

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

OA 649/1989

NEW DELHI, THIS 24th DAY OF MARCH, 1994

Shri N.V.Krishnan, Hon'ble Vice-Chairman(A)  
Shri C.J. Roy, Member(J)

Shri J.L. Jain, FA&CAO(S)  
s/o Shri Sunderlal Jain  
Northern Railway  
SC-6, Basant Lane  
New Delhi-110055 .. Applicant

By S/Shri O.P.Khokha, K.B.S.Rajan and  
(late) K.L. Bhatia, Counsel

versus

Union of India, through

1. The Secretary to the Govt. of India  
Ministry of Railways  
Rail Bhavan, New Delhi-110 001

2. Joint Secretary (Estt)  
Railway Board  
Rail Bhavan, New Delhi

3. General Manager  
Northern Railway  
Baroda House, New Delhi .. Respondents  
By Shri R.L. Dhawan, Advocate

ORDER

(By Hon'ble Shri N.V.Krishnan, Vice-Chairman(A)

The applicant is a Member of the Indian Railway Accounts Service who, at the relevant time, was working as the FA&CAO(Survey), Northern Railway in the pay scale of Rs.5900-6700. In that capacity the applicant functioned as the Member (Finance) of the Tender Committee appointed to consider the tenders for the construction of 3 X 25 M Road over-bridge at Okhla. There were two other members of the Tender Committees, namely, Shri Ramesh Chandra, Civil Engineering Member (Construction) and Shri Chandrika Prasad, coopted Member from Signalling and Tele-communication Department (Construction). In connection with the advice tendered by the applicant as the Finance Member of the Tender Committee and the stand he had taken in regard to award

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of the tender, a disciplinary proceeding was initiated against him by the issue of the Memorandum dated 22.2.89 (Annexure III) by the first respondent, the Ministry of Railways on the following charge:

"Shri J.L. Jain while posted at FA&CAO/S, Northern Railway during the period 1986 - 1988 and functioning as a Member of the Tender Committee set up in connection with the consideration of tenders for the award of work relating to construction of Road Over-Bridge at Okhla attempted to favour a particular contractor by way of giving justification at various stages of the case on apparently wrong premises with the intention to help that particular contractor to get the work and in the process he even recorded inconsistent and contradictory notes at different stages and also wrongly took cognizance of letters from the contractor which had been received subsequently.

"The aforementioned acts of misconduct exhibit lack of integrity, failure to maintain devotion to duty and acting in a manner unbecoming of a railway servant on the part of Shri J.L. Jain and tantamount to contravention of Rule 3(1)(i) & 9(iii) of the Railway Services (Conduct) Rules, 1966."

The statement of imputation is lengthy and will be referred to later. The charges are to be proved in the departmental enquiry only by perusal of Northern Railway's Construction file No.74-W/W/1/120/WA relating to the tender for the road over-bridge at Okhla.

2. Immediately thereafter, an order of compulsory retirement dated 13.3.89 under Rule 2046(L) of the Indian Railway Establishment Code was served on the applicant retiring him from the date on which that order was served on him, after paying him the quantum of pay and allowances in lieu of the notice of three months. The disciplinary proceeding initiated, was, nevertheless, continued after his premature retirement.

It is in these circumstances that the applicant filed this OA to set aside the impugned office memorandum dated 22.2.89 (Annexure III) initiating the disciplinary proceeding against the applicant.

3. Admittedly, the order of compulsory retirement (Annexure V) was set aside by an order of this Tribunal dated 7.9.91.

4. Two important contentions have been urged by the applicant. As the order of compulsory retirement has been quashed, the departmental enquiry should also be quashed. Secondly in any case even on merits, the disciplinary proceeding is bad in law, because it has been initiated without any evidence, whatsoever, as is apparent from the record and hence should be quashed.

5. The respondents have filed a reply resisting the prayers and contending that the OA should be dismissed. It is further contended that an application of this nature can not lie against a disciplinary proceeding which has just been commenced against the applicant. The applicant ought to have submitted a reply to the charges and allowed the proceedings to be completed before rushing to the Tribunal.

6. The applicant has filed a rejoinder contending that there is no substance in the charge which is in respect of the opinion given by the applicant in the course of his duties and that there is no trace of evidence to

substantiate the allegation that the applicant had given such an advice with the intention to help a particular contractor.

