

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 478 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Pradyumna Kumar Dash, S/o Sri Purna Chandra Dash, resident of Gadakan, Post Office –Mancheswar, Rly. Colony, PS- Mancheswar, District- Khurda, Orissa, last employed as Senior Section Engineer (Carriage & Wagon), East Coast Railway, Sambalpur.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, E.Co.Rly. Sadan, Chandra Sekhar Pur, Bhubaneswar-17, PO-Mancheswar Rly. Colony, District-Khurda.
2. Addl. Divisional Railway Manager, E.Co.Rly., Sambalpur, At/Post Office/PS/District-Sambalpur.
3. Senior Divisional Mechanical Engineer/E.Co.Rly., Sambalpur, At/Post Office/PS/District-Sambalpur.

.....Respondents.

For the applicants: Mr.C.Nanda, counsel

For the respondents: Mr.D.K.Mohanty

Heard & reserved on : 2.12.2019

Order on : 14.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this Original Application (in short OA) seeking the following reliefs:-

- “(i) This Hon'ble Tribunal may be pleased to quash/set aside the Charge sheet in Annexure-1, orders dated 05/08/2011 (Annexure-11) passed by respondent No.3 and order dated 01.12.2011 (Annexure-13) passed by respondent No.2.
- (ii) This Hon'ble Tribunal may be pleased to direct the respondents to re-instate the applicant in his services and to give all the back wages and the consequential benefits to the applicant.
- (iii) Pass such other order/orders or direction/directions as the Hon'ble Tribunal deems fit and proper in the bona fide interest of justice.”

2. The applicant was posted as Section Engineer under administrative control of the respondent no. 3 when he was served the charge memo dated 3-5/04/2010 (Annexure-1 of the OA), with the following articles of charges:-

“That, the said **Shri Pradyumna Kumar Dash, Section Engineer/C&W/KBJ**, while functioning as such, had refused to work in Breakdown duties despite lawful instructions of his respective Superior i.e. Sr.

DME/E.Co.Rly/SBP thus, he has shown lack of devotion to his duty thereby violated **Rule-3.1(ii) of Railway Service (Conduct) Rules-1966.**

Article-II

That, the said **Shri Pradyumna Kumar Dash, Section Engineer/C&W/KBJ**, while functioning as such, has disobeyed the lawful instructions of his respective Superior i.e. Sr. DME/E.Co.Rly/SBP to work in Breakdown duties thus, he has shown his attitude of unbecoming of a Railway Servant thereby violated **Rule-3.1(iii) of Railway Service (Conduct) Rules-1966.”**

The said charge memo was signed by Sri Manish Kumar who was posted as Sr. Divisional Mechanical engineer (in short Sr.DME) and both the charges were linked to the allegation that the applicant disobeyed the order of Sr. DME (Respondent No. 3) ordering the applicant to take up the additional duty as Breakdown Supervisor in addition to his work as Section Engineer.

3. The applicant submitted his reply to the charge memo on 25.4.2010, which was considered by the disciplinary authority (in short DA) i.e. the Respondent No. 3 who appointed Enquiry Officer (in short EO) to inquire into the charges framed against the applicant vide order dated 12.5.2010 (Annexure-4 of the OA). By that time, Sri Manish Kumar had been transferred and another officer was posted as Sr.DME who passed the order to appoint EO. EO submitted his report, copy of which was communicated to the applicant with instruction to submit his representation within 10 days. On consideration of his representation, the Respondent No.3 passed the order dated 5/8/2011 (Annexure-11 of the OA) dismissing the applicant from service. The applicant filed appeal before the Respondent no.2 who is the Appellate Authority and who rejected the appeal vide order dated 1.12.2011 (Annexure-13). In this OA, the applicant has impugned the orders at Annexure-1, 11 and 13.

4. Following grounds are advanced by the applicant in the OA :

(i) The Disciplinary Authority (in short DA) is biased in this case as he was involved since the charge against the applicant was violative of the DA's instruction to attend to breakdown duties. As per Railway Board's Circular dated 9.11.1990 [Para 2(e) of Annexure-3 of the OA], the respondent No.3 should not have acted as the disciplinary authority in this case since the disciplinary authority was involved in the charge memo.

