

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2688/90

New Delhi this the 7th Day of October, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Surender Kumar
S/o Sh. Hari Chand Sharma,
R/o Delhi
C/o Sh. Sant Lal, Advocate,
C-21(B), New Multan Nagar,
Delhi-110 056.

...Applicant

(By Advocate Sh. Sant Lal)

Versus

1. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.
2. The Secretary, Departmental Canteen,
Dr. Ram Manohar Lohia Hospital,
New Delhi.
3. The Manager, Departmental Canteen,
Dr. Ram Manohar Lohia Hospital,
New Delhi.

...Respondents

(By Advocate Sh. V.K. Khanna)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The applicant was a Wash Boy in the Departmental Canteen of the Dr. Ram Manohar Lohia Hospital (Dr. R.M.L.H. for short). In disciplinary proceedings initiated against him, he was dismissed from service by the order dated 3.1.90 of the third respondent, the Manager, Departmental Canteen. The applicant states that an appeal was filed by him on 26.2.90, which was not disposed of. Accordingly he has filed this O.A. for quashing the impugned order of dismissal with a direction to the respondents to reinstate him with consequential benefits.

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2. Earlier, this O.A. was disposed of by the judgement dated 4.12.92. Though it was observed that the applicant had challenged the dismissal on a number of grounds, the Tribunal contended itself with considering only two questions viz., whether, respondent No.3 was competent to pass the final orders dismissing the applicant and whether, in any case, the proceedings were vitiated by the fact that a copy of the enquiry officer's report had not been given to the applicant to make a representation before the disciplinary authority found him guilty of the charges levelled against him. It was held that the initiation of the disciplinary proceedings by the third respondent was not legally sustainable as it was the Chairman of the Canteen who appointed the applicant as a Wash Boy. Therefore, it was found that the application should succeed on this ground alone. It was also found, based on the Supreme Court's judgement in Union of India vs. Mohd. Ramzan Khan (1991 (10 SCC 588), that the non-supply of a copy of the enquiry report to the delinquent employee, before he was found guilty, amounts to violation of the principles of natural justice and, therefore, the proceedings were bad. Accordingly, the order was quashed on these two grounds and the respondents were directed to reinstate the applicant in service as a Wash Boy with consequential benefits. It was also directed that the period of suspension should be treated as duty for all purposes.

3. The respondents preferred an appeal before the Supreme Court (Civil Appeal No.5467/93 arising out of SLP (c) 9924/93) which was disposed of by the order

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dated 11.10.93. The Supreme Court noticed that the judgement in Mohd. Ramzan Khan's case would have only prospective effect, i.e., in respect of orders of punishment passed after 20.11.90. The Supreme Court found that the status of the authority which initiates the disciplinary proceedings is immaterial, as held in P.V. Srinivasa Sastry and Others vs. Comptroller and Auditor General and Others (1993 (1) SCC 419). What is material is who passed the final orders in the disciplinary proceedings. It was held that in the present case, the Chairman who was the appointing authority has passed the order of dismissal. Hence, the appeal was allowed and the order of the Tribunal was set aside. The matter was remanded too the Tribunal " for decisions on other points, if any, raised by the respondent workman." That is how this O.A. is before us again.

4. The learned counsel for the respondents submitted that nothing now remains for adjudication because the grounds abandoned by the applicant earlier cannot be raised again after the remand of the OA by the Supreme Court. He relies on the judgement of the Allahabad High Court in Swadeshi Cotton Mills v. Labour Court, U.P. (1977 LAB.I.C. 1503). It was held in that judgement that if a party files a writ petition on a number of grounds but presses only one ground in which it fails it cannot, thereafter file another petition based on the grounds not pressed earlier. We are of the view that this decision does not apply. In the OA it was the Tribunal which felt that consideration of other

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grounds was unnecessary. Therefore, the grounds raised in the O.A. other than those decided by the Supreme Court are still open for adjudication.

