shirt-pocket gave the money to CO with his right hand.

8.4 In his recorded statement (S-24) Satyanarayan Rao states that the CO recognised Lokanadham when he had entered his room, that Lokanadham after greeting the CO enquired from him as to what had happened to his work. The CO then offered a seat to

Lokanadham while Satyanarayan Rao kept on standing by the side of Lokanadham. Thereafter, the CO asked Lokanadham whether he brought the money and extended his right hand.

8.5 It is significant to note here that the CO's act of extending his right hand was not seen by the other members of the raiding party who were standing near the window just about **6 feet away** [see S-2(2)]. Again, from Ex.S-6, which is a site plan of the place of occurrence, it appears that Lokanadham was sitting to the left of the CO, rather than in front of him, and so, it would have been easier and more natural for the CO to extend his **left hand** rather than **his right hand.**

8.6 Satyanarayan Rao did not tell that the CO had first extended his hand (right or left) when he (Satyanarayan Rao) was asked to narrate the incidents by the Inspector [see Ex.S-2(2)]. Nor did the other independent witness tell so when questioned as to what he saw; although in his recorded statement (S-19) this second witness states that the CO **after saying something** extended his hand.

8.7 The question that naturally arises as a doubt is, if the CO had extended his hand, and that too in the first instance, why was this significant fact not mentioned in the mediators' report which was supposed to have been written immediately after the event when the matter was fresh in the minds of the witnesses?

8.8 During his entire deposition as SW-9 Satyanarayan Rao does not at all say or suggest that the CO had demanded any money from Lokanadham rather, he is emphatic in his assertion that it was Lokanadham who thrust or pushed the money into the hands of

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the CO and persuaded him (CO) to take it.

8.9 The conclusion is inescapable, on the basis of material evidence adduced, that the CO had not demanded the alleged bribe on 9.10.1990, either.

9.0 ACCEPTANCE

9.1 It is mentioned in the Mediators' report [Ex.S-2(2)] that Lokanadham gave the money to the CO with his right hand and after counting it with both hands the CO kept the money in his lift side shirt pocket. This part of the said report is based on the reply given by the independent withness, i.e. Satyanarayan Rao who had accompanied Lokanadham to the CO's room. This version of the incident has been vindicated in the recorded statement of Lokanadham in Ex.S.17 page 3, and in the recorded statement of V Ramachandradu, the other independent witness, in Ex.S-19(p.3).

9.2 This particular incident of the CO accepting the bribe was, however, not observed by the Police Inspector Chellathurai as is apparent from his recorded statement (Ex.S-23) although Chellathurai did observe Lokanadham talking to the CO and being offered a chair and also giving the pre-arranged signal. Satyanaryan Rao in his recorded statement (Ex.S-24) narrates the same story of the CO counting the money with both of his hands and keeping the same in his left side pocket.

9.3 In his deposition Lokanadham (SW-1) confirmed the contents of his statement at Ex.S-17 and the contents of the post-trap proceedings at Ex.S-2(2). In cross-examination he denied that he had thrust the money in the pocket of the CO.

CV Venkateswara Rao
Advocate

9.4 The independent witness, V Ramachandrudu (SW-3) confirmed the contents of his recorded statement at Ex.S-19 and also the fact that at the relevant time he was standing outside the window and in spite of a PBX board being there by the side of the window he was able to see the happennings.

9.5 G Ramakrishna who appeared as SW-6 stated that on 9.10.1990 he had observed Lokanadham approaching the CO and thrusting something in his hands, but he was not aware of the contents.

9.6 Y Chellathurai, Police Inspector, who appeared as SW-8 confirmed the contents of his statement at Ex.S-23.

9.7 K Satyanarayan Rao, the independent witness who had accompanied Lokanadham into CO's room on 9.10.1990, appeared as SW-9. He confirmed his statement at Ex.S-24 but in cross-examination deposed that Lokanadham had thrust the money in the hands of the CO. He confirmed this position when questioned by the Inquiry Officer.

9.8 To another question of the IO he replied that even without their giving a signal, the CBI inspector entered the room because the Inspector was observing the proceedings from a window by the side of the door.

9.9 Satyanarayan Rao also deposed in re-examination that after receiving the money the CO had kept the money in his pocket. The CBI inspector had asked the CO to take out the money from his pocket and later conducted some tests. In the same breath he stated that he could not immediately remember whether the said chemical test was conducted by the CBI Officer before or after taking out the currency from the pocket of the CO.

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9.10 SW-9 in cross-examination did not agree to the suggestion that Lokanadham after thrusting the money into the hands of the CO had also thrust the same into the CO's pockets.

10.0 CO'S DEFENCE

10.1 The CO has denied accepting bribe from Lokanadham. In page 9-10 of his brief as well as in his general examination he submits that Lokanadham visited him on 9.10.1990 of his own accord. Lokanadham came near him and thrust a few currency notes into his hands and requested him to drop the audit objection. The CO then pushed back the money into Lokanadham's hands but Lokanadham, to cause trouble to him, immediately thrust the money into his (CO's) shirt pocket. At that time the CBI inspector entered the room and asked the CO his identity.

10.2 The CO further contends that Lokanadham was a bribe-giver amd lacked character, was an accopmplice in law and his evidence required to be scrutinised intimately.

10.3 The CO also contends that (audit) objections once raised cannot be dropped unless they are found invalid when further records are produced by the Department in support of their reply.

10.4 The CO's contention that the money was thrust into his hands finds corrobboration in the deposition of SW-9 and SW-6. SW-6, being a member of the CO's audit party and also a co-accused at some stage as far as demand of bribe was concerned, may not be quite reliable but SW-9 cannot be regarded in that light. So, I am inclined to agree with the CO's defence that the money was passed and forced into his hands by Lokanadham.

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Advocate

This fact is reinforced, albeit obliquely, from the mebulous and uncertain evidence regarding the stretching of hand by the co, voluntarily, to accept the money from the complainant - a point I have discussed in the earlier paras.

10.5 However, the Co's contention that the money was thrust into his pocket does not find support in the testimony of SW - 9, or for that matter from any other piece of evidence.

10.6 Should we, therefore, hold the Co quilty ofaccepting the bribe money?

10.7 The evidence tendered by SW - 9 has some weak points. He replied to a question put by IO that the money was counted before he entered the room. Why this was done is not known. Sw - 9 contradicts himself in as much as while replying to a question put by the IO he stated that the CBI inspector entered the room even without their giving the signal. The question, therefore arises whether any signal was given or not and if given at what stage, i.e. after the Charged Officer took the money in his pocket or took the money in his hands. If the Charged officer had accepted the money in his hands, without being prevailed upon to do so, the sign could have been given at that stage or else the raiding-cum-observing party could have entered the room immediately thereon; They should not have waited till the moeny was (allegedly) counted by the Charged Officer and placed in his pocket. This clearly establishes that the money was being forced into the CO'S hands by Lokanadham.

10.8 The counting of the money by the CO is a conclusion of the witness SW - 9 and of Lokanadham, and it cannot be established merely from the turning into pink of the chemical solution in

which both hands of the CO were dipped. Thus even though the factum of recovery of the money from the CO's shirt pocket is clearly established, the fact that the CO was taking this money willingly, wilfully and with a mensrea is not established, particularly so because I find nothing on record to assail the CO's submission that audit objections, raised and reiterated formally, could not be dropped unless the concerned department produced fresh material so as to invalidate these objections. In this case, no evidence exists of any new material from the Medical Officer of the Health Centre being furnished to the CO on or prior to the date of the trap, therefore, the CO could not have dropped the objections so as to benefit Lokanadham.

10.9 Be that as it may, the CO has not given any proof of how the money landed in his shirt pocket. That it was not forcibly placed there by Lokanadham is borne out unfalteringly by SW-9. So taking all things into consideration, I have to conclude that the CO did show a motiveless, subliminal temptation to pocket the money, and this action of the CO was bordering on passive acceptance.

11.0 FINDING

11.1 Charge proved - partially, as discussed in this report.

(OP MISHRA)
COMMISSIONER FOR DEPARTMENTAL INQUIRIES

PLACE : NEW DELHI
DATED : 31.12.1993

A-VI

Dated, 29/10/1993

From;

D.Gopala Krishna Murty,
Audit Officer, Quarter No.[illegible],
A.G's Staff Quarters, [illegible],
HYDERABAD - 500 045.

To

Sri G.P.Mishra,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
Wing No.3, Block No.10, Jamnagar House,
Akbar Road, New Delhi - 110 011.

Most Respected Sir,

Sub:- Departmental Inquiry against Sri D.J.K.Murty, Audit Officer, Office of the P.A.G. Audit-I, A.P., Hyderabad - Submission of reply to the written brief of the P.O.

Ref:- 1) No.155PH2a Daily Order sheet of the Inquiry Officer dated 25-7-93.
2) Letter No.6304/93/12(1)/93-VP dated 12-8-93 and send to the I.O. and copy enclosed to me.
3) My Telegram dated 23-8-93.

-:0:-

As required in the Daily Order Sheet cited at reference No.(1), I submit herewith my reply to the written brief of the Presenting Officer received in the reference (2) cited above. Due to my ill-health and certain unavoidable circumstances I could not send my reply by 25th instant and requested the Inquiry Officer for extension of time for one week in my telegram dated 23rd instant. The delay of (4) days in this regard is very much regretted.

Yours faithfully,

(D. GOPALA KRISHNA MURTY)

Encls;

Advocate

WRITTEN BRIEF OF THE CHARGED OFFICER IN THE DEPARTMENTAL INQUIRY AGAINST SRI. M.G.K. MURTHY, AUDIT OFFICER, OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL, AUDIT-I, A.P. HYDERABAD.

I, M.G.K. Murthy, Audit Officer was posted during April 1988 to supervise the work of the pay fixation party consisting of two Assistant Audit Officers and four Senior Auditors. The work of the audit party is to check the correctness of the fixation of pay of the A.P. State Government employees in the Revised Pay Scales 1986. After completing the work in eleven districts, our party went to Nellore during September 1990. Accommodation was provided in the office of the District Collector Nellore to the Audit Party for performance of their duties as is done in any district. All the Drawing Officers send the service registers of their staff to us at the collecterate for check and return.

2. During the course of our Audit Check at Nellore, Sri. Jameel-ur-Rab, Senior Auditor drafted a half margin objection pointing out a recovery of over Rs.10,500/- due to incorrect fixation and regulation of the pay of one Sri. P.V. Lokanatham, Health Supervisor, Primary Health Centre, Turimerla. After scrutiny of the half margin objection by Sri. Mohd. Sibhgatullah, Supervisor (whose nature of duties is similar to that of Assistant Audit Officer) the same was approved by me and was issued to the Medical Officer, P.H.C., Turimerla on 19-9-1990. The Medical Officer sent his reply to the objection through Sri. A.R.K. Nageswar Rao, Senior Assistant of the PHC on 5-10-1990. As Shri Mohd.Sibhgatullah, Supervisor was relieved from our Audit Party on 24.9.90 consequent on his retirement from service on superannuation, I consulted Shri Jameel-ur-Rab, Sr.Auditor and recorded my remarks rejecting the reply as it did not need the objection raised and returned the reply to the Medical Officer. Shri P.V.Lokanatham wanted to manipulate to secure our goodwill to get the objection dropped and thereby avoid the recovery. When his attempts failed he took a revengeful attitude and was successful in arranging a manipulated [illegible] in collaboration with

the CBI authorities of Visakhapatnam on 9.10.90 at the Collectorate.

The CBI authorities, after completion of the trap formalities at Nellore left for Visakhapatnam on 10.10.90 evening and filed a F.I.R. against me in the Court of the Special Judge for CBI cases, Visakhapatnam on 11.10.90. Later due to inherent weakness in the case, the case was transferred to the Principal A.G., Audit-I, A.P., Hyderabad to be settled by Departmental Inquiry.

The Principal A.G. issued a charge-sheet to me under Rule 14 of the CCS(CCA) Rules, 1965 on 19.11.91 charging that I demanded and accepted a bribe of Rs. 1000/- (Rupees One thousand only) from Shri P.V.Lokanatham in the matter of his dropping the objection and thereby failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant thereby violating Rule 3(1) of CCS(Conduct)Rules,1964. After obtaining copies of various documents mentioned in the imputation to the charge memo, I submitted my statement of defence on 20.4.92 totally denying the charge and desired conduct of an inquiry.

On his appointment as Inquiry Officer on 7.1.93, Shri O.P.Mishra, Commissioner for Departmental Inquiries in the Central Vigilance Commission conducted Preliminary Hearing at Hyderabad on 17.2.93 in which I repeated my denial of the charges. The Regular Hearing was conducted from dt.21.7.93 to dt.23.7.93 at Hyderabad in which 9 Prosecution Witnesses and one Defence Witness were examined. The other 5 Prosecution Witnesses were dropped by the Presenting Officer without assigning any reasons. I was generally examined by the Inquiring authority himself and proceedings were recorded.

At the outset I wish to submit that the Audit Officer of a Field Party can neither approve incorrect objections nor can drop correct objections raised and issued at his will. The entire record of the objections raised along with replies wherever received will be sent to the Head Quarters Office, viz., Principal A.G., Audit-I, A.P., Hyderabad. There they are subjected to thorough scrutiny and finally disposed of by issuing correct objections in the form of an inspection report and dropping the incorrect objections.

C. Venkatanarayana

an instance where an objection issued by our Pay fixation Party was found to be not valid by the Deputy Accountant General may be seen in circular no.62, dt.11.4.89 (copy enclosed). This clearly shows that I cannot render any favour to Sri P.V.Lokanatham by dropping his objection already raised, issued and much more so when replied by the Medical Officer, P.H.C., Thurimerla. In this context kind attention is invited to the Judgement of Supreme Court in the case Trilok Chand vs State of Delhi (copy enclosed). Shri Loknnatham was vindictively interested in harming me as he failed to secure any favour from me. In these circumstances the alleged demand and acceptance are totally alien in the present context of trap.

At the outset it needs to be mentioned that there is no evidence that addused by the Presenting Officer that I demanded any payment of illegal gratification. There is absolutely no evidence also that I voluntarily received any illegal gratification from anybody much less from Shri Lokanatham. The money was thrust without any demand against my will. Before I could complain against the high-handed activity of Sri Lokanatham in thrusting the money, the CBI Officers entered the scene to rub a case against me.

Before the details of the case are submitted it is necessary to appreciate the character and antecedents of Sri Lokanatham. He is employed in the Medical & Health Department as Health Supervisor. He possesses labour Union tendencies, political leanings and is an active worker of Telugu Desam Party which was in power prior to the present Government in Andhra Pradesh. He was taken to task for his political interferences and he behaved as PSEUDO political leader and has been thriving as such. By his own showing, he was working as the President, Nellore District Telugu Nadu Trade Union Council. He gave press statements against the present Government and other political parties and he was subjected to a Departmental Inquiry, vide Regional Director, of Health, Guntur letter to the Director of Medical & Health Services (copy enclosed). (Lines 22 to 27 on page 1 of deposition of S.W.1). Regarding his moral calibre, Sri M.Subramanyam, a graduate Health Supervisor

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submitted a regular signed petition against him which reveals his nefarious activities (copy enclosed). The pamphlets issued in support of Telugu Desam candidates for election to Assembly and Parliament includes his name as the District President of T.N.T.U.C. (a copy of the pamphlet is enclosed). I submit that the said Lokanatham, with his notorious character he is not amenable to any discipline and any official propriety. I may be permitted to submit that the enquiring authority had the occasion to observe the demeanour during the deposition and cross examination of Sri Lokanatham. He had deputed his emissary (S.W.4) Sri Nageswara Rao to me on 5.10.90 and his emissary requested me to drop the objection raised against Sri Lokanatham. In any view of the matter Sri Lokanatham cannot be an acceptable witness as per the standards of Supreme Court evolved in the case Sarawan Singh vs State of Punjab (xerox copy of Judgement enclosed). Sri Lokanatham on his own admission is a bribe giver. His evidence in Law is treated as an evidence of accomplice and as such it needs to be scrutinized carefully. Sri Lokanatham deputed Sri Nageswara Rao (S.W.4) to hold parleys with the public servant. Sri Lokanatham stated that he never offered any bribe or was willing to bribe me to get the objection dropped. But it is proved beyond doubt during the cross examination of S.W.4 that Lokanatham tried to bribe me through S.W.4 for getting the objection dropped. As such the version of Sri Lokanatham did not have any ~~corroboration~~ corroboration when he professed that I received illegal gratification. A person with bad repute, lagging in charater and attempting to bribe through his emissary cannot be an acceptable witness. Rejecting the evidence of Lokanatham there is no evidence in this case to prove the demand of any illegal gratification by me.

The trap is a manipulated one. The arrival of the CBI Insp (S.W.8) at Nellore at 5.45 a.m. and immediately thereafter comin into contact with Sri Lokanatham and making arrangements for the trap indicates manipulation. Sri A.Satyanarayana Rao, Income T Inspector (S.W.9) stated that he was for the first time contact by CBI Inspector (S.W.8) at about 9.30 a.m. in his office on 9. (lines 14 to 16 on page 13 of deposition of S.W.9). The CBI In

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claims that he, Sri V.Ramachandmudu (S.W.3) and Sri K.Satyanarayana Rao (S.W.9) etc., met at the Railway rest house at 8.45 a.m. for the pre-trap rehearsals (lines 21 to 23 of page 1 of S-23). The pre-trap panchanama (S-2(1) was timed to have been commenced at 8.45 a.m. on 9.10.90. Reading the versions of S.W.8 and S.W.9 together clearly establishes that the version of S.W.8 is not correct. He, having met S.W.9 for the first time in his office at about 9.30 a.m. on 9.10.90 could not have prepared S-2(1) at 8.45 a.m. in the Railway rest house. The version of S.2(1) militates against the evidence of S.W.9 and also militates against the evidence of S.W.8. S.W.8 stated that he met S.W.9 at Railway rest house at 8.45 a.m. whereas S.W.9 says that he was for the first time contacted by the CBI Inspector in his office at about 9.30 a.m. and on 9.10.90. Both in respect of place of meeting of S.W.9 and also timed at which S.2(1) was prepared vary fundamentally. These details show that all is not well with the CBI Inspector. Cuppled with these details, his presence at Nellore is a pre-conceived programme to manipulate a trap. In the same sequence it needs to be appreciated that Sri Lokanatham on his own showing could not have possesed and produced the trap money of Rs.1000/-. He has clearly stated so in his statement S-17 and also in his evidence S.W-1. When ~~numerativel~~ cumulatively appreciated it is clear that S-2(1) as was a manipulation. It is not a true record on the event.

S.W.8 arrived at Nellore at 5.45 a.m., received complaint from Sri Lokanatham at 7.00 a.m. and started preparation of pre-trap mediator-nama S-2(1) at 8.45 a.m. which needs earlier preparation for longer time. The time at which his commend after receipt of complaint and before commencement of S-2(1) is not sufficient. It is all an enigma as to how S.W.1 could have got scent of the arrival of S.W.8 by about 6.00 a.m. to present his complaint at 7.00 a.m. S.W.8 claims that he made enquires which helped him to conclude that my reputation was bad. Reading between the lines it is clear that S.W.8 could not have the opportunity or time to make any independant enquiries about the antecidents of S.W.1 or the reputation of the charged officer. S.W.8 has admitted that he did make any enquiry about the antecidents of S.W.1(line 19 on page 12 of deposition of S.W 1). It is law on the subject that

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When a public servant is trapped there must be an enquiry to know the antecidents of the bribe giver and that of the public servant. The Supreme Court in the case Sirajuddin vs State of Madras made it clear that such an enquiry is a must.(copy of the Judgement is enclosed). From the above resume it is clear that S.W.8 did not act in a genuine way with clean hands. He soiled his hands in the matters adverted to supra.

The other part of the trap regarding acceptance, it is necessary to make it clear that there was no demand. To a question put by the Inquiring Authority, S.W.9 replied that the money was counted by me in the presence of S.W.9 even before he (S.W.9) entered the room. The claim of S.W.9 that he saw the counting of money even before he entered the room does not favour of any sense and his version is totally incredible. Efforts were made on 5.10.90 through the medium of S.W.4. But these overtures were rejected. It was made definetely clear that objections raised could not be dropped. Efforts were made with the cooperation and collaboration of CBI Inspector to somehow plant the money by one method or other so that circumstances stimulating that of a trap could be created by the CBI officials obviously for statistical purposes to secure feather in their cap. The tainted money was thrusted into the hands and later into the pocket of the public servant. This circumstance gains strength and support from the way S-2(1) was brought into existence as explained above. The CBI Inspector S.W.8 did not hesitate to fabricate S-2(1) to involve me.

I submit that the evidence of S.W.3 Sri V.Ramachandrudu is "procured" evidence. He was brought by the CBI Inspector S.W.8. I further submit that the P.B.X.board and the person at the PBX board are definitely obsticles to S.W.3 for any observation. His evidence that S.W.8 recorded his statement is not correct as S.W.7 signed the statement. S.W.8 and S.W.9 are definite in their evidence that the money was thrust and it shows that the trap is not a genuine trap but more artificial and manipulated. In the normal course of events, if it is a case of regular demand there will be no question of thrusting at all. Wherever thrusting occurs, in such circumstances needs no canvassing that it was

not a case preceded by demand for payment of illegal gratification.

The positive reaction ~~of~~ to phenoptheline soda test conducted on my fingers cannot have any evidencial value as it is not a case of acceptance but it is a case of thrust.

I submit that I have put in about 33 years of unblemished service prior to this manipulated trap and I am reaching the age of superannuation by ~~x~~ September'98 and I have earned various promotions during my service at relevant times. I have been put into trouble because of the stiff stand I took in not dropping the objections raised by our Audit party. It is relevant to submit that I became a victim of exhibiting stiff stand, honesty, devotion to duty, integrity and sincerity. It is ~~xxxxxxxx~~ also relevant to submit that I and my audit party members were able to point out excess payments to ~~x x~~ the tune of about Rs.70,lakhs in all the 12 Districts where we conducted Pay fixation check. It will show clearly how I and my party members exhibited high standard of devotion to duty.

I submit that it is revealed beyond any doubt during the cross examination of Sri A.R.K.Nageswar Rao(S.W.4) that I never demanded any amount for dropping the objection. S.W.4 stated the he went to the lodge at the instance of Sri Lokanatham who asked him (S.W.4) to meet the Audit Officer there and convince him by offering some bribe at his (S.W.1) expense. (Last 3 lines of page 5 of the deposition of S.W.4). During the re-examination S.W.4 stated that S.W.1 has been asking him right from the receipt of the audit objection to convince the Audit Officer to drop the Audit objection against Sri Lokanatham's Pay. (page 6 of deposition of S.W.4). It is clear that S.W.1,Sri Lokanatham wanted him to get the audit objection dropped by me to which I, as a dutyful servant and as an Officer of integrity, was resisting. I also told S.W.1 and his emissary S.W.4 that such objections are a routine nature of the duties of the audit party. I also told that the objections against S.W.1 is a valid one and it could not be dropped. I also submit that Sri Lokanatham got angry and threatened ~~in~~ the presence of Sri G.Ramakishan (S.W.6). The evidence given by S.W.6 would prove that he did threaten me. He

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He used the words "I shall see how you won't drop it. Your objections are wrong". (Lines 9 to 11 on page 9 of deposition of S.W.6). Thus Sri Lokanatham bore grudge against me and decided to harm me by hook or hook as I did not drop the objection. I also submit that S.W.4 is a senior Assistant in the P.H.C.,Thurimerla where S.W.1 was also working. Sri Nageswara Rao was admittedly entrusted with the job of attending to the Audit objections raised against the staff working in the PHC, Thurimerla. It is relevant to submit that the Audit party raised objections against 3 officials working in PHC, Thurimerla.

During cross examination Dr.M.Vijayakumar, Medical Officer, PHC, Thurimerla, S.W.2 stated that Sri Nageswara Rao, Senior Assistant was handling the Audit objections. He also stated that Sri Lokanatham did not tell him about the demand of bribe by the Audit party before 9.10.90. (Lines 11 and 12 on page of deposition of S.W.2). The conduct of Sri Lokanatham does not establish that there was any demand for payment of illegal gratification by the Audit party. If there was really a demand for illegal gratification, he could have reported or complained to any of his officers like S.W.2.

I submit that Sri K.Satyanarayana Rao,(S.W.9) stated that I was attending to my work when S.W.1 and S.W.9 entered the hall. In the presence of S.W.9, S.W.1 was pursuading me to take the money. S.W.9 stated that Sri Lokanatham offered the money to me and he pursuaded me to take the money. (Saying "Theescondi" in telugu). (Answer to question no.8 of Inquiring authority on page 14 and 15). Evenafter pursuation by S.W.1 when I did not accept the money, he thrust the money into my hands. I thrust the money back into the hands of S.W.1. As S.W.1 came with a determined mind to harm me, he thrust the money into my shirt pocket and went back to the wall 6 ft. away from me. The deposition of S.W.9 clears all the doubts about the thrusting of money (page 14 answer to question no.2 by the Inquiring Authority, lines 14 to 16 and last 2 lines in cross examination on page 13). The deposition of S.W.9 that S.W.8 entered the room even without giving any signal indicates the anxiety of the CBI Inspector to involve me in the manipulated trap. (page 14 - answer to question no. 5 of the Inquiring

Thus the deposition of S.W.9 shows that there was never any demand or acceptence by me. It also shows that S.W.1 managed to manipulate the trap successfully with the active cooperation and collaboration of C.B.I. I also submit that S.W.3 and S.W.9 are procured witnesses.

I submit that Sri A.R.K.Nageswara Rao, S.W.4, met me in the lodge on 5.10.90 in the presence of S.W.6. He requested us to drop the objections relating to Sri Lokanatham for consideration. We told that it is not possible to drop the objection. S.W.4 went away. After sometime Sri P.V.Lokanatham, S.W.1, met us and requested us for dropping the objection. When his request was not accepted he threatened us. I submit that S.W.4 and S.W.1 came to the lodge without any invitation. They came of their own on 5.10.90 evening. I and other members of my party were staying in a rental lodge. I submit that controlling visitors in a lodge is not possible. Sri Lokanatham came to the Collectorate on 9.10.90 of his own. I never invited him or wanted him to meet me on 9.10.90 at my camp office. The deposition of S.W.9 clearly shows that when S.W.9 and S.W.1 came Collectorate I was busy and fully engrossed in my work. Therefore the question of offering S.W.1 a chair to sit with me does not arise. The Presenting Officer's commentary about offering a chair to S.W.1 is only an artificial boost. Therefore offering a chair is totally false. I also submit that it is not also a probable situation as I was very clear in my mind that I would not drop the objection raised. It is true that Sri Lokanatham threatened me in the presence of S.W.6 on 5.10.90 evening at the lodge. I submit that the job of the Audit party in Pay fixation cases is to point out excess payments and issue half margins thereby the persons working in the Audit party will be incurring the displeasure and wrath of the affected Govt.servant. These are common experiences which I and other party members came across in almost all the 12 Districts where the pay fixation checks were conducted. Hence I submit that the threat given by Sri Lokanatham was not reported to his Superiors because it was a normal affair experienced in all most all the 12 Districts.

I submit that Sri Lokanatham visited the Collectorate on

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.10.90 of his own accord. He came near me and thrust a wad of currency notes into my hands and requested me to drop the objection on the basis of a Govt.Order issued during January'90. I did not like it and pushed back the money into his hands. Because Sri Lokanatham came with a determined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I wanted to report the mal-practice to the District Medical Officer, Nellore and turned towards the P.B.K.board. At this juncture one CBI Inspector entered the room and asked my identity and also disclosed his identity. When I tried to explain to him the happenings prior to his entering into the room he asked me to keep quiet and sit down. In the circumstances mentioned above there was absolutely no scope for ~~x~~ raising hue and cry. I was quite innocent and I was sure that I would be able to prove my innocence. As I was under shock in view of the mal-practice played by S.W.1 in collaboration with C.B.I.,Visakhapatnam I could not react in a violent way. Under these circumstances any resistance from me is futile. The factual details of the happenings were brought to the notice of my Superiors on 29.10.90 vide copy enclosed). It is pertinent to state that as a result of the shock caused by the manipulated trap I fell ill and was on medical leave. Hence I could not bring the factual details to the notice of my superiors earlier than 29.10.90.

In view of the above I submit that there was absolutely no demand or acceptance of bribe by me. I also submit that there is absolutely no evidence to prove that I demanded and accepted a sum of Rs.1000/- from Sri Lokanatham. I submit that the trap is manipulated by S.W.1 in collaboration with CBI, Visakhapatnam as I did not favour S.W.1 by dropping the audit objection.

In the circumstances narrated supra, I submit that I am sinned against rather than myself sinning. Objections once raised cannot be dropped unless they are found invalid when further records are produced by the Department in support of their reply. S.W.1, being a bribe giver, is an accomplice in law. He is with a bad background and his evidence cannot be accepted on its own. He lacks character. Hence his evidence requires to be scrutinised very intimately. The reasons advanced by the Presenting Officer are not

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convincing. I submit that I am innocent and the trap was foisted against me by Sri Lokanatham in collaboration with CBI Officers. I have put in 33 years of service prior to the trap and it is my misfortune that at the fag end of my service I am put in this muddle. I therefore pray that I may be fully exhonorated of all the charges levelled against me.

(N.G.K. Murty)

Advocate

Citations in my defence are listed below:

1) Sirajuddin vs State of Madras:

A Preliminary Inquiry is a must in all cases investigated by A.C.B.

No such thing was done in this case.

2) Sarawan Singh vs State of Punjab:

The bribe giver is an accomplice in law. His evidence must satisfy 2 tests namely (a) bribe giver is an acceptable witness (b) his evidence must have independant corroboration.

Both the tests are not satisfied in respect of Sri Lokanatham.

3) Suraj Mal vs State of Delhi:

Mere recovery of money in the absence of proof of demand and acceptance ~~of~~ is not sufficient in law to hold the public servant guilty.

There is absolutely no demand or acceptance of bribe by me.

4) Trilokchand vs State of Delhi:

In the case of a public servant who cannot do any favour, paying bribe is ill-conceived and does not arise.

(M G K Murty)

OFFICE OF THE
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13/8/93 IPM

No. 6054 /03/12(A)/90-VSP. Dt:12.08.1993.

To,

Sri O.P.Mishra,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
NEW DELHI.

Sir,

SUB: Departmental Inquiry against Sri M.G.K.Murthy Audit Officer, O/o.P.A.G, A.P, Hyderabad - Submission of Written Brief of P.O on behalf of D.A - Reg.

REF: No.13 DFM/28 ORDER SHEET dtd 23.7.93. of Inquiring Authority.

***

With reference to above, I submit herewith my Written Brief in the subject case, with a request to take the same on file. Copy of the Written Brief is being sent to the Charged Officer as per the above order sheet. The delay of two days in submitting the Written Brief may kindly be condoned, as I was away from Head Quarters on leave and Court attendence.

Yours faithfully,

12.8.93

(Y.T.R.PRASAD)
INSPECTOR OF POLICE &
PRESENTING OFFICER
CBI/SPE/VISAKHAPATNAM

CC to: Sri N.G.K.Murthy, Audit Officer, Q.No.D-4, A.G.Staff Quarters, Yousufguda, Hyderabad - 500 045.

CC to: S.P, CBI. Visakhapatnam - for favour of infm.

WRITTEN BRIEF OF PRESENTING OFFICER IN THE DEPARTMENTAL INQUIRY AGAINST SRI M.G.K.MURTHY, AUDIT OFFICER, O/o. PRINCIPAL ACCOUNTANT-GENERAL, A.P, HYDERABAD.

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1 The Departmental Inquiry was conducted by Sri O.P.Mishra, Commissioner for Departmental Inquiries, C.V.C., New Delhi and Inquiring Authority, in pursuance of Memorandum No.CC/DC-I/88-118/90-91/45 dtd 19.11.91 of the Principal Accountant-General,A.P, Hyderabad against Sri M.G.K.Murthy, Audit Officer, P.A.G.Office, A.P, Hyderabad, on thefollowing Article of Charge.

2 "That the said Sri M.G.K.Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his official position as Public Servant on 9.10.90 at 10.30 hours at Collectorate, nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy, Sri P.V.Lokanadham, Health Supervisor, Primary health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct. By the aforesaid acts, the Public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a Public Servant and thereby violated Rule 3(1) of Central Civil Services (Conduct) Rules, 1964."

3 The article of charge and the detailed imputations of misconduct alongwith list of 16 documents and list of 14witnesses, on which the article of charge was relied, was served on the charged officer and was asked to submit written statement of defence. Accordingly, the charged officer had submitted his statement of defence, wherein he denied the charge and desired to have an oral inquiry.

4 After completion of PH formalities, the Inquiring Authority held RH at his camp office, Hyderabad from 21.7.93 to 23.7.93. During course of the Inquiry, as many as 9 witnesses were examined and their evidence was taken on file on behalf of the disciplinary authority. In support of the article of charge 16 documents and material objects were marked as Ex.S-1 to S-16 and the prerecorded statements of 9 witnesses were also marked as Ex.S-17 to 24 during the course of Inquiry. 7 witnesses owned their prerecorded statements in toto, while 2 witnesses partly disagreed with the contents of their prerecorded statements. 2 documents, viz., (1) one file containing the telegram issued by one Sri Prabhakar, Sr.Assistant, Collectorate, Mahaboobnagar, to the A.G, Audit-I, A.P, Hyderabad, complaining against the Audit Officer of Pay Fixation party, and (2) one file containing note of Sri M.G.K.Murthy, (Charged Officer) regarding mischievous dropping of his (charged Officer's) objection by one Sri R.C.Murthy, Sr.Auditor of his office, admission of latter's guilt, his remarks thereon, and final orders of the Dy.A.G/A.G, were marked as Ex.D-1& D-2, defence documents, on behalf the charged officer. The charged Officer presented

one witness, viz., Sri Md.Sighathulla, Retd. Asst. Audit officer (who worked under him for some time) as defence witness (DW-1) and he did not opt to present himself as defence witness on his behalf.

The evidence of S-9 and S-10 established that C.O has raised objection against the Pay fixation of SW-1 Sri P.V. Lokanadham erroneously, and paid him excess pay of Rs.10,500/- and advised SW-2 Dr.M.Vijaya Kumar to recover the said excess amount from SW-1 and on that SW-2 (who is drawing authority of SW-1 s pay) explained how the objection raised by C.O is not tenable by referring relevant Government orders and guidelines and that C.O has returned the same with remarks that audit objection stands good. SW-5 Sri Jameet-Ur-Rab stated that he did not prepare audit objection in-question at the instance of C.O., but prepared himself, which was agreed and signed by C.O as per the procedure.. DW-1 Sri Md. Sibghathullah stated that Auditor will prepare objection slip, wherever they come across any irregular pay fixation and the same will be examined and forwarded by Asst. Audit Officer to the Audit Officer (who is incharge of the pay fixation party) for approval, and that on receipt of the reply from concerned department, it has been re-examined by the Auditor and Asst. Audit officer, and that in this particular audit objection, C.O has left his remarks and returned it to SW-2 without referring it to the Asst. Audit Officer or Auditor. DW-1 also stated that the Audit Officer can drop the Audit objection, if he is satisfied and he is vested with the powers to drop. The evidence on record established that C.O was dealing the subject matter during relevant period of occurrence and was capable to drop the audit objection inquestion, which implies that C.O had an opportunity of showing favour/disfavour to the complainant (SW-1) duirng relevant period i.e September - October, 1990.

Regarding the charge that C.O had demanded and accepted an amount of Rs 1,000/- from SW-1 on 9.10.90 at about 10.30AM, at Collectorate, Nellore for dropping the audit objection regarding the recovery of excess pay of Rs.10,500/- paid to SW-1, there is clinching documentary evidence viz., S-1 to S-7. S-1 is the complaint of SW-1 addressed to the S.P, CBI, Visakhapatnam in his hand writing was seen by SWs-3 and 9 which was given voluntarily by SW-1 to the CBI Inspector (SW-8), setting law into motion against the Charged Officer. S-2 (1) and (2) are Mediators Reports drafted on 9.10.90 in the presence of SW-1 (Complainant) SWs-3 and 9 (independent witnesses belongs to Railway and Income-tax depts., respectively). S-3 (1) to (3) are three bottles containing wash of right hand, left hand and shirt's pocket of C.O that were seized by CBI Inspector in the presence of SWs-3 and 9 at relevant time and place of occurrence. S-4 and S-5 are bush shirt of C.O and tainted currency notes that were recovered by CBI Inspector from the C.O. S-6 and S-7 are Rough site plan of place of occurrence and specimen seals that were prepared by CBI Inspector in the presence of SWs-3 and 9 at relevant place and time of occurrence. Documentary evidence S-1 to S-7 is proved by

SW-1 Sri P.V.Lokhanadham, SWs-3 and 9 sri V.Ramachandrudu and Sri K.S.Rao and SW-8 CBI Inspector.

7 Ex.S-2(1) is the mediators report drafted in Officers Rest House, S.C.Railway, Nellore on 9.10.90, when SW-1 briefly narrated the facts of his complaint against the C.O, the fact of production of Rs.1,000/- by SW-1 as the money intended to pay to the C.O in case of demand, the fact of applying phenolpthalene powder to the currency notes of aforesaid Rs 1,000/- the explanation and demonstration of chemical test, entrustment of the tainted currency notes amounting to Rs 1,000/- to SW-1 with instructions to pay only to the C.O in case of demand, the instructions given to Sri K.S.Rao, accompanying witness (SW-9) were all mentioned in detail. Similarly Ex.S-2(2) is the mediators report drafted at the place of occurrence on 9.10.90 upto 1.00PM, by incorporating all the facts since the members of the trap team left Officers Rest House, S.C.Railway, Nellore till the C,O was apprehended by the CBI Inspector, after the tainted currency notes amounting to Rs.1,000/- was demanded and accepted by the C.O from SW-1 (Sri P.V.Lokhanadham). Both these documents (Ex.S-2(1) & (2)) are contemporaneous records written on the spot in the presence of the signatories of the documents according to the events that took place on 9.10.90 in officers rest house, S.C.Railway, Nellore and the Collectorate, Nellore.

8 Evidence of Sri V.Ramachandrudu (SW-3) and Sri K.S.Rao (SW-9), who are Inspector of works, S.C.Railway and Inspector, Income tax Dept., respectively and independent mediators in this case establishes the charge of demand and accceptance of bribe amount of Rs.1,000/- on 9.10.90 against the Charged officer. SW-9, who accompanied SW-1 on 9.10.90 into the camp offfice of the C.O had categorically stated that the C.O had accepted the amount of Rs 1,000/- with one of his hands, counted the currency notes with his both hands and kept the currency notes in his shirt's pocket, which shirt was marked as Ex.S-4 and which shirt was worn by the C.O at the relevant time and place of occurrence, and subsequently when the CBI Inspector (SW-8) disclosed his identity and questioned the C,O., he replied that he had taken money from Sri P.V.Lokhanadham (page-2, lines 3 to 7 of Ex.S-2(2)). The deposition of SW-9 clears all the doubts about the acceptance of bribe amount by C.O, that the C.O had stretched one of his hands towards Sri Lokhanadham, and on that Sri Lokhanadham gave money to C.O (page-13, para-3, lines 1 to 3 of Inquiry proceedings), that it is not true to suggest that Sri Lokhanadham, after thrusting the money into the hands of C.O., had also thrusted the money into the pocket of C.O (page-14, para-1 of Inquiry proceedings), that the tainted money was counted by C.O in his presence (page-14, 3rd question and answer of inquiry proceedings). Both SWs-3 and proved their statements given to CBI Inspector (Ex.S-19 and 24) which discloses that CBI Inspector had observed all formalities to lay trap against the C.O and had given necessary instructions to SWs-1 & 9, that CBI Inspector apprehended the C.O after demanding and accepting bribe amount (tainted currency notes) from the complainant

in the presence of SWs-3 and 9, and had given an opportunity to the C.O to explain whether the C.O had demanded and accepted tainted currency notes as bribe from the complainant, that CBI Inspector conducted chemical test on the hands and shirt's pocket of the C.O, that CBI Inspector recovered material objects including tainted currency notes in the presence of SWs-3 and 9 and that CBI Inspector had got drafted pre-trap and post trap mediators reports which were authenticated by SWs-3 and 9, who are independent mediators from Railway and income tax Depts., have never associated with either CBI people or the complainant prior to 9.10.90. They have no interest in the case except to speak the truth. Hence their evidence can be relied. Their evidence is corroborated by Ex.S-1 to S-7. Hence, the evidence of Ex.S-1 to S-7 can also be relied.

9. During deposition, SW-1 Sri P.V.Lokhanadham agreed that he had given a complaint against the C.O on 9.10.90 and had produced 10 Nos of hundred rupee notes before the CBI Inspector, two mediators in officers Rest House, S.C.Railway, Nellore, and stated about the facts of the demonstration and explanation of chemical test by CBI Inspector, that the instructions issued by CBI Inspector to himself and SW-9, that accordingly he alongwith SW-9 went to the camp office of C.O and handed over tainted currency notes to C.O on being asked, that conducting of chemical test on the hands and shirt's pocket of C.O by CBI Inspector, that recovery of tainted currency notes and bush shirt of C.O by CBI Inspector, that drafting of pre-trap and post trap mediators reports by incorporating all the details of events that took place on 9.10.90, and he agreed that the contents of his statement given to the CBI Inspector are correct.

10. SW-2 Dr.M.Vijaya Kumar agreed that the contents of his pre-recorded statement are correct and proved the Ex.S-8 and 9. SW-4 Sri A.R.K.Nageswara Rao agreed that the contents of his pre recorded statement are correct and stated that C.O has expressed before him also that he intend to receive 1/4th of the amount that C.O has advised to recover from the pay of Sri P.V.Lokanadham. SW-7 Sri G.B.Rao, CBI Inspector stated about the facts and findings of his investigation. SW-8 Sri Y.Chellathurai, CBI Inspector stated and corroborated the evidence of Ex.S-1 to 7, SWs-1,3 & 9, and further stated that he verified the antecedents of C.O and learnt that the C.O's reputation was bad, that he was competent to lay trap in the subject case etc.

11. The C.O on general examination by Inquiring Authority, stated that he did not report about the alleged threat of Sri P.V.Lokanadham against him to the superior officers of Sri Lokanadham inspite of allowing Sri Lokanadham twice at his Camp Office. The C.O further stated that he did not ask Sri Lokanadham to visit him, but Sri Lokanadham had visited him on his own. If it is true, what was the necessity to C.O to allow Sri P.V.Lokanadham on 5.10.90 evening at his temporary residence and on 9.10.90 at about 10.00AM at his Camp Office and to offer him a chair to sit with him. The

C.O also stated that Sri P.V.Lokanadham threatened him on 5.10.90 evening at his temporary residence. If it is true, why he did not inform either his own senior officers or the senior officers of Sri P.V.Lokanadham about the incident. The C.O also stated that Sri P.V.Lokanadham thrusted a wad of currency notes into his hands first and later thrusted the same currency notes into his shirt's pocket at relevant time and place of occurrence. If it is true, the C.O accompanied by his party members numbering about 7 and the host department i.e Collectorate, Nellore, would have raised hue and cry and immediately he would have informed the CBI Inspector, the people available at the place of occurrence as well as the Officers of the Collectorate, Nellore. He did not resist and allowed the CBI Inspector to conduct chemical test on his hands and shirt's pocket and to seize his bush shirt. In view of the above points, the version of the C.O can not be believed since what he stated is only an after thought of the defence.

12 In view of the above facts, the Charge against the Charged Officer, that he accepted a sum of Rs.1,000/- from Sri P.V.Lokanadham, Health Supervisor, PHC, Thurimerla on 9.10.90 at about 10.30AM at the Camp Office of the C.O for dropping the audit objection raised by the C.O., stands established by the standard of preponderance of probability.

12.8.93

(Y.T.R.PRASAD)
INSPECTOR OF POLICE &
PRESENTING OFFICER
CBI/SPE/VISAKHAPATNAM

A VIII / 8M4 (8d) 77

HYDERABAD
22.07.1993

Deposition of Shri.A.R.K.Nageswara Rao,Manager, MFTB&CD Hospital, Nellore, Andhra Pradesh.

-S-S-S-

Examination in Chief

I have gone through the statement marked as Exhibit.S20. and confirmed its contents. It is a fact that I informed Sri.P.V.Lokanandam that Sri.M.G.K.Murthy wanted to see him regarding consideration of the Audit objection raised. It is a fact that Sri.M.J.K.Murthy has expressed before me also that he intend to receive ½ of objected amount.

Cross Examination

I am working as Sr.Assitant from 4.10.1968 to 15.4.92. of Sri.Lokanadam
The pay/on revision of the scale was fixed by theDistrict Medical & Health Officer. Three objection were raised by the Audit party in respect of my PHC. Half margins were replied by the drawing Medical Officer of my PHC. After signing the Audit replies by the Medical Officer I handed over them to the Audit Officer, at Collectorate, Nellore. We have send replies to three out of two Audit objections, and out of these two replies one was accepted by the Audit so the objection was dropped and the other reply which related to Sri.Lokanandam's case was not accepted so the objection remained. The replies to the half margins were handed over to Collectorate Nellore on 05.10.1990. I further clarify that this was handed over to the Audit Officer on 05.10.1990. I went to the Lodge as per the oral orders of the Audit Officer(CO). At the time when the Audit Officer asked me to come to the Lodge some members of the Audit party were present at a distance. I do not know how many persons and who were the persons present at the Lodge when I met the Co there at 7.30 PM on 5.10.1990. I deny the suggestion that I asked the Audit Officer/Audit party to drop the objections for consideration. I went to the Lodge that the instance of Sri.Lokanandam who asked me to meet the Audit Officer there and convenience them by offering some bribe at his expense(Sri.P.V.Lokanadam).

Contd..2.

A.R.K.Nageswara Rao
22.7.93

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Re-examination

Right from the receipt of the audit objection, Sri.Lokanadam that asked me to convenience the Audit Officer to drop the objections against Sri.Lokanandam's pay.

INQUIRING AUTHORITY

RO&AC

(A.R.K.NAGESWARA RAO)

SW9 SW9

HYDERABAD
~~22.07.1993~~
23.07.1993

Deposition of Sri.K.Satyanarayana Rao,
~~Deposition~~ of Sri.K.Satyanarayana Rao,
Inspector of Income Tax(Retd.), Guntur.

-S-S-S-

Examination in Chief

I ~~xxx~~ have gone through the Statement recorded by CBI Officer and confirm the contents of the same. It is now marked Ex.S24. I was a witness in the subject case for the first time.

Cross Examination

The CBI Inspector, Sri.Chellathurai came to the Office of the Income Tax Officer and requested the service of an Income Tax Inspector and since I was the only Inspector available at that time, I was directed by my ITO to accompany Sri.Chellathurai. The timings of IT Office are 9.15 AM to 5.45 PM. I went to the office between 9.15 & 9.30 AM, on 09.10.1990. Mr.Chellathurai met me for the first time in the ITO Office, however I don't remember the exact time when i Met Sri.Chellathurai in the Office. I was not informed about the objection raised by Audit. I ~~xxx~~ did not examine whether the objections are genuine or otherwise. I donot remember whether I asked any questions to Lokanadam, regarding his complaint. I don't remember ~~X~~hat this stage who wrote the Mediators Report S2(2). I don~~o~~t remember whether any questions were put to the witnessess (including me) by the CBI Officers before recording the proceedings (Ex.S2(2). Mr.Lokanadam thrusted money in the hands of Sri.Murthy(CO).

Reexamination

It is true that CO had stretched one of his hands towards Sri.Lokanadam, and on that Sri.Lokanadham had given money to Mr.Murthy. After receiving themoney, Mr.Murthy had kept the money in his pocket. At this stage, I don't remember whether the money was kept in his shirt/pant pockets either right or left. The CBI Inspector asked Mr.Murthy to take out the money from his pocket and later conducted some tests. Now I cannot immediately remember whether the said Chemical tests was conducted by CBI officer before taking out the currency or after it, from the pocket of Mr.Murthy.

Contd..

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Re- Cross examination

I do not agree to the suggestion that Sri.Lokanadam after thrusting the money into the hands of Sri.Murthy had also thrusted the money into his pocket.

Questions by IA.

Q. Who went along with you into the room of Sri.Murthy and who were present in the room at that time on 9.10.1990 ?

A. Myself, Lokanadam and other witness(I do not remember the name of the witness. All the members of the audit party(6 or 7 members) including Sri.Murthy.

Q. Describe briefly what happened after three of you entered the room of Sri.Murthy as per you remember ?

A. Sri.Lokanadam persuaded Sri.Murthy (AO) and thrusted the money into the hands of Mr.Murthy. He kept the money in his pocket later. Then the CBI Inspectors entered into the room, introduced themselves and asked him to take out the money.

Q. Was the money counted in your presence before you entered the room by Mr.Murthy?

A. Yes, it was counted.

Q. Was this money given by Sri.Lokanadam or CBI Officer?

A. The money was given by Sri.Lokanadam only.

Q. How did the CBI Inspector enter into the room i.e. what caused him to enter the room after the money was given ?

A. Even without giving our signal the CBI INspector entered the room because he was observing the proceedings from a window by the side of the door.

Q. How did you know the CBI Inspector was observing ?

A. I had seen the CBI Inspector observing the proceedings.

Q. Who else was observing the proceedings.

A. I could see the other witness also but whether the witness was inside the room or outside with the Inspector.

Q. Can you remember how Sri.Lokanadam thrust the money into thehands of Sri.Murthy i.e.please describe the movements of Sri.Lokanadam and Sri.Murthy during this transactions ?

A. Sri.Lokanadam took out the money from his pocket in my presence. At that time Sri.Murthy was attending to his work. Sri.Lokanadam offered the money to Mr.Murthy and persuaded to take the money (saying "TISUKONDI" in Telugu) —

HYDERABAD
23.07.1993.

General Examination of Sri.M.G.K.MURTHY,CO. by the Inquiring Authority.

-S-S-S-

Q. Can you tell whether the Audit Objection with regard to the pay fixation of Sri.Lokanadam was based on any Government Order/Circular applicable at the relevant time and if so whether this fact was intimated to the Medical Officer, Primary Health Centre who was head of the Office?

A. Yes.

Q. Did you yourself scrutinise the relevant Govt.Order and come to the conclusion that the said Audit objection was sustainable?

A. Yes.

Q. Can you explain the reasons as far as you know, as to why, when the correspondence was between your Office and concerned health centre, Sri.Lokanadam visited you, as he states four times.?

A. I did not ask Sri.Lokanadam to visit me. He came on his own accord and visited me on the evening of 5th October 1990 for the first time and later on 9th October 1990 when the trap was laid at Collecto-rate, Nellore.

Q. Did Sri.Lokanadam give you any threat or warning in the event the audit objections relating to his pay fixation was not dropped.?

A. Yes.

Q. When was this threat given to you, if you can remember and in who's presence, if you can remember?

A. When I refused to drop the objection, even after repeted requests of Sri.Lokanadam, he in return threatned in the evening of 5.10.1990 and Sri.G.Rama-kishan, Asst.Audit Officer was also present at that time, at the Vijaya Lodge.

Q. Was this threat reported by you to the Superior Officer of Sri.Lokanadham or do you normally receive such threats ?

A. I did not report the threat given by Sri.Lokanadham to his superiors because it was a normal affair which I have experienced in almost all the 12 districts

Contd..

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where I conducted the pay fixation checks, After returning from Nellore, I reported this to my DAG, on 29.10.90.

Q. On 9.10.1990 what transpired between you and Sri.Lokanadam by way of discussing or otherwise, when Sri.Lokanadam visited your Office at the Collectorate, Nellore?

A. When Sri.Lokanadam visited the Collectorate, Nellore on 9.10.1990 he came near me and thrust a wad of currency notes into my hands and requested me to drop the objection on the basis of a Government Order issued in January 1990. I didn't like it and pushed back the money into his hands. Because Sri.Lokanadam came with a determined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I wanted to report this malpractise of Sri.Lokanadam to the DM&HO, Nellore and stood up and turned towards the telephone(PABX Board). Yet this juncture one CBI Inspector entered the room and asked my identity. I replied that I am M.G.K.Murthy, Audit Officer of the Pay fixation party.

INQUIRY AUTHORITY 23/7/93

RO&AC

(M.G.K.Murthy) 23/7/93

GOVERNMENT OF INDIA

INDIAN AUDIT AND ACCOUNTS DEPARTMENT

Office of the Accountant General
Andhra Pradesh :: Hyderabad -500463

No. CC/DC-I/8-118/90-91/45 Dated: 19-11-91.

MEMORANDUM

The undersigned proposed to hold an inquiry against Shri M.G.K.Murthy, Audit Officer under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of mis-conductor misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure - III and IV).

2. Shri M.G.K. Murthy, is directed to submit within ten days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

4. Shri M.G.K. Murthy, is further informed that if he doesnot submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C.A) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him exparte.

5. Attention of Shri M.G.K. Murthy, is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of the matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri M.G.K. Murthy, is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

Name: SRI. U.N. ANANTHAN
Designation: PRINCIPAL ACCOUNTANT GENERAL
(DISCIPLINARY AUTHORITY)

To
Sri.M.G.K. Murthy,
(Audit Officer),
'D' type Quarters,
A.G's Staff Quarters,
Yousufguda,
HYDERABAD.

ANNEXURE-I

Statement of articles of charge framed against Sri M.G.K.Murthy, Audit Officer, Pay Fixation Party (CP-65) Office of the Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad.

That the said Sri. M.G.K.Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.90 at 10.30 hrs. at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri. P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

amount from Shri Lokanadham vide half margin slip dated: 19.9.1990. He sent this half margin slip through Shri Nageswar Rao to the Medical Officer, Primary Health Centre, Thurimerla who replied vide his letter dated: 26.9.90 addressed to the Section Officer, Pay Fixation Party, Camp Nellore, that no excess payment was made to Shri Lokanadham and the anamolies found by Sri. M.G.K.Murthy and his party were not correct. In his letter he stated that the pay fixation of Shri Lokanadham done from period to period was correct as he was coming under the category of beneficiaries as mentioned in the said Government orders. With his letter he enclosed various Government orders in support of his contention that pay fixation was in accordance with the Government orders. This reply was taken to Sri M.G.K.Murthy and submitted in person by Shri Nageswar Rao on 5.10.90.

Even after perusing the reply of Medical Officer and the enclosed Office orders, Sri. M.G.K.Murthy did not agree with the Medical Officer and maintained that the complainant would not get the benefits of the Government orders and as such his pay fixation was in excess. He made his remark to this effect on the reverse side of the letter of medical officer and returned the same to Shri Nageswar Rao. The main contention of Sri. M.G.K.Murthy was that as Shri Lokanadham was functioning as Health Supervisor (On promotion) from 22.3.1978 and as he was not stagnant, he has not completed 15 years of service for getting the benefit as enumerated under Government circular dated: 22.3.1989. On the same day Sri. M.G.K.Murthy conveyed to

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ANNEXURE-II

Statement of imputation of misconduct in support of article of charge to be framed against Sri. M.G.K.Murthy, Audit Officer Office of the Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad.

