

Panaji, 24th August, 1989 (Bhadra 2, 1911)

SERIES II No. 21

OFFICIAL GAZETTE

GOVERNMENT OF GOA

GOVERNMENT OF GOA

Education Department

Order

No. 23/4/89/EDUCATION

Read:— Govt. Order No. 16-54-89-Adm.I/344 dated 8-5-1989.

Shri Prabhakar Timble is hereby temporarily appointed on ad hoc basis as Principal, Government College of Arts and Commerce, Quepem under the Directorate of Education with effect from 11-7-1989 (B.N.) in the scale of Rs. 3700-5700/- plus the usual allowances admissible from time to time with the initial pay of Rs. 3700/-.

The appointment is subject to the condition specified in the office Memorandum No. 21/Misc/2616/EDN dated 27th June, 1989 and the Rules and Regulation laid down by the Government from time to time.

The appointment is for a period of one year and purely on ad hoc basis and it will not bestow on the appointee any claim for regular appointment/promotion to the higher post and seniority and will be liable to be terminated by one month's salary in lieu of notice.

The appointment is liable for termination in case the character and antecedents of the appointee are adverse so as to disqualify him from the holding of a post under Government.

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Education).

Panaji, 3rd August, 1989.

Order

No. 22/3/89/EDN

Read: Govt. Order No. 16-53-89/Adm-I dated 29-6-1989.

Dr. John B. Fernandes is hereby temporarily appointed on ad hoc basis as Principal, Government College of Arts & Commerce, Khandola, under the Directorate of Education with effect from 1-7-1989 (F.N.) in the scale of Rs. 3700-5700/- plus the usual allowances admissible from time to time with the initial pay of Rs. 3700/-.

The appointment is subject to the condition specified in the office Memorandum No. 21/Misc/2616/EDN dated 28th June, 1989 and the Rules and Regulation laid down by the Government from time to time.

The appointment is for a period of one year and is purely on ad hoc basis and it will not bestow on the appointee any claim for regular appointment/promotion to the higher post and seniority and will be liable to be terminated by one month's salary in lieu of notice.

The appointment is liable for termination in case the character and antecedents of the appointee are adverse so

as to disqualify him from the holding of a post under Government.

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Education).

Panaji, 4th August, 1989.

Order

No. 13/19/79/EDN

On recommendation of Group "A" Departmental Promotion Committee, Shri S. I. Coutinho, Assistant Lecturer in Mechanical Engineering of Government Polytechnic, Panaji is hereby promoted on ad-hoc basis to the post of Lecturer in Mechanical Engineering in the Government Polytechnic with immediate effect in the scale of Rs. 2200-75-2300-EB-100-4000 plus admissible allowances. His pay on promotion will be fixed as per the Rules.

The appointment is purely on ad hoc basis and it will not bestow on the appointee any claim for regular appointment, promotion to the higher post and seniority and will be liable to be terminated by one month's notice or with payment of one month's salary in lieu of notice.

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Education).

Panaji, 4th August, 1989.

Department of Science, Technology and Environment

Notification

No. 15-2-89-STE

In exercise of the powers conferred by clause (b) of sub-section (1) of section 52 of the Water (Prevention and Control of Pollution) Act, 1974 (Central Act 6 of 1974), the Government of Goa is pleased to specify the National Institute of Oceanography, Dona Paula, Goa, as the State Water Laboratory to carry out the functions entrusted to the State Water Laboratory under the Act.

By order and in the name of the Governor of Goa.

A. T. Fernandes, Under Secretary to the Government of Goa (S.T.E. Department).

Panaji, 11th August, 1989.

Notification

No. 15/2/89-STE

In exercise of the powers conferred by sub-section (2) of section 53 of the Water (Prevention and Control of Pollution) Act, 1974 (Central Act 6 of 1974), the Government of Goa is pleased to appoint Dr. R. Sen Gupta, Deputy Director

(Chemist) and Dr. A. H. Parulekar, Assistant Director (Biologist) in the National Institute of Oceanography, Dona Paula, Goa as the Government Analysts for the purpose of analysis of samples of water or of sewage or trade effluent sent for analysis to the State Water Laboratory.

By order and in the name of the Governor of Goa.

A. T. Fernandes, Under Secretary to the Govt. of Goa, (S. T. E. Department).

Panaji, 11th August, 1989.