5. The brief facts of the case may be set out first.

6. The applicant was employed as a Wash Boy. He was suspended on 3.6.88 by the third respondent to initiate proceedings against him in respect of acts of alleged indiscipline. The charges framed against him are under five heads regarding disobedience, misbehaviour and misconduct, loss of canteen property, malpractice and gross indiscipline. The immediate provocation for his suspension and for initiating the disciplinary proceeding was the gross indiscipline with which he is charged under item-V of the chargesheet which reads as follows:-

"V. GROSS INDISCIPLINE :

i) On 2.6.88, at 3.35 P.M. Shri Surender Kumar was asked by the Manager, Shri Raj Kishore, to bring some flasks from Senior Officers like Welfare Officer and Dr. K.K. Malhora, Consultant in Medicine & Head of the Department of Medicine. Shri Surender Kumar flatly refused to obey the orders of the Manager.

ii) On 3.6.88, at 9.15 A.M. the Manager was trying to serve with a Memo to Shri Surender Kumar calling his explanation for such grave indiscipline committed by him by refusing to fetch flasks from the office of Senior Officers. Instead of receiving the memo he tore to destroy it with office copy, implying gross indiscipline on the part of Shri Surender Kumar to destroy the official record."

7. The other charges relate to disobedience of the orders of the Assistant Manager Ramesh Chand on 21.3.81, 14.9.83, 11.3.88; misbehaviour with the Assistant Manager, Ramesh Chand on 21.3.81; absenting himself

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from duty without prior information on a few days in 1982, 1983, 1984, 1985 and 1986; loss of three L.P.G. cylinders on 6.7.91 when the applicant was on duty and indulging in malpractice of selling food items at higher prices than the prescribed rates. On his denial of the charges, enquiry was entrusted to Sh. George Milton, Senior Physiotherapist of the hospital. The Enquiry Officer found all charges proved against him, except charge No. III relating to loss of canteen property, Thereupon, the third respondent issued the impugned order dated 03.01.90 which, inter alia, states as follows :-

"5. On the basis of the enquiry proceedings i.e. the evidence on record and witness provided by the Department, the enquiry officer came to the conclusion that charges framed against Shri Surender Kumar Wash Boy, Departmental Canteen, Dr. R.M.L. Hospital, New Delhi, stands proved.

6. The Disciplinary Authority in this case having regard to the enquiry and the findings on the basis of the evidence adduced during the enquiry, is of the opinion that in customers' interest and in the interest of discipline in canteen and to protect the reputation of the canteen, a major penalty specified in clause (vii) of Rule 18 should be imposed on Shri Surender Kumar for having committed following acts:

i) On 2.6.88, at 3.35 P.M. Shri Surender Kumar was asked by the Manager, Shri Raj Kishore, to bring some flaks from Senior Officer like Welfare Officer and Dr. K.K. Malhotra, Consultant in Medicine and Head of the Department of Medicine. Shri Surender Kumar flatly refused to obey the orders of the Manager.

ii) On 3.6.88 at 9.15 A.M. the Manager was trying to serve with a Memo to Shri Surender Kumar calling his explanation for such grave indiscipline committed by him by refusing to fetch flaks from the office of Senior Officers. Instead of receiving the Memo he tore to destroy it with office copy, implying gross indiscipline on the part of Shri Surender Kumar to destroy the official record and in view of his past conduct.

7. As such, it is ordered under provisions of sub rule (10) of rule 20 in the Chapter IV of the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 Shri Surender Kumar, Wash Boy be dismissed from service, as specified in

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clause (vii) of rule 18 of the said Rules which shall be a bar to future employment in the Canteen with effect from 5.1.90 (F.N.) The suspension order is revoked and for the period of suspension, he shall be paid subsistence allowance at the rate of 50% of his basic pay last drawn."

8. The applicant has impugned only the dismissal order as, according to him, the appeal filed by him has not been disposed of. On the contrary, the respondents state that the applicant has been informed on 7.5.90 about the decision on his appeal. However, the respondents have not filed any copy of that order. In the circumstances, we are unable to take it for granted that any appellate order has been passed.