(ii) Entrusting the applicant with breakdown duties in addition to his normal duty as Section Engineer was against the established practice as he did not give his option for breakdown duty due to his medical condition.

(iii) The Enquiry Officer had acted as prosecutor, questioning the applicant and the applicant's representation for change of EO was rejected by the disciplinary authority i.e. Sr.DME.

(iv) The report of the EO and order of DA are based on extraneous materials as averred in para 5 D and 5 E of the OA.

(v) Essential document like special medical examination report of the applicant, which was relied upon by the DA, was not supplied, for which there was violation of the Rule 9 and the applicant was prejudiced.

(vi) DA allowed 10 days' time as against 15 days' time required under rule 10(2)(a) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short DAR).

(vii) Applicant was not allowed sufficient opportunity as full medical report was not supplied along with the chargesheet.

(viii) The punishment imposed "excessive, oppressive and opposed to conscience of reasonable and prudent man".

5. The respondents replied to these ground through Counter as under :

(i) DA, being the Controlling Officer, was correct in taking disciplinary action against the applicant for smooth management. There is no involvement of the DA in the matter.

(ii) Exercise of option for the part of duty as stated in Sl.No.87 of Railway Board's letter dated 17.9.2002 (Annexure-16), which does not debar the authorities to entrust the applicant the work as BS without his option. He was not entrusted the duty as per Sl.No.87.

(iii) EO has carried out the enquiry impartially and without any bias, for which the request of the applicant for change of EO was rejected.

(iv) Question No. 15 put by the EO to the applicant during inquiry was due to his response to question No. 14. But this was not taken into account while finalizing the report of the EO of by the DA. The ACR entries of the applicant were also not considered by DA while passing his order.

(v) The applicant was sent for special medical examination which did not reveal that he was not fit to take up the breakdown duties. No medical document was furnished by the applicant to show that he cannot undertake such duty. Further, the EO has considered his medical documents rationally. All 'relied upon' documents have been supplied to the applicant. It was decided by the authorities not to supply copy of special medical examination report to applicant as these were not considered relevant.

(vi) Regarding provision of 15 days time under the rules, it is stated in Counter that DA had granted 10 days time to the applicant to submit representation against EO's report and the applicant did not object to it and furnished the reply. It is also stated that this ground was not stated in his appeal filed by the applicant before the Respondent No.2.

(vii) The applicant was offered reasonable opportunities to defend the disciplinary proceedings and was supplied all relied upon documents.

(viii) The applicant was entrusted the breakdown duty after assessing his caliber. But he disobeyed the order of the superior officer entrusting him to attend breakdown duty.

6. The applicant filed Rejoinder stating that his health condition did not allow him to attend breakdown duties and he had informed the authorities about it in good faith, which 'cannot be termed as insubordination attitude and lack of integrity'. It is also stated that his contention that EO acted like prosecutor has not been denied and that, EO was biased, which shows from the fact that he asked the question No. 15. The applicant also reiterated the grounds mentioned in the OA.

7. Heard learned counsel for the applicant and the respondents and both have filed their written submissions with copy of the judgment in cases cited in support of their respective cases. The averments in the pleadings have been reiterated by learned counsels. Applicant's counsel has cited judgments in following cases in his written note :

- (i) S.C.Chakrabarty –vs- State of West Bengal [AIR 1971 SC 752]
- (ii) Sawai Singh –vs- State of Rajasthan [AIR 1986 SC 995]
- (iii) Order dated 22.6.2017 of Cuttack Bench of CAT in Surendra Nath Panda –vs- Union of India
- (iv) Arjun Chaubey –vs- Union of India [AIR 1984 SC 1356]

Respondents' counsel in his written note, has filed a copy of the judgment in the case of Mnsukhlal K.Bhalala –vs- Bank of India & Ors. of Gujarat High Court (indiakanon.org/doc/116054).

8. The pleadings and submissions by both the parties are duly considered by us. It is necessary to examine whether the grounds mentioned in the OA challenging the punishment of dismissal from service would justify the reliefs prayed for in the OA to quash the charge memo and impugned punishment order of dismissal from service.

