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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.508 OF 1995.

DATE OF ORDER : 17th June, 1998.

BETWEEN :

M. VENKAT REDDY,
S/o M.P.Reddy, aged about 45 years,
Defence Research Development Laboratory
(DRDL), Kanchanabag, Hyderabad,
R/o Hyderabad. ... APPLICANT

A N D

1. Scientific Adviser to the Ministry of Defence and Director General, Defence Research and Development Organisation, Government of India, New Delhi.
2. Director, Defence Research and Development Laboratory (DRDL), Kanchanabagh, Hyderabad. ... RESPONDENTS

COUNSEL FOR APPLICANT : MR.S.LAKSHMA REDDY

COUNSEL FOR RESPONDENTS : MR. N.R.DEVARAJ, Sr.CGSC

CORAM :

HONOURABLE MR.R.RANGARAJAN, MEMBER(ADMINISTRATIVE)

HONOURABLE MR.B.S.JAI PARAMESHWAR, MEMBER(JUDICIAL)

O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member(J))

1. Heard Mr. S. Lakshma Reddy, the learned counsel for the applicant and Mr. N.R. Devaraj, the learned Standing Counsel for the respondents. The respondents have produced the enquiry records. Perused the same.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 10.4.1995.
3. The applicant joined the establishment of the respondent No.2 as Machinist (Token No.658). The



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applicant was placed under suspension with effect from 24.9.1977. On 19.10.1977 he was served with a Memorandum of Charges. The misconduct alleged against him reads as follows :

" Article I of Charge :-

Shri M. Venkat Reddy Designation Machinist T.No.658 was required vide Workshop Routine Order no.37 of 19-9-77 to report to the clocking supervisor of his shop every day and get his man-hour booking card, machine-hour booking card and operation cards punched.

Shri M. Venkat Reddy failed to report to the clocking Supervisor of his shop on 22-9-77, 23-9-77 and 24-9-77 and thus disobeyed Workshop Routine order no.37 dated 19-9-77.

The aforesaid acts of commission, Shri M. Venkat Reddy amount to wilful disobedience and constitute grave misconduct and hence violation of Rule 3 of the Central Civil Service (Conduct)Rules,1964.

Article - II of Charge :-

Shri M. Venkat Reddy Designation Machinist, T.No.658 while functioning as Machinist during the period July,'77 to Sep.'77 instigated members of the staff of the Development Works of DRDL to

- (a) disobey verbal and written orders of instructions of the Officers of the said workshop such as Workshop Routine Order no.37 of 19-9-77;
- (b) strike work from 0845 hrs to 1230 hrs on 25-7-77;
- (c) boycott their pay on 6-9-77 and
- (d) shout slogans and take part in a demonstration on 7-9-77 from 0840 hrs to 0915 hrs within the DRDL premises.

Thus Shri M. Venkat Reddy either singly or in collusion with others made concerted attempts to disrupt the normal functioning of DRDL.

As part of this attempt Shri M. Venkat Reddy himself disobeyed the verbal and written instructions as stated above, struck work from 0845 hrs. to 1230 hrs on 25-7-77. refused to take his pay on 6-9-77 though he was absent from his place of work and was to go to collect his pay, and took part in the demonstration between 0840 hrs. and 0915 hrs on 7-9-77 inside the DRDL premises. By the aforesaid act of commission and omission Shri M. Venkat Reddy committed grave misconduct and behaved in a manner unbecoming of a Government servant in contravention of Rule 3 and 7 of the Central Civil Service (Conduct)Rules,1964."

4. The applicant denied the charges.

5. A Board of Enquiry was constituted and Lt.Col.R. Swaminadhan as Presiding Officer and Sri S.R.Ramaswamy, Scientist 'C' DLRL as Member were appointed. The applicant raised objections to the competency of the Board of Enquiry to enquire into the charges. However, he participated in the enquiry proceedings.