9. The respondents filed a reply dated 23.5.91. This was supplemented by another reply dated 30.7.91 wherein it is contended that no relief is due to the applicant. The learned counsel for the respondents who was not available to be heard on the last date had mentioned the following authorities:-

i) Swadeshi Cotton Mills vs. Labour Court, U.P. - 1977 Lab IC 1503.

ii) Management of Delhi Transport Corporation v. Industrial Tribunal Delhi 1965 (10) FLR 236 (SC).

iii) D.D. Cement Ltd. v. Murari Lal (AIR 1971 SC 22).

iv) Associate Cement Companies vs. The Workman - 1963 (7) FLR 269.

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v) Union of India vs. Tulsi Ram Patel 1985 (3)
SCC 398

vi) R.C. Bansal vs. Union of India 1992
(Suppl.) (2) SCC 318.

vii) Glaxo Laboratories vs. Presiding Officer
1984 (1) SCC 1.

viii) Borium Chemicals Ltd. v. Company Law
Board - AIR 1967 SC 295.

ix) Bank of India vs. Apurba Kumar Sinta
(1994) 2 SCC 615.

x) Railway Board vs. N. Singh AIR 1969 SC
966.

10. We now consider the grounds raised by the
applicants, which were argued.

11. The applicant has contended that the impugned
order is a non-speaking order and therefore, is liable
to be struck down on that ground alone. We are unable
to agree. That order has to be read with the Enquiry
Officer's report which has examined the charges framed
against the applicant in considerable detail.

12. An objection has been raised to the language of
the charge by contending that the charge itself
expresses the final opinion as to the guilt of the
applicant. In other words, the matter has been

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prejudged. This violates the principle of natural justice. Reliance is placed on the Andhra Pradesh High Court Judgement in M.A. Narayana Setty Vs. Divisional Manager, 1990 (2) ATLT 41. We are not impressed by this argument. The memorandum of charges alleges certain acts of omission and commissions by the applicant. On the basis of whatever information was available the respondents are entitled to draw some tentative conclusions to frame the charge. That by itself does not mean that any final conclusion has already been formed. The principles of natural justice were followed when an enquiry officer was appointed to enquire into the charges when they were denied by the applicant. We see no merit in this objection.

13. It is next contended that the chargesheet itself is defective, as it also does not cite the relevant rules under which it has been issued. It does not contain the statement of imputations or misconduct or misbehaviour in support of each article of charge. Further, particulars of the documents and the names of witnesses by which article of charges are proposed to be sustained have not been produced. The Allahabad High Court has held this to be a sufficient ground to hold that there was a denial of reasonable opportunity to the delinquent to defend himself in the enquiry (Union of India & Others vs. Kamla Dass 1990 (1) ATLT 407).

14. The respondents have denied this allegation and stated that the chargesheet is specific and in detail and gives full description of the misconduct committed by the applicant. It is stated by the respondents that

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the conditions of service of the employee in the Departmental Canteen are governed by the Departmental Canteen Employees (Recruitment and Conditions of Service), Rules, 1980. The reference by the applicant to various judgements and regulations applicable to other government servants will have no relevance to the case of Canteen Employees.

15. It is unfortunate that the respondents have not produced for our perusal the aforesaid rules. What is more important is, that though the respondents have taken such a defence, the applicant too has not rebutted this claim by the production of the necessary rules and instructions.

16. We have considered the judgement of the Allahabad High Court referred to above. We have perused the chargesheet given to the applicant (Annexure R-2) with the final reply. Each charge is self contained. The allegations are specific and concise and gives the name of the witness who will establish it. Therefore, we do not see how that judgement can be applied to the present situation.

17. The applicant denies certain observations of the disciplinary authority in the Annexure A-I order, as false and misleading. In the enquiry report, which has been filed as Annexure R-8 by the respondents with the first reply the enquiry officer has stated as follows:-

"The workman has admitted the following charges:-

i) Even though the manager asked him repeatedly to submit leave application for 13.12.83 to 19.12.83 and 20.12.83 he did not care to submit the application.

