

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1511/87  
T.A. No.

198

DATE OF DECISION

23.11.80

Ananda Prakash Singhal

Petitioner

Shri R.L.Tandon,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L.Verma,

Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

*( J.P. Sharma )*  
( J.P. Sharma )  
Member (Judl.)

*( P.C. Jain )*  
( P.C. Jain )  
Member (Admn.)

(A)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 1511/87

DATE OF DECISION: 23.11.90

ANANDA PRAKASH SINGHAL

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

SHRI R.L. TANDON

...COUNSEL FOR THE APPLICANT

SHRI M.L. VERMA

COUNSEL FOR THE RESPONDENTS

**CORAM:**

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

**JUDGEMENT**

( DELIVERED BY HON'BLE SHRI J.P. SHARMA )

1. The applicant in the application under Section 19 of the Administrative Tribunal Act, 1985 assailed the order dated 28.12.1983/31.7.1984 read with order dated 12th February, 1986 (Annexure O-2 & U), by which in a proceeding under Section 14 CCS(CCA) Rules, 1965, the penalty was imposed on the applicant.

2. The penalty imposed initially was removal from service which was subsequently altered to reduction of pay by four stages from Rs.1300 to Rs.1100 in the time scale of 700 to 1300 for a period of one year w.e.f. the date the applicant rejoins service, with the further direction that the applicant will earn the increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing the future increments

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of pay. The applicant was allowed 60 per cent of his pay and allowance of the period between his removal from service upto the date he rejoined duty in pursuance of the order dated 31.7.1984 and further this period will be treated as spent on duty.

3. The applicant retired on superannuation in September, 1985.

4. The applicant prayed for the following reliefs:

- (1) Restoration of full pension on the basis of pay of Rs.1600 per month.
- (2) Award of a sum of Rs.2 lacs due on account of applying relevant and proper pay and allowances to the whole length of service of 23 years of the applicant since 1962 till 1985.
- (3) Award a sum of Rs.45,000 as loss on pay and allowances due to the non-implementation of the order of QMG for merger of junior class I grade to Senior Class I Grade of pay scales.
- (4) Award on another sum of Rs.12000 as expenses incurred by the applicant due to impugned order and due to shifting from Simla to Kota and back.
- (5) Full pay and allowances between the impugned order dated 23rd December, 1983 to 31.7.1984 amounting to Rs.9,000

5. The facts in brief are that the applicant joined the service as Agriculture Engineer in 1960 and worked for two years but in 1962 when one, Shri Shahid Ali, was selected by U.P.S.C.,

as Agriculture Engineer, joined at the post, the applicant was offered the Class II post of DAD(MF) which was not accepted by the applicant. He was appointed as Assistant Agriculture Engineer on the fixed pay of Rs.600 per month. Though the applicant represented for the higher pay but he was only allowed the scale of Rs.700-1300.

The applicant continued to work as Assistant Agriculture Engineer. In the year 1975, an irrigation project of Young Stock Farm (Pune) was inaugurated by the Army Commander. This project suffered from a very minor left out work by the contractor and after spending a sum of Rs.6,986.54, the project was commissioned and functioning. A court of enquiry was ordered by QMG, Army Headquarters. The Presiding Officer of the Court of enquiry submitted the report in November, 1980 which was concurred by QMG by the letter dated 10.4.1981 and vide Headquarter Southern command letter dated 26th August, 1981 as follows:-

- (a) The following officers are responsible in framing faulty quotations and agreement, non-verification of the bonafides of the contractor and failing to verify the technical soundness of the schemes:
  - i) Col.R.C. Dutta, the then DDMF, HQ SC(Farms)
  - ii) Shri A.P.Singhal, AAE, HQ SC (FARMS)
- (b) Shri S.C. Joshi, the then officer-incharge, YSF, Manjiri is blamed for his failure to deduct the cost of cement amounting to Rs.13,562.50 from the payment made to M/s. Arun Enterprises.
- (c) The poor execution of the lift irrigation scheme is mainly due to faulty agreement, inexperienced and financially unsound contractor and absence of machinery for execution of such projects in the Military Farms Department. This should have ensured by Col. R.C. Dutta, the then DD MF HQ SC (Farms) and Shri A.P. Singhal, the then AAE(Farms) should have advised him.

