**Sat against disciplinary action**

BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL TN AT CHENNAI

OA No:\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

OA Under Section 19 of the Administrative Tribunals Act, 1985

Chennai

Applicant

\_\_\_\_\_\_

Through, Advocate

Respectfully Sheweth:

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned action of the respondents whereby they \_\_\_\_.

The said impugned action is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power.

4. Jurisdiction:

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

(a) That the facts leading to filing of the present case and the relevant facts are furnished hereunder in chronological order for the convenience of this Hon’ble court: -

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(b) That \_\_\_\_\_\_\_

**GROUNDS**

(c) That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others: -

(i) That the impugned action of the respondent is arbitrary, malafide, illegal, ultra vires, against the Article 39 (d) read with 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(ii) That\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_

(iii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That as per the settled principle of law, the alleged misconducts pertaining to the period prior to the promotion of the applicant stands condoned. As such the misconducts in Articles of Charges Nos. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ cannot be made grounds for punishment of the applicant. The Disciplinary Authority was prejudiced against the applicant and due to malafide intention and for the extraneous reasons has awarded impugned punishments on the applicant.

(iv) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_), the applicant was served with charge sheet by the Disciplinary Authority for the following four charges:-

(v) \_\_\_\_\_\_\_\_\_That the applicant submits that on \_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_) the applicant has prayed for copy of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ mentioned in the Annexure A-III with the Charge Sheet so as to enable the applicant to submit his written statement of defense as sought for by the Disciplinary Authority.

(vi) \_\_\_\_\_\_\_\_\_\_\_\_ That it is against well established principles of law, rules and regulations that the person who happens to be witness cannot be appointed as Presenting Officer and vice versa.

(vii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That the applicant submits that on \_\_\_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_) the applicant made a representation to the Disciplinary Authority with a copy of the same endorsed to and got received on the same date by the Inquiry Officer, praying therein that the applicant is entitled to seek assistance of a defense assistant in his disciplinary case as per the relevant provisions and therefore the applicant may be granted permission to engage Defense Assistant, Sh. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is an advocate. It was also stated therein that Sh. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has also consented to assist the applicant in the afore-mentioned case in the inquiry. It was obligatory on the part of the Disciplinary Authority to allow Defense Assistant to the applicant and further proceedings could be proceeded only after the Defense Assistant has been allowed to the applicant.

(viii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That the applicant further submits that the said charge sheet was further amended on \_\_\_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_) without affording the opportunity to the applicant to file reply to the said amendment. The Disciplinary Authority has not observed the mandatory principles of law, rules and regulations to seek the further written statement from the applicant with regard to the amended charge sheet.

(ix)\_\_\_\_\_\_\_\_\_\_ \_\_\_\_That on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Annexure A-\_\_\_\_\_\_\_) the applicant made a detailed reply to the show cause notice, raising therein various legal objections to the enquiry. Non-consideration of those points is indicative of non-application of mind by the Disciplinary Authority.

(x) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That the penalty of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ imposed by the Disciplinary Authority on the applicant is disproportionate to the alleged misconduct and shocking the conscience as well as indicative of arbitrariness and malafide intention on the part of the Disciplinary Authority.

(xi) \_\_That the Applicant further submits that on \_\_\_\_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_\_\_\_\_\_\_\_\_) the applicant applied to the Disciplinary Authority to supply day-to-day proceedings of order sheet, witnesses examined in the inquiry and other documents related to inquiry placed on the file so that the applicant could file the appeal. The Disciplinary Authority has flatly denied the same to the applicant on \_\_\_\_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_\_\_\_\_\_\_\_\_). The applicant submits that such denial amounts to denial of natural justice to the applicant and such an action on the part of the respondent Disciplinary Authority is against the well-settled principle of law, rules and regulations.

(xii) \_\_\_\_\_\_That the inquiry officer is stated to have conducted the hearings in the case on \_\_ without any Defense Assistant having been allowed to the applicant and without giving notice to the applicant, which is against the provisions of Rule 14 of the CCS (CCA).

(xiii) \_\_\_\_\_\_\_\_ That the applicant has thus been deprived of his legitimate rights of cross-examining the witnesses and put his own defense and give defense witnesses. The witnesses were thus examined at the back of the applicant without affording opportunity to the applicant to establish the veracity of their false statements. The witnesses were tutored on the behest of the Disciplinary Authority as they all are the subordinates of the Disciplinary Authority.

(xiv) \_\_\_\_\_\_\_\_\_\_\_That the applicant was legitimately expecting that after the application of the applicant for Defense Assistant is decided by the Disciplinary Authority, the further disciplinary proceedings will be proceeded in accordance with the law.

(xv) \_\_\_\_\_\_\_\_\_\_\_That the defense of the presenting officer was recorded in utter violation of Rules

14 (15) of CCS (CCA) Rules 1965, which interalia provides that Presenting Officer appointed in a case cannot be examined as a witness at the enquiry.