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ii) Again he was absent without information on 8th, 9th, 19th, 25th to 27th, 30th October and 7th November, 1984 and he submitted application for the same after joining duty when he was reminded several times by the Manager, Shri Raj Kishore.

iii) Though he remained absent on 30.7.85, 5.8.85, 6.8.85, 12 to 16.8.85, 20.8.85, 30.8.85 and 31.8.85 without any intimation or prior permission, he submitted application for 2 days only after he returned from leave, for which the Manager was to have withheld his 12 days salary and released payment after submission of application on 6.9.85."

17. Relying on this passage in the EO's report, the disciplinary authority has observed in para 3 of its Annexure A-1 order that "during the preliminary hearing Sh. Surender Kumar admitted the following charges." This is followed by the three items of charges mentioned in the enquiry officer's report, referred to above. The learned counsel contends that these are not charges at all. The periods of leave referred to therein have been settled long back. These matters have been raised after several years with a malafide intention to throw the applicant out of employment and cause mental and physical torture. He contends that after the alleged absence is treated as leave, the factum of absence does not survive any further (State of Punjab v. Channan Singh (1988 (3) SLJ 216 (P&H)).

18. It is, therefore, clear that the question of absence on these days stand admitted. What is contended is that as the absence has been regularised, they cannot be raked up again. Why that has been done, has been clearly explained by the disciplinary authority in para 1 and 2 of its orders (Annexure A-1). It is seen therefrom that the proximate reason for the disciplinary proceeding was the misconduct and disobedience of orders of the third respondent on 2.6.88 and 3.6.88.

Therefore, he was chargesheeted. In the chargesheet his previous activities, behaviour and unbecoming attitude were also included to show his conduct throughout the service. In other words, reliance on these charges are only to show the previous conduct of the applicant. We do not find any thing wrong in mentioning these matters in the chargesheet which only puts the applicant on notice that his previous behaviour is also being considered.

19. The applicant then contends that the alleged incident of 1981 to 1985 have been included in the memorandum of charges issued on 28.9.88. As there is considerable delay, this is fatal. Reliance is placed on a decision of the Gujarat High Court in Mohan Bai vs. Y.B. Zala & others - 1980 (1) SLR 324.

20. We are unable to agree. As mentioned above, the provocation to frame the charge against the applicant was the alleged blatant disobedience of the orders of the Manager. In order to show that they are not isolated instances, such instances of disobedience in the past. We do not see how they are irrelevant and how the delay in referring to these charges would make them invalid, particularly in view of the fact that some of the facts as alleged in the chargesheet already stand admitted as mentioned by the enquiry officer in his report.

21. It is alleged that while the applicant was under suspension, his subsistence allowance was stopped from 1.1.89. Thereupon, the applicant and his Defence

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Assistant requested the enquiry officer to postpone the proceeding as, because of financial hardship resulting from stopping the subsistence allowance, the applicant did not participate in the enquiry. The applicant does not know the fate of the enquiry thereafter until the final order was issued wherein it is stated that the enquiry officer proceeded exparte and found the charges proved. He impugns this action of the respondents.

22. The respondents have filed as Annexure R-5 the memo dated 12.4.89, issued to the applicant when he was under suspension, which reads as follows:-

"Shri Surender Kumar, Wash Boy (Under suspension) has drawn his subsistence allowance from June 88 to Dec.88. Thereafter he has not drawn his subsistence allowance on the plea that he wants subsistence allowance @75% of pay per month.

In this connection he is informed that as per Departmental Canteen Employees (Recruitment & Condition of Service) Rules, 1980, Chapter IV, Para 22 (2) he is entitled for 50% of his basic pay (last drawn) subsistence allowance. As such Shri Surender Kumar is asked to come and collect his subsistence allowance due from January 89 onwards."

- The applicant filed OA-2270/89 challenging the orders passed regarding subsistence allowance. - A reply to that OA was filed on 18.12.89 and a copy thereof is filed in this OA by the respondents. It is seen from para 4.17 of the reply that the applicant refused to participate in the proceedings till subsistence allowance is paid according to FR 53 (i.e. 75%).