Revenue Department

Notification

No. 22/99/88-RD

Whereas by Government Notification No. 22/99/88-RD dated 8-8-1988 published on page 482 of Series II, No. 44 of the Official Gazette dated 7-2-1989 and in two newspapers (i) Rashtramat dated 17-8-1988 and (ii) Herald dated 13-8-1988, it was notified under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the land specified in the schedule appended to the said notification (hereinafter referred to as the "said land") was needed for public purpose viz. Land Acquisition for construction of Post Office building at Vasco da Gama in Mormugao Taluka.

And whereas in the opinion of the Government of Goa (hereinafter referred to as the "Government") the said land is not required for the aforesaid purpose.

Now, therefore, the Government is pleased to declare under Sub-section (1) of section 48 of the said Act that it has withdrawn from acquisition of the said land for the aforesaid public purpose and that the aforesaid Government notification shall be deemed to be cancelled so far as it relates to the said land. The persons interested in the said land, may lodge to the Deputy Collector (S. D. O.) Mormugao Vasco-da-Gama within a period of thirty days from the date of this notification claims under Sub-section (2) of section 48 of the said Act, for the damages suffered by them in consequence of the notice or of any proceedings thereunder, and for costs reasonably incurred by them in prosecution of the proceedings under the said Act relating to the said land.

A plan of the land, shall be available for inspection in the office of the Deputy Collector (S. D. O.) Mormugao, Vasco-da-Gama, for a period of thirty days from the date of this notification.

By order and in the name of the Governor of Goa.

D. V. Sathe, Under Secretary (Revenue).

Panaji, 17th August, 1989.

Corrigendum

No. 22/16/87-RD

Read: Notification No. 22/16/87-RD dated 13-5-1988 published in the Official Gazette dated 19-5-88 Series II, No. 7 page 82 and in two Newspapers (1) Navhind Times dated 20-5-88 and (2) Rashtramat dated 24-5-1988.

The total area mentioned in Notification referred to above may be read as 2305-00 sq. mts. instead of 2265.00 sq. mts.

P. S. Nadkarni, Under Secretary (Revenue) to the Government of Goa.

Panaji, 3rd August, 1989.

Corrigendum

No. 22/132/87-RD

Read: Notification No. 22/132/87-RD dated 10-1-1989 published in the Official Gazette dated 19-1-89 Series II, No. 42 pages 446-447 and in two Newspapers

(1) Navhind Times dated 3-2-89 (2) Gomantak dated 17-1-89.

1. The Survey No. 164/1 (part) mentioned in Column No. 1 of the Schedule appended to the above notification may be read as "Survey No. 164/3 (part)". And then following may be included:

164/1 (part) O: Purushottam Pai Raikar 250:00.

2. The total area may be read as 23847:00 sq. mts. instead of 23597:00 sq. mts.

3. This supersedes the Corrigendum of even number dated 14-6-1989.

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue) to the Government of Goa.

Panaji, 11th August, 1989.

Corrigendum

No. 22/160/88-RD

Read: Notification No. 22/160/88-RD dated 6-12-1988, published on pages 501-502, Series II, No. 45 of Official Gazette dated 9-2-1989 and two local newspapers (1) Navhind Times dated 18-12-1988 and (2) Rashtramat dated 12-12-1988.

The survey No. 29/1 shown in the above notification admeasuring 460 sq. mts. may be read as 25/1.

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 14th August, 1989.

Corrigendum

No. 22/79/88-RD

Read: Notification No. 22/79/88-RD dated 20-6-1989 published on pages 115 to 117, Series II, No. 13 of Official Gazette dated 29-6-1989 and in two newspapers (1) Navhind Times dated 27-6-1989 and (2) Sunaprant dated 23-6-1989.

The survey number "172/2 part" appearing at page 8 of the above Notification may be read as "177/2 part".

D. V. Sathe, Under Secretary (Revenue).

Panaji, 17th August, 1989.

Office of the Collector of South Goa District, Margao

(Civil Administration Branch)

Order

No. 52-8-87-CAB (Part)

Read: (1) Govt. letter No. 1/89-RD (Pt. file) dated 5-7-89.

The following persons are appointed as Members of the Managing Committee for the triennium 1989-91 of the Comunidades under the jurisdiction of the Administration of Comunidade of Salcete and South Zone.

Comunidade of Vaddem

President: Herculano T. Dourado.
Substitute: Filip P. D'Gama.

Comunidade of Chicolna

President: Latino A. Henriques.
Substitute: Herculano T. Dourado.

Comunidade of Margao

President: Francisco Monte Cruz.

Substitute: Antonio Agnelo D. Almeida.

A. Venkataratnam, Collector, South Goa District.

Margao, 27th July, 1989.