6. While the enquiry proceedings were under progress the applicant filed a writ petition in W.P.No.144 of 1980 before the Hon'ble High Court of Andhra Pradesh at Hyderabad. The said writ petition was transferred to this Tribunal and was re-numbered as T.A.No.9 of 1991.

7. On 10.9.1993 this Tribunal disposed of the T.A. as follows :

"8. In the result, Article-II of the charge memo dated 19-10-1977 to the extent of alleged violation of Rule 7 of the Conduct Rules is quashed.

9. It is for the concerned authority to dispose of the inquiry in regard to Article-I and remaining portion of Article-II in accordance with law."

Thus a portion of Charge No.II of the Charge Memo. was quashed and the Board of Enquiry was directed to conclude the enquiry into the Charge No.I and the remaining portion of Charge No.II of the Charge Memo.

8. On 5.1.1980 the Board of Enquiry concluded the enquiry and submitted its report. A copy of the report of the Board of Enquiry was furnished to the applicant. The applicant submitted his explanation dated 19.1.1995. The



copy of the explanation is at pages 18 to 19 of the O.A.

9. The disciplinary authority after considering the findings recorded by the Board of Enquiry and the explanation of the applicant, by his proceedings No.DRDL/638/MVR/A dated 14.6.1994 imposed the penalty which reads as under :

" The pay of Shri M.Venkat Reddy be reduced by one stage from Rs.272.00(to be fixed at Rs.1010/- corresponding Rs.272/- under CDS(RP)Rules,1986) to Rs.266.00(corresponding to Rs.990/- under CDS(RP)Rules,1986) in the pre-revised time scale of pay of Rs.260-6-290-EB-6-326-8-360-EB-8-390-10-400 (Revised to scale of pay of Rs.950-20-1150-EB-25-1500 under CDS (RP) Rules,1986) for a period of Four years with effect from the date of reporting. It is further directed that Shri M.Venkat Reddy will earn increments of pay during the period of reduction and that on the expiry of this period the reduction will not have the effect of postponing his future increments of his pay."

10. The applicant submitted an appeal against the the conv. of the Memorandum of Appeal is at pages 29 to 36 of the O.A. which is dated 25.7.1994.

11. The appellate authority after considering the various grounds urged in the appeal, by his proceedings No.RD/Pers-10/21538/94(15)/DLRL dated 23.1.1995 rejected the appeal and confirmed the punishment.

The respondent No.2 is the disciplinary authority and the respondent No.1 is the appellate authority.

12. The applicant has filed this O.A. challenging the order dated 14.6.1994 passed by the respondent No.2 and the order dated 23.1.1995 passed by the appellate authority, on the following grounds :

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(a) It is stated that the imputation in support of the Charge No.1 and Charge No.2 framed under Rules 3 & 7 has to fall on the ground as without jurisdiction once the applicant is held as workman entitled to exemption from Rule 7 inasmuch as the imputations constituting the basis for a specific misconduct as provided under Rule 7 could not be brought under Rule 3 and hence the charges framed are misconceived, illegal and without jurisdiction.

(b) The second respondent has no jurisdiction to constitute the Board of Enquiry under the CCS(CCA) Rules, 1965 and even assuming such a power was there, it is submitted that the constitution of the Board by the is illegal enquiry conducted by the said Board is vitiated.

(c) The constitution of the Board of Enquiry with Lt. Col. R. Swaminadhan as the Enquiring Authority/Presiding Officer of the Board of Enquiry is contrary to the well established principle that no witness to an incident and a person who is actively participated in the alleged incident can be appointed as an Enquiry Officer.

(d) The respondents' failure to produce man-hour booking card, machine-hour booking card and operation booking card which were the basic documents to prove the facts constituting the misconduct amounted to denial of reasonable opportunity to him to prove that the charges framed were baseless.

(e) The oral evidence of other witnesses cannot be treated as admissible and legal evidence to be relied upon to prove the said allegations and hence the Enquiry Officer as well as the Respondents 1 and 2 relied upon

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inadmissible evidence to prove the charge.

