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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No. 753/1987

DATE OF DECISION: December 21, 1988

Shri Amar Singh

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the Applicant

.... Shri J.K. Bali, counsel.

For the respondents

.... Shri P.H. Ramchandani,
Senior Counsel.

J U D G E M E N T

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman.)

The applicant filed the above Original Application under Section 19 of the Administrative Tribunals Act, 1985 on 25.5.1987 and prayed that the same be heard at a very early date. The Application was heard for admission on 5.6.1987. The applicant challenged his removal from the post of Lower Division Clerk in No. 16 Drawing Office, Directorate of Map Publication, Ministry of Science & Technology. When he filed the Application, he alleged that the order of removal had not been served on the applicant. He had only been informed by Notice dated 12.5.1987 that he stands relieved from service with effect from 12.5.1987 by the order dated 8.5.1987. The Bench hearing the matter for admission held that since the applicant has not exhausted remedies of appeal and review provided under the Service Rules, the Application was premature. They, consequently, dismissed the Application.

The applicant aggrieved by the above order preferred a Special Leave Petition in the Hon'ble Supreme Court of India.

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By an order dated 2.11.1987, the Division Bench granted Special Leave but disposed of the matter at that stage by directing the Tribunal to dispose of the matter by examining it on merits. Accordingly the appeal was disposed of.

The matter was thereafter readmitted by a Bench of this Tribunal vide order dated 23.11.1987. The counter and rejoinder have been filed and thereafter the matter has come up for hearing. On 17.10.1989, after hearing learned counsel for the parties, we recorded that a short question has to be decided in this case regarding the previous service of the applicant in the Survey of India's office. The relevant record was not before us so we directed the learned counsel for the respondents to produce the same before us on 24.10.89. The record was thereafter produced before us. We concluded our hearing and reserved our orders.

The applicant's case is that he is a Central Government servant working under the Surveyor General of India (respondent No. 2) which is controlled by the Ministry of Science and Technology, Govt. of India, New Delhi. He was appointed to the post of Lower Division Clerk (LDC) in the office of the Director of Map Publications (respondent No.3) on 13.11.1972. During the past 14 years of service, the applicant has served in the office of Director of Census Operations, Uttar Pradesh, Ministry of Home Affairs as Sorter from 14.5.1971 to 15.11.1971 and he was retrenched from service on account of winding up of the Regional Tabulation Office. Thereafter, the applicant was registered in the

Surplus Cell of the Employment Exchange with a view to give him priority for employment as 'retrenched employee'. The particulars of his previous employment including those under Survey of India and Director of Census Operation were duly recorded in the records of the Employment Exchange. Thereafter the applicant's name was sponsored by the Employment Exchange and he was selected after interview. He has also submitted an "Attestation Form" duly filled in in compliance with the instructions from respondent No. 3. In column No. 11(a) and 11(b), the applicant was required to give information about his previous service under the Government of India, State Government, Government Undertaking or Autonomous bodies etc. Accordingly the applicant indicated that his previous service as Sorter under the Director of Census Operations, U.P. in column 11(a) was not/terminated shown to have been under Central Civil Service (Temporary Service) Rules, 1965 etc. It was indicated that column 11(b) was not applicable. He further alleged that at the time of the interview in 1972, the applicant was specifically asked about his past experience and he had specifically indicated therein that he had worked in the Survey of India from 1964 to 1965. He had not concealed his past service particulars at any stage.