Department of Labour

Order

No. 28/11/87-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 26th May, 1989.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA

AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/46/87

Shri Prabhakar L. Sawal — Workman
V/sM/s. Goa Co-op. Marketing & Supply — Employer
Federation Ltd.,

Workman represented by Adv. Arun Nigalye.

Employer represented by Adv. G. K. Sardessai.

Panaji, Dated: 13-5-1989

AWARD

This is a reference made by the Government of Goa, by its order No. 28/11/87-ILD dated 28th May, 1987 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Goa Co-op. Marketing & Supply Federation Ltd., Panaji, in terminating the services of Shri Prabhakar L. Sawal, Salesman, with effect from 8-10-1986 is legal and justified?

If not, what relief the workman is entitled?"

After the above Government reference was received in this office, the matter was registered but no immediate notices were issued as the post of the Presiding Officer was then vacant. After I took over, notices were issued to the parties and both the parties who were duly served appeared in the matter and filed their pleadings. Initially the workman filed his claim statement on 8-12-1987 and after giving the reference of the Government reference he has given the facts of the case which I summarily reproduce here to understand the rival contentions. The Party II M/s. Goa Co-op. Marketing and Supply Federation Ltd., is registered under Co-operative Societies Act and the essential activities of the Society are purchase, marketing and supply of essential commodities through its shops and outlets and also through other co-operative institutions in the territory. The Society for this purpose is running several departmental stores in different parts of Goa and one of the departmental store is by name Pushpagandha Sahakar Bhandar, situated at Vasco da Gama. The workman by name Prabhakar L. Sawal was initially appointed as a Salesman in the Medicine Counter of Puspagandha Sahakar Bhandar and he worked there between 1979 to 1982. According to the management the Salesman was subsequently promoted as Incharge of the Sales Counter of the Medicine Section while the workman denies this.

The physical verification of the stock of the Medicine counter was taken in December, 1982 or so and found a shortage of Rs. 23,368.33. At the relevant time along with the workman three more employees were working in the Medicine Section and the three other workers were Pharmacists by name Prakash Ayanchi, Uday Barad and Vassanti Savaikar. As per the practice followed by the Society the particular medicines were entrusted to the Salesman who were to account for the same. In due course after finding out the shortage of Rs. 23,000 and odd the management distributed the liability amongst the incharge of the Sales Counter and the three Pharmacists working under him. Hence the present workman deemed to be the Incharge of the Sales Counter was held liable to account for half of the shortage, to the tune of Rs. 11,683.17. The liability of the remaining half shortage was passed to the three Pharmacists working under the Incharge of the Sales Counter. A show cause notice was issued to the workman on 11-12-1982 asking for his explanation about the shortage and directing him to pay the amount within 8 days therein. The workman received a charge sheet on 17-12-1987 issued by the General Manager indicating that due to the shortage of the medicines the workman was guilty of Act of subversive of discipline and restraint from shortages/pilferages. Thereafter a departmental enquiry was held by appointing one Mr. M. S. Salgaonkar as the Inquiry Officer and the workman denied the charges and his liability to account for the shortages. The said Salgaonkar held the enquiry in due course and the shortages were for the period between 31-12-79 to 15-5-82 at the Medicine Counter.

A second charge sheet was served on the workman on 5th Jan., '84 reiterating the same charges. At this time the second charge sheet was issued by the Chairman of the Society and one Ulhas B. Pai Raikar was appointed as the Inquiry Officer. The workman sent a reply to the second charge sheet also. The workman raised objection stating that the Inquiry Officer was biased against him and was in favour of the management. In spite of this objection the Inquiry Officer went on with the enquiry wherein both the management and the workman participated. During the course of the enquiry several documents were brought on record showing varying amounts of shortages at the medicine counter during the relevant period. According to the workman all the documents just went to show that he was a Salesman of the Sales Counter and not employed as Incharge. According to him the Pharmacists who were duly qualified persons were his superiors and that he was not their superior. According to him there was no clear cut evidence showing that he was accountable for the shortages and the Inquiry Officer ought to have taken this into consideration. However, the Inquiry Officer recorded his finding on 22-12-84 holding the workman liable to account for the shortages. According to the workman the findings of the Inquiry Officer are vitiated and the innocent person is held guilty even when the management had failed to establish the charges as per the charge sheet. According to him, the findings of the Inquiry Officer are speculative in nature. Thereafter the services of the workman were terminated w.e.f. 8th October, 1986 and the workman raised an industrial dispute and the matter went into conciliation. The conciliation proceedings ended in failure and the failure report was made to the government and in due course the government made the reference to this Tribunal. In this proceeding the workman maintains that the termination of the services by the management is illegal and unjustified and he claims back wages and other benefits. As against this the management has filed the written statement dated 6-1-88 contending inter alia that the workman was given full opportunity to participate in the inquiry proceeding which was conducted by an impartial and independent Inquiry Officer. According to them the very appointment of the Inquiry Officer by name Ulhas Pai Raikar, Advocate in place of M. S. Salgaonkar went to show that the management desired to have the enquiry conducted by an efficient person knowing the proper procedure and law and the Inquiry Officer has conducted a fair and proper enquiry by giving the workman full opportunity to put forth his case and defend himself. According to the management the workman was initially employed as a Salesman and subsequently promoted as "Incharge of the Sales Counter". So accordingly to the management, primarily the workman is liable to account for the shortages and the accountability of the Pharmacists are secondary in nature and so the workman was given an opportunity to present his case and to defend the charges levelled against him. Opportunity was also given to examine his witnesses. According to them the Inquiry Officer after holding an impartial enquiry