(f) The deposition of the Clocking Supervisor to question No.68 onwards itself goes to prove that no absentee code was given to the applicant and that operation card in respect of the applicant had shown that the work assigned to him was done itself goes to show that the applicant had not disobeyed Workshop Routine Order No.37 and also to show that he regularly reported to the Clocking Supervisor for getting his cards punched i.e. on the relevant dates/22nd, 23rd and 24th September, 1977.

(g) The deposition of P.W.4 Sri C.Veeraiah, Supervisor to the effect that the handwriting on Ex.P.3 was not his but that of one Cleaner of the Bay 6 Mr.Kamal Singh and that they were prepared subsequently and signed by him on 26.9.77 i.e. after placing the applicant under suspension and that those documents were prepared to harass the applicant.

(h) There was no evidence on record to show that the applicant had boycotted the pay nor was it deposed by any witness that the applicant had not received the pay on 6.9.77 nor was there any reason for non-disbursement of the pay on that day. Hence the charge was baseless.

(i) The Incharge Officer of the Development workshop who had issued the Workshop Routine Order No.37 had no jurisdiction to issue such order and as such it was not the lawful order with authority and the same was liable to be declared as ultra vires of the powers of the said Officer having no consequences in law much less for treating it as the basis for framing charges of misconduct, particularly when the applicant had attended the workshop on these relevant dates.

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(j) The respondents relied upon the material which is not forming part of the record, such as, Bulletin said to have been issued by the unrecognised Union in which the applicant was an Office bearer and as such the impugned orders were passed with prejudice relying upon the said documents which were not put to examination during the course of enquiry and thus he was denied reasonable opportunity.

(k) The action of the respondents is vindictive amounting to unfair labour practice. The punishment imposed by the respondents is grossly disproportionate and has no rationale for the alleged proved charge and as such violative of Articles 14 and 16 of the Constitution of India; and

(l) The reasons explained by the applicant in his defence brief dated 15.12.1979 and in his Memorandum of Appeal have not at all been considered by the authorities while passing the impugned orders.

13. The respondents have filed their counter stating that certain grounds urged by the applicant regarding competency of the Board of Enquiry etc. were considered by this Bench in T.A.No.9/91; that the documents relating to man-hour booking cards for the months of August and September, 1977, Machine hour booking cards for the months of August and September 1977 and job operation cards for the months of August and September, 1977 were not available as their utility period was over; that they were not preserved but the contents of those documents were fed to the Computer and processed for the purpose of analysing the works; that as the applicant requested for those documents after a lapse of 2 years, the same could



not be supplied to him; that as per the Workshop Routine Order (WRO) No.37 dated 18.9.1977 it was the duty of all the staff to ensure that the operation, man hour booking and machine hour booking cards pertaining to the job entrusted to them are furnished to the Clocking Supervisor promptly for punching ; that failure to report to the Clocking Supervisor would be taken as absence from duty and disobedience of these orders; that the Clocking Supervisor had given his first information report for 22.9.1977, for 23rd and 24th September, 1977 giving the list of operators who did not report to him for getting their cards punched; that in those lists, the name of the applicant had figured; that non-availability of man/hour booking card and machine-hour booking card would in no way alter(s) the position regarding the refusal of the applicant to report to the Clocking Supervisor for getting the card punched; that a regular enquiry was conducted into the charges and that reasonable opportunity was provided to the applicant to defend his case; that the disciplinary authority as well as the appellate authority have considered the material placed on record; the enquiry report submitted by the Enquiry Officer and other relevant records and came to the proper conclusion; that the disciplinary authority passed a reasoned order; that the Board of Enquiry was appointed with an outside member as the Enquiry Officer for serving the principles of natural justice; that a senior officer of the rank of Lt.Col. was appointed as the Presiding Officer and an officer of the rank of Scientist 'C' was appointed as the Member; that the Board of Enquiry consisted of Lt.Col. Sri R.Swaminathan as the Presiding Officer and Sri S.R. Ramaswamy, SSO-I,