7. We have heard the learned counsel for the parties and perused the record.

8. It is seen from the Annexure III memorandum of charges (para 1) that the alleged misconduct for which the applicant is proceeded against relates to one case regarding the awarding of a contract for the construction of a 3 X 25 M road over-bridge at Okhla. A perusal of the statement of imputations enclosed with the Annexure III OM dated 22.2.89 in support of the charges discloses that the applicant had made recommendations on three successive occasions that the tender of M/s. Sarvesh Chopra should be accepted as it has an edge over the tender of the nearest rival M/s Combes India Pvt. Ltd. who was every time recommended by the majority (i.e. the other two Members of the Tender Committee) and who was ultimately awarded the contract by the competent authority.

9. The proceedings of the Tender Committee shows that out of 4 tenders, the first two lowest tenders had to be rejected because the parties did not have credentials. That left only two other tenderers in the field, viz. Sarvesh Chopra and Ms. Combes India Ltd. The proceedings as to which of the two should be given the contract fall into three consecutive phases as mentioned in the succeeding paras.

10. Phase I commenced with the opening of the tender and when the papers were first put up to the Tender Committee.

- (i) The majority opined that the tender of M/s Sarvesh Chopra at Rs.46.38 lakhs contained two important conditions. The first relates to additional payment in the event of escalation of prices beyond 5% stipulating that he should be given the benefit of escalation for the first 5% increase in prices also. This was not agreed to and considering the tendered price, it was estimated that the amount involved on this account would be Rs.1.39 lakhs. The second condition stipulated by the contractor was that he would allow a rebate of 0.1% in case of regular monthly payments and a further rebate of 0.25% in case the final bill was paid within three months from the date of completion of the work. The majority felt that this latter rebate was hollow in nature because, normally, the final bill never got finalised within three months from the date of completion of work. The majority made an allowance only for the rebate of 0.1% for monthly payment. Thus the offer of M/s Sarvesh Chopra was evaluated by then at Rs.47,72,850/-.
- (ii) The majority found that the offer of M/s Conbes India Ltd. was for Rs.46,97,6/- which was according to tender schedule except for one item relating to increase in pile length. The majority felt that this item did not have any financial implication. The tenderer also stipulated a condition that 10% mobilisation advance should be given against bank guarantee. The majority felt that this condition was based on standard conditions for granting advances and that no financial implication was involved. They recommended his offer for acceptance as it was lower than that of Sarvesh Chopra.
- (iii) On the contrary, the applicant evaluated the two tenders as follows:-
  1. In respect of M/s. Conbes India Pvt. Ltd., he added Rs.47,000 in respect of changes in pile length and Rs.71,000 in respect of interest on mobilisation of advance. Thus his tender was evaluated at Rs.48.15 lakhs.
  2. In regard to the tender of M/s Sarvesh Chopra he added Rs.28,000 towards price variation clause on escalation on the basis of his own calculations. He observed that due to the effective policies taken by the Government of India the prices were having a downward trend and hence he restricted the increase in price

to Rs.28,000 as against Rs.1.39 lakhs estimated by the majority. He also provided for a discount of Rs.16,000 to be given by the contractor in respect of monthly payments and final payment with 3 months. Thus the tender of M/s. Sarvesh Chopra worked out to Rs.46.50 lakhs. Hence, he recommended M/s. Sarvesh Chopra's tender.

(iv) In the statement of imputations it is stated as follows:

"4. The accepting authority AGM(TS) did not agree with the views of FA & CAO that M/s. Sarvesh Chopra's offer with/or without conditions was lower. He mentioned that the calculations made by him were also controversial. He accepted the majority view for calling negotiations with all the valid tenderers whose credentials had been accepted.

11. In the second phase fresh offers were invited.

(i) The negotiations were conducted on 16.6.87. The tender committee met on 25.6.87 and 1.7.87. The real contest was still between the same two parties mentioned above.

(ii) M/s. Conbes India Pvt. Ltd. now quoted Rs.44,67,500 against the earlier offer of Rs.46.97 lakhs. It failed to quote for item No.6 in this tender; The majority added Rs.9500 on this account based on the earlier tender and worked out this contractor's tender at Rs.44,77,000/-. The contractor had withdrawn all conditions including the mobilisation advance.