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Subsequently, the second oral enquiry was again instituted which was restricted only to supervisory and technical aspects and did not refer to the administrative and executive lapses. The charge-sheet was issued to the applicant vide letters dated 17th July, 1982 and 22nd June, 1982 (Annexure L-1 and Annexure L-2). The charge-sheet was drawn against the applicant as well as one Shri S.G. Joshi, Manager, Y.S.F. Manjri. The charge against the applicant was as followed:

"That Shri A.P. Singhal Assistant Engineer, Farms Branch, HQ Southern Command Pune, who planned and technically executed the lift irrigation project at Youngstack Farm Manjri during the period July 73 to Dec. 75, was negligent in the performance of his duties, in that he was responsible for initiating faulty quotations and agreement employing non-bonafide Contractor for the project and failed to verify the technical soundness of the scheme resulting in an inefficient, uneconomical and incomplete project.

2. Shri A.P. Singhal Assistant Agriculture Engineer, thus exhibited lack of devotion to his duties and conduct unbecoming of a Government servant and thereby violated Rule 3(ii) and (iii) of the CCS(Conduct) Rules, 1964."

Lt. Col. Joginder Singh was Enquiry Officer who proceeded with the enquiry, the proceedings of which has also been filed by the applicant from pages 43 to 63 of the OA. The finding of the Enquiry Officer against the applicant are as follows:-

"The oral Inquiry Officer finds the following in respect of Shri A.P. Singhal:

(a) I find that the majority of the bills of the contractor passed through Shri A.P. Singhal and normally it was his responsibility as the only technically qualified officer to verify or technically check the work ~~thus~~ carried out by the contractor with reference to his

claim in the bill, however this should have been done at sight, if not daily, at least more frequently than fortnightly (as was stipulated in the agreement). Due to exigencies of his duties this was not done by Shri Singhal as he had to attend to work at other Depots/Farms under the HQ,SC, Farms branch. Thus the appending of his signatures to the contractor's bills was a mere formality.

(b) Maintaining a record of measurement of work under execution is a normal function in a Govt. Engineering, department which undertakes execution of works/projects and this function is assigned to the engineer placed on supervision duty at site. If such a record was to be kept by the HQ,SC, Farms branch Shri A.P. Singhal should have been detailed for daily duty at the project site to ensure correct day-to-day record of measurement of work done and materials supplied/utilised. I find that such an arrangement was not made.

(c) I find from official record that the original certificate dated 31.3.74/1.4.74 recorded by Shri A P Singhal states that the Pump sets are upto the required standard specification.

(d) I find from the record of the proceedings of the board of officers held on 08 Apr 75 that 'D' class quality pipes were actually lying in the project area and these correspond to the specifications in the agreement in respect of the relevant portion of the pipeline of the rising main.

(e) I find that the contractor did take advantage of the provision in the agreement to fill the excavation with earth instead of providing measonary or cement concrete Pillars (refer Para 6 of APPX 'C' of the agreement attached as Annexure to APPX 'E').

(f) I find, on site inspection of the project, distributions channel starts from the highest point in the local terrain of the Farm and the flow of water through the channel is smooth.

(g) I find that the cost of the cement and other material supplied to the contractor was not fully adjusted against 90% payment of his bills, but this did not result in any overpayment to him because the balance 10% amount of the accepted bills and the security deposite of Rs.6,250/- held back by the Govt. adequately covered the unadjusted part of the value of the materials supplied to the contractor.

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The enquiry officer also held that the Article of charge against A.P. Singhal as well as against the other employee Shri S.G. Joshi are disproved.

The findings arrived at in Enquiry officer in the report were not agreed to by the Disciplinary Authority and in the name of the President of India reasons of disagreement, quoted below, are the basis of penalty of removal imposed on the applicant by the order dated 28.12.1983 (Annexure O-2)

"AND WHEREAS, the President has considered the findings of the Enquiry Officer and disagrees with the same for the following reasons:-

1. The said Shri A.P. Singhal was not devoted to his duties as is seen from the fact that neither did he maintain Measurement Book nor did he exercise any technical check of the project.
2. It is also proved that the said Shri Singhal did not follow the stipulations of the agreement in that he passed the contractor's bills without any reference either to the Measurement Book which was not maintained or by exercising any technical check. This resulted in over payment to the firm.
3. He also failed to follow the provisions of the agreement with the contractor in that he allowed the contractor to bring pump sets to the site right in the beginning of the contract whereas their requirement would have been when execution of the work had progressed substantially. This was apparently done as the agreement with the firm provided 90% payment on collection of material.
4. He also failed to verify the technical soundness of the project in that he allowed the contractor to improperly lay the rising main and portion of 30 metres main near the dock bridge on loose embankment without pillars which resulted in a permanent flaw in the project.
4. The applicant filed a Review (Annexure P) petition before the President of India against the above order of removal from service on 5.3.1984.