A chargesheet dated 22.10.1985 was issued to the applicant by respondent No. 3 which pertains to his non-giving of particulars of his previous service in Survey of India and termination thereof which was in violation of the warning printed at the top of the "Attestation Form". One

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Shri R.J. Rana, Superintending Surveyor, Officer-in-Charge, No.1 Drawing Office, Survey of India, Dehra Dun was appointed as Inquiry Officer. He completed his enquiry and submitted his report on 29.12.1986. He gave a finding that the charge against the applicant stood proved. A copy of the report of the Enquiry was given to the applicant by respondent No. 3 for submission of his representation. The applicant submitted a representation dated 6.4.1987 to respondent No. 3. The applicant heard nothing further. The applicant only saw a notice No. 1377/11-G dated 12.5.1987 stating that the applicant had been removed from service with effect from 12.5.1987 vide Respondent No.3's order dated 8.5.1987. It was also stated therein that the Identity Card bearing serial No. 14979 and Dispensary Card No. 1258 issued to him will have no validity. He further alleged that the Disciplinary Authority had not issued any speaking orders based upon the findings of the Inquiry Officer and the evidence in support of the charges and thus the impugned order of removal from service was against the principles of natural justice and bad in law. He, therefore, prayed for setting aside the impugned order dated 8.5.1987 and Notice dated 12.5.1987 and the applicant be deemed to have been continuing in service.

In the reply to the aforesaid Application, a preliminary objection was taken as to the maintainability of the Application before the Principal Bench. It was stated that since the applicant was employed in the office of the Director, Map Publication, Survey of India, Dehra Dun, the

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Allahabad Bench of the Tribunal alone was competent to entertain and decide the matter. In their reply to the Application the respondents particularly took the plea that the applicant had suppressed relevant and material facts in regard to his previous service with the Survey of India in the Application as well as in the application form for service with the Survey of India. It was stated that the applicant was initially employed in Survey of India as a Topo Trainee Type 'B' (Planetabler) on 4.6.1964. Thereafter, he was classified as Planetabler Grade V with effect from 1.7.1965. His services were terminated under Rule 5(i) of the Central Civil Services (Temporary Service) Rules, 1965 w.e.f 15.2.1969 (A/N) by the Director, North Western Circle, Survey of India, Chandigarh. The applicant was appointed afresh in the office of the Director, Map Publication, Survey of India, Dehra Dun as a LDC w.e.f. 1.1.1973 and he continued to work as such till 12.5.1987 when he was removed from Government service as a result of disciplinary proceedings. Reference was made to the chargesheet served on the applicant in the disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. An Inquiry Officer was appointed as per said rules by the Disciplinary Authority. The Inquiry Officer submitted his report to the Disciplinary Authority who in turn sent a copy thereof to the applicant asking him to submit his representation, if any. The applicant submitted his representation to the Disciplinary Authority which was duly considered and final orders were passed on 8.5.1987 removing the applicant from service with

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effect from 12.5.1987. The said removal order dated 8.5.1987 was sent to the applicant through his Head of Office, who called the applicant to receive the same on 12.5.1987 (F/N) in the presence of two other Gazetted Officers and his Officer. The applicant after having gone through the order did not receive the same and left the office in the same forenoon without permission of his officer-in-charge. The removal order was also sent by Registered post and was returned undelivered. The Head of Office issued a circular notifying that the applicant has been removed from service w.e.f. 12.5.1987 by the competent authority and the Identity Card and Dispensary Card issued to him would have no force after his removal from service.

It was pointed out that in paragraph 3 of the Application, the applicant has stated about "the illegal and arbitrary order of dismissal from service". It was stated that this was entirely wrong as there was no order of removal or dismissal of the applicant. The order dated 12.5.1987 is a Notice issued by Shri K.S. Panwar, Superintending Surveyor, O.C. No. 16 Drawing Office, whereby he had notified that the applicant had been removed from Government service w.e.f. 12.5.1987 by the Director, Map Publication, Survey of India (Appointing Authority) vide his order dated 8.5.1987. Applicant's allegation that he was employed as LDC in the office of the Director of Map Publications was denied. Further the allegation that the applicant had rendered spotless and unblemished service to the entire satisfaction of his