9. The applicant's counsel has cited the judgment in the case of Surath Chandra Chakrabarty (supra), in which, the authorities had not supplied the

statement of allegations or charges against the concerned employee, which was found be violating the provisions of the Fundamental Rule 55, even after the applicant requested for the same. The disciplinary proceeding was found to have been finalized without following the mandatory rules, for which it was held by Hon'ble Apex Court that the petitioner was denied reasonable chance to defend himself and hence, the proceeding was nullified. The facts in present OA reveal that the article of charges has been served on the applicant. But the applicant has challenged the charge memo on various grounds which were different from the grounds of challenge of the disciplinary proceeding in the case of Surath Chandra Chakrabarty (supra). Hence, the cited case is factually distinguishable.

10. In the case of Sawai Singh (supra), it was held that the charges were vague and it would be very difficult for any accused to defend the charges and the evidence adduced did not clearly prove the allegations against the applicant. No such ground has been taken by the applicant in the present OA. Hence, the cited case, being factually distinguishable, will not be helpful for the applicant.

11. In the case of Arjun Chaubey (supra), Hon'ble Apex Court observed as under:-

"The appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. On May 22, 1982 the Senior Commercial officer wrote a letter to him, calling upon him to offer his explanation in regard to 12 charges of gross indiscipline. The appellant submitted his explanation to the charges by his reply dated June 9, 1982. On the very next day, the Deputy Chief Commercial Superintendent served a second notice upon the appellant, saying that the explanation offered by him was not convincing but that another chance was being given to him to offer his explanation regarding the specific charges which were conveyed to him by the letter of May 22, 1982. By this letter, the appellant was also called upon to submit his explanation within three days as to why deterrent disciplinary action should not be taken against him. The appellant submitted his further explanation on June 14, 1982, but on the very next day, the Deputy Chief Commercial Superintendent passed an order dismissing him from service on the ground that he was not fit to be retained in service.

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The letter dated May 22, 1982 which contains accusations of gross misconduct against the appellant enumerates 12 charges, out of which Charges Nos. 2 to 7 and 11 refer to the appellant's misconduct in relation to Respondent 3. For example, the second charge alleges that the appellant entered the office of Respondent 3 and challenged him in an offensive and derogatory language. Charge No. 3 says that the appellant was in the habit of forcing himself on Respondent 3 two or three times every day with petty complaints. Charge No. 4 alleges that the appellant stormed into the office of Respondent 3 and shouted at him, using foul words. Charges 5, 6 and 7 contain similar allegations. "

Under the circumstances as above, Hon'ble Apex Court in the case of Arjun Chaubey held that the disciplinary proceeding was vitiated since the authority

on whose complaint some of the charges were framed, should not have considered the matter as the disciplinary authority. In that case, no enquiry was conducted, unlike the present OA in which another officer had conducted the enquiry and found the applicant guilty. Further, in the present OA, the Sr.DME (Sri Manish Kumar) who had issued the order entrusting additional duty to the applicant as Breakdown Supervisor, had not functioned as DA while passing the order on the applicant's reply to the charge memo and while passing the order of punishment. Hence, the cited case is factually distinguishable.

12. In the case of Surendra Nath Panda (supra) in OA No. 702/14, the charge memo had cited the disciplinary authority's inspection report as one of the relied upon document to prove the charges. It was held by the Tribunal that the authority conducting inspection had formed his opinion on the alleged incident and it will not be appropriate if the same authority functions as disciplinary authority. Hence, the chargesheet in question was quashed giving liberty to the respondents to continue with the proceeding by appointing another disciplinary authority. It is seen that in OA No. 702/14, the applicant in his reply to the charge memo, had pointed out illegality of the chargesheet because of its reliance on the inspection report of the disciplinary authority. One of the grounds advanced in the present OA is also involvement of the DA in the charge memo as the charge consisted of violation of the DA's order entrusting additional duty to the applicant to attend to breakdown duties. As discussed earlier, the officer whose order was alleged to have been disobeyed, had issued the charge memo at Annexure-1 to the applicant as he had not functioned as DA subsequent to issue of charge memo. Hence, the facts in OA No. 702/14 are different for the present OA, for which the cited judgment will not be helpful for the applicant.