was constituted to enquire into the charges; that it was only on 1.8.1979 nearly after 2 years, the applicant stated that the said Lt.Col.Swaminathan was a defence witness; that had the applicant any intention to call the said Swaminathan as his witness, he should not have waited for nearly 19 months after constitution of the Board; that the Board considered all the facts and circumstances of the case; that the documents listed in this paragraph were not available as their utility period had expired; that the statements of witnesses were recorded during the course of enquiry as per the list submitted by the applicant as well as by the Presenting Officer; that the Board of Enquiry considered the material placed on record and submitted its report; that the absentee report was required to be given only in respect of man-hour booking card and not in the operation card; that for the period from 18.9.1977 to 24.9.1977 the operation booking card was not produced during the course of enquiry; that the evidence which was produced was the job card sheet in which the information contained in the operation card of a particular day was extracted and compiled for the whole week; that the Clocking Supervisor collected the said information from the Bay Supervisor regarding the operation card when the operators had not reported to the Clocking Supervisor for the purposes of punching the various cards during the month of September,1977 to avoid loss of information; that the information contained in the job card sheet by itself is not a proof of implicit obedience of the instructions contained in the Workshop Routine Order No.37 of 1977; that the Disbursing Officer was required to pay the



that salary to 150 employees and he actually had disbursed the pay only to 5 employees; that the applicant did not collect his salary on 6.9.1977 though his name was there in the list of employees; that the Union published a bulletin claiming that about 800 employees of the Laboratory had refused to receive their salaries on 6.9.1977 in protest against the attitude of the management in failing to pay the salaries on 3.9.1977; that there was a system of publication of orders and instructions in the Workshop of the Laboratory for smooth flow of the work; that the routine orders were issued as and when necessity arose; that the bulletin referred under this paragraph was produced during the course of enquiry as Ex.P.5; that each disciplinary case had been considered by the disciplinary authority on its merits and out of 11 cases referred to by the applicant, the authority found them guilty of the charge after the enquiry was over; that out of those 9 employees, 4 employees were warned and the services of the remaining 4 employees were terminated; that the disciplinary authority after considering the enquiry report and the explanation of the applicant as also the material placed on record, imposed the penalty on application of its mind that and there was no violation of Articles 14 and 16 of the Constitution of India. Thus they contend that there are no merits in this O.A. and the O.A. is liable to be dismissed.

14. The learned counsel for the applicant during the course of his arguments, relied upon the following decisions in support of his submissions.

(1) 1981 (3) SLR 639
R. Srinivasan v. Union of India (Mad.)

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(2) 1982 (3) SER 347
V.K. Parameswaran v. Union of India and others.

(3) 1983 (3) SER 319
Mahendra Kumar v. Union of India and another.

(4) 1985 (1) SLR 181 (at page 189)
Mahendra Kumar v. Union of India and another (AP)

(5) 1991 Supp. (1) SCC 504
Kulwant Singh Gill v. State of Punjab.

Further he relied upon Rule 3 of the CCS(Conduct) Rules to contend that Rule 3(1) of the said Rules provides that every Government servant shall at all times maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Government servant. It is stated that this rule serves specific purpose covering the acts of misconduct not covered by other specific provisions of the rules. It is, therefore, necessary that the disciplinary authorities should first satisfy themselves that the alleged acts of misconduct do not attract the provisions of any other specific rule before taking recourse to Rule 3(1) of the CCS(Conduct) Rules.