Sri. M.G.K.Murthy functioned as Audit Officer of Pay Fixation Party (CP-65) of Accountant General (Audit)I, Andhra Pradesh, Hyderabad during the period 1990.

Sri. P.V.Lokanadham functioned as Health Supervisor, Primary Health Centre, Thurimerla during 1990.

During the routine audit at Nellore Collectorate, Sri. M.G.K.Murthy came across the service book and pay fixation of Shri. P.V.Lokanadham, Health Supervisor, prior to this Sri. R.K.Nageswar Rao, Sr.Assistant of Primary Health Centre, Thurimerla produced the service registers of all the staff including that of the complainant before the audit party on 14.9.90 under the instructions of his DMHO Nellore. Sri. M.G.K.Murthy kept 8 service registers including that of the complainant and returned the rest to Shri Nageswar Rao. He returned the 8 registers with half margin slips with audit objections in case of 3 including the service register of the complainant. In the case of Shri Lokanadham the complainant, M.G.K.Murthy did not agree with his pay fixation with the contention that the benefits given by Government of Andhra Pradesh in various Government orders were not applicable to Shri Lokanadham. M.G.K.Murthy stated in the half margin slip that as Shri Lokanadham was given the benefit under the said Government orders his pay was over fixed with effect from 1.4.1981 to 30.9.1990, to the tune of Rs.10,500/-+ allowances. He recommended for the recovery of the said

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Inspector of Income Tax, Nellore, He also requested other CBI staff who were camping at Nellore to assist him in the proposed trap against the accused persons.

At 8.45 A.M. the following Officers assembled in Officers Rest House, S.C. Railway, Nellore.

1. Shri. Y.Chellathurai, Inspector of Police
2. Shri. V. Ramachandrudu
3. Shri. K.Satyanarayana Rao and
4. Shri. G.B. Rao, Inspector of Police, CBI, Visakhapatnam.

Shri. Chellathurai explained the contents of the complaint submitted by Lokanadham and his intention to lay a trap against the public servant at Collectorate Office, Nellore to which V. Ramachandrudu and Satyanarayana Rao would be independent witnesses. He explained to everyone the salient features of the trap. When called in Shri Lokanadham appeared before them and he was introduced to all present and vice versa. Shri Chellathurai asked the independent witness to go through the complaint from Shri Lokanadham. Accordingly they raised some doubts which were clarified by the complainant. Both the independent witnesses signed on the carbon copy of the complaint in token of having seen it. Shri Chellathurai also explained to all present the significance of Sodium Carbonate and Pheholphthelien Powder test, and he got it demonstrated also. Under his direction CBI FC Shri. L.N. Murthy applied thin layer of Phenolphthelien powder on the ten one hundred rupee

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Shri Nageswar Rao that if Lokanadham would pay him 1/4th of Rs.10,500/- (the amount to be recovered) as bribe he would drop the objection. Shri Nageswar Rao conveyed this matter to Shri Lokanadham on 5.10.90 itself. On 5.10.90 Shri Lokanadham met the Audit Party at Vijaisree Lodge, Nellore on being called. Shri. M.G.K.Murthy demanded 1/4th of Rs.10,500/- as bribe for droping the audit objections. Sri Lokanadham pleaded with him that he was not in a position to pay such a huge amount. He asked him to meet at the same lodge on 6.10.90 at 8.00 A.M. He explained him that his pay fixation was correct and his advise for recovery was unreasonable where upon Sri. M.G.K.Murthy asked him to pay at least Rs.1,000/- on 9.10.90 at Collectorate Office, Nellore for droping audit objections. He threatened him that unless he pays the bribe the recovery would be effected.

Shri. P.V.Lokanadham submitted a complaint to Shri Chellathurai Inspector of Police at Officers Rest House, S.C. Railway, Nellore on 9.10.90 at 7.00 A.M. after he learnt that some C.B.I. Officers are camping at that place. In his complaint he stated about the demand of bribe by Sri. M.G.K.Murthy and he urged the CBI to take necessary action as he was not willing to pay the bribe. Shri Chellathurai asked Shri Lokanadham to appear before him with Rs.1,000/- at 8.45 A.M. in the Officers Rest House, Nellore. After Shri Lokanadham left Shri Chellathurai arranged two independent witnesses S/Shri. V.Ramachandrudu, I.O.W., S.C. Railway, Nellore and K.Satyanarayana Rao,

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Chellathurai R
Adv

prepared comprising of all the happenings in officers guest house, Nellore, after the witness came there. Then all the members of the trap party washed their hands with soap and water. The remaining phenolphthelien powder was left in the officers Rest House and all started for Collectorate Office, Nellore. They reached the Office at about 10.00 A.M. Shri Lokanadham and Satyanarayana proceeded to record section while other members followed them to record section and took the position outside of it, keeping an eye on Lokanadham and Satyanarayana Rao through the window of record office of Collectorate and Shri Lokanadham started conversation with one person who was sitting in a Chair before a table about 6 ft. away from the window. This person was later identified as Shri. M.G.K.Murthy. Shri Ramachandrudu another independent witness was having a clear view of Sri Murthy and Lokanadham and Satyanarayana through the window. After some formal conversation Shri Murthy offered a seat to Lokanadham. Shri Lokanadham sat down by his side in a chair while Shri Satyanarayana Rao stood close by. Then Shri Murthy asked Shri Lokanadham whether he brought the money. Shri Lokanadham replied in affirmative and took out the money from his left hand shirt pocket and gave the money to Shri Murthy with his right hand. Shri Murthy accepted the money and after counting the same with both of his hands kept the money in the left side shirt pocket. At once Shri Satyanarayana Rao who was observing and overhearing whatever transpired between Shri Murthy and Shri Lokanadham gave the pre-arranged signal. Inspector Chellathurai, Ramachandrudu and other members of the party rushed in. Shri

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ADV

notes having the following numbers:

1. One hundred rupee note No. OLV-111027
2. One hundred rupee note No. TCV-462359
3. One hundred rupee note No. OPM-195785
4. One hundred rupee note No. 3QA-944771
5. One hundred rupee note No. 5LM-892590
6. One hundred rupee note No. 7HU-222472
7. One hundred rupee note No. 8QN-078946
8. One hundred rupee note No. 9NQ-666399
9. One hundred rupee note No. 8MG-042705
10. One hundred rupee note No. 5PH-028353

The person of Shri Lokanadham was searched and it was ensured that he carried nothing except handkerchief and a small scooter key. Under the directions of the said CBI Inspector, Shri Satyanarayana Rao kept the treated notes amounting to Rs. 1,000/- in the empty left side shirt pocket of Shri Lokanadham. The CBI Inspector instructed Shri Lokanadham firmly to handover the notes to Shri. M.G.K.Murthy only on demand and not otherwise in the Collectorate Office. The CBI Inspector instructed Shri K.Satyanarayana Rao to accompany Shri Lokanadham to Shri. M.G.K.Murthy and to observe and over hear whatever transpires between Sri Murthy and Lokanadham and to give signal by wiping his face with his handkerchief as soon as Shri Murthy accepts the bribe from Shri Lokanadham. Shri. Lokanadham was also requested by the Inspector to give similar signal as soon as Shri Murthy accepts the bribe. The Inspector also instructed Shri Ramachandrudu another independent witness to observe whatever transpires between Shri Murthy and Lokanadham in unobstrusive manner. Then the first mediator report was

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8. One hundred rupee note No. 9NQ-666399

9. One hundred rupee note No. 8MG-042705

10. One hundred rupee note No. 5PH-028353

Shri. Chellathurai meanwhile informed Smt. Priti Sudhan, Joint Collector about the trap laid. She deputed one of her staff by name Shri. B.Ramakrishna a Sr.Assistant as independent observer of the proceedings and Shri Ramakrishna remained present in the record office while the post trap formalities were done. Shri Chellathurai also subjected the pocket of the shirt of Shri Murthy to Sodium Carbonate test. The wash yielded light pink colour. This solution was also transferred into another bottle. All the aforesaid 3 bottles were sealed and all ~~sing~~ signed on the lables pasted on them. Shri Chellathurai seized all the 3 bottles and the currency notes. Temporarily the shirt was returned back to Shri Murthy.

At the time of the trap the other subordinates of Shri Murthy were also present in the record office and they witnessed all happenings as mentioned above. They were Shri. R.Jaishankar, Sr.Auditor, Jamil Ur-Rub, Sr.Auditor, K.V.Ramesh Babu, Senior Auditor, Shri. G.Ramakrishen, Asst.Audit Officer and Shri. C.Panduranga Rao, Asst.Audit Officer all of pay fixation party. The specimen of the seal with which the aforesaid bottles were sealed was taken on two blank papers which were attested by the mediators and the trap party. The site plan of the place of occurance was also prepared and attested by all mediators

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92 & 93 (104)

Chellathurai after disclosing his identity to Shri Murthy asked Shri Murthy to disclose his identity. Shri Murthy disclosed his identity as Audit Officer, Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad. Shri Chellathurai asked him whether he has just then demanded and accepted Rs.1,000/- from Shri Lokanadham as bribe. Shri Murthy replied that he had accepted the money from Shri Lokanadham. Shri Chellathurai got two glasses of Sodium. Carbonate/solution prepared and on request Shri Murthy washed fingers of both of his hands separately in two glasses. The right hand wash yielded deep pink colour and the left hand wash yielded light pink colour. Under the directions of the Inspector the solutions ~~was~~ were transferred into two clean glass bottles. Then Shri Chellathurai requested Shri Murthy to produce the bribe amount that he has accepted from Shri Lokanadham. Shri Murthy took out the money from his left side shirt pocket and placed it on his table. Shri. V.Ramachandrudu and Satyanarayana compared the numbers of the notes produced by Shri Murthy which are as under, with the numbers incorporated in the first mediators report, they tallied exactly.

1. One hundred rupee note No. 9LV-111027
2. One hundred rupee note No. TCV-462359
3. One hundred rupee note No. 0PM-195785
4. One hundred rupee note No. 3QA-944771
5. One hundred rupee note No. 5LM-892590
6. One hundred rupee note No. 7HU-222472
7. One hundred rupee note No. 8QN-078946

Contd--8--

and trap party members. Inspector Chellathurai searched the person of Shri Murthy and Lokanadham. Shri Murthy was found in possession of Rs.22/- The same were returned to him. Shri Lokanadham was having one handkerchief and scooter key which were returned back to him. The trap proceedings were drafted and concluded at about 1.00 P.M. The proceedings were signed by the CBI Inspector, Independent witnesses and the complainant and the colleagues of Shri Murthy and observer sent by the Joint Collector who were present at the time of trap.

Later Shri Chellathurai searched the rooms under occupation of Shri Murthy in Vijaisree Lodge and seized the connected documents from him. He also seized shirt of Shri Murthy from him.

Thus the public servant violated Rule 3(1) of Central Civil Service(Conduct) Rules, 1964.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

-ANNEXURE-IV

List of witnesses by whom the article of charge framed against Sri. M.G.K.Murthy, Audit Officer, O/o. AG, AP, Hyderabad is proposed to be sustained.

1. Sri. P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, Dagadatti Mandal, Nellore.
2. Shri. K.Satyanarayana Rao, Inspector of Income Tax, Nellore
3. Sri. V.Ramachandrudu, IOW, S.C. Railway, Nellore.
4. Sri. Y.Chellathurai, Inspector of Police, CBI, Visakhhapatnam.
5. Sri. R.K.Nageswar Rao, S/o Late A.Parawatalaiah, D.No.5/26, Prakash Nagar, Nellore, working as Sr.Assistant under the Medical Officer, Primary Health Centre, Thurimerla.
6. Dr. M.Vijaya Kumar, Medical Officer, Primary Health Centre, Thurimerla, Dist. Nellore.
7. Sri. D.Ramakrishna, Sr.Assistant, Collectorate, Nellore.
8. Sri. R.Jaishanker, Sr.Auditor, Pay Fixation Party, (CP-65) Office of the AG, AP, Hyd. Audit-I.
9. Sri. Jamil Ur-Rub, Sr.Auditor, Pay Fixation Party, (CP-65) Office of the AG, Audit.I, AP, Hyd.
10. Sri.K.B.Ramesh Babu, Sr.Auditor (CP-65), O/o.the AG, Audit-I, AP, Hyd. Pay Fixation Party.
11. Sri.C.Pandu Ranga Rao, Asst.Audit Officer, O/o. the AG, Audit-I, AP, Hyd. (CP-65) Pay Fixation Party.
12. Sri.G.Ramakrishan, Asst.Audit Officer, Audit.I, Pay Fixation Party, (CP-65), Pay Fixation Party.
13. Sri.T.S.C.Bose, Dy.Supdt. of Police, CBI/Visakhapatnam.
14. Sri.G.B.Rao, Inspector of Police, CBI, Visakhapatnam.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

15. Photo copy of Service Book of Shri. P.V.Lokanadham.

16. One file No.CP-65/PE/90-91 under heading Medical Department containing folios 1 to 162.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

ANNEXURE-III

List of Documents by which the articles of charge framed against Shri.M.G.K.Murthy, Audit Officer are proposed to be substantiated.

1. Complaint dated: 9.10.90 of Shri. P.V.Lokanadham.
2. Pre-trap and Post Trap proceedings dated: 9.10.90.
3. Three bottles containing pink colour solutions (right hand and left hand wash)
4. Bush shirt of accused M.G.K.Murthy.
5. Currency notes amounting to Rs.1,000/-.
6. Rough site plan of place of occurance.
7. A paper containing specimen seals.
8. Carbon copy of letter No.PFP/CP-65/9091/AG.AUDIT-I dated: 19.9.90 signed by Shri.M.G.K.Murthy with annexures.
9. Letter dated: 26.9.90 of Medical Officer, Primary Health Centre, Thurimerla, addressed to Section Officer, Pay Fixation Party, O/o. AG, AP, Hyderabad Camp Nellore.
10. Certified copy of the proceedings of Dist. Medical and Health Officer, Nellore vide No.901/E.3/89 dated:25.1.90.
11. Certified true copy of letter No.DIS.No.7602/A-2/88 dated: 16.1.89 (Proceedings of Regional Director of Medical and Health Services, Guntur).
12. Certified true copy of letter No.6076/A-2/89 dated: 8.12.89 (Proceedings of the Regional Director of Medical and Health Services, Guntur).
13. Certified true copy of memorandum No.1320/H.1/88-2/Health) dated: 23.3.89 of Govt. of A.P., Hyderabad, Health Medical and family welfare department.
14. Photo copy of letter No.M-89-06-043/258/A-1/RC.1/89 dated: 19.1.90 of A.P. Health Supervisors Association, Hyderabad and Govt. of A.P. Finance & Planning Dept. on the subject of rationalisation of pay scales under multi purpose health scheme.

Contd--2--

Ex 98 107

October 29, 1990.

From

M G K Murty
Audit Officer
D-4, A.G's Staff Quarters
Yousufguda
HYDERABAD - 500 045

To

The Deputy Accountant General
Office of the Accountant General-Audit I
Andhra Pradesh
HYDERABAD

Sir,

Sub: Final Progress Report for Nellore District - C.P. 65 - Reg.

Ref: Your Memo No. IAU(LA)I/Prog.90-91/582 dated 23-10-1990.

In the final Progress Report dated 12-10-1990 while stating that the figures Rs.3,92,601/- do not include the number of H.Ms and money value of objections issued to Medical & Health Department upto 8-10-1990 and that the H.M. file was seized by CBI authorities on 9-10-90, I enclosed the seizure report of the CBI Officers which indicate the concerned H.Ms. page numbers of the file.

I am to state that a sum of Rs.10,500/- was detected by me as excess payment to one Sri P V Lokanathan, Health Supervisor, P.H.C., Thurimerla village.

However, the concerned Medical Officer relied upon certain Government Orders and forwarded them for my consideration. I stated that those Government Rules have no application in the present case and that my objection still prevails.

It appears that Sri Lokanathan having found that I am not amenable to revoke the objection raised by me, laid a trap with the help of the CBI Officers while I was in the Collector's Office on 9-10-1990. He came to my seat and gave me a copy of a Government Memo issued in January, 1990 and asked me to revoke the objection and I told him that it was not possible to do so, unless I verify the Government Memo brought by him. Immediately, the said Sri Lokanathan removed a wad of currency notes from his pocket and tried to thrust it into my hands. I refused to accept them and also asked him to get out from the premises. Not knowing what to do, the said Sri Lokanathan,

..2.

in a confused mood thrust the currency notes into my shirt pocket, which I removed immediately and asked him to stay as I was intending to take him to his Officer and to appraise his Officer of the mal-practice being indulged by Sri Lokanathan. It was at that stage, some CBI Officers rushed to my seat and directed me not to move. Several members of the staff of not only of my party but local Collector's Office were present.

The CBI Officers later searched the Lodge in which I was staying and seized the concernmed H.Ms. file of the Medical & Health Department.

I am again enclosing a copy of the seizure report handed over to me by the CBI Officers acknowledging the said file by them from my possession.

Thanking you,

Yours faithfully,

(M G K MURTY, A.O.) 29/10/80

Encl: as above

Personally handed over to Sri AR Subramanian, who took me to Mr K. Subramanya Iyer, Dy Ag. The DAG gave through the letter, signed and gave it back to Sri ARS. Give appointment Mr K. Subramanya Iyer to render advice DAG... Help in this

Regd Post
Ack due

S. I. A. 109

A XI

1 महालेखाकार का कार्यालय
आन्ध्र प्रदेश, हैदराबाद-500 476
OFFICE OF THE ACCOUNTANT GENERAL I
ANDHRA PRADESH
HYDERABAD-500 476

IAU-LA1/Prog/90-91/532 ज्ञापन MEMO

Valid 23-10-90

Sub:- Final Progress Report for Nellore Dist. C.P. 65 - Reg.
Ref:- (Progress Report) of AO/CP 65 dt. 12.10.90.

R.P. No 652
24/10
4-30 p.m.

In the Final Progress Report, Dt. 12.10.90, you have indicated that the Money value of objections is for Rs. 3,92,601/- and that "These figures do not include the number of H.Ms and Money value of objections issued to Medical and Health Department, upto 8.10.90 as that H.M. file was seized by the C.B.I. authorities on 9.10.90" without indicating the number of H.Ms, page Nos. of the file seized by the C.B.I. authorities, and also the ~~measures~~ and circumstances, leading to seizure of the official documents. You are requested to report on the above points urgently within 3 days of receipt of this communicati

23/10/90

Deputy Accountant General.

Sri. M.G.K. Murthy, Audit Officer
C/o. Quarter No. D4
A.G's Staff Quarters
Yousufguda,
Hyderabad — 500045 (A.P.)

AGCHYDE—82—(S.I.A.)22-AG/AP/88—13-10-88—2,000 Pads

A XII

S. 185 (Large)
कार्यालय, महालेखाकार (ले० प०)-I
आं० प्र०, हैदराबाद-500 463
OFFICE OF THE ACCOUNTANT GENERAL
(Audit)-I, A.P., HYDERABAD-500 463

No.AG(Au)-I/Co.ord cell/DC.I/E-118/90-71 दिनांक/Date 23-10-1990.

ORDER No:32

Whereas a case against Sri M.G.K. Murthy, Audit Officer in respect of an offence under Section 7 of the P.C. Act 1988 is under investigation.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule(1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965, hereby places the said Sri M.G.K. Murty under suspension with immediate effect.

(SAMIR GUPTA)
ACCOUNTANT GENERAL
(AUDIT)-I.

To

Shri M.G.K. Murty, Audit Officer,
orders regarding subsistance allowance admissible to him during the period of his suspension will issue separately.

IC V Satyanarayana
Advocate

IC-VENKATESWARA
Consel for applt

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.NO. 1189/95

Between:

M. Gopalakrishna Murthy ... Applicant

and

The Principal Accountant General,
A.P., Hyderabad and others ... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

I, V.V.Rama Murthy, son of late Sri V.L.Kantha Rao, aged about 54 years, do hereby solemnly affirm and state as follows:

1. I am the Deputy Accountant General (Admn.) in the office of the Principal Accountant General (Audit)I, Andhra Pradesh, Hyderabad and respondent No.1 herein and, as such I am fully acquainted with all the facts of the case. I have read the application and understood the contents thereof. I am filing this reply affidavit on behalf of all the respondents herein as I have been authorised to do so. The averments in the application are neither true nor correct save those that have been expressly admitted hereunder. The applicant is, therefor put to strict proof of such averments that have not been traversed hereunder.

2. For a proper appreciation of the issue involved in the case, brief facts thereof are presented hereunder:-

The applicant was working as Audit Officer in the office of the Principal Accountant General (Audit I), Andhra Pradesh, Hyderabad. He was entrusted with the work of supervision over the audit of pay-fixation of the employees of A.P. State Government

1st PAGE CORRECTIONS

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
Deputy Accountant General (A
कार्यालय, प्रधान महालेखाकार (लेखा
o/o. the Principal Accountant Ge
आंध्र प्रदेश, हैदराबाद-500
Andhra Pradesh, Hyderabad

during September and October 1990, the Audit Party whose work he was supervising, took up the audit of pay fixation of the employees of Nellore District. While the audit was in progress, one Sri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, Nellore (Dist) filed a complaint dated 9-10-90 with the Superintendent of Police, C.B.I., Visakhapatnam alleging that the applicant has demanded Rs.1000/- from him for dropping the objection raised on his pay fixation. The CBI laid a trap the very same day i.e., 9-10-90. The applicant was caught red-handed while accepting the money offered by Sri Lokanadham. After completion of the investigation and recording of evidence of witnesses, the C.B.I. authorities remitted the case to the Principal Accountant General (Audit I), A.P., Hyderabad for taking departmental action against the applicant. A charge-sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules was issued to the applicant, vide memo No.Co-ordn Cell/ DC-I/8-118/90-91/45 dated 19-11-1991. As the applicant in his statement of defence dated 20-4-92 refuted the charges levelled against him, an inquiry was ordered by the Disciplinary Authority and the Commissioner for Departmental Inquiries, Central Vigilance Commission, New Delhi was appointed as the Inquiring Authority. The Inquiring Authority completed the inquiry and submitted his report to the Disciplinary Authority. According to the findings of the Inquiring Authority the Charged Officer did show a motiveless, subliminal temptation to pocket the money and thus his action was bordering on passive acceptance and accordingly the charge was held as proved partially and the Charged Officer could not adduce any proof as to how the money had landed in his pocket.

2nd PAGE CORRECTIONS

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DEPONENT
वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (Au) I
आंध्र प्रदेश, हैदराबाद-500 004.

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While furnishing a copy of the inquiry report, the applicant was given an opportunity to submit his representation, if any. The applicant submitted his representation on 29-4-94. The disciplinary authority after considering the representation of the applicant found that the applicant was guilty of the charges levelled against him and accordingly imposed the penalty of 'removal' from service through a self-contained speaking order dated 31-8-94. The applicant submitted an appeal dated 10-10-94 to the Deputy Comptroller & Auditor General of India, New Delhi/Appellate Authority. The Appellate Authority having considered the appeal rejected the same, vide his speaking order dated 7-8-95. Aggrieved by the above, the applicant has filed the present O.A.

The various averments/contentions raised in the O.A. are answered in seriatum.

3. The averments in paras 1 to 5 of the application are only formal and as such they do not call for any remarks.

4. Regarding the averments in para 6 of the application, I submit that the Half-margin objection pointing out the necessity of recovery of a sum of Rs.10,500/- which was due on account of erroneous pay-fixation, from Sri P.V.Lokanadham was issued to the Medical Officer, Primary Health Centre, Thurimerla on 19-9-90 and the same was received back on 5-10-90 with a reply. The applicant having recorded his rejection of the reply should have kept the same with him and brought into the Inspection Report. Instead, he returned the same to the Medical Officer for necessary action for the reasons best known to him.

5. The contention that the Appellate Authority (Resp.No.2 herein

3rd PAGE CORRECTIONS

DEPONENT

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A.P., HYDERABAD.

वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
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o/o. the Principal Accountant General (Au) I
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

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has not dispassionately considered the various contentions raised by the applicant in his appeal is devoid of any merit. The Appellate Authority in its order dated 7-8-95 has given the reasons for arriving at the conclusion and upholding the penalty imposed by the disciplinary authority.

6. I submit that the trap took place on 9-10-90 and the members of the Audit Party, including the applicant, were interrogated continuously on 9-10-90 and 10-10-90 late till 6.30 P.M. The applicant could have met the District Medical & Health Officer, Nellore and brought to his notice about the offer of money to him by Sri Lokanadham. He has also failed to report to his superiors about the trap. It is only after his return to the Headquarters, he narrated about the events in person to his group officer and the Accountant General. On calling for explanation regarding seizure of the file pertaining to the office of the D.M. & H.O., Nellore, by the CBI authorities he came up with the particulars of incidence of trap. Thus the observation of the appellate authority that the applicant did not express shock or surprise and did not make hue and cry at the time of trap is based on the depositions of the various witnesses. The depositions of the witnesses would reveal that the applicant did not protest when money was offered by Sri Lokanadham on 9-10-90.

7. I submit that the proviso under rule 11 of the Central Civil Services (CCA) Rules 1965 make it only obligatory on the part of the disciplinary authority to impose major penalty of removal/dismissal from service in every case in which the charge of acceptance of any illegal gratification as a motive or reward for doing or forbearing to do any official act is established but does not prohibit or preclude from imposition of such penalty if otherwise warranted by the circumstances of the case.

4th PAGE CORRECTIONS

DEPONENT

ATTESTOR
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SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (Au) I
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

The inquiring authority in his report dated 31-12-93 held that the applicant did show a motiveless subliminal temptation to pocket the money. In view of this finding, the disciplinary authority imposed the penalty of removal from service and the appellate authority has upheld the penalty.

8. I submit that the applicant was examined by the Inquiry Officer on 23-7-93. During the examination, he was asked to state as to what transpired between the applicant and Sri Lokanadham on 9-10-90. The applicant in his reply stated that on 9-10-90 Sri Lokanadham came to him to drop the objection on the basis of the Government orders issued in January 90. He went on that he pushed back the money into his (Lokanadham's) hands and to cause trouble to him he (the latter) thrust the amount into his shirt pocket. However, the depositions of the various witnesses will show that the statement of the applicant that Sri Lokanadham pushed the money into his shirt pocket is not correct. The contention of the applicant that both the disciplinary authority and the appellate authority have failed to issue reasoned, self contained speaking order as contemplated in the rules is not correct. The order bearing No.Prl.AG(Au)I/CoC/DC-I/8-118/94-95/O.O.No.7 dated 31-8-94 issued by the respondent (disciplinary authority) is a self-contained, reasoned and speaking order. I submit that according to Rule 27 of the C.C.S (CCA)Rules the Appellate Authority is expected to consider as to:-

a) Whether the procedure laid down in the said rules has been complied with and, if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in failure of justice;

5th PAGE CORRECTIONS

DEPONENT

ATTESTOR
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A.P., HYDERABAD.

वि. वि. राममूर्ति
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Andhra Pradesh, Hyderabad - 500 004.

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b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c) Whether the penalty or the enhanced penalty imposed is adequate/inadequate or severe. It will be appreciated that the Appellate Authority in his order dated 7-8-95, vide para 3 thereof, has clearly stated that the above has been kept in view and the various contentions raised by the applicant in his appeal have been considered and rejected giving reasons for the same.

9. I submit that the inquiry authority had arrived at the conclusion that the applicant has shown motiveless subliminal temptation to pocket the money which was bordering on passive acceptance based on the depositions of the witnesses. In fact, in his report dated 31-12-93 he has discussed at length the reasons for his conclusion. Further both the disciplinary authority and Appellate Authority took into consideration the findings of the inquiry authority and then passed reasoned and self-contained speaking orders. It is not correct to say that thrusting the money into the hands of the applicant and his acceptance of the same cannot go together, as the applicant could have protested by raising hue and cry or he could have expressed shock at such an incident. As there was no reaction on the part of the applicant, his conduct amounted to acceptance of the money offered to him. When the money was recovered from his shirt pocket, the applicant failed to come out with any proof as to how the money landed in his shirt pocket. The charge of acceptance of the money by the applicant was therefore held as proved.

10. I submit that the charge against the applicant was that in abuse of his official position as a public servant, he had demand and accepted Rs.1000/-as bribe from the decoy Sri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla on 9-10-90

6th PAGE CORRECTIONS

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
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कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (Au)
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

at Collectorate office, Nellore. The inquiry authority took into consideration all the available evidence and gave his report holding that the charge was held proved partially as the component of the charge i.e. demand for bribe was not proved and the other component of the charge i.e. acceptance of the bribe was proved. It will be appreciated that the standard of proof required in a departmental inquiry differs materially from that of the proof required in criminal trials. Thus, the standard of proof required in a disciplinary case is that of preponderence of probability and not proof beyond reasonable doubt. The proviso under Rule 11 of C.C.S(CCA) Rules does not preclude or prohibit imposition of the penalty of removal if the circumstances of the case so warrant. Taking into consideration all the factors of the case the disciplinary authority has imposed the penalty of removal from service and the Appellate Authority upheld the same. Hence the contention of the applicant that the impugned action of the respondents is unwarranted and is based on wrong assumption and surmises both on facts and law, is not correct. It is also not correct to say that the applicant had no other effective remedy as he could have preferred representation to the Comptroller & Auditor General of India, who is the reviewing authority.

In view of the foregoing submissions, it is clear that the applicant has failed to make out a case for grant of the relief prayed for. There are no merits either on facts or in law warranting any interference by this Hon'ble Tribunal. Hence it is prayed that the O.A. may be dismissed with costs.

Sworn and signed before me
on this the 14th day of June '96.

DEPONENT

वि. वि. राममूर्ति
V. V. RAMAMURTHY
उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
o/o. the Pri ci a. Ac- ...tant General (A.)
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

GOVERNMENT OF INDIA

INDIAN AUDIT AND ACCOUNTS DEPARTMENT

Office of the Accountant General
Andhra Pradesh :: Hyderabad -500463

No. CC/DC-I/8-118/90-91/ 45 Dated: 19-11-91.

MEMORANDUM

The undersigned proposed to hold an inquiry against Shri M.G.K. Murthy, Audit Officer under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of mis-conduct misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure - III and IV).

2. Shri M.G.K. Murthy, is directed to submit within ten days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

4. Shri M.G.K. Murthy, is further informed that if he doesnot submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C.A) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him exparte.

5. Attention of Shri M.G.K. Murthy, is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of the matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri M.G.K. Murthy, is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

Name: SRI. U.N. ANANTHAN
Designation: PRINCIPAL ACCOUNTANT GENERAL
(DISCIPLINARY AUTHORITY)
(AU.I)

To

Sri.M.G.K. Murthy,
(Audit Officer),
'D' type Quarters,
A.G's Staff Quarters,
Yousufguda,
HYDERABAD.

"Attested"

K CHA[illegible]RA MO[illegible]
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL [illegible]
A.P., HYDERABAD.

ANNEXURE-I

Statement of articles of charge framed against Sri M.G.K.Murthy, Audit Officer, Pay Fixation Party (CP-65) Office of the Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad.

That the said Sri. M.G.K.Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.90 at 10.30 hrs. at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri. P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

Attested

K. [illegible]RA MOHAN
SEN[illegible]
O/O ACCOUNTANT GENERAL
A.P., HYDERABAD.

amount from Shri Lokanadham vide half margin slip dated: 19.9.1990. He sent this half margin slip through Shri Nageswar Rao to the Medical Officer, Primary Health Centre, Thurimerla who replied vide his letter dated: 26.9.90 addressed to the Section Officer, Pay Fixation Party, Camp Nellore, that no excess payment was made to Shri Lokanadham and the anamolies found by Sri. M.G.K.Murthy and his party were not correct. In his letter he stated that the pay fixation of Shri Lokanadham done from period to period was correct as he was coming under the category of beneficiaries as mentioned in the said Government orders. With his letter he enclosed various Government orders in support of his contention that pay fixation was in accordance with the Government orders. This reply was taken to Sri M.G.K.Murthy and submitted in person by Shri Nageswar Rao on 5.10.90.

Even after perusing the reply of Medical Officer and the enclosed Office orders, Sri. M.G.K.Murthy did not agree with the Medical Officer and maintained that the complainant would not get the benefits of the Government orders and as such his pay fixation was in excess. He made his remark to this effect on the reverse side of the letter of medical officer and returned the same to Shri Nageswar Rao. The main contention of Sri. M.G.K.Murthy was that as Shri Lokanadham was functioning as Health Supervisor (On promotion) from 22.3.1978 and as he was not stagnant, he has not completed 15 years of service for getting the benefit as enumerated under Government circular dated: 3.1989. On the same day Sri. M.G.K.Murthy conveyed to

Contd--3--

ANNEXURE-II

Statement of imputation of misconduct in support of article of charge to be framed against Sri. M.G.K.Murthy, Audit Officer Office of the Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad.

Sri. M.G.K.Murthy functioned as Audit Officer of Pay Fixation Party (CP-65) of Accountant General (Audit)I, Andhra Pradesh, Hyderabad during the period 1990.

Sri. P.V.Lokanadham functioned as Health Supervisor, Primary Health Centre, Thurimerla during 1990.

During the routine audit at Nellore Collectorate, Sri. M.G.K.Murthy came across the service book and pay fixation of Shri. P.V.Lokanadham, Health Supervisor, prior to this Sri. R.K.Nageswar Rao, Sr.Assistant of Primary Health Centre, Thurimerla produced the service registers of all the staff including that of the complainant before the audit party on 14.9.90 under the instructions of his DMHO Nellore. Sri. M.G.K.Murthy kept 8 service registers including that of the complainant and returned the rest to Shri Nageswar Rao. He returned the 8 registers with half margin slips with audit objections in case of 3 including the service register of the complainant. In the case of Shri Lokanadham the complainant, M.G.K.Murthy did not agree with his pay fixation with the contention that the benefits given by Government of Andhra Pradesh in various Government orders were not applicable to Shri Lokanadham. M.G.K.Murthy stated in the half margin slip that as Shri Lokanadham was given the benefit under the said Government orders his pay was over fixed with effect from 1.4.1981 to 30.9.1990, to the tune of Rs.10,500/-+ allowances. He recommended for the recovery of the said

"Attested"

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

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Inspector of Income Tax, Nellore. He also requested other CBI staff who were camping at Nellore to assist him in the proposed trap against the accused persons.

At 8.45 A.M. the following Officers assembled in Officers Rest House, S.C. Railway, Nellore.

1. Shri. Y.Chellathurai, Inspector of Police
2. Shri. V. Ramachandrudu
3. Shri. K.Satyanarayana Rao and
4. Shri. G.B. Rao, Inspector of Police, CBI, Visakhapatnam.

Shri. Chellathurai explained the contents of the complaint submitted by Lokanadham and his intention to lay a trap against the public servant at Collectorate Office, Nellore to which V. Ramachandrudu and Satyanarayana Rao would be independent witnesses. He explained to everyone the salient features of the trap. When called in Shri Lokanadham appeared before them and he was introduced to all present and vice versa. Shri Chellathurai asked the independent witness to go through the complaint from Shri Lokanadham. Accordingly they raised some doubts which were clarified by the complainant. Both the independent witnesses signed on the carbon copy of the complaint in token of having seen it. Shri Chellathurai also explained to all present the significance of Sodium Carbonate and Phenolphthelien Powder test, and he got it demonstrated also. Under his direction CBI FC Shri. L.N. Murthy applied thin layer of Phenolphthelien powder on the ten one hundred rupee

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Shri Nageswar Rao that if Lokanadham would pay him 1/4th of Rs.10,500/- (the amount to be recovered) as bribe he would drop the objection. Shri Nageswar Rao conveyed this matter to Shri Lokanadham on 5.10.90 itself. On 5,10.90 Shri Lokanadham met the Audit Party at Vijaisree Lodge Nellore on being called. Shri. M.G.K.Murthy demanded 1/4th of Rs.10,500/- as bribe for droping the audit objections. Sri Lokanadham pleaded with him that he was not in a position to pay such a huge amount. He asked him to meet at the same lodge on 6.10.90 at 8.00 A.M. He explained him that his pay fixation was correct and his advise for recovery was unreasonable where upon Sri. M.G.K.Murthy asked him to pay at least Rs.1,000/- on 9.10.90 at Collectorate Office, Nellore for droping audit objections. He threatened him that unless he pay the bribe the recovery would be effected.

Shri. P.V.Lokanadham submitted a complaint to Shri Chellathurai Inspector of Police at Officers Rest House, S.C. Railway, Nellore on 9.10.90 at 7.00 A.M. after he learnt that some C.B.I. Officers are camping at that place. In his complaint he stated about the demand of bribe by Sri. M.G.K.Murthy and he urged the CBI to take necessary action as he was not willing to pay the bribe. Shri Chellathurai asked Shri Lokanadham to appear before him with Rs.1,000/- at 8.45 A.M. in the Officers Rest House, Nellore. After Shri Lokanadham left Shri Chellathurai arranged two independent witnesses S/Shri. V.Ramachandrudu, I.O.W., S.C. Railway, Nellore and K.Satyanarayana Rao,

Attested

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SENIOR ACCOUNTS OFFICER
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A.P., HYDERABAD.

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prepared comprising of all the happenings in officers guest house, Nellore, after the witness came there. Then all the members of the trap party washed their hands with soap and water. The remaining phenolphthelien powder was left in the officers Rest House and all started for Collectorate Office, Nellore. They reached the Office at about 10.00 A.M. Shri Loknadham and Satyanarayana proceeded to record section while other members followed them to record section and took the position outside of it, keeping an eye on Lokanadham and Satyanarayana Rao through the window of record office of Collectorate and Shri Lokanadham started conversation with one person who was sitting in a Chair before a table about 6 ft. away from the window. This person was later identified as Shri. M.G.K.Murthy. Shri Ramachandrudu another independent witness was having a clear view of Sri Murthy and Lokanadham and Satyanarayana through the window. After some formal conversation Shri Murthy offered a seat to Lokanadham. Shri Lokanadham sat down by his side in a chair while Shri Satyanarayana Rao stood close by. Then Shri Murthy asked Shri Lokanadham whether he brought the money. Shri Lokanadham replied in affirmative and took out the money from his left hand shirt pocket and gave the money to Shri Murthy with his right hand. Shri Murthy accepted the money and after counting the same with both of his hands kept the money in the left side shirt pocket. At once Shri Satyanarayana Rao who was observing and overhearing whatever transpired between Shri Murthy and Shri Lokanadham gave the pre-arranged signal. Inspector Chellathurai, Ramachandrudu and other members of the party rushed in. Shri

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notes having the following numbers:

1. One hundred rupee note No. OLV-111027
2. One hundred rupee note No. TCV-462359
3. One hundred rupee note No. OPM-195785
4. One hundred rupee note No. 3QA-944771
5. One hundred rupee note No. 5LM-892590
6. One hundred rupee note No. 7HU-222472
7. Qne hundred rupee note No. 8QN-078946
8. One hundred rupee note No. 9NQ-666399
9. One hundred rupee note No. 8MG-042705
10. One hundred rupee note No. 5PH-028353

The person of Shri Lokanadham was searched and it was ensured that he carried nothing except handkerchief and a small scooter key. Under the directions of the said CBI INspector, Shri Satyanarayana Rao kept the treated notes amounting to Rs. 1,000/- in the empty left side shirt pocket of Shri Lokanadham. The CBI Inspector instructed Shri Lokanadham firmly to handover the notes to Shri. M.G.K.Murthy only on demand and not otherwise in the Collectorate Office. The CBI INspector instructed Shri K.Satyanarayana Rao to accompany Shri Lokanadham to Shri. M.G.K.Murthy and to observe and over hear whatever transpires between Sri Murthy and Lokanadham and to give signal by wiping his face with his handkerchief as soon as Shri Murthy accepts the bribe from Shri Lokanadham. Shri. Lokanadham was also requested by the Inspector to give similar signal as soon as Shri Murthy accepts the bribe. The Inspector also instructed Shri Ramachandrudu another independent witness to observe whatever transpires between Shri Murthy and Lokanadham in unobstrusive manner. Then the first mediator report was

8. One hundred rupee note No. 9NQ-666399

9. One hundred rupee note No. 8MG-042705

10. One hundred rupee note No. 5PH-028353

Shri. Chellathurai meanwhile informed Smt. Priti Sudhan, Joint Collector about the trap laid. She deputed one of her staff by name Shri. D.Ramakrishna a Sr.Assistant as independent observer of the proceedings and Shri Ramakrishna remained present in the record office while the post trap formalities were done. Shri Chellathurai also subjected the pocket of the shirt of Shri Murthy to Sodium Carbonate test. The wash yielded light pink colour. This solution was also transferred into another bottle. All the aforesaid 3 bottles were sealed and all ~~sing~~ signed on the lables pasted on them. Shri Chellathurai seized all the 3 bottles and the currency notes. Temporarily the shirt was returned back to Shri Murthy.

At the time of the trap the other subordinates of Shri Murthy were also present in the record office and they witnessed all happenings as mentioned above. They were Shri. R.Jaishanker, Sr.Auditor, Jamil Ur-Rub, Sr.Auditor, K.V.Ramesh Babu, Senior Auditor, Shri. G.Ramakrishen, Asst.Audit Officer and Shri. C.Pandurenga Rao, Asst.Audit Officer all of pay fixation party. The specimen of the seal with which the aforesaid bottles were sealed was taken on two blank papers which were attested by the mediators and the trap party. The site plan of the place of occurance was also prepared and attested by all mediators

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Chellathurai after disclosing his identify to Shri Murthy asked Shri Murthy to disclose his identity. Shri Murthy disclosed his identity as Audit Officer, Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad. Shri Chellathurai asked him whether he has just then demanded and accepted Rs. 1,000/- from Shri Lokanadham as bribe. Shri Murthy replied that he had accepted the money from Shri Lokanadham. Shri Chellathurai got two glasses of Sodium Carbonate/solution prepared and on request Shri Murthy washed fingers of both of his hands separately in two glasses. The right hand wash yielded deep pink colour and the left hand wash yielded light pink colour. Under the directions of the Inspector the solutions were transferred into two clean glass bottles. Then Shri Chellathurai requested Shri Murthy to produce the bribe amount that he has accepted from Shri Lokanadham. Shri Murthy took out the money from his left side shirt pocket and placed it one his table. Shri. V.Ramachandrudu and Satyanarayana compared the numbers of the notes produced by Shri Murthy which are as under, with the numbers incorporated in the first mediators report, they tallied exactly.

1. One hundred rupee note No. ΦLV-111027
2. One hundred rupee note No. TCV-462359
3. One hundred rupee note No. OPM-195785
4. One hundred rupee note No. 3QA-944771
5. One hundred rupee note No. 5LM-892590
6. One hundred rupee note No. 7HU-222472
7. One hundred rupee note No. 8QN-078946

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and trap party members. Inspector Chellathurai searched the person of Shri Murthy and Lokanadham. Shri Murthy was found in possession of Rs.22/- The same were returned to him. Shri Lokanadham was having one handkerchief and scooter key which were returned back to him. The trap proceedings were drafted and concluded at about 1.00 P.M. The proceedings were signed by the CBI Inspector, Independent witnesses and the complainant and the colleagues of Shri Murthy and observer sent by the Joint Collector who were present at the time of trap.

Later Shri Chellathurai searched the rooms under occupation of Shri Murthy in Vijaisree Lodge and seized the connected documents from him. He also seized shirt of Shri Murthy from him.

Thus the public servant violated Rule 3(1) of Central Civil Service(Conduct) Rules, 1964.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

Attested

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

15. Photo copy of Service Book of Shri. P.V.Lokanadham.

16. One file No.OP-65/PE/90-91 under heading Medical Department containing folios 1 to 162.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

ANNEXURE-III

List of Doouments by which the articles of charge framed against Shri.M.G.K.Murthy, Audit Officer are proposed to be substantiated.

1. Complaint dated: 9.10.90 of Shri. P.V.Lokanadham.
2. Pre-trap and Post Trap proceedings dated: 9.10.90.
3. Three bottles containing pink colour solutions (right hand and left hand wash)
4. Bush shirt of accused M.G.K.Murthy.
5. Currency notes amounting to Rs.1,000/-.
6. Rough site plan of place of occurance.
7. A paper containing specimen seals.
8. Carbon copy of letter No.PFP/CP-65/9091/AG.AUDIT-I dated: 19.9.90 signed by Shri.M.G.K.Murthy with annexures.
9. Letter dated: 26.9.90 of Medical Officer, Primary Health Centre, Thurimerla, addressed to Section Officer, Pay Fixation Party, O/o. AG, AP, Hyderabad Camp Nellore.
10. Certified copy of the proceedings of Dist. Medical and Health Officer, Nellore vide No.901/E.3/89 dated:25.1.90.
11. Certified true copy of letter No.DIS.No.7602/A-2/88 dated: 16.1.89 (Proceedings of Regional Director of Medical and Health Services, Gundur).
12. Certified true copy of letter No.6076/A-2/89 dated: 8.12.89 (Proceedings of the Regional Director of Medical and Health Services, Guntur).
13. Certified true copy of memorandum No.1320/H.1/88-2/Health) dated: 23.3.89 of Govt. of A.P., Hyderabad, Health Medical and family welfare department.
14. Photo copy of letter No.M-89-06-043/258/A-1/RC.1/89 dated: 19.1.90 of A.P. Health Supervisors Association, Hyderabad and Govt. of A.P. Finance & Planning Dept. on the subject of rationalisation of pay scales under multi purpose health scheme.

"Attested"

SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

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-ANNEXURE-IV

List of witnesses by whom the article of charge framed against Sri. M.G.K.Murthy, Audit Officer, O/o. AG, AP, Hyderabad is proposed to be sustained.

1. Sri. P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, Dagadatti Mandal, Nellore.
2. Shri. K.Satyanarayana Rao, Inspector of Income Tax, Nellore
3. Sri. V.Ramachandrudu, IOW, S.C. Railway, Nellore.
4. Sri. Y.Chellathurai, Inspector of Police, CBI, Visakhhapatnam.
5. Sri. R.K.Nageswar Rao, S/o Late A.Parawatalaiah, D.No.5/26, Prakash Nagar, Nellore, working as Sr.Assistant under the Medical Officer, Primary Health Centre, Thurimerla.
6. Dr. M.Vijaya Kumar, Medical Officer, Primary Health Centre, Thurimerla, Dist. Nellore.
7. Sri. D.Ramakrishna, Sr.Assistant, Collectorate, Nellore.
8. Sri. R.Jaishanker, Sr.Auditor, Pay Fixation Party, (CP-65) Office of the AG, AP, Hyd. Audit-I.
9. Sri. Jamil Ur-Rub, Sr.Auditor, Pay Fixation Party, (CP-65) Office of the AG, Audit.I, AP, Hyd.
10. Sri.K.B.Ramesh Babu, Sr.Auditor (CP-65), O/o.the AG, Audit-I, AP, Hyd. Pay Fixation Party.
11. Sri.C.Pandu Ranga Rao, Asst.Audit Officer, O/o. the AG, Audit-I, AP, Hyd. (CP-65) Pay Fixation Party.
12. Sri.G.Ramakrishan, Asst.Audit Officer, Audit.I, Pay Fixation Party, (CP-65), Pay Fixation Party.
13. Sri.T.S.C.Bose, Dy.Supdt. of Police, CBI/Visakhapatnam.
14. Sri.G.B.Rao, Inspector of Police, CBI, Visakhapatnam.

PRINCIPAL ACCOUNTANT GENERAL(AUDIT)I

Attested

SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
AP., HYDERABAD.

The Principal Accountant General
Audit I A P Hyderabad 500463

(HB 127)

Sir,

Sub: Submission of statement of defence

Ref: 1) Your Memo No CC/Dc.I/8-118/90-91/45 Dt/17-1151
2) " " " /1873-04-92
3) " " " /1881-04-92

I hear by submit that I am not guilty of the charge or the imputations listed in support of the charge. The allegations were projected against me out of spite by Sri P V Lokanatham in collaboration with the officers of the C.B.I. The charge and allegations were fabricated by the mastermind of the said Sri Lokanatham. It is totally false that I demanded and accepted any illegal gratification from any body at any time much less from Sri Lokanatham.

I desire to have an oral inquiry and also wish to be heard in person. I shall examine defence witnesses and submit my list after the close of the prosecution evidence.

Yours faithfully
M Sreenivasulu
M S K Murty 20/4/92

Attested
K C [illegible]
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

No.Prl.AG(Au)-I/Coord.Cell/DC.I/8-118/94-95/ Dated 31-8-1994.

कार्यालय प्रधान महालेखाकार (ले प.) आंध्र
Office of the Principal Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-५०० ४६३
Andhra Pradesh, Hyderabad-500 463.

OFFICE ORDER NO.7.

WHEREAS disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were instituted against Shri M.C.K. Murthy, Audit Officer vide this office Memo.No.CC/DC-I/8-118/90-91/45 dated 19-11-1991 on the following articles of charge:

Statement of articles of charge framed against Shri M.C.K. Murthy, Audit Officer, Pay Fixation Party (CP-65), office of the Principal Accountant General(Audit)-I, Andhra Pradesh, Hyderabad.

That the said Shri M.C.K. Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9-10-1990 at 10-30 hours at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy Shri P.V. Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter of his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule 3(1) of Central Civil Services (Conduct) Rules, 1964.

A statement of imputations of Misconduct or Misbehaviour on which the Article of charge were based, together with a List of Documents by which, and a List of Witnesses by whom, the charges were proposed to be sustained, were also forwarded to him along with the abovesaid Memorandum dated 19-11-1991.

2. Shri M.C.K. Murthy, Audit Officer denied the charge and requested to be heard in person vide his letter dated 20th April, 1992. Accordingly, Shri A.K. Handa,

Commissioner for Departmental Inquiries, was appointed as the Inquiring authority to inquire into the charges vide Order No.3 dated the 1st May, 1992.

3. AND WHEREAS the Inquiring authority vide his Report No.F No.13 OPM 28(45) dated 31st December, 1993 gave a finding that he (Inquiring Authority) had come to conclude that the Charged Officer did show a motiveless, subliminal temptation to pocket the money, and this action of the Charged Officer was bordering on passive acceptance and hence personally pronounced that the charge proved partially.

4. AND WHEREAS a copy of the report of inquiry was sent to Shri M.C.K. Murthy, Audit Officer vide, this office Memo. No.Sr.DAG(A)/Au-I/C.Cell/DC-1/8-118/KW/94-95/601 dated 15th April, 1994 and he was given an opportunity of making such submissions on the report of inquiry as he desired. His submissions on the Report of inquiry were received vide his letter dated 29th April, 1994. The said representation of Shri M.C.K. Murthy has been carefully considered. The various points raised by him examined in the light of the records of the case are given below:

The main charge against Shri M.C.K. Murthy is that "in abuse of his position as public servant on 9-10-1990 at 10-30 hours at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy Shri P.V. Lokanadham in the matter of his dropping audit objection against his pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct."

While the Inquiring Authority could not countenance the complaint of Lokanadham that the Charged Officer had demanded any gratification prior to the laying of the trap on 9-10-1990, he further found that the conclusion was inescapable on the basis of material evidence adduced that the Charged Officer had not demanded the alleged bribe on 9-10-1990 either.

However, in respect of the charge that Shri

M.G.K. Murthy had accepted bribe on 9-10-1990, the Inquiring Authority concluded that the Charged Officer had not given any proof of how the money landed in his shirt pocket. That it was not forcibly placed there by Shri Lokanadham is borne out unfalteringly by SW-9. So taking [illegible] into consideration he had concluded that the Charged Officer did show a motiveless, subliminal temptation to pocket the money, and this action of the Charged Officer was bordering on passive acceptance. On this basis the Inquiring Authority found that the charge proved partially as discussed in the report.

I have carefully gone through the representation of Shri M.C.K. Murthy with regard to the findings of the Inquiring Authority. With regard to the charge of demand of illegal gratification, Shri Murthy submits that he was dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy and he was made a victim by the scrupulous methods by the decoy in connivance with the C.B.I..

With regard to the second ingredient pertaining to acceptance, the Charged Officer states that the Inquiring Authority was inclined to agree with the Charged Officer's defence that the money was passed and thrust into his hands by Shri Lokanadham. After finding against the prosecution with regard to the demand on the date of trap and also on earlier dates and also having found that the Charged Officer had not accepted the illegal gratification as the money was thrust into his hands, the Inquiring Authority could not have come to the wrong conclusion that the Charged Officer had motivelessly pocketed the money and thus held that the charge was partially proved. The Charged Officer further contends that having found that the money was thrust into his hands, the Inquiring Authority could not have come to the conclusion that the Charged Officer had accepted the money motivelessly.

The Charged Officer further states that the money

was thrust back into his packet by the decoy Shri Lokanadham as he came on 9-10-1990 with a determined mind to cause trouble to him since his repeated requests to drop the objection was not conceded to by him. The Charged Officer contested the observation of the Inquiring Authority that he had not adduced any evidence as the statements made by him during the course of inquiry and earlier constituted evidence on his behalf. Charged Officer repeated once again that he never yielded to any temptation as was clear from the inquiry itself.

In a charge of this nature the important point is whether the proffered bribe is accepted by the Charged Officer or not. The issue that settles the whole question is whether the money proffered was received by the Charged Officer. Even the Charged Officer did not contest the fact that the money was recovered from his pocket. Once the money was recovered from the person of the Charged Officer, the debate on whether the acceptance was passive or otherwise does not seem very relevant. In this case acceptance of the money is proved by the Inquiring Authority himself and any comment on the motive is not realy relevant to the context. If the Charged Officer were to reject truly the bribe he would have reacted in such a way as to demonstrate shock and surprise. Continued interaction with the complainant would be out of the question. Based on the available evidence the contention of the Charged Officer that the "money was thrust back into my pocket by the decoy shri Lokanadham - - - - - - with a determined mind to cause trouble to him since his repeated request to drop the objection was not conceded to by him" does not appear convincing enough.

5. AND WHEREAS on careful consideration of the report of the Inquiring Authority and other records of the case in the light of the submissions made by Shri M.G.K. Murthy in his observations on report of the inquiry and during his personal hearing, the undersigned has decided

to accept the findings of the Inquiring Authority.

6. NOW, THEREFORE, after considering the record of inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Shri M.G.K. Murthy, Audit Officer, is guilty of the charge. The undersigned is of the view that ends of justice would be met if the penalty of removal from service is imposed on him.

Accordingly, in exercise of the powers conferred on me by Rule 12 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time read with Sub-Rule (4) of Rule 15 thereof I hereby order the imposition of penalty of removal from service which shall not be a disqualification for future employment under the Government. Shri M.G.K. Murthy, Audit Officer(under suspension) be removed from service from the date of these orders.

7. A copy of this order may be added to the Confidential Rolls of Shri M.G.K. Murthy, Audit Officer.

Krishna

(K. KRISHNA DAS)
Principal Accountant General
(Audit)-I,
Disciplinary Authority.

31/08/94

O/c

" Attested "

K.CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

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From

M.Gopala Krishna Murthy,
Audit Officer,
D-4, A.G.Staff Quarters,
Yousufguda P.O.,
HYDERABAD - 500 045.