(iii) The second contractor M/s. Sarvesh Chopra offered a revised rate of Rs 45,09,750 as against the earlier offer of Rs.46,38,440/-. The contractor withdrew the special condition regarding escalation payment i.e. for the first 5% increase also. He maintained the other condition regarding rebate for monthly payment (0.1%) and settling of final bill (0.25%) within 3 months. He also gave a letter on 25.6.87 raising this to 1% and 2.5% respectively. The majority did not give any credit for this condition as, in their view, full payment can not be made in 3 months. They, therefore, found that the tender of M/s Sarvesh Chopra was for Rs.45,09,750 which is more than the tender of M/s Conbes India Pvt. Ltd. Hence they recommended the acceptance of the latter tender.

(iv) As against this, the applicant evaluated the two tenders as follows as mentioned in the statement of imputations:

"He still maintained that the offer of M/s Sarvesh Chopra remained lowest as shown under:

S.No.	Item	M/s. Conbes India Pvt. Ltd.	M/s. Sarvesh Chopra
1.	Rates quoted	Rs.44,67,500	Rs.45,09,750
2.	Add (notionally) for missing item no.6	9,500	NIL
3.	Less discount	NIL	5,524
4.	Variation due to piles etc.	48,250	NIL
		45,25,250	45,04,226

He also recommended that the offer of M/s. Conbes India Pvt. Ltd. should be ignored as they did not quote for Item 6 of the schedule. He recommended acceptance of the tender of M/s. Sarvesh Chopra.

(iv) The statement of imputations then states as follows:

"The accepting authority AGM (TS) observed that even after carrying out negotiations the TC had not been able to come to a unanimous conclusion. He further observed that the basis of FA&CAO(S) of assuming 25% deviation in the pile length etc. were not clear. He did not agree with both the recommendations and ordered another round of negotiations".

12. The second round of negotiations was held on 16.7.87. Apparently fresh offers were given. There was against a difference of opinion in the tender committee in regard to the tender of the same parties. This is the third phase:

(i) The majority noted that M/s Conbes India Pvt. Ltd. have given a tender of Rs.42,07,750 without any condition. The contractor accepted the Railway's condition for the change in the pile length also.

(ii) Regarding M/s. Sarvesh Chopra, the majority held as follows as seen from the statement of imputations:

"(b) M/s. Sarvesh Chopra revised his rate to Rs.43,53,100/- . The contractor did not put any condition with the latest offer. Regarding the rebate offered by the contractor at various stages, they observed that vide his letter dated 16.6.87. the contractor had offered a rebate of 1% instead of .1% in case of regular monthly payment and further rebate of 2.5% instead of .25% in case the final bill was paid within 3 months from the date of

the completion of the work. They observed that normally,, it was not possible to prepare bill within such a short time and it may not be possible to avail the rebate offered. However, in their view even if the both the rebates were taken into account, the offer still remained higher than that of M/s Conbes India Pvt. Ltd.

It is useful to reproduce paras 9 and 10 of the statement of imputations in this connection.

9. The financial appraisal by FA&CAO at this stage was as under:

"(a) Shri J.L. Jain, FA&CAO deliberated on the rebate offered by M/s Sarvesh Chopra. He stated that this contractor had increased his rebate to 3.5%. The increased rebate was to be taken as cumulatively. He stated that on earlier occasion he had taken reduced implications on a hypothetical basis and that if the 2 rebates were not taken cumulatively even then M/s. Sarvesh Chopra's offer was the lowest acceptable. But the actual position is that the 2 rebates were cumulative.

(b) Taking a rebate of 3.5% on the overall value offered by Shri Sarvesh Chopra i.e. Rs.43,53,100/- his offer became Rs.42,07,741/-. He concluded that this rate was lower than the offer of M/s. Conbes India Pvt. Ltd. and hence recommended for the acceptance of his offer.

"10. AGM/TS while accepting the majority recommendations observed that FA&CAO(S) had been contradicting himself while recording his dissent note at different points of negotiations. He observed that the lowest offer obviously was that of M/s. Conbes India Pvt. Ltd. and he accepted the same."