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The above Review petition was considered and the penalty of removal from service was modified to Reduction in rank by the order dated 31.7.1984 (Annexure R) with the following observation:

"(a) According to the terms of the agreement with the firm, Shri Singhal was responsible for technical check of the Project. It is not necessary that he should have maintained the measurement book himself but atleast, as senior officer, he should have caused and ensured its maintenance. As regards the payment of bills he cannot absolve himself from the responsibility on the plea that he checked the bills for its correctness. It is necessary that bills should have been checked with reference to the work done.

(b) Over payment is not only when the amount more than that agreed upon is paid but it also amounts to over payment when it is made irrespective of the work done or for the items brought before their requirement.

(c) Shri Singhal did allow the Contractor to bring pump sets to the site in contravention of the provision of the agreement.

(d) The project never worked on its anticipated efficiency since its completion.

(e) It is correct that Shri Singhal was occasionally on tour during the construction of the project and that he was an Agricultural Engineer.

AND WHEREAS, the President is satisfied that the points raised by Shri Singhal had already been considered at the time of imposition of the penalty. However, the President feels that since he was occasionally on tour, during the construction of the project and that he was an Agricultural Engineer, these points need reconsideration of the penalty imposed on the officer.

NOW, THEREFORE, the President in exercise of the powers conferred on him under Rule 29-A of the CCS(CCA) Rules, 1965, reduces the penalty of removal from service to reduction of pay by four stages from Rs.1300/- to Rs.1100/- in the time scale of Rs.700/- to Rs.1300/- for a period of one year with effect from the date he rejoins service, with further directions that Shri Singhal will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

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5. The President have also ordered that Shri Singhal allowed to rejoin his duties and be paid 50% of his pay and allowance from the date of removal from service upto the date preceding the date he rejoins his duties and the period will be treated as spent on duty.

By order and in the name of the President."

6. The applicant again filed a Review Petition against the order dated 31.7.1984 which was rejected, hence this application under section 19 of the Administrative Tribunals Act, 1985.

7. The respondents contested the application and took the plea in reply that the application is barred by Sec. 21 of the A.T. Act, 1985. The respondents in the reply stated that the applicant was confirmed w.e.f. 12.12.74 vide order dated 19.3.79 based on his ACR and because of ACR he could not be considered for permanancy earlier. It is further said that the enquiry was regularly conducted according to the Rules and full opportunity was given to the applicant to defend himself.

8. It is further stated that the charges at Annexure L-2 and these brought about in the Presidential order dated 28.12.1983 (Annexure O-2) would reveal that there is no difference in the charges levelled against the petitioner. The Disciplinary Authority (the President) recorded its own reasons, point to point, for disagreement with the report of the E.O. and recorded its own finding on each charge as provided for in Rule 15(2) of the CCS(CCA) Rules 1965. It is stated that the pension has been granted on the basis of pay @ Rs.1100 instead of Rs.1600.

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9. We have heard the learned counsel for the parties at length and have gone through the records of the case. The learned counsel for the respondents has taken the plea of jurisdiction of the Tribunal to decide the present case, as according to the learned counsel the matter relates to Armed Forces of Union of India, which is excluded by virtue of clause a of Section 2 as well as Section 14 of the Administrative Tribunals Act, 1985. According to the learned counsel the Military Farms Department is of Armed Forces of the Union and the provisions of the Act shall not apply to any member of the Department. However, a similar matter came before the Principal Bench in the case of Shri R.K.Tiwari Vs. Union of India in TA 380 of 1986 which was decided on 20.5.1988 wherein the preliminary objection of jurisdiction was overruled. In the aforesaid case the applicant was a Farm Officer in the military Farms department and had filed an application under Section 19 of the Act, claimed the post of Deputy Director (Farms). The said copy of the judgement has been filed in the present case. The learned counsel for the respondents argued that a S.L.P. has been filed before the Hon'ble Supreme Court against this judgement of Shri R.K. Tiwari and a stay has been granted. Irrespective of the judgement in the case of Shri R.K. Tiwari (supra), prima facie, it appears that the applicant was holding a civil post in the military farms. In the circular of the Ministry of Defence dated 5th December, 1962 (Annexure B, at page 24 of the paper-book) in the terms and conditions of appointment regarding the recruitment of Assistant Agriculture Engineer (AAE) in the military farms in