To

The Principal Accountant General,
Audit-I A.P.(Disciplinary Authority)
HYDERABAD - 500 463.

Respected Sir,

Representation on the Inquiry Report Dated: 31-12-1993 forwarded to me by the Sr. D.A.G.(Administration) in his letter No.Sr.D.A.G.(A)/AU-1/C.Cell/ DC-1/8-118KW/94-95/601 Dated: 15-4-1994.

In the reference cited, I was called upon to make representation or submission, if any, on the report of the Inquiring Authority to the Disciplinary Authority within 15 days of receipt.

I received the report on 18-4-1994 and I enclose my representation on the conclusions reached by the I.A. for the kind consideration of the Disciplinary Authority and request for the issue of favourable orders early.

Thanking you,

Yours faithfully,

Place: Hyderabad,
Dated: 29-4-94

(M.Gopala Krishna Murthy)

Attested

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

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REPRESENTATION OF THE CHARGED OFFICER ON THE INQUIRY REPORT

The main ingredients of the charge and allegations levelled against me are:

(a) Demand of illegal gratification and

(b) Acceptance of illegal gratification from one Sri. P.V.Lokanatham working as Health Supervisor in the P.H.C. Thurimerla of Nellore District. The I.A. has discussed the ingredients in detail. I am refraining from repeating the aspects discussed by the I.A. However, I am submitting some aspects which reinforce the findings given by the I.A.

The I.A. discussed the demand aspect in two facets namely:

(1) Demand prior to the date of trap i.e., 9-10-1990 and

(2) Demand on the date of trap

In respect of both these facets the I.A. found that there was no demand by me vide paras 7.24 and 8.9 of the I.A's report. A close scrutiny of the facts establishes that neither I nor any other member of the Audit Party could validly cancel or efface the objection. The objection raised in respect of the excess pay drawn in the case of Sri. P.V. Lokanatham(decoy) can be admitted only on compliance by the Medical Department to which the decoy belongs. There cannot be any motive as I, having raised the objection, cannot withdraw the same. As was observed by the I.A. the objection raised by me was affirmed even after receipt of reply from the Medical Officer of the P.H.C. So to say, the objection raised by our Audit Party with my approval was confirmed by me irrevocably. The question of rendering help or showing official favour to the decoy does not arise. In Madan Mohan Singh vs State of U.P. 1954 S.C.(Page-637) and in Trilok Chand Jain vs State of Delhi 1974 S.C.(Page-666), the Supreme Court of India have held want of motive in cases where the public servant cannot render any favour or disfavour to serve as a motive for payment of illegal gratification.

The findings given by the I.A. in this regard finally concluded that alleged demand for illegal gratification either before or on the date of trap has not been made out by the prosecution. It is relevant to submit that as I am dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy, I was made a victim by the scrupulous methods by the decoy in connivance with the C.B.I.

The second ingredient pertains to acceptance. The I.A's finding that the money was thrust into my hands ~~will~~ itself goes to prove that there was no acceptance. Acceptance always conveys a willing public servant soliciting a bribe and receiving the same. In the case under reply, the evidence of SW9 clearly shows when he depose an oath as under - "Mr. Lokanatham thrusted the money into the hands of Mr. Murthy(CO)". SW9 is a third party witness in this case. This aspect was discussed and finding was recorded by the I.A. as under - "I am inclined to agree with the CO's defence that the money was passed and thrust into his hands by Sri. Lokanatham". Vide para 10.4 and 10.7 of the I.A's report. Thrusting and acceptance ill go together. Thus the I.A. found that I did not accept any illegal gratification. The cumulative effect of the evidence of SW9 and the finding recorded by the I.A. conclusively establish that I was never a soliciting party. The I.A. also disbelieved the allegation that I counted the currency. This part of the case is discussed in detail by the I.A. in para 10.8 of his report.

The I.A., having found against the prosecution, the demand on the date of trap and also on the earlier dates and also having found that I have not accepted the illegal gratification by the fact that the money was thrust in my hands, could not have come to wrong conclusion that I have motivelessly pocketed the money and so holding that the charge was partially proved.

I respectfully submit that the I.A. was breathing hot and cold. The I.A. having found that I have not demanded payment of illegal gratification on the date of trap or earlier and also having found that the money was thrust into my hands, the I.A. could not have come to the conclusion that I have accepted the money motivelessly. Thi findings go ill-together. Having found that there was neither demand nor acceptance, the two ingredients of the charge, the I.A. could not have held that I have motivelessly pocketed the money. It needs to be appreciated at this juncture that both SW9 and the I.A. have reached the conclusion that the money was thrust into my hands. As already contended above, thrusting and acceptance ill go together.

It has been the burden of my song all along that the money was thrust back into my pocket by the decoy Sr. Lokanatham as he came on 9-10-1990 with a determined mind to cause trouble to me since his repeated requests to drop the objection was not conceeded to by me. I repeatedly stated this in my defence as per the requirements of Rules 14(4) and 14(16) of C.C.S.(C.C.A.) Rules 1965. These are statutory replies and they constitute evidence on my behalf. I did not examine any oral evidence. The answers I gave, the material I elicited during cross examination and answers given by me constitute in the eye of law, evidence under Section 3 of the Indian Evidence Act. My statements consistedly representing how the money was thrust into my pocket fulfill the role of my evidence. The observation by the I.A. that I had not adduced any evidence does not stand to reason and as the same is ill-founded the statement made by me during the course of Inquiry and earlier constitute Evidence on my behalf.

Having found both the ingredients of the charge namely demand and acceptance have not been proved at all, it should not enable the I.A. to observe that the charge is partially proved holding that I have kept the money in my pocket motivelessly and having been subliminally tempted.

It is always expected of the Inquiring Authority to categorically and indisputably give a finding all that is wanting in this Inquiry.

I may bring to your kind notice that I am to reach the age of superannuation by September of this year and I was kept under suspension for about 43 months for no fault of mine. I may be pardoned in bringing to your kind notice that I joined service as U.D.C. and have earned promotions at the relevant dates and have sincerely discharged the duties to the best of my ability and for the matter of that for having raised an objection of over drawal of pay by an employee, I was victimised by his unscrupulous activity in vindictively dealing against me.

In the light of various facts mentioned in my representation which are supported by circumstantial and material evidence, I humbly submit that I am quite innocent and I am put to all these troubles for the simple reason that I have not dropped the object even after repeated requests by the decoy. I repeat once again that I never yielded to any temptation as is clear from the Inqui itself. I am innocent, honest, truthful and obedient Government Servant and always tried to maintain high standard of integrity.

I request the Principal Accountant General to consider all the points raised by me in this representation with all sympathy and do justice.

Attested

K C. [illegible]DRA MOHA
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

(M. Gopala Krishna Murthy)

(129) 138

28/2

O R D E R

I have carefully considered the appeal dated 10.10.94 of Shri M. Gopala Krishna Murthy, ex-Audit Officer of the Office of the Principal Accountant General (Audit)-I, Andhra Pradesh against the penalty of removal from service imposed by the disciplinary authority.

2. Shri Murthy has urged that his appral may be considered alongwith his letter dated 29.10.90 addressed to the Dy. Accountant General (Civil) of the Office of the Principal Accountant General (Audit)-I, Andhra Pradesh, his written brief dated 29.8.93 addressed to the Inquiring Authority and his representation dated 29.4.94 on the Inquiry Report sent by the Disciplinary Authority. He has prayed for setting aside the penalty mainly on the following grounds :

(1) The charge of accepting bribe of Rs. 1000 is manipulated and fabricated and the money was thrust in his pocket despite his resistance. When the Inquiring Authority held that the charge of demanding bribe has not been proved, its conclusion that the appellant had shown motiveless and subliminal temptation to pocket the money which is bordering on passive acceptance is a perverse imagination.

(2) Disciplinary Authority was not correct to hold that once the money was recovered from the appellant, motive is not relevant and if he were really to reject the bribe he should have reacted to demonstrate shock and surprise and absence of his reaction proves the charge. The appellant says that being a heart patient, he could not over-react. Mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict an accused. Mere recovery of money does not prove the charge of taking bribe in absence of proof of demand and acceptance. As per Rule 11 of CCS (CCA) Rules, it is mandatory to have motive in order to impose the major punishment of removal from service. In absence of proven motive, the mandatory provision of the CCS (CCA) Rules is not satisfied.

(3) The requirements of Rule 14(18) of CCS (CCA) Rules have not been satisfied and the circumstances of the discovery of the money of Rs. 1000 from him were not specifically inquired by the Inquiring Authority during the general examination.

3. I have gone through the disciplinary case records relating to the case. I have also considered the various points raised in the appeal and also whether the procedure laid down in the CCS (CCA) Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice, whether the findings of the Disciplinary Authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe.

4. None of the contentions raised by the appellant has any merit in view of the following :

(1) It is not disputed that an amount of Rs.1000 was found in the pocket of the appellant on 9.10.90 during CBI trap and it is also not disputed that the said amount was provided by Shri Lokanadham. The appellant has contended that the said money was thrust in his pocket by Shri Lokanadham despite his resistance and in support of it he has relied heavily on the evidence of SW 9, Shri K. Satyanarayana Rao who was one of the witnesses to the trap. But during re-examination the said SW 9 had deposed that the appellant stretched one of his hands towards Shri Lokanadham and on that Shri Lokanadham had given money to the appellant. He had also deposed that after receiving the money the appellant had kept it in his pocket. During re-cross examination, SW 9 did not agree to the suggestion that Shri Lokanadham, after thrusting the money into the hands of the appellant had

also thrust the money into his pocket.

(2) Further, there is no evidence that the appellant displayed any sense of shock or abhorrence at the offer of money by Shri Lokanadham to him which would have been the normal and natural reaction had the money been thrust into the hand or pocket of the appellant. The appellant also did not bring the fact to the notice of his senior officers that Shri Lokanadham had thrust something into his hands. The appellant has contended that he did not over react as he had been a heart patient and cultivated the habit of not to get excited to prevent recurrence of heart attack. This plea of cultivated equanimity has not been entered at any stage in the proceedings. This is also at variance with his written brief that there was absolutely no scope for raising hue and cry since he was asked by the CBI Inspector to keep quiet and that he could not react in a violent way since he was under shock in view of malpractice played by Shri Lokanadham in collaboration with CBI. Although the incident took place on 9.10.90, the appellant did not make any report either to the District Medical Officer or even to his own officers till 29.10.90. Had he been a victim of manipulated CBI trap as alleged by him he would not have waited for a formal letter from his office and taken 19 days to make a report on 29.10.90 which was six days after he had been placed under suspension. His explanation is that due to shock caused by the manipulated trap he had fallen ill and was on medical leave due to which he could not bring the factual details of the case to the notice of his superior officers earlier than 29.10.90. But he had in fact submitted a progress report on 12.10.90 wherein he had mentioned seizure of certain records by CBI. When he had already mentioned in his progress report dated 12.10.90 about the seizure of the records by CBI there is no reason

why he could not have given full details and mentioned that he was a victim of a manipulated trap. He made a report regarding the trap only after he received a specific inquiry dated 23.10.90. Moreover, he was on commuted leave from 16.10.90 to 22.10.90 and his silence in the matter upto 15.10.90 and again from 23.10.90 to 28.10.90 remains unexplained. His conduct during the trap and thereafter is, therefore, not consistent with his profession of innocence. It is clear beyond any manner of doubt that he had accepted the money from Shri Lokanadham.

(3) The appellant has contended that in the absence of a proven motive for acceptance of money, the mandatory requirement of Rule 11 of CCS (CCA) Rules for imposition of a penalty of removal/dismissal from service is not satisfied. The said rule makes it only obligatory on the part of the Disciplinary Authority to impose major punishment of removal/ dismissal from service in every case in which the charge of acceptance of any illegal gratification as a motive or reward for doing or forbearing to do any official act is established but does not prohibit or preclude imposition of such penalty if otherwise warranted by the circumstances of the case.

(4) The appellant has contended that the requirements of Rule 14(18) of CCS (CCA) Rules have not been satisfied and that the circumstances of the discovery of the money of Rs. 1000 from him were not specifically inquired by the Inquiring Authority during the general examination. According to Rule 14(18) of CCS (CCA) Rules, the Inquiring Authority may, after the government servant closes his case, and shall, if the government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him. This is not intended to be searching examination or cross-examination of the government servant who has elected not to

examine himself. However, during the general examination the appellant was asked questions on alleged threat or warning given by Shri Lokanadham, whether the same was reported by the appellant to his superior officers and also what transpired between him and Shri Lokanadham on 9.10.90 by way of discussion or otherwise, when Shri Lokanadham visited the appellant at the Collectorate office, Nellore and the appellant replied to these questions. The requirements of Rule 14(18) of CCS (CCA) Rules have thus been adequately met by the general examination of the appellant.

5. Having regard to the position stated above, I am satisfied that the charge of acceptance of money by the appellant is established by the evidence on record. The charge established against the appellant is sufficiently grave to warrant imposition of the major penalty of removal from service. In the circumstances, I uphold the penalty imposed by the Disciplinary Authority and reject the appeal of the appellant.

Dated,
New Delhi,
7.8.95.

(Dharam Vir)
Deputy Comptroller & Auditor General and
Appellate Authority.

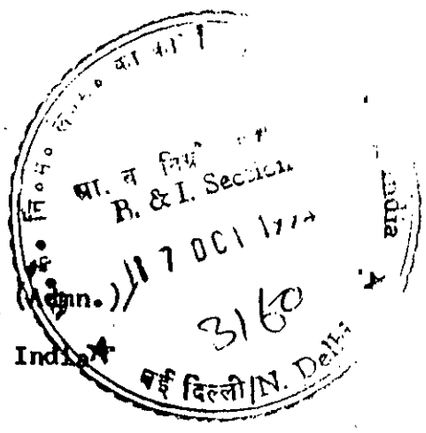
Attested

K. CHANDRA MOHA
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

October 10, 1994

From

M. Gopala Krishna Murty
Quarter No. D-4, A.G.s Staff Quarters
Yousufguda
HYDERABAD - 500 045 (A.P)



To

The Dy. Comptroller & Auditor General of India (Admn.)
Appellate Authority
Office of the Comptroller & Auditor General of India
Indraprastha Estate
Bahadurshah Zaffer Marg
NEW DELHI - 110 002

Most Respected Sir,

Sub: Appeal against the order of removal from Service by the Principal Accountant General (Audit-I), A.P., Hyderabad/ Disciplinary Authority

Ref: No. Prl.AG(Au)-I/Coordn. Cell/DC.I/8-118/94-95 Dated 31.8.1994 Office Order No. 7

I humbly request that I may be permitted to bring the following few lines and facts to your notice for your most sympathetic consideration and favourable orders.

I submit that while working as Audit Officer in the Office of the Principal Accountant General (Audit-I), A.P.,Hyderabad I was posted from April 1988 onwards to supervise the work of Pay fixation in 1986 revised Pay scales of the A.P. State Government employees. After completing the work in eleven districts, our Audit Party went to Nellore during September 1990. The Audit Party was provided accommodation in the District Collectorate. During the course of Audit, one of the Senior Auditors, Sri Jameel-ur-Rub drafted a Half Margin objection pointing out recovery of over Rs.10,500/- due to erroneous pay fixation in the case of one Sri P.V. Lokanatham, Health Supervisor, Primary Health Centre, Thurimerla. The said objection was approved by me after due scrutiny and issued to the Medical Officer, P.H.C., Thurimerla on 19.9.1990 for regulating the pay of the incumbant. However the Medical Officer sent his replies to the Audit objection through his Sr. Assistant, Sri A.R.K. Nageswara Rao on 5.10.1990. After noticing that the reply submitted by the Medical Officer is not convincing, I have rejected the reply in writing and returned the same to the Medical Officer for necessary action. Sri P.V. Lokanatham somehow wanted to

..2.

manipulate and get the Audit objection dropped. But however when his attempts in getting the objection dropped failed, he took a revengeful attitude and arranged a manipulated trap in collaboration with CBI authorities of Visakhapatnam at the Collectorate, Nellore on 9.10.1990. Although the CBI authorities filed a F.I.R. in the court of the Special Judge for CBI Cases on 11.10.1990, the matter was referred to the Principal Accountant General, Audit-I, A.P., Hyderabad for taking departmental action due to inherent weakness in the case.

2) While so, a charge sheet was issued by the Principal Accountant General under Rule 14 of CCS (CCA) Rules, 1965 on 19.11.1991 alleging that I have demanded and accepted a bribe of Rs.1,000/- from Sri P.V. Lokanatham in the matter of dropping Audit objection against his Pay Fixation and thereby committed gross misconduct and failed to maintain absolute integrity and conduct as a public servant. I submitted my explanation on 20.4.1992 denying and disputing the charge and requested to conduct an enquiry by giving personal hearing. Thereupon, the Commissioner of Departmental Enquiries in the Central Vigilance Commission Sri O.P. Mishra was appointed as Inquiring Authority who conducted preliminary hearing at Hyderabad on 17.2.1993 wherein I have repeated that the charge is totally false. Later a regular enquiry was conducted at Hyderabad from 21.7.1993 to 23.7.1993 wherein as many as nine (9) prosecution witnesses and one defence witness were examined and the Inquiring Authority submitted his report holding that :

a) I have not demanded the alleged bribe either before or on the date of trap (9.10.1990)
b) that the money was passed and forced into my hands by Sri P.V. Lokanatham
c) that although the money was recovered from my shirt pocket, the fact that I took the money willingly, wilfully and with a MENSREA is not established and
c) that the Audit objection could not have been dropped by me to favour Sri P.V. Lokanatham because no material evidence was produced by the Medical Officer, P H C, prior to or on the date of trap.

But, unfortunately the Inquiring Authority concluded that I did show a motiveless subliminal temptation to pocket the money which is bordering on passive acceptance.

..3.

3) On receipt of the Inquiry Report, the Disciplinary Authority while furnishing a copy of the Report in Memo No. Sr. DAG(A)/Au-I/ C.Cell/DC-I/8-118/KW/94-95/601 dated 15.4.1994 directed me to submit my explanation on the report of the Inquiring Authority. Accordingly I submitted my detailed explanation on 29.4.1994 mentioning that I have never yielded to the threats and temptations by Sri P.V. Lokanatham and was unfortunately made a victim by his unscrupulous methods in connivance with the CBI and that the Inquiring Authority while holding that the money was passed and thrust into my hands by the complainant and held against the prosecution, could not have come the conclusion that I have motivelessly pocketed the money. I have therefore requested that I may be exonerated of the charge.

4) Such being the case the Disciplinary Authority has issued Office Order No. 7 dated 31.8.1994 holding that I am guilty of the charge and the ends of justice would be met if the penalty of removal from service is imposed on me and accordinly ordered for my removal from service from the date of the order which is clearly unjustified. The Disciplinary Authority has come to the conclusion that as the money was recovered from my person, the question of whether the acceptance was passive or otherwise does not seem very relevant and as the acceptance of the money is proved by the Inquiring Authority any comment on the motive is not really relevant to the context. The Disciplinary Authority also observed that if I were to reject truely the bribe, I would have reacted in such a way as to demonstrate shock and surprise. It is under these circumstances, the Disciplinary Authority held the charge proved against me and issued orders removing me from service, which is highly unjustified.

5) I submit that the whole charge is manipulated and fabricated as I have not yielded to the temptations of the complainant to drop the Audit objection in his case. At the outset I submit that the Audit Officer of a field party can neither approve incorrect objection nor can he drop the objections once raised at his will. All the records relating to the objections along with replies wherever received will be sent to the Head Quarters Office, viz. Principal Accountant General, A.P., Hyderabad where they are subjected to thorough scrutiny and finally disposed of either by dropping incorrect objections or including the correct objections in the form of a report. Thus it is a matter of common knowledge that once the objection is issued nothing remains in my hand. Therefore, the story of prosecution that

I have accepted the bribe from the complainant for dropping the Audit Objection does not arise particularly in view of the reply furnished by the Medical Officer, P H C, Thurimerla on my objection.

6)(a) I submit that the Inquiring Authority has clearly held that the demand of any gratification prior to the laying of the trap or on the date of trap is not proved. The Inquiring Authority also observed that even though the money was recovered from my shirt pocket it was not established that the money was accepted willingly wilfully and with MENSREA. It was also held by the Inquiring Authority that the money was passed and forced into my hands by the complainant. I submit that the fact of thrusting the money into my hands and my acceptance of the money never go together and they are mutually contradictory. I therefore submit that the conclusion of the Inquiring Authority that I have shown motiveless and subliminal temptation to pocket the money which is bordering on passive acceptance is nothing but perversive imagination of Inquiring Authority. I submit that the money was thrust without any demand and against my will.

(b) I also submit that on the basis of the conclusion of the Inquiring Authority that there was no demand for money from me either on the date of trap or prior to that, it is crystal clear that Sri Lokanatham came to the Audit Party with a predetermined mind on 9.10.1990 along with CBI officials to involve me and entangle me into trouble as I have not yielded to his temptations. This fact was not at all considered by the Inquiring Authority. I respectfully submit that the Inquiring Authority exhibited a biased attitude in arriving at the conclusion which is purely based on imagination but not on evidence on record.

(c) I submit that the complainant is a notorious person habituated to bring the honest officers into trouble by dubious means. It is only with this motive in mind and with preplanned trap by CBI officials the complainant entered my camp office at Collectorate on 9.10.1990. It is relevant to submit that as I am dutiful and maintained high standard of integrity and honesty by not yielding to threats and temptations by the decoy, I was made a victim by the unscrupulous methods by the decoy in connivance with the CBI.

..5..

7) The Inquiring Authority's finding that the money was thrust into my hands itself goes to prove that there was no acceptance. Acceptance always conveys a willing public servant soliciting a bribe and receiving the same. In the present case, the evidence of SW 9, Sri Satyanarayana Rao, a third party witness in the case, clearly shows when he deposed an oath as under - "Mr. Lokanatham thrusted the money into the hands of Mr. Murthy (CO)". This aspect was discussed and finding was recorded by the Inquiring Authority as under - "I am inclined to agree with the CO's defence that the money was passed and thrust into his hands by Sri. Lokanatham", vide para 10.4 and 10.7 of the Inquiring Authority's report. Thrusting and acceptance ill go together. Thus the Inquiring Authority found that I did not accept any illegal gratification. The cumulative effect of the evidence of SW 9 and the finding recorded by the Inquiring Authority conclusively establish that I was never a soliciting party. The Inquiring Authority also disbelieved the allegation that I counted the currency. This part of the case is discussed in detail by the Inquiring Authority in para 10.8 of his report.

8) I further submit that Sri A.R.K. Nageswara Rao, Sr. Assistant, PHC, Thurimerla, in his deposition has clearly admitted that right from the date of receipt of Audit objection, Sri P.V. Lokanatham asked him to convince the Audit Party by offering some bribe at his expense to drop the objection raised against his pay fixation. This statement has apparently not been considered by Inquiring Authority while arriving at the conclusion.

I therefore once again submit that there was absolutely no material on record to establish that I have demanded and accepted the illegal gratification. The Inquiring Authority's report is purely based on imagination but not on basis of any evidence on record.

9)(a) I submit that it is unfortunate that the Disciplinary Authority came to the conclusion that "once the money was recovered from the person of Charged Officer, the debate on whether the acceptance was passive or otherwise does not seem very relevant, and once the acceptance of the money is proved by the Inquiring Authority himself, and any comment on the motive is not really relevant to context." In this connection I submit that admittedly there is absolutely no motive on my part to accept the illegal gratification. On the other hand it is the complainant who has thrust a wad of currency notes into my hands and requested me to to drop the objection on the basis of G.O. issued in January 1990. I did not like it and pushed back the money

into his hands. However as the complainant came with a predetermined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I was under shock in view of the malpractice played by Sri Lokanatham but did not over react as I have been a heart patient since 1981 and cultivated the habit not to get excited at any moment to prevent recurrence of heart attack. Therefore I decided to report the malpractice of the complainant to the D.M. & H.O., Nellore and turned towards the telephone (PABX Board). But I could not do so on account of the CBI Inspectors' entering the premises even without the prearranged signal as deposed by S.W. 9. Though I tried to explain the events to CBI Inspectors, they did not allow me to do so but asked me to keep quiet and sit down. I submit that the mere recovery of the money divorced from the circumstancesunder which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable as held by the Supreme Court in Surajmal Vs Delhi Administration AIR 1979, SC - 1408.

(b) The Disciplinary Authority has unfortunately erred in failing to see that the motive is very much relevant in any charge of illegal gratification. Mere recovery of money does not prove the charge in the absence of proof of demand and acceptance. These well known principles were unfortunately not taken into consideration by the Disciplinary Authority in arriving at his conclusion for awarding a major penalty of removal from service. I respectfully submit that the conclusions arrived at awarding the major penalty of removal were not only against the principle of natural justice but also in gross violation of statutory provision of Rule 11 in Part V of the CCS (CCA) Rules, 1965 which is reproduced below for your kind perusal.

> "Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed"

It is thus obvious that in order to impose the major punishment of removal from service (viii) or dismissal from service (ix) it is mandatory to have MOTIVE or reward for acceptance of the illegal gratification. Thus, the observations of the Disciplinary Authority "in this case, acceptance of the money is proved by the Inquiring Authority himself and any comment on the motive is not really relevant to the context, it is humbly submitted, is against the very mandatory requirement in CCS (CCA) Rules, 1965.

..7.

(a) Rule 14(18) of the CCS (CCA) Rules, 1965 requires that the Inquiring Authority shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. This means that when the public servant does not get into the witness-box and offer himself as a witness to defend himself, the Inquiring Authority shall question him about the circumstances appearing against him in the evidence and then only such circumstances can be read and interpreted against him. In my case, the Inquiring Authority apparently noticed that the aspect as to how the alleged bribe money has gone into my pocket was not told by any of the witnesses and while conducting general examination of the public servant on the last day of Inquiry, i.e. 23.7.1993 the Inquiring Authority did not question the public servant specifically in this regard though he put seven (7) questions on various aspects. Without questioning me the Inquiring Authority could not have interpreted the circumstances against me in para 10.9 of his report to conclude that I did show motiveless and subliminal temptation to pocket the money.

(b) I respectfully submit that the Inquiring Authority fell into the error of interpreting the circumstances against me without putting them to me under Rule 14 (18) of CCS (CCA) Rules, 1965 and concluded that the charge was proved partially. Based on these incorrect findings of the Inquiring Authority, the Disciplinary Authority imposed the most serious penalty of removal from service depriving me of all benefits of my service of over thirty six (36) years. Considering this important aspect I request that the Inquiring Authority's report and Disciplinary Authority's decision based thereon should be rejected and I may be fully exonerated of the charge.

11) It can be observed from the report of the Inquiring Authority and the final order of the Disciplinary Authority that the Disciplinary Authority differred from the opinions, conclusions and findings of the Inquiring Authority as mentioned below in brief:

a) In para 10.4 of the report the Inquiring Authority agreed that the money was passed and forced into the hands of the Charged Officer by Sri Lokanatham based on the deposition of the independent witness, SW 9 that the money was thrust into the Charged Officer's hands. The Disciplinary Authority, however, observed that the issue that settles the whole question is whether the money proffered was received by the Cherged Officer and that the non-contesting of the fact of recovery of the money from the Charged Officer's shirt pocket confirms the receiving of money and its acceptance by the Charged Officer. As thrusting and acceptance do not go together the Disciplinary Authority and the Inquiring Authority differ in this regard.

..8.

b) The Inquiring Authority observed in para 10.8 of his report that the fact of receiving the money by the Charged Officer willingly wilfully and with a mensrea is not established. He therefore observed in para 10.9 that the Charged Officer did show motiveless, and subliminal temptation to pocket the money and this act of the Charged Officer was bordering on passive acceptance. The Disciplinary Authority observed in para 4 of his order that the debate whether the acceptance was passive or otherwise does not seem very relevant and any comment on the motive is not really relevant to the content. How the Disciplinary Authority differed from the Inquiring Authority here is very clear.

c) In paras 8.5, 8.6, 8.7, 9.2, 10.4 and 10.6 of his report the Inquiring Authority's remarks reveal that he is not definite in regard to the acceptance of the money by the Charged Officer. The Disciplinary Authority observed in his Order that the acceptance of the money was proved by the Inquiring Authority himself. Here also how the Dispiplinary Authority differed from the Inquiring Authority is clearly seen.

d) As the charge of the acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act is not established by Inquiring Authority, the remarks of the Disciplinary Authority, in para 6 of his order, that he has concluded that the Charged Officer is guilty of charge and his view that the ends of justice would be met if the penalty of removal from the service is imposed on the Charged Officer is unfortunate especially because the requirements of the first proviso to rule 11 of CCS (CCA) Rules, 1965 are not satisfied.

e) The remarks of the Disciplinary Authority in para 4 of his order that if the Charged Officer were to reject truely the bribe, he would have reacted in such a way as to demonstrate shock and surprise are based on his personal imagination and are not at all raised by the Inquiring Authority.

In Government of India instructions no.1 under rule 15 of CCS(CCA) Rules, 1965 it is clearly mentioned that as orders passed by the Disciplin Authority are in exercise of quasi judicial powers it is necessary that self-contained, speaking and reasoned ordersshould be issued while passing the final orders in disciplinary cases. No reason has been given by the Disciplinary Authority in this case substantiating how he differred from the Inquiring Authority on various aspects as discussed above.

..9.

Returned

(1) Material papers to be attested & Indexed.

17/6/96

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
प्राप्ती
RETURNED
17 JUN 1996
हैदराबाद न्यायपीठ
Hyderabad Bench

8-7-96

Objections Complied to resubmitted
pshaik.
8/7/96

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
पुन-प्रस्तुती
RE-PRESENTED
08 NOV 1996
हैदराबाद न्यायपीठ
Hyderabad Bench

In the Central Administrative Tribunal: Hyderabad

O.A. No. 1189/95

Reply Statement.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
प्राप्ती
RECEIVED
14 JUN 1996
346
हैदराबाद न्यायपीठ
Hyderabad Bench

Filed by: G. Parameswara Rao
Standing Counsel for R's

Filed on: 14-6-96.

Received a copy

14/6/96

5/7/96

(b) (c) I respectfully submit that I was made a victim by the unscrupulous methods adopted by decoy Sri. Lokanatham in collaboration with CBI authorities. I also submit that I became a victim for maintaining high sense of duty, integrity and honesty. It is not uncommon in these days to make an honest officer suffer and victimise when he does not yield to temptations. I may humbly state that my case is an excellent example for this. I have put in about 33 years of service prior to suspension and I also served the department with all honesty sincerity and devotion. I have a big family to maintain and no children of mine are employed till now. I have to perform the marriage of my fourth daughter besides I have to maintain my aged mother.

(c) I am deprived of my promotion as Sr. Audit Officer from 1.7.1989. In normal course I should have retired at the maximum of Rs.4,000/- in pay scale of Sr. A.O. I sufferred mentally and also this became a stigma in my life. In brief I submit that I sufferred a monetary loss of about Rs. 3 lakhs for no fault of mine.

(e) In view of the above I humbly pray the Appellate Authority to kindly consider my case most sympathetically and generously by setting aside the order of removal from service passed by the Principal Accountant General vide his Officeorder No. 7 dated 31.8.94 with all consequential benefits for which act of kindness my family and I shall remain ever grateful to your goodselves.

(d) In conclusion I request that this appeal of mine may kindly be consdered most sympathetically alongwith : a) my reply dated 29.10.90 addressed to the Dy. Accountant General (Civil) of my office (b) my written brief dt. 29.8.1993 addressed to the Inquiring Authority and (c) my representation on the Inquiry Report sent to the Disciplinary Authority on 29.4.1994.

(e) I look forward to receiving the favourable orders from your goodselves at the earliest.

Thanking you Sir, with profound regards.

Yours faithfully,

10/10/94

(M. Gopala Krishna Murty)

Copy submitted to:

The Principal Accountant General (Audit-I)/
Disciplinary Authority
Andhra Pradesh, Hyderabad
- for kind information please.

Attested

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

O.A.NO. 1189 of 1995

Between:-

M.Gopala Krishna Murthy, S/o.Late Mallikarjuna Sastry, Ex-Audit Officer, O/o.the Principal Accountant General, Audit-I, A.P., Hyderabad Resident of H.No.6-3-348/1, Dwarakapuri Colony, Panjugutta P.O., Hyderabad-500 082. ... APPLICANT

A N D

1. The Principal Accountant General, Audit-I, Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller and Auditor General of India (Admn.), O/o.the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002. ... RESPONDENTS

REJOINDER

I, Gopala Krishna Murthy, S/o.Late Mallikharjuna Sastry aged about 60 years, Ex-Audit Officer, O/o.the Principal Accountant General (Audit-I) A.P., Hyderabad, do hereby solemnly affirm and sincerely state as follows:-

2. I submit that I am the applicant in the above O.A. and as such I am well acquainted with the facts of the case. I have read the counter affidavit filed on behalf of the respondents and in reply thereto I beg to submit as followw:-

3. I submit that all the allegations made against me in the reply affidavit are denied except those that are specifically admitted herein. The Respondents are put to strict proof of such of those allegations as are not admitted herein.

4. At the outset I submit that there is absolutely no truth in the socalled complaint dated 9.10.1990 said to have been filed against me by Sri P.V.Lokanadham, Health Supervisor, P.H.C. Thurimerla, Nellore District alleging that I have demanded Rs.1,000/- (Rupees one thousand only) from him for dropping the objection raised on his pay

/Contd.. 2..

fixation. I submit that I have never demanded any amount much less Rs.1,000/- from Sri P.V.Lokanatham for dropping the said objection. I submit that when the said Health Supervisor was unsuccessful in his attempts to get the objection dropped, he took a revengful attitude and arranged a manipulated trap in collaboration, with the C.B.I. authorities Visakhapatnam on 9.10.1990. The Allegation is that I was caught redhanded while accepting the money from Lokanatham is totally false and invented for the purpose of this case. It is relevant to submit that although the C.B.I. filed F.I.R. in the court of special judge for C.B.I. case, the matter was referred to the Principal Accountant General, Audit-I,A.P. Hyderabad for taking departmental action on account of inherent weakness in the case. It is very much relevant to submit that this averment is incontravention to the findings of the inquiry officer, wherein it was clearly observed that the charged officer has not demanded the alleged bribe either before or on the date of trap (9.10.1990) and that although the money was recovered from his shirt pocket the fact that the applicant took the money willingly, wilfully, and with a mensrea is not established. It is also relevant to submit that the inquiring authority in his report has found that the charged officer did show a motiveless, subliminal temptation to pocketthe money and thus his action was bordering on passive acceptance and accordingly the charge was held as proved partially. I submit that the averment that I could not adduce any proof as to how the money had landed in my pocket is not a proper conclusion in the sense that it is for theprosecution to prove the doing but not for the charged officer to

/Contd... 3.,

explain. Further I submit that Sri Lokanathan having thrust the money in to my hands and when the money was pushed back into his hands, the said Lokanathan thrust the amount into my ~~xx~~ shirt pocket with a view to cause trouble to me. I submit that the charge has either to be held as proved or not proved and there is no middle course as partially proved. I submit that the fact of thrusting the money into my hands and acceptance of the same can never go to-gether as they are mutually contradictory. I therefore submit that the conclusions of the inquiring authority that I had shown motiveless sublimital, temptation, to pocket the money which is bordering on passive acceptance is nothing but perverse imagination of the inquiring authority and not at all based on the evidence on record. I submit that the fact that the money was thrust into my hands goes to show that there was no acceptance, since acceptance conveys a willing public servant soliciting the bribe and receiving the same. I submit that infact the senior Assistant of Thurimerla Sri A.R.K.Nageswar Rao has clearly admitted in his deposition that right from the date of receipt of Audit objections namely 19.9.1990, Sri P.V.Lokanathan asked him to convince the Audit Party by giving some bribe to drop the objection against his pay fixation. I submit that this relevant fact has not been taken into consideration either by the inquiring authority or for that matter by the appellate authority.

5. I submit that the inquiring authority has never held that the charge against ~~him~~ me was held proved but infact held as "Proved partially". Such being the case when the disciplinary authority agreed with the findings of the inquiring authority could not have come to the conclusion that I am guilty of the charges levelled against me and impose the punishment.

/Contd..

6. Regarding para 3 and 4 of the reply affidavit, I submit that according to instructions, the pay fixation party is not required to prepare any report and the half martin objections together with the replies are required to be sent to head quarters section. I submit that as per the practice the replies will be sent to Head Quarters in cases where the objections were dropped or modified based on the reports of the Department. I submit that notes also will be sent to head quarter's sections where the inspecting officer could not take a decision on the replies of the Department. In the instant case, the reply of the medical officer did not meet any of the objections raised and hence it was returned to the Department. It is relevant to submit that the inquiring officer himself specifically remarked that the Audit objection could not have been dropped by the C.O. to favour Sri Lokanathan because no material evidence was produced by the medical officer prior to or on the date of trap (Paragraph 10.8 of I.O. report) I submit that half margin and reply have been available with the principal A.G. since 1991 and I could be questioned if I had made a mistake in rejecting the reply. I, therefore submit that this is new point raised for the first time after 5 years of issuing the charge sheet and hence it shall be ignored.

7. Regarding para 5 of the reply affidavit I submit that the acceptance of bribe money by me is only an imagination and perception of the Respondents is based on their conjecture. I submit that even the inquiring authority clearly came to a conclusion in para 7.23 of his report that the evidence tendered by Loknatham and Nageswar Rao unhesitatingly establishes the fact that they had, on 5.10.1990, circumbulated to the lodge of the charged officer and other members of the Audit party not at the latter's suggestion and invitation but as

a result of their own deliberate act under their own sweet (and seed) motive and ~~violation~~ VOLITION. I submit that I.O's report in para 7.22 establishes that Sri Lokanatham and Sri Nageswar Rao chose the dubious path of approaching the audit personnel at odd hours (after 7 PM) and at odd place (Lodge) on 5.10.1990. I submit that the very fact that I did not yield to their attempt to bribe me at the lodge itself clearly establishes that the finding of the appellate authority that I have accepted the bribe of Rs.1,000/- is unfounded and mere perception. I submit that the Sri A.R.K.Nageswar Rao, Senior Assistant also stated in his reexamination "right from the receipt of the Audit objection, Sri Lokanatham asked me to convince the Audit Officerto drop the objection against Lokanatham's pay by offering some bribe. These relevant facts were never adverted to either by the disciplinary or appellate authority. The disciplinary authority and the appellate authority have inflicted punishment without any material evidence on record. I submit that the evidence of Sri K.Satyanarayana Rao, SW9 was not properly assessed. I submit that over all evidence given by Sri K.Nageswar Rao was not taken into consideration by the disciplinary ~~xx~~ and appellate authority. The inquiry officer came to the conclusion keeping in view the depositi of SW9 that he is inclined to agree with CO's defence that the money was passed and forced into his ~~xx~~ hand by Loknath and this fact was reineforced, albeit obliquely from the nebulous and uncertain evidence regarding stretching of hand by the C.O. voluntarily to accept the money from the complainant. I submit the question of stretching of my hands ~~xxx~~ does not arise when it is established tha money was thrust into my hands by Lokanatham. This clea

established that the money was being forced into my hands by Lokanatham. I therefore submit that the observation of the appellate authority that I have extended my hand for receivin- money is false. As regards not making any complaint to the D.M. & H.O. or to my own officers, till 29.10.1990, I submit that on 9.10.1990, soon after Sri Lokanatham thrust money into my hands and later into my shirt pocket, I turned towards the Telephone P.B.X. to my left to inform the D.M. & H.O. Nellore about the Malpractice of his employee Sri Lokanatham, but the C.B.I. inspector rushed into the roor and asked me to keep quiet and sit down and therefore I was helpless inthe matter. As far as the alleged delay in reporting the matter to my own officer till 29.10.1990, I submit that myself and other members of the audit party were continuously interrogated on 9.10.1990 and 10.10.1990 upto 6.30 PM and we were not allowed any free movement. I submit tha immediately after completion of audit work at Nellore on 12.10.1990 I drafted the covering report wherein I clearly mentioned that the money value of objections in respect of medical and health department could not be included in the report as the entire file of the Department was seized by the C.B.I. on 9.10.1990. The Audit party returned to Hyderabad after availing transit on 13.10.1990 and reported to head quarters on 15.10.1990 as 14.10.1990 was sunday. I have handed over the files to Audit Officer (head quarters section A.R. Subramanyam and appraised Deputy A.G. Civil Sri R.Dharma Rajan and Sri A.R.Subramanyam of the happening at Nellore on 9.10.1990. Thereupon I was advised to meet the A.G. Sri Samir Gupta. However I could not meet the Accountant General on 15.10.1990 I submit that I have been a heart patient from 1981, developed heart problem on 16.10.199 and therefore approached C.G.H.S. discpensary No.10 of A.G.Colo

and the Doctor on duty there advised me rest for thirty days. I have therefore applied for sanction of commuted leave for 30 days from 16.10.1990 duly enclosing the Medical Certificate. In the meanwhile, I was served with suspension orders on 23.10.1990. Thereupon inspite of my ill health with great difficulty I went to office of A.G. on 25.10.1990 escorted by my brother Hari Hara Prasad to seek an interview but the secretary to the A.G. (Audit) informed me that the A.G.(Audit) was busy the whole day and advised me to contact him on 26.10.1990 over phone for interview. Accordingly I contacted the Secretary to A.G. on 26.10.1990 from the reception gate, but however, I was informed that the A.G.was not willing to see me. It is under these circumstances I could not apprise the A.G. of the happenings of 9.10.1990 at Nellore on 26.10.1990 I received a registered letter from the Deputy A.G. dated 23.10.1990 asking me to explain within 3 days from the date of recept of this letter, the circumstances leading to the seize of the file of Medical Department by the C.B.I. at Nellore. I have accordingly submitted my detailed reply on 29.10.1990, through my brother. These circumstances and facts were not taken into consideration by the appellate authority and these facts were not disputed in the counter. As regards observation of appellate authority that I did not express shock or surprise and did not make hue and cry at the time of trap, I submit that these words were borrowed from the report of the presenting officer. Further it is a matter dependingon individual temperment and cannot be as to how the other person imagines.It is relevant to submit that the raiding party is a C.B.I. party whose behaviour will

never be normal. I submit that these facts were totally ignored by the appellate authority who confirmed the punishment.

Regarding para 7 & 8 of the reply statement, I submit that the penalty of compulsory retirement, or removal or dismissal from service can beimposed in case in which the charge of acceptance from any person of gratification other than legal remuneration as motive or reward for doing or forbearing to do any official act is established. However in exceptional cases and for special reasons recorded in writing any other penalty may be imposed. It is thus clear that in all cases of acceptance of illegal, gratification, as aforesaid, the ~~unisliments~~ Punishments of compulsory retirement removal or dismissal from service may be imposed. However in exceptional cases any other penalty may be imposed for spedial reasons to be recorded. I therefore, submit that the contention that rule 11 of CCA Rules of 1965 make it obligation to impose the major penaltyof removal/dismissal from service in every case in which the charge of acceptance of any illegal gratifications as amotive or reward for doing or forbearing to do any official act is established is not correct as is clear from the plain reading of provisions to rule 11 of CCS(CCA) Rules of 1965. On the other hand it is clear from the provisions to the above rule that any other penalty other than compulsory retirement/ removal/dismissal can be imposed even if the charge of acceptance of illegal gratification as a motive or reward for doing or forberaring to do any official act is established. Thus the contention it is obligatory to impose removal/dismissal should be imposed is not

correct as per rule 11 of CCS(CCA) Rules 1965. I submit that the observation" if otherwise, warranted by the circumstance of the case" in para 7 of the reply statement is clearly outside the scope of the proviso to rule 11 Of CCS(CCA) Rules, 1965 and is invented only for purpose of justifying the imposition of punishment of removal from service. In the instant case admittedly, I as Audit Officer have no power to drop the Audit objection so as to favour Sri Lokanatham and as the question of demand or acceptance of any illegal gratification as a motive does not arise further the inquiry officer in para 8.9 has clearly came to a conclusion. "The conclusion is in escapable, on the basis of material evidence adduced, that the C.O. had not demanded the alleged bribe on 9.10.1990". The further observations of the inquiry officer in para 10.4 "so~~k~~ I am included to agree with the CO's defence that the money was passed and forced into his hands by lokanatham. This fact is reinforced, albeit obliquely, from the nebulous and uncertain evidence regarding the stretching of hand by the C.O., voluntarily, to accept the money from the complainant (10.7 of I.O. report). This clearly establishes that the money was being forced into the C.O's hands by Lokanatham. Thus even though the factum of recovery of the money from the CO's shirt pocket is clearly established, the fact that the C.O. is taking this money willingly wilfully and with menseria is not established". (10.8 of I.O.report). It is thus clear from the I.O. report that the main ingrident of acceptance of illegal gratification, as a motive or reward for doing or forbearing to do any official act is absent in entirity and as such the punishment of removal is clearly untenable in the eye of law.

9. I submit that the observations of the appellate authority in para 4(4) of the impugned order that the requirements of rule 14(18) of the CCS(CCA) Rules of 1965 were adequately met since I was asked on the alleged threat or warning given by Sri Lokanatham during my general examination and there cannot be searching examination or cross examination of the Government servant who has elected not to examine himself is contrary to the letter and spirit of Rule 14(18) of CCS(CCA) Rules 1965 and also opposed to dictum of law ~~x~~ laid down by Hon'ble Supreme Court. I submit 14(18) is mandatory and the inquiring authority should necessarily put questions to me specifically referring to certain statements of prosecution evidence and ask the delinquent as to what ~~x~~he has to say with reference to those statements and then leave the matter at that stage without putting further searching and probing questions to the delinquent. In the instant case the inquiry authority though had put 7 questions to me in general examination had failed to specifically question me as to how the alleged bribe money has gone into my pocket. I submit this omission on the part of the I.O. was not disputed by the respondent. I, therefore submit that the observations of appellate authority that the requirement of rules of CCS(CCA) Rules of 1965 were metwith is not correct.

10. Regarding paras 9 to 10 of the reply affidavit, I submit that conclusion of the inquiring authority that I have shown motiveless subliminal temptation to pocket the money which is bordering on passive acceptance is nothing but perverse imagination of the inquiring authority and not at all based on evidence on record. I submit that the fact that the money was thrust into my hands goes to

prove that there was no acceptance since acceptance conveys a willing public servant soliciting the bribe and receiving the same. I submit that the inquiring authority clearly held that the demand of illegal gratification either prior to laying of trap or on the date of trap is not proved. The inquiring authority also observed that even though the money was recovered from shirt pocket it was not established that the money was accepted willingly, wilfully with menseria. I also submit the fact of thrusting the money into my hands and acceptance of the same never go together. I submit that the cumulative effect of the depositions of SW9 and finding recorded by the inquiring authority conclusively establish that I was never a soliciting party. It is also relevant to submit that Sri A.R.K.Nageswar Rao, Senior Assistant SW4 of Primary Health Centre, Thurimerla in his deposition has clearly admitted that right ffom the date of receipt of Audit objection, namely on 19.9.1990, Sri P.V.Lokanatham asked him to convince the Audit party by giving some bribe to drop the objection against his pay fixation. I submit that neither I.O., nor the disciplinary authority nor the appellate authority has ever given any weight to this important aspect of evidence. I submit that as already stated above, in order to establish the guilt, the necessary ingriedients are (1) demand (2) acceptance besides others. In the instant case, it is clearly established by I.O. himself that demand of bribe was not proved. I submit that there is no material to show that acceptance of bribe was proved. Even according to I.O.

/Contd..

the money was being forced into my hands. The only point that the I.O. found against me was that I could not give any proof of how the money landed in my shirt pocket. I could submit, if IO found this against me he would have questioned me on this under Rules 14(18) and hence it cannot be taken as an adverse finding.

11. It is relevant to submit that during the general examination by the I.O. on 23.7.1993, I have already stated that Sri Lokanatham came near me and thrust the wad of currency notes into my hands and requested me to drop the objection on the basis of Government orders issued in 1/90, but I did not like it and pushed back the money into his hands. However as Lokanatham came with a determined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. Though I wanted to report this malpractice to the DM&HO, Nellore, I could not do so because of entering, Senior Inspector into the room and asked my identity etc.

12. I also submit that the audit objection raised by me against Sri Lokanatham is a valid one and is according to the rules and this is not disputed by the Respondents., I submit that I reliably unddrstand that thepunishment of removal was inflicted on me on the basis of the advice tendered by the vigilance Commission. I submit that the Hon'ble Supreme Court in State Bank of India Vs. D.C., Aggarwal AIR 1993 SC 1197 held that the disciplinary authority is not to act on any material without furnishing copy of the same to the delinquent. The Cpurt observed that non supply of C.V.C. recommendation which was prepared behind the back of the respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied, was certainly violative of proceedure safeguard and contrary to fair and just inquiry. I submit that as a

copy of advice so rendered by Central Vigilance Commission was not supplied to me and as such the principles of natural justice have been violated and hence the punishment imposed is clearly illegal. I therefore submit that the punishment is not only illegal andunjustified but also disproportionate as to shock judicial consoience.

It is therefore prayed that this Hon'ble Tribunal may be pleased to allow the O.A. as prayed for with costs and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Solemnly andsincerely affirmed
at Hyderabad on this 19th day of
September, 1997.

DEPONENT

Before me

// ADVOCATE // HYDERA

S114

P-14 156 169

HYDERABAD
22.07.1993

Deposition of Shri.A.R.K.Nageswara Rao,Manager, MFTB&CD Hospital, Nellore, Andhra Pradesh.

-S-S-S-

Examination in Chief

I have gone through the statement marked as Exhibit.S20. and confirmed its contents. It is a fact that I informed Sri.P.V.Lokanandam that Sri.M.G.K.Murthy wanted to see him regarding consideration of the Audit objection raised. It is a fact that Sri.M.J.K.Murthy has expressed before me also that he intend to receive ¼ of objected amount.

Cross Examination

I am working as Sr.Assitant from 4.10.1968 to 15.4.92. of Sri.Lokanadam
The pay/on revision of the scale was fixed by theDistrict Medical & Health Officer. Three objection were raised by the Audit party in respect of my PHC. Half margins were replied by the drawing Medical Officer of my PHC. After over them to the Audit Officer, at Collectorate, the Medical Officer I handed ~~XXX~~ We have send replies to three out of two Audit objections, and out of these two replies one was ~~xx~~ accepted by the Audit so the objection was dropped and the other reply which related to Sri.Lokanandam's case was not accepted so the objection remained. The replies to the half margins were handed over to Collectorate Nellore on ~~xxxxxxxxxx~~ 05.10.1990. I further clarify that this was handed over to the Audit Officer on 05.10.1990. I went to the Lodge as per the oral orders of the Audit Officer(CO). At the time ... members of the Audit party were present at a distance. I do not know ... persons present at the Lodge when I met the Co there at 7.30 PM on 5.10.1990. I deny the suggestion that I asked the Audit Officer/Audit party to drop the objections for consideration. I went to the Lodge that the instance of Sri.Lokanandam who asked me to meet the Audit Officer there and convenience them by offering some bribe at his expense(Sri.P.V.Lokanadam).

A.R.K.NageswaraRao
22.7.93.

Contd..2.

Re-examination

Right from the receipt of the audit objection, Sri.Lokanadam that asked me to convenience the Audit Officer to drop the objections against Sri.Lokanandam's pay.

INQUIRING AUTHORITY

RO&AC

(A.R.K.NAGESWARA RAO)

HYDERABAD
23.07.1993.

General Examination of Sri.M.G.K.MURTHY,CO. by the Inquiring Authority.

-S-S-S-

Q. Can you tell whether the Audit Objection with regard to the pay fixation of Sri.Lokanadam was based on any Government Order/Circular applicable at the relevant time and if so whether this fact was intimated to the Medical Officer, Primary Health Centre who was head of the Office?

A. Yes.

Q. Did you yourself scrutinise the relevant Govt.Order and come to the conclusion that the said Audit objection was sustainable?

A. Yes.

Q. Can you explain the reasons as far as you know, as to why, when the correspondence was between your Office and concerned health centre, Sri.Lokanadam visited you, as he states four times.?

A. I did not ask Sri.Lokanadam to visit me. He came on his own accord and visited me on the evening of 5th October 1990 for the first time and later on 9th October 1990 when the trap was laid at Collectorate, Nellore.

Q. Did Sri.Lokanadam give you any threat or warning in the event the audit objections relating to his pay fixation was not dropped.?

A. Yes.

Q. When was this threat given to you, if you can remember and in who's presence, if you can remember?

A. When I refused to drop the objection, even after repeted requests of Sri.Lokanadam, he in return threatned in the evening of 5.10.1990 and Sri.G.Ramakishan , Asst.Audit Officer was also present at that time, at the Vijaya Lodge.

Q. Was this threat reported by you to the Superior Officer of Sri.Lokanadham or do you normally receive such threats ?

A. I did not report the threat given by Sri.Lokanadham to his superiors because it was a normal affair which I have experienced in almost all the 12 districts

Contd..

(17) 168

where I conducted the pay fixation checks. After returning from Nellore, I reported this to my DAG, on 29.10.90.

Q. On 9.10.1990 what transpired between you and Sri.Lokanadam by way of discussing or otherwise, when Sri.Lokanadam visited your Office at the Collectorate, Nellore?

A. When Sri.Lokanadam visited the Collectorate, Nellore on 9.10.1990 he came near me and thrust a wad of currency notes into my hands and requested me to drop the objection on the basis of a Government Order issued in January 1990. I didn't like it and pushed back the money into his hands. Because Sri.Lokanadam came with a determined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I wanted to report this malpractise of Sri.Lokanadam to the DM&HO, Nellore and stood up and turned towards the telephone(PABX Board). Yet this juncture one CBI Inspector entered the room and asked my identity. I replied that I am M.G.K.Murthy, Audit Officer of the Pay fixation party.

INQUIRY AUTHORITY

RO&AC

(M.G.K.Murthy) 23/7/93

OA. No. 1189/1995

* * * *

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD — II COURT

M.A./R.A/C.A No.

ORIGINAL APPLICATION NO. 1189/ of 1995

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: 9/1/98

Counter Signed.

Court Officer/Section Officer

YLKR

Signature of the Dealing Asst.

* * * *

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

(1771)

O.A.NO. 1189 OF 1995

DATE OF DECISION: 5.1.98

M. Gopala Krishna Murthy — PETITIONER(S)

Mr. K. Venkateswara Rao — ADVOCATE FOR THE PETITIONER(S)

VERSUS

The Principal Accountant General Audit-I + 2 others. — RESPONDENT(S)

Mr. G. Parameswar Rao — ADVOCATE FOR THE RESPONDENT(S)

THE HON'BLE Sri R. Rangarajan : Member (Admn.)