13. It is on these facts that, in para 11 of the imputations it is stated as follows:

"11. From the above, it can be seen that Shri J.L. Jain attempted to justify the award of work to Shri Sarvesh Chopra at each stage though valid reasons in that regard were not there. His attempts had been to prove that it was Shri Parvesh Chopra who had made the lowest offer and not M/s. Conbes India Pvt. Ltd. In doing so he had at times changed his stand and even contradicted his earlier views. The efforts made by Shri Jain in this direction are highlighted below."

14. The most important imputation is with respect to phase 3 i.e. after the second negotiation. The statement of imputations alleges as follows in this regard, in para 11:

"(iii) Tender Committee Minutes after the second negotiation.

After the second negotiations, difference between the offers of M/s. Conbes India Pvt. Ltd., and M/s. Sarvesh Chopra widened with the respective figures being Rs.42,07,750 and Rs.43,53,100, difference between the two being Rs.1,45,350/-.

"Shri J.L. Jain made yet another attempt to justify that the offer of Shri Sarvesh Chopra was still lower of the two by deducting an amount of Rs.1,52,359/- from the offer of Shri Sarvesh Chopra and thereby bringing it to the value of Rs.42,00,741/- and thus marginally (by Rs.7,009/-) below that of M/s. Conbes India Pvt. Ltd. To do this, Shri Jain took cognizance of a letter submitted by Shri Sarvesh Chopra on 22.7.87 and after the negotiations held on 16.7.87 in which he had stated that the rebates offered earlier (in June, 1987) were still valid and should be considered. This letter dated 22.7.87 which was submitted after negotiations should not have been taken cognizance of. But Shri Jain not only took cognizance of this letter (offering a discount of 1% for monthly payments and 2.5% for payment of the final bill within 3 months), but he wrongly argued that these two discounts would be cumulatively available on the full value of the work. This stand of his was different from the stand taken by him when after first negotiation he had calculated in his dissent note dated 2.7.1987 that the two discounts would be available separately on different values. This idea of applying the discounts cumulatively apparently stemmed only from the desire to reach a figure which would enable Shri Sarvesh Chopra to become the lowest tenderer. Also Shri Jain totally ignored the ground position that in works of this magnitude, and complexity the final bill does not get paid within 3 months and as such the 2.5% rebate would normally not be available. The majority recommendation took this position into account and disregarded this discount offer. Also, had the rebate been applied in the same manner as Shri Jain had done earlier, Shri Chopra would not have become the lowest tendered in the calculation.

"11. The above acts of misconduct on the part of Shri J.L. Jain exhibit lack of integrity and failure to maintain devotion to duty and having acted in a manner unbecoming of a railway servant and thereby contravened Rule 3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966."

15. The learned counsel for the applicant contended that the applicant had given only his honest assessment based on his reasoning. It is not the case of the respondent that there has been any overt action on his part on which it can be alleged that his actions were motivated with a view to enable M/s. Sarvesh Chopra to gain and in the process inflict loss on the railways. There is nothing in the charge and the imputations to suggest that the opinion given by the applicant is dishonest and that his intention was to benefit M/s. Sarvesh Chopra.

16. He further pointed out that after having taken all this trouble in settling the tender in favour of M/s. Conbes India Pvt. Ltd., that contractor had to be dropped midway when he was unable to fulfil the contract. Thereafter, the work that remained to be done was again retendered and on this occasion the tender was awarded at greater cost to M/s. Sarvesh Chopra i.e. the very same party who was recommended by the applicant, though the applicant did not have any role to play in awarding that tender, as by that time he had been compulsorily retired. He contended that this circumstance lends weight to his argument that the applicant recommended the tender of M/s. Sarvesh Chopra on merits and not out of any desire to favour him.

17. The learned counsel for the respondent, on the contrary, contended that the facts mentioned above and a perusal of para 11 of the statement of imputations would show that the applicant adduced, *prima facie*, unsound grounds to ensure, willy nilly, that the contract was awarded to M/s. Sarvesh Chopra whom he favoured at every stage.

18. In reply to a query whether the applicant was wrong in taking note of the rebate offered by M/s. Sarvesh Chopra of 1% in respect of monthly payments and of 5% if final payment is made before 3 months of the close of the work, the learned counsel for the respondent pointed out that the ground realities were entirely different and this must have been known to the applicant also. It was impossible to make the final payment within three months and therefore the rebate offered was entirely illusory and this should not have been taken note of by the applicant. The very fact that the applicant took note of this - though it was illusory - rebate which tilted the balance in favour of the applicant <sup>to</sup> ~~himself~~ shows that the applicant was motivated in giving his advice.