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superiors and there had been no complaint or adverse remarks about his performance or functions in the Department was denied. The applicant had suppressed information regarding his previous employment in the Survey of India and termination thereof under Rule 5(i) of the Central Civil Services (Temporary Service) Rules, 1965. The applicant was required to give information about his previous service under the Central or State Govt. or other organisations under column 11(a) and 11(b) of the above Rules, but the applicant had concealed the particulars of his past service in Survey of India. Applicant's allegation that he was not allowed to inspect relevant documents and that the procedure as laid down under Rule 14 of the CCS(CC&A) Rules, 1965 was not followed was denied. The Inquiry Officer performed his function as laid down under the said Rules. The respondents also stated that the applicant had not stated any specific sub-rule of CCS(CC&A) Rules which had been violated by the Inquiry Officer. The applicant's allegation that neither a copy of the Notice dated 12.5.1987 nor a copy of the order dated 8.5.1987 was furnished to the applicant is wrong. In the end, it was stated that the applicant was not entitled to any relief.

In the rejoinder, it was stated that the name and designation etc. of the official who had framed the respondent reply have not been given. But a perusal of the respondents reply shows that the necessary particulars have been given.

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In the rejoinder, the applicant stated that since his Application was entertained by the Principal Bench and disposed of and as two of the respondents are located at Delhi, the Principal Bench could entertain and hear the matter. Secondly, it was reiterated that the applicant had been selected for appointment on 13.11.1972 and he joined on 1.1.1973. He also reiterated that he had furnished all the details of his past services and experience in such services to the Employment Exchange. He also reiterated that he had not suppressed any material fact from the Director of Map Publications, by not furnishing the particulars of his past services in column 11(a) of the Attestation Form which would have disqualified him from his service in the new post of Lower Division Clerk in the office of the Director of Map Publications. It was also stated that even if there was an omission, the punishment was disproportionate to the alleged offence. He, therefore, prayed that the order of removal be quashed and the applicant be reinstated with all consequential benefits.

It will be relevant if we refer to the "Attestation Form" first. It is in Annexure R-3 in the reply filed by the respondents. At the very top, there is a warning in the following words:

"WARNING: The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification, and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this form, the details should be

communicated immediately to the Union Public Service Commission or the authority to whom the Attestation Form has been sent earlier, as the case may be, a suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated."

The entries in Column 11(a) and 11(b) made in Attestation Form are as follows:

"11(a) Are you holding or have any time held an appointment under the Central or State Government or a Semi-Government or a quasi-Government body, or an autonomous body, or a public undertaking, or a private firm or institution? If so, give full particulars with dates, of employment, upto date.

From	Period To	Designation, emoluments and nature of employment	Full name and address of employer.	Reasons for leaving previous service.
14.5.71	15.11.71	Sorter (Temporary)	REGIONAL TABULATION OFFICE, CENSUS OPERATION, 28, RAJPUR ROAD, DEHRA DUN(UP)	WINDING OF TABULATION OFFICE CENSUS DEHRADUN (UP) RETRENCHED.

11(b) If the previous employment was under the Govt. of India, a State Government/an undertaking owned or controlled by the Govt. of India or a State Govt./an autonomous body/University/Local body. If you had left service on giving a month's notice under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, any similar corresponding rules, were disciplinary proceeding framed against you, or had you been called upon to explain your conduct in any matter at the time you gave notice of termination of service, or at a subsequent date, before your services actually terminated?

A perusal of the above column 11(a) would show that there is no mention whatsoever of the applicant that he had been employed in the Survey of India from 4.6.1964 until 15.2.1969. There is no mention that his services were terminated w.e.f. 15.2.1969 under Rule 5(i) of the Central Civil Services (T.S.) Rules, 1965. A perusal of the conditions of paragraph 11(a) leaves no doubt that the applicant had to furnish all information regarding his previous employment either in the Central or State Government or a Semi-Government or a quasi-Government body, or an autonomous body, or a public undertaking, or a private firm or institution. It also required him to mention full particulars with dates of employment upto date. There cannot be an iota of doubt as to what information was required. The applicant treated as if he had only to mention the immediate past employment that he was doing. He, therefore, furnished particulars of his temporary appointment in the Regional Tabulation Office, Census Operation, Dehra Dun. The fact that he had been previously employed with the Survey of India from 1964 to 1969 was not disclosed at all.