THE HON'BLE Sri B.S. Jai Parameshwar : Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the judgement? No

2. To be referred to the Reporter or not? No

3. Whether their Lordships wish to see the fair copy of the judgement? No

4. Whether the judgement ~~xxxx~~ is to be circulated to the other Benches? No

JUDGEMENT DELIVERED BY HON'BLE

JR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 1189 of 1995

Date of Decision: 5.1.1998

Between:

M. Gopala Krishna Murthy .. Applicant

AND

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn.), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

Counsel for the Applicant: Mr. K. Venkateswara Rao

Counsel for the Respondents: Mr. G. Parameswara Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

..2

ORDER

(Per Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

1. Heard Sri K. Venkateswara Rao, the learned counsel for the applicant and Smt. G. Shakti for Sri G. Parameshwara Rao, the learned counsel for the Respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act 1985. The application was filed on 26.6.1995.

3. The facts giving raise to this O.A. may, in brief, be stated as thus:-

(a) The applicant was working as audit Officer in the office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Lokanadham and employee of the Health Department and the applicant was caught red handed while accepting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases, Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through the investigation papers of the CBI and after forming an opinion as to the existence of a

prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt.19.11.1991 (Annexure-9 page 84-97 of the O.A.). The charge levelled against the applicant reads as follows:-

"

That the said Sri M.G.K. Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.1990 at 10.30 hrs. at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V. Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (decoy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964.

"

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93 the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG/(AU)-1/ COORDN. CELL/DC/1/8-118/94-95 dated 31.8.94, disclosing the reasons, imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant prefered an appeal to the Respondent-2. The copy of the Memorandum of appeal Dt.10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by his proceedings No.PRL/AG(AU)-1/COORDN. CELL/DC/1/8-118/117 Dt.4.9.1995.

4. The applicant has filed this OA to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

..5

of the Constitution of India and, consequently for a declaration that the applicant is entitled to be treated on duty from t-he date of his suspension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

5. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and allowances to Sri P.V. Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimella that in the objection it was ordered to recover Rs.10,500/- from Sri P.V. Lokanadham, that the objection was issued on 19.9.1990 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicant could have met the District Medical Officer, Nellore and brought to his notice, if really, Sri P.V. Lokanadham had attempted to bribe him that it was only after his return from Nellore to Headquarters, that too after a lapse of many days and after service of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS (CCA) Rules that Rule 11 of the CCS (CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal

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from service in case the acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in posession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V. Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his posession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in juxtaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V. Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are perfectly valid, justified and according to law.

6. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

7. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore district. On 9.10.90 the CBI laid a trap

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on the applicant. They laid a trap on the basis of the complaint lodged by one P.V. Lokanadham, an employee of the Department of Health.

objections regarding the fixation of pay of Sri P.V. Lokanadham and had ordered recovery of Rupees 10,500/- from his salary. Sri P.V. Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audit objections.

9. On 9.10.90 the CBI laid a trap in the office of the Collectorate, Nellore. It was in the early office hours, the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V. Lokanadham approached the applicant as agreed to, earlier and offered the bribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and kept in the left side pocket in his shirt.

10. Thereafter the Investigating Officer entered the room where the applicant was seated, as-certained as to what took place and conducted chemical test on the hands of the applicant, and seized the currency notes from posession of the applicant that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and

that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

11. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V. Lokanadham and thereby comitted an offence of misconduct. This is the gist of the case of the applicant.

12. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V. Lokanadham visited the collectorate, that the said P.V. Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objections on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V. Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V. Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V. Lokanadham to DM and HO, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay fixation Party.

13. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

14. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri P.V.Lokanadham.

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However the Inquiry Officer found no plausible explanation from the Applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

15. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

16. The learned counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N. Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal p.10. In para-2 the Hon'ble Supreme Court has been pleased to observe as follows:-

"

> It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment

imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal ~~for~~ from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an inteference.

"

17. The learned counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission was that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengeance against the applicant. However, it is not clearly brought out as to how Sri P.V. Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri P.V. Lokanadham and sent the objection to the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

18. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation of pay of Sri P.V. Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri P.V. Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri P.V. Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri P.V. Lokanadham laid the trap on the applicant.

19. The trap was laid in the office of the Collectorate, Nellore. Sri P.V. Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri P.V. Lokanadham thrusted the tainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should have taken to

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task Sri P.V. Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

20. Besides, the applicant did not inform his official superior about this incident till he replied to the chargememo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for the reasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

21. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri P.V. Lokanadham or not can be ascertained from the moment Sri P.V. Lokanadham lodged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

22. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a theory in the absence of immediate action on the part of the applicant. As already submitted he has not brought this incident to the official superior till he submitted his explanation to the chargememo. His continued silence goes a long way to disprove his defence.

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23. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to this submission the learned counsel for the Respondents relied upon the decision of Supreme Court in the State of Tamil Nadu Vs. Subramaniam 1996 Vol. 33 ATC Page 337. The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para-5 the Hon'ble Supreme Court has been pleased to observe as under:-

"

> The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution o f India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the

authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi V. Union of India,[1] State of T.N. V. T.V. Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajapandian[4] (SCC para 4) and B.C. Chaturvedi V. Union of India[1] (SCC at pp 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

"

24. The learned counsel for the applicant submitted that mere recovery of a sum of Rs.1000/- from the posession of the applicant is not enough that the charge is not established that it is for the Disciplinary Authority to prove the charge that the applicant had been examined himself and that therefore the burden was heavy on the Disciplinary Authority to substantiate the charge levelled against the accused. No doubt in prosecutions under the provisions of the Prevention of Corruption Act the Strict rules of evidence is necessary and that the standard of proof expected in such prosecution is beyond all reasonable doubt. As already observed the strict rules of evidence are not applicable to the disciplinary proceedings. Disciplinary proceedings is only a fact finding body to ascertain the conduct of the delenquent employee. In prosecutions state is the authority to prosecute in the interest of society in general. In domestic enquiries, it is for the employer to ascertain the conduct of his employee only to take a decision whether the employee is fit to be continued in service or not.

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In the instant case the applicant has not pointed out any lapses on the part of the Inquiring Authority. The Inquiry Authority had recorded his finding in a way favourable to the applicant. The Disciplinary Authority and the Appellate Authority have properly analysed the evidence placed on record and have come to a just conclusion. Hence we feel that citations relied upon by the learned counsel for the applicant do not come to the aid of the applicant.

25. We have gone through the impugned orders. Both the Disciplinary and Appellate Authority have taken into consideration the material available on record and after proper analysis reached correct conclusion. The learned counsel for the respondents placed before us entire enquiry records for our perusal. We have perused the same. We found no illegality in the conduct of the proceedings. We are convinced that the authorities have applied their mind to the facts and circumstances of the case and have reached the just conclusion. We do not find any reasons to interfere with the impugned orders.

Hence for the reasons stated above the only order that can be passed in this OA is to dismiss the same. Accordingly the O.A. is dismissed leaving the parties to bear their own costs.

(The enquiry records are returned in a sealed cover to the respondent's learned counsel.)

(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

5.1.98

(R. RANGARAJAN)
MEMBER (ADMN.)

Date: 5th January 1998

KSM

Copy to:

1. The Principal Accountant General Audit .I,
   Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Audetor General of India,
   (Admn.), O/O the Comptroller & Auditor General of India,
   Indraprastha Estate, Bahadur Shah Zafar Marg, New Delhi.

3. The Comptroller & Auditor General of India,
   Indrapeastha Estate, Bahadur Shah Zafar Marg,
   New Delhi.

4. One copy to Mr.K.Venkateswara Rao,Advocate,CAT,Hyderabad.

5. One copy to Mr.G.Rarameswara Rao, Advocate,CAT,Hyderabad.

6. One copy to HBSJP,M(J),CAT,Hyderabad.

7. One copy to D.R(A),CAT,Hyderabad.

8. One duplicate copy.

YLKR

21/1/98 (8)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.B.RANGARAJAN : M(A)

AND

THE HON'BLE MR.B.S.JAI PARAMESHWAR: M(J)

DATED: 5/1/98

ORDER/JUDGMENT

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

in

O.A.NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH
19 JAN 1998

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

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

ORIGINAL APPLICATION NO. 1189/95 dt. 29/9/98

TRANSFER APPLICATION NO. 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: 29/9/98

COUNTER SIGNED

SECTION OFFICER/COURT OFFICER

SIGNATURE OF THE DEALING ASST.

YLKR

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O.A.1189/95

Pre-pronounced judgement in the above O.A. is placed for perusal.

HM(J) Jai 28/9

HM(A)-I

To be posted on 29.9.98

JR

(189)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd..2

ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules, 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31.8.84, had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

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(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

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(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same ~~xx~~ in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

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of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

Contd...8

perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant ~~x~~ that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

Contd...10

16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

Contd..11

into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly [illegible] regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

Contd..13

should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

Contd..14

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu and Anr. Vs. Subramaniam (1996 Vol.33 ATC page 317). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

> "The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

Contd...15

conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

Contd.. 19

influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respponde having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(c) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

(B.S. JAI PARAMESHWAR)
MEMBER(J)

(R. RANGARAJAN)
MEMBER(A)

Dated, the 29th September, '98.

D.R

CS

Copy to:

1. The Principal Accountant General Audit - I,
   Andhra Pradesh, Hyderabad.

2. The Dy.Comptroller and Auditor General of India,(Admn.).,
   O/O Comptroller & Auditor General of India,
   Indraprastha Estate, Bahadurshah Zaffar Marg, New Delhi.

3. The Comptroller & Auditor General of India,
   Indraprastha Estate, Bahadurshah Zaffar Marg,
   New Delhi.

4. One copy to Mr.K.Venkateswara Rao,Advocate,CAT,Hyderabad.

5. One copy to Mr.G.Parameswara Rao,Addl.CGSC,CAT,Hyderabad.

6. One copy to HBSJP,M(J),CAT,Hyderabad.

7. One dopy to D.R(A),CAT,Hyderabad.

8. One duplicate copy.

YLKR

23/10/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR:
M(J)

DATED: 29/9/98

ORDER/JUDGMENT

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

in

O.A.NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
7 OCT 1998
हैदराबाद न्यायपीठ
HYDERABAD BENCH

(243)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA.No.932/98 in OA.1189/95

Between: Dated:18.1.1999

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller & Auditor General of India (Admn), O/o The Comptroller and Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi. .. Applicants

And

M. Gopala Krishna Murthy .. Respondent

Counsel for the Applicants : Mr.G.Parameswara Rao

Counsel for the Respondent : Mr.K.Venkateswara Rao

CORAM:

THE HON'BLE MR. R.RANGARAJAN : MEMBER (A)
THE HON'BLE MR.B.S.JAI PARAMESWAR : MEMBER (J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Ms.Shakti for Sri G.Parameswara Rao for the applicant and Sri Venkateswara Rao for the Respondents.

The respondents in the OA., have filed this Miscellaneous Application for extenstion of time.

In the O.A., while setting aside the impugned orders, we passed the Judgment on 29.9.1998 with certain directions.

The learned counsel for the applicant submits that in view of Rule 9(2) (a) of CCS (Pension) Rules, 1972, the respondents are not competent to file this M.A., for extension of time.

The learned counsel for the Respondents in the O.A. in their counter affidavit submits that the matter is under process by Govt., of India. The case is under process. It is not a point for consideration in this M.A. The M.A., relates to extension of time for implementation of the Judgment. As the applicant was working in the Respondents' Organisation, it is for the Respondents' Organisati who should process the case for getting necessary orders from the Competent Authority in accordance with the Rules. Hence considerati of any Rule at this juncture in this M.A., does not arise.

In view of what is stated above two months time is gran from today for implementation of the Judgment.

The M.A., is disposed of. No costs.

21-1-99

Section Officer

Copy to:-

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hy
2. The Dy.Comptroller & Auditor General of India (Admn.), O/o The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indraprastha Estat Bahadur Shah Jaffar Marg, New Delhi.
4. One copy to Mr.G.Parameswara Rao, Addl.CGSC., CAT., Hyd.
5. One copy to Mr.K.Venkateswara Rao, Advocate, CAT., Hyd.
6. One duplicate copy.

srr

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

29/1/99.

~~IST AND~~ IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR :
VICE CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

DATED: 18/1/99

ORDER/JUDGMENT

M.A./~~R.A./C.P.NO.~~ 932/98

In

O.A. NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS MA is

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

6 copies

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
21 JAN 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH

206 215

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD:

MA.NO 282/1999

IN

OA.NO. 1189/1995

Between: Date: 9-4-99

1. The Principal Accounttant General (Audit-II) AP,Hyderabad.
2. The Depyty Controller and Auditor General Bahadurshah Zafar Marg,New delhi Indraprastha Estate.
3. The Comptroller And Auditor General of India Indraprastha Estate,Bahadurshah Zaffer Marg New delhi.

... Applicants

and

Mr.Gopalakrishna Murthy ...Respondent

Counsel for the Applicants ...B.Narasimha Sarma

Counsel for the Respondent ...K.Venkateshwara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN : MEMBER : (ADMN)

THE HON'BLE MR. B.S.JAI PARAMESHWAR: MEMBER (JUDL)

**** *****

THE TRIBUNAL MADE THE FOLLOWING ORDERS.

Heard Mr.Jacob for Mr.BN.Sharma for the applicants in the MA and Mr.K.Venkateswara Rao, for the respondent is the MA.

The learned counsel for the respondent in the MA has no objection to grant time as prayed for in this MA. Hence the extension of time is granted till 18-5-99, for compliance the order dated.29-9-1998.

The MA is disposed of No Costs.

Section Officer.

Copy to:-

1. The Principal Accountant General(Audit-I) AP,Hyderabad.
2. The Dy.Comptroller and Auditor General Of India,O/o the Auditor General,Indraprastha Estate,New delhi.
3. The Comptroller and Auditor General fo India,Indraprastha Estate,Bhadurshah Zaffer Marg,New delhi.
4. One copy to Mr. B.N.Shara,Sr.CGSC,CAT,Hyderabad.
5. One copy to Mr.K.Venkateshwararao,Advocate,CAT,Hyderabad.
6. One spare.

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. B.R.(A)
5. SPARE

21/4/99

~~I~~ AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR :
VICE - CHAIRMAN

THE HON'BLE MR. H.RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BEL MR.B.S.JAI PARAMESWAR:
MEMBER (J)

DATED: 9-4-99

ORDER / JUDGEMENT

M.A./~~R.A./C.P~~.No. 282/99

IN

O.A. No. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

C.P.CLOSED.

R.A. CLOSED.

MA DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

SRR

6 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
16 APR 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH, HYDERABAD

MA.NO. 410/99

IN

OA.NO. 1189/95

Between Date. 4-6-99

1. The Principal Accountant General(Audit.I)
   A.P.Hyderabad.
2. The Dy.Controller and Auditor General
   of India(Admn) O/o Comptroller & Auditor General
3. Indrapastha Estate,Bahadurshah Zafar Marg,New delhi.
3. The Comptroller and Auditor General of India
   Indraprastha Estate,Bahadurshah Zaffer Margh
   New delhi.

..Applicants

And

M.Gopalakrishna Murthy ..Respondent

Counsel for the applicants : Mr V. Vinod Kumar, Addl. Cgsc
Counsel for the Respondent : Mr. K. Venkateswara Rao

CORAM:

THE HON'BLE MR.R.RANGARAJAN,MEMBER(ADMN)

THE HON'BLE MR.B.SJAI PARAMESHWAR,MEMBER(JUDL)

****

NONE ON EITHER SIDE. The MA is dismissed No costs.

Section Officer.

Copy to:

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

IST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR:
VICE - CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD:
MEMBER (A)

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

THE HON'BLE MR.B.S.JAI PARAMESWAR
MEMBER (J)

DATED: _____

ORDER/JUDGEMENT

MA./~~RA./CP~~.No. 410/99

IN

O.A. NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

(6 copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
14 JUN 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA. No.590 of 1999
in
OA. No.1189 of 1995

Between: Dated:29.7.99

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Dy.Comptroller and Auditor General of India (Admn.), O/o The Comptroller and Auditor General,of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffar Marg, New Delhi. .. Applicants

And

M.Gopalakrishna Murthy .. Respondent

Counsel for the Applicants : Mr.V.Vinod Kumar

Counsel for the Respondent : Mr.K.Venkateswara Rao

CORAM:

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

THE HON'BLE MR. B.S.JAI PARAMESWAR : MEMBER (J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Mr.V.Vinod Kumar for the applicants in the MA and Mr.K.Venkateswara Rao for respondent in MA.

MA is not opposed.

Time granted in prayed for. ie upto 17-11-99.

MA is disposed of.

Section Officer

Srr

1st AND IInd COURT. A 128

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

THE HON'BLE MR.JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD
MEMBER (ADMN)

THE HON'BLE MR.R. RANGARAJAN :
MEMBER (ADMN)

THE HON'BLE MR.B.S.JAI PARAMESHWAR:
MEMBER (JUDL)

ORDER, Date. 29/7/99

ORDER / ~~JUDGMENT~~

~~MA./RA./CP.NO~~ 590/99
IN
OA.NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

O.A. CLOSED

MA is
DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWAN

ORDERED/ REJECTED

NO ORDER AS TO COSTS. 8 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
05 AUG 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 1018/99 in OA 1189/95

DATE OF ORDER : 23-12-1999

Between :-

1. The Principal Accountant General (Audit-I), A.P., Hyderabad.
2. The Dy.Comptroller & Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estates, Bahadurshah Zafar Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, Addl.CGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

... 2.

(Order per Hon'ble shri R.Rangarajan, Member (A)).

-- -- --

None for the applicant. Heard Ms.Parvathi for Sri K.Venkateshwar Rao, learned counsel for the MA respondent.

2. M.A. is not oppossed. Under the circumstances, the M.A. is allowed as prayed for. No order as to costs.

(R.Rangarajan)
Member (A)

(D.H.Nasir)
Vice-Chairman

Dated: 23rd December, 1999.
Dictated in Open Court.

avl/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

A
7/1/2000

~~I~~ST AND ~~II~~ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR.JUSTICE DH.NASIR
VICE-CHAIRMAN

THE HON'BLE MR.R. RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL)

****

DATE OF ORDER 23/12/99

MA/~~RA/CP~~.NO. 1018/99
IN
OA.NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

MA ALLOWED

CP CLOSED (7 copies)

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWAN

ORDERED/REJECTED

NO ORDER AS TO COSTS

COPY TO.

1. HDHNJ
2. HRRN M (ADMN)
3. HSSJP.M.(JUDL)
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
- 4 JAN 2000
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

OA. No.266 of 2000
in
OA. No.1189 of 1995

Between: Dated:24.3.00

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller and Auditor General of India (Admn.), O/o The Comptroller & Auditor General Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi. .. Applicants

And

M.Gopalakrishna Murthy .. Respondent

Counsel for the Applicants : Mr.V.Vinod Kumar, Addl CGSC

Counsel for the Respondent : Mr.K.Venkateshwar Rao

CORAM:

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

THE HON'BLE MR.B.S.JAI PARAMESWAR : MEMBER (J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Mr.V.Vinod Kumar, for the applicant and Mr.K.Venkateswara Rao, for the respondents.

This MA is filed for extending time by 2 months from 17.2.00 for complying the orders dated 29.9.00 in OA.

MA is not opposed. Under the circumstances 2 months time from 17.2.00 is granted.

MA is disposed of.

Section Officer

Srr

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.HYDERABAD BENCH.
HYDERABAD.

IST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO

1. HDHNJ
2. HRRN (ADMN) MEMBER.
3. HBSJP. M.(JUDL)
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE-CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL)

DATE OF ORDER 24/3/00

MA/~~RA/CP~~.NO 266/00
IN
O.A. NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

MA
DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(6 copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
29 MAR 2000
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 368/2000 in OA 1189/95

DATE OF ORDER : 27-4-2000

Between :-

1. The Principal Accountant General
(Audit-I), A.P., Hyderabad.

2. The Dy.Comptroller & Auditor General
of India (Admn),
Office of the Comptroller & Auditor
General of India, Indraprastha Estate,
Bahadurshah Zafar Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India,
Indraprastha Estate, Bahadurshah Zafar Marg,
New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, ACGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

..2.

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

Heard Sri V.Vinod Kumar, learned standing counsel for the MA applicants and Sri T.V.V.S.Murthy for Sri K.Venkateshwar Rao, learned counsel for the Respondent.

2. M.A. is not oppossed. Hence time is granted upto 17-6-2000. MA disposed-of. No costs.

(B.S.JAI PARAMESHWAR)
Member (J)

(R.RANGARAJAN)
Member (A)

Dated: 27th April, 2000.
Dictated in Open Court.

avl/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO:

1. HDHNJ
2. HRRN (ADMN) MEMBER
3. HBSJP (JUDL)MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

IST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER 27/4/00

MA/~~RA/CP~~.NO. 368/00

IN

OA.NO. 1189/95

ADMITED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P.CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(6 copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH
-8 MAY 2000
Despatch

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

MA.486/2000 in O.A.NO.1189 of 1995.

Between Dated:30.6.2000.

1. The Principal Accountant General(Audit-I), A.P.Hyderabad.
2. The Deputy Comptroller and Auditor General of India(Admn.) O/O Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi.

... Applicants/Respondents

And

M.Gopalakrishna Murthy ... Respondent/Applicant

Counsel for the Applicants : Sri.V.Vinod kumar, Addl. CGSC.

Counsel for the Respondent : Sri.K.Venkateswara Rao

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Hon'ble Mr. B.S.Jai Parameshwar, Judicial Member

The Tribunal made the following order:-

Present. Heard both sides.

both sides agree that the judgement has been complied with.

Hence, no order is necessary in this MA.

The MA is dismissed.

No costs.

Deputy Registrar(Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO
1. HDHNJ
2. HRRN (ADMN.) MEMBER
3. HBSJP (JUDL.) MEMBER
4. D.R. (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

~~IST~~ AND ~~IIND~~ COURT

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

THE HON'BLE MR.~~JUSTICE~~ D.H.NASIR
~~VICE~~-CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER 30/6/2000

MA/~~RA/CP~~.NO.486/2000
IN
OA. NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P. CLOSED (6 copies)

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

MA DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
डेस्पच / DESPATCH
11 JUL 2000
हैदराबाद न्यायपीठ
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Cont-d..2

O R D E R

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5 .1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31 .8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

Contd..3

6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit Party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

Contd...4

demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

Contd...5

Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

Contd...6

of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Kokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

Contd...7

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

Contd...8

perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant x that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that 'on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu and Anr. Vs. Subramaniam (1996 Vol.33 ATC page 317). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

> "The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

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influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the resppondent having filed appeal there was no projudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi, to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

CERTIFIED TO BE TRUE COPY

केस संख्या O.A.1189/95
29/9/98.
30/9/98

ORDER

(Per Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

1. Heard Sri K. Venkateswara Rao, the learned counsel for the applicant and Smt. G. Shakti for Sri G. Parameshwara Rao, the learned counsel for the Respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act 1985. The application was filed on 26.6.1995.

3. The facts giving raise to this O.A. may, in brief, be stated as thus:-

(a) The applicant was working as audit Officer in the office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Lokanadham and employee of the Health Department and the applicant was caught red handed while accepting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases, Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through the investigation papers of the CBI and after forming an opinion as to the existence of a

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 1189 of 1995

Date of Decision: 5.1.1998

Between:

M. Gopala Krishna Murthy .. Applicant

AND

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn.), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

Counsel for the Applicant: Mr. K. Venkateswara Rao

Counsel for the Respondents: Mr. G. Parameswara Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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(h) On 31.12.93 the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer the Disciplinary Authority by his proceedings No.PRL/AG/(AU)-1/ COORDN. CELL/DC/1/8-118/94-95 dated 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant prefered an appeal to the Respondent-2. The copy of the Memorandum of appeal Dt.10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by his proceedings No.PRL/AG(AU)-1/COORDN. CELL/DC/1/8-118/117 Dt.4.9.1995.

4. The applicant has filed this OA to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt.19.11.1991 (Annexure-9 page 84-97 of the O.A.). The charge levelled against the applicant reads as follows:-

"

That the said Sri M.G.K. Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.1990 at 10.30 hrs. at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V. Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (decoy(s) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964.

"

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

from service in case the acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in posession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V. Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his posession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in juxtaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V. Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are perfectly valid, justified and according to law.

6. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

7. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore district. On 9.10.90 the CBI laid a trap

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of the Constitution of India and, consequently for a declaration that the applicant is entitled to be treated on duty from t-he date of his suspension i.e. 23.10.1990 till the date of his [illegible] 30.9.1994 and with all consequential benefits.

5. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and allowances to Sri P.V. Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V. Lokanadham, that the objection was issued on 19.9.1990 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicant could have met the District Medical Officer, Nellore and brought to his notice, if really, Sri P.V. Lokanadham had attempted to bribe him that it was only after his return from Nellore to Headquarte that too after a lapse of many days and after service of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS (CCA) Rules that Rule 11 of the CCS (CCA) Rules makes it obligatory to impose a major penalty of removal/dismiss

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that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

11. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V. Lokanadham and thereby comitted an offence of misconduct. This is the jist of the case of the applicant.

12. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V. Lokanadham visited the collectorate, that the said P.V. Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V. Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V. Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V. Lokanadham to DM and HO, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay fixation Party.

13. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

14. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri P.V.Lokanadham.

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on the applicant. They laid a trap on the basis of the complaint lodged by one P.V. Lokanadham, an employee of the Department of Health.

8. It appears the Audit party had raised certain objections regarding the fixation of pay of Sri P.V. Lokanadham and had ordered recovery of Rupees 10,500/- from his salary. Sri P.V. Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audit objections.

9. On 9.10.90 the CBI laid a trap in the office of the Collectorate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V. Lokanadham approached the applicant as agreed to, earlier and offered the bribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V.-Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and kept in the left side pocket in his shirt.

10. Thereafter the Investigating Officer entered the room where the applicant was seated as-certained as to what took place and conducted chemical test on the hands of the applicant, and seized the currency notes from posession of the applicant that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and

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imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal ~~for~~ from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an inteference.

"

17. The learned counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission was that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengeance against the applicant. However, it is not clearly brought out as to how Sri P.V. Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri P.V. Lokanadham and sent the objection to the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

18. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation of pay of Sri P.V. Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri P.V. Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri P.V. Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri P.V. Lokanadham laid the trap on the applicant.

19. The trap was laid in the office of the Collectorate, Nellore. Sri P.V. Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri P.V. Lokanadham thrusted the tainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should have taken to

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However the Inquiry Officer found no plausible explanation from the Applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

15. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

16. The learned counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N. Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal p.10. In para-2 the Hon'ble Supreme Court has been pleased to observe as follows:-

"

> It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment

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23. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to this submission the learned counsel for the Respondents relied upon the decision of Supreme Court in the State of Tamil Nadu Vs. Subramaniam 1966 Vol. 33 ATC Page 337. The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para-5 the Hon'ble Supreme Court has been pleased to observe as under:-

"

> The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the

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task Sri P.V. Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

20. Besides, the applicant did not inform his official superior about this incident till he replied to the chargememo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for the reasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

21. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri P.V. Lokanadham or not can be ascertained from the moment Sri P.V. Lokanadham lodged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

22. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a theory in the absence of immediate action on the part of the applicant. As already submitted he has not brought this incident to the official superior till he submitted his explanation to the chargememo. His continued silence goes a long way to disprove his defence.

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In the instant case the applicant has not pointed out any lapses on the part of the Inquiring Authority. The Inquiry Authority had recorded his finding in a way favourable to the applicant. The Disciplinary Authority and the Appellate Authority have properly analysed the evidence placed on record and have come to a just conclusion. Hence we feel that citations relied upon by the learned counsel for the applicant do not come to the aid of the applicant.

25. We have gone through the impugned orders. Both the Disciplinary and Appellate Authority have taken into consideration the material available on record and after proper analysis reached correct conclusion. The learned counsel for the respondents placed before us entire enquiry records for our perusal. We have perused the same. We found no illegality in the conduct of the proceedings. We are convinced that the authorities have applied their mind to the facts and circumstances of the case and have reached the just conclusion. We do not find any reasons to interfere with the impugned orders.

Hence for the reasons stated above the only order that can be passed in this OA is to dismiss the same. Accordingly, the O.A. is dismissed leaving the parties to bear their own costs.

(The enquiry records are returned in a sealed cover to the respondent's learned counsel.)

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी उप रजिस्ट्रार (न्यायिक)
Court Officer/Dy. Registrar
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

केस संख्या
CASE NUMBER OA.1189/95
निर्णय का दिनांक
Date of Judgement 5/1/98
प्रति तैयार की गई तारीख
Copy Made Ready on 15/1/98

अनुभाग अधिकारी(न्यायिक)/उप रजिस्ट्रार (न्यायिक)
Section Officer (J)/Dy. Registrar (J)

authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi V. Union of India,[1] State of T.N. V. T.V. Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajapandian[4] (SCC para 4) and B.C. Chaturvedi V. Union of India[1] (SCC at pp 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

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24. The learned counsel for the applicant submitted that mere recovery of a sum of Rs.1000/- from the posession of the applicant is not enough that the charge is not established that it is for the Disciplinary Authority to prove the charge that the applicant had been examined himself and that th refore the burden was heavy on the Disciplinary Authority to substantiate the charge levelled against the accused. No doubt in prosecutions under the provisions of the Prevention of Corruption Act the Strict rules of evidence is necessary and that the standard of proof expected in such prosecution is proof beyond all reasonable doubt. As already observed the strict rules of evidence are not applicable to the disciplinary proceedings. Disciplinary proceedings is only a fact finding body to ascertain the conduct of the delenquent employee. In prosecutions state is the authority to prosecute in the interest of society in general. In domestic enquiries, it is for the employer to ascertain the conduct of his employee only to take a decision whether the employee is fit to be continued in service or not.

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ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31.8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

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demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit Party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

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Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant ~~a~~ that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu and Anr. Vs. Subramaniam (1996 Vol.33 ATC page 317.). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

Contd...17

conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

Contd...

at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

Contd.. 19

30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR [illegible] page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

Contd..18

was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participaton, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

Contd... 21

influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the resppondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

Contd... 20

37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

केस संख्या
C.A. No. O.A.1189/95
निर्णय दिनांक 29.8.98
निर्णय की प्रति प्राप्त हुई 30/8/98
अनुभाग अधिकारी (न्यायिक)
Section Officer (J)

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

Contd.. 22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA.No.932/98 in OA.1169/95

Between:

Dated:18.1.1999

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller & Auditor General of India (Adm), C/o The Comptroller and Auditor General of India, Indrapastha Estate, Bahadur Shah Zaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indrapastha Estate, Bahadur Shah Zaffar Marg, New Delhi.

.. Applicants

And

B. Gopala Krishna Murthy

.. Respondents

Counsel for the Applicants : Mr.G.Parameswara Rao

Counsel for the Respondent : Mr.K.Venkateswara Rao

CORAM:

THE HON'BLE MR. T.RANGARAJAN : MEMBER (A)
THE HON'BLE MR.B.S.JAI PARAMESWAR : MEMBER (J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Mr.Dicksi for Sri G.Parameswara Rao for the applicant and Sri Venkateswara Rao for the Respondents.

The respondents in the OA., have filed this Miscellaneous Application for extension of time.

In the O.A., while setting aside the impugned orders, we passed the Judgment on 29.9.1998 with certain directions.

The learned counsel for the applicant submits that in view of Rule 9(2) (b) of CCS (Pension) Rules, 1972, the respondents are not competent to file this M.A., for extension of time.

The learned counsel for the Respondents in the O.A. in their counter affidavit submits that the matter is under process by Govt., of India. The case is under process.~~xxxxx~~ It is not a point for consideration in this M.A. The M.A., relates to extension of time for implementation of the Judgment. As the applicant was working in the Respondents' Organisation, it is for the Respondents' Organisation to who should process the case for getting necessary orders from the Competent Authority in accordance with the Rules. Hence consideration of any Rule at this juncture in this M.A., does not arise.

In view of what is stated above ~~xxx~~ two months time is granted from today for implementation of the Judgment.

~~YYQUASHED AND SET ASIDE~~ M.A., is disposed of. No costs.

Sd/- X X
Section Officer

To

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyd.
2. The Dy.Comptroller & Auditor General of India (Adm.), C/o The Comptroller & Auditor General of India, Indrapastha Estate, Bahadur Shah Zaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indrapastha Estate, Bahadur Shah Zaffar Marg, New Delhi.

One copy to Mr.G.Parameswara Rao, Addl.CGSC., CAT., Hyd.
One copy to Mr.K.Venkateswara Rao, Advocate, CAT., Hyd.
One duplicate copy.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

M.A. 282/1999

in

O.A. 1189/1995

Between: Date: 8-4-99

1. The Principal Accountant General (Audit-I) A.P.,Hyderabad.
2. The Deputy Controller and Auditor General Bahadurshah Zafar Marg,New delhi Indraprastha Estate.
3. The Controller And Auditor General of India Indraprastha Estate,Bahadurshah Zafar Marg New delhi.

... Applicants

and

Mr.Gopalakrishna Murthy ...Respondent

Counsel for the Applicants ...S.Ramakrishna Rao

Counsel for the Respondent ... T.Venkateshwara Rao

CORAM:

THE HON'BLE [illegible] : MEMBER : (ADMN)

THE HON'BLE [illegible] : MEMBER (JUDL)

THIS THE [illegible]

THIS THE [illegible] APPLICATION.

Heard Mr.Rama Rao for Mr.S.Ramakrishna Rao for the Applicants in the O.A and Mr.T.Venkateswara Rao, for the Respondent in the O.A.

The learned counsel for the respondent in the OA has no objection to grant time as prayed for in this MA. Hence the extension of time is granted till 17-5-99, for compliance of the order dated.23-3-1998.

The MA is disposed of accordingly.

Sd/-xxx
Section Officer.

Copy to:-

1. The Principal Accountant General(Audit-I) A.P.,Hyderabad.
2. The Dy.Controller and Auditor General of India, C/o the Auditor General,Indraprastha Estate,New delhi.
3. The Controller and Auditor General of India,Indraprastha Estate,Bahadurshah Zafar Marg,New delhi.
4. One copy to Mr. D.J.Dhara,Sr.CGSC,CAT,Hyderabad.
5. One copy to T.V.Venkateshwara Rao,Advocate,CAT,Hyderabad.
6. One spare.

प्रमाणित प्रति
CERTIFIED TRUE COPY

क्रम संख्या
CASE NUMBER M.A 282/99 in O.A 1189/95

निर्णय का दिनांक
DATE OF JUDGMENT 9.4.99

प्रति तैयार की गई
COPY MADE ON 12.4.99

[illegible] न्यायालय अधिकारी
Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH.

THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

M.A.No. 413/99

IN

O.A.No. 1189/95

Between

Date. 4-6-99

1. The Principal Accountant General(Audit.I)
A.P.Hyderabad.
2. The Dy.Controller and Auditor General
of India(Edn) C/o Comptroller & Auditor General
3. Indraprastha Estate,Bahadurshah Zafar Marg,New delhi.
3. The Comptroller and Auditor General of India
Indraprastha Estate,Bahadurshah Zafar Marg
New Delhi.

..Applicants

And

K.Gopalakrishna Murthy ..Respondent

Counsel for the applicants Mr V.Vinodkumar, Addl.Cgsc
Counsel for the Respondent Mr K.Venkateswara Rao

CORAM:

THE HON'BLE [illegible], VICE-CHAIRMAN(A)

THE HON'BLE [illegible], MEMBER(JUDL)

ORDER (PER HON'BLE [illegible], VICE-CHAIRMAN(A)): The MA is dismissed as costs.

Sd/-xxx
Section Officer.

प्रमाणित प्रति
CERTIFIED TRUE COPY

MA 413/99
OA 1189/95
4-6-99
9-6-99

Central Administrative Tribunal
HYDERABAD BENCH.

(Order per Hon'ble shri R.Rangarajan, Member (A)).

-- -- --

None for the applicant. Heard Ms.Parvathi for Sri K.Venkateshwar Rao, learned counsel for the MA respondent.

2. M.A. is not oppossed. Under the circumstances, the M.A. is allowed as prayed for. No order as to costs.

प्र मा णि त प्रति
CERTIFIED TRUE COPY
क्रम सं : MA 1018/99 in OA 1189/95
CASE : EC
नि : DISPATCH 23/12/99
COPY MADE READY ON 31/12/2000
अधिकारी न्यायालय अधिकारी
Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 1018/99 in OA 1189/95

DATE OF ORDER : 23-12-1999

Between :-

1. The Principal Accountant General (Audit-I), A.P., Hyderabad.
2. The Dy.Comptroller & Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estates, Bahadurshah Zafar Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, Addl.CGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

... 2.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA. No.590 of 1999
in
OA. No.1189 of 1995

Between: Dated:29.7.99

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Dy. Comptroller and Auditor General of India (Admn.), C/o The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi. .. Applicants

And

M.Gopalakrishna Murthy .. Respondent

Counsel for the Applicants : Mr.V.Vinod Kumar

Counsel for the Respondent : Mr.K.Venkateswara Rao

ORDER:

THE HON'BLE [illegible] : MEMBER (J)

THE HON'BLE [illegible] : MEMBER (A)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Mr.V.Vinod Kumar for the applicants in the MA and Mr.K.Venkateswara Rao for respondent in MA.

MA is not opposed.

Time granted in prayed for. [illegible] 12-11-99.

MA is disposed of.

Sd/- X X
Section Officer

Sss

प्रमाणित प्रति
CERTIFIED TRUE COPY
क्रम संख्या MA-590/99 in
CASE NUMBER OA-1189/95
निर्णय का दिनांक
DATE OF [illegible] 29-7-99
प्रति तैयार
COPY [illegible] ON 2-8-99

अनुभाग अधिकारी
Section Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

MA 368/2000 in OA 1189/95

DATE OF ORDER : 27-4-2000

Between :-

1. The Principal Accountant General (Audit-I), A.P., Hyderabad.

2. The Dy.Comptroller & Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, ACGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

..2.

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

Heard Sri V.Vinod Kumar, learned standing counsel for the MA applicants and Sri T.V.V.S.Murthy for Sri K.Venkateshwar Rao, learned counsel for the Respondent.

2. M.A. is not oppossed. Hence time is granted upto 17-6-2000. MA disposed-of. No costs.

avl/

प्र मा णि त प्रति
CERTIFIED TRUE COPY
क्रम संख्या MA 368/2000 in
CASE OA 1189/95
दि
DA 27.4.2000
COPY SUPPLIED ON 5.5.2000
Section Officer
Central Administrative Tribunal
HYDERABAD BENCH

FORM NO. 21.

(SEC. RULE 114.)

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH .HYD.

~~OA/TA/RA/CCP~~

IN

O/ ~~TA~~ ..... 1189 ..... Of 1999

....M. Gopala krishna Murthy.....Applicant (S)

Versus

....The Principal Accountant.....

.....General Audit-I, A.P. and 2 ors Respondent (S)

INDEX SHEET

Serial No	Description of Documents and Dates.	Pages.
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Interim orders		
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MA 590/99.	29-7-99. in all respects	219 & 220
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Signature of Dealing Hand.	21-4-99 25/6/99.	
(Record Section)	20/8/99 28/1/2000	Signature of S.O.

C.A.V. SLIP

1. Circulated to Hon'ble Sri B.S. Jaiparameswar(J)
2. Case No. O.A. 1189/95
3. Date of Hearing
4. Date when reserved for judgement 21.9.98
5. Cases cited by the Counsel for Applicant(s) :

   i)
   ii)
   iii)
   iv)
   v)
   vi)

6. Cases cited by the counsel for Respondent(s) :

   i)
   ii)
   iii)
   iv)
   v)
   vi)

7. Circulated :

8. Departmental files if any :

Dated : 21/9/98

COURT OFFICER

C.A.V. SLIP

1. Circulated to Hon'ble Sri B.S. Jai Parameshwar, M(J)
2. Case No. RA.18/98 in OA.1189/95
3. Date of Hearing 13-8-98
4. Date when reserved for judgement 13-8-98
5. Cases cited by the Counsel for Applicant(s) :
   i)
   ii)
   iii)
   iv)
   v)
   vi)
6. Cases cited by the counsel for Respondent(s) :
   i)
   ii)
   iii)
   iv)
   v)
   vi)
7. Books Circulated :
8. Departmental files if any :

Dated : 13-8-98

13/8/98
COURT OFFICER
II Court

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

RA.No. 18/98 in

O.A.No. 1189 OF 1995

M. Gopala Krishna Murthy. (Applicant(s)

VERSUS

The Principal Accountant General, Audit-I, AP. Hyd & 2 Ors (Respondent(s).

Date	Office Note.	Order
2.4.98		Heard. Notice. HBSJP M(J)
Notices RA 30-4-98		30.4.98 List this RA for 12.6.98. No further adjournment will be given. HBSJP M(J)
Cy 3/4/98 Issued 6/4/98		18/6/98 At the request for the Respondents list it on 26/6/98. No further adjournment will be given. HBSJP M(J)
		DSN

HRRN M(A)

M(A)

HRRN M(A)

ANNEXURE

FORM OF INDEX

List of papers in ~~MA/CP~~/RP.No. 18 /98 in OA. No. 1189/95

Serial No.of papers on record Part-I	Date of papers or Date of filing	Description of papers	Remark
	16/2/98	Petition & Affidavit	3.S. Copies
		Reply Statement filed by Mr. G. Parameshwara Rao on 24/6/98	
		Rejoinder filed by Mr. G. Parameshwara Rao on 24/6/98	

Memorandum of Review Application

(Under Section 22(f) of Administrative Tribunal's Act, of 1985

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT :: HYDERABAD

REVIEW APPLICATION NO. 18 OF 1998

in

O.A.No. 1189 of 1995

Between:-

M.Gopala Krishna Murthy. ... Applicant/Applicant

and

The Principal Accountant General
Audit-I, Andhra Pradesh, Hyderabad.

2. The Dy.Controller and Auditor General of India, (Admn.# O/o.the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi. ... Respondents

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to review the judgement dated 5.1.1998 in O.A.No.1189/95 and be pleased to allow the above O.A. as prayed for and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Hyderabad,

Dated :

Counsel for the Applic

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

REVIEW APPLICATION NO. 18 of 1998

in

O.A.No. 1189 of 1995

Between:-M.Gopala Krishna Murthy,
S/o.Late Mallikarjuna Sastry,
aged about 61 years, Ex;-Audit Officer,
O/o.the Principal Accountant General,
Audit-I, A.P., Hyderabad Resident of
H.No.6-3-348/1, Dwarakapuri Colony,
Punjagutta P.O., Hyderabad-500 082. ... APPLICANT

A N D

1. The Principal Accountant General
Audit-I, Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller and Auditor
General of India (Admn.), O/o.the
Comptroller & Auditor General of
India, Indraprastha Estate, Bahadur Shah
Zaffer Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of
India, Indraprastha Estate, Bahadur
Shah Zaffer Marg, New Delhi-110 002. .. RESPONDENTS

A F F I D A V I T

I, M.Gopala Krishna Murty, S/o.Late Mallikharjuna Sastry, Ex.Audit Officer, O/o.the Principal Accountant General Audit-I, A.P., Hyderabad, Resident of H.No. 6-3-348/1, Dwarakapuri Colony, Punjagutta, Hyderabad, aged about 61 years, do hereby solemnly and sincerely affirm and state as follows:-

2. I am the applicant herein and also in the main O.A. and as such I am well acquainted with the facts of the cas

2. I submit that I filed the above O.A. to call for the records relating to Office Order No.7 dated 31.8.1994 iss by the Principal Accountant General (Audit-I) A.P., Hyder read with order No.NIL dated 7.8.1995 issued by the Deput Comptroller and Auditor General of India (Admn.) O/o.the Comptroller and Auditor General of India communicated th Lr.No.Prl.AG-(AU)-1/Coordn.Cell/D.C.I/8-118/117, dated 4.9.1995 including the file relating to advice if any rendered by the Central Vigelence Commission and quash t same etc. The Hon'ble Tribunal was pleased to dismiss t

said O.A. on 5.1.1998 without properly considering the material on record and relevant rules and as such requires to be reviewed for the following among other

GROUNDS

(1) The judgement of the learned Tribunal is an error aparent on the face of record.

(2) The Judgement of the learned Tribunal is contrary to law, weight of evidence and propabilities of the case.

(3) The learned Tribunal erred in not adverting to the non supply of copy of the central Vigilence Commission's Advice inspite of (1) Specific prayer in the O.A. (2) Specific averment in para 12 of the rejoinder for the non supply of C.V.C.report and the decision of the Hon'ble Supreme Court in State Bank of India Vs. D.C.Aggarwala AIR 1993 SC.1197 wherein it was held that the disciplinary authority is not to act on any material without furnishing the same to the delinquent.

(4) Specific admission across the Bar/by the respondents counsel to the specific question by the learned Bench about the advice of the C.V.C. report and its non supply to the applicant inspite of the advice having been taken into consideration while awarding punishment and as such the principles of natural justice, was grossly violated.

(4) The Hon'ble Tribunal ought to have seen that as the report of the Inquiry Officer is in favour of the applican as observed in para 24 of the judgement and as the disciplinary authority and the appellate authority did not disagree with the findings of the Inquiry Officer and hence the punishment of removal is without any justificat It is relevant to submit that the disciplinary authority if disagrees with the findings of the Inquiring authority

on any article of charge record its reasons for such disagreement and record its own finding on such charge if the evidence record is sufficient for the purpose. No such disagreement with the inquiry report, makes it clear that both the disciplinary authority and appellate authority have agreed with the findings of the Inquiry Report intoto and therefore the question of awarding punishment is unjustified and the Hon'ble Tribunal ought to have setaside the impugned order on this ground alone. Therefore the observations of the Hon'ble Tribunal that the disciplinary authority and the appellate authority have properly analysed the evidence placed on record and have come to a just conclusion is in/ contradiction to the earlier observations.

(5) The Hon'ble Tribunal erred in observing that the applicant had not pointed out any lapses on the part of the inquirying authority. The Hon'ble Tribunal ought to have seen that Rule 14(18) of CCS (CCA) Rules, 1965 is mandatory and the inquiring authority should necessarly put the question to the delinquent specifically referring to certain statements of prosecution evidence and ask the delinquent as what he has to say with reference to those statements and then leave the matter at that stage without putting further searching and probing questions to the delinquent. In the instant case, the Inquiring authority had put seven questions to the delinquent in general examination, but failed to specifically put to him as to how the alleged bribe money landed into his pocket and this fact has not disputed by the respondents. The Applicant submits that this is a lapse on the part of the Inquiring authority re ting in miscarriage of justice. If only this point is

adverted to by the Hon'ble Tribunal, the judgement would have been otherwise.

(6) The Hon'ble Tribunal ought to have seen that the applicant could not examine any witnesses on his behalf in support of his defence for the reasons that all those present at the place of alleged trap were taken as prosecution witnesses, and there was none left to be taken as defence witnesses. Further the prosecution could not produce two of their witnesses and dropped 3 of the witnesses whowere present on the days of Inquiry, thereby the ~~renew~~ applicant was deprived of cross examining the witnesses for proving his innocence. This fact was not taken into consideration by the Hon'ble Tribunal.

(7) The Hon'ble Tribunal failed to see that in accordance with the instructions of the Office, pay fixation party is not required to prepare any report and half margin objections together withreplies are required to be sent to head quarters's section. As per the practice the replies will be sent to Head Quarters in cases where the objections are dropped or modified based on the replies of the Department. Further a note will be sent to head quarters where the inspecting officer could not take a decision on the replies of the department. In the instan case the reply of the Medical Officer did not meet any o the objections raised. Hence it was returned to the department. The Inquiry Officer has infact specifically remarked that the Audit objections could not be dropped by the Charged Official to favour Sri Lokanatham becaus material evidence was produced by the Medical Officer p to or on the date of trap. It is very relevant to subm that Audit objection are always prepared induplicate a

one copy will be issued to the department and other remains in the file. Therefore the Hon'ble Tribunal ought to have seen that when the applicant as Audit Officer has no power to drop the said Audit objection, to favour the ~~delay~~ decoy paying bribe is illconceived and does not arise as held in Trilokchand Vs. State of Delhi.

(8) The Hon'ble Tribunal in observing that the applicant had meetings and dialogue with P.V.Lokanatham earlier to 9.10.1990 and it is only during those meetings both conversed together and had to come to an understanding as regards the amount of bribe to be paid to the applicant, with great respect it is to be submitted that these observations are not borne on record and neither the inquiry officer, nor the disciplinary authority have arrived at such conclusion even remotely. Infact Sri A.R.K.Nageswar Rao Sr. Assistant ofP.S.C.SW4 in his reexamination on 22.7.1993 has stated that right from the Audit objection Sri Lokanatham asked him to convince the audit officer to drop the objection over Lokanatham's pay. In this connection the observations of the Inquiry Officer in para 7.23 may kindly be referred to.

"Moreover, the evidence tendered by Lokanadham and Nageswar Rao unhesitatingly establishes the fact that the had on 5.10.1990, circumambulated to the lodge of the C.O., and other members of the Audit party, not at the latter's suggestion and invitation but as a result of their own deliberate pact and of their own sweet (and seedy) motive and violation. Lokanatham's story that he had approached the C.O. and his collegue Ramakrishna on 6.10.1990 also remains uncorroborated and cannot be relied upon as a fact in evidence."

These observations of Inquiry Officer were not disputed by both the disciplinary authority and appellate authori

and therefore the above observations of Hon'ble Tribunal are not based on record which has resulted in great ~~insis-~~ vindictive tance to the applicant in administration of justice.

(9) The Hon'ble Tribunal erred in observing that as per the disciplinary authority the applicant had demanded and accepted Rs.1,000/- from Sri P.V.Lokanatham. In this connection, the disciplinary authority observed in his order dated 31.8.1994 as follows:-

> "In a charge of this nature the important point is whether the proferred bribe is accepted by the Charged Officer or not. The issue that settles the wh question is whether the money proferred was received by the Charged Officer. Even the Charged Officer did n contest the fact that the money was recovered from his pocket. Once the money was recovered from the person of the Charged Officer, the debate on whether the acce tance was passive or otherwise does not seem very relevant. In this case acceptance of the money is proved by the Inquiring Authority himself and any comment on the motive is not realy relevant to the context. If the Charged Officer were to reject truly the bribe he would have reacted in sucky a way as to demonstrate shock and surprise. Continued interaction with the complainant would be out of the question. Based on the available evidence the contention of the Charged Officer that the "money was thrust back into my pocket by the decoy Sri Lokanadham. ..... with a determined mind to cause trouble to him since his repeated request to drop the objection was not conceded to by him" does not appear convincing enough.

(10) The Hon'ble Tribunal failed to appreciate the contention of the applicant that there cannot be any distinction between the charge as "having not been prove and "having not been conclusive of proved" and the char has to be held either as proved or not proved and there is no middle course as held in Ramdas Singh Vs. Union of India and other (1990) 13 ATC 136 Todphpur.

(11) The Hon'ble Tribunal erred in observing that the disciplinary authority as well as the appellate authority have considered the report of the Inquiry Officer and have detailed reasons as to how the mi

of applicant has been ~~empty~~ only proved (para 15 of judgement). Infact in their counter, in para 10, while explaining the concept of partially proved observed "demand for bribe was not proved and the other component of the charge i.e. acceptance of bribe was proved". Thus when the ~~xxx~~ element of demand was not proved it is ~~any body's~~ beyond any body's comprehension how the applicant could be punished particularly when the demand and acceptance go together while holding the employ guilty.

(12) The Hon'ble Tribunal erred in observing that "it is not clearly brought out as to how Sri P.V.Lokanadham had a grievance against him". The Hon'ble Tribunal failed to see in this regard that Sri P.V.Lokanatham had a grievanc against him, as the applicant had raised an objection with regard to refixation of his pay and suggestion recovery of Rs.10,500/- and infact reaffirmed the same and refused to drop the objection. It is relevant to submit that Sri P.V.Lokanatham had to pay Rs.10,500/- and also have a recurring reduction in pay and allowances.

(13) The Hon'ble Tribunal's observations in para 19 of the judgement are with great respect, the applicant submits are not based on any record much more so when the inquiry officer disciplinary and appellate authority are satisfied that the money was thrust into the hands of applica and that there was no demand and that the applicant could adduce any evidence how the money landed in his shirt pocket. The Hon'ble Tribunal failed to appreciate that no gentlemans/employee would like to ~~x~~ involve unnecessarily in a situation like trap, with a view to avoid ~~xxx~~ nuisan from the police and therefore the observations that there must have been a commotion in the office and the said process should have came to the ~~resume~~ resue of theapplicant are with great respect would never arise.

(14) The Hon'ble Tribunal while observing that the Enquiry Officer recorded a finding that there was no demand of bribe on the part of the applicant, and that the respondents have accepted the same, it is clearly ununderstandable that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available is nothing but reappreciating the evidence.

(15) Likewise the Hon'ble Tribunal erred in observing that the applicant had not brought the incident to the official superior till he submitted his explanation to the charge memo and his continued silence goes a long way to disprove his offence;. These observations are with great respect contrary to the material on record in that soon after Sri Lokanatham thrust the money into his hands and later into his shirt pocket on 9.10.1990, the applicant turned down towards the Telephone PBX to his left to inform the D.M., & H.O., Nellore about the malpractice of his employee Sri Lokanatham, but the C.B.I., Inspector rushed into the room and asked the applicant to keep quiet and sit down and therefore he was helpless in reporting the matter to the D.M.&H.O., Nellore. Further the applicant and other members of Audit Party were continuously interrogated on 9.10.1990 and 10.10.1990 upto 6.30 P.M. and they were not allowed any free movement and immediately after completion of work at Nellore on 12.10.1990, the applicant drafted the report that the money value of objections in respect of Medical and Health Department could not be included in the report as the entire file of that Department was seized by the C.B.I., on 9.10.1990. The Audit Party returned to Hyderabad on 13.10.1990 after availing transit and handed over the files to the Audit Officer on reporting to the Head quarters office on

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15.10.1990. The Applicant had then met Sri A.R.Subramanian, the Audit Officer of the Headquarters section and met the Deputy Accountant General Civil Sri R.Dharma Rajan along with Sri A.R.Subramanian, appraised him of the happenings at Nellore on 9.10.1990 when he was advised by the Deputy Accountant General to meet the Accountant General Sri Samir Gupta, but however he was not successful in meeting the Accountant Generql, though requested by him on 15.10.1990. In the meanwhile the applicant developed heart problem on 16.10.1990 and the concerned Doctor in C.G.H.S.Dispensary No.10, advised rest for 30 days by issuing medical certificate and accordingly the applicant had applied for sanction of committed leave for 30 days from 16.10.90. In the meanewhile the order of Suspension was served on the applicant at his residence on 23.10.1990. However inspite of his illhealth the applicant with great difficulty went to AG's Office escorted by his brother Sri Harihara Prasad on 25.10.1990 to seek interview ~~xxx~~ with A.G. but however he was informed by the Secretary to A.G.Audit that the A.G.(Audit) was busy wholeday and advised him to contact him on 26.10.1990 over phone for interview. Accordingly the applicant contacted the Secreta to A.G. on 26.10.1990 from reception gate No.1, but however he was informed that he was not willing to see him. It is under these circumstances that the applicant had submitted his detailed ~~x~~ reply on 29.10.1990. These events clearly explain the circumstances under which the incident dated 9.10.1990 could not be appraised earlier inspite of due diligence on the part of the applicant.