submitted a result finding and the management accepted the findings of the Inquiry Officer and took a decision to dismiss the workman from service. According to the management misappropriation is a serious misconduct which merits punishment of dismissal. The management considered the statement of the workman and did not find any extenuating circumstances to award lesser punishment than dismissal. According to them the punishment is just and fair and proper and the domestic enquiry on the finding of which the dismissal is effected was legal, fair and valid and the findings of the Inquiry Officer are based on evidence on record and he has fairly conducted the enquiry and has arrived at proper conclusion. According to them considering the method followed by the Inquiry Officer there is no justification whatsoever to cast any aspersions on the impartiality of the Inquiry Officer and the finding in the enquiry in which the workman had fully participated is just, fair and proper and the workman cannot be permitted to challenge the finding of the Inquiry Officer as the quantum of shortages was duly proved during the course of the enquiry.

To the written statement; the workman filed his rejoinder on 7-1-1988 stating that the management deliberately appointed Shri Pai Raikar, Advocate as Inquiry Officer in place of M. S. Salgaonkar and the termination based on the finding of the Inquiry Officer is illegal and unjustified.

With these rival contentions, I framed the following issues on 22-2-1988.

ISSUES

1. Whether the employer proves that the workman was guilty of the mis-conduct while working as a Salesman in the Medicine Counter at Puspagandha Sahakar Bhandar at Vasco da Gama and that there were shortages in the Medicine Counter?
2. If so, whether the employer further proves that the employee was dismissed after a fair and proper enquiry was held against him?
3. Whether the workman proves that the Enquiry Officer Pai Raikar was biased against him and was in favour of the management as alleged?
4. Whether the findings of the Enquiry Officer are just and proper and based on the evidence and facts in this case?
5. If so, whether the action of the management of M/s. Goa Co-operative Marketing and Supply Federation Ltd., Panaji, in terminating the services of the employee is legal and justified and whether the same calls for any interference?
6. What relief, if any, is the workman entitled to?

Out of the above 6 issues, issues 1 to 4 pertain to the finding of the Inquiry Officer and its fairness or otherwise. If the findings on the enquiry go in favour of the management then there is no question of leading any further evidence and then it has to be seen whether the termination based on the finding of the Inquiry Officer is just and proper. However, on the contrary if I come to a conclusion that no fair and proper enquiry was held against the workman then I shall have to set aside the findings in the domestic enquiry. In that case the management as well as the workman will have to be given further opportunity to lead further evidence in the matter on the merits of the case so far as the question of termination goes. So I shall first dwell upon the question of the fairness, legality and justifiability of the enquiry or otherwise and for this purpose I shall scan the evidence recorded in the inquiry proceedings as well as the evidence lead before me.

The case papers of the Domestic enquiry are in the files and the first file Exb. E-1 is the important file wherein the Inquiry Officer Ulhas Raikar, Advocate has recorded his finding dated 22-12-1984. The Inquiry Officer has held the charge of misconduct under Rule 20(Z) of the Service Rules of the Federation and Rules 22(d) & (e) of the Shops Act as duly proved against the workman Prabhakar Ladu Sawal. It has to be noted here that the workman was represented by Adv. Arun Nigalye throughout the enquiry and the witnesses are cross examined. Even the testimony of the workman is also recorded in this case. Before considering the evidence of the management I shall first study what the workman has to say in his deposition before the Inquiry Officer. It has to be noted here that in this

matter before this Tribunal the workman has not entered the witness box to contravert the evidence led by the management; Presumably because this is a hearing on the preliminary issue of legality or otherwise of the domestic enquiry. His examination in chief was taken on 26-10-84.