15. It is to be noted that the word 'misconduct' has not been defined in the CCS(Conduct) Rules. But however, the Hon'ble Supreme Court of India has clearly analysed and explained the word 'misconduct' in the case of State of Punjab v. Ramsingh, reported in AIR 1992 SC 2188). In paras 4 & 5 the Hon'ble Supreme Court has been pleased to observe as under :

"4. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

" A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

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Misconduct in office has been defined as :

" Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Ediction 1987 at p. 821 'misconduct' defines thus :-

" The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral torpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act of complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

16. With this background we may consider the charges imputed against the applicant.

17. The Charge No. I levelled against the accused as extracted above gives us an impression that he violated the Workshop Routine Order No.37 dt.19.9.1977. It is the case of the respondents that the applicant as a Machinist was required to report to the Clocking Supervisor every day and to get his man-hour booking card, machine/hour booking card and operation card punched. This was the duty he was expected to do as per the WRO No.37 dated 19.9.1977. Thus the applicant failed to follow the said WRO on 22nd, 23rd and 24th September, 1977.

In fact, the man-hour booking card, machine-hour booking card and operation card were not available during the enquiry.

18. The applicant prayed for production of those documents. The explanation of the authorities is that those documents were to be served only for a period of 2 years and that they were destroyed after the expiry of the utility period. However, the contents of the said documents were fed to the Computer and were preserved. That apart, they rely upon the oral evidence of the Clocking Supervisor under whom the applicant was then working.

19. Non-furnishing of the documents by the Inquiry Officer in the circumstances cannot be held ~~as~~ to be a violation of principles of natural justice. The applicant has not denied that the contentions of the respondents are not acceptable. It is not his case that the respondents are required to preserve these documents for ever.

20. The charge places certain burden on the applicant to prove his innocence of this charge. The charge is that on 22nd, 23rd and 24th September, 1977 he failed to report to the Clocking Supervisor certain

documents and got them punched. If really he had reported to the Clocking Supervisor and had got those documents punched in accordance with the Workshop Routine Order No.37 dated 19.9.1977 then he should have stated so in clear terms. When the authorities allege the violation of the Workshop Routine Order and when the applicant disputes it, then it is natural for him to place some material on record to show that he had discharged the duties in accordance with the Workshop Routine Order and that there was no disobedience on his part. This Routine Order required him to report to the Clocking Supervisor of his shop every day and to get his man-hour booking card, machine-hour booking card and operation cards punched.

21. The respondents have submitted that these documents had been destroyed on the expiry of their utility period. However, they submit that contents of those documents were fed to the Computer and preserved. They have relied on the evidence of the Clocking Supervisor to substantiate this charge. The authorities have carefully analysed the evidence of the Clocking Supervisor. Further, the Clocking Supervisor had submitted the first information reports dated 22nd, 23rd and 24th September, 1977 containing names of those subordinates who had violated WRO No.37 dt.19.9.1977. The name of the applicant was found in the said information. The applicant has not disputed or challenged the evidence of Clocking Supervisor and his first information report. That apart, the applicant while submitting his objections to the Charge Memo dt.19.10.1977, had admitted his lapses. His explanation is dated 28.10.1977. The disciplinary authority has taken note of admission of the applicant in the impugned order.

The disciplinary authority after taking into consideration the evidence of Clocking Supervisor, his

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first information and the explanation dated 28.10.1977 of the applicant, reached the conclusion that Charge No.I is proved.

The appellate authority also has considered these aspects. Though the applicant does not dispute his explanation dated 28.10.1977, he has taken a curious contention that he should have been examined with reference to the same under Rule 14(18) of the CCS(CCA) Rules.

We are not inclined to accept the contention of the applicant. Appreciation of evidence and analysis of evidence is within the proper discretion of the respondents. This Tribunal cannot re-appraise the evidence and record a contrary finding.

Thus we hold that reasonings of the respondents on the Charge No.I of the Charge Memo. are proper.

22. It is the contention of the applicant that, when once this Tribunal in T.A.No.9/91 decided on 10.9.1993 and held a portion of Charge No.II of the Charge Memo. quashed, there remained nothing for the disciplinary authority to enquire into Charge No.II of the Charge Memo. A portion of the Charge No.II of the Charge Memo. was quashed as his pay then was less than Rs.500/- per month and that Rule 7 of the CCS(Conduct)Rules was not applicable to him.