23. It is thus clear that the applicant was being paid subsistence allowance at the rate of 50% which he continued to accept. Subsequently, he made a demand for

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subsistence allowance at the rate of 75%. This was denied to him because the Service Rules of the Canteen Department did not contain any provision for revision of the subsistence allowance to 75%. In the circumstances, we are of the view that this is not a case where subsistence allowance was refused. It is the applicant who refused to accept 50% subsistence allowance on the ground that he was entitled to 75% subsistence allowance. Therefore, this is not a case where the respondents denied the applicant the minimum allowance during suspension without which he could not have participated in the enquiry. This ground has, therefore, no substance. In the circumstances, we do not find that the enquiry officer can be faulted if he proceeded with the enquiry exparte. In our view the reliance of the applicant on the decision in Ghan Sham Das Srivastava vs. State of M.P. (AIR 1973 SC 1183), State of Maharashtra vs. Chander Bhan 1983 (2) SLJ 227 SC and of the Rajasthan High Court in 1985 (1) SLJ 68 are of no avail.

24. It is alleged that the statement of witnesses relied upon and the documents relied upon were not supplied to the applicant. Even the opportunity for inspection was not provided. The respondents contend that these statements and documents were given at the time of the enquiry. The learned counsel for the respondents has not drawn our attention to any rule applicable to the Canteen Employees which the respondents have violated. We are of the view that the

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interest of natural justice seems to be satisfied by furnishing the statements and the documents at the enquiry stage.

25. The most important ground raised by the applicant is that the chargesheet shows the Manager as a complainant in most of the charges and, therefore, he should be a prosecution witness. Instead, he performed the functions of the disciplinary authority and passed the final order of dismissal. This is against the basic principles of natural justice that no person can be the judge in his own case. Reliance is placed on S.Rajmohan vs. Supdt. of Post Offices, Negapatinan 1988 (1) SLJ 176 CAT Madras and Toby Nainan vs. Union of India 1990 (1) ATLT 149 CAT (PB) and of the Supreme Court in Arun Chobey Vs. Union of India AIR 1984 SC 1356.

26. The respondents have contended that the witnesses to the charges have been separately examined and, therefore, no irregularity has been committed. The third respondent, the Manager was competent to impose a penalty. However, the Chairman as the Secretary of the Managing Committee approved the action.

27. In so far as this issue is concerned, one matter already stands settled by the orders of the Supreme Court. It has been held that, in the present case, the Chairman was the appointing authority and it is the Chairman who has passed the order of dismissal. Therefore, we cannot accept the plea of the applicant that the order has been passed by the third respondent.

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28. The last important ground urged by the applicant is that the penalty has been imposed arbitrarily without application of mind. We are of the view that in the matter of penalty it is not left for the Tribunal to judge whether the penalty is severe or it is disproportionate to the charges proved so long as some charge is proved against the delinquent.

29. That takes us to only one question which was argued at great length. The order of disciplinary authority states that the punishment of dismissal has been given on the strength of the charges relating to gross indiscipline which relates to the incidents which took place on 2.6.88 and 3.6.88. These have been reproduced in para-6 above. The third respondent has also filed an affidavit on 23.5.91, which is enclosed as Annexure R-10 with the reply of the respondents of that date. It is stated in that affidavit as follows:-

"I, Raj Kishore, son of Shir M.M. Gupta aged 42 years resident of WZ 1145, Nangal Raya, New Delhi, do hereby solemnly declare on oath as under:

1. That I am the Manager of Departmental Canteen, Dr. R.M.L. Hospital and a respondent in this case and I am fully conversant with the facts of this case.

2. That on 2.6.88 at about 3.35 p.m. I asked Shri Surender Kumar, Wash Boy in the canteen to bring some flasks from Senior Officers of the Hospital. Shri Surender Kumar told me that he will not carry out my orders.

3. That on 3.6.88 at about 9.15 A.M. I asked Shri Surender Kumar to receive a memo calling for his explanation for the above misconduct. Shri Surender Kumar took the Memo alongwith office copy and tore to destroy it."