In his deposition the workman states that he was served with letters by the management informing him that in the stock taking shortages were found and the total shortage was to the tune of Rs. 23,368.33 and he was responsible for the stock valued at Rs. 11,684.17. Earlier by a letter Exb. E-8 dated 27-3-81 he was informed that the shortages were of Rs. 9606.48. Earlier by the letter Exb. E-7 he was informed of the following shortages:

31-12-79	Rs. 2,142-85
31-12-80	Rs. 9,606-48
30-6-81	Rs. 1,755-56

He was initially served with one charge sheet and was informed that the enquiry against him would be conducted by Salgaonkar. He was served with a second charge sheet wherein he was informed that the Advocate Ulhas Pai Raikar was appointed as the Inquiry Officer and the charge sheet Exb. M-2 was served on him. According to him he was not consulted before appointing Shri Raikar as the Inquiry Officer. About the shortages he states that during the relevant period of the shortages three more employees namely Helpers and Pharmacists were working on the Medicine Counter. He claims that he was just a Salesman of the Federation. His duty was to write sales register, daily statement and also effect sales. According to him his signature was not taken on the stock verification statement. This is what he states in examination in chief. In cross examination he admits that physical stock verification was taken in the Bhandar where he was working and it was being taken after every half year. He admits that at the time of physical stock verification the items were counted and were recorded on the statement and he was signing on the statement after the stock verification. About the shortages he admits that whether there was any excess or shortages they used to know about it only after the Manager sent the report to the counter. He further admits that the daily statement which is maintained at the counter the report of stock and sales are recorded and that the balance stock at the end of the day could be ascertained from the said statement. He also admits that in the physical stock verification the total value of the stock was shown after the calculation. He admits that the Manager's report after physical verification and the daily statement were not tallying. This is the sum and substance of his evidence.

I shall now advert to the evidence of the management comprising of 3 witnesses, out of whom the first witness MW-1 Shri Prakash N. Naik is of importance. He has produced the consolidated stock statement as on 31-12-79, 30-6-80, 31-12-80, 30-6-81, 31-12-81 and 7-5-82. He has also produced the consolidated stock statement the production of which was opposed by the advocate for the workman. The Inquiry Officer did not allow the consolidated statements but he allowed the consolidated stock sheets and marked them as Exb. M-7, M-8, M-9, M-10, M-11 and M-12. He also allowed the stock verification statements as stated earlier. The carbon copies of these statements are signed by the Branch Incharge as well as the workman P. L. Sawal. They are taken on record at Exb. M-13, M-14, M-15, M-16, M-17 and M-18. In cross examination by Shri Nigalye he states that he appear in the proceeding as the Presenting Officer of the management. He admits that earlier when Shri M. S. Salgaonkar was the Inquiry Officer he was cited as a witness for the management. He further states that he was deposing as the Presenting Officer and not the management's witness. About the change of the Inquiry Officer he states that the management took the decision to change the earlier Inquiry Officer namely Salgaonkar and appointed Ulhas Raikar, Advocate as the Inquiry Officer. He does not know whether the matter of the change of the Inquiry Officer was conveyed to the workman or not. He produced the copy of the resolution of the Board meeting dated 12-11-83 marked at Ex. M-19.

About the verification of the shortages he explains the procedure. The stock is verified at the end of half year. The total value of the existing stock is calculated. The total value of the goods in the charge of the employee is considered. The total sale is deducted. Thus the physical difference in the existing stock of the preceding 6 months

and the existing stock is a shortage. About the value of stock after physical verification he produced the statements which are at Exb. M-13, M-14, M-15, M-17 & M-18. He admits that a certain stock is given to a certain employee and its value is calculated as per the selling price at which he is supposed to sell. The total sale effected by the employee is considered at the end. About the liability of the workman Sawal he states that the total amount of shortage is Rs. 23,368-33 and the amount to be paid by the workman Sawal is Rs. 11,684-17 and this liability is calculated being 50% of the amount. According to him they divided the amount in this way because there were two staff members in that counter. According to him this liability was divided only between two persons who were working during the concerned period. According to him this has been done because both the staff members are jointly responsible for the shortages. He does not know whether any circular or notice is given to the employees regarding the joint responsibility. He denies the suggestion that the management has not initiated any enquiry against the co-worker of Shri Sawal who was also responsible for the remaining 50% shortages. He positively denies the suggestion that the management has not taken any action against the other co-worker and that the management wants to protect that co-worker and so they have not initiated the enquiry against him. It is suggested to him that the management want to make the workman Sawal only as a scape goat. According to him the management issued the charge sheet to this workman Sawal under Rule 20(Z) of the Service Rules of the Federation and Rules 22(d) & (e) of the Goa Shop Act. This is the sum and substance of his evidence.