23. Thus a portion of the Charge No.II was quashed. In the direction it was clearly stated that the enquiry may be conducted into the Charge No.I and the remaining portion of Charge No.II. That means, the contention of the applicant is that after quashing of a portion of Charge No.II there did not remain anything for the Inquiry Officer to enquire into, cannot be accepted. The very

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direction given by this Tribunal clearly indicates that there was remaining portion of Charge No.II which was to be enquired into by the Inquiry Officer.

Charge No.II also related to the conduct of the applicant. It is stated that he disobeyed the verbal routine orders of the officers of the Workshop, struck the work from 8.45 a.m. to 12.30 p.m. on 25.7.1977, boycotted his pay on 6.9.1977 and shouted slogans and took part in a demonstration on 7.9.1977 from 8.40 a.m. to 9.15 a.m. within the Laboratory premises.

24. In the first instance, the disciplinary authority accused the applicant to have violated Rule 7 of the CCS(Conduct)Rules. As his pay was less than Rs.500/- (Conduct) per month, Rule 7 of the CCS(7) Rules was not attracted.

It is for this reason the applicant relied upon the observations made under Rule 3. Even if Rule 7 of the CCS(Conduct)Rules is excluded, his conduct shows disobedience of orders i.e. disobeying the oral orders of his immediate superiors, striking the work for a period of 4 hours and refusing to receive pay on 6.9.1977 and shouting slogans and taking part in the demonstration on 7.9.1977.

25. In this charge also the applicant has to place some material on record to show that he had not disobeyed the oral orders of his official superiors, or he had not struck the work on 25.7.1977; or did not take part in the demonstration and did not also boycott to receive his pay on 6.9.1977.

The report of the Inquiry Officer is a very detailed one. We have gone through the report of the Inquiry Officer.

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The disciplinary authority during the course of his order has observed as follows:

"9. I find that the oral and documentary evidence produced by the Presenting Officer have clearly established both the charges beyond any reasonable doubt. Significantly the CGS in his reply dated 28.10.1977 to the charge-sheet has clearly admitted that he is guilty of both the articles of charges. The relevant extract from this letter is given below :

"The alleged lapses pointed out against me in the Charge Memo are all interlinked and arose due to certain misunderstanding between the administration and the employees with regard to WRO No.37 dated 19/9/77..... The lapses have common to all employees including me.

....In the light of above facts the lapses pointed out against me accrued only due to above said misunderstandings and are not intentional." This reply of CGS clearly establishes that he admitted the lapses on his part mentioned in the Charge Memo.

10. As stated earlier 7 witnesses were produced and examined by the P.O. to substantiate the charges. These witnesses included Officers and Supervisors of the Workshop and the pay disbursement officer. The deposition of these witnesses clearly show that a computersied data collection system had been introduced in the Workshop from November/December,1976 onwards progressively and was functioning smoothly till about the beginning of September,1977. The members of the Workshop staff were thus aware of the duties and responsibilities with regard to the said system. It was required of the staff members to report to the Clocking Supervisor in the shops the various events during the course of their work so that the data could be gathered. Mass disobedience of the verbal orders regarding the system commenced in the beginning of September,1977 and writeten orders were issued vide Workshop Routine Order No.37/77. This was a lawful order. The said order was properly communicated to the staff members including the CGS. The CGS was reporting to the Clocking Supervisor for getting his cards punched prior to August,1977 but refused to do so in September,1977. Sometime after August/September,1977 the documentary evidence corroborated by the statement of witnesses clearly established the fact that even though the CGS was explained the contents of WRO No.37 and the necessity of punching the card, he refused to report for punching on 22nd, 23rd and 24th September,1977. At no time during the period of his refusal did the CGS expressed to any one apprehension or any difficulty in understanding the instructions about the system.