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para IV, it is specifically laid down that "he will be subject to other conditions of service as normally applicable to temporary civilian government servant of his rank and status paid from the defence services estimates in accordance with the order issued by the Government of India from time to time." There cannot be, therefore, any dispute that the post of Assistant Agriculture Engineer which was held by the applicant was a Civilian post in the military farms. Under Section 14 of the Administrative Tribunals Act, 1985, there is a provision that all service matters concerning the civilian appointed to a defence service or a post connected with the defence is within the sole jurisdiction of this Tribunal. Further, Section 2(a) of the Administrative Tribunals Act, 1985 referred to a member of the armed forces for the union. A civilian appointed in the defence service on a post connected with the defence, by such appointment does not become a member of the armed forces of the union and that has been clearly observed in Clause a and b(iii) of sub section 1 of Section 14 of the Administrative Tribunals Act, 1985. Thus, it is in view of the above, the matter which is sought to be agitated, being a service matter concerning the applicant a civilian, though appointed to a post connected with the defence and in respect of a post which is claimed as one likely, to be filed by a civilian, though it be one connected with the Armed Forces or the defence service, is well within the jurisdiction of this Tribunal in view of the clear provision in sub section 1 of Section 14 of the Act.

10. The learned counsel for the respondents has also taken a plea of limitation as, the applicant has since retired on 30.9.1985, the impugned order is even

earlier to that date and the present application has been filed on 20.4.1987, so it is hit by section 21 of the Administrative Tribunals Act, 1985. The learned counsel for the respondents also relied on a number of the authorities in this regard. However, we find that the applicant, under Section 5 of the Limitation Act, 1963, moved the MP 2593 of 1988, heard in the presence of the learned counsel for both the parties on 14.2.1989, and the Bench condoned the delay, allowed the application under Section 5 of the Limitation Act, as such, the present application has to be heard on merits.

11. The learned counsel for the applicant has assailed the punishment order on the ground that none of the charges framed against the applicant in a joint enquiry with Shri S.G. Joshi have been proved and in the present case the Enquiry Officer in its report has clearly finding of exonerated the applicant of the charges but the Disciplinary Authority is based on extraneous matter and is not on the basis of the evidence adduced and considered by the Enquiry officer in its report dated 29th June, 1983. It has been further contended by the learned counsel for the applicant that on a review petition being filed to the President under Rule 15 sub Clause (2) of the CCA( CCS) Rules, 1965, the order of removal dated 28.12.1983 was substituted by another order dated 31.7.1984 by which the punishment was modified as said above. In the review petition, the applicant has given a detailed analysis of the whole of the evidence adduced and considered by the Enquiry Officer. However, it is further contended that the disciplinary authority has twisted the same and the findings given, as such,

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on the review petition are also perverse and based on surmises and conjectures. Another Review petition was filed which was dismissed in February, 1986. It is contended by the learned counsel for the applicant that actually the disciplinary authority has changed even the charges which were framed against the applicant and did not take into account the fact that the other officer, Shri S.G. Joshi who was jointly charged with the applicant was not further proceeded with and the findings of the Enquiry Officer were accepted in his case. The learned counsel contended that the Board of Officers who entered into the verification of the said project had given their report at page 112 of the Paper-book and the same has not been considered by the Disciplinary Authority as well as by the Reviewing authority.

12. It is essential to see what were the duties assigned to the applicant as Assistant Agriculture Engineer. It is not disputed that the applicant was not associated with the Manjari Farm and in the agreement entered into between the contractor and Officer Incharge Y.F.S. Manjari on 24.11.1973, a lift irrigation project was to be established at the Farm but the contractor did not complete the project and abandoned the same. The applicant is said to have, under his signature, made overpayments to the contractor and allowed him to bring pump sets to the site right in the beginning of the contract whereas their requirement would have been when the execution of the work had progressed substantially. The applicant was also questioned by the Enquiry Officer in the answers given by him, to the Enquiry Officer, he has denied his liability to

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supervise the work of the contractor as no specific orders were issued and also that the payments were made after Bills were passed by competent authority under his signature. The applicant said that he has to supervise through out India about 26 military farms and no specific orders were issued in his name to make technical check-up of the project at times. It is further given out by the applicant to the Enquiry Officer that most of the time he remained out on duty. Thus no duty was assigned to him for technical check of work.