The next witness is MW-2 Shri Umakant B. Sawant. He states that he worked as a Manager at the Pushpagandha Sahakar Bhandar at Vasco da Gama during the period in which the workman Sawal worked on the Medicine Counter. He makes a positive statement that the workman Sawal was incharge of the counter and that he had assistants working under him. According to him even though Sawal was incharge of the Counter his designation on the record was a Salesman. He states that during the period of the services of the workman there was shortage at his counter and Exb. M-6 is the copy of the consolidated statement of the Shortages-Excesses from 31-12-79 to 15-5-82. It has to be noted that his examination in chief was recorded on 14-8-84 and on 15-9-84. When the witness was offered for cross examination the same was declined on behalf of the workman even though the opportunity was given to him.

The 3rd witness of the management MW-3 Ashok S. Naik, who was also working as Manager at the Pushpagandha S. Bhandar between 1976 to 1980. It appears that MW-2 Umakant Sawant was working as Manager after 1980. This witness states that he was initially working as Accountant and he was promoted to the post of Manager. About Sawal he states that he was entrusted with the duty as Salesman comprising of preparation of bills, Stock Control forms, Sales Register etc. According to him there was another person working as a Pharmacist there. According to him there were shortages during the period when Shri Sawal was working there. He states in cross examination that he was in his capacity as Manager at the time of stock verification at the medicine counter on 31-12-79 and 26-6-80 and the statements are marked Exb. 13 and 14 which bear his signature. He also verified the stock on 31-12-80 which is Exb. M-15. In cross examination he states that when Sawal was going on leave the Pharmacists were taking the charge of Sawal. The duties of Sawal were to write Sales Register, preparing cash memos and sales. He admits that Medicine Counter was not divided between Sawal and Pharmacist. When confronted with the show cause notice Exb. E-8 he admits that he issued the same to Sawal asking him why he should not be held responsible along with the other staff members for the shortages of Rs. 9606-48 shown in the stock verification statement. He states that he mentioned the other staff members because they were also working at the medicine counter and so such notices were issued to them also. He admits that at that time there were no rules regarding joint responsibility of working together of the staff members and such show cause notice was issued in the absence of such rules. He frankly admits that he cannot state as to exactly due to whom the shortages had occurred at the medicine counter. With this it is suggested to him that either he or the other staff members were responsible for the shortages. This is the last witness examined by the management and as against this there was the statement of the workman Sawal which I have discussed in the foregoing paragraphs.

With this evidence on record the learned Inquiry Officer has gone through the record produced before him and has recorded his finding. He has perused the documents including consolidated statements of shortages and physical stock verification statements as on 31-12-79, 30-6-80, 31-12-80, 30-6-81, 31-12-81 and 7-5-82. He finds from these statements that for the period between 31-12-79 to 15-5-82 there is a shortage to the tune of Rs. 22,368-33. There is no dispute as regards the amount of shortage, the dispute being who is responsible to account for the shortages. He then saw the copies of the stock verification statement which are signed by the Branch Incharge as well as the workman Sawal. He also found that the stock verification statements Exb. M-13 dated 31-12-79, Exb. M-16 dated 30-6-81 and Exb. M-17 dated 31-12-81 bore the signature of the workman Sawal. He also found that the workman Sawal has signed on the statements Exb. M-15 dated 31-12-80. The only statements which do not bear the signature of the workman Sawal were Exb. M-14 dated 30-6-80, M-18 dated 7-5-82. With this scrutiny of the record of the Bhandar he examines the oral evidence of the witnesses and according to him MW-1 has stated that the workman Sawal was working at the counter during the period and witness MW-2 stated that Sawal was Incharge of the counter and that there were shortages which were noted during physical stock verification. This witness is not cross examined on behalf of the workman and his statement that the workman Sawal was incharge of the counter has gone unchallenged. He then found that the workman in his cross examination has admitted that the stock verification was done in his presence and he was signing on the statements. With this evidence he concluded that there were shortages at the medicine counter, a fact which has been proved beyond doubt. The next question posed by him as to who was responsible for the shortages at the medicine counter. According to him the employee is liable for the shortages. According to him no suggestions were put to the witness MW-2 and MW-3 that the workman was not incharge of the counter and that he was not responsible for the shortages. According to him the statement of MW-2 went unchallenged and he was not cross examined at all. Considering the facts he held that it has been established that there were shortages at the medicine counter for the period referred to above and that the workman Sawal was working at the medicine counter during the relevant period and that MW-1 and MW-2 have categorically stated that Shri P. L. Sawal was working at the medicine counter and was incharge of the counter. According to him the Salesman Sawal was over all incharge of the counter during the relevant period and he was mainly responsible to account for the shortages along with other employees at the counter. With these observations, he concluded that the workman Shri P. L. Sawal being an employee at the counter is liable for the shortages and the charge of mis-conduct under rule 20(Z) of the Service Rules of the Federation and Rules 22(d) and (e) of the Goa Shop have been duly proved against the workman Shri Prabhakar Ladu Sawal. This is what I find from the record of the Inquiry proceedings and I have now to see whether the enquiry was properly conducted, whether the findings are properly recorded on the basis of the evidence that was led before the Inquiry Officer and whether this Tribunal can come to a different conclusion so far as the individual responsibility of the workman Shri Sawal who was stated to be the Incharge of the Counter of sales.