Column 11(b) required him to furnish information, if there were disciplinary proceedings or he had been called upon to explain his conduct or given a month's notice under Rule 5(i) of the C.C.S.(TS) Rules, 1965 before the service was actually terminated. This column was filled up by the applicant in two letters "N.A." In this context, it will be relevant to consider the warning printed at the top of the "Attestation Form". The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the applicant unfit for employment

under the Government. Paragraph 3 of the warning is very relevant for it warns the applicant that "if the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated."

This provision is attracted in the present case, for the applicant not only suppressed the fact that he was employed in the Survey of India in a different capacity between 1964 and 1969 but had also suppressed the fact that his services had been terminated under Rule 5(i) of the CCS(TS) Rules, 1965.

We had asked the learned counsel for the respondents to bring before us his previous service record. The same was produced by the learned counsel before us. We have perused the record and find that there is ample material on the record which would in all likelihood have disqualified the applicant from further service in the office of the Director of Map Publications Survey of India, if particulars of his previous service were known to the authorities. We find from the A.C.R. file of the applicant for the period from 1966 to 1968 following remarks:

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That there is a warning issued to the applicant on 16.9.1966. It is stated therein that on 11.8.1966 he picked up a quarrel with Shri Uggar Sain in the office during working hours. He did not report the matter to his superior officer, and when asked by the superior officer to give a statement on the event, he gave false statement. It was reported that his attitude to S.O's was not good. He was warned to improve his sense of discipline, honesty and integrity. In the Annual Confidential Report for the year 1966, the following remarks had been communicated to the applicant:-

"You are hard-working but dishonest. Your sense of responsibility is below average. You tend to be insolent at times with your Section Officers. Your conduct is poor and you require strong supervision. Your integrity is doubtful."

For the year 1967, the following adverse remarks were communicated to the applicant:

"You are short tempered and resort to physical violence. You should get over this weakness."

For the year 1968, the following adverse remarks were communicated to the applicant:

"You have poor sense of discipline. You resort to physical violence. You should take more interest to improve your proficiency."

We have also noticed from the personal file of the applicant of a warning being issued vide letter dated 7.9.1967 to control his temper in future and to refrain from resorting to physical violence. He had also been warned for bad conduct vide letter dated 9.5.1968. An inquiry report was submitted by the Deputy Superintending

Surveyor in respect of Shri Ram Kishan, Surveyor Grade I and the applicant vide letter dated 24.8.1968. The inquiry report concluded that "Shri Amar Singh P/T Gde V is guilty of behaving in a most insubordinate manner in giving first blows to his superior officer. He is also responsible for creating indiscipline in the Section" and he recommended that "Shri Amar Singh be chargesheeted and censured."

On 11.9.1968, the applicant was chargesheeted. The two items in the chargesheet were as follows:

"Would you please intimate by 25.9.1968 as to why disciplinary action should not be taken against you for the following:

- (i) you have physically assaulted your superior Officer (Shri Ram Kishan, Surveyor) on the 2nd August, 1968. This is being regarded as a gross case of indiscipline and misbehaviour.
- (ii) You have instigated your colleagues in defaming your Superior Officer (Shri R.C. Sachdeva, Officer Surveyor). You have been responsible for a conspiracy to defame your Superior Officer (Shri R.C. Sachdeva, Officer Surveyor). This is regarded as a case of severe mis-conduct."

The applicant filed a reply to the above after some time. There is plenty of material on the personal file of the applicant to show that he has been repeatedly warned and that his work was not upto the mark but also complaining of his poor performance.