13. As per conclusions arrived ~~at~~ by the Enquiry Officer in the Enquiry Report, the charge was disapproved against the applicant as well as against the Farm Manager, Shri S.G. Joshi (since retired). However, the Disciplinary Authority did not agree with the conclusions of the Enquiry Officer and disagreed with them giving certain reasons for the same and passed the punishment order as said above. On a Review against the decision of the Disciplinary Authority to the President again the reasoning has been given for modifying the earlier punishment passed by the Disciplinary Authority of removal from service to reduction in the pay scale by three stages. However, the reasoning given by the Disciplinary Authority as well as in the decision on the Review by the applicant are materially not related with the charge initially framed against the applicant.

14. The charge against the applicant is in short "during the period from July 1973 to December, 1975 Anand Prakash Singhal was negligent in the performance <sup>was</sup> of the duties in that he was responsible for initiating faulty

quotations and agreement, employing non bonafide contractor. He failed to verify the technical soundness of the scheme." The Enquiry Officer on these charges gave clear finding that the function of checking the soundness of the scheme was to be discharged by the Government Engineering Department, if this function was to be discharged by Anand Prakash Singhal then there should have been a definite duty order but it was not done. Further regarding the payment of bills, Enquiry Officer held that bills were passed by Mr. Anand Prakash Singhal but no over payment was done as 10 per cent of the amount of bills which were paid was retained and further the security deposited by the Contractor was also with the Department and in such a situation the left out work by the Contractor could have been got done in this amount.

15. The Enquiry Officer further observed that the pump sets which were on the spot were of required standard specifications. The Enquiry Officer further observed that from the record of the proceedings of the Board and of Officers held on 8th April, 1985, the class/quality of pumps were actually lying in the project area and these correspond to the specifications in the agreement in respect of the relevant portion of the pipe line of the rising main. Further the Enquiry Officer observed after a site inspection of the project that the channel starts from the highest point in the local terrain of the Farm and flow of the water during the channel is smooth. Thus, these findings have to be discarded to negative conclusions of the E.O. by the Disciplinary Authority/but the Disciplinary Authority has disagreed/ them only on the reasons, firstly

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that Shri Anand Prakash Singhal did not maintain MB carried out and did not actually/ technically check up of the project, secondly that over payment was made to the contractor and he was allowed to bring pump sets right in the beginning of the work while it should have come after work has progressed sufficiently, and lastly he failed to check the technical soundness of the project. Thus the reasoning number one and last are on the same point.

16. On considering the order passed on the first Review, again the applicant was found fault with for not carrying out technical check up of the project and further the earlier reasoning was contradicted regarding non maintenance of MB that he was not required to maintain the same. However, he should have as senior officer could ensure its maintenance. Again regarding the payment of bills in the Review, it has been held that it was necessary that the bill should have been checked with reference to the work done. This by itself negative the first reasoning of the Disciplinary Authority regarding non maintenance of MB and not checking the soundness of the project by the applicant. Regarding over payment in the Review order, it has been said that over payment also means if a person is paid more than is due on the basis of work done upto that time but it is not the specific charge against the applicant. Further it has been also stated in the Review order that the contractor was allowed to bring pump sets in the site in contradiction of the agreement but it was not a charge framed against the applicant. Another fact pointed out in the Review order is that the project never worked as is anticipated, efficiently since its completion. But this is against the spot and inspection by the Enquiry Officer, who has clearly held that he inspected the spot and the distributory channel starts from the highest point

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and the flow of water through the channel is smooth. The Disciplinary Authority did not make any spot inspection. The most important point stated in the order passed on the first Review is that it has been accepted by the Department that the applicant was occasionally on tour during the construction of the project and that he has been Agriculture Engineer.

17. A perusal of the above will show that the reasoning given by the Disciplinary Authority for imposing the punishment almost stands washed away by the order passed in the first Review in the name of President and that the charge which was initially framed was almost ignored. The charge originally framed therefore was not proved and rather a new charge appears to have been substituted. It has been held in 1989 ATLT(II) Vs. U.O.I. CAT p.606 (SHMALDIN BHAGWATI) / the Disciplinary Authority cannot award punishment on charge not specifically mentioned in the charge-sheet. Again it has been held in 1990 Vol. I ATLT High Court p.305 Kapil Deo Singh Vs. U.O.I. & Ors., two charges were framed against delinquent police constable but the punishment arrived at was not on any of the charges and hence quashed.