I have rather gone in deep details of the enquiry just to see whether the same is conducted properly or not. The Inquiry Officer is an Advocate and the Supreme Court has laid down that there is nothing wrong in appointing Advocate as the Inquiry Officer and the person having knowledge of law is supposed to be working in a judicial manner and arriving at a proper conclusion on the basis of the evidence that is led before him. The workman simply claims that this Inquiry Officer was biased against him and he was not consulted before appointing the Inquiry Officer. I feel that there is no provision under which the consent of the workman for appointing an Inquiry Officer is necessary. However, the court will certainly go into the aspect if impartiality and high handedness is alleged against the Inquiry Officer or if any motive is attributed against him. Nothing of that sort is brought on record. The other point raised for the workman is that the other workman by name Ayanchi who was also working on the medicine counter and was a drug addict is let scot free and this workman is made a scape goat. Shri Sardesai for the management made a statement of the bar that steps have already been taken to proceed against the workman Ayanchi and the action against him is also contemplated.

In this regard the question is simply because Ayanchi is not proceeded against, this workman against whom the charge of mis-appropriation and mis-conduct is proved should be let off? Shri Nigalve for the workman relies on an authority of the Supreme Court on the point of discrimination. The judgment reported in 1984 LAB, I.C. page 182 is very short judgement of about 15 lines. In that case a few workers had gone on strike. The management after the strike was over reinstated some workmen but 10 workmen were not reinstated. The industrial tribunal ordered reinstatement or compensation in respect of the 10 workmen. The management challenged this order in the Supreme Court. The Supreme Court held that the approach of the Tribunal was fair, just and reasonable and that all workmen were involved in the strike but the 10 workmen were singled out for drastic treatment. This according to the Tribunal was discriminatory. This view of the Tribunal was upheld by the Supreme Court. I feel that this case does not stand comparison for the present case as this is not a case of workers going on strike at the instant of the Union and the Union withdrawing the strike at a later stage after the compromise with the management. The right of going on strike is recognised as a right accrued to a workman and the workmen who go on strike at the call of the Union cannot be said to be the persons involved for any gross acts of mis-conduct or indiscipline. Hence the action of the management in singling out the 10 workmen for drastic action was rightly held to be improper. However in the instant case there is the matter of gross misconduct in as much as the workman who was supposed to be the Incharge of the Sales Counter was responsible for the shortages to the tune of Rs. 23,000 or so and as there was no clear and specific rule to fasten the liability on a particular person the liability was shared between the workmen by the management by holding the workman Sawal responsible for the shortage of 50% of the dues and this is not just a shortage but this is a case of misappropriation and this is been proved by the management by producing statements of stock verification. The workman does not specifically deny his responsibility for the loss but wants that the others also be held responsible along with him. This statement is improper and when the Inquiry Officer was supposed to find out whether the workman against whom the enquiry was being conducted before him was held responsible for the shortages and he has come to the conclusion that he was proved to be responsible for the shortages by leading the proper evidence.