(16) The Hon'ble Tribunal erred in not adverting to or to consider the effect of proviso to Rule 11 of CCS(CCA) Rul 1965 under which the penalty of removal or dismissal fro service shall be imposed in a case in which the charge

of acceptance ffom any person of any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official Act is established. In the instanct case the applicant as Audit Officer has no power to drop the Audit objection so as to favour the decoy. The Hon'ble Tribunal ought to have seen in this regard that the Inquiry Officer after appreciating evidence came to the conclusion that the main ingrident of acceptance of illegal gratification as a motive or reward for doing or for bearing to do any official act is absent in entirety. Therefore the punishment of removal is in controvention of proviso to Rule 11 of CCS(CCA) Rules, 1965.

That other grou ds will be urged at the time of hearing.

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It is therefore prayed that this Hon'ble Tribunal may be pleased to review the judgement dated 5.1.1998 in O.A.No.1189/95 and be pleased to allow the above O.A. as prayed for and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Solemnly affirmed at Hyderabad on this 16th February, 1998 and signed his name in my presence.

DEPONENT

Before me

// ADVOCATE // HYDERABAD.

ORDER

(Per Hon'ble Sri B.S. Jai Parameshwar : Member (Judl.)

1. Heard Sri K. Venkateswara Rao, the learned counsel for the applicant and Smt. G. Shakti for Sri G. Parameshwara Rao, the learned counsel for the Respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act 1985. The application was filed on 26.6.1995.

3. The facts giving raise to this O.A. may, in brief, be stated as thus:-

(a) The applicant was working as audit Officer in the office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party which proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Lokanadham and employee of the Health Department and the applicant was caught red handed while accepting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through the investigation papers of the CBI and after forming an opinion as to the existence of a

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 1180 of 1995

Date of Decision: [illegible] 1998

Between:

M. Gopala Krishna Murthy .. Applicant

AND

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn.), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

Counsel for the Applicant: Mr. K. Venkateswara Rao

Counsel for the Respondents: Mr. G. Parameswara Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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(h) On 31.12.93 the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer the Disciplinary Authority by his proceedings No.PRL/AG/(AU)-1/ COORDN. CELL/DC/1/8-118/94-95 dated 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent-2. The copy of the Memorandum of appeal Dt.10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by his proceedings No.PRL/AG(AU)-1/COORDN. CELL/DC/1/8-118/117 Dt.4.9.1995.

4. The applicant has filed this OA to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt.19.11.1991 (Annexure-9 page 84-97 of the O.A.). The charge levelled against the applicant reads as follows:-

"

That the said Sri M.G.K. Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of his position as public servant on 9.10.1990 at 10.30 hrs. at Collectorate Office, Nellore, demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V. Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (decoy(s) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct

By the aforesaid acts, the public servant failed to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Services (Conduct) Rules, 1964.

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(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

from service in case the acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in posession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V. Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his posession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in juxtaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V. Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are perfectly valid, justified and according to law.

6. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

7. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore district. On 9.10.90 the CBI laid a trap

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of the Constitution of India and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suspension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

5. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V. Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V. Lokanadham, that the objection was issued on 19.9.1990 that the Health Officer returned the said objection with a reply that the reply was received on 1.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicant could have met the District Medical Officer, Nellore and brought to his notice, if really, Sri P.V. Lokanadham had attempted to bribe him that it was only after his return from Nellore to Headquarters, that too after a lapse of many days and after service of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS (CCA) Rules that Rule 11 of the CCS (CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal

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that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

11. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V. Lokanadham and thereby comitted an offence of misconduct. This is the jist of the case of the applicant.

12. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V. Lokanadham visited the collectorate, that the said P.V. Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V. Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V. Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V. Lokanadham to DC and HO, that he stood up to turn up towards the telephone that at this juncture the CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay fixation Party.

13. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

14. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri P.V.Lokanadh

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on the applicant. They laid a trap on the basis of the complaint lodged by one P.V. Lokanadham, an employee of the Department of Health.

8. It appears the Audit party had raised certain objections regarding the fixation of pay of Sri P.V. Lokanadham and had ordered recovery of Rupees 10,500/- from his salary. Sri P.V. Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audit objections.

9. On 9.10.90 the CBI laid a trap in the office of the Collectorate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V. Lokanadham approached the applicant as agreed to, earlier and offered the bribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and kept in the left side pocket in his shirt.

10. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant, and seized the currency notes from posession of the applicant that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and

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imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal ~~for~~ from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an inteference.

17. The learned counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission was that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengeance against the applicant. However, it is not clearly brought out as to how Sri P.V. Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri P.V. Lokanadha and sent the objection to the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

18. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation of pay of Sri P.V. Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri P.V. Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri P.V. Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri P.V. Lokanadham laid the trap on the applicant.

19. The trap was laid in the office of the Collectorate, Nellore. Sri P.V. Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri P.V. Lokanadham thrusted the tainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should have taken to

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However the Inquiry Officer found no plausible explanation from the Applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

15. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

16. The learned counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of K. Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal p.10. In para-7 the Hon'ble Supreme Court has been pleased to observe as follows:-

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> It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the [illegible]

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23. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to this submission the learned counsel for the Respondents relied upon the decision of Supreme Court in the State of Tamil Nadu Vs. Subramaniam 1996 Vol. 33 ATC Page 337. The Hon'ble Supreme Court in that case considered whether the Tribunal can ap reciate the evidence and come to a different conclusion in para-5 the Hon'ble Supreme Court has been pleased to observe as under:-

"

The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the

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task Sri P.V. Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

20. Besides, the applicant did not inform his official superior about this incident till he rep ied to the chargememo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for the reasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

21. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderance of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri P.V. Lokanadham or not can be ascertained from the moment Sri P.V. Lokanadham lodged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

22. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a theory in the absence of i mediate action on the part of the applicant. As already submitted he has not brought this incident to the official superior till he submitted his explanation to the chargememo. His continued silence goes a long way to disprove his defence.

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(25)

In the instant case the applicant has not pointed out any lapses on the part of the Inquiring Authority. The Inquiry Authority had recorded his finding in a way favourable to the applicant. The Disciplinary Authority and the Appellate Authority have properly analysed the evidence placed on record and have come to a just conclusion. Hence we feel that citations relied upon by the learned counsel for the applicant do not come to the aid of the applicant.

25. We have gone through the impugned orders. Both the Disciplinary and Appellate Authority have taken into consideration the material available on record and after proper analysis reached correct conclusion. The learned counsel for the respondents placed before us entire enquiry records for our perusal. We have perused the same. We found no illegality in the conduct of the proceedings. We are convinced that the authorities have applied their mind to the facts and circumstances of the case and have reached the just conclusion. We do not find any reason to interfere with the impugned orders.

Hence for the reasons stated above the only order that can be passed in this OA is to dismiss the same. Accordingly, the O.A. is dismissed leaving the parties to bear their own costs.

(The enquiry records are returned in a sealed cover to the respondent's learned counsel.)

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

स्वाधीन अधिकारी हद रजिस्ट्रार (न्यायिक)
Court Officer/Dy. Registrar
केन्द्रीय प्रशासनिक न्यायाधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

OA 1189/95
5/1/98
15/1/98

(24)

authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi V. Union of India,[1] State of T.N. V. T.V. Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajapandian[4] (SCC para 4) and B.C. Chaturvedi V. Union of India[1] (SCC at pp 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

"

24. The learned counsel for the applicant submitted that mere recovery of a sum of Rs.1000/- from the posession of the applicant is not enough that the charge is not established that it is for the Disciplinary Authority to prove the charge that the applicant had been examined himself and that therefor the burden was heavy on the Disciplinary Authority to substantiate the charge levelled against the accused. No doubt in prosecutions under the provisions of the Prevention of Corruption Act the Strict rules of evidence is necessary and that the standard of proof expected in such prosecution is beyond all reasonable doubt. As already observed the strict rule of evidence are not applicable to the disciplinary proceedings. Disciplinary proceeding is only a fact finding body to ascertain the conduct of the delenquent employee. In prosecution state is the authority to prosecute in the interest of society in general. In domestic enquiries, it is for the employer to ascertain the conduct of his employee only to take a decision whether the employee is fit to be continued in service or

said Rules depends on the facts and circumstances of each case. We are of the view that in the facts and circumstances of this case the Appellate Authority and the High Court were justified in reaching the conclusion that the plot holders and other affected persons were not given proper opportunity by the Town Planning Officer while deciding their objections. We see no ground to interfere. The appeal is dismissed with no order as to costs.

Appeal dismissed.

AIR 1993 SUPREME COURT 1197

(From : Punjab and Haryana)

S. RATNAVEL PANDIAN AND R. M. SAHAI, JJ.

Civil Appeal No. 4813 of 1992 (arising out of S.L.P. (C) 10168 of 1991), D/- 13-10-1992.

State Bank of India and others, Appellants v. D. C. Aggarwal and another, Respondents.

Constitution of India, Art. 14 — Departmental enquiry — Procedural fairness — Imposition of punishment on material neither supplied nor disclosed to him — Not proper — Plea that report of Central Vigilance Commission, based on which punishment was imposed, is a privileged document — Not sustainable.

Industrial Disputes Act (14 of 1947), Sch. II, Item 6.

Judgment of Division Bench of Punjab and Haryana High Court — Affirmed.

Judgment delivered by single Judge of Punjab and Haryana High Court reported in 1991 Lab IC 1618 affirmed by the Division Bench. (Paras 4, 5)

R. M. SAHAI, J. : Can Disciplinary Authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent is the only issue, of substance, which arises for consideration in this appeal, filed by the State Bank of India against the judgment and order of the High Court of Punjab and Haryana.

2. Even though more than ten years have elapsed since the respondent was charge sheeted the proceedings have not achieved finality as yet. Partial responsibility for the delay was of the respondent, as well, who on every minor issue rushed to the courts including this Court. At one stage the inquiry had been closed ex parte against him. But it was directed to be re-opened by this Court in 1984 with direction to continue it from the stage it was closed and permission to the bank to produce material including examination of witnesses subject to cross-examination. The Court further directed the Central Vigilance Commission to appoint another Inquiry Officer. In pursuance of this direction an IAS officer of the Tamil Nadu cadre was appointed. Out of the thirteen charges framed against the respondent the Inquiry Officer found charges I (1) and II(1) only to have been proved. Remaining were found not to have been proved. Consequently the Inquiry Officer recommended for exonerating the respondent as the charges found to be proved were minor and of procedural nature. Instead of acting on this recommendation the Bank appears to have directed the Inquiry Officer to submit the report through the CVC. Under what provision this was done is not clear. In fact at one stage the learned Additional Solicitor General stated that the Bank itself was aggrieved by this conduct of the Inquiry Officer in sending its recommendation to CVC. But it appears he was not properly instructed as the finding, recorded by the High Court that the Inquiry Officer submitted his report to the CVC on the direction of the Bank in contravention of the order passed by this Court remained uncontroverted. From rule 52 of the State Bank of India (Supervisory Staff) Service Rules part of Chapter VI dealing with Discipline and Appeal it does appear that the Bank is empowered, 'to consult the Central Vigilance Commission, wherever necessary, in respect of all disciplinary cases having vigilance angle'. The fact of the matter is that the CVC examined the inquiry report and recorded its own findings on each of the charges and sent its recommendations running into nearly fifty pages to the Bank. The CVC not only

disagreed with the Inquiry Officer and found charges I, II, III, IV, VIII, XI to XIII to have been proved, but it advised, 'imposition of a major penalty not less than removal from service'.

3. Both the Inquiry Report and recommendations of the CVC were sent to the Disciplinary Authority who passed an elaborate order recording finding against the respondent, and coincidently, agreeing on each charge on which CVC had found against him but disagreeing on quantum of punishment. It was observed,

"While the wrongful acts indulged in by the official are no doubt grave, the facts brought out during the enquiry do not show that Bank sustained any monetary loss thereby. There is also no conclusive proof that the official in all the transactions for procurement of steel, fans, etc. had misappropriated bank's funds or obtained pecuniary gains for himself. Considering the totality of the circumstances, therefore, in my opinion the imposition of the extreme penalty of cessation of service as advised by the Central Vigilance Commission would be too harsh."

The departmental appeal against this order was dismissed. But the order was quashed by the learned single Judge of the High Court,* as it was in violation of the principle of audi alteram partem. It was found that the report of the CVC having not been supplied to the respondent it could not furnish basis for the order passed by the Disciplinary Authority. Punishment was also found to be disproportionate. The Division Bench dismissed the appeal summarily.

4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment, in writ jurisdiction, but we propose to confine only to the question of effect of non-supply of CVC recommendations as if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.

5. Reliance was placed on sub-rule (5) of Rule 50 which reads as under:

"(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."

It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only

*Reported in 1991 Lab IC 1618 (Punj & Har)

irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior officer of the bank. He was promoted to the top executive grade in August 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

AIR 1993 SUPREME COURT 1199

(From : Bombay)

K. JAYACHANDRA REDDY AND G. N. RAY, JJ.

Criminal Appeal No. 770 of 1985, D/- 18-8-1992.

Union Territory of Goa, Appellant v. Boaventura D'Souza and another, Respondents.

Penal Code (45 of 1860), Ss. 300, 411 — Murder, to commit robbery — Proof — Case based on circumstantial evidence — Accused alleged to have stayed at deceased house and committed murder with a view to commit robbery — Eye-witness injured in the incidence, not implicating accused — Stay of accused, who was relative of deceased, at her place, doubtful — Inference that accused committed murder, cannot be drawn from the fact of recovery of stolen articles from accused one month after the date of incidence — Accused convicted under S. 411, I.P.C.

Evidence Act (1 of 1872), S. 115(a).

(Para 8)

JUDGMENT :— This appeal pursuant to the leave granted by this Court is directed against the judgment of High Court of Bombay acquitting the two respondents.

4. State Bank of India & Ors. v. D.C. Aggarwal and another, 1993(2) SLJ 89 (SC).

5. Nagaraj Shivrao Karjagi v. Syndicate Bank Head Office and Another, 1991 (3) SLJ 219.

6. Ram and Shyam Company v. State of Haryana & Ors., (1965)3 SCC 267.

7. Shri Shankar Baruah and Ors. v. U.O.I. & Others, Gawahati Bench of the Central Administrative Tribunal.

Advocates :

For the Applicant : *In person.*

For the Respondents : *Shri B.K. Sharma, Advocate.*

IMPORTANT POINTS

1. Where the advice of CVC has been used by D.A. he must give a copy to E.O.

2. D.A. must consider the inconsistencies in the findings of E.O.

3. Where a part only of a composite charge is proved, it is for D.A. to sift which part of the rules has been violated.

4. CAT may interfere in quantum of penalty where the D.A. has not applied its mind.

5. In exceptional cases CAT may entertain a case even without exhausting remedy of appeal.

JUDGMENT

Chaudhari, J.—The applicant is aggrieved by the Office Order No. E/74/Gaz/254/Con. dated 17.1.1994 issued by the General Manager, N.F. Railway imposing upon him major penalty of reduction of pay by one stage viz. from Rs. 3125 to 3050 in the time scale of Rs. 2000-3500 for a period of 3 months with effect from 8.1.1994 in a disciplinary proceeding. The applicant prays for quashing and setting aside the said order and a direction to the respondents to give him benefit of promotion to senior scale together with all consequential benefits from the date his immediate junior was promoted to that scale. In aid of the aforesaid reliefs he also prays that the orders of promotion of respondent Nos. 8 and 9 dated 19/22.11.1993 and 2.3.1994 respectively be set aside.

2. The relevant facts are as follows :

3. The applicant was initially appointed as Wireless Operator with N.F. Railway and in due course the post of Assistant Personnel Officer and at the material time was posted at Lumding. In that capacity he was nominated during the period from 29.6.1988 to 2.7.1988 to act as a Member of Selection Committee for recruitment to Group 'D' posts (in the N.F. Railway).

4. The applicant was served with a Memorandum of Charges for major penalty under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 dated 27.3.1990. The said charges on which a disciplinary enquiry was proposed to be held inter alia related to the allegation of violation of standing instructions for observance of age limit of the recruitees while acting as a Member of the Selection Committee and making changes as to age of some candidates in the tabulation form thereby exhibiting lack of integrity, devotion to duty and conduct unbecoming of a Railway servant constituting breach of Rule 3(1)(i), (ii) and (iii) of the Railway Service Conduct Rules, 1965. There were three heads of charge framed which encompassed this allegation.

Central Administrative Tribunal—Guwahati

The Hon'ble Mr. Justice M.G. Chaudhari, Vice-Chairman.

The Hon'ble Mr. G.L. Sanglyine, Member (A).

Shri B.C. Tewari —Applicant

Versus

Union of India & Others —Respondents

O.A. No. 53 of 1994 *Decided on 11.8.1995*

(i) Quantum of penalty, Power of CAT—Plea that there being no flaw in procedure CAT can't go into the amount of penalty—Found the penalty order was passed without full application of mind, hence held that the CAT could go into it. *(Para 19)*

(ii) Application of mind, contradictory findings—3 Charges against the applicant viz. accepting wrong certificates and altering DOB, admitting over aged persons, misguiding the selection committee—Charges 2 and 3 not proved holding charge one proved—Held to say that certificates were false and yet candidates were not over aged is contradictory specially when no ulterior motive also is proved—Hence to accept charge (1) as proved shows non application of mind by the G.M. *(Para 20)*

(iii) Composite charge, Non application of mind—3 Charges levelled and mentioned that he had violated Rule 3(1)(i) (ii) and (iii) of R.S. (Conduct) Rules—All the three clauses are independent—EO held only one of the 3 charges as proved—DA failed to sift as to which of the clauses (i), (ii) or (iii) was violated by the charge as proved—Held this is a serious flaw of D.A. *(Para 21)*

(iv) Disciplinary Proceedings, Advice of CVC, Mechanical orders, Application of mind—Records show there was internal correspondence by Railway Board with CVC who had advised to impose major penalty—Advice not furnished to the applicant though it was used by the G.M.—G.M.'s orders did not discuss the evidence, the findings etc. and only mentioned 'after careful consideration of E.R. and all other relevant factors"—Held under the circumstances orders suffered being mechanical in nature and bad for being based on CVC's advice. *(Para 22-36)*

(v) AT Act, 1985—Section 20, Alternate remedies—Plea that no appeal was filed so the case suffers from defect under Section 20—Applicant's reply that since appeal lay to Railway Board and penalty had been imposed as per their advice, no purpose could have been served by such an appeal—CAT convinced by it—Entertained the application by virtue of use of word "ordinarily" in Section 20 as a special case in this case. *(Para 37/40)*

(vi) Relief—Penalty of reduction in stage imposed and not promoted due to sealed cover—CAT found decision of G.M. inconsistent mechanical, based on extraneous matter and without application of mind—Applicant already retired—Instead of asking him to file appeal, or the G.M. to furnish him copy of CVC advice, ordered to quash the penalty, pay arrears, promote if DPC found him fit.

Cases Referred :

1. Union of India v. Parmananda, AIR 1989 S.C. 1185.
2. Govt. of Tamil Nadu & Another v. A. Rajapandian, AIR 1995 S.C. 561.
3. Sunil Kumar Banerjee v. State of West Bengal, AIR 1980 SC 1170.

"3. *General.*—(1) Every railway servant shall at all times :—

(i) maintain absolute integrity;

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of a railway or Government servant.

2. (i) .....

(ii) No railway servant shall, in the performance of his official duty or in the exercise of power conferred on him, act otherwise than in his best judgment except ....."

The various counts of charge were as follows :

"Statement of Article of Charges framed against Shri Bhuwan Chandra Tewari, APO/I/Lumding, N.F. Railway.

Article-1

That Shri Bhuwan Chandra Tewari, APO/I/Lumding, while functioning as a Member from Personnel Branch in the Recruitment Committee for the recruitment of 84 group 'D' staff for Traffic Department/Lumding, from Employment Exchange sponsored candidates during 29.6.1988 to 2.7.1988 at Lumding, had accepted 2 bogus and false school certificates, showing lesser age, from 2 overaged candidates and changed date of birth particulars in the Tabulation Sheet for accepting their candidature for ultimate selection to the post violating the standing instructions for observance of age limitations of the recruitees.

Article-2

That said Shri B.C. Tewari, APO/I/Lumding, while functioning in the aforesaid Recruitment Committee in aforesaid position had connived with Shri R. Hazarika, ACS/LMG, another member of the said Recruitment Committee, for manipulating/tampering with date of birth particulars of 2 candidates in the individual tabulation sheet of Shri N. Dekaraja, a non-railway official member of the said Recruitment Committee, beyond Shri Dekaraja's knowledge when he had left the venue of selection.

Article-3

That said Shri B.C. Tewari, APO/I/Lumding, while functioning as a member of the aforesaid Recruitment Committee, had in consideration of his own, exerted influence and induced Shri R. Hazarika, ACS/LMG, and Dr. (Miss) Doina Yanzom, ADMO/Lumding, both members of the said Recruitment Committee, to accept certain school certificates which indicate lesser age of overaged candidates viz. S/Shri Manik Ch. Dey and Swapan Dasgupta and to alter their date of birth particulars recorded in the respective tabulation sheet on the basis of particulars furnished by Employment Exchange, to favour the aforesaid two overaged candidates for their ultimate selection to the post. Shri Tewari also influenced Shri Hazarika to enhance the marks of two candidates named Sarvashri Pradip Chandra Sharma and Layataque Ali from the originally awarded marks of 37 and 30 to 39 and 34 respectively.

Thus by aforesaid acts said Shri B.C. Tewari, APO/I/LMG, exhibited lack of integrity, devotion to duty and conduct unbecoming of a Railway servant and

same and reach different finding than that of the disciplinary authority.

17. The learned Counsel therefore submits that the Tribunal cannot go behind the finding of the Inquiry Officer or the order passed by the Disciplinary Authority particularly as these are based on the evidence and the record adduced at the enquiry and a certain view which could be taken on its appreciation has been taken by the authorities. In that strain the learned Counsel also submits that the applicant not having availed of the remedy of appeal provided under the rules it is not open to him to challenge the finding of fact and order based thereon. Learned Counsel also submits that as Section 20 of the Administrative Tribunals Act has not been complied with the O.A. itself is not maintainable.

18. We are convinced that the impugned order is vitiated and is illegal and must be quashed on following grounds :

(i). The General Manager has not applied his mind to the effect of charge Nos. 2 & 3 having been held as not established.

(ii). He has failed to notice the absence of a clear finding to have been recorded by the Inquiry Officer as to which clause of Rule 3(1) of the Conduct Rules has been breached nor has himself recorded such a finding.

(iii). His decision is not the result of his own view on appreciation of the record but is the product of opinions of CVC and is thus vitiated.

(iv). He has not passed a reasoned order after discussing the evidence and appreciating the same.

19. In our view these features make it permissible to go behind the order and to find out whether the action can be sustained in law and on the touch stone of natural justice by lifting the veil. Therefore we proceed to examine the aforesaid grounds in detail.

Ground No. I

20. Article 1 of the charges was based on the allegation of accepting 2 bogus and false school certificates showing lesser age from 2 overaged candidates and changing the date of birth particulars in the tabulation sheet for accepting their candidatures for ultimate selection to the post. The finding in the affirmative on this allegation cannot be sustained as Article 2 of charge has not been established and the Inquiry Officer has recorded the finding that it is not established that the two candidates (i.e. Manik Ch. Dey and Swapan Das Gupta) were indeed overaged. (Para 18). That knocks out the very genesis of charge under Article 1. With these contradictory findings the question of the applicant having altered the dates in the tabulation sheet can be described as an honest act committed under a mistake and misconception about the function of verification of the certificates and not done with a view to achieve any ulterior purpose. Likewise the finding recorded on Article 3 of charge that whether this was a case of injudicious decision taken by the committee on the advise of the applicant or whether this was done by design with the objective of ensuring ultimate selection of the aforesaid candidates in violation of the standing instructions for observance of age limit of the candidates is not established renders the finding on Article 1 of no material consequence nor it results in establishing any deliberate act amounting to a misconduct. The General Manager has not at all applied his mind to this vital aspect as that is not reflected in the order passed by him.

Ground No. II

21. This is another vital aspect. Sub-Rule (1) of Rule 3 of the Railway Services (Conduct) Rules, 1966 casts three different obligations upon a railway servant which are

thereby violated Rule 3(1)(i), (ii) & (iii) of Railway Service Conduct Rules, 1966."

13. The Inquiry Officer has recorded his finding in the following manner :

"The first article of charge is established to the extent as brought out in para 18 above. The other two articles of charge are not established."

14. After analysis of evidence, other material on record and the defence of the applicant the Inquiry Officer has held in para 18 as follows :

"In view of the foregoing analysis, the first article of charge is established only to the extent that the CO was instrumental in accepting false certificate produced by S/Shri Manik Ch. Dey and Swapan Dasgupta at the time of the interview and charging the date of birth particulars of these candidates as shown in the Tabulation sheets based on these false certificates without highlighting this fact in the selection proceedings. However, it is not established that these two candidates were indeed overaged. It is also not established whether this was a case of an injudicious decision taken by the Committee on the advice of the CO or whether this was done by design with the objective of ensuring ultimate selection of the aforesaid candidates in violation of the standing instructions for second article of charge."

15. The General Manager (as the DA) has not considered in the impugned penalty order about the impact of the exoneration of the applicant under second and third heads of charge. This assumes significance inasmuch as the allegation contained under the first head of charge has to be understood in the context of allegations contained in the Second & Third heads of charge which have not been proved. That has resulted in arriving at contradicting findings as we shall show little later. Thus a vital aspect has been overlooked by the DA. That leads to the inevitable inference that the order suffers from non-application of mind and has been mechanically passed.

16. It is submitted by Shri B.K. Sharma, the learned Counsel for the respondents that the Tribunal would have no jurisdiction to interfere with the penalty order as it is based on the finding recorded by the Inquiry Officer and it was entirely within the province of the General Manager as the DA to accept the finding and determine the measure of penalty. Submits the learned Counsel that as there has been no procedural error or any legal flaw in the conduct of the Enquiry or imposition of penalty there is no violation of Article 311(2) of the Constitution of India and the same cannot be reopened by the Tribunal. In support of his above submissions the learned Counsel relied on following rulings :

1. AIR 1989 S.C. 1185 - *Union of India* v. *Parmananda* and
2. AIR 1995 S.C. 561 - *Govt. of Tamil Nadu & Another* v. *A. Rajapandian.*

In *Parma Nanda's case* (supra) it was held that the Administrative Tribunal cannot interfere with the penalty imposed on a delinquent employee by the competent authority on ground that the penalty is not commensurate with the delinquency of the employee.

In *A. Rajapandian's case* (supra) it has been held that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the Inquiry Authority in disciplinary proceeding. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the

..... It is seen that as per this advice ..... major penalty is to be imposed on .... B.C. Tiwari, APO ..... In compliance with the above advice, necessary action may please be taken under advice to this office ..... All the documents referred to in the Enquiry Reports ..... are also sent herewith ....."

The impugned order was thereafter passed on 17.1.1994. Although the letter does not show that the penalty was specified yet in the absence of the advice that was tendered being disclosed the possibility that the General Manager had decided to impose the penalty as awarded in tune with that advice does not stand ruled out. In other words it is difficult to say that the quantum of punishment was decided by the General Manager on the basis of his own independent assessment of the evidence recorded at the Enquiry and the finding recorded by the Inquiry Officer uninfluenced by the advice as may have been tendered by the Vigilance Commission.

26A. It is apparent that the Disciplinary Authority has sought the advice of the CVC in view of Circular issued by the Railway Board dated 5.4.1988, the letter of the Railway Board, Vigilance Section dated 17.3.1989, letter dated 30.6.1992 and dated 28.8.1989, whereunder procedure for dealing with DAR cases arising out of vigilance/CBI investigations has been laid down. Copies of the circular and letters aforesaid are as Annexures 12 to 12C.

27. It is settled position in law that where the Disciplinary Authority has arrived at its own conclusion on material available to it, its finding and decision cannot be said to be tainted with any illegality merely because it consulted Vigilance Commissioner and obtained his views on the very same material (See *Sunil Kumar Banerjee* v. *State of West Bengal*, AIR 1980 SC 1170). In the instant case while obtaining the advise of the Vigilance Commission may not be faulted yet the impugned order of the Disciplinary Authority stands vitiated as he has not arrived at its own conclusion on material available to it as we shall demonstrate a little later, which is not in consonance with the opening words of the ratio laid in the aforesaid decision of the Supreme Court.

28. In *State Bank of India & Ors.* v. *D.C. Aggarwal and another*, 1993(2) SLJ 89 (SC). Their Lordships of the Supreme Court considered the effect of non-supply of CVC recommendations. It was observed in that connection as follows :

"The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was to only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just enquiry ....."

"Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the findings of guilt are same as in the CVC report but it being a material obtained behind back of the respondent

disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's Judicial Review of Administrative Action, 4th Edn., p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters".

30. As stated earlier in the instant case admittedly advice of Central Vigilance Commission had been obtained. Likewise it is the stand of the respondents that the communication from the Vigilance Commission is the internal affair of the Railway Administrative Machinery and therefore the question of supplying (copies of) the communications to the applicant as requested by him does not arise. We have already referred to the guidelines issued by the Railway Board for seeking advice of the Vigilance Commission (Annexures 12 to 12C). The position therefore squarely falls within the ratio in the aforesaid decisions of the Supreme Court.

31. The Enquiry was held under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 9 provides the procedure for imposing major penalties. It is pertinent to note that sub-rule (1) lays down that no order imposing penalties specified in clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 10.

Sub-rule 10 of Rule 9 refers to the material that can be relied upon at the enquiry namely :

(a) The articles of charge and the statement of the imputations of misconduct or misbehaviour.

(b) The written statement of defence submitted by the Railway servant (if any).

(c) Copy of the statement of witnesses (if any) referred to in sub-rule 6.

(d) evidence proving the delivery of the documents referred to in sub-rule (6) to the Railway servant (which means these documents can be relied upon).

(e) Order appointing the presenting officer (if any) and

(f) list of witnesses (if any) furnished to by the Railway servant (which means the evidence of the witnesses when recorded).

Sub-rule 6 refers to the statement of all relevant facts and list of documents by which and a list of witnesses by whom, the articles of charges are proposed to be sustained.

32. The sub-rules following thereafter provide for discovery and production of relevant documents at the instance of the Railway servant, recording of oral and documentary evidence, production of evidence and stating the defence orally or in writing after the case for the disciplinary authority is closed, examination of the Railway servant generally by the Inquiry Officer where he has not got examined himself, submission of written briefs by both the sides and oral arguments. After the conclusion of the enquiry a report has to be prepared by the Inquiry Authority in which he has to deal with assessment of evidence in respect of each article of charge and record findings on each of them with reasons therefore. The report is then forwarded to the disciplinary authority together with the records of the enquiry. The procedure so prescribed is complete within itself and leaves no room for any extraneous material or advise to be taken into account. By note under sub-rule 18 new evidence is not permitted save and except for the circumstances mentioned therein. The procedure of the inquiry does not refer to any advise of the CVC to be treated as part of the

(37)

without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order ....."

"The submission of the learned Addl. Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority."

[(SLJ-1993) Vol. 48 June Part II p. 88 (SC)]

29. Similarly, in *Nagaraj Shivrao Karjagi* v. *Syndicate Bank Head Office and Another*, (1991)3 SLJ 219 while dealing with the subject of consultation with and acceptance of advice of Central Vigilance Commission in relation to Departmental enquiry it was held after examining the Syndicate Bank Officers' Employees (Discipline & Appeal) Regulations 1976, the Direction of the Ministry of Finance, Department of Economic Affairs (Banking Division), circulars of the Bank dated 27.6.1984 and 8.9.1986, and after noticing the contentions of the petitioner and the Bank respectively it was observed as follows :

"17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulations, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self-imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A.N. D'Silva* v. *Union of India* has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission".

And,

"Secondly, the Ministry of Finance, Government of India has no jurisdiction to issue the impugned directive to banking institutions .....".

And further,

"The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the

reduction of pay by one stage viz. from Rs. 3125/- to Rs. 3050/- in the time scale of Rs. 2000-3500/- for a period of 3 months with cumulative effect to meet the end of justice. The penalty will take effect from 8.1.1994.

Shri Tewari should acknowledge receipt of this Memorandum in the enclosed format".

35. It does not discuss the evidence nor the findings of the Inquiry Officer. It does not set out any reasons even briefly to indicate as to which of the findings are accepted and why. We have already shown above as to how the findings are inconsistent and it is not clear as to what misconduct has exactly been found established. Those aspects needed critical examination by the Disciplinary Authority. We have also shown above that there has been non-application of mind on the part of the Disciplinary Authority. Therefore the words "After careful consideration of the inquiry report ....." and "all other relevant factors" sound mechanically used. Likewise the assertion in the written statement that the General Manager has passed a reasoned order on careful consideration of the imputation of charges carries no conviction. The order therefore cannot be sustained even if it does not refer to any advice of the Vigilance Commission.

36. The distinct possibility of the advice of the Vigilance Commission being the basis of the order of the General Manager arises from the following circumstances :

(1) findings are neither discussed nor evidence is assessed.

(2) Nature and degree of misconduct held proved by the Enquiry Officer has not been critically examined.

(3) It is revealed from the written statement that advice of the Vigilance Commissioner had been obtained.

(4) By reason of the general instructions issued by the Railway Board to the General Manager the advise given by the CVC will be ordinarily accepted and that advice having been obtained behind the back of the applicant and not being shown to have been disagreed with it appears to have been followed. No reasons are stated in the order. It is therefore difficult to say that General Manager has recorded his own findings independently of the advise as may have been tendered.

We, therefore hold that the impugned order cannot be sustained in law and uphold ground Nos. III and IV.

Point No. 3

37. Having thus found that the impugned order cannot be sustained the next question to be examined is as to whether in the absence of an appeal having been filed against that order to the Railway Board, it is open to the Tribunal to interfere with the same having regard to the provisions of Section 20 of the Administrative Tribunals Act, 1985.

38. There is no dispute that under Rule 17 (D&A) Rules read with Schedule III an appeal against the impugned order lay to the Railway Board. Admittedly no such appeal has been filed by the applicant. He has stated in that connection that as he was on the verge of retirement on superannuation he has filed the O.A. before the Tribunal (straight away) for a speedy and quick relief. He however submitted orally that as the Disciplinary Authority had acted on the instructions and advise of the Board he did not expect any fair and impartial consideration of his case and therefore he did not appeal to the Board and did not think it proper to state that reason in the O.A. and that he was giving out that reason in reply to

record or evidence at the enquiry. It therefore follows that where it is shown that the opinion of the Inquiry Officer or Disciplinary Authority is influenced by such advice and is not found based entirely on merits it would be vitiated.

33. After having discussed the position in law about the advice of CVC we now turn to the impugned order.

34. Rule 10 of the D&A Rules provides for action on the Inquiry Report. It inter alia provides that having regard to its decision on all or any of the findings of the inquiring authority if the Disciplinary Authority is of the opinion that the penalty warranted is such as it is within its competence, that authority may act on evidence on record and may impose the appropriate penalty. Sub-rules 4 and 5 provide as follows :

"(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 6 should be imposed on the Railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty.

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the Railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Railway servant".

The provisos to sub-rules 4 and 5 do contemplate advice of the Commission which is Union Public Service Commission by virtue of definition contained in Rule 2(b) (of the Railway servants (D&A) Rules, 1968). There is thus no provision to obtain advice of the Vigilance Commissioner. The D&A Rules having been made by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution the executive guidelines issued by the Railway Board providing for consultation with Vigilance Commissioner cannot override the procedure prescribed under Rules 10 & 11 from the stage the Disciplinary Enquiry is initiated and till the order is passed by the Disciplinary Authority under Rule 11 and even where such advice is obtained the Disciplinary Authority cannot mechanically act on that basis but has to independently arrive at his conclusion strictly upon consideration of the evidence and record forming part of the Inquiry.

The impugned order has been passed in following manner :

"Memorandum

After careful consideration of the inquiry report into the charges framed vide Memorandum of even number dated 27.3.1990, the representation dated 17.3.1993 of the charged officer and all other relevant factors, the undersigned has decided to impose on Shri B.C. Tewari, APO/LMG penalty of

In *Shri Shankar Baruah and Ors.* v. *U.O.I. & Others* this Bench (Guwahati) of the Central Administrative Tribunal negatived the respondents objection under Section 20 holding that the plea was belatedly taken and was not taken when the application was admitted and that cannot be a ground to dismiss the application. We rely on this decision only for the limited purpose that even though Section 20 may not have been complied with the O.A. can be decided on merits and do not express any view on the point as to when the objection should be raised.

42. We therefore reject the submission of Mr. B.K. Sharma that the O.A. should be dismissed as the applicant had not exhausted the remedy of appeal. We hasten to add that we are inclined to do so in the peculiar facts and circumstances of this case and for interest of justice to be secured in this case and do not lay down as an absolute proposition that in every case where Section 20 is not complied with yet the application should be entertained as a rule. Doing so will be rendering Section 20 nugatory. In other words we have looked upon this case as an exception to the general rule.

Point No. 4

43. The next point to be considered is the grievance of the applicant about denial of promotion to him to senior scale though selected by the D.P.C. held in August, 1993. The respondents have stated that as the disciplinary proceeding was pending (out of which the O.A. has arisen) the question of promotion did not arise. That question would depend upon our order in respect of the impugned order and we shall indicate our answer accordingly.

44. Lastly, it has to be considered as to what relief ought to be granted since we hold that the impugned order is not sustainable. One course to be adopted is to direct the applicant to file an appeal to the Railway Board with a direction to the Board to entertain and decide it. Second course would be to direct the General Manager to reconsider the matter and pass a fresh order. Third course open is to grant final relief to the applicant.

45. We are not inclined to adopt the first two options as that would leave room for further litigation and involve delay. Moreover the applicant has already retired from service and therefore it is desirable that he gets the relief earlier. In the facts and circumstances of the case we are inclined to adopt the 3rd course. For that purpose we hold that the applicant had acted in an irresponsible manner but that was not coupled with any ulterior purpose. No harm or prejudice was thereby occasioned to anyone. At the highest that would have led the applicant to be considered unfit to be nominated on a selection committee and the fact could be recorded in his ACR. What the applicant did although cannot be ignored or justified yet we are not satisfied that it amounts to any punishable misconduct under the conduct rules particularly when as discussed earlier neither the Inquiry Officer nor the Disciplinary Authority has specified as to which category of conduct defined as misconduct under Rule 3 of the Conduct Rules has been committed. Even the tenor of the findings of the Inquiry Officer indicates that he had merely found the conduct of applicant unwarranted. May be it was technical breach of the rules and ethically wrong. The circumstance that there could have been error of judgment on the part of the applicant and the lapse committed was an honest mistake does not stand absolutely ruled out and this aspect has not been examined by the General Manager.

Point No. 2

46. In the view as we are inclined to take as above the question of our going behind the quantum of punishment does not survive. The principle that it is not open to the Tribunal to interfere with the quantum of penalty awarded could be applicable if we had upheld the impugned order but as we are inclined to quash it the question does not arise.

the persistent query from the Bench as to why he had not preferred the appeal. In order to buttress the above submission he has drawn our attention to the statements contained in the written statement.

39. In para 16 of written statement the respondents have stated that (Central Vigilance Commission) and Railway Board's communication in this respect is the internal affair of the Railway Administrative machinery. In para 18 it is stated that no restriction was imposed by the Railway Board in taking General Managers' independent decision in imposition of penalty. These statements leave on manner of doubt that some advice was tendered by the Railway Board. What was that advice has not been shown. Copy thereof was not supplied to the applicant though he had asked for the same It is contended that that is internal communication. This position does not rule out the possibility of the General Manager having been influenced by the opinion particularly as he has not discussed in his order any reasons to indicate that his decision was entirely based on appreciation of evidence and record and analysis of the findings returned by the Inquiry Officer. In this situation whether applicant's failure to file the appeal is fatal to the maintainability of the O.A. is the question that stares in the face.

40. In order to resolve the above question it is necessary to refer to Section 20 of the Administrative Tribunal's Act, 1985. That section provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The word ordinarily is significant. Reasonably construed the use of that word means that in appropriate cases the Tribunal is not precluded from entertaining an application notwithstanding that the remedies available under the service rules may not have been availed of. The Tribunal derives its jurisdiction under Section 14 read with Section 2(q) of the Act in relation to all service matters relating to the conditions of service in connection with the affairs of the Union (etc.). We are therefore inclined to entertain the O.A. on merits since the powers exercisable are analogues to the exercise of powers by the High Court under Article 226 of the Constitution.

41. We are fortified in the above view by following decisions :

In *Ram and Shyam Company* v. *State of Haryana & Ors.*: (1965)3 SCC 267 the Supreme Court was pleased to hold as follows :

> "Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in *State of U.P.* v. *Mohammad Nooh* it is observed that "there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits."

46A. In sum, we hold that the impugned order cannot be sustained in law. The order is also vitiated for violation of principles of natural justice. We have not reappreciated the evidence nor we purport to ignore the finding recorded by the Inquiry Officer. Our conclusions are reached in the light of the finding as it stands. We are interfering with the order on purely legal grounds.

47. Thus on point No. 1 we hold that the impugned order is vitiated and cannot be sustained in law and answer the point in the affirmative. Consequently we hold in answer to point No. 2 that it does not survive. We hold that the application is maintainable though no appeal was preferred departmentally and answer point No. 3 in the negative. On point No. 4 we hold that although applicant is entitled to be considered for promotion it will be subject to directions in the operative order.

48. In the result following order is passed:

ORDER

1. The impugned order dated 17.1.1994 passed by the General Manager imposing the penalty as stated therein upon the applicant is hereby quashed and set aside.
2. It is declared that the applicant is not liable to be awarded penalty on the first article of charge.
3. The respondents are directed to restore the pay of the applicant without effecting any reduction as ordered in the impugned order.
4. The respondents are directed to pay to the applicant the arrears of difference of pay from the date the penalty was enforced and till the date of superannuation on the basis that no reduction by way of penalty was permissible.
5. The respondents are directed to examine the question of giving benefit of proforma promotion to the senior scale to the applicant consistently with the decision of D.P.C. held in August 1993 kept in sealed cover. It is made clear that it will be open to the respondents to take into account the conclusions drawn by the Inquiry Officer in respect of first article of charge in para 18 while considering the question of promotion although it is held that despite that finding there does not arise misconduct attracting a penalty.
6. In the event of the respondents being inclined to give benefit of promotion to senior scale from due date retrospectively to the applicant, the respondents will fix the pay accordingly on proforma basis as on the date of superannuation of the applicant. The applicant however will not be entitled to be paid arrears in the senior scale and the proforma fixation will enure only to the pensionary benefits unless he has actually drawn the senior scale.
7. In view of the above directions no order on prayer for quashing the promotion order of P.G. Keshavan and A. Kispotta.

The O.A. is partly allowed in terms of the above order and is disposed of. No order as to costs.

Interim directions vacated. Record if any produced by the respondents be returned to them against acknowledgement.

[21/95]

Application allowed

* * * * *

witnesses proposed to be examined by the department in support of the allegations made in the charge. But on two occasions when the witnesses came, the applicant not having appeared, the enquiry could not proceed and the witnesses could not be examined. Subsequently the enquiry officer recorded the statement of the applicant and perusing the letters of the witnesses and the person who made the complaint closed the enquiry and found the applicant guilty of the charge. On a perusal of the report of the enquiry officer the disciplinary authority passed an order reverting the applicant to a lower grade in the time-scale of pay for a period of three years with cumulative effect. Hence the present application for quashing the impugned order of reversion.

Held: True it is that the strict standard of proof as required in a criminal proceeding cannot be expected in a disciplinary proceeding. But all the same, it is settled that a departmental proceeding is a quasi-criminal one and to reach the finding there must be materials and proof in support of the allegations made against the charged officer. When the witnesses are examined and the charged officer is denied the opportunity to cross-examine the witnesses, there would be a failure of justice if reliance is made on mere statements in a letter of such a person proposed to be examined as witness. In the instant case none of the witnesses proposed to be examined in support of the charges was really examined. Therefore, it is not possible to sustain the impugned order, i.e., the order of reversion from the higher grade to the lower grade.

The impugned order is set aside. However, the respondents are at liberty to conduct an enquiry in a proper manner after affording opportunity to the applicant to have his defence and after examining the witnesses in support of the charges.

[Trinadha Panda *v.* Union of India and others, (1990) 12 ATC 350 (Cuttack).]

37. Charge to be held as either 'proved' or 'not proved'.—The main attack to the two impugned orders made by the disciplinary authority and the appellate authority respectively is that the Enquiry Officer had exonerated the applicant of the charge and held that the charge had not been proved. Even though the disciplinary authority had disagreed with the findings of the Enquiry Officer, the appellate authority had recorded in his order that the charges were not conclusively proved. The order read as follows: "Since the charges are not conclusively proved, I give the benefit of doubt to (the applicant). The punishment is, therefore, reduced to stoppage of increment in the same grade for one year without future effect."

The learned counsel for the applicant argued that in the circumstances no penalty whatsoever could be imposed on the applicant.

We hold that when benefit of doubt has been given to the applicant and charges have been held as having not been conclusively proved, there is no case for imposition of any penalty. This is not a case where the punishment or the penalty has been reduced keeping in view the quantum

of the punishment in relation to the gravity of the charges. This is a case where both the Enquiry Officer and the appellate authority came to the conclusion that the charges had not been proved. There cannot be any distinction between charges as 'having not been proved' and 'having not been conclusively proved'. The charge has to be held either as proved or not proved. There is no middle course. In the circumstances the orders of the disciplinary and appellate authorities cannot be sustained. The applicant shall stand reinstated to his earlier post from the date he was reduced to the lower grade and he shall be entitled to all consequential benefits including payment of arrears of salary.

[Ram Das Singh *v.* Union of India and others, (1990) 13 ATC 136 (Jodhpur).]

38. Statement made behind the back of the person charged cannot be treated as substantive evidence for finding him guilty.—In a disciplinary enquiry for the enquiry officer to rely on the statements recorded at an earlier stage and to base a conviction, it is necessary that the correctness of the contents of those statements are affirmed by the persons making the said statements. In the present case the statements were not affirmed by the witnesses, but, on the other hand, they specifically denied having given such statements. They had deposed in the enquiry that their signatures had merely been taken on blank papers and they did not know the contents thereof. It has been held by the Supreme Court in Central Bank of India *v.* P.C. Jain [AIR 1969 SC 983], that a finding of a domestic tribunal would be perverse if it is not supported by any legal evidence. While accepting that domestic tribunals like enquiry officers are not bound by technical rules of evidence as contained in the Indian Evidence Act, the Supreme Court observed as follows:—

> "But it has never been laid down that even substantive rules which would form part of principles of natural justice also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged, are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act."

In the present case the enquiry officer could not reject the version of the witnesses out of hand merely because they were not supporting the prosecution case. The enquiry officer's observation that the witnesses' denial, of having paid the money during the enquiry "appears to be an after thought" is not supported either by the evidence on record or any reasons. It is further to be noted in this regard that the applicant, in his written brief, has pointed out certain lacunae in regard to the factum of recording of the statements of the two witnesses and had alleged that they were concocted. It is well established that not only the evidence against the employee but discrepancies, if any pointed out by the employee in regard to the evidence against him should also be considered and dealt

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HYDERABAD
23.07.1993.

General Examination of Sri.M.G.K.MURTHY,CO. by the Inquiring Authority.

-S-S-S-

Q. Can you tell whether the Audit Objection with regard to the pay fixation of Sri.Lokanadam was based on any Government Order/Circular applicable at the relevant time and if so whether this fact was intimated to the Medical Officer, Primary Health Centre who was head of the Office?

A. Yes.

Q. Did you yourself scrutinise the relevant Govt.Order and come to the conclusion that the said Audit objection was sustainable?

A. Yes.

Q. Can you explain the reasons as far as you know, as to why, when the correspondence was between your Office and concerned health centre, Sri.Lokanadam visited you, as he states four times.?

A. I did not ask Sri.Lokanadam to visit me. He came on his own accord and visited me on the evening of 5th October 1990 for the first time and later on 9th October 1990 when the trap was laid at Collectorate, Nellore.

Q. Did Sri.Lokanadam give you any threat or warning in the event the audit objections relating to his pay fixation was not dropped.?

A. Yes.

Q. When was this threat given to you, if you can remember and in who's presence, if you can remember?

A. When I refused to drop the objection, even after repeted requests of Sri.Lokanadam, he in return threatned in the evening of 5.10.1990 and Sri.G.Ramakishan , Asst.Audit Officer was also present at that time, at the Vijaya Lodge.

Q. Was this threat reported by you to the Superior Officer of Sri.Lokanadham or do you normally receive such threats ?

A. I did not report the threat given by Sri.Lokanadham to his superiors because it was a normal affair which I have experienced in almost all the 12 districts

Contd..

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where I conducted the pay fixation checks, After returning from Nellore, I reported this to my DAG, on 29.10.90.

Q. On 9.10.1990 what transpired between you and Sri.Lokanadam by way of discussing or otherwise, when Sri.Lokanadam visited your Office at the Collectorate, Nellore?

A. When Sri.Lokanadam visited the Collectorate, Nellore on 9.10.1990 he came near me and thrust a wad of currency notes into my hands and requested me to drop the objection on the basis of a Government Order issued in January 1990. I didn't like it and pushed back the money into his hands. Because Sri.Lokanadam came with a determined mind to cause trouble to me he immediately thrust the amount into my shirt pocket. I wanted to report this malpractise of Sri.Lokanadam to the DM&HO, Nellore and stood up and turned towards the telephone(PABX Board). Yet this juncture one CBI Inspector entered the room and asked my identity. I replied that I am M.G.K.Murthy, Audit Officer of the Pay fixation party.

INQUIRY AUTHORITY

RO&AC

(M.G.K.Murthy) 23/7/93

NO.13 OPM 28
ORDER SHEET

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Hyderabad
21.7.1993

Present : Shri MGK Murthy, CO
" KV Rao, Defence Counsel
" YTR Prasad, PO

Regular Hearing of the case taken up. To begin with 16 listed documents were taken on record and marked Ex.S1 to S16. 3 listed witnesses were examined and their evidence recorded as SW1 to SW3. Their pre-recorded statements were taken on record as Ex.S17, S18 and S19 respectively. Two defence documents also taken on record and marked Ex.D1 and D2.

Case adjourned to 22.7.1993 at 11.30AM in my camp at Hyderabad.

Copies of deposition recorded today with copy of this order issued to CO & PO.

CO 21/7/93

Defence Counsel K.V.Rao 21.7.93

PO 21.7.93

INQUIRING AUTHORITY

Hyderabad
22.7.1993

Present : parties as on 21.7.1993.

RH resumed. 5 listed witnesses examined as SW4 to SW7. Their pre-recorded statements taken on record as Ex.S20 to S23.

The PO dropped 5 listed witnesses and intimated that one of the important listed witnesses will be available for examination tomorrow.as he met with an accident and shall be in a position to attend tomorrow. It was permitted.

Case adjourned to 23.7.1993 at 2PM in my camp at Hyderabad.

A copy of the deposition recorded today with copy of this order issued to CO & PO.

CO 22/7/93

Def. Counsel K.V.Rao

22.7.93

INQUIRING AUTHORITY

PO 22/7/93

Re-examination

Right from the receipt of the audit objection, Sri.Lokanadam that asked me to convenience the Audit Officer to drop the objections against Sri.Lokanandam's pay.

INQUIRING AUTHORITY

RO&AC

(A.R.K.NAGESWARA RAO)

Returned
1) covering letter to be filed
2) one more copy to be filed.

Adv
Central
Administrative
Tribunal

Review Applu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT : HYDERABAD

REVIEW.APPLN.No. OF 98

in

O.A.NO. 1189 OF 95

REVIEW APPLICATION.

Received Copy
P Shakti
11/3/98
for G.P. Rao

Central Administrative Tribunal
RECEIVED
16 FEB 1998
491
Hyderabad Bench

Mr. K. Venkateswara Rao

Counsel for the Applicant

5/2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT:: HYDERABAD

R.A.NO. 18/98

in

O.A.No. 1189 of 1995

Between:-

M.GOPALA KRISHNA MURTHY. ... APPLICANT

A N D

The Principal Accountant General, Audit-I, Andhra Pradesh, Hyderabad and others. ... RESPONDENTS.

REJOINDER

I, M.Gopala Krishna Murthy, S/o.Late Mallikharjuna Sastry, aged about 61 years, Audit Officer Retired, O/o.the Principal Accountant General, Audit-I, A.P., Hyderabad, do hereby solemnly and sincerely affirm and state as follows:-

1. I am the applicant in the above review application and also in the main O.A. and as such I am well acquainted with the facts of the case. I have read the reply affidavit on bhelaf of the respondents and in reply thereto, I beg to submit as follows:

2. I submit that the averment that the review application is not maintainable on the ground that none of the ingredien prescribed under Order 47 Rule 1 of C.P.C. is not satisfied is not correct. I submit that admittedly the judgement of Hon'ble Tribunal is an error apparent on the face of record mainly for the reason that the Hon'ble Tribunal has not adverted to the effect of non supply of copy of the central Vigilence Commission's advice inspite of the specific prayer in the O.A. and specific averment in the para 12 of the Rejoinder. It is specifically held by the Hon'ble Supreme Court in State Bank of India Vs. D.C.Aggarwala AIR 1993 S.C. 1197 that the disciplinary authority is not to act an any material without furnishing the same to the delinquent, ~~such~~ and as such the principles of natural justice are grossly violated. In view of the above the rev application is maintainable. Further I submit that unfortunat

there is an error in not appreciating the evidence on record and as such the judgement is contrary to law weight of evidence and probabilities of the case requiring the review of the judgement.

3. I submit that the finding of the inquiry officer are that the charged officer has not demanded the alleged bribe either before or on the date of trop (9.10.1991) , and that although the money was recovered from his shirt pocket, the fact that the charged officer took the money willingly, wilfully, and with a menseria is not established. The Inquiry Officer has also observed that the charged officer did show a motiveless subliminal temptation to pocket the money and thus his action was bordering on passive acceptance and accordingly the charge was held as proved partially. I, therefore submit that the inquiring authority has never held that the charge against me was held proved but infact held as proved partially. Such being the case when the disciplinary authority agreed with the findings of the Inquiring authority he could have not come to the conclusion that I am guilty of the charges levelled against me and impose the punishment. I submit that the penalty of compulsory retirement, removal or dismissal from service can be imposed in case in which the charge of acceptance from any person of gratification other than legal remuneration as motive or reward for doing or for bearing to do any official act is established. However in exceptional cases, for special reasons recorded in writing any penalty may be imposed. It is thus clear t in all cases of acceptance of illegal gratification, the punishment of compulsory retirement, removal or dismissal from service may be imposed. I, therefore submit that ule 11 of CCA Rules 1965 makes it obligatory to impose major penalty of removal/dismissal from service in every

case in which the charge of acceptance of any illegal gratification as motive or, reward for doing or for bearing to do any official act is established is not correct as is clear from the plain reading of Rule 11 of CCS (CCA) Rules 1965. On the otherhand it is clear from rule that any penalty other than compulsory retirement/removal/dismissal can be imposed even if the charge of acceptance of illegal gratification as motive or reward for doing or for bearing to do any official act is established. Thus the contention that it is obligatory to impose removal/dismissal is not correct as per Rule 11. I submit that the observation "if otherwise warranted by the circumstances of the case" in para 7 of the reply statement is clearly outside the scope of the proviso to Rule 11 and is invented only for the purpose of justifying the imposition of punishment of "removal" from service inspite of no such contemplation in the said rule. It is thus obvious that the report of the inquiry officer is in my favour as held by the Hon'ble Tribunal in para of judgement. In view of the above position, I should have been in all fairness exonerated of the charges but however the disciplinary authority has imposed the punishment of removal from service on exterior considerations contrary to the findings of the inquiry officer and also to Rule 11 of CCS(CCA) Rules, 1965. I, therefore submit that the contention in para 3 of the reply that the disciplinary authority analysed the evidence on record and after applying its mind came to the conclusion that I am guilty of the charge is not correct. I, therefor submit that the disciplinary authority has clearly not appl his mind to the evidence on record. and imposed the punishr mechanically on the advice of the central Vigilance Commission. I submit that the averment that the order of punishment is a speaking order is not correct. Hence I submit that the punishment of removal is awarded mainly

on the basis of C.V.C. advice but not on the basis of record.