Also WRO Sl.No.37 clearly warned the operators the consequences of not obeying the order. Written reports regarding the disobedience were prepared and submitted by the Supervisors. These reports were verified and countersigned by the Officers. Those reports were produced during the enquiry and taken into evidence as Exhibits. The evidence clinchingly established that the CGS failed to report to the Clocking Supervisor as he was required to do so by the Workshop Routine Order No.37 of 19.9.1977."

The respondent authorities have produced the reply dated 28.10.1977 given by the applicant to the Charge Memo. In the said reply, he admitted the charge with regard to WRO No.37 dated 19.9.1977. Further, he assured the authorities that he would not give any scope even for such lapses and would be careful in future.

26. In the Memorandum of Appeal, the applicant at page 6 (at page 34 of the OA) has taken the contention that he should have been examined as to the said explanation dated 28.10.1977 wherein he had admitted his guilt. His explanation dated 28.10.1977 forms part and parcel of the inquiry proceedings. The disciplinary authority can take note of that explanation even without the same being questioned by the Inquiry Officer. It is not his case that he had not at all submitted such an explanation to the Charge Memo. dated 19.10.1977. Hence, we find no reasons to accept the contention of the applicant that the Inquiring authority should have brought the said explanation dated 28.10.1977 to his notice under Rule 14(18) of the CCS(CCA) Rules.

27. The applicant relied upon the observations made by the Hon'ble High Court of Madras in the case of R.Srinivasan v. Union of India(Mad.) reported in 1981(3) SLR page 639. In that case, the Hon'ble High Court



considered the expression "Conduct unbecoming of a Government servant" appearing in Rule 3(l)(iii) and 16 of the CCS(Conduct)Rules,1964. In that case, the appellant while working as an Income Tax Ofsficer at Madurai had stayed at Sri Ranga Lodge from 26th July,1973. He had failed to pay the rent from 1st August,1973 to 3rd September,1976 and on 10th November,1976 a cheque for Rs.6000/- was sent by the appellant's brother. The Hon'ble High Court formed an opinion that an innocent indiscreet act on the part of the Income Tax Officer in not paying the rent for staying in a Lodge in the hope that he can pay the same as soon as the monthly rent is fixed and be characterised as conduct unbecoming of a Government servant especially when a Government servant is permitted to have credit facilities with a bona fide trader.

28. The facts involved in the case cited above are quite different from the facts available in the case on hand. The applicant failed to obey the WRO No.37/77 and in his explanation dated 28.10.1977 he admitted his guilt. In our humble opinion, the said decision may not be applicable to his case. Probably in order to make a submission that the charge levelled against him under Item No.2 of the Charge Memo. may not amount to an act or conduct unbecoming of a Government servant. Under Charge No.II he had been alleged that he failed to receive salary and raised slogans etc. So far as Item No.I of the Charge Memo. is concerned, the said decision is not attracted.

29. The applicant relied upon the decision of the Hon'ble High Court of Andhra Pradesh in the case of Mahendra Kumar v. Union of India reported in 1983(3) SLR. page 319. In that case, the Hon'ble High Court considered the scope of 42nd Amendment to the Constitution of India and formed an opinion that in case the disciplinary

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authority disagrees with the findings recorded by the Inquiry Officer, then the disciplinary authority is not obliged to furnish an 'opportunity to the delinquent employee. Further the Hon'ble High Court observed that a Court cannot act as an appellate authority and it is not open for it to re-appraise the evidence.

30. The applicant relied upon the decision of the Hon'ble High Court of Karnataka in the case of V.K. Parameswaran v. Union of India and Ors., reported in 1982(3) SLR 347. In that case the petitioners therein were dismissed from service on the charge of having caused the filing of a few writ petitions by their colleagues in the office before the Karnataka High Court questioning the legality of promotion of a junior Clerk and had prayed for quashing the orders made by the Officer-in-Charge-Records, Records Office, Madras Engineer Group, Bangalore. In that case, the Hon'ble High Court of Karnataka formed an opinion that the proceedings initiated against the petitioners therein on that score that they instigated their colleagues to file the writ petitions did not amount to misconduct. Thus the dismissal orders passed against the petitioners were set aside.