Adverting then to the scope of the present enquiry, so far as the Domestic Enquiry is concerned I find that this Tribunal has limited scope and power to consider the legality of the domestic enquiry when no bias nor any prevention of opportunity to defend himself is proved by the workman. The workman has not only fully participated in the enquiry but he was given opportunity to defend himself through an advocate. It is not quite clear why the evidence of MW-2 was not challenged in cross examination specially when he has made a positive statement that the workman though designated as a Salesman was a person who was incharge of the sales counter and it was his duty to write the cash memos etc. and to collect the sales proceeds, other workmen being helpers and pharmacist. The workman is proved to be responsible employee of the Corporation and the Inquiry Officer has considered this aspect to record his finding. On the point of the interference by the Tribunal or Labour Court in the findings of the domestic enquiry the Supreme Court has observed in the case of Delhi Cloth Mills v/s Labour Court reported in 1970 LLJ Vol. I page 23 that Labour Court could not interfere with the order of dismissal on re-appraisal of the evidence recorded at the domestic enquiry. In that case the management arrived at the conclusion if the dismissal of the workman after consideration of the report of the Inquiry Officer. The Supreme Court while considering the case of Indian Iron & Steel Company Ltd., v/s their workmen reported in 1958 LLJ Vol. I, page 260 held that unless the case is brought within the exceptions pointed out in the decision of the Indian Iron and Steel Co., the action of the management must be upheld. In the Delhi Cloth Mill case the Labour Court had reappraised the evidence and the Labour Court in the Indian Iron & Steel Co. Ltd., had also reappraised the evidence led before the Inquiry Officer. The Supreme Court felt that while doing so the Labour Court had transgressed the limits of its jurisdiction. The Supreme Court in another case reported in 1970 LLJ Vol. I page 26 held that enquiry held by the Senior Labour

Officer of the Company wherein the Mill Manager held the worker guilty after giving him opportunity and passed order of dismissal. Such order of dismissal was held to be legal and valid after considering the evidence recorded by the Inquiry Officer. The Supreme Court held that simply because questions to the workers and the witnesses were put in cross-Examinations it is just the domestic enquiry and the finding of the Inquiry Officer was up held.

As stated above the above discussion is confined to the question of the findings of the Inquiry Officer and the issue No. 4 is whether the findings of the Inquiry Officer are just and proper and are based on the evidence and facts in the case. So far as the issue No. 4 is concerned I am constrained to hold that the workman has failed to prove how the finding is improper. On the contrary I feel that the Inquiry Officer has recorded his findings which are based on proper evidence that was led before him and consequently I shall have to record the finding on issue no. 4 in the affirmative by holding that the findings of the Inquiry Officer are just and proper and are based on the evidence and facts in the case. The issue No. 3 is regarding the plea of bias made out by the workman against the Inquiry Officer U. B. P. Raikar and I find that there is nothing on record showing that the Inquiry Officer was biased against workman or that he acted anyway in favour of the management. The finding on issue No. 3 also goes against the workman and I record the finding in the negative. Issue No. 3 & 4 are the main and basic issues which are taken out for consideration as preliminary issues and the finding is recorded in favour of the management and against the workman. The management has issued the order of termination against the workman on the ground that the workman working as a Salesman on the Medicine Counter at the Pushpagandha Sahakar Bhandar at Vasco da Gama had committed acts of misappropriation which amounted to misconduct under rule 20(Z) of the Service Rules of the Federation and Rules 22(d) & (e) of the Goa Shops Act. The order of termination is based on the finding and evidence against the workman and so I record my findings on issues 1 and 2 also in the affirmative and adverting to issue No. 5 I hold that the action of the management in terminating the services of the employee is legal and justified in the circumstances of the case. As the finding on the preliminary issue has gone in favour of the management I hold that the order of termination is just and proper and I answer the Government reference accordingly. In the result, I pass the following order:

ORDER

It is hereby held that the action of the management of M/s Goa Co-op. Marketing & Supply Federation Ltd., Panaji, in terminating the services of Shri Prabhakar L. Sawal, Salesman w.e.f. 8-10-86 is legal and justified and the same does not call for any interference.

Consequently the workman is not entitled to any relief in this case.

There shall be no order as to costs. Inform the Government about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Finance (Revenue and Control) Department

Order

No. 6/16/83-Fin(R&C)

Read:— Govt. Notification No. 6/16/83-Fin(R&C)II dated 7-5-1984 regarding ad hoc promotion.

On the recommendations of the Departmental Promotion Committee, the Government is pleased to regularise the ad-hoc promotion of S/Shri Y. S. Pai Bir and R. R. A. Araujo, Assistant Sales Tax Officers to the post of Sales Tax Officers in the scale of pay of Rs. 2000-60-2300-EE-75-3200-100-3500 vide Government Notification cited above, with effect from 18-7-1989.

By order and in the name of the Governor of Goa,

K. M. Nambiar, Under Secretary (Fin. Exp.).

Panaji, 2nd August, 1989.

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