18. To summarise the above, what has been stated above in the above, para, it is evident that Sh.S.G.Joshi, the Farm Manager who was also given benefit by the Enquiry Officer holding the charge disproved, the Disciplinary Authority also did not proceed against him and the report of the Enquiry Officer was accepted in his case. Against this, the Disciplinary Authority has disagreed with the report of the Enquiry Officer with respect to the applicant and gave the reasoning.

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of disagreement which appears to be self-contradictory and also explained away in the order passed on the first Review petition filed by the applicant.

19. Now looking to the scope of the Tribunal to go deep into the matter regarding the correctness or otherwise of the findings arrived at either by the Enquiry Officer or by Disciplinary Authority, the law has already been discussed above. However, as held in S.K. Srinivasan Vs. Director General E.S.I.C. & Ors. 1989 Vol.I SLJ p.132 CAT, it has been held, the Tribunal can enquire whether the punishment order is based on any evidence or not. Malafide exercise of power need not be shown to prove that the order is based on any evidence. However, keeping in mind that the Tribunal cannot sit in judgement over the findings arrived at in the Disciplinary enquiry, but if they are based on no evidence and no inference can be drawn therefrom that the officer is guilty or at the most there is a local lurking suspicion based on the facts on record, the Court will be justified that the charge against the officer is not substantiated, he was wrongly punished. In the present case, the Disciplinary Authority did not take into account the explanation furnished by the applicant and also did not consider the reasons given in support by the applicant. If no prudent mind can draw inference or arrive at a finding in a disciplinary enquiry on the basis of material on records, or the material is absolutely irrelevant or extraneous, the Court may proceed on the basis that in such circumstances, there was no evidence to sustain a finding and as such the finding in the above case by the Disciplinary Authority is perverse

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and of no consequence. The Disciplinary Authority has ignored the principle of natural justice by drawing inferences which was unreasonable and against facts. Mere suspicion cannot take the place of proof.

20. The learned counsel for the respondents argued that the scope of the Tribunal is restricted to see whether during the enquiry proceedings in passing the order of punishment, the Rules under which the enquiry is held are followed and as well as the delinquent officer has been given due opportunity to defend himself and further there has been no violation of the principle of natural justice. IN U.O.I. Vs. Parmanand AIR 1989 SC p.1185, it was held that the jurisdiction to interfere with the punishment order lies only if the order assailed is utterly perverse or arbitrary. The same view has been taken in 1989 (2) ATLT p.282 C.S. Brodia Vs. U.O.I. and AIR 1963 SC p.404 State of Orissa Vs. Muralidhar. The learned counsel for the respondents has also referred to other authorities. also but in view of the above law the evidence against the applicant is not being evaluated but only the reasoning of the Disciplinary Authority, whether this reasoning covers the charges framed initially against the applicant or not. Thus, the above Authority cited by the respondents do not help to uphold the impugned order.

21. The applicant however, also brought on record various documents which are irrelevant for the decision of this application and so they are not being discussed and only those documents which have nexus with the proceedings of the enquiry or of the findings arrived at by the Disciplinary Authority are being discussed.

22. The non-confirmation of the applicant in due turn or non-merger of the junior class I scale to the senior class I scale or not allowing any allowance to the applicant, can not be considered after his retirement on reaching the age of superannuation. Regarding this grievance, the applicant had to come at the relevant <sup>with</sup> time in the limitation. Though the present application has been admitted after condonation of delay but as held in P.L. Shah Vs. U.O.I. 1982 (2) SLJ p.49 by the Hon'ble Supreme Court that the applicant can be given benefit of that case within three years or after <sup>the</sup> coming into force of A.T. Act, 1985.

22. In view of the above discussion, the application is partly allowed and the impugned order dated 28.12.1983/ 31.7.1984 read with order dated 12.2.1986 are quashed and the applicant shall be entitled to consequential benefits as if he has been in continuous service of the respondents. The relief of a claim of Rs. 2 lacs or a claim of Rs.45 thousand or expenses of Rs.12 thousand claimed as relief number 1, 2, and 3 are disallowed.

The applicant will be entitled to claim full pay with all allowances from the date of the impugned order of dismissal i.e. 23.12.1983 till the date of superannuation, in September 1985 adjusting the amount which has already been paid to him and he shall also be entitled to the pension and other retirement benefits according to the Rules. In the circumstances, we direct the parties to bear their own costs.

*J. P. Sharma*  
( J.P. SHARMA ) 25.11.80  
MEMBER (J)

*C. C. 23/11/90*  
( P.C. JAIN )  
MEMBER (A)