31. The applicant relied upon the decision of the Hon'ble Supreme Court in the case of Kulwant Singh Gill v. State of Punjab reported in 1991 Supp (1) SCC 504. In that case the appellant was an Inspector of Food and Supplies, Talagaon. He had visited the place and found him to have purchased substandard wheat requiring him to receive the charge sheet of June 9, 1976, for his misconduct. He was after conclusion of the enquiry imposed the penalty of stoppage of two increments with

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cumulative effect. The appellant had instituted a suit for declaration that the punishment order impugned amounted to major penalty and imposition thereof without conducting an enquiry as enjoined under the Rules 8 and 9 was illegal. In that case, the Hon'ble Supreme Court considered the Rules 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and considered whether withholding of increments by simpliciter was a minor penalty or not. But however, the Hon'ble Supreme Court observed that conducting of enquiry de hors the rules is no enquiry in the eye of law and imposition of penalty on the appellant without conducting an enquiry was not proper. The Hon'ble Supreme Court felt that the punishment imposed on the applicant was a major penalty and enquiry was necessary. 32.

32. The applicant further contended that the authorities had failed to consider the defence plea dated 15.12.1979 and the grounds urged in his Appeal Memo. dated 15.7.1979. The respondent authorities have produced the defence plea submitted by the applicant. He had analysed the evidence placed on record by the disciplinary authority and contended that Rule 7 of the CCS(CCA) Rules was not applicable to him. In fact, this Tribunal itself had directed the respondent/authorities to conduct an enquiry into the remaining portion of the Item No.2 of the Charge Memo excluding the portion which was incorporated for contravention of Rule 7 of the CCS(CCA) Rules. This was done as at that relevant point of time the applicant was drawing less than the salary of Rs.500/- per month.

33. The disciplinary authority has considered the defence plea dated 15.12.1979 submitted by the applicant

and also his explanation dated 28.10.1977 to the Charge Memo. The disciplinary authority has narrated the probabilities of the misconduct alleged against the applicant under both the items of charges in the Charge Memo. and taking into consideration the material available on record formed an opinion that the finding recorded by the Inquiring Authority is proper and acceptable.

34. The Tribunal can only consider whether during the conduct of the enquiry the principles of natural justice were adhered to or not and whether the order of punishment was passed by the competent officer or not. In that view of the matter, the powers of this Tribunal are very much limited. We cannot analyse or reappraise the evidence placed on record and come to a different conclusion.

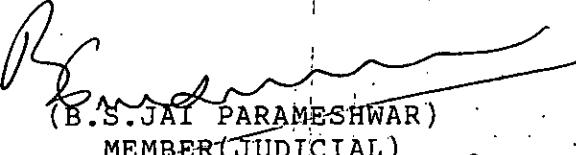
35. The Memorandum of Appeal submitted by the applicant is at pages 29 to 36 of the O.A. It is dated 25.7.1994. On 23.1.1995 the appellate authority has taken into consideration the various grounds raised by the applicant in the Memorandum of Appeal and has passed a speaking order. The appellate authority has taken into consideration most of the grounds raised by the appellant in the Memorandum of Appeal. We find no irregularity or illegality in the order passed by the appellate authority.

36. Considering the various contentions raised by the applicant and after perusing the enquiry records produced by the respondents, we are of the considered view that there are no reasons to interfere with the orders of the disciplinary authority and that of the Appellate Authority.

[Signature]

37. In our humble view, there are no merits in this O.A. The O.A. is liable to be dismissed as having no merits.

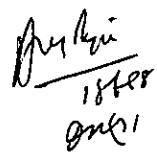
38. Accordingly the O.A. is dismissed. No order as to costs.


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


(R.RANGARAJAN)
MEMBER(ADMINISTRATIVE)

17.6.98

Dated the 17th June, 1998.


DJ/
18/6/98


DJ/