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Having seen the personal file of the applicant, we are of the view that if reference had been made by the applicant to his previous service in the Survey of India, it may have gone against him. However, there appears a plausible reason why the applicant did not mention anything about his past service in the Survey of India in the "Attestation Form". In spite of the warning printed at the top, he ignored it.

Reference may also be made to the three lines just above the signature of Shri Amar Singh in the Attestation Form dated 16.11.1972 in which it is mentioned:

"I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government."

The fact that he did not make any reference whatsoever to his previous employment with the Survey of India shows that he gave a false certificate. It was not by way of a mistake or a mere omission that the particulars were not given. We are of the view that non-disclosure of his previous service in the Survey of India could be deliberate.

The next question is what is the effect of the warning in paragraph 3 of the Form. Whether the warning contained therein would be effective in a case it was subsequently found that there was a suppression of material facts and a false certificate was given in the "Attestation Form". In our opinion, the applicant would render himself vulnerable for his service being terminated if it was found that he had suppressed the material facts and given a false certificate.

It must be noticed that although the applicant's services could be terminated in view of paragraph 3 of the warning in the "Attestation Form", yet the respondents had initiated disciplinary proceedings which was, in our opinion, a correct procedure to terminate the services of the applicant. In the disciplinary proceedings, he had been chargesheeted and given an opportunity to examine the relevant material and ultimately the Inquiry Officer filed a report. A copy of the report was given to the applicant and an opportunity was given to him to make a representation. That was given by the applicant. The representation was considered and ultimately disciplinary action was taken by removing him from service. All this had been done and the applicant have been removed from service after following the above procedure.

Learned counsel for the applicant, however, urged that even if the fact of his previous service with the Survey of India was not disclosed in the Attestation Form, it would not matter for in the disciplinary proceedings, due procedure was not followed. The witnesses named in the chargesheet were not produced and that the applicant had been cross-examined by the Inquiry Officer. In other words, it was said that the cross examination by the Presenting Officer was bad in law as he was only required to produce the documents and witnesses in support of the charges. His contention that the applicant was not allowed to inspect the documents in support of the charges is squarely denied by the respondents.

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In a departmental or disciplinary proceedings, three things have to be assured. That the applicant is aware of the charges against him. The presenting officer produces the evidence - both oral and documentary. The applicant knows about them or inspects the documentary evidence and thereafter he is asked if he has to say anything in respect of the evidence so produced and ultimately after the report of the Inquiry Officer is prepared, the applicant is to be given an opportunity to make a representation. All this had been done here. As a matter of fact, the most relevant and important thing in this case is ^{the} ~~the~~ documentary evidence. His documentary evidence is the "Attestation Form" and consequently, the material on the record which pointed out that the applicant was employed in the Survey of India and the manner and the reasons for the termination of his previous service. In the present case no other oral evidence was necessary except for someone to present the documents before the Inquiry Officer. The documents on the record speak for themselves and, in our opinion, were rightly considered by the Inquiry Officer and the Disciplinary Authority. The allegations of cross examination etc. have no bearing in the matter in view of the fact that the documentary evidence conclusively established the suppression of relevant information and giving a false certificate. We are satisfied that the applicant had been afforded all opportunities, and there is no violation of rules of natural justice. We are satisfied that the applicant was given a fair opportunity to prove that he had not suppressed any relevant material.

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We may in this context also consider one contention of the learned counsel. He urged that the applicant had given all particulars about his previous service to the Employment Exchange in his application for a job. That is not material. Any information submitted to the Employment Exchange is not relevant for the service condition. The Attestation Form was given to the applicant to be filled in duly and with correct particulars. There was a clear warning at the top of the Attestation Form and the applicant had to give a certificate before signing the Attestation Form. In spite of the warning, he had given a incorrect certificate to the effect that the information given was correct and complete to the best of his knowledge and belief. It is, therefore, apparent from the above that any information given to the Employment Exchange is of no relevance in the matter which was directly between the applicant and his employer. Nothing has been brought to our notice to indicate that the information which he had given to the Employment Exchange had been forwarded to the respondents before his interview by the respondents in 1972.