4. I submit that the supply of C.V.C. report is mandatory as held by the Supreme Court and the respondents are bound to supply the same. I, therefore submit that the contention that it was felt that there is no need to supply a copy of the advice by C.V.C. is untenable.

5. I submit that the averment that I have not raised the issue with regard to C.V.C. report in the O.A. but made an attempt in the rejoinder is factually false and incorrect. I submit that I have clearly mentioned in the prayer to call for the file containing the advice if any rendered by the C.V.C. in addition to the records relating to the punishment order dated 31.8.1994 and the appellate order dated 7.8.1995 and quash the same. I therefor submit that it is not for the first time that I raised [illegible] regarding C.V.C. report at the timeof rejoinder in O.A. I submit that the fact that the C.V.C.rendered its advice to the disciplinary authority could be known to me only during the course of final hearing. I submit that the Hon'ble Tribunal has clearly observed in para 24 of the judgement that the inquiry authority had recorded his finding in a way favourable, to the applicant and this means that the charge cannot be held as proved and as such the order of removal imposed by the disciplinary authority is clearly without application of mind. I submit that no prudent person would expect in such circumstances that a major punishment like removal from service would be imposed by disciplinary authority. So I submit that the appellate order dated 7.8.1995 is also equally without application of mind and based only on the advice of C.V.C.

6. I submit that the averment/S/Sri V.Ramachandrudu and A.R.K.Nageswara Rao, the prosecution witnesses had stated that I have received the bribe amount with my righthand and after counting the money with both hands and kept the same in my left shirt pocket is totally false. I am filing copies of depositions of the above two prosecution witnesses and nowhere they deposed as aforesaid. I, therefore submit that the above statement is made deliberately to prejudice my case. Infact the Inquiry Officer has clearly held "Iam inclined to agree with charged officer's defence that the money was passed and forced into his hands by Lokanatham. This fact is reinforced almost albeit obliquely from the nebulous and uncertain evidence regarding the stretching of hands by C.O. voluntarily to accept the money from the complainant." I submit that sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965, clearly provides that the Inquirying authority may after the Government servant close his case, shall if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling government servant to explain any circumstances appearing against himin the evidence I submit that this provision being mandatory, the Inquiring authority should necessarily put questions to the delinquent by specifically referring to certain statement of prosecution evidence and ask the deliquent to state what he has to say with reference to those statements and then leave the matter at that stage without putting further searing and probing questions to the delinquent as held in Satyapal Arora.Vs Director of Postal Services 1990(2) SLJ (AT) 100 Jabalpur. I submit that in the instant case the inquiring authority though had put seven questions in his general examination the deliquent, had failed to specifically question him as to how the alleged bribe money has gone into my pocket an

as such the inquiry suffered from the vice of non observance of statutory provisions of Rule 14 (18) of CCS (CCA) Rules, 1965. I, therefore submit that the averment "in view of the statement of witnesses, the inquiry officer, perhaps felt that it may not be necessary to put any further questions and gave his findings based on the evidence on record is legally untenable as stated above and is in violation of ~~X~~ CCA Rules.

7. I submit that it is for the prosecution to prove the charge. I submit that a dispassionate view of the Inquiry ~~of~~ report and other connected records would prove that I am innocent.

8. I submit that the pay fixation party is not required to prepare any report and the half margin objections together with replies are required to be sent to head quarters section. I submit that asper the practice the replies will be sent to head quarters in cases where the objections were dropped or modified based on the report of the department. Notes also will be sent to head quarters section where the inspecting officer could not take a decision on the replies of the department. In the instant case, the reply of the medical officer did not meet any of the objections raised and hence it was written to the department. It is relevant to submit that the inquiring officer himself specifically remarked that the audit objection could not be dropped by the C.O. to favour Sri Lokanathan because no material evidence was produced by the Medical Officer prior to or on the date of trop. I submit that half margin and reply have been available with the principle A.G. since 1991 and I could be questioned and if I had made a mistake in rejecting the reply. I, therefore submit that it is a new point raised for the f

time after several years of issuing charge sheet and hence it has to be ignored. I submit that the half margins are numbered by the Audited and as such questioning the Audit Officer and attributing motives at this distance of time that too for the first time is wholly irrelevant. I submit that if my intention is to favour the complainant by not bringing the objection on official record, the Audit Objection would have not at all been issued and this will go to prove my integrity. It is also pertinent to submit that similar Audit objections were raised in respect of Sri Y.Subrahmanyam of PHC Anantasagaram, and Sri Shaik Abdul Sakkur of PHC Mohammadapuram pointing out (Rs.6,600 and Rs.9,145/- respectively, and in these cases the replies received were were also rejected and returned. No person however foolish one is, will not burn his own fingers by dropping objections returning them to the affected party, while allowing the objections in the other two cash.

9. I submit that the averment that A.R.K.Nageswara Rao went to the lodge at the instance of both the complainant and the applicant is totally false and is irrelevant in the contex of finding of inquiry officer"that Lokanatham and Nageswar Rao circumambulated to the lodge of the charged officer and other members of Audit party on 5.10.1990 not at the laetter's sugge tion and invitation but as a result of their own deliberate pact and of their own sweet (and seedy) motive and volition".

10. I submit that in the light of the findings of the inquiry officer the observation of Hon'ble Tribunal in para 1 of the judgement that as per the disciplinary authority, demanded and accepted Rs.1000/- from Sri P.V.Lokanatham required to be reviewed as it is an error apparent on record.

11. With regard to observation that I did not show any shock when the complainant thrust the bribe money into my hands proves beyond doubt that I had the intention of accepting bribe money, I submit that it is a matter depending upon individual temperment and cannot be as to how other person imagines. It is pertinent to submit that the raiding party is a C.B.I. whose behaviour will never be normal. However these facts were totally ignored by the appellate authority while confirming the punishment. It is very relevant to submit that the respondents are trying to justify the punishment on exterior considerations. I submit that soon after Sri Lokanathan thrust the money into my hands and later into my shirt pocket, I turned towards telephone P.B.X., to my left to inform the D.M. & H.O. Nellore about the Malpractice of his employee Sri Lokanathan, but the C.B.I. Inspector rushed into the room and asked me to keep quiet and sit down and therefore I was helpless in reporting the matter to the D.M. & H.O. It is therefore obvious that under these conditions I have to kee silent to avoid further humiliation. As regards delay in reporting the matter to my office till 29.10.1990, I submit that I and other members of the Audit party were continuously interrogated on 9.10.1990 and 10.10.1990 upto 6.30 P.M. and were not allowed any free movement. Soon after completion of audit work, at Nellore on 12.10.1990, I had drafted the repor wherein I had clearly mentioned that the money value of objections in respect of Medical and health department could not be included in the report as the entire file of the Department was seized by C.B.I. on 9.10.1990. I genuinely f that I should not mention in the above report dated 12.10.19 the details of what happened at Nellore on 9.10.1990 except the seizure of the file. The Audit Party returned to Hydera availing transit on 13.10.1990 and reported to Head Quarter office on 15.10.1990 as 14.10.1990 was Sunday. I submit tha I had handed over the files to Audit Officer of Head Quarte

section to Sri A.R.Subramanyam and met the Deputy Accountant General (Civil) Sri R.Dharma Rajan along with A.R.Subramanian and appraised him of the happenings at Nellore on 9.10.1990. I am then advised by the Deputy A.G. to meet the A.G. but however I was not successful in meeting the A.G., though requested for on 15.10.1990. I submit that being a heart patient from 1981, I had developed heart problem on 16.10.1990 and approached C.G.H.S., Dispensary in A.G. Colony when I was advised rest for 30 days absence from 16.10.1990. I had therefore applied for sanction of commuted leave for 30 days from 16.10.1990 along with the M.C., and Meanwhile the suspension order was served on me on 23.10.1990. Under these circumstances with great difficulty. I went to AG's Office on 25.10.1990 and escorted by my brother Sri Hari Prasad to seek an interview with the A.G. but the Secretary to A.G. Audit informed me that the A.G. was busy wholeday and advised me to contact on 26.10.1990 over phone for interview. Accordingly when I contacted him from the reception gate on 26.10.1990 I was informed that the A.G. was not willing to see me. It is under these circumstances, I could not appraise the A.G. of the happening on 9.10.1990 at Nellore. On reaching home on 26.10.1990 I received a letter from the Deputy A.G. (Civil) dated 23.10.1990 directing me to explain within 3 days from the date of receipt of letter, the circumstances leading to the seizure of the file of the Medical Department by the C.B.I. at Nellore and accordingly I had submitted my detailed reply on 29.10.1990 through my brother who personally handed over the letter to Deputy A.G. Civil. It is therefore totally incorrect to say that I was silent upto 29.10.1990 to make a report to my officers. As regards the averment that I have not numbered half margin objection and thereby effectively placed myself in a position and could drop the objection by not bringing on record, in addition to what has been stated

above in this regard, I submit that if the intention is to make money, a person who is of corrupt motive would not issue half margin at all but would settle matter with the party concerned at a threat of issuing audit objection.

In view of the foregoing submissions, it is therefore prayed that this Hon'ble Tribunal may be pleased to review the judgement dated 5.1.1998 in O.A.No.1189/95 and be pleased to allow the above O.A. as prayed for and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Solemnly and sincerely affirmed at Hyderabad on this 2nd day of July, 1998.

DEPONENT

Before me

21/7/98

// ADVOCATE // HYDERABAD.

SW3

Hyderavad
21.9.93

Deposition of Shri V. Ramachandrulu, IOW/SC Rly, Nellore

....

I have gone through my statement recorded by CBI and confirm its contents. It is marked Ex.S19.

CBI Inspector had requested me to come to Officers Rest House at Nellore on 9.10.90. He asked me to be witness in a trap case.for which I agreed.

Cross examination

The Watchman of the Officers Rest House came to my residence.at/8AM on 9.10.90. I don't remember the name of the Watchman who gave me the message. I went for the first time to be a witness for the trap. I informed my office that I was summoned by the CBI officefor the trap. I informed AE/Nitragunta.

/730 to

I was standing outside the window at about 10'0 clock. There was an PBX Board by the side of the window. The board was in one corner and one person was ~~standing~~ sitting in front of the board but still I was able to the happenings.

CBI Inspector Mr.Chellakumar recorded my statement S19.

Re-examination -Nil-

RO&AC

INQUIRING AUTHORITY

(witness)

FAIR LISTED
On 3-7-98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT:: HYDERABAD

R.A.NO. 18 of 1998

in

O.A.No. 1189 of 1995

REJOINDER

***

Received
D Shakti
2/7/98
for
G.P.Rao

Mr. K.Venkateswara Rao,

Counsel for the Applicant.

2/7/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A.No. 18/98

IN

O.A.No.1189/95

Between:

M.Gopala Krishna Murthy, ... Applicant/Applicant

AND

The Principal Accountant General,
Audit-I, Andhra Pradesh, Hyderabad
and others. ..... Respondents/Respondents

REPLY STATEMENT FILED ON BEHALF OF RESPONDENTS

I, V.V.Rama Murthy, son of late Sri V.L.Kanta Rao, aged about 56 years, do hereby solemnly affirm and state as follows:

1. I am the Senior Deputy Accountant General (Administration) in the office of the Principal Accountant General (Audit)I and Respondent No.1 herein and, as such, I am fully acquainted with all the facts of the case. I have read the review application and understood the contents thereof. I am filing this reply statement on behalf of all the respondents herein as I have been authorised to do so. The averments made in the review application are neither true nor correct save those that have been expressly admitted hereunder. The applicant is, therefore, put to strict proof of such averments that have not been traversed hereunder.

2. PRELIMINARY OBJECTION:

At the outset, I submit that the review application is not maintainable as none of the ingredients prescribed under Order 47 Rule 1 of the C.P.C. is satisfied. Needless to say that a Review is not maintainable on the mere ground that the decision was

1st PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL A&E,
A.P., HYDERABAD.

वी. वी. राममूर्ती, आई.ए. & ए.एस.
V:V. Rama Murthy, I.A. & A.S.
वरिष्ठ उप महा लेखाकार (प्रशा.ए.)
Sr. Dy: Accountant General (Adm.)
महालेखाकार का कार्यालय (लेखापरीक्षा)-I
Office of the Accountant General (Au-I)
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, HYDERABAD-500 004.

erroneous on facts of the case. It will be appreciated that the applicant in the present review application is reagitating the entire matter and seeking re-adjudication of the issue which is not permissible in law. I am advised that the Apex Court in a catena of cases has discussed in detail the scope and parameters of review and that being so the Review Application is liable to be dismissed in limini.

Not withstanding the above objection, the various contentions raised in the review application are answered in seriatum hereunder:-

3. The averments in paras 1 and 2 of the review application are formal and as such they do not call for any remarks.

4. Regarding the averments in para 3 of the R.A., I submit that the contention of the applicant that the Hon'ble Tribunal had dismissed the O.A.1189/95 without properly considering the material on record and relevant rules and as such the judgement requires to be reviewed are without foundation and as such devoid of any merit. I submit that a reading of the judgement clearly shows that the Hon'ble Tribunal has gone through the entire material on record and after considering the rule position have dismissed the O.A. on merits.

GROUNDS

1 & 2 I submit that the applicant has failed to adduce any reasons in support of his contention that the judgement is an error apparent on the face of the record and that it is contrary to law, weight of evidence and probabilities of the case.

3. I submit that eventhough the Central Vigilance Commission has tendered its advice on the case, the disciplinary authority

2nd PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
AP, HYDERABAD

वी. वी. राममुर्ती, आई.ए. व ए.एस.
V.V. Rama Murthy, I.A. & A.S.
वरिष्ट उप महा लेखाकार (एस आर ए
Sr. Dy: Accountanat General (S R A)
महालेखाकार का कार्यालय (लेखापरीक्षा)-I
Office of the Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-५०० ००४.
Andhra Pradesh, HYDERABAD-500 004.

on its part analysed the evidence on record and after applying its mind, came to the conclusion that the applicant is guilty of the charge. I submit that a perusal of the order dated 31-8-94 would show that it is a speaking order. This only goes to show that the disciplinary authority did not act mechanically on the advice of the Central Vigilance Commission and on the contrary arrived independently at his own findings while imposing the penalty.

4. I submit that since the disciplinary authority did not act mechanically on the advice tendered by the Central Vigilance Commission and arrived at his own conclusion based on the evidence on record, it was felt that there was no need to supply a copy of the advice given by the Central Vigilance Commission. Perhaps, it would have been different had the disciplinary authority acted mechanically on the advice of the Central Vigilance Commission and imposed the penalty. This is not so in so far as this case is concerned.

5. In all humility I submit that the applicant is misquoting the submissions made at the time of arguments by the Standing Counsel for the respondents. What all the Learned Standing Counsel stated, was that no doubt the Central Vigilance Commission had recommended for awarding the punishment of removal, the competent authority had in fact applied its mind to the facts of the case and evidence as on record and imposed the punishment. It may be relevant to point out here that the applicant has not raised this issue in the main O.A. but made an attempt in the rejoinder which, I am advised is not permissible in law. If the applicant felt that non-supply of the copy of the Central Vigilance Commissions recommendations has adversely affected his

3rd PAGE CORRECTIONS

DEPONENT

ATTESTOR

K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL A & E,
AP, HYDERABAD.

वी. वी. राममूर्ती, आई.ए. व ए एस.
V:V. Rama Murthy, I.A. & A.S.
वरिष्ट उप महा लेखाकार (यस.आर ए
Sr. Dy: Accountanat General (
महालेखाकार का [illegible] लेखापरीक्षा)-II
Office of the Accountant General (Au-II)
आंध्रा प्रदेश, हैदराबाद-५०० ००४.
Andhra Pradesh, HYDERABAD-500 004.

interests, nothing prevented him from raising the same in his main O.A. I submit that in para 24 of its judgement, the Hon'ble Tribunal has observed that the inquiry authority had recorded his findings 'in a way favourable to the applicant' but not that the finding is favourable to the applicant as claimed by the applicant. I submit that when the findings of the inquiring authority is partly in favour of the applicant, it is beyond any ones comprehension how the applicant could nourish grievance against the inquiring authority. I submit that the inquiry authority in its report dated 31-12-93 held that the charge against the applicant is partly proved for the reasons given therein and the disciplinary authority after thoroughly analysing the evidence had accepted the said findings. As there was no disagreement with the findings of the inquiring authority, the question of recording reasons for disagreement with the said findings by the disciplinary authority did not arise. I submit that both the disciplinary authority and the Appellate Authority have independently analysed the evidence on record and came to the just conclusion as observed by the Hon'ble Tribunal.

6. I submit that according to the depositions of S/Shri V. Ramachandrudu and A.R.K.Nageswara Rao, the prosecution witnesses' recorded statements, the applicant has received the bribe amount with his right hand and after counting the money with both his hands (applicants) kept the same in his left-shirt pocket. The applicant did not even try to disprove or dislodge the above statements when he had the opportunity of cross examining the said witnesses. During examination of the applicant by the inquiring authority, at the end of oral enquiry, the applicant

4th PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL
A.P., HYDERABAD.

वी. वी. राममुर्ती, आई.ए. व ए.एस.
V.V. Rama Murthy, I.A. & A.S.
वरिष्ट उप महा लेखाकार (यस.आर ए
Sr. Dy: Accountanat General (Plans)
महालेखाकार का कार्यालय (लेखापरीक्षा)-I
Office of the Accountant General (Au-I)
आंध्रा प्रदेश, हैदराबाद-५०० ००४.
Andhra Pradesh, HYDERABAD-500 004.

stated that the bribe money was thrust into his hands and when he pushed back the money into the hands of the complainant, the latter thrust the money into his shirt-pocket. In view of the statements of the witnesses the inquiry officer, perhaps felt that it may not be necessary to put any further questions to the applicant and gave his findings based on the evidence on record.

7. I submit that the applicant had availed of the opportunity to cross examine the prosecution witnesses and yet he could not disprove the charges.

8. I submit that as per the instructions contained in para 124(c) and Note 5 thereunder of the Manual of Instructions(Civil), during the local audit all observation Memoranda should be issued in duplicate and if the replies to the audit queries are incomplete or inadequate, the pages concerned need to be re-issued to the local officer with a request to return the same with further remarks clarifying the points. Instead of following the said procedure, the applicant had returned the reply dated 26-9-90, furnished by the Medical Officer, Primary Health Centre, Thurimerl recording his rejection of the same. I submit that the applicant instead of taking the reply on record returned the same to the department which he ought not have done and as a result the Deputy Accountant General (I.C.) was in dark about the reply furnished by the Medical Officer. Further, as per the practice, the inspecting officer should ensure that a list of half-margin objections issued are numbered serially and maintained. Obvious the applicant failed to follow the said practice in respect of t pay fixation statement of Sri P.V.Lokanatham, Health Supervisor. Obviously, he wanted to favour the complainant by not bringing the objection on the official record.

5th PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E),
A.P., HYDERABAD.

पी. वी. रामामूर्ती, आई. ए. ए. एस.
P.V. Rama Murthy, I.A.A.S.
वरिष्ठ उप महा लेखाकार (वाणिज्य)
Sr. Dy. Accountant General (Comm.)
महालेखाकार का कार्यालय (लेखापरीक्षा)
Office of the Accountant General (Audit)
आंध्र प्रदेश, हैदराबाद-500 001.
Andhra Pradesh, HYDERABAD-500 001.

9. I submit that during the cross-examination of the witness viz., Sri A.R.K.Nageswara Rao, he clearly stated that he went to the lodge (where the applicant was staying) as per the oral orders of the Audit Officer (the charged Officer). Later, the witness stated that he went to the lodge at the instance of Sri Lokanatham (complainant) who asked the witness to offer some bribe. It is clear from the above that the witness had gone to the lodge at the instance of both the complainant and the applicant.

10. I submit that in para 6 of the order dated 31-8-94 under which the penalty was imposed, the disciplinary authority has observed that he came to the conclusion that the applicant is guilty of the charge after considering all the material on record of the inquiry report. I submit that the charge against the applicant is that he (the applicant) demanded and accepted a bribe of Rs.1,000/- from the decoy. The Hon'ble Tribunal, in para 11 of its judgement dated 5-1-98, has held that as per the disciplinary authority, the applicant demanded and accepted Rs.1,000/- from Sri P.V.Lokanadham.

11. I submit that as already stated in para 10 of the reply statement, filed in the main O.A., the standard of proof required in a departmental inquiry differs materially from that of the proof required in a criminal trial. It is well laid down principle of law that the standard of proof required in the disciplinary case is that of preponderance of probability and not proof beyond reasonable doubt as required in criminal case.

12. I submit that the fact that the applicant did not show any shock when the complainant thrust the bribe money into his hands proves beyond doubt that he had the intention of accepting the bribe money.

6th PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E),
A.P., HYDERABAD.

वी. वी. राममूर्ती, आई.ए. व ए एस.
V.V. Rama Murthy, I.A. & A.S.
वरिष्ठ उप महा लेखाकार (लेखापरीक्षा)-I
Sr. Dy: Accountanat General (Audit)
महालेखाकार कार्यालय (लेखापरीक्षा)-I
Office of the Accountant General (Au-I)
आंध्र प्रदेश, हैदराबाद-५०० ००४.
Andhra Pradesh, HYDERABAD-500 004.

13. I submit that even in the absence of any demand when bribe was offered, the applicant did not protest. The fact that he has tried to cover up the issue by way of not accounting for the objection while forwarding the audit objection to the Headquarters office will tell upon his overall conduct.

14. I submit that nothing prevented the applicant from throwing light on the indidence of 9-10-90 as also about the objection in respect of Medical and Health Department and seizure of the file by the Central Bureau of Investigation in his report dated 12-10-90 which he sent from Nellore to the Head Office at Hyderabad. According to the applicant, he met some of his colleagues and superior officers but never gave any report to his superior officers about the incidence of 9-10-90, till 29-10-90 when he was issued a memorandum asking him to explain the reasons and the circumstances leading to the seizure of the records by the Central Bureau of Investigation. In the background of the material on record, which the Hon'ble Tribunal had the occassion to peruse the reasons advanced by the applicant for not reporting to his superiors about the trap laid by the Central Bureau of Investigatio hardly convinces any one about its bonafides.

15. As already stated, the applicant instead of following the prescribed procedure had returned the reply furnished by the Medical Officer after recording his rejection of the same. As the applicant is not competent to drop the objection, he should have taken on record the reply furnished by the Medical Officer enabling the Deputy Accountant General (I.C.) to take his own decision on the matter. The applicant has also not numbered the half-margin objection. By not doing so, he effectively placed himself in a position and could drop the objection by not bringi

7th PAGE CORRECTIONS

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFIC
O/O ACCOUNTANT GENERAL
A.P., HYDERABAD.

वी. वी. राममूर्ती. आई.ए. व ए.एस.
V.V. Rama Murthy, I.A. & A.S.
वरिष्ट उप महा लेखा कार (गस आर.ए.)
Sr. Dy: Accountant General (Admn)
महालेखाकार क [illegible] निरीक्षा)-I,
Office of the Accountant General (Au-I),
आंध्रा प्रदेश [illegible] ००४,
Andhra Pradesh, HYDERABAD-500 004.

In The Central Administrative Tribunal.

At Hyderabad

R.A. 18/98

IN

O.A.No. 1189/98

Reply Statement.

Service accepted

Filed by: G. Parmeshwara Rao
Standing Counsel for I A & AD

Filed on: 24/6/98

Copy filed
24/6/98

it on record. I submit that according to rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 while it is obligatory on the part of the disciplinary authority to impose major penalty of removal/dismissal, from service in every case in which the charge of acceptance of any illegal gratification as a motive or reward for doing or forbearing to do any official act, is established, it however, does not prohibit or preclude imposition of such penalty in cases, if it otherwise warranted by the circumstances of the case.

In view of the foregoing submissions, it is clear that the applicant had failed to bring his case within the parameters of review, more so, on the grounds raised therein. It is, therefore, prayed that the Review Application may be dismissed in limini with costs.

Sworn and signed before me on
this the 19th day of June, '98

DEPONENT

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL
A.P., HYDERABAD.

वी. वी. राममूर्ती, आई.ए. व ए.एस.
V.V. Rama Murthy, I.A. & A.S.
वरिष्ट उप महा लेखाकार (एस आर ए
Sr. Dy: Accountanat General (Admn.)
महालेखाकार का कार्यालय (लेखापरीक्षा)
Office of the Accountant General
आंध्र प्रदेश, हैदराबाद-500 001
Andhra Pradesh, HYDERABAD-500 001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

R.A.NO./M.A.NO/C.P.NO. 18/98

ORIGINAL APPLICATION NO. 1189 OF 1995 dt-7/9/98

TRANSFER APPLICATION NO. ..... 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 7/9/98

Counter Signed

Section Officer/Court Officer

YLKR

Signature of the Dealing Asst.

* * *

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A. NO.18 OF 1998 IN O.A. 1189 OF 1995

Dated, the 7th Sept., 1998.

BETWEEN :

M. Gopala Krishna Murthy .... Applicant

A N D

1. The Principal Accountant General, Audit-I, Andhra Pradesh, Hyderabad.

2. The Dy.Controller and Auditor General of India,(Admin) O/o The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi .... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN.)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER(JUDL.)

O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Mrs. Shakthi, Learned Counsel for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

Contd..2

2. The applicant has filed this application praying to review the order dt. 5.11.98 by which his original application came to be dismissed.

3. The main grounds on which the applicant prays for review order dt. 5.1.98 are as under :

a) The disciplinary authority and the appellate authority considered the report of the C.V.C. while imposing punishment without giving an opportunity or furnishing a copy of the C.V.C. report to him.

b) The Enquiry Officer had not properly examined him under Rule 14(18) of the CCS (CCA) Rules.

4. The respondents have filed a reply to this review application.

5. From the review application it is clear that the respondents before imposing the punishment on the applicant had secured the report of the C.V.C. and had not given a copy of the same to the applicant before accepting or considering the report of the C.V.C. while imposing the punishment.

6. The respondents main contention is that they were not influenced by the report of the C.V.C. but took an independent decision to impose the punishment on the applicant and that they were under no obligation to give a copy of the C.V.C. report to the applicant, for, they had not accepted or relied upon the said report of the C.V.C. mainly in imposing the punishment.

7. It is to be noted that the appellate authority and the disciplinary authority while passing the impugned orders failed to state anywhere in those orders to the

Contd..3

effect that they had obtained the report of the C.V.C. It is on this ground the applicant in the prayer column of the O.A. had specifically pleaded for calling for the report of the C.V.C.

8. While resisting the O.A. the respondents did not specifically state that they had obtained the report of the C.V.C. before imposing the punishment. Further, they did not furnish the report of the C.V.C. along with the enquiry reports. Therefore, this Bench was not in a position to advert to this important lacunae that had crept in the disciplinary proceedings.

9. It is as if the disciplinary authority can take any material without giving an opportunity to the delinquent employee. The Learned Counsel for the applicant in support of his contention that both the authorities before passing the impugned orders had failed to follow the principles of natural justice in not giving a copy of the report of the C.V.C. relied upon the decision of the Hon'ble Supreme Court in the case of State Bank of India and Others Vs. D.C. Aggarwal and another (reported in AIR 93 S.C. 1197).

10. The other ground on which the applicant prays for review of the order dt. 5.1.98 is that the Enquiry Officer failed to examine him under Rule 14(18) of the CCS (CCA) Rules. In fact, the Enquiry Officer has examined the applicant under the said rule. The rule provides examination of the delinquent only for the purpose of enabling him to explain the material available.

Contd...4

in evidence against him. The Enquiry Officer may have his own way of putting questions to the delinquent employee. No hard and fast rule can be evolved, as to the manner in which a delinquent employee has to be examined, under the said rule. Every Inquiry Officer adopts his own way of examining the delinquent employee and puts questions. We cannot find any fault with the Inquiry Officer. The very object of examining the delinquent employee is to enable him to explain the circumstances appearing against him.

11. When that is so the applicant was required to state those circumstances explicitly in his defence. Nobody prevented him to state or explain what all that would appear in evidence against him. If the Inquiry Officer had not put certain questions as regardsthe material appearing in evidence against him the applicant could have filed a written statement indicating or analysing the evidence of every witness examined on behalf of the disciplinary authority.

12. Therefore, in our humble view this ground cannot be considered as ground for reviewing the order dt. 5.1.98. Hence, this ground is ~~liable to be~~ rejected.

13. As regards non-furnishing the report of the C.V.C. the Hon'ble Supreme Court had considered in the case cited at supra and observed as follows :

> ".... . . It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error

Contd...5

in coming to ~~the~~ conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned Counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that ~~the~~ if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned Counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying documents is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into, nor it is necessary to consider validity of rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits, complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding o-f guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any exrror in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But

Contd..6

that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are, confidential copy, of which, could not be supplied cannot be accepted. Recommendation of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority."

14. In view of the above, we feel that the disciplinary authority and the appexllate authority had accepted and relied upon the report of the CVC without furnishing a copy of the same to the applicant.

15. Hence, the following order :

a) The Review Application is hereby accepted.

b) The order dt. 5.1.88 is hereby set aside.

c) The O.A. is posted for re-hearing.

16. With the above directions, the R.A. is disposed of.

No costs.

(B.S. JAI PARAMESHWAR)
MEMBER(J)

(R. RANGARAJAN)
MEMBER (A)

Dated, the 7th September, 1998.

CS

RA.18/98 in OA.1189/95

Copy to:-

1. The Principal Accountant General, Audit-I, Andhra Pradesh, Hyderabad.
2. The Dy. Controller and Auditor General of India (Admn) O/o The Comptroller &Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi.
4. One copy to Mr. K.Venkateswara Rao, Advocate, CAT., Hyd.
5. One copy to Mr. G.Parameswara Rao, Addl.CGSC., CAT., Hyd.
6. One copy to MBSJP M(J), CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.
9. M. Gopala Krishna murthy, S/o late mallikarjuna Sastry, EX - Audit officer, o/o the Principal Accountant General, Audit-I A.P., Hyderabad

srr

OA Restored to file

II COURT

TYPED BY CHECKED BY

COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : M(J)

DATED: 7/9/98

ORDER/JUDGMENT

M.A./R.A/C.P.NO. 18/98

in

C.A.NO. 1189/95.

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS RA

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

Copy to Counsel

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
11 SEP 1998
हैदराबाद न्यायपीठ
HYDERABAD BENCH

2. The applicant has filed this application praying to review the order dt. 5.11.98 by which his original application came to be dismissed.

3. The main grounds on which the applicant prays for review order dt. 5.1.98 are as under :

a) The disciplinary authority and the appellate authority considered the report of the C.V.C. while imposing punishment without giving an opportunity or furnishing a copy of the C.V.C. report to him.

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5. From the review application it is clear that the respondents before imposing the punishment on the applicant had secured the report of the C.V.C. and had not given a copy of the same to the applicant before accepting or considering the report of the C.V.C. while imposing the punishment.

6. The respondents main contention is that they were not influenced by the report of the C.V.C. but took an independent decision to impose the punishment on the applicant and that they were under no obligation to give a copy of the C.V.C. report to the applicant, for, they had not accepted or relied upon the said report of the C.V.C. mainly in imposing the punishment.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A. NO.18 OF 1998 IN O.A. 1189 OF 1995

Dated, the 7th Sept., 1998.

BETWEEN :

M. Gopala Krishna Murthy .... Applicant

A N D

1. The Principal Accountant General, Audit-I, Andhra Pradesh, Hyderabad.

2. The Dy.Controller and Auditor General of India,(Admin) O/o The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi .... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN.)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER(JUDL.)

ORDER

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Mrs. Shakthi, Learned Counsel for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

Contd..2

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11. When that is so the applicant was required to state those circumstances explicitly in his defence. Nobody prevented him to state or explain what all that would appear in evidence against him. If the Inquiry Officer had not put certain questions as regardsthe material appearing in evidence against him the applicant could have filed a written statement indicating or analysing the evidence of every witness examined on behalf of the disciplinary authority.

12. Therefore, in our humble view this ground cannot be considered as ground for reviewing the order dt. 5.1.98. Hence, this ground is ~~liable to be~~ rejected.

13. As regards non-furnishing the report of the C.V.C. the Hon'ble Supreme Court had considered in the case cited at supra and observed as follows :

> ". . . . . It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error

Contd...5

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8. While resisting the O.A. the respondents did not specifically state that they had obtained the report of the C.V.C. before imposing the punishment. Further, they did not furnish the report of the C.V.C. along with the enquiry records. Therefore, this Bench was not in a position to advert to this important lacunae that had crept in the disciplinary proceedings.

9. It is as if the disciplinary authority can take any material without giving an opportunity to the delinquent employee. The Learned Counsel for the applicant in support of his contention that both the authorities before passing the impugned orders had failed to follow the principles of natural justice in not giving a copy of the report of the C.V.C. relied upon the decision of the Hon'ble Supreme Court in the case of State Bank of India and Others Vs. D.C. Aggarwal and another (reported in AIR 93 S.C. 1197).

10. The other ground on which the applicant prays for review of the order dt. 5.1.98 is that the Enquiry Officer failed to examine him under Rule 14(18) of the CCS (CCA) Rules. In fact, the Enquiry Officer has examined the applicant under the said rule. The rule provides examination of the delinquent only for the purpose of enabling him to explain the material available

Contd...4

that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are, confidential copy, of which, could not be supplied cannot be accepted. Recommendation of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority."

14. In view of the above, we feel that the disciplinary authority and the appexllate authority had accepted and relied upon the report of the CVC without furnishing a copy of the same to the applicant.

15. Hence, the following order :

a) The Review Application is hereby accepted.

b) The order dt. 5.1.88 is hereby set aside.

c) The O.A. is posted for re-hearing.

16. With the above directions, the R.A. is disposed of. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

RA-18/98

केस संख्या
CASE NUMBER OA.1189/95
निर्णय का तारीख
Date of Judgement 7.9.98
प्रति तय्यार किया
Copy Made Ready 11/9/98

अनुभाग अधिकारी/उप रजिस्ट्रार
Section Officer / Dy. Registrar

in coming to ~~the~~ conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned Counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that ~~the~~ if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned Counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying documents is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits, complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding o-f guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any exrror in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But

Contd..6

FORM NO. 21 (See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD.

O.A. No. 71/980A.1189/ 1995

M.C.K. Murthy ... Applicant(s)

Versus

To Post. Accountant General, AP, Hyd 2 ors ... Respondent(s)

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4.	Reply Statement.	
5.	Rejoinder	
6.	Orders in (final Orders) 8-1-99.	34 to 39

1/2/99

Signature of dealing Head in Record Section.

Signature of S.O.

(1)

Form No.4.

(SEE Rule 12)

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH : HYDERABAD.

ORDER SHEET

RA.No. 71/98 in

O.A.No. 1189 of 1995

M. Gopala Krishna Murthy ..... Applicant(s)

Through M/s. ..... Advocate

VERSUS

The Pr. Accountant General Audit-I, Hyd & 2 ors

..... Respond

By.Mr. ..... CGSC.

Date	Note of the Registry	Order of
		01-01-199

Heard Mr.K.Venkateswara Rao for the app
and Mrs.Shakti for Mr.G.Parameshwara Rao for the respo

2. It is stated that in para-20 to 25 of the Judgement some observations were made by the Bench reappreciat the facts and evidences of the witnesses. If these observatio are kept in the Judgement then it may prejudice the case of t applicant when a future enquiry ordered. Hence, the learned counsel for the applicant requests for expunging of these observations after reappreciating the evidences. If there are no reappreciation of the evidences or any observations which will prejudice the case of the applicant then the RA may not stand. But if there is any reappreciation of the evidences an which may prejudice the case of the applicant in future the same will be examined.

3. Judgement reserved.

HBSJP
M(J)

HRRN
M(A)

8.1.99:
R.A. is dismissed. Vide OA

HBSJP
M(J)

HHRN
M(A)

64

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

~~THE HON'BLE MR. JUSTICE D.H. NASIR : VICE-CHAIRMAN~~
~~AND~~
THE HON'BLE MR.R.RANGARAJAN : MEMBER (A)
AND
~~THE HON'BLE MR.R.RAJENDRA PRASAD : MEMBER (A)~~
~~AND~~
THE HON'BLE MR.B.S.JAI PARAMESHWAR : MEMBER (J)

Review Application No. 71 of 1998
in
Original Application No. 1189 of 1995

The above Review Application has been filed for review of the Judgement of the Bench dated 25/9/98. of the Tribunal consisting of ~~Hon'ble Mr.Justice D.H.Nasir,Vice-Chairman~~ and Hon'ble Mr.R.Rangarajan,Member(A) and ~~Hon'ble Mr.R.Rajendra Prasad,Member(A)~~ Hon'ble Mr.B.S.Jai Parameshwar, Member(J) in Original Application No. 1189 of 1995.

Circulated as per Rule 49 of the Central Administrative Tribunal Rules of practice, 1993.

Submitted.

23/11/98

Post this RA
& MA No 932/98
for Admission 4/12

ANNEXURE
FORM OF INDEX.

List of papers in ~~MA / CP~~ / RA No. 71 of 98 in OA No. 1189 of 95

Serial No. of papers on record part-i	Date of papers or Date of filling	Description of papers	Remarks
	30-10-98	Petition & Affidavit	3. S. Copies

(2)

Memorandum of Review Application

(Under Section 22(3)(f) OF ADMINISTRATIVE TRIBUNAL'S ACT 1985

in the Central Administrative Tribunal at :: Hyderabad

Review Application 71 of 1998

in

O.A.No. 1189 of 1995

Between:-

M.GOPALA KRISHNA MURTHY. ... Applicant/Applicant

A N D

The Principal Accountant General Audit-I, A.P., Hyderabad.

2. The Deputy Controller & Audit General of India, (Admn) O/o.the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi. ... RESPONDENTS

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to review the judgement in O.A.No.1189/95 dated 29.9.1998 in so far as the findings/observations against the review applicant are concerned and order for deletion of the same as otherwise it would prejudice his case in the disciplinary ~~xxxxx~~ proceedings and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Hyderabad,

Dated :

Counsel for the Applicant

Received
DSrakti
18/11/98
for G. Parameswara Rao

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT:: HYDERABAD

REVIEW APPLICATION No. 71 of 1998

in

O.A.No. 1189 of 1995

Between:-

M.GOPALA KRISHNA MURTHY, S/o.Late Mallikarjuna Sastry, aged about 61 years, Ex-Audit Officer, O/o.the Principal Accountant General, Audit-I, A.P., Hyderabad resident of H.No.6-3-348/1, Dwarakapuri Colony, Punjagutta P.O., Hyderabad - 500 082. ... APPLICANT

A N D

The Principal Accountant General Audit-I, A.P., Hyderabad and 2 others. ... RESPONDENTS

A F F I D A V I T

I, M.Gopala Krishna Murthy, S/o.Late Mallikarjuna Sastry, Ex.Audit Officer, O/o.the Principal Accountant General Audit-I, A.P., Hyderabad, Resident of H.No. 6-3-348/1, Dwarakapuri Colony, Punjagutta, Hyderabad, aged about 61 years, do hereby solemnly and sincerely affirm and state as follows:-

1. I am the applicant herein and also in the main O.A. and as such I am well acquainted with the facts of the case

2. I submit that I filed the above O.A. to call for the records relating to office Order No.7 dated 31.8.1994 issu by the Principal Accountant General (Audit-I) A.P., Hyderab read with Order No.NIL dated 7.8.1995 issued by the Deputy Comptroller and Auditor General of India (Admn.), O/o.the Comptroller and Auditor General of India communicated thr Lr.No.Prl. AG-(AU)-1/Coordn.Cell/D.C.I/8-118/117, dated 4.9.1995 including the file relating to advice if any rendered by the Central Vigilence Commission and quash th same etc. The Hon'ble Tribunal was pleased to dismiss th said O.A. on 5.1.1998 without properly considering the material on record and relevant rules. I had therefore Review Application No.18/98 in O.A.No.1189/95 to review

judgement dated 5.1.1998. The Hon'ble Tribunal accepted the review application on 7.9.1998 and setaside the order dated 5.1.1998 and posted the O.A. for hearing. The above said O.A. was allowed by the Hon'ble Tribunal on 29.9.1998 and setaside the impugned order dated 31.8.1994 and the order of the Appellate Authority dated 7.8.1995 communicated to the applicant through Letter dated 4.9.1995. The Hon'ble Tribunal has however held that the respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of C.V.C.Contained in O.M. dated 2.3.1994 to the applicant and that the respondents shall consider the period of removal of the applicant from service from 31.8.1994 to this day in accordance with C.C.S.(CCA) Rules. The Hon'ble Tribunal directed that the respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of the order. The Applicant submits that the above said judgement to the extent of discussing the evidence and giving findings thereon requires to be reviewed for the following among other

G R O U N D S

(1) The Judgement of the Hon'ble Tribunal is an error apparent on the face of the record.

(2) The Judgement of the Hon'ble Tribunal is contrary to law, weight of evidence and the probabilities of the case.

(3) The Hon'ble Tribunal having setaside the order of removal on technical grounds for non supply of C.V.C. report ought not to have discussed the merits of the case evidence probabilities and findings thereon, thereby prejudicing the case of the applicant before thedisciplinary and the appellate authority causing irreperable damage to the applicant.

(4) The Hon'ble Tribunal erred in observing vide Para 11 that earlier to 9.10.1990 the applicant had meeting and dialogue with Sri P.V.Lokanatham and it is only during those meeting conversed together and had come to an understanding as regards the amount of bribe to the applicant. These observations are not borne on record and neither the inquiry officer, nor the disciplinary authority have arrived at such conclusion even remotely. Infact Sri A.R.K.Nageswara Rao Senior Assistant SW-4 in his reexamination on 22.7.1993 had stated that right from the Audit objection, Sri Lokanatham asked him to convince the Audit Officer to drop the objection. In this connection the observation of the Inquiry Officer in Para 7.2.3 may kindly be referred to

"Moreover the evidence tendered by Lokanatham and Nageswar Rao unhesitatingly establishes the fact that they had on 5.10.1990, circumbulated to the lodge of the C.O. and other members of Audit Party, not at the ~~xxxxx~~ letter's suggestion and invitation but as a result of their own deliberate pact and of their own sweet (and seedy) motive and volition. Lokanatham's story that he had approached the C.O. and his collegue Ramakrishna on 6.10.1990 also remains uncorroborated and cannot be relied, upon as a fact in evidence."

These observations of Inquiry Officer were not disputed by both the disciplinary authority and Appellate Authority and therefore the above observation of the Hon'ble Tribunal with great respect, are not based on record which will cause great prejudice to the applicant in administration of justice.

(5) The Hon'ble Tribunal erred in observing that Sri P.V.Lokanatham approached the applicant & agreed to earlier and offered the bribe of Rs.1,000/- (10 containing ~~10~~ currency notes) of Rs.100/- each). As per the version

of Sri P.V.Lokanatham, the applicant demanded the bribe amount and when he offered the same, the applicant accepted the same from right hand and kept in the left side pocket in his shirt. These observations are clearly in contravention of the Inquiry Officer who stated "this clearly establishes that the money was being forced into C.O's hands by Lokanatham".

(6) Having setaside the impugned orders of removal the Hon'ble Tribunal erred in observing in para 8 that the impugned orders are perfectly valid and justified and according to law.

(7) The Hon'ble Tribunal likewise erred in para 16 that the applicant had not examined any of the witnesses in support of his defence:- In this regard the Hon'ble Tribunal ought to have seen thatthe applicant could not examine any witnesses on his behalf for the reasons that all those present at the place of alleged trap were taken as prosecution witnesses and there was none left to be taken as defence witnesses and further the prosecution could not produce two of their witnesses and dropped three of the witnesses present on the day of inquiry, thereby the review applicant was deprived of cross examining the witnesses and proving his innocence.

(8) The Hon'ble Tribunal having held that the Inquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri P.V.Lokanatham erred in holding that the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket and these observations are for the disciplinary authority and appellate authority.

(9) The Hon'ble Tribunal erred in observing "we are not persuaded to accept the said contention that the trap was not a collusive one, is not necessary because such a finding would adversely affect his case on remand. The Hon'ble Tribunal erred in faiding to see that it is not for the applicant to include the objection once raised in the Audit report. In this regard the Hon'ble Tribunal ought to have seen that the Audit report's are edited and sent by Head Quarters offices not by the field officer like the applicant.

(10) The Hon'ble Tribunal erred in observing that the Enquiry Officer for the reasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant, and that he feel thatthe demand and acceptance of the bribe by the delinquent employee have to gather from the circumstances available in the case. The Enquiry Officer made a reasoned findings that there was no demand for bribe, and the disciplinary authority and the appellate authority have accepted the same. It is submitted that it is not for this Hon'ble Tribunal to appreciate the evidence and come to a different conclusion as decided by Supreme Court in the State of Tamilnadu and another Vs. Subrahmanyam (1996 Vol.33 ATC Page 370). The Hon'ble Tribunal unfortunate failed to appreciate the evidence rendered by K.R.Nageswar Rao Senior Assistant SW-4 in his reexamination on 22.7.93 wherein he had stated that right from the Audit objection, Sri Lokanatham asked him to convince the Audit Officer to drop the objection. In this connection the observation of the Inquiry Officer in para 7.2.3 may kindly be referred to.

(11) The Hon'ble Tribunal observation that it is not clearly brought out as to how Sri P.V.Lokanatham had a grievance against him. It is to be averred that the Audit party had raised an objection against P.V.Lokanatham for recovery of Rs.10,500/- and which he has to shell down besides monthly drop in emoluments as the objection relates to wrong pay fixation resulting the excess payment. Hence it is clear that P.V.Lokantham had a grievance against him. It is also to be stated that the Audit report is not prepared by the Field Parties. It is edited and issued by the Head Quarters office and any field officer like the applicant had nothing to do with the Audit report. This was misconstrued in the judgement. Audit Objections are prepared in duplicate and one copy is retained by the field party and other will be issued for reply from the executive like Medical Officer in this case. This is known to the disciplinary authority and also appellate authority. However it is observed by the learned Tribunal that there is no satisfactory explanation from the applicant which is not true as per the records.

Other grounds will be urged at the time of hearing.

It is therefore prayed that thisHon'ble Tribunal

may be pleased to review the judgement in O.A.No.

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1189/95 dated 29.9.1998 in so far as the findings/observations against the review applicant are concerned and order for deletion of the same as obherwise it would prejudice his case in the disciplinary proceedings and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Sworn
~~Swrong~~, and signed before me on this 30th day of ~~Oct~~ November, 1998 at Hyderabad.

DEPONENT

Before me

// ADVOCATE // HYDERABAD.

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

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ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31.8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Mo. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit Party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same ~~km~~ in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head quarters, that too after a lapse of amny days andafter service

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of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

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perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant x that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted the tainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham lodged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu and Anr. Vs. Subramaniam (1996 Vol.33 ATC page 317). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

> "The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

Contd...15

conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

Contd...

27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

Contd...17

30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

Contd..18

at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

Contd.. 19

influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the resppondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

Contd... 21

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

Contd.. 22

37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

केस संख्या
O.A 1189/95
29/8/98
30/8/98

(1) Incomplete petition without full details and sworn affidavit order Copy, date of Judgment etc.

(2) Service to be effected on the other side.

(3) Rule Provision to be mentioned.

Review Petition

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT: HYDERABAD

R.A.NO. OF 1998

in

O.A.No. 1189 of 1995

REVIEW APPLICATION

***

Review sent to Records on 30/10/98

Mr. K.Venkateswara Rao,

Counsel for the Applicant.

May be filed

R.A.81/98 IN O.A.1189/95

Pre-pronounced judgment in the above R.A. is placed for kind perusal.

HM(J)

HM(A)-I

To be listed on 8.1.98

(34)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A. 71 OF 1998

in

O.A. 1189 OF 1995

Dated, the 8th January, '99

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1.The Principal Accountant General
Audit-I, Andhra Pradesh,
Hyderabad.

2.The Deputy Comptroller and Auditor
General of India(Admin)
Office of the Comptroller & Auditor
General of India, Indraprastha
Estate, Bahadur Shah Zaffer Marg,
New Delhi-110 002.

3.The Comptroller & Auditor General of India,
Indraprastha Estate,
Bahadur Shah Zaffer Marg,
New Delhi - 110 002.

... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd...2

1. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Mrs. Shakthi for G. Parameswara Rao, Learned Standing Counsel for the respondents.

2. The applicant in the O.A. has filed this application praying to review the order dt. 29.9.98 passed in the O.A. for deleting certain observations made during the course of the order in the O.A.

3. Even though by the order dt. 29.9.98, we have set aside the orders impugned in the O.A. on the technical ground that the respondent authorities/had passed the impugned orders taking into consideration the report of the C.V.C., New Delhi without giving an opportunity to the applicant, the applicant has filed this application for reviewing the said order dt.29.9.98 on the following grounds :

(a) The Tribunal when set aside the impugned orders, on the technical ground on noting that the respondents relied on the report of the C without giving him an opportunity, should not have discussed the evidence and probabilities and findings thereon.

(b) The observations made in para 11 are against the findings recorded by the Inquiry Officer.

(c) The Tribunal erred in making an observation that the complainant P.V.Lokanatham approached the applicant as agreed to earlier and offered the bribe of Rs.1,000/- on demand made by the applicant. It is stated that these observations are clearly in contravention of the findings recorded by the Inquiry Officer.

(d) The observations made in para 8 are not called for.

(e) The observation that the applicant had not examined a witness in defence was not called for as some of the witnesses cited in the prosecution were dropped.

(f) This Tribunal should have seen that the Audit reports are edited and sent by the Head Quarters Office and any field Officer like the applicant had nothing to do with the Audit.

(g) The Tribunal failed to appreciate the evidence rendered by ARK Nageswara Rao, Senior Assistant, SW-4 and also to note that Lokanatham had a grievance against the applicant as he had raised objection regarding his stepping up of his pay.

4. During the course of hearing the learned Counsel brought to our notice the observations made in paras 22 and 25 of the order dt. 29.9.98 passed by this Tribunal and submitted that these observations may prejudice the case of the applicant when a future inquiry is ordered.

5. No doubt, the impugned order was set aside on the ground that the respondent authorities while passing these orders had taken into consideration the report of the CVC without giving an opportunity to the applicant. It is to be noted that the applicant had not specifically raised this point in the O.A. When that is so, the respondent authorities had no occasion to meet this point. In fact, this Tribunal earlier by its order dt. 5.1.98 had dismissed the O.A. Then the applicant raised this point in the R.A. and attempted to contend that the impugned orders passed by the respondent authorities taking into consideration the report of the CVC were illegal. During the hearing of the R.A. 18 of 98, we after convincing that the respondent authorities had in fact taken into consideration the report of the CVC without giving him an opportunity, allowed the said R.A. 18/98 on 7.9.98 and the O.A. was posted for re-hearing.

6. Had the applicant taken this specific ground in the O.A. itself and had he confined his arguments only to this point then we could have answered only that point. But the applicant had addressed the arguments on merits to the O.A. while challen ing the impugned orders.

7. Therefore, it cannot be said that we should not have expressed any opinion on the merits of the case when we were setting aside the impugned orders on the technical ground.

Contd..

8. The observations made in para 11 and 16 are borne out by the inquiry records. Normally the C.B.I. will not register a case against a public servant unless it is satisfied that the public servant is demanding bribe from the complainant.

9. During the course of the arguments the applicant made a ground that a false case was foisted against him by the complainant in collusion with the CBI authorities. While answering the said point the Tribunal was naturally bound to make observations whether the CBI had any grievance against the applicant to collude with the complaint to foist a false case; and his ground was worth considering.

10. The observations made in para 8 are the contentions raised by the respondents. The respondents filed their counter and their contentions are incorporated in para 8 of the order. It is what they say that the impugned orders are perfectly and legally valid. It is not the observations of the Bench.

11. The Learned Counsel for the applicant also brought to our notice the observations made in para 22 to 25. These observations were required to be made as they are the contentions raised by the applicant in the O.A. Therefore, it cannot be said that these observations were not required to be made by this Bench. As already observed the applicant had not taken the contention--the technical groundon which we set aside the impugned orders in the O.A. and argued the application on merits.

12. When certain grounds have been raised by the applicant challenging the impugned orders and while considering these grounds, observations are naturally to be made by the Tribunal.

13. Hence, it cannot be said that these observations pointed out by the learned Counsel for the applicant during the hearing of the R.A. were not necessary or not called for.

Contd...5

13. The applicant pressed for deletion of these observations as it may affect the future inquiry ordered in the order dt. 29.9.98. The respondent authorities are required to pass a suitable order after giving the applicant a copy of the report of the CVC and considering his explanation thereto. At best we may observe that the respondent authorities may take an independent decision in the matter without being guided or influenced by any of the observations made by us during the course of the order.

14. We absolutely see no reasons to delete the observations as contended by the applicant. The R.A. thus lacks merits. There is no error apparent on record in the order dt. 29.9.98.

15. Hence the R.A. is dismissed. No order as to costs.

(B.S. JAI PARAMESHWAR)
MEMBER(J)
8.1.99

(R.RANGARAJAN)
MEMBER(A)

Dated, the 8th January, '99.

CS

IST AND IIND COURT

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR :
VICE CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

DATED: 8/1/99

~~ORDER~~/JUDGMENT

M.A./R.A./~~C.P.~~NO. 71/98

In

O.A. NO. 1189/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

RA
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

8 copies.

per. M. Gopala Krishna murthy, s/o late Mallikharjuna Sastry, Ex-Audit officer, o/o the Principal Accountant General, Audit-I, A.P., Hyderabad R/o H.No. 6-3-348/1, Dwarakapuri colony, Punjagutta P.O. Hyd.

1. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Mrs. Shakthi for G. Parameswara Rao, Learned Standing Counsel for the respondents.