30. We are somewhat surprised that an affidavit of this nature is filed on 23.5.91. The charge specifically states that on 2.6.88 and 3.6.88 the

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applicant not only disobeyed the orders of the third respondent but also expressed his contempt for the third respondent by tearing off the memo calling for his explanation in his presence. This is the charge where the third respondent himself should have appeared as a witness to testify before the enquiry officer about the incident that took place on that date. The filing of affidavit at Annexure R-10/^uis no substitute for such deposition. Instead, we see from the enquiry officer's report that these two charges were established by the torn pieces of the memo dated 3.6.88 which were produced before the enquiry officer, as also by the evidence of Suresh Kumar, bearer. The enquiry officer states as follows in this regard:-

"The next witness Shri Suresh Kumar, Bearer, working in the canteen stated that on 3.6.88 at about 9.15 a.m. when the Manager tried to serve a memo to Shri Surender Kumar, Shri Surender Kumar tore off and thus destroyed the said memo alongwith its office copy in his presence, when the witness was dusting the table. When Surender Kumar was asked to express regret of what he had committed, Shri Surender Kumar refused to do so. In cross-examination the witness replied that the dusting of the table of the Manager formed a part of his duties. The witness did not agree to a suggestion that the Manager had reprimanded Shri Surender Kumar and to cover his behaviour, the Manager was trying to issue him a memo. He did not know the contents of the memo but stated that the same pertained to the incident of indiscipline having been committed by Shri Surender Kumar on 2.6.88. The witness denied a suggestion that Shri Surender Kumar had been implicated in a false charge."

"The documentary evidence also shows that the contents of the memo dated 3.6.88 (torn off by him) were that when on 2.6.88 at 3.35 p.m. the workman was asked by the Manager Shri Raj Kishore to bring flaks from Senior Officers like Welfare Officer Dr. K.K. Malhotra, consultant in Medicine and Head of the Department of Medicine, the workman flatly refused to obey the lawful orders of the Manager. It also appears that the workman committed an act of grave indiscipline daring to tear off the said memo, forced the Disciplinary Authority to place Shri Surender Kumar under suspension to maintain discipline and run the administration in the Departmental Canteen."

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31. We are of the view that as Suresh Kumar has not been mentioned in the charge as a witness to the incidents, it cannot be left to that bearer to prove this charge. The charge ought to have been proved only by the third respondent who should have appeared as a witness. None of the authorities relied upon by the learned counsel for the respondents help them in this regard. We, therefore, hold that the charges under the head V Gross Indiscipline are not proved."

32. The question is whether, on this ground the penalty should not be quashed. The learned counsel for the respondents has relied on Railway Board vs. N. Singh AIR 1969 SC 966. It was noted that in AIR 1963 SSC 779 (State of Orissa vs. Bidyabhushan Mohapatra) that if the penalty can be imposed for any substantial misdemeanor it is not for the Court to consider whether, that ground alone would have weighed with the authority in imposing that punishment. In the present case there is no room for such doubt. For, it is clear from para 6 of the impugned order that the penalty of dismissal from service was imposed because of these two charges. We are, therefore, satisfied that the penalty of dismissal has no basis and, therefore, the penalty imposed has to be set aside.

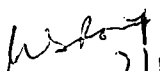
33. We have carefully considered the enquiry officer's report where after considering the various charges on merits he has come to the conclusion that excepting charge No.III the other charges are proved. We hold that charges under heading V are also not proved.

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Nevertheless, the applicant is guilty of the other charges. In the circumstances, we are of the view that the applicant is liable to a punishment other than the termination of the service, which should be decided by the disciplinary authority.

34. Therefore, we allow this application in part to the extent of quashing the findings of the disciplinary authority that charge under heading V Gross Indiscipline is proved. For that reason we quash the order of penalty imposed by that authority. We hold that other charges other than III & V have been proved against the applicant. In the circumstances, we direct the respondents to reinstate the applicant within a period of one month from the date of service of this order. The competent authority should now impose an appropriate penalty other than termination of service in respect of the charges proved against the applicant, and also pass orders as to how the period from the date of his suspension upto the date of dismissal and from the date of dismissal upto the date of reinstatement should be regularised in accordance with the provisions of law, within a further period of one month.

35. The appeal which is stated to be pending by the applicant will abate, if not already disposed of.


(C.J. Roy)
Member (J)

'Sanju'


7/6/84
(N.V. Krishnan)
Vice-Chairman