19. In any case, he submitted, the department proceedings have been initiated and it is open to the applicant to furnish his reply and meet the charges on merits. He therefore contends, that, in the circumstances, the OA should be dismissed.

20. The learned counsel for the applicant has cited several decisions to contend that a charge sheet which is not based on any evidence can be quashed by the Tribunal. He contends that the applicant, as a Financial Adviser, has given his honest advice and he is being penalised for it. Just as disciplinary proceedings can not be held against judicial or quasi-judicial officers for the decisions rendered by them, even if they are erroneous, so also such a proceeding does not lie in the present case, even though the applicant is not even a quasi-judicial functionary. It was also urged that this action would amount to a malice in law, even if there is no malice in fact. The authorities relied upon are as follows:

- i) 1979(2) SCC 491 - Smt. S.R.Venkataramana Vs. UOI & another
- ii) AIR 1993(SC)1478 UOI Vs. K.K.Dhawan
- iii) (1989)9 ATC 369(Calcutta) - Bejoy Gopee Mukherjee Vs. UOI
- iv) (1989)9 ATC 500(Ahmedabad) M.N.Qureshi Vs. UOI
- v) (1990)14 ATC 337 (PB) Sudhir Chandra Vs. UOI
- vi) (1992)21 ATC 61 (PB) Rattan Lal Vs. UOI
- vii) (1992) 21 ATC 70 (PB) Ashok Kakkar Vs. UOI
- viii) (1993) 23 ATC 277 (PB) S.C.Gangwar Vs. UOI

21. The learned counsel for the respondent denied that the charge sheet is either without evidence or that the applicant is sought to be penalised for the views held by him. It is clear from the imputations that the allegation is that the applicant has given motivated advice to benefit one contractor. Therefore, this Tribunal cannot quash the charge-sheet and the departmental enquiry should be allowed to be completed in accordance with law. He also relied on the judgement of the Supreme Court in Dhawan's case (supra) for contending that judicial and quasi-judicial officials are not immune from disciplinary proceedings. Such

proceedings can be initiated on the grounds given therein. He has drawn our attention to the unreported judgement dated 16.2.93 of the Principal Bench in OA 1896/91 C.Merwar Vs. UOI, wherein the Hon'ble Chairman has held that it would not be desirable to interfere in such proceedings, where the jurisdiction of the disciplinary authority is not challenged and the charge-sheet is refuted on merits.

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22. We have given our anxious consideration the rival contentions.

23. We do not find any merit in the argument that this disciplinary proceeding has to be quashed when the order of premature retirement under Rule 2046 (R) of the Indian Railway Establishment Code has been quashed in OA 650/89 on 6.9.91. We have seen a copy of that order. There is nothing in that case which prohibits the respondents from continuing with the present departmental enquiry. Therefore the plea is rejected.

24. The applicant is a FA&CAO tendering advice in financial matters. The charge concerns the advice given by him in the case relating to the award of a contract. He is charged with misconduct in giving the advice. The question is whether a departmental enquiry can be initiated in this connection. We have also to note that the advice is not binding on the competent authority, who can reject it for good reasons. In other words, the advice per se has not adversely affected Government. That distinguishes the applicant from other quasijudicial authorities who can take final decisions.

25. In respect of judicial and quasi judicial officers the matter has been examined recently by the Supreme Court in Dhawan's case (AIR 1993 SC 1478) and it has been held as follows:

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality with reference to the nine assessment may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- iii) if he has acted in a manner which is unbecoming of a government servant;
- iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;
- vi) if he had been actuated by corrupt motive however small the bribe may be because Lord Coke said long ago @though the bribe may be small, yet the fault is great".

"29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

Therefore, it is not necessary to discuss any of the other judgements cited at the bar.

26. We have to consider whether the charge against the applicant read with the statement of imputations justify the disciplinary proceeding.

27. It is not the case of the applicant that the charge sheet has been framed and issued by an authority who is not competent to do so.