(xvi) The Disciplinary Authority was required to entrust the enquiry to the Director Departmental Enquiries HP Govt as per State Govt. orders vide notification No. Per(AP-II)(A)(3)1/79/PET dated 22.10.1997 (Annexure A-\_\_) and 01.07.1999 (Annexure A-\_\_). Vide Annexure A-\_\_, it is clearly envisaged that:-
“All fresh inquiries in disciplinary proceedings to be initiated against Gazetted Officers (Class-I & Class-

II) will be entrusted to the Commissioner Departmental Enquiries and those against the Non-Gazetted Officers/officials will be entrusted to the Director of Departmental inquiries.”

(xvii) \_\_\_\_\_\_\_That it is apparent from the above that the Disciplinary Authority has purposely and malafidely violated the above instructions of the state Government.

(xviii) \_\_\_\_\_\_That the day to day proceedings including copies of depositions of witnesses and the written briefs of the Presenting Officer were not supplied to the applicant as required under Rule 14 Note 6 of CCS (CCA) Rules 1965.

(xix) \_\_\_\_\_\_That the Disciplinary Authority has not indicated the proposed penalty in the show cause notice which is mandatory requirement.

(xx) \_\_\_\_\_\_That the Inquiry Officer has never served the applicant with the notice of ex-parte proceedings, which was obligatory on the part of the Inquiry Officer. It is mandatory under the Government Instructions that the notices of all hearings should be served on the accused or communicated to him unless the first notice says that the inquiry will continue from day to day.

(xxi) \_\_\_\_\_\_\_That the respondents have not even afforded opportunity to the applicant to see the relevant record being used against the applicant before starting of inquiry. Neither has the applicant been supplied with the Presenting Officer's briefs.

(xxii) \_\_\_\_\_\_\_\_\_\_\_ That the punishment as awarded by the Disciplinary Authority is not competent as much as the Disciplinary Authority is not the appointing authority of the applicant.

(xxiii) That the conclusions arrived at by the disciplinary authority is not reasonably borne from available material/evidence.

(xxiv) \_\_\_\_\_\_That the Charge sheet has been issued by the incompetent authority. No tenable oral or documentary evidence was brought on record before the Disciplinary Authority. Disciplinary Authority has based its decision on extraneous matters. Similarly the Appellate Authority has rested its decision on the extraneous matters. The Appellate Authority has not applied its own mind. The appellate authority has not supplied the copy of comments sought for from the department to the applicant and thus the decision of the appellate authority has been prejudiced and vitiated.

(xxv) \_\_\_\_\_\_That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(xxvi) \_\_\_\_\_\_\_That the impugned order is against the well-settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice: -

(a) Quash the impugned \_\_\_\_\_ being arbitrary, malafide and illegal;
(b) Direct the respondents to \_\_\_\_\_;
(c) Allow the cost of this O.A.;
(d) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is prayed that during the pendency of this OA, the operation of the impugned order A-\_\_\_\_\_\_ may kindly be stayed in the interest of justice.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending with any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Chennai

Applicant

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Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL TN AT CHENNAI**

O.A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

**Affidavit**

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under: -

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Chennai this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL TN AT CHENNAI**

Case No: \_\_\_\_\_\_ of 2004

Petitioner

VERSUS

Respondents

KNOW ALL TO whom these presents shall come that I/We \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the above named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_PETITIONER/RESPONDENT do hereby appoint: - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to be the advocate for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PETITIONER/RESPONDENT in the above mentioned case, to be all following acts, deeds and things or any of them that is to say:

1. To act, appear and plead in the above mentioned case in this Court or any Court in which the same may be tried or heard in the first instance or in Appeal or Letters Patent Appeal or Review or Revision or execution or in any other stage of its progress until its final decision.

2. To present Complaints, Pleadings, O.A., M. A. Appeals, Letters Patent Appeals, Petitions for Appeal to High Court/Supreme Court, Cross-objections or Petition for execution, review, revision withdrawal compromise or other petitions or affidavit or other documents as may be deemed necessary or advisable for the prosecution of the said case in all it's stages.

3. To withdraw or compromise the said case or submit to arbitration any difference or disputes that shall arise touching or in any manner relating to the said cause.

4. To receive moneys and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in course of the prosecution of the said case.

5. To employ and instruct any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I/We hereby agree to ratify whatever the advocate or his substitute shall do in the premises.

AND I/We hereby agree not to hold the advocate or his substitute responsible for the result of the said cause in consequence of his absence from the court when the said cause is called up for hearing.

AND I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said cause until the same is paid.

IN WITNESS WHEREOF I/We here up to set my/our hands to these presents the contents of which have been explained to me/us and understood by me/us the \_\_\_\_\_\_

Accepted

\_\_\_\_\_\_Advocate

Client