13. In the case of Mansukhlal K. Bhalala (supra), the petitioner-employee was deputed to another office in exigencies of work and he was relieved. But the petitioner did not join in his new place of posting and remained absent beyond leave sanctioned in his favour by the authorities. In the judgment of Hon'ble Gujarat High Court, the implications of violation of procedure as laid down under the rules have been examined and it was held that an employee punished under disciplinary proceeding cannot claim the benefit of any deviation of the rules or procedure unless prejudice to him is established by him. In the present OA, apart from deviation from the rules/procedures, the applicant has also taken other grounds like involvement of the DA in the matter, bias of the EO and punishment imposed being excessive etc. Hence, the case cited by the respondents' counsel is factually distinguishable.

14. The applicant has raised the ground of bias on the part of the DA (Sri Manish Kumar), who has issued the charge memo since disobedience of the DA's order was the basis of the charges framed against the applicant. As stated earlier, Sri Manish Kumar had passed the order entrusting additional duty to the applicant as Breakdown Supervisor and he had also issued the impugned charge memo. But consideration of the reply of the charge memo was by another officer who had joined as Sr.DME in place of Sri Manish Kumar. Since the officer who had considered the applicant's reply and passed the punishment order in the disciplinary proceeding as DA was not Manish Kumar, it cannot be said all the officers who had worked as Sr.DME after issue of charge memo, were biased against the applicant, since the charge memo did not contain any charge in which involvement of any of those officers was alleged. In the judgments cited by the applicant, the authority who had passed the punishment order was involved in the proceedings, unlike the present OA. Hence, we are unable to agree with the applicant's contention that DA was biased in this case.

15. The Railway Board circular dated 9.11.1990 (Annexure-3) states as under :

"(e) If the Disciplinary Authority of a charged official is also involved in the same case then he should not act as the Disciplinary Authority in the said case. The authority who is next higher in hierarchy should act as Disciplinary Authority."

In this OA, since Sri Manish Kumar whose order was alleged to have been disobeyed by the applicant in the charge memo, had not passed any order in this disciplinary proceeding except for issuing the charge memo, it cannot be said that the disciplinary authority was involved in this OA. Hence, the Railway board circular dated 9.11.1990 will not be helpful for the applicant's case.

16. Similarly, the applicant's allegation against the EO on the ground that he was biased, has no justification. Putting certain questions to the applicant during inquiry does not prove that the EO was biased. The ground in the OA relating to deviation from the Rule 9 since 10 days time was allowed to him to file representation on the EO's report (in place of 15 days), is not tenable since no prejudice to the applicant has been demonstrated in the OA.

17. The applicant has mentioned the ground that the punishment of dismissal from service imposed on him was excessive, oppressive and opposed to conscience of a reasonable person. This averment needs to be examined in view of the punishment of dismissal from service imposed on the applicant. In reply to such averment in the OA, the respondents have averred that the applicant had disobeyed the order of his superior officer and refused to work as

Breakdown Supervisor, for which, the punishment of dismissal from service is commensurate with the gravity of the offence. The applicant in his Rejoinder has stated that his request not to entrust the duty as Breakdown Supervisor on medical ground should not be considered as insubordination or lack of integrity or lack of devotion to duty.

18. It is seen from the charge memo at Annexure-1 that the documents which were relied upon to prove the charges included the order dated 26.3.2010 of the Sr.DME by which the applicant was instructed to take up breakdown dirties which were refused by the applicant on the ground of his health conditions, but such ground was not accepted by the Sr.DME. The charge consisted of refusal to work in breakdown duties and disobedience of lawful orders of his superiors and it did not include any specific instance of breakdown duty which was entrusted to the applicant and which was refused by him. The charges did not contain any imputation if the Railways had incurred any loss or operational inconvenience/difficulties due to refusal of the applicant to attend to breakdown duties.