28. We notice that no specific allegation has been made that the advice given by the applicant in the tender case on the three occasions when it was considered by the Tender Committee is contrary to the relevant financial rules or any standing instruction on the subject. The applicant can not also be charge sheeted merely because he consistently held on all the three occasions that the offer of M/s. Sarvesh Chopra is the lowest tender.

29. It is not also the case that, *prima facie*, the charges are made without any evidence. The statement of imputations give the grounds on which the charge is framed. What is apparent from the record is that no violation of any rule/instruction has been alleged.

30. The most important alleged act of misconduct is the applicant's accepting the offer of M/s. Sarvesh Chopra that he would give a rebate of 1% for the monthly payments and a rebate of 2.5% for payment of final bill within 3 months from the close of the work. It is

stated that payment of final bill in 3 months is an impossibility and the applicant, who knew the fact, should not, therefore, have taken this rebate into account in his evaluation. No rule or instruction has been cited by the respondents which prohibits taking into account such a rebate. The delays in payments of contractor's bills are notorious and breed corruption. If a tenderer gives a rebate for prompt payment, it can not be ignored. Three months is a reasonable time to make payment in respect of a work costing about Rs.45 lakhs. Therefore, the mere act of taking this rebate into account can not justify the charge.

31. There is an allegation that the rebate of 1% is on monthly payments made - which would be about 85% of the cost and the 2.5% rebate is on the balance of 15%, if paid within 3 months. It is alleged that the applicant has taken these rebates cumulatively for the whole cost, when he gave advice at the final stage, whereas at the second stage he took the rebate for final payment only in respect of the balance of 15% of cost that is anticipated to remain outstanding. We, however, notice that in the first stage itself, the applicant took the rebates of 0.1% for monthly payment, 0.25% for balance on the whole cost and allowed a rebate of Rs.16,000 on this account on the tendered cost of Rs.46.38 lakhs. Therefore, it can not be held that the applicant invented the principle of cumulative rebate at the last stage only to help this contractor.

32. If these alone had been the essence of the charges perhaps, we would have been inclined to consider that *prima facie*, the charge of misconduct has no basis.

33. We, however, find two other elements in the imputations which amount to alleging misconduct and stretching of arguments with a view to favouring the contractor M/s. Sarvesh Chopra. They are as follows:

i) The applicant took into account only statistical data for the months September, 86 to March, 87 to evaluate the cost of the condition that compensation has to be paid for escalation of costs beyond 5%, whereas a longer period should have been taken into account.

ii) At the third stage M/s. Sarvesh Chopra had quoted Rs.43,53,100 without any condition. The applicant however deducted cumulative rebate of 3.5% from this offer on the basis of the letter dated 25.6.87 received prior to the date (17.7.87) of the second negotiations and the letter dated 22.7.87 received subsequently.

The applicant has elaborately tried to justify these and other actions of his which are the subject matter of the imputations. A very elaborate rejoinder running to 124 pages has been filed. In MP 213 of 1992 he has filed copies of various documents (118 pages) in support of his actions.

34. We have considered them. We are of the view that these 2 actions will *prima facie* bring the case within the purview of the law laid in Dhawan's case vide para 25 supra and that all the replies of the applicant may be considered in the departmental enquiry. We are not competent to judge, at this stage, on the basis of all these replies and the arguments whether the charge is true or not. That function has to be discharged only by the Enquiry Officer and by the Disciplinary Authority.

35. Therefore, we are of the view that we will not be justified in interfering with the disciplinary proceedings at this stage. The applicant can meet the charge in the departmental enquiry and establish his innocence before the Enquiry Officer/Disciplinary Authority.

36. In the circumstances, we find no merit in this OA which is accordingly dismissed. We, however, make it clear that the observations we have made in paras 26 to 34 supra are only to help us reach an appropriate conclusion. We make it clear that we neither intended to consider or decide the merits of the charges nor have we done so. It is open to the parties concerned to press their respective points of view before the competent authority without feeling constrained by any observation we have made here. At the same time, it is equally open to them to depend on the observations we have made - though they are not conclusive by any means - to support their case, if they so feel. We also direct the respondents to dispose of this disciplinary proceeding expeditiously.

36. OA disposed of as above. No costs.

*1/3/94*  
(C.J. ROY)  
MEMBER (J)

*1/3/94*  
(N.V. KRISHNAN)  
VICE-CHAIRMAN (A)

/tvg/