2. The applicant in the O.A. has filed this application praying to review the order dt. 29.9.98 passed in the O.A. for deleting certain observations made during the course of the order in the O.A.

3. Even though by the order dt. 29.9.98, we have set aside the orders impugned in the O.A. on the technical ground that the respondent authorities had passed the impugned orders taking into consideration the report of the C.V.C., New Delhi without giving an opportunity to the applicant, the applicant has filed this application for reviewing the said order dt.29.9.98 on the following grounds :

(a) The Tribunal when set aside the impugned orders, on the technical ground on noting that the respondents relied on the report of the CVC without giving him an opportunity, should not have discussed the evidence and probabilities and findings thereon.

(b) The observations made in para 11 are against the findings recorded by the Inquiry Officer.

(c) The Tribunal erred in making an observation that the complainant P.V.Lokanatham approached the applicant as agreed to earlier and offered the bribe of Rs.1,000/- on demand made by the applicant. It is stated that these observations are clearly in contravention of the findings recorded by the Inquiry Officer.

(d) The observations made in para 8 are not called for.

(e) The observation that the applicant had not examined any witness in defence was not called for as some of the witnesses cited in the prosecution were dropped.

(f) This Tribunal should have seen that the Audit reports are edited and sent by the Head Quarters Office and any field Officer like the applicant had nothing to do with the Audit.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A. 71 OF 1998

in

O.A. 1189 OF 1995

Dated, the 8th January, '98

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1.The Principal Accountant General
Audit-I, Andhra Pradesh,
Hyderabad.

2.The Deputy Comptroller and Auditor
General of India(Admin)
Office of the Comptroller & Auditor
General of India, Indraprastha
Estate, Bahadur Shah Zaffer Marg,
New Delhi-110 002.

3.The Comptroller & Auditor General of India,
Indraprastha Estate,
Bahadur Shah Zaffer Marg,
New Delhi - 110 002.

... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd...2

(g) The Tribunal failed to appreciate the evidence rendered by ARK Nageswara Rao, Senior Assistant, SW-4 and also to note that Lokanatham had a grievance against the applicant as he had raised objection regarding his stepping up of his pay.

4. During the course of hearing the learned Counsel brought to our notice the observations made in paras 22 and 25 of the order dt. 29.9.98 passed by this Tribunal and submitted that these observations may prejudice the case of the applicant when a future inquiry is ordered.

5. No doubt, the impugned order was set aside on the ground that the respondent authorities while passing these orders had taken into consideration the report of the CVC without giving an opportunity to the applicant. It is to be noted that the applicant had not specifically raised this point in the O.A. When that is so, the respondent authorities had no occasion to meet this point. In fact, this Tribunal earlier by its order dt. 5.1.98 had dismissed the O.A. Then the applicant raised this point in the R.A. and attempted to contend that the impugned orders passed by the respondent authorities taking into consideration the report of the CVC were illegal. During the hearing of the R.A. 18 of 98, we after convincing that the respondent authorities had in fact taken into consideration the report of the CVC without giving him an opportunity, allowed the said R.A. 18/98 on 7.9.98 and the O.A. was posted for re-hearing.

6. Had the applicant taken this specific ground in the O.A. itself and had he confined his arguments only to this point then we could have answered only that point. But the applicant had addressed the arguments on merits to the O.A. while challenging the impugned orders.

7. Therefore, it cannot be said that we should not have expressed any opinion on the merits of the case when we were setting aside the impugned orders on the technical ground.

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8. The observations made in para 11 and 16 are borne out by the inquiry records. Normally the C.B.I. will not register a case against a public servant unless it is satisfied that the public servant is demanding bribe from the complainant.

9. During the course of the arguments the applicant made a ground that a false case was foisted against him by the complainant in collusion with the CBI authorities. While answering the said point the Tribunal was naturally bound to make observations whether the CBI had any grievance against the applicant to collude with the complaint to foist a false case; and his ground was worth considering.

10. The observations made in para 8 are the contentions raised by the respondents. The respondents filed their counter and their contentions are incorporated in para 8 of the order. It is what they say that the impugned orders are perfectly and legally valid. It is not the observations of the Bench.

11. The Learned Counsel for the applicant also brought to our notice the observations made in para 22 to 25. These observations were required to be made as they are the contentions raised by the applicant in the O.A. Therefore, it cannot be said that these observations were not required to be made by this Bench. As already observed the applicant had not taken the contention--the technical groundon which we set aside the impugned orders in the O.A. and argued the application on merits.

12. When certain grounds have been raised by the applicant challenging the impugned orders and while considering these grounds, observations are naturally to be made by the Tribunal.

13. Hence, it cannot be said that these observations pointed out by the learned Counsel for the applicant during the hearing of the R.A. were not necessary or not called for.

Contd...5

13. The applicant pressed for deletion of these observations as it may affect the future inquiry ordered in the order dt. 29.9.98. The respondent authorities are required to pass a suitable order after giving the applicant a copy of the report of the CVC and considering his explanation thereto. At best we may observe that the respondent authorities may take an independent decision in the matter without being guided or influenced by any of the observations made by us during the course of the order.

14. We absolutely see no reasons to delete the observations as contended by the applicant. The R.A. thus lacks merits. There is no error apparent on record in the order dt. 29.9.98.

15. Hence the R.A. is dismissed. No order as to costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER ..... RA 71/98 OA 1189/95
निर्णय दिनांक
DATE OF JUDGEMENT 8-1-99
प्रति तैयार की गई
COPY MADE READY ON 12-1-99

अनुभाग अधिकारी/न्यायालय अधिकारी
Section Officer/Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.282/99

IN

O.A.NO.1189/95

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprasthat Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

Mr.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 18-3-99 to 18-5-99 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as it deem fit and proper.

COUNSEL FOR PETITIONER

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH)

AT HYDERABAD

M.A.No. 282/99

IN

O.A.NO.1189/95

Between:

M.Gopala Krishna Murthy .....Applicant

AND)

The Principal Accountant General(Audit)I,
Andhra Pradesh, Hyderabad and others .....Respondents

A F F I D A V I T

I, V.Balakrishna Murthy, son of V.Narasimha Rao aged about 55 years, do hereby solemnly affirm and state as follows:

1. I am the Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, as such, I am fully acquainted with all the facts of the case.

2. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicant/ Respondent in O.A.No.1189/95 has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case was over, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT

उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (Au) I
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

3. I submit that on the Misc.Application No.932/98 filed by this petitioner, the Hon'ble Tribunal was pleased to grant extention of time till 18-3-99 for compliance with the orders dated 29-9-98. In this connection, I submit that according to the letter No.511-GE II/188-90-III of the Assistant Comptroller and Auditor General (N), New Delhi, the case of Sri M.Gopalakrishna Murthy, applicant in O.A.No.1189/95 needs consultation with the UPSC and may take some more time. It is therefore, necessary that further extension of time is granted in that regard.

2nd PAGE CORRECTIONS

ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT

उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा)
o/o. the Principal Accountant General (Audit)
आंध्र प्रदेश, हैदराबाद - 500 004.
Andhra Pradesh, Hyderabad - 500 004.

In view of the foregoing submission, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 2 months from 18-3-99 to 18-5-99 for compliance with the orders dated 29-9-98 in O.A.No.1189/95 and to pass such other order or orders as it may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this
the 17th day of March, 1999

ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

DEPONENT

उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (A.)I
आंध्र प्रदेश, हैदराबाद-500004.
Andhra Pradesh, Hyderabad - 500 004.

GARGI KAUL
ASST.COMPTR.& AP.GENL N)

No.511-GE II/188-90-III

भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय
10, बहादुरशाह जफर मार्ग,
नई दिल्ली - 110 002
OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL
OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002
दिनांक / DATE_____

Dear Sir

Kindly refer to your Fax dated 8-3-99 regardin disciplinary case against Shri. M.G.K Murthy, retired Audit Officer.

2. Ministry of Finance has now intimated that the ca e needs consultation with UPSC and may take some mor time. A copy of MOF(Expr) I.D No.14011/1/99-EG date: 15-3-99 is enclosed for your information and neces ary action.

Yours sincerely,

(Gargi Kaul)

Shri. Surinder Pal
Prl.Accountant General (Audit)-I
Andhra Pradesh,
Hyderabad.

दू० भा० / Phone : 3231440, 3231761
टैलेक्स / Telex : 031-65981, 031-65847
तार / Telegram : ARGEL NEW DELHI
फैक्स / Fax : 91-11-3235446, 91-11-3234014

MOST IMMEDIATE
COURT CASE

By Spl. messenger.

Ministry of Finance
Department of Expenditure
E.G.Branch

(5)

Subject:- Disciplinary case against Shri M.G.K.Murthy, retired Audit Officer of the office of the Principal Accountant General(Audit), Andhra Pradesh, Hyderabad.

Office of the C&AG may please refer to their U.O. No.350-GE.II/188-90-III dated 22-2-99 on the subject mentioned above.

2. Since the disciplinary case against Shri M.G.K. Murthy is to be examined in consultation with the UPSC, it may take some time. Office of the C&AG is, therefore, requested to seek extension of time from CAT, Hyderabad Bench.

3. This may please be treated as Most Urgent.

Narain Das.

(Narain Das)
Under Secretary to the Govt.of India
Tele No.3012604

Office of the C&AG
(Ms. Gargi Kaul, Asstt. C&AG(N)
M/o Fin(Exp)I.D.No.C-14011/1/99-EG dt.15.3.99

Legislation of Rules

In the CAT at Hyderabad

MA

In

OA 1189/95

Application for Condonation of Delay

30/3/99

B. NARASIMHA SHARMA
Sr. Central Govt.
Standing Counsel,
Central Administrative,
Tribunal, Hyderabad.

Regularised

Fax Message No.....dated.....

2

(152)C

148/C

THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA.No.932/98 in OA.1189/95

Between:

Dated:18.1.1999

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller & Auditor General of India (Admn), O/o The Comptroller and Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.

.. Applicants

And

M. Gopala Krishna Murthy

.. Respondents

Counsel for the Applicants : Mr.G.Parameswara Rao

Counsel for the Respondent : Mr.K.Venkateswara Rao

CORAM:

THE HON'BLE MR. R.RANGARAJAN : MEMBER (A)
THE HON'BLE MR.B.S.JAI PARAMESWAR : MEMBER (J)

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Ms.Shakti for Sri G.Parameswara Rao for the applicant and Sri Venkateswara Rao for the Respondents.

The respondents in the OA., have filed this Miscellaneous Application for extension of time.

In the O.A., while setting aside the impugned orders, we passed the Judgment on 29.9.1998 with certain directions.

The learned counsel for the applicant submits that in view of Rule 9(2) (a) of CCS (Pension) Rules, 1972, the respondents are not competent to file this M.A., for extension of time.

The learned counsel for the Respondents in the O.A. in their counter affidavit submits that the matter is under process by Govt., of India. The case is under process.~~xxxxx~~ It is not a point for consideration in this M.A. The M.A., relates to extension of time for implementation of the Judgment. As the applicant was working in the Respondents' Organisation, it is for the Respondents' Organisation wh who should process the case for getting necessary orders from the Competent Authority in accordance with the Rules. Hence consideration of any Rule at this juncture in this M.A., does not arise.

In view of the stated above ~~xxx~~ two months time is granted from today for implementation of the Judgment.

The M.A., is disposed of. No costs.

Sd/-
Section Officer

Copy to:-

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyd.
2. The Dy.Comptroller & Auditor General of India (Admn.), O/o The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.

Contd.....

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.
4. One copy to Mr.G.Parameswara Rao, Advocate, CAT., Hyd.
5. One copy to Mr.K.Venkateswara Rao, Advocate, CAT., Hyd.

HRRN/HBSJP

GENERAL / ORIGINAL

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH CASE

M.A.NO. 282 OF 1999

IN

O.A. NO. 1189 1995

Petition for extension of Time.

Mr. B. Narasimha Sarma
COUNSEL FOR THE APPLICANTS

AND

Mr. K. Venkateshwar Rao
Sr. ~~Addl.~~ ~~Standing~~ Counsel ~~for C.G. Rlys.~~

MA.282/99 in OA.1189/95.

9-4-99.

Heard Mr. Jacob for Mr. B.N. Sharma for the applicants in the MA and Mr. K. Venkateswara Rao for the respondents in the MA.

The learned counsel for the respondents in the MA has no objection to grant time as prayed for in this MA. Hence the extention of time is granted till 18-5-99 for compliance of the order dated 29-9-98.

The MA is disposed of. No costs.

HBSJP
M(J)

HRRN
M(A)

ANNEXURE
FORM OF INDEX

List of Papers in MA/~~CP/RP~~/No. 590/99 in OA. No. 189/95

Serial No. of Papers on record Part-I	Date of Papers or Date of filing	Description of Papers	Remarks
	16/7/99		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO 590/99

IN

O.A.NO.1189/95

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg; New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 (3) OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1985

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 6 months from 18-5-99 to 17-11-99 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as it deem fit and proper.

COUNSEL FOR PETITIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

M.A.No.590/99

IN

O.A.NO.1189/95

Between:

M.Gopala Krishna Murthy .....Applicant

AND

The Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad and others .....Respondents

A F F I D A V I T

I, Mohinder Singh, son of Sri Karnail Singh aged about 46 years, do hereby solemnly affirm and state as follows:

1. I am the Senior Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, as such, I am fully acquainted with all the facts of the case.

2. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicant/ Respondent in O.A.No.1189/95 has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case was over, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR

K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT

मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महालेखाकार
Sr. Dy. Accountant General (Admn.)
O/o. प्रधान महालेखाकार (लेखापरीक्षा-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission New Delhi to the applicant.

c) The resondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

3. I submit that on the Misc.Application No.282/99 filed by this petitioner, the Hon'ble Tribunal was pleased to grant extension of time till 18-5-99 for compliance with the orders dated 29-9-98. In this connection, I submit that according to the letter No.250 LC/225-97 dated 17-5-99 of the Deputy Director (Legal), Office of the Comptroller and Auditor General of India, New Delhi, the case of Sri M.Gopalakrishna Murthy, applicant in O.A.No.1189/95 has been referred to Ministry of Finance for Presidential sanction for further action under Central Civil Services (Pension) Rules. The matter is under the consideration of the Government and Presidential sanction is yet to be received.

2nd PAGE CORRECTIONS

ATTESTOR
E. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

4. It is further submitted that, as the consideration of the Government and Presidential sanction is yet to be received, the applicants herein have filed M.A. 410/99 for further extension of time for implementation of the directions of this Hon'ble tribunal passed in the above O.A. The said M.A. came up on 4-6-99 and this Hon'ble Tribunal was pleased to dismiss the same as none on either side were present. In this regard it is submitted that, Additional Standing Counsel for Central Government who is appearing in the above case was engaged in the other Court of this Hon'ble Tribunal when the said M.A. was called, and as a result he could not attend. It is learnt that on the same day the learned Counsel appearing for the Government represented before this Hon'ble Tribunal and the Hon'ble Tribunal was pleased to direct him to file a fresh M.A. seeking for extension of time for implementing the judgement. Further according to the letter No.ID No.C-14011/1/99-EG, dated 28-5-99 of the Ministry of Finance, Department of Expenditure addressed to Comptroller and Auditor General of India, the Union Public Service Commission is yet to be consulted and it may take some more time to arrive at any final decision in respect of the Disciplinary case against Sri M.Gopala Krishna Murthy. Hence this M.A. for further extension of time.

3rd PAGE CORRECTIONS

DEPONENT

ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

In view of the foregoing submission, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 6 months from 18-5-99 to 17-11-99 for compliance with the orders dated 29-9-98 in O.A.No.1189/95 and to pass such other order or orders as it may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this
the 16th day of July, 1999

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

R SIVASUBRAMANIAN
ASSTT. COMPT. & AR. GENL(N)

No. 851-GE.II/188-90-III

भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय
10, बहादुरशाह जफ़र मार्ग,
नई दिल्ली - 110 002
OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL
OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002

दिनांक / DATE 24.6.99

Dear [illegible],

Kindly refer to your letter No. C Cell/CC-1/8.22/MA-282/99 dated 11.5.99 about issue of Presidential order in the disciplinary case against Shri MGK Murthy, retired Audit Officer.

2. A copy of the interim reply received from Ministry of Finance in this regard is forwarded for your kind information.

Yours sincerely

(R Sivasubramanian)

Shri Surinder Pal,
Pr. Accountant General (Audit)-I,
Andhra Pradesh,
HYDERABAD.

दूरभाष / Phone : 3231440, 3231761
टेलेक्स / Telex : 031-65981, 031-65847
तार / Telegram : ARGEL NEW DELHI
फैक्स / Fax : 91-11-3235446, 91-11-3234014

MOST IMMEDIATE
COURT CASE

Ministry of Finance
Department of Expenditure

Subject:- Issue of Presidential orders in respect of disciplinary case against Shri M.G.K.Murthy, retired Audit Officer.

Office of the C&AG may please refer to their letter No.626-GE.II/188-90-III dated 17.5.99 on the subject mentioned above.

2. As the UPSC is yet to be consulted and it may take some time more to arrive at any final decision in respect of the disciplinary case against Shri M.G.K.Murthy, office of the C&AG is requested to take further extension of time from CAT, Hyderabad Bench.

(Narain Das)
Under Secretary to the Govt.of India
Tele No.3012604

Office of the C&AG
(Ms.Meenakshi Gupta, Asstt.C&AG(N)
M/o Fin.U.O.No.C-1207/1/99-EG dt. 28.5.99

232

THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:AT(HYD)

MA.NO. 282/1999

IN

OA.NO. 1189/1995

Between: Date: 9-4-99

1. The Principal Accountant General (Audit-I) AP,Hyderabad.
2. The Deputy Controller and Auditor General Bahadurshah Zafar Marg,New delhi Indrapraastha Estate.
3. The Comptroller And Auditor General of India Indrapraastha Estate,Bahadurshah Zaffar Marg New delhi.

...Applicants

And

Mr.Gopalakrishna Murthy ...Respondent

Counsel for the Applicants ...C.Narasimha Sarma

Counsel for the Respondent ...K.Venkateshwara Rao

CORAM:

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR: MEMBER (JUDL)

*** ****

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Mr.Jacob for Mr.D.N.Sharma for the applicants in the MA and Mr.K.Venkateswara Rao, for the respondent in the MA.

The learned counsel for the respondent in the MA has no objection to grant time as prayed for in this MA. Hence the extension of time is granted till 12-5-99, for compliance of the order dated.22-3-1999.

The MA is disposed of No Costs.

Sd/-xxx
Section Officer.

Copy to:-

1. The Principal Accountant General(Audit-I) AP,Hyderabad.
2. The Dy.Comptroller and Auditor General of India,C/o the Auditor General,Indrapraastha Estate,New delhi.
3. The Comptroller and Auditor General of India,Indrapraastha Estate,Bhadurshah Zaffar Marg,New delhi.
4. One copy to Mr. D.N.Sharma,Sr.CGSC,CAT,Hyderabad.
5. One copy to Mr.K.Venkateshwarrao,Advocate,CAT,Hyderabad.
6. One Spare.

प्रमाणित प्रति
CERTIFIED TRUE COPY

MA 282/99 in OA 1189/95

9.4.99

12.4.99

Certified
Court Officer
Central Administrative Tribunal
HYDERABAD BENCH.

2/2

Adm

Memo of appearance, my

M. Madhavi

Reg:- Extension of time

In the CAT Hyd Bench

MA NO of 99

OA NO 1189 of 95

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
प्राप्ती
RECEIVED
16 JUL 1999
2724
हैदराबाद न्यायपीठ
Hyderabad Bench

Extension of Time

V. Vinodkumar
Adcan Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
वापसी
RETURNED
23 JUL 1999
हैदराबाद न्यायपीठ
Hyderabad Bench

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
पुन-प्रस्तुती
RE-PRESENTED
23 JUL 1999
हैदराबाद न्यायपीठ
Hyderabad Bench

260

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH, HYDERABAD

MA.NO. 410/99

IN

OA.NO. 1189/95

Between Date. 4-6-99

1. The Principal Accountant General(Audit.I)
A.P.Hyderabad.
2. The Dy.Controller and Auditor General
of India(Admn) O/o Comptroller & Auditor General
3. Indrapastha Estate,Bahadurshah Zafar Marg,New delhi.
3. The Comptroller and Auditor General of India
Indraprastha Estate,Bahadurshah Zaffer Margh
New delhi.

..Applicants

And

M.Gopalakrishna Murthy ..Respondent

Counsel for the applicants : V. Venkateswara Rao, Addl. Case
Counsel for the Respondent : K. Venkateswara Rao.

CORAM:

THE HON'BLE MR.R.RANGARAJAN,MEMBER(ADMN)

THE HON'BLE MR.B.SJAI PARAMESHWAR,MEMBER(JUDL)

****

NONE ON EITHER SIDE. The MA is dismissed No costs.

Sd/-XXX
Section Officer.

प्रमाणित प्रति
CERTIFIED TRUE COPY
MA 410/99
OA 1189/95
4-6-99
9-6-99
Central Administrative Tribunal
HYDERABAD BENCH.

60. cmd-Todd
CC-I
6-7-99

27
6/7/99

MA.590/99 in OA.1189/95

Dt. 29.7.99

Heard Mr. V. Vinod kumar for the ~~respondents~~ applicants in the MA. and Mr. K. Venkateswara Rao for respondent in MA.

MA is not opposed.

Time granted as prayed for.

MA is disposed of.

HRRN
M(A)

BJP
M(J)

Edlension of time

केस केब/BENCH CASE
साधारण/GENERAL

M.A.No. 590 OF

IN

O.A.No. 1189 OF 19

Mr. _____

COUNSEL FOR THE APPLICANT

AND

Mr. V. Vinod Kumar

~~Sr~~.Addl.Standing Counsel for C.G. Rlys.

Mr. K. Venkateswarlu
Advocate

ANNEXURE
FORM OF INDEX

List of Papers in MA/~~CP/RP~~/No. 590/99 in OA. No. 188/99

Serial No. of Papers on record Part-I	Date of Papers or Date of filing	Description of Papers	Remarks
	14/7/99.		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.590/99

IN

O.A.NO.1189/95

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.6 (3) OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 6 months from 18-5-99 to 17-11-99 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as it deem fit and proper.

COUNSEL FOR PETITIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

M.A.No.870 /99

IN

O.A.NO.1189/95

Between:

M.Gopala Krishna Murthy .....Applicant

AND

The Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad and others .....Respondents

A F F I D A V I T

I, Mohinder Singh, son of Sri Karnail Singh aged about 46 years, do hereby solemnly affirm and state as follows:

1. I am the Senior Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, as such, I am fully acquainted with all the facts of the case.

2. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicant/ Respondent in O.A.No.1189/95 has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case was over, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प
O/o. the Prl. Accountant General Audi
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 0

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission New Delhi to the applicant.

c) The resondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

3. I submit that on the Misc.Application No.282/99 filed by this petitioner, the Hon'ble Tribunal was pleased to grant extension of time till 18-5-99 for compliance with the orders dated 29-9-98. In this connection, I submit that according to the letter No.250 LC/225-97 dated 17-5-99 of the Deputy Director (Legal), Office of the Comptroller and Auditor General of India, New Delhi, the case of Sri M.Gopalakrishna Murthy, applicant in O.A.No.1189/95 has been referred to Ministry of Finance for Presidential sanction for further action under Central Civil Services (Pension) Rules. The matter is under the consideration of the Government and Presidential sanction is yet to be received.

2nd PAGE CORRECTIONS

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A P , H Y D E R A B A D.

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

4) It is further submitted that, as the consideration of the Government and Presidential sanction is yet to be received, the applicants herein have filed M.A. 410/99 for further extension of time for implementation of the directions of this Hon'ble tribunal passed in the above O.A. The said M.A. came up on 4-6-99 and this Hon'ble Tribunal was pleased to dismiss the same as none on either side were present. In this regard it is submitted that, Additional Standing Counsel for Central Government who is appearing in the above case was engaged in the other Court of this Hon'ble Tribunal when the said M.A. was called, and as a result he could not attend. It is learnt that on the same day the learned Counsel appearing for the Government represented before this Hon'ble Tribunal and the Hon'ble Tribunal was pleased to direct him to file a fresh M.A. seeking for extension of time for implementing the judgement. Further according to the letter No.ID No.C-14011/1/99-EG, dated 28-5-99 of the Ministry of Finance, Department of Expenditure addressed to Comptroller and Auditor General of India, the Union Public Service Commission is yet to be consulted and it may take some more time to arrive at any final decision in respect of the Disciplinary case against Sri M.Gopala Krishna Murthy. Hence this M.A. for further extension of time.

3rd PAGE CORRECTIONS

ATTESTOR

K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Pri. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

In view of the foregoing submission, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 6 months from 18-5-99 to 17-11-99 for compliance with the orders dated 29-9-98 in O.A.No.1189/95 and to pass such other order or orders as it may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this
the 16th day of July, 1999

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

R SIVASUBRAMANIAN
ASSTT. COMPT. & AR. GENL(N)

No. 851-CE.II/188-90-III

भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय
10, बहादुरशाह जफर मार्ग,
नई दिल्ली - 110 002
OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL
OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002

दिनांक /-DATE 24.6.99

Dear Shri

Kindly refer to your letter No. C Cell/CC-1/8.22/MA-282/99 dated 11.5.99 about issue of Presidential order in the disciplinary case against Shri MGK Murthy, retired Audit Officer.

2. A copy of the interim reply received from Ministry of Finance in this regard is forwarded for your kind information.

Regards,

Yours sincerely

(R Sivasubramanian)

Shri Surinder Pal,
Pr. Accountant General (Audit)-I,
Andhra Pradesh,
HYDERABAD.

दू भा / Phone : 3231440, 3231761
टेलेक्स / Telex : 031-65981, 031-65847
तार / Telegram : ARGEL NEW DELHI
फैक्स / Fax : 91-11-3235446, 91-11-3234014

MOST IMMEDIATE
COURT CASE

Ministry of Finance
Department of Expenditure

Subject:- Issue of Presidential orders in respect of disciplinary case against Shri M.G.K.Murthy, retired Audit Officer.

Office of the C&AG may please refer to their letter No.626-GF II/188-90-III dated 17.5.99 on the subject mentioned above.

2. As the UPSC is yet to be consulted and it may take some time more to arrive at any final decision in respect of the disciplinary case against Shri M.G.K.Murthy, office of the C&AG is requested to take further extension of time from CAT, Hyderabad Bench.

(Narain Das)
Under Secretary to the Govt.of India
Tele No.3012604.

To
The Addl. Dy. C&AG
(Ms.Meenakshi Gupta, Asstt.C&AG(N))
Audit-II, D.No.G-1201/1/99-EG dt. 28.5.99

232

THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH,AT HYD

MA.NO. 282/1999

IN

OA.NO. 1189/1995

Between: Date: 9-4-99

1. The Principal Accounttant General (Audit-I) AP,Hyderabad.
2. The Deputy Controller and Auditor General Bahadurshah Zafar Marg,New delhi Indra,astha Estate.
3. The Comptroller And Auditor General of India, Indraprastha Estate,Bahadurshah Zaffar Marg New Delhi.

...Applicants

Mr.Gopalakrishna Murthy

...Respondent

Counsel for the Applicants ...C.Narasimha Sarma

Counsel for the Respondent ...K.Venkateshwara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN : MEMBER : (ADMN)

THE HON'BLE MR. B.S.JAI PARAMESHWAR: MEMBER (JUDL)

**** ****

THE TRIBUNAL MADE THE FOLLOWING ORDERS.

Heard Mr.Jacob for Mr.M.Sharma for the applicants in the MA and Mr.K.Venkateswara Rao, for the respondent in the MA.

The learned counsel for the respondent in the MA has no objection to grant time as prayed for in this MA. Hence the extension of time is granted till 12-5-99, for compliance of the order dated.23-3-1999.

The MA is disposed of No Costs.

Sd/-xxx
Section Officer.

Copy to:-

1. The Principal Accountant General(Audit-I) AP,Hyderabad.
2. The Dy.Comptroller and Auditor General of India,C/o.the Auditor General,Indraprastha Estate,New delhi.
3. The Comptroller and Auditor General of India,Indraprastha Estate,Bhadurshah Zaffar Marg,New delhi.
4. One copy to Mr. D.N.Bhara,Sr.CGSC,CAT,Hyderabad.
5. One copy to Mr.K.Venkateshwara Rao,Advocate,CAT,Hyderabad.
6. One Spare.

CERTIFIED TRUE COPY

MA 282/99 in OA 1189/95

9.4.99

12.4.99

Section Officer
Central Administrative Tribunal
HYDERABAD BENCH.

2/2

and call 10/5/99

In the CAT Hyd Bench

OA No 1189 of 95

MA No of 99

Extension of Time

V. Vinodkumar
Advocate

960

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH, HYDERABAD

MA.NO. 410/99

IN

OA.NO. 1109/95

Between Date. 4-6-99

1. The Principal Accountant General(Audit.I)
A.P.Hyderabad.
2. The Dy.Controller and Auditor General,
of India(Admn) O/o Comptroller & Auditor General
3. Indrapastha Estate,Bahadurshah Zafar Marg,New delhi.
3. The Comptroller and Auditor General of India
Indraprastha Estate,Bahadurshah Zaffer Margh
New delhi.

..Applicants

And

M.Gopalakrishna Murthy ..Respondent

Counsel for the applicants : V. Venkateswara Rao, Addl. Cgsc
Counsel for the respondent : K. Venkateswara Rao.

CORAM:

THE HON'BLE MR.R.RANGARAJAN,MEMBER(ADMN)

THE HON'BLE MR.B.SJAI PARAMESHWAR,MEMBER(JUDL)

****

NOTE ON EITHER SIDE. The MA is dismissed No costs.

Sd/-XXX
Section Officer.

CERTIFIED TRUE COPY
MA 410/99
OA 1089/95
4-6-99
9-6-99

Deputy Registrar
Central Administrative Tribunal
HYDERABAD BENCH.

CC-II
6.7.99

27
6/7/99

MA 590/99 in OA 1159/95

Dt. 29.7.99

Heard Mr. V.V. Vinod Kumar for the ~~respondent~~ applicants in the MA. and Mr. K. Venkateswara Rao for respondent in MA.

MA is not opposed.

Time granted as prayed for.

MA is disposed of.

BJP
M(J)

HRRN
M(A)

DEVELOPMENT OF TIME

खंडपीठ/BENCH CASE
साधारण/GENERAL

M.A.No. 590 OF 1999

IN

O.A.No. 1159 OF 1995

Mr. _____

COUNSEL FOR THE APPLICANT

AND

Mr. V. Vinod Kumar

~~Sr~~.Addl.Standing Counsel for C.G. Rlys.

Mr. K. Venkateswara Rao

ANNEXURE

FORM OF INDEX.

List of papers in MA / ~~CP / RA~~ No. 932 of 98 in OA No. 1189 of 95

Serial No. of papers on record part-1	Date of papers or Date of filling	Description of papers	Remarks
	13-11-98	Petition & Affidavit	
	30-12-98	Reply Affidavit of Respondent filed by Mr. K. Venkateswara Rao, Advocate	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

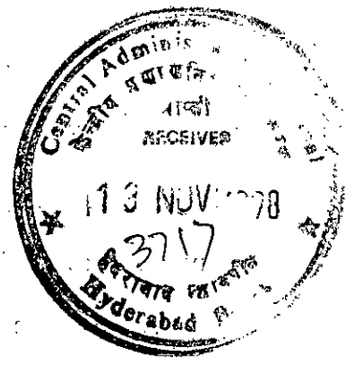
AT HYDERABAD

M.A. No. /98

IN

O.A. No. 1189/95

PETITION FOR EXTENSION OF TIME



Filed on 12-11-98

Filed by: G. PARMESWARA RAO
Standing counsel IA & AD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A. No. 932 /98

IN

O.A. No. 1189/95

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller & Auditor General of India (Admn), Officeof the Comptroller and Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Jaffar Marg, New Delhi. ..... Applicants/ Respondents

AND

M. Gopala Krishna Murthy. .... Respondent/ Applicant

PETITION FILED UNDER SEC. 8(3) OF THE ADMINISTRATIVE TRIBUNALS (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by four months from 23rd, November'98 to 21st March, 1999 for complying with the orders dated 29-09-1998 in O.A. No. 1189/95 and to pass such order or orders as the Hon'ble Tribunal deems fit amd proper in the circumstances of the case.

Hyderabad

Dated: 12-11-98

Counsel for Applicants/Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
HYDERABAD

M.A.No.932/98
IN
O.A.No.1189/95

Between:

Principal Accountant General(Audit-I),
Andhra Pradesh, Hyderabad & two others
... Applicant/Respondent

AND

Mr.Gopala Krishna Murthy ... Respondent/Applicant

AFFIDAVIT

I, Mohinder Singh, son of Sri Karnail Singh, aged about 46 years, do hereby solemnly affirm and state as follows:

I am the Senior Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit)I, Andhra Pradesh, Hyderabad and as such I am fully acquainted with all the facts of the case.

I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Respondent/Applicant in O.A.No.1189/95, has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted it (main OA) for re-hearing. Further after the re-hearing was over, the Hon'ble Tribunal by its judgement dated 29-09-1998, has passed the following orders:

a) the impugned orders dated 31-8-94 and the order of the appellate authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

1st PAGE CORRECTIONS

(Mohinder Singh)
DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.प-I)
the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

Recd copy
Somayajulu
13/11/98
for K.V. Rao

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission contained in the O.M. dated 2-3-94 of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

In this connection I submit that the Respondent/Applicant has attained superannuation on 30-9-94 and is deemed to have retired from service with effect from the said date. In terms of rule 9(2) of the Central Civil Services (Pension) Rules, and the Government of India's decision 3 below Rule 9 thereof, the findings of the disciplinary proceedings have to be submitted to the Government for final orders in that regard. I submit that the said procedure would entail lengthy correspondence with the Government of India and it may not therefore be possible to complete the proceedings within 45 days as stipulated by the Hon'ble Tribunal. It is therefore, necessary that extension of time by another 4 months is granted, so that the disciplinary proceedings are concluded and final orders of the Government of India are communicated to the Respondent/ Applicant as directed by the Hon'ble Tribunal.

2nd PAGE CORRECTIONS

(Mohinder Singh)
DEPONENT
मोहिन्दर सिंग
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant General (Admn.)
O/o the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, Hyderabad

ATTESTOR
K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

AD-500 604

In view of the foregoing, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 4 months from 22nd November, 1998 thus enabling the department to conclude the disciplinary proceedings against the Respondent/ Applicant in O.A.No.1189/95, as directed by it in its orders dated 29-09-98, and to pass such other order or orders as it may deem fit and proper in the circumstances.

Sworn and signed before me on
this the 12th day of November, 1998

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

(Mohinder Singh)
DEPONENT
मोहिन्दर सिंग
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.प-I)
the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT : HYDERABAD

M.A.NO. 932 OF 1998

in

O.A.No. 1189 of 1995

Between:-

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn.), O/o.the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, NEW DELHI - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi- 110 002.

... APPLICANT/Respondents

A N D

Mr. Gopala Krishna Murthy ... Respondent/Applicant

REPLY AFFIDAVIT

I, M.Gopala Krishna Murthy, S/o.Late Mallikarjuna Sastry, aged about 61 years, Ex.Audit Officer, O/o.the Principal Accountant General, Audit-I,A.P., Hyderabad, resident of H.No.6-3-348/1, Dwarakapuri Colony, Punjagutta, Hyderabad, do hereby solemnly affirm and sincerely state as follows:-

1. I am the respondent in the above M.A. and the applicant in the main O.A. and as such I am well acquainted with the facts of the case.

2. I submit that I have filed the above O.A. challengingthe order dated 31.8.1994 removing me from service and the consequential order dated 7.8.1995 confirming the punishment. I submit that on my filing the Review Application, the Hon'ble Tribunal was pleased to pass the judgement dated 29.9.1998 whereby the order of removal dated 31.8.1994 and the appellate order dated 7.8.1995 were setaside and the respondents were given liberty, to proceed with the disciplinary proceeding from the stage of furnishing a copy of the report/opinion of

C.V.C. and conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of the order.

3. I submit that the time of 45 days granted by the Hon'ble Tribunal to conclude the disciplinary proceedings had already expired even according to the respondents and therefore there is no justification or reasonable cause for extending the time to implement the judgement dated 29.9.1998.

4. I submit that I had already retired from service on 30.9.1994. I submit that the provisions contained in Rule 9(2)(a) of CCS (Pension) Rules, 1972 have no application in this case since the departmental proceedings instituted while I was in service had already been concluded much earlier to the date of my retirement, on 30.9.1994 and based on the said report I was removed from service by office order No.7 dated 31.8.1994. I submit that Sub Rule 2(a) of Rule 9 expressed clearly that the proceedings if instituted before retirement and could not be concluded before such retirement shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service. It is therefore clear that this provision shall not apply in cases like that of mine where the departmental proceedings were commenced and concluded before retirement.

/Contd.. 3.,

5. I submit that consequent on my retirement I am outside the jurisdiction of the respondents and the respondents cannot have any say in the matter as it is the president that has to pass final order under Government of India decision No.3 below rule 9 of CCS(Pension) Rules, 1972.

6. I submit that the respondents have not so far setaside the orders of removal dated 31.8.1994 so far and also the appellate order dated 7.8.1995 even though it is now more than 3 months since the date of judgement on 29.9.1998. The Respondents are not entitled for any indulgence to ask for extension of time by four months from 29.11.1998 as prayed for in the above O.A. Further in as much as the Rule9(2)(a) of CCS (Pension) Rules, 1972 is not applicable it is submitted that no extension of time is necessary. I submit that the respondents are guilty of latches.

It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the M.A. for extension of time to implement the judgement in O.A.No.1189/95 dated 29.9.1998 as otherwise I will suffer irreparable loss and hardship which cannot be compensated at a later stage and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this 29th day of December, 1998, at Hyderabad.

DEPONENT

Before me.

//ADVOCATE//HYDERABAD

Fair List case

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT:: HYDERABAD

M.A.NO. 932 OF 1998

in

O.A.No. 1189 of 1995

REPLY AFFIDAVIT

***

Sir,

I undertake to serve copy on the Addl CGSC.

Somasekhar
30/12/98

Mr. K.Venkateswara Rao,

Counsel for the Applicant.

मूल/ORIGINAL

बेंच केस/BENCH CASE साधारण/GENERAL

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

M.A.No. 932 of 1998

IN

O.A.NO. NO 1189 of 1995.

- Petition for extention of time.

Mr. G. Parameswara Rao.
COUNSEL FOR THE APPLICANT/Respdt

AND

Mr. K. Venkateswara Rao
~~Sr.ADDL. STANDING COUNSEL FOR C.S. C.G.RLY.~~

932/98 in OA. 1189/95.

27-11-98.

Heard Mrs. Sakti for Mr. G. Parameswara Rao for the applicants and Mr. K. Venkateswara Rao for the respondent.

Notice.

List it on 23/12/98.

HBSJP
M(J)

HRRN
M(A)

Copies of M.A. have not been filed by the applicants counsel.

1-1-99

List this MA after the review petition is disposed of.

HBSJP
M(J)

HRRN
M(A)

Issued
18/12/98.

M.A.932/98 in O.A.1189/95.

18-1-1999.

Heard Ms. Shakti for Sri G. Parameswara Rao for the applicant and Sri Venkateswara Rao for the Respondents.

The respondents in the O.A., have filed this Miscellaneous Application for extension of time.

In the O.A., while setting aside the impugned orders, we ~~have~~ passed the Judgment on 29-9-1998 with certain directions.

The learned counsel for the applicnt submits that in view of Rule 9(2)(a) of ~~Rxlxx~~ CCS(Pension) Rules,1972, the respondents are not competent to file this M.A., for extension of time.

The learned counsel for the Respondents in the O.A, in their counter-affidavit submits that the matter is under process by Govt. of India. The case is under process is not a point for consideration in this M.A. The M.A., relates to extension of time for implementation of the Judgment. As the applicant ~~belongs to~~ is working in the Respondents' Organisation, it is the Respondents' organisation who should process the case for getting necessary orders from the Competent Authority in accordance with the Rules. Hence consideration of any Rule at this juncture in this M.A., does not arise.

In view of what is stated above two months time is granted from today for implementation of the Judgment.

The M.A., is disposed of.

No costs.

HRRN
M(A)

ssss

ANNEXURE

FORM OF INDEX

List of papers in MA/~~CP/RP~~/No. 288/24 in O.A. 1189/25 of

Sl.No of papers on record Part-I	Date of papers OR Date of filing	Description of papers	REMARKS
	24/4/24	Petn	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO. 387/2000

IN

O.A.NO.1189/1995

Between:

1. The Principal Accountant General (Audit-I),
   Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General
   of India (Admn),
   Office of the Comptroller & Auditor General
   of India, Indraprastha Estate,
   Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India,
   Indraprastha Estate, Bahadurshah Zaffer Marg,
   New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 17-04-2000 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Date : 24-4-00

Hyderabad

V. Vinodkumar

COUNSEL FOR PETITIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A.No. /2000

IN

O.A.NO. 1189/1995

Between:

The Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad and others .....Applicants/ Respondents

AND

M.Gopala Krishna Murthy .....Respondent/ Applicant

A F F I D A V I T

I, Sheela M.Jog, daughter of Sri Madhukar S.Jog aged about 37 years, occupation Government service, Resident of Hyderabad do hereby solemnly affirm and state as follows:

2. I am working as Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and dealing with the subject matter of the case, as such, I am fully acquainted with all the facts of the case.

3. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicants/Respondents here, by its order dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/ opinion of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The Respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

4. In this connection, it is submitted that in pursuance of t direction of this Hon'ble Tribunal dated 22-9-98 O.A.No.1189/95 a copy of the Central Vigilance Commission repo was furnished to the applicant and he made a representation a the same was forwarded to the competent authority alongwith entire record of the disciplinary case to take a final decis in this matter. As the applicant had already attained the age superannuation the authority who can pass any order vests w the President of India.

2nd PAGE CORRECTIONS

ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
AP., HYDERABAD.

DEPONENT

शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन
Dy. Accountant General (Ad
प्रधान महालेखाकार का कार्यालय
O/o. the Prl. Accountant General
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD

5. The Ministry of Finance vide their letter No.F.No.C-14011/1/99-EG dated 31-12-99 directed the applicant No.1 herein to send the CR dossiers of Respondent herein directly to the Union Public Service Commission as the U.P.S.C. also requires to be consulted. Accordingly the CR dossiers of the Respondent have been sent to the Under Secretary, U.P.S.C., New Delhi vide letter dated 07-01-2000 and accordingly Union Public Service Commission has tendered its advice and the disciplinary case of the Respondent herein is being processed for seking Presidential order under Rule 9 of Central Civil Services (Pension) Rules.

6. It is submitted that it may take some more time for finalisation of the disciplinary case. It is, therefore, expedient and necessary to extend the time for implementation of this Hon'ble Tribunal's orders dated 22-9-98 in O.A.No.1189/95 by 3 months from 17-4-2000.

Hence it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 17-04-2000 for complying with the orders dated 29-9-98 in O.A.No.1189/95 in the interest of justice.

Sworn and signed before me on this
the day of April, 2000

K CHANDRA MOHAN ATTESTOR
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.
O/o. the Prl. Accountant General (Au
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA. No.266 of 2000
in
OA. No.1169 of 1995

Between:

Dated:24.3.00

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Deputy Comptroller and Auditor General of India (Admn.), O/o The Comptroller & Auditor General Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffar Marg, New Delhi.

.. Applicants

And

M.Gopalakrishna Murthy

.. Respondent

Counsel for the Applicants : Mr.V.Vinod Kumar Addl CASC

Counsel for the Respondent : Mr.K.Venkateshwar Rao

CORAM:

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

THE HON'BLE MR.B.S.JAI PARAMESHWAR : MEMBER (J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Mr.V.Vinod Kumar, for the applicant and Mr.K.Venkateswara Rao, for the respondents.

This MA is filed for extending time by 2 months from 17.2.00 for complying the orders dated 29.9.98 in OA.

MA is not opposed. Under the circumstances 2 months time from 17.2.00 is granted.

MA is disposed of.

3/4/2000

Grr

Sd/- X X
Section Officer

प्रमाणित प्रति
CERTIFIED TRUE COPY

COPY READY ON 24/3/2000

Court Officer
Central Administrative Tribunal
HYDERABAD BENCH

Section Officer
CC-I
3.4.2000

4/4/00

ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt. 31.8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

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demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Kokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

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Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham, the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant x that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu Vs. Subramaniam (1996 Vol.33 ATC page 337). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that has the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/MP stands dismissed."

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

Contd.. 19

30. The learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

Contd..18

was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

Contd... 21

influenced by the report/opinion of the CVC; that the discipinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the resppondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

Contd... 20

37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

OA 1189/95
25/8/98
30/8/98

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the topo executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

Contd.. 22

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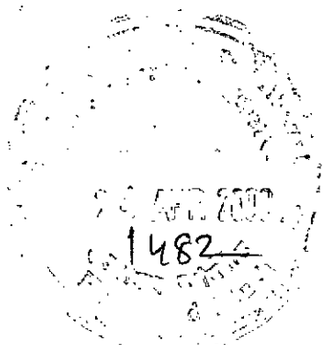
Reg:- Extension of time

In the CAT Hyd Bench

MA NO Of 2000

OA NO 1189 of 95



Extension of Time

V. Venkateswara Rao
Advocate

Mr. G. Rao
26/6

MA 368/2000 in OA 1189/95

27-6-2000

MA Disposed of. Order on Seperate Sheets No Costs.

HBSJP HRRN MJ MH

मूल/ORIGINAL

बेंच केस/BENCH CASE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

M.A.No. 368 OF 2000

IN

O.A.No. 1189/95 OF ~~2000~~

Extension of Time

Mr. V. Vinod Kumar

COUNSEL FOR THE APPLICANT

AND

Mr K. Venkateswar Rao

Standing Counsel
Addl. Standing Counsel for Gental Govt.,

Sr. Standing Counsel for Central Govt.,

Standing Counsel for Railways.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.266/2000

IN

O.A.NO.1189/1995

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 months from 17-02-2000 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Date :

Hyderabad

V. Vinod

COUNSEL FOR PETITIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A.No. /2000

IN

O.A.NO. 1189/1995

Between:

The Principal Accountant General(Audit)I, Andhra Pradesh, Hyderabad and others .....Applicants/ Respondents

AND

M.Gopala Krishna Murthy .....Respondent/ Applicant

A F F I D A V I T

I, Sheela M.Jog, daughter of Sri Madhukar S.Jog aged about 37 years, occupation Government service, Resident of Hyderabad do hereby solemnly affirm and state as follows:

2. I am working as Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, dealing with the subject matter of the case, as such, I am fully acquainted with all the facts of the case.

3. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicants/Respondents here and by its order dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR
के. चन्द्रमोहन
K. CHANDRA MOHAN
Sr. Accounts Officer (Legal)
Office of the Pr. Accountant General (A&E)
A.P. HYDERABAD-500 004.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
O/o. the Pri. Accountant General (Audit)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority [illegible] to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/ opinion of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The Respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

4. In this connection, it is submitted that in pursuance of the direction of this Hon'ble Tribunal dated 22-9-98 in O.A.No.1189/95 a copy of the Central Vigilance Commission report was furnished to the applicant and he made a representation and the same was forwarded to the competent authority alongwith the entire record of the disciplinary case to take a final decision in this matter. As the applicant had already attained the age of superannuation the authority who can pass any order veste with the President of India.

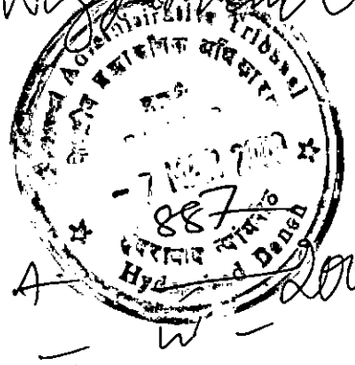
2nd PAGE CORRECTIONS

ATTESTOR
के. चन्द्रमोहन
K. CHANDRA MOHAN
[illegible]
[illegible]
[illegible]
A. P. HYDERABAD-500 004.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले
O/o. the Prl. Accountant General (A
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-50

In the CAT

Hyderabad



MA - 2000

in

OA 1189/95

Extension of time

Filed by:—

V. Vinod Kumar

5. The Ministry of Finance vide their letter No.F.No.C-14011/1/99-EB dated 31-12-99 directed the applicant No.1 herein to send the CR dossiers of Respondent herein directly to the Union Public Service Commission as the U.P.S.C. also requires to be consulted. Accordingly the CR dossiers of the Respondent have been sent to the Under Secretary, U.P.S.C., New Delhi vide letter dated 07-01-2000.

6. It is submitted that it may take some more time for finalisation of the disciplinary case. It is, therefore, expedient and necessary to extend the time for implementation of this Hon'ble Tribunal's orders dated 22-9-98 in O.A.No.1189/95 by 2 months from 17-2-2000.

Hence it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 months from 17-02-2000 for complying with the orders dated 29-9-98 in O.A.No.1189/95 in the interest of justice.

Sworn and signed before me on this

the day of February, 2000

ATTESTOR

के. चन्द्रमोहन
K. CHANDRA MOHAN
वरिष्ठ लेखा अधिकारी (प्रशि.)
Sr. Accounts Officer (Trg.)
मुख्य नियंत्रक लेखा परीक्षक कार्यालय
Office of the Accountant General
आ. प्र. हैदराबाद-५०० ००४
A.P. HYDERABAD-500 004.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Pr! Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

(Order per Hon'ble shri R.Rangarajan, Member (A)).

-- -- --

None for the applicant. Heard Ms.Parvathi for Sri K.Venkateshwar Rao, learned counsel for the MA respondent.

2. M.A. is not oppossed. Under the circumstances, the M.A. is allowed as prayed for. No order as to costs.

प्र मा प्रि स प्रति
CERTIFIED TRUE COPY
फॉम संख्या
CASE NUMBER ... OA 1018/95 & OA 1189/95
DATE OF ... 23/12/95
COPY MADE READY ON ... 31/1/2001
अनुभाग अधिकारी/न्यायालय अधिकारी
Section Officer/Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 1018/99 in OA 1189/95

DATE OF ORDER : 23-12-1999

Between :-

1. The Principal Accountant General (Audit-I), A.P., Hyderabad.
2. The Dy.Comptroller & Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estates, Bahadurshah Zafar Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, Addl.CGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

... 2.

CONFIDENTIAL

D.O.No.PAG(Au)I/CC/CC I/8-22/OA 1189/95/225/226 Dated: 7-1-2000

Dear Sri

Kindly refer to Confidential letter F.No.C-14011/1/99-EG of Ministry of Finance, Department of Expenditure, E.G. Branch addressed to the Comptroller & Auditor General of India with a copy to this office.

2. I forward herewith the CR Dossier of Sri M.Gopalakrishna Murthy, Retired Audit Officer by the period 1958-59 to 1989-90 as desired.

Encl: as above

Yours sincerely,

Sd/-

D.A.G.(Admn)

Sri I.C.Kamboj,
Under Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

Copy to

Ms.Meenakhashi Gupta,
Asst.Comptroller & Auditor General(N)
Comptroller & Auditor General
of India,
New Delhi- 110 002.

(True Copy)

Sr.Accounts Officer(Legal)

ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31.8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd..2

demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report= of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

Contd...5

6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same ~~xx~~ in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

Contd...7

Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

Contd...6

perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant x that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu Vs. Subramanian (1996 Vol.33 ATC page 311 337.). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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should have taken to task Sri PV Dokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajapandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/MP stands dismissed."

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

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30. The learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participaton, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.CU-CAC-06 dt. 2.3.98 was perused by us and returned to the respondents.

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

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24/3/00

Mr. V. Vinod Kumar, for the applicant and Mr. K Venkateswara Rao, for the respondent.

This MA is filed for extending time by 2 months from 17/2/00 for complying the orders dt 29/9/00 in OA

MA is not opposed.

Under the circumstances 2 months time from 17/2/00 is granted.

MA is disposed of.

HBSJP
M(J)

MRRN
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

M.A.No. 266 of 2000
IN

O.A.No. 1189/95 of 199

Extension of Time Petition.

Mr. M. B.N. Sarma, Sr. Counsel
COUNSEL FOR THE APPLICANTS

AND

Mr. K. Venkateshwar Rao
Standing Counsel
Addl Standing Counsel for Gen. Govt.,
Sr. STANDING COUNSEL FOR Cen. Govt.,
S.C. for RLYS.

ANNEXURE

FORM OF INDEX

List of papers in MA/~~CP/RP~~/No. 1018 in O.A. 1189 of 95

Sl.No of papers on record Part-I	Date of papers OR Date of filing	Description of papers	REMARKS
	22/11/99		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.1018/99

IN

O.A.NO.1189/95

Between:

1. The Principal Accountant General (Audit-I),
   Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General
   of India (Admn),
   Office of the Comptroller & Auditor General
   of India, Indraprastha Estate,
   Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India,
   Indraprastha Estate, Bahadurshah Zaffer Marg,
   New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 18-11-99 to 17-02-2000 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as it deem fit and proper.

V. Vinod
COUNSEL FOR PETITIONER

Reg
18/11/99

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

M.A.No.1018/99

IN

O.A.NO.1189/95

Between:

M.Gopala Krishna Murthy .....Applicant

AND

The Principal Accountant General(Audit)-I, Andhra Pradesh, Hyderabad and others .....Respondents

A F F I D A V I T

I, Sheela M.Jog, daughter of Sri Madhukar S.Jog aged about 37 years, do hereby solemnly affirm and state as follows:

1. I am the Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, as such, I am fully acquainted with all the facts of the case.

2. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicant/ Respondent in O.A.No.1189/95 has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case was over, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

वरिष्ठ लेखापरीक्षा परीक्षक (प्रशासन)
Senior Audit Officer (Admn.)
Office of the Principal Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-500 463.
Andhra Pradesh, Hyderabad-500 463.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Administration)
प्रधान महालेखाकार के कार्यालय
O/o. the Prl. Accountant General
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission New Delhi to the applicant.

c) The resondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

3. In this connection, I submit that according to the letter No.1522-GE II/188-90-III dt.17-11-99 of the Asst. Comp.& Auditor General Office of the Comptroller and Auditor General of India, New Delhi, the case of Sri M.Gopalakrishna Murthy, applicant in O.A.No.1189/95 has been referred to Ministry of Finance for Presidential sanction for further action under Central Civil Services (Pension) Rules. The matter is under the consideration of the Government and Presidential sanction is yet to be received.

2nd PAGE CORRECTIONS

ATTESTOR
वरिष्ठ लेखापरीक्षा अधिकारी(प्रशासन)
Senior Audit Officer (Admn.)
प्रधान महालेखाकार (लेपरी-I) प्रथम
Office of the Principal Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-५०० ४६३.
Andhra Pradesh, Hyderabad-500 463.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (लेपरी-I)
O/o. the Prl. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

4. In this connection it is submitted that in pursuance of the direction of this Hon'ble Tribunal dated 29-9-98, a copy of the Central Vigilance Commission report was furnished to the applicant and he made a representation and the same was forwarded to the Competent Authority along with the entire record of the disciplinary case to take a final deision in this matter. As the applicant had already attained the age of superannuation the authority who can pass any order vests with President of India and as such, it was informed that it may take some more time for finalisation. As the extended period granted by the Hon'ble Tribunal for implementing the judgement expires on 17-11-99, it is humbly prayed that extension of further 3 months time i.e. upto 17-02-2000 may be granted to comply with the orders dated 29-9-98 of this Hon'ble Tribunal.