19. It is noticed that the charge is for disobeying the instruction of superior authority to attend breakdown duties because of health condition of the applicant and there is no document furnished on record to show that the applicant was medically fit to undertake the breakdown duties, although a Medical Board had specially organized to examine medical fitness of the applicant. Hence, it cannot be presumed that the contention of the applicant about his medical condition have no justification.

20. It is also seen that the applicant in this OA has no history of any previous misconduct as no contention to this effect has been brought on record by the respondents either in the charge memo or in the pleadings. As discussed earlier, no instance of non-attendance of the applicant for any specific breakdown duty entrusted to him, which could have resulted in loss or damage to the railways has been cited in the charge memo or in the Counter. The applicant's plea that his health condition does not permit him to attend to the breakdown duties has not been refuted by any medical report after examination of the applicant by the medical authorities of the respondents. Under these circumstances, even if the charges against the applicant as per the impugned charge memo are considered to be proved, the punishment of dismissal from the service appears to be excessive and disproportionate to consider the charges framed against the applicant.

21. As per the settled law on disciplinary proceedings, the Tribunal can interfere if the punishment imposed is such that it shocks judicial conscience or there is violation of statutory rules or principles of natural justice or if the punishment order is not based on any evidence. Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings has held as under:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.”

22. Hon'ble Apex Court in the case of **Deputy Commissioner KVS vs. J. Hussain, reported in AIR 2014 SC 766**, has laid down the following principles as under:-

“When the charge proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include,

apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the disciplinary required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority.”

23. Similarly, in the case of **State Of Meghalaya & Ors vs Mecken Sing N. Marak, reported in 2008 (7) SCC 580**, Hon’ble Apex Court on the issue of quantum of punishment in a disciplinary proceeding, has observed as under:-

“A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

In the present OA, the reasons for considering the punishment to be shockingly disproportionate to the charges established against the applicant have been discussed in paragraphs 18, 19 and 20 of this order.

24. The above principles have been reiterated by Hon’ble Apex Court in the case of **Union of India vs. S.S. Ahluwalia, reported in 2007 Law Suit (SC) 950**, in which it was held as under:-

“The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty.”

25. Applying the ratio of judgments as discussed above to the present OA, the punishment of dismissal from service imposed on the applicant by the authorities is considered to be shockingly disproportionate considering the charges framed in view of the reasons discussed earlier and hence, there is justification for this Tribunal to interfere in the matter.

26. Under rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, it was necessary on the part of the Appellate Authority to examine whether the punishment imposed by the DA was adequate or inadequate or severe and come to a finding on the said question. In this OA, the Appellate Authority in

his order dated 1.12.2011 (Annexure-13 of the OA) has not examined the issue although it was submitted in the appeal dated 9.9.2011 (Annexure-12) under Ground No. 12 specifically stating that the punishment of dismissal from service ‘is excessive, oppressive and opposed to conscience of reasonable and prudent man...’. Hence, the impugned order dated 1.12.2011 of the Appellate Authority confirming the punishment of dismissal from service, is not in accordance with the rule 22, for which it is not tenable.

27. In the circumstances as discussed above, the impugned orders dated 5.8.2011 of the disciplinary authority (Annexure-11) and order dated 1.12.2011 of the Appellate Authority (Annexure-13) are set aside since the punishment imposed is shockingly disproportionate to the charges established against the applicant and the matter is remitted to the Disciplinary Authority to reconsider the matter afresh from the stage of receipt of the applicant’s representation dated 6.5.2011 (Annexure-10) after receipt of the report of the Enquiry Officer and pass a fresh order disposing of the disciplinary proceeding in question within four months from the date of receipt of a copy of this order and if it is decided by the disciplinary authority to punish the applicant after reconsideration as above, then the penalty should be other than dismissal, removal and compulsory retirement from service. It is clarified that the service of the applicant from the date of dismissal till passing of fresh order of the disciplinary authority on reconsideration as above or till his reinstatement in service whichever is earlier, would be decided as per the rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968. It is further clarified that the respondents will be at liberty to review afresh the health condition of the applicant as furnished by him along with the representation and then take a decision if the breakdown duties are to be entrusted to him.

28. The OA stands allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