We may also notice the written arguments submitted by the learned counsel for the applicant after the close of oral arguments. His contention was that the Inquiry Officer had violated the statutory rules and principles of natural justice because he did not afford the applicant a reasonable opportunity to defend himself. He contended that the Inquiry Officer started by putting questions to the applicant and this violated the statutory rules and also principles of natural justice. In this context he referred to the cases of -

- (1) Associated Cement Co. Ltd Vs. The Workman and another (1964) 3 SCR 652, 660-661.
- (2) Central Bank of India Ltd. Vs. Kurunamoy Banerjee (1968) 1 SLR 251.

(3) Phulbari Tea Estate Vs. Its Workmen
(1960) 1 SCR 32.

(4) Union of India Vs. H.C. Goel.
(1964) 4 SCR 718, 723-724.

In the first case of Associated Cement Co. Ltd. (supra), their Lordships made it clear that in the first instance the employer should take steps to lead evidence against the workman charged and then give an opportunity to the workman to cross examine the said evidence and then ask the workman if he desired to give any explanation about the evidence led against him. In the case of Central Bank of India Ltd. (supra), it was laid down that in a domestic enquiry against a workman the allegations against the workmen are denied by the latter. The burden of proving the truth of these allegations would lie on the management. The witnesses called by the management must be allowed to cross examine the workman and the workman must be given an opportunity to examine himself and adduce other evidence, if any. In Phulbari Tea Estate (supra), it was laid down that the workman should be given an opportunity to question the witnesses after knowing in full what they have to state against him. In the case of Union of India (supra), it was laid down that a public servant who is entitled to the protection of Article 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences and he should get notice to the above and is also provided an opportunity to offer his explanation and, lastly, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice.

There can be no quarrel with the proposition enunciated in the above cases. In the present case, the entire

matter would be decided on the basis of documents and very little would depend on oral evidence. In the Attestation Form which he had filed at the time of his appointment, he has verified that the facts given were correct and complete to the best of his knowledge and belief. The Attestation Form (Annexure R-3) of which a photo copy was filed does not disclose anywhere that the applicant had earlier worked in the Survey of India. That fact was definitely withheld and concealed. Paragraph 11 (a) of the Attestation Form which has been quoted earlier sought information from the person whether he had held an appointment under the Central or State Government or a Semi-Government or a quasi-Government body, or an autonomous body, or a public undertaking, or a private firm or institution and to give full particulars with dates and employment upto date. The information that he had worked in the Survey of India earlier was not given and was suppressed and this was done notwithstanding the warning given at the top of the Attestation Form which has also been referred to earlier. Paragraph 3 of the warning which has also been quoted earlier in this judgment also indicates that in case if there is any suppression of any factual information in the attestation form comes to the notice at any time during the service of a person, his services would be liable to be terminated. In spite of this, the applicant kept back the information that he had earlier worked in the Survey of India, presumably, because he did not want the respondents to know about this.

In the present case, the respondents case is that opportunity had been given to the applicant to defend himself and we are satisfied that he had been afforded reasonable opportunity and there is no breach of rules of natural justice.

Learned counsel for the applicant lastly urged that the removal from service was a far too severe action against the applicant than was warranted and consequently, the order for his removal from service may be substituted by lesser punishment. The Tribunal is not entitled to sit as the punishing authority to reapp~~raise~~^{raise} the evidence and modify the punishment awarded. The Tribunal has only to judge whether the procedure has been followed in accordance with law and ^{the} rules of natural justice have been observed. We have already answered that against the applicant. We are not inclined to interfere with the impugned order.

In the result, therefore, the Application is dismissed. However, we make no order as to costs.

B.C. Mathur
(B.C. Mathur) 21.12.89 -
Vice-Chairman (A)

Ad.
(Amitav Banerji)
Chairman.

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Announced in open Court today.

B.C. Mathur
21.12.89