In view of the foregoing submission, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 18-11-99 to 17-02-2000 for compliance with the orders dated 29-9-98 in O.A.No.1189/95 and to pass such other order or orders as it may deem fit and proper in the circumstances of the case.

Sworn and signed before me on this
the 22nd day of November, 1999

DEPONENT

ATTESTOR

वरिष्ठ लेखापरिक्षा अधिकारी (प्रशासन)
Senior Audit Officer (Admn.)
कार्यालय प्रधान [illegible] प्रथम
Office of the Principal Accountant General (Audit)-I
आंध्र प्रदेश, हैदराबाद-५०० ४६३.
Andhra Pradesh, Hyderabad-500 463.

शीला. म. जोग.
SHEELA. M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार [illegible] (लें.प-I)
O/o. the Pri. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

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FAX

No.1522-GE II/188-90-III

MEENAKSHI GUPTA
ASST.COMPTR.& AR.GEN(N)

भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय
10, बहादुरशाह जफर मार्ग,
नई दिल्ली 110 002
OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL
OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002

दिनांक / DATE November 17, 1999

Dear Sir,

Kindly refer to the correspondance resting with our letter No.851-GE II/188-90-III dated 24-6-99 regarding disciplinary case against Shri.MGK Murthy, retired Audit Officer.

2. Ministry of Finance has now intimated that the case has been referred to UPSC & their advice in this regard is still awaited. A copy of the Ministry's I.D No.C-14011/1/99-EG dated 16-11-99 is enclosed for your information.

With regards,

Yours sincerely,

Meenakshi Gupta

(Meenakshi Gupta)

Shri.Surinder Pal
Prl.Accouhtant General(Audit)I
Andhra Pradesh
Hyderabad.

दूरभाष / Phone : 3231440, 3231761
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फैक्स / Fax : 91-11-3235446, 91-11-3234014

T/C
V.K.

-1-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

MA. No.590 of 1999
in
O.A. No.1189 of 1995

Between: Dated:29.7.99

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.
2. The Dy.Comptroller and Auditor General of India (Admn.), O/o The Comptroller and Auditor General,of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi.
3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffar Marg, New Delhi. .. Applicants

And

M.Gopalakrishna Murthy .. Respondent

Counsel for the Applicants : Mr.V.Vinod Kumar

Counsel for the Respondent : Mr.K.Venkateswara Rao

CORAM:

HON'BLE [illegible] : M(A)

THE HON'BLE MR. B.S.JAI [illegible] : M(J)

* * *

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Heard Mr.V.Vinod Kumar for the Applicant in the OA and Mr.K.Venkateswara Rao for respondent in MA.

MA is not opposed.

Time granted in prayed for. Complete by 15-9-99.

MA is disposed of.

Sd/- X X
Section Officer

Srr

प्रमाणित प्रति
CERTIFIED TRUE COPY
MA 590/99 in
OA 1189/95
29.7.99
2.8.99

[illegible]
Court Officer
Central Administrative Tribunal
HYDERABAD BENCH

ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5.1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31.8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

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26/10/98

demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit Party who proceeded for audit and verification of fixation of Pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

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Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

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perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are J

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant ~~x~~ that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu Vs. Subramaniam (1996 Vol.33 ATC page 317). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/MP stands dismissed."

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

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30. The learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is an altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR ... page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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influenced by the report/opinion of the CVC; that the discipinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

OA 1189/95
25/8/98
30/8/98

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

Contd.. 22

In the C.A.T
Hyd Bench

M.A. /99
in
OA 1189/95

Extension of time

Filed by:—
V. Vinod Kumar
Adv. Clerk

29/11

MA.1018/99 in OA.1189/95.

9/12/99.

Heard Mr. V. Vinod Kumar for the applicants in the MA

Notice

Listed on 22-12-99.

HRRN
MJD

HDHNJ
VC

Notice issued
23/12 SS

23/12 SS

23/12

23.12.99

MA allowed. Order on separate sheets. No costs.

HRRN
MJD

HDHNJ
VC

/ORIGINAL

बेंच केस/BENCH CASE

IN THE CENTRAL ADMINIS

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

M.A.NO. 1018 of 1999
IN
O.A.No. 1189 of 1995

Extension of time

MR. _____
Counsel for the applicants.

MR. V. Vinod Kumar
Standing Counsel - for
Standing Counsel for Rlys.
Sr.Standing Counsel for C.Govt.,
Addl.Standing Counsel for C. Govt.

Mr. K. Venkateswara Rao
Advocate

ANNEXURE

FORM OF INDEX

List of papers in MA/~~CP/RP~~/NP. 266/2010 in O.A. 1189/95 of

Sl.No. of papers on record Part-I	Date of papers OR Date of filing.	Description of papers.	Remarks.
	7/3/24		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.261/2000

IN

O.A.NO.1189/1995

Between:

1. The Principal Accountant General (Audit-I),
   Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General
   of India (Admn),
   Office of the Comptroller & Auditor General
   of India, Indraprastha Estate,
   Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India,
   Indraprastha Estate, Bahadurshah Zaffer Marg,
   New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 months from 17-02-2000 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Date : 3/8/00

Hyderabad

COUNSEL FOR PETITIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A.No. /2000

IN

O.A.NO. 1189/1995

Between:

The Principal Accountant General(Audit)I,
Andhra Pradesh, Hyderabad and others .....Applicants/
Respondents

AND

M.Bapala Krishna Murthy .....Respondent/
Applicant

A F F I D A V I T

I, Sheela M.Jog, daughter of Sri Madhukar S.Jog aged about 37 years, occupation Government service, Resident of Hyderabad do hereby solemnly affirm and state as follows:

2. I am working as Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, dealing with the subject matter of the case, as such, I am fully acquainted with all the facts of the case.

3. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicants/Respondents here and by its order dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR
के. चन्द्रमोहन
K. CHANDRA MOHAN
[illegible]
[illegible]
[illegible]
[illegible]
A.P. HYDERABAD-500 004.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले.प-I)
O/o. the Prl. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/ opinion of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The Respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

4. In this connection, it is submitted that in pursuance of the direction of this Hon'ble Tribunal dated 22-9-98 in O.A.No.1189/95 a copy of the Central Vigilance Commission report was furnished to the applicant and he made a representation and the same was forwarded to the competent authority alongwith the entire record of the disciplinary case to take a final decision in this matter. As the applicant had already attained the age of superannuation the authority who can pass any order vests with the President of India.

2nd PAGE CORRECTIONS

ATTESTOR

के. चन्द्रमोहन
K. CHANDRA MOHAN

DEPONENT

शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार का कार्यालय (ले प-I)
O/o. the Prl. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

Returned

Service to be made on the counsel for the applicant in OA.

14 days h.m. 8/3/00 for DR

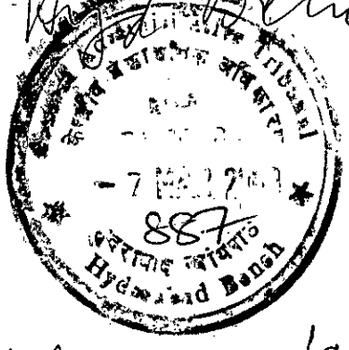
Objection Complied with

14/3
V. Vinod Kumar

A1

In the C.A.T.

Hyderabad Bench



MA /2000

in

OA 1189/95

Extension of time

Rep

14/3/2000
Adv.

Filed by:—

V. Vinod Kumar
Addl. CGSC

5. The Ministry of Finance vide their letter No.F.No.C-14011/1/99-EB dated 31-12-99 directed the applicant No.1 herein to send the CR dossiers of Respondent herein directly to the Union Public Service Commission as the U.P.S.C. also requires to be consulted. Accordingly the CR dossiers of the Respondent have been sent to the Under Secretary, U.P.S.C., New Delhi vide letter dated 07-01-2000.

6. It is submitted that it may take some more time for finalisation of the disciplinary case. It is, therefore, expedient and necessary to extend the time for implementation of this Hon'ble Tribunal's orders dated 22-9-98 in O.A.No.1189/95 by 2 months from 17-2-2000.

Hence it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 months from 17-02-2000 for complying with the orders dated 29-9-98 in O.A.No.1189/95 in the interest of justice.

Sworn and signed before me on this
the 24th day of February, 2000

ATTESTOR
के. चन्द्रमोहन
K. CHANDRA MOHAN
Senior Accounts Officer (Audit)
O/o. the Pr. Accountant General (Audit-I)
A.P. HYDERABAD-500 004.

DEPONENT
शीला. म. जोग.
SHEELA, M. JOG.
उप महालेखाकार (प्रशासन)
Dy. Accountant General (Admn.)
प्रधान महालेखाकार क. कार्या... (ले प-I)
O/o. the Prl. Accountant General (Audit-I)
आन्ध्र प्रदेश, हैदराबाद
Andhra Pradesh, HYDERABAD-500 004.

(Order per Hon'ble shri R.Rangarajan, Member (A)).

-- -- --

None for the applicant. Heard Ms.Parvathi for Sri K.Venkateshwar Rao, learned counsel for the MA respondent.

2. M.A. is not oppossed. Under the circumstances, the M.A. is allowed as prayed for. No order as to costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY
क्रम संख्या
CASE NUMBER ... MA 1018/99 OA 1189/95
DATE OF ... 23/12/99
COPY MADE READY ON 31/12/2000
न्यायालय अधिकारी
Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद
HYDERABAD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 1018/99 in OA 1189/95

DATE OF ORDER : 23-12-1999

Between :-

1. The Principal Accountant General (Audit-I), A.P., Hyderabad.
2. The Dy.Comptroller & Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estates, Bahadurshah Zafar Marg, New Delhi-110 002.
3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

...Applicant/Respondents

And

M.Gopalakrishna Murthy

...Respondent/Applicant

-- -- --

Counsel for the Applicants : Shri V.Vinod Kumar, Addl.CGSC

Counsel for the Respondent : Shri K.Venkateshwar Rao

-- -- --

CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

... 2.

Copy received 19/1/2000

CC-II 19-1-2000

CONFIDENTIAL

D.O.No.PAG(Au)I/CC/CC I/8-22/OA 1189/95/225/226 Dated: 7-1-2000

Dear Sri

Kindly refer to Confidential letter F.No.C-14011/1/99-EG of Ministry of Finance, Department of Expenditure, E.G. Branch addressed to the Comptroller & Auditor General of India with a copy to this office.

2. I forward herewith the CR Dossier of Sri M.Gopalakrishna Murthy, Retired Audit Officer by the period 1958-59 to 1989-90 as desired.

Encl: as above

Yours sincerely,

Sd/-

D.A.G.(Admn)

Sri I.C.Kamboj,
Under Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

Copy to

Ms.Meenakhashi Gupta,
Asst.Comptroller & Auditor General(N)
Comptroller & Auditor General
of India,
New Delhi- 110 002.

(True Copy)

Sr.Accounts Officer(Legal)

O R D E R

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5 .1.98, we had dismissed this O.A. However, the applicant/filed an application under Rule 17 of the Central Administrative Tribunals (Procedure) Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt.31 .8.84 had taken into consideration the report/opinion of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

Contd..3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd..2

demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report= of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

Contd...5

6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

Contd...4

of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of amny days andafter service

Contd...7

Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

Contd...6

perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

Contd...8

16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly provod. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into considerat on all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

Contd..11

kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant ~~x~~ that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

Contd...10

brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was abooluteley no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

Contd..13

into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu Vs. Subramaniam (1996 Vol.33 ATC page 337.) The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

Contd...15

should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham lodged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

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30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR [illegible] page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participaton, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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influenced by the report/opinion of the CVC; that the disciplinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.CU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

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24/3/00

Mr. V. Vinod Kumar, for the applicant and Mr. K. Venkateswara Rao, for the respondent.

This MA is filed for extending time by 2 months from 17/2/00 for complying the orders dt. 29/9/98 in OA.

MA is not opposed. Under the circumstances 2 months time from 17/2/00 is granted.

MA is disposed of.

HBSJP
M(J)

HRRN
M(A)

ORIGINAL

बेंच केस/BENCH CASE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

M.A.No. 266 of 2000
IN

O.A.No. 1187 of 1995

Extension of Time Petition.

V. VINOD KUMAR

Mr. [redacted], Advocate

COUNSEL FOR THE APPLICANTS

AND

Mr. R. Venkateshwar Rao

Standing Counsel
Addl Standing Counsel for Gen. Govt.,
Sr. STANDING COUNSEL FOR Cen. Govt.,
S.C. for RLYS.

ANNESURE

FORM OF INDEX

List of papers in M.A/~~C.P/R.A~~/NO. 1188/00 in O.A.No. 1189 OF 95

Sl.No.of papers on record Par-I	Date of papess or Date of filing	Description of papers	Remarkk
	16/6/00		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.466/2000

IN

O.A.NO.1189/1995

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadurshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 weeks from 17-06-2000 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Date : 16-6-2k

Hyderabad

V. Vinodkumar
COUNSEL FOR PETITIONER

Rec copy
Gopalakrishna Murthy
for K.V.Rao
16/6/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A.No.486 /2000

IN

O.A.NO. 1189/1995

Between:

The Principal Accountant General(Audit)I,
Andhra Pradesh, Hyderabad and others .....Applicants/
Respondents

AND

M.Gopala Krishna Murthy .....Respondent/
Applicant

A F F I D A V I T

I, V.Balakrishna Murthy, son of Sri V.Narasimha Rao aged about 36 years, occupation Government service, Resident of Hyderabad do hereby solemnly affirm and state as follows:

2. I am working as Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and dealing with the subject matter of the case, as such, I am fully acquainted with all the facts of the case.

3. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicants/Respondents here, by its order dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा) I
o/o. the Principal Accountant General (Au) I
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/ opinion of the Central Vigilance Commission, New Delhi to the applicant.

c) The respondents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The Respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

4. In this connection, it is submitted that in pursuance of the direction of this Hon'ble Tribunal dated 29-9-98 in O.A.No.1189/95 a copy of the Central Vigilance Commission report was furnished to the applicant and he made a representation which was considered and a report of the Disciplinary Authority was forwarded to the competent authority alongwith the entire record of the disciplinary case to take a final decision in this matter. As the applicant had already attained the age of superannuation the authority who can pass any order vests with the President of India.

2nd PAGE CORRECTIONS

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL
A.P., HYDERABAD.

DEPONENT

उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा)
o/o. the Principal Accountant General (Au)
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004

In the CAT Hyd Bench

MANO of 2000

IN

OANO 1189 of 95

Extension of time

for short Reserved on 14/6/00

V. Vinod Kumar
Adm

May be filed
S
26/6

5. It is learnt from our Headquarters office that the final orders in this case have since been issued by the Competent Authority. As it takes some more time to receive the original order from our Headquarters office and to communicate the same to Sri M.Gopalakrishna Murthy, it is expedient and necessary to extend the time for implementation of the orders dated 29-9-98 of this Hon'ble Tribunal in O.A.No.1189/95 by 2 (two) weeks from 17-6-2000.

Hence it is prayed that this Hon'ble Tribunal may be pleased to grant extension of time by 2 weeks from 17-06-2000 for complying with the orders dated 29-9-98 in O.A.No.1189/95 in the interest of justice.

Sworn and signed before me on this

the 16th day of June, 2000

DEPONENT

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A&E)
A.P., HYDERABAD.

उप महालेखाकार (प्रशासन)
Deputy Accountant General (Admn.)
कार्यालय, प्रधान महालेखाकार (लेखापरीक्षा)
o/o. the Principal Accountant General (Au)
आंध्र प्रदेश, हैदराबाद-500 004.
Andhra Pradesh, Hyderabad - 500 004.

30/6/2000

Heard Mr. V. Vinod Kumar for the Applicants in the MA and Mr. K. Venkateswara Rao for the Respondent in the MA.

Both sides agree that the judgment has been complied with. Hence, no order is necessary in this MA.

The MA is dismissed.

No costs.

HRRN MJ

HSSP MJ

Or.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

मूल/ORIGINAL

बेंच केस/BENCH CASE

M.A.No. 484 OF 2000

IN

O.A.No. 1189 OF 1999

Extension of time

Mr.

COUNSEL FOR THE APPLICANT

AND

Mr V. Vinod Kumar

Standing Counsel
Addl. Standing Counsel for Gental Govt.,

Sr. Standing Counsel for Central Govt.,

Standing Counsel for Railways.

Mr. K. Venkateswara Rao
for

NOTE.—The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.—New evidence shall [illegible] witness shall not be recalled to fill up any gap in [illegible] may be called for only when there is an inherent lacu[illegible] evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte*.

(21) (*a*) Where a disciplinary authority competent to impose any of the penalties specified in clauses (*i*) to (*iv*) of Rule 11 [but not competent to impose any of the penalties specified in clauses (*v*) to (*ix*) of Rule 11], has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (*v*) to (*ix*) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(*b*) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if

opportunity to the delinquent official to submit his explanation and give reasons for the ultimate decisions taken. The approach cannot be judicial where the enquiry is made by some other authority, recommendations of which are not disclosed to the persons affected thereby and no reasons are recorded by the competent authority as to why it is accepting those recommendations.

In the circumstances, without going into the other infirmities, the orders of punishment are to be set aside on the procedural grounds as discussed above.

[Thomas Pothen v. Senior Superintendent of Post Offices 1989 (4) SLJ (CAT) 513 (Ernakulam).]

26. Denial of opportunity to cross-examine key prosecution witness vitiates enquiry.—Without going into the merits of the case or the findings of the Enquiry Officer and the disciplinary authority, we find that the enquiry proceedings and the disciplinary proceedings based thereon suffer from grave infirmities. The whole case against the applicant is based on the fact that the railway ticket numbers which the applicant had given in support of his L.T.C. claim were fictitious and no ticket bearing those numbers had been issued from the Ernakulam Junction, in accordance with the letter of the Chief Booking Supervisor, Ernakulam Junction. Though this letter was listed amongst the five documents in the Annexure to the charge memo and heavily relied upon, the Chief Booking Superior who wrote this letter was not produced to prove the same and to subject himself to cross-examination by the applicant. He was the key witness and by keeping him outside the pale of cross-examination by the applicant, the applicant can be said to have been denied reasonable opportunity of defence.

[V.D. Joseph v. Union of India and others, (1990) 14 ATC 99 (Ernakulam).]

27. Delinquent to be examined only after the case against him is closed.—The Enquiry Committee examined the applicant first and then only called the prosecution witnesses. In our opinion, an inquiry in which the delinquent officer is examined at the very commencement of it cannot be held to be a fair inquiry giving him a reasonable opportunity to defend himself. In Associated Cement Company v. Their Workman, [1963 (2) Lab. L.J. 396], the Supreme Court observed as follows:—

"The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then the workman should be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him.

In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings."

In the instant case, the proceedings of the enquiry clearly indicate that it was in the form of questions and answers between the Inquiry Officer and the delinquent officer from the very ouset of the enquiry. Therefore, the impugned orders of dismissal are liable to be set aside and quashed.

[Mukesh Kumar v. Union of India and others, 1990 (2) ATJ 1 (Principal Bench).]

28. When delinquent has not examined himself Inquiry Officer must question him generally.—Another contention of the applicant is that he was subjected to cross-examination by the Enquiry Officer himself and, therefore, the departmental enquiry was vitiated. The respondents deny this fact. The manner in which, however, the examination of the delinquent official is conducted by the Enquiry Officer is material. It will be relevant to reproduce in this context Rule 14 (18) of the CCS (CCA) Rules 1965: "18. The inquiry authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him." It has been held by the Kerala High Court in the case of S. Krishna v. Divisional Superintendent, Southern Railway [1973 Lab IC 591] that: "It is not that a person who faces a charge should not be asked any question by the Inquiry Officer. A statement may be taken by the Inquiry Officer. Normally such statement is taken after the close of the evidence. But it may be that in some circumstances even if it is taken earlier it cannot vitiate the enquiry. If the attempt by the Inquiry Officer is not to seek the accused to explain the case against him but to elucidate certain material out of him so that the charge which is otherwise unsustained is proved, the inquiry is certainly vitiated and I do not think that the Supreme Court has ever spoken to the contrary." The Madhya Pradesh High Court in the case of Raushaklal Yadav v. Chief Security Officer [AIR 1967 MP 91] has deprecated extensive examination of the delinquent by the Enquiry Officer.

In the present case the statement of the applicant appears to give the impression that it is in the nature of cross-examination of the Enquiry Officer himself by the applicant in which he has challenged the impartiality of the Enquiry Officer rather than a cross-examination of the applicant by the Enquiry Officer. To that extent the contention of the applicant and his learned counsel that the examination of the delinquent official has been conducted in such manner as to be in the nature of cross-examination by the Enquiry Officer cannot be sustained. At the same time, however, the examination of the delinquent official, i.e., the applicant by the Enquiry

Officer fails materially to discharge the requirements of Rule 14 (18) of the C.C.S. (C.C.A.) Rules inasmuch as if the Government servant has not examined himself it was incumbent upon the Enquiry Officer to question him on the circumstances appearing against him in the evidence for the purpose of enabling the delinquent official to explain facts appearing in the evidence against him. The questions should be put by the Enquiry Officer to the applicant by specifically referring to certain statements of the prosecution witnesses or other documentary prosecution evidence and asking the delinquent official, i.e., the applicant, to state what has he to say with reference to those statements and then leave the matter at that without the Enquiring Officer further putting searching and probing questions to the delinquent. This obligation has not been discharged by the Enquiry Officer in this case. The Enquiry Officer at the end of Para. 4 of his report has clearly stated that the applicant has not examined himself and that he was examined by the Enquiry Officer himself. Therefore, it was necessary for him to meet the requirements of Rule 14 (18) of the C.C.S. (C.C.A.) Rules, 1965, as stated above. Further Para. 9 of the report of the Enquiry Officer indicates that the Enquiry Officer has put to the applicant certain questions and had come to the conclusion with reference to his own questions rather than that based on the evidence of the prosecution witnesses. This does not meet the requirements of Rule 14 (18) of the C.C.S. (C.C.A.) Rules, 1965 and the manner in which the delinquent's examination has been conducted has caused prejudice to the Petitioner's defence. Under the circumstances, it has to be held that the material requirements of Rule 14 (18) of the C.C.S. (C.C.A.) Rules. 1965, have not been met in this case as prejudice has been caused to the applicant thus vitiating the enquiry.

[Satyapal Arora v. Director of Postal Services 1990 (2) SLJ (CAT) 100 (Jabalpur).

29. When no Presenting Officer is appointed Inquiry Officer himself questioning the witnesses to ascertain the fact in issue, in order.—In almost all disciplinary inquiries in the Indian Railways, a presenting officer is not generally appointed and the inquiry officer himself puts questions to witnesses, elicits their answers and records the same verbatim. That general practice has been followed by the disciplinary authority in the instant case also. We very much wish that the Railway administration dispenses with this practice and appoints independent presenting officer before inquiry officers. But that desirable practice cannot be a ground to invalidate all the legal proceedings held against the applicant.

The object of all inquiries is to ascertain the fact in issue or the truth of the case Who really puts the question to a witness, that too in a domestic inquiry, which cannot be compared to a proceeding before a civil or criminal court, cannot be a ground to hold that the inquiry officer had acted both as a prosecutor and a judge.

We have carefully read the depositions of all the witnesses and the report of the inquiry officer. On a reading of all of them we are inclined

to hold that the inquiry officer had not acted as a prosecutor and a judge in the case. Hence the proceedings are not vitiated on this count.

[K. Farooq Ahmed v. Union of India and others, 1990 (1) SLJ (CAT) 304 (Bangalore).]

30. Inquiry Officer cannot act both as prosecutor and judge.—There is force in the contention of the applicant as regards infirmity in the enquiry initiated against him. A perusal of the report of the Enquiry Officer indicates that when the applicant appeared before the Enquiry Officer in person on 6-3-1989, the Enquiry Authority is stated to have argued the case with the applicant. The entire proceedings were in the form of questions by the Enquiry Authority put to the applicant and the replies given by him. This is not in conformity with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. To examine and cross-examine the delinquent in the first instance without the prosecution itself leading the evidence against him amounts to denial of reasonable opportunity as well as non-compliance with the safeguards contained in Rule 14 of the C.C.S. (C.C.A.) Rules 1965. On this short ground the proceedings initiated against the applicant in the instant case, culminating in the submission of the enquiry report to the disciplinary authority is not legally sustainable and is liable to be quashed.

[Lachhman Das Garg v. Union of India 1990 (2) SLJ (CAT) 500 (New Delhi): 1990 (2) ATJ 313]

31. Inquiry Officer himself cross-examining delinquent violates principles of natural justice.—We have gone through the various questions put by the Enquiry Officer to the charged officer. We find that the Enquiry Officer completely transgressed his domain by not only putting to the applicant incriminating and leading questions but also trying to trap him by asking him a leading question as to the time when the train from Ernakulam to Delhi reached Madras. It is common knowledge that no direct train from Ernakulam to New Delhi passes through Madras. The Enquiry Officer tried to trap him by getting some affirmative answer to the question and later incriminating the applicant by stating that the applicant never travelled by the train and his claim was fictitious. The examination of the applicant by the Enquiry Officer was nothing less than gruelling cross-examination between a criminal and an over enthusiastic police officer. In Prembabu v. Union of India [(1987) 4 ATC 727], the Principal Bench of the Tribunal has held that where the enquiry authority himself cross-examines the delinquent, there is violation of principles of natural justice and the order of punishment has to be set aside.

[V. D. Joseph v. Union of India and others, (1990) 14 ATC 99 (Ernakulam).]

32. Inquiry Officer putting searching questions to delinquent, not indicative of bias.—The case of the applicant is that the Enquiry Officer was biased against him. Though the applicant did not disclose why the Enquiry Officer was biased against him, he contended that the Enquiry Officer, after the Presenting Officer completed the questions, had resorted to put searching questions to him. We do not think that this would

ANNEXURE

FORM OF INDEX

List of Papers in MA/CP/RP/No. 410 / 99 in OA. No. 1181/98

Serial No. of Papers on record Part-I	Date of Papers or Date of filing	Description of Papers	Remarks
	26/5/99		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

M.A.NO.410 /98

IN

O.A.NO.1189/95

Between:

1. The Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India (Admn), Office of the Comptroller & Auditor General of India, Indraprastha Estate, BahadUrshah Zafar Marg, New Delhi - 110 002.

3. The Comptroller and Auditor General of India, Indraprastha Estate, Bahadurshah Zaffer Marg, New Delhi - 110 002.

....Applicant/Respondent

AND

M.Gopalakrishna Murthy ....Respondent/Applicant

PETITION FILED UNDER SEC.8 OF CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES 1986

For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Tribunal may be pleased to grant extension of time by 3 months from 18-5-99 to 17-8-99 for complying with the orders dated 29-09-1998 in O.A.No.1189/95 and to pass such other order or orders as it deem fit and proper.

V. Vinod

COUNSEL FOR PETITIONER/Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

M.A.No.410 /99

IN

O.A.NO.1189/95

Between:

M.Gopala Krishna Murthy .....Applicant

AND

The Principal Accountant General(Audit)I,
Andhra Pradesh, Hyderabad and others .....Respondents

A F F I D A V I T

I, Mohinder Singh, son of Sri Karnail Singh aged about 46 years, do hereby solemnly affirm and state as follows:

1. I am the Senior Deputy Accountant General (Administration) in the Office of the Principal Accountant General (Audit-I), Andhra Pradesh, Hyderabad and, as such, I am fully acquainted with all the facts of the case.

2. I submit that the Hon'ble Tribunal having considered the Review Application No.18/98 filed by the Applicant/ Respondent in O.A.No.1189/95 has by its orders dated 7-9-98 set aside its earlier judgement dated 5-1-98 in the main O.A. and posted the case for re-hearing. Further, after re-hearing of the case was over, the Hon'ble Tribunal by its judgement dated 29-9-98 has passed the following orders:

1st PAGE CORRECTIONS

ATTESTOR
K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT
मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प-
O/o. the Prl. Accountant General Audit-
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh, HYDERABAD-500 004

a) The impugned orders dated 31-8-94 and the orders of the Appellate Authority dated 7-8-95 communicated to the applicant through letter dated 4-9-95 are hereby set aside.

b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the Central Vigilance Commission New Delhi to the applicant.

c) The respndents shall consider the period of removal of the applicant from service from 31-8-94 to this day in accordance with the Central Civil Services (Classification, Control and Appeal) Rules.

d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

3. I submit that on the Misc.Application No.282/99 filed by this petitioner, the Hon'ble Tribunal was pleased to grant extention of time till 18-5-99 for compliance with the orders dated 29-9-98. In this connection, I submit that according to the letter No.250 LC/225-97 dated 17-5-99 of the Deputy Director (Legal), Office of the Comptroller and Auditor General of India, New Delhi, the case of Sri M.Gopalakrishna Murthy, applicant in O.A.No.1189/95 has been referred to Ministry of Finance for Presidential sanction for further action under Central Civil Services (Pension) Rules. The matter is under the consideration of the Government and Presidential sanction is yet to be received. It is therefore, necessary that further extension of time is granted in that regard.

2nd PAGE CORRECTIONS

ATTESTOR

K. CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.

DEPONENT

मोहिन्दर सिंह
MOHINDER SINGH
वरिष्ठ उप महा लेखाकार
Sr. Dy. Accountant Genera (Admn)
O/o. प्रधान महालेखाकार का कार्यालय (ले.प)
O/o the Prl. Accountant General Audit-I
आन्ध्र प्रदेश, हैदराबाद.
Andhra Pradesh HYD

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH,HYDERABAD

MA.NO. 282/1999

IN

OA.NO. 1109/1995

Between: Date: 9-4-99

1. The Principal Accountant General (Audit-I) AP,Hyderabad.
2. The Dy.Controller and Auditor General Bahadurshah Zafar Marg,New delhi Indrapraastha Estate.
3. The Comptroller And Auditor General of India Indrapraastha Estate,Bahadurshah Zaffar Marg

...Applicants

And

Mr.Gopalakrishna Murthy ...Respondent

Counsel for the Applicants ...C.Narasimha Sarma

Counsel for the Respondent ...K.Venkateshwara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN : MEMBER : (ADMN)

THE HON'BLE MR. B.S.JAI PARAMESHWAR: MEMBER (JUDL)

**** ****

HEARD THE FOLLOWING ORDER.

Heard Mr.Jacob for Mr.OM.Sharma for the applicants in the MA and Mr.K.Venkateswara Rao, for the respondent in the OA.

The learned counsel for the respondent in the MA has no objection to grant time as prayed for in this MA. Hence the extension of time is granted till 10-5-99, for compliance of the order dated 22-3-1999.

The MA is disposed of No Costs.

Sd/-xxx
Section Officer.

Copy to:-

1. The Principal Accountant General(Audit-I) AP,Hyderabad.
2. The Dy.Comptroller and Auditor General of India,C/o the Auditor General,Indrapraastha Estate,New delhi.
3. The Comptroller and Auditor General of India,Indrapraastha Estate,Bahadurshah Zaffar Marg,New delhi.
4. One copy to Mr. O.M.Sharma,Sr.CGSC,CAT,Hyderabad.
5. One copy to Mr.K.Venkateshwara Rao,Advocate,CAT,Hyderabad.
6. One spare.

CERTIFIED TRUE COPY

MA 282/99 in OA 1109/95

9.4.99

12.4.99

Deputy Registrar
Court Officer
Central Administrative Tribunal
HYDERABAD BENCH.

cont. cell 10/5/99

2/2

Reference

Service of the affidavit

Matter filed

28/5

for Reg.

Objection Complied with

31.5.99

for V. Vinod Kumar

Advocate

Reg:- Extension of time

In the C.A.T.

Hyd Bench

MA 1/99

in

OA 1189/95

Extension of time

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
प्राप्ती
RECEIVED
26 MAY 1999
1870
हैदराबाद न्यायपीठ
Hyderabad Bench

31.5.99

Filed by:-

V. Vinod Kumar

Addl. CGSC

Govt Counsel
28/5
31/5

Reg/Copy
28/5

D.O.NO.250LC/225-95 FAX

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भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय
10, बहादुरशाह जफ़र मार्ग,
नई दिल्ली - 110 002
OFFICE OF THE
COMPTROLLER & AUDITOR GENERAL
OF INDIA
10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002

दिनांक / DATE 17.5.99

R.Srinivasan
Deputy Director (LEGAL)
TELE No. 323 9335

Dear Shri Singh

Please refer to your D.O. No. C.Cell/CC-I/8-22/MA-282/99 dated 11.5.99 regarding O.A. 1189/95 filed by Shri M.Gopalakrishna Murthy before CAT, Hyderabad bench.

The matter has been referred to the Ministry of Finance for Presidential sanction for further action under CCS (Pension) Rules. The matter is under the consideration of the Govt. and presidential sanction is yet to be received. You may kindly move the Hon'ble Tribunal for further extension of three months beyond 18.5.99 for completing the formalities.

Regards

Yours sincerely,

Srinivasan

Shri Mohinder Singh
Sr. Deputy Accountant General (Admn)
Office of Accountant General (Audit)
Andhra Pradesh
HYDERABAD

दू० भा० / Phone : 3231440, 3231761
टेलेक्स / Telex : 031-65981, 031-65847
तार / Telegram : ARGEL NEW DELHI
फैक्स / Fax : 91-11-3235446, 91-11-3234014

ORDER

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER(JUDL)

1. After hearing the Learned Counsels for the parties by the order dt. 5..1.98, we had dismissed this O.A. However, the applicant filed an application under Rule 17 of the Central Administrative Tribunals (Procedure Rules 1987 in R.A. No.18 of 98 praying for review of the said order on the ground that this Tribunal had not considered the propriety or otherwise of the impugned orders, for, the disciplinary authority while passing the impugned order dt. 31 .8.84 had taken into consideration the report/opinio of the Central Vigilence Commissioner, New Delhi without giving him an opportunity to say against the same.

2. The said R.A. was accepted on 7.9.98 and our earlier order dt. 5.1.98 was recalled. We posted the O.A. for rehearing.

3. By our order dt. 7.9.98, we had directed the respondents to produce the file containing the report/opinion of the C.V.C. and also to produce the guidelines or circular instructions issued by the Department or DOPT in the matter of seeking the report/opinion from the C.V.C. and its binding nature.

4. Heard Mr. K. Venkateswara Rao, Learned Counsel for the applicant and Ms. Shakthi for Mr. G. Parameswara Rao, Learned Counsel for the respondents.

5. During the course of hearing the respondents have produced a file containing the OM dt. 2.3.94 of the CVC, New Delhi.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1189/95

Dated, the 29th September, 1998.

BETWEEN :

M. Gopala Krishna Murthy ... Applicant

A N D

1. The Principal Accountant General Audit-I, Andhra Pradesh, Hyderabad.

2. The Deputy Comptroller and Auditor General of India(Admin)., Office of the Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi-110 002.

3. The Comptroller & Auditor General of India, Indraprastha Estate, Bahadur Shah Zaffer Marg, New Delhi - 110 002.

.... Respondents

COUNSELS :

For the Applicant : Mr. K. Venkateswara Rao

For the Respondents : Mr. G. Parameswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER(ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(JUDL)

Contd..2

demanded and accepted a bribe of Rs.1,000/- from the decoy. Shri P.V.Lokanadham, Health Supervisor, Primary Health Centre, Thurimerla, in the matter his (deocy's) dropping audit objection against his (decoy's) pay fixation and thereby committed gross misconduct as detailed in the imputation of misconduct.

By the aforesaid acts, the public servant to maintain absolute integrity and conduct and acted in a manner unbecoming of a public servant and thereby violated Rule-3(1) of Central Civil Service (Conduct) Rules, 1964."

(e) On 29.4.94 the applicant submitted his explanation. The Disciplinary Authority was not satisfied with the explanation of the applicant. Hence, it ordered to conduct a detailed inquiry into the charge levelled against the applicant. The applicant participated in the Disciplinary Proceedings.

(f) The applicant had not examined any witnesses on his behalf and in support of his defence.

(g) The Presenting Officer submitted his written brief, a copy of which is at pages 72-76 of the O.A. Likewise, the applicant also submitted his written brief, the copy of which is at pages 59-69 of the O.A.

(h) On 31.12.93, the Inquiry Officer submitted his report. A copy of the report of the Inquiry Officer is at pages 39-57 of the O.A. The Inquiry Officer held that charge levelled against the accused as partially proved.

(i) A copy of the report of the Inquiry Officer was furnished to the applicant. On 15.4.94 the applicant submitted his explanation to the report of the Inquiry

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6. The facts giving raise to this O.A. may, in brief, be stated as thus :-

(a) The applicant was working as Audit Officer in the Office of the Principal Accountant General (Audit-I), Hyderabad. During September, 1990 the applicant was a member of the Audit party who proceeded for audit and verification of fixation of pay of various Departments of State of Andhra Pradesh. The audit party was performing its audit checks in Nellore District.

(b) On 9.10.90 the CBI laid a trap on the applicant on the complaint of one Sri P.V. Kokanadham an employee of the Health Department and the applicant was caught red handed while accpeting the 10 currency notes of denomination of Rs.100/- (Rs.1000/-).

(c) It is submitted that the CBI had submitted an FIR to the Court of Special Judge for CBI cases Nellore, and also reported the matter to the Department about the involvement of the applicant in the trap.

(d) On going through investigation papers of the CBI and after forming an opinion as to the existence of a prima facie case to proceed against the applicant, departmentally, the Disciplinary Authority served a major penalty charge memo No.CC/DC-1/8-118/1991 Dt. 19.11.1991 (Annexure-9 page 84-97 of the O.A.) The charge levelled against the applicant reads as follows :

> "That the said Sri MGK Murthy, while continuing as the Audit Officer of Pay Fixation Party of Accountant General, Andhra Pradesh, Hyderabad in abuse of hisposition as public servant on 9.10.1990 at 10.30 hrs. at Collectorate office, Nellore,

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of the Constitution of India, and, consequently for a declaration that the applicant is entitled to be treated on duty from the date of his suppension i.e. 23.10.1990 till the date of his retirement on superannuation i.e. on 30.9.1994 and with all consequential benefits.

8. The respondents have filed their counter stating that the CBI laid a trap on 9.10.90 that the applicant was caught red handed while accepting the money offered by P.V. Lokanadham that with respect to the said trap a major penalty charge memo was served on the applicant that the Audit Party had raised an objection as to the excess payment of Pay and Allowances to Sri P.V.Lokanadham on account of erroneous fixation of his pay, that the said objection was issued to the Medical Officer, Primary Health Centre, Thurimerla that in the objection it was ordered to recover Rs.10,500/- from Sri P.V.Lokanadham, that the objection was issued on 19.9.90 that the Health Officer returned the said objection with a reply that the reply was received on 5.10.90 that the applicant had rejected the reply offered by the Department to the audit objections that the applicant should have brought to the notice of the same ~~xx~~ in the course of his inspection report that, instead, he returned the reply to the Medical Officer for necessary action that the applicantcould have met the District Medical Officer, Nellore and brought to his notice, ifreally, Sri P.V.Lokanadham had attempted to bribe him that it was only after his return from Nellore to Head. quarters, that too after a lapse of anny days andafter service

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Officer. The copy of the explanation offered by the applicant is at pages 34-37 of the O.A.

(j) After considering the explanation offered by the applicant and also the report of the Inquiry Officer, the Disciplinary Authority by his proceedings No.PRL/AG(AU)-1/COORDN.CELL/DC/1/8-118/94-95 dt. 31.8.94, disclosing the reasons imposed the penalty of removal of the applicant from service. The copy of the order of the Disciplinary Authority is at Annexure-3.

(k) Against the said order of punishment of removal, the applicant preferred an appeal to the Respondent No.2 The copy of the Memorandum of appeal dt. 10.10.94 is at Annexure-2.

(l) The Appellate Authority i.e. Respondent-2 after considering the appeal and the records of the Enquiry, confirmed the punishment and rejected the appeal by hisproceedings No.PRL/AG(AU)-1/Coordn.Cell /DC/1/8-118/117 dt. 4.9.1995.

7. The applicant has filed this O.A. to call for the records relating to the impugned orders, including the file containing the advice if any rendered by the Central Vigilance Commission and quash the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14 and 16

Contd...6

perfectly valid, justified and according to law.

9. Thus they submit that there are absolutely no reasons to interfere with the impugned orders.

10. During October, 1990 the Applicant was a member of the Audit Party who had proceeded to audit the fixation of pay of the employees of the Departments of the State of Andhra Pradesh in Nellore District. On 9.10.90 the CBI laid a trap on the applicant. They laid a trap on thebasis of the complaint lodged by one P.V.Lokanadham, an employee of the Department of Health.

11. It appears the Audit Party had raised certain objections regarding the fixation of pay of Sri P.V.Lokanadham and had ordered recovery of Rs.10,500/- from his salary. Sri P.V.Lokanadham complained to the CBI that the accused demanded bribe for waiving the audit objections regarding his fixation of pay. Earlier to 9.10.90 the applicant had meetings and dialogue with P.V. Lokanadham. It is only during those meetings both conversed together and had come to an understanding as regards the amount of bribe to be paid to the applicant. It is only thereafter Sri P.V. Lokanadham approached the CBI being certain that the applicant was demanding bribe from him to show him an official favour; that is to waive the audib objections.

12. On 9.10.90 the CBI laid a trap in the office of the Collecotrate, Nellore. It was in the early office hours the applicant was trapped. Certain other officials of the Collectorate were also present. Sri P.V.Lokanadham approached the applicant as agreed to, earlier and offered thebribe of Rs.1000/- (containing 10 currency notes of Rs.100/- each). As per version of Sri P.V. Lokanadham the applicant demanded the bribe amount that when he offered the same the applicant accepted from his right hand, and

of the charge memo the applicant came with an explanation; that the Enquiry Officer followed the procedure detailed in Rule-14 of the CCS(CCA) Rules that Rule 11 of the CCS(CCA) Rules makes it obligatory to impose a major penalty of removal/dismissal from service in case of acceptance of illegal gratification as a motive or reward for doing or forbearing any official act is established that the Enquiry Officer, categorically, held that the applicant was in possession of the tainted currency notes that the applicant had produced the same before the Enquiry Officer from his shirt pocket, that the applicant took up the plea that the amount was thrusted into his hands and into his pocket by P.V.Lokanadham that the applicant failed to give satisfactory explanation as to how the tainted currency notes were in his possession or were found in his shirt pocket that the Disciplinary Authority after considering the findings of the Inquiry Officer and in justaposition with the explanation offered by the applicant formed an opinion that the applicant had demanded and accepted the bribe amount from Sri P.V.Lokanadham and accordingly passed the impugned order imposing the penalty of removal of the applicant from service that the reasonings of the disciplinary authority in coming to the conclusion are convincing, clear, and cogent; that the Appellate Authority also took into consideration the various grounds raised by the applicant in the memorandum of appeal and having regard to events that took place subsequent to the trap formed an opinion that the defence of the applicant was not acceptable and that accordingly the impugned orders are

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16. During the enquiry the applicant has not examined any of the witnesses in support of his defence.

17. The Inquiry Officer analysed the evidence and recorded a finding that charge levelled against him is partly proved. The Enquiry Officer formed an opinion that there was no actual demand by the applicant of the bribe amount from Sri PV Lokanadham. However, the Inquiry Officer found no plausible explanation from the applicant as to how the tainted currency notes were found in his shirt pocket. The Inquiry Officer rejected the case of the applicant that the complainant had thrusted the tainted currency notes into his shirt pocket. With this reasoning the Inquiry Officer submitted his report.

18. The Disciplinary Authority as well as the Appellate Authority have considered the report of the Inquiry Officer and have detailed reasons as to how the misconduct of the applicant has been amply proved.

19. The Learned Counsel for the respondents in support of his contention argued that this Tribunal cannot attempt to reappreciate the evidence or reanalyse the evidence, relied on the observations made by the Hon'ble Supreme Court of India in the case of N.Rajaratnam Vs. State of Tamil Nadu and another reported in 1997 All India Services Law Journal P.10. In para 2 the Hon'ble Supreme Court has been pleased to observe as follows :

> " It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken

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kept in the left side pocket in his shirt.

13. Thereafter the Investigating Officer entered the room where the applicant was seated ascertained as to what took place and conducted chemical test on the hands of the applicant and seized the currency notes from possession of the applicant x that the applicant himself took out the currency notes from his pocket and handed over the same to the I.O. and that the Investigating Officer seized the shirt worn by the applicant and subjected the shirt to chemical test.

14. Thus as per the disciplinary authority the applicant demanded and accepted Rs.1000/- from Sri P.V.Lokanadham and thereby committed an offence of misconduct. This is the jist of the case of the applicant.

15. During the enquiry the applicant gave his statement. It is at pages 82 & 83 of the O.A. The defence of the applicant in the Disciplinary Proceedings was that on 9.10.90 one Sri P.V.Lokanadham visited the collectorate, that the said P.V.Lokanadham came near him and thrusted a wad of currency notes into his hands and requested him to drop the objection on the basis of the G.O. issued in January 90 that he did not like it and pushed back the money into the hands of P.V.Lokanadham and Lokanadham had come with a determined mind to cause trouble to him, that P.V.Lokanadham immediately thrusted the amount into his shirt pocket that he wanted to report the malpractice of Sri P.V.Lokanadham to DM and HQ, that he stood up to turn up towards the telephone that at this juncture one CBI Inspector entered his room and asked his identity and that he disclosed that he was the auditor of the Pay Fixation Party.

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brought out as to how Sri PV Lokanadham had a grievance against him. The respondents in their counter had clearly stated when once he raised the objection regarding erroneous fixation of pay of Sri PV Lokanadham and sent the objection the Medical Officer, Nellore, thereafter he should have included the same objections in the audit report. Instead, he entered into correspondence with the Medical Officer. For this there is no satisfactory explanation from the applicant.

21. The learned counsel for the applicant submitted that the applicant was not the competent officer to drop the objection raised in respect of erroneous fixation ofpay of Sri PV Lokanadham. If that was so, there was absolutely no reason for the applicant to entertain Sri PV Lokanadham earlier to 9.10.90 and on 9.10.90. The complaint filed by Sri PV Lokanadham against the applicant clearly indicate the circumstances under which the applicant demanded the bribe. Therefore, it cannot be imagined that the CBI official colluding with Sri PV Lokanadham laid the trap on the applicant.

22. The trap was laid in the office of the Collectorate, Nellore. Sri PV Lokanadham met the applicant in the presence of other officials. If, as contended by the applicant, Sri PV Lokanadham thrusted thetainted currency notes first into his hands and then into his left side pocket in the shirt we feel naturally there must have been a commotion in the office and in the said process the officials should have come to the rescue of the applicant. The officials should

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into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in theservice. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier carrier. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

20. The Learned Counsel for the applicant submitted that it is the case of no evidence that the impugned orders are not sustainable. His further submission that Sri P.V. Lokanadham and the CBI officials colluded together and laid a trap on him to harass him. We are not persuaded to accept the said contention that the trap was a collusive one. There is no reason for the CBI officials to have any vengence against the applicant. However, it is not clearly

submitted he has not brought this incident to the official superior till he submitted his explanation to the charge memo. His continued silence goes a long way to disprove his defence.

26. The learned counsel for the applicant contended that the Disciplinary Authority and the Appellate Authority have misconstrued the evidence. In reply to thissubmission the learned counsel for the Respondents relied upon the decision of the SupremeCourt in the State of Tamil Nadu Vs. Subramaniam (1996 Vol.33 ATC page 311). The Hon'ble Supreme Court in that case considered whether the Tribunal can appreciate the evidence and come to a different conclusion in para 5 the Hon'ble Supreme Court has been pleased to observe as under :

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own findings that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same inthe Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own

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should have taken to task Sri PV Lokanadham for attempting to bribe him. It is surprising that none of the official who was present in the Collectorate on 9.10.90 when the applicant was caught red-handed has come forward to support the defence theory of the applicant.

23. Besides, the applicant did not inform his official superior about this incident till he replied to the charge memo. This queer conduct could not have been expected from an official who was falsely involved in a trap. The Disciplinary Authority and the Appellate Authority have taken these factors in passing the impugned orders. The Inquiry Officer for thereasons best known to him recorded a finding that there was no demand for bribe on the part of the applicant. We feel that the demand and acceptance of the bribe by the delinquent employee have to be gathered from the circumstances available in the case.

24. Disciplinary proceedings are neither criminal trial nor Civil Trial. Preponderence of probabilities is the guiding factor. Whether the applicant demanded the bribe from Sri PV Lokakdham or not can be ascertained from the moment Sri PV Lokanadham ldoged the complaint with the CBI. Further, the tainted currency notes were found and seized from the left hand side pocket in the shirt worn by the applicant.

25. His explanation that the complainant thrusted the tainted currency notes in the hands in the first instance and then into the shirt pocket cannot be accepted. No man of ordinary prudence can accept such a tehory in the absence of immediate action on the part of the applicant. As already

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27. Lastly the Learned Counsel for the applicant contended that the disciplinary authority had taken into consideration the report/opinion of the CVC in imposing the punishment of removal from service.

28. It is not in dispute that the disciplinary authority had sought the report/opinion of the CVC, New Delhi. This is evident from the file produced by the respondents. This material was not furnished to the applicant, before passing the order.

29. On the contrary, the Learned Counsel for the respondents contended that the applicant had not taken this ground in challenging the impugned orders in the O.A.; that this ground was taken only in the rejoinder filed to the reply filed by the respondents; that the respondent authorities had not taken into consideration the report/opinion of the CVC in imposing the punishment and that the disciplinary authority had independently of the report/opinion of the CVC took decision to impose the punishment.

30. It is to be noted that the CVC had opined for removal of the applicant from service. Even the disciplinary authority had imposed the said punishment in the impugned. order.

31. The reason for not taking this ground of attack in the O.A. according to the learned counsel for the applicant is that in the impugned order dt. 31.8.94, the disciplinary authority had nowhere indicated that he had sought the opinion or report from the CVC; that was the reason why he had prayed in the prayer column of the O.A. to summon the report of the CVC, if any, that when the report was filed then he took a specific ground in the rejoinder that the disciplinary authority had taken into consideration the report/opinion of the CVC without giving the applicant an opportunity to say against the same.

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conclusion, Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reached is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi V. Union of India,[1] State of T.N. V. T.V.Venugopalan[2] (SCC para 7), Union of India V. Upendra Singh[3] (SCC at para 6), Govt. of T.N. V. A. Rajagandian[4] (SCC para 4) and B.C.Chaturvedi V. Union of India[1](SCC at pp-759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

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at one stage they had thought of not proceeding against the applicant therein and that the opinion of the CVC is only advisory.

34. From the material placed during the course of re-hearing, it is amply established that the disciplinary authority had obtained the report/opinion of the CVC. The CVC in in his OM dt. 2.3.94 had, after taking into consideration the facts and circumstances in the case advised imposition of penalty of removal of the applicant from service. The respondents may now contend that the disciplinary authority was not influenced by the report of the CVC. But the fact remains that they had taken the report/opinion from the CVC before taking a decision in the matter.

35. The Learned Counsel for the applicant contended that there is violation of principles of natural justice in that the disciplinary authority failed to give the applicant an opportunity on the report/opinion of the CVC. In support of this contention the Learned Counsel for the applicant relied on the observations made by the Hon'ble Supreme Court, in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr. reported in AIR 1993 S.C. 1197. It is to be noted that the disciplinary authority passed the impugned order dated 31.8.94 after the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court considered in the said case whether the disciplinary authority can, while imposing the punishment, major or minor, act on material which neither supplied nor shown to the delinquent employee. In that case, the delinquent employee had sought a copy of the report of the CVC. The disciplinary authority rejected his request to furnish the report of the CVC on the ground that it was a confidential document.

36. In that case also the the appellants Counsel put forth the arguments as submitted by the learned Counsel for the respondents herein that the disciplinary authority was not

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30. The Learned Counsel for the respondents contended that the disciplinary authority was not influenced by the report/opinion tendered by the CVC; that it has not caused any prejudice to the applicant.

31. There are justifiable circumstances for the applicant in not raising this ground of attack in the O.A. On going through the order dt. 31.8.94, it is not possible to come to the conclusion that the disciplinary authority, before passing the order dt. 31.8.94 had sought the opinion/report of the CVC. It is altogether a different matter whether he had accepted or rejected the report/opinion of the CVC. The disciplinary authority was expected to take a decision in the matter independently, without any pressure from outside source.

32. In the case of Anil Goel Vs. Union of India and Another reported in 1994 (28) ATR page 646 at para 52 the Principal Bench of this Tribunal has observed as follows :

> "52. The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

33. In the case of Alfred D'Souza Vs. Collector of Customs & ANR. reported in ATR 1992 (2) page 531, the Ernakulam Bench of this Tribunal considered the role of the CVC, New Delhi in the disciplinary proceedings. In that case, the Ernakulam Bench of this Tribunal formed an opinion that the respondents therein were influenced by the report of the CVC even though

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was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as,'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Takig action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be confidential that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind the back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was

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influenced by the report/opinion of the CVC; that the discipinary authority independently took the decision to impose the penalty and that the applicant has not been prejudiced. Repelling those contentions, the Hon'ble Supreme Court in para 5 of the above case has been pleased to observe as follows :

> "....It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to the conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasized that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the resppondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which

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37. Considering the decision of the Hon'ble Supreme Court, we are of the opinion that the disciplinary authority was not expected to consider the report/opinion of the CVC dt. 2.3.94 without giving an opportunity to the applicant.

38. In that view of the matter, the impugned orders cannot be sustained. They are liable to be set aside. However, liberty is given to the respondent authorities to conclude the disciplinary proceedings from the stage where the illegality was committed i.e. from the stage of furnishing a copy of the OM dt. 2.3.94 of the CVC to the applicant. Hence, we issue following orders :

(a) the impugned orders dt. 31.8.94 and the order of the appellate authority dt. 7.8.95 communicated to the applicant through letter dt. 4.9.95 are hereby set aside.

(b) The respondents are at liberty to proceed with the disciplinary proceedings from the stage of furnishing a copy of the report/opinion of the CVC contained in the OM dt. 2.3.94 of the CVC, New Delhi. to the applicant.

(d) The respondents shall consider the period of removal of the applicant from service from 31.8.94 to this day in accordance with the CCS CCA Rules.

(d) The respondents shall conclude the disciplinary proceedings within 45 days from the date of receipt of a copy of this order.

39. With the above directions the O.A. is allowed leaving the parties to bear their own costs.

The CVC Memo No.OU-CAG-06 dt. 2.3.98 was perused by us and returned to the respondents.

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So because the respondent prior service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submissionof the learned Additional Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendations which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior Officer of the bank. He was promoted to the tope executive grade in August, 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error."

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