

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

ORIGINAL APPLICATION NO. 440 of 2001.

Allahabad, this the 28th day of March 2006.

HON. MR. K.B.S RAJAN J.M
HON. MR. A.K. SINGH, A.M

Chandra Kumar Mishra a/a 41 years Son of Shri Umakant Mishra, Resident of 179/1 Babu Purwa Colony, Kidwai Nagar, Kanpur.

.....Applicant.

(By Advocate : Sri S.K. Mishra)

Versus

1. Union of India through The Secretary, Ministry of Defence, Deptt. Of Defence Production and Supplies, New Delhi.
2. The Addl. Director General, Ordnance Factories/Member Appellate Authority, Ordnance Factories Board, 10-A Shaheed K.R. Bose Road, Calcutta.
3. The Senior General Manager, Ordnance Factory, Kanpur

.....Respondents.

(By Advocate : Sri R.K. Tiwari)

O R D E R

BY HON. MR. A.K. SINGH, A.M

O.A. No.440/2001 has been filed by the applicant Shri Chandra Kumar Mishra (of the address given in the notice) against the following decisions/orders of the respondents' authorities.

- (i) Order of removal of the applicant dated 31.10.1998 passed by Senior General Manager, Ordnance Factories Kanpur (who is respondent NO.3 in the O.A)

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- (ii) Order dated 10.5.99 passed by Addl. Director General Ordnance Factories and Member Ordnance Factories Board Calcutta (who is respondent NO.2 in the O.A.) modifying the above-mentioned order of removal to compulsory retirement.
- (iii) Order dated 21.10.99 passed by President of India on behalf of Union of India (represented by respondent NO.1 in the O.A) rejecting the Revision Application filed by the applicant under Rule 29 of CCS (CCA) Rules 1965.

2. O.A. in question has been filed on the following grounds:-

- (i) That while serving a Machinist(s) in the Ordnance Factory at Kanpur, there was an incident which involved him as well as another worker namely Samuel Singh. It was alleged that the applicant had quarreled and manhandled Samuel Singh and even snatched some money from the latter on 24.10.1997. After completion of preliminary investigations in the matter, the applicant was first suspended and thereafter served with a memorandum charges. In brief these charges are:
 - (a) The applicant was indulging in the business of money lending unauthorisedly in the premises of the Ordnance Factory.
 - (b) That on 24.2.1997 at about 2.05 P.M when arrears of salary were being disbursed to the employees the applicant manhandled another, employee Shri Samuel Singh, as soon as he received the payment and also forcibly

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snatched the arrears of salary received by him.

- (c) That in view of this incident (involving alleged manhandling and snatching of money from Samuel Singh), the payment of arrears of salary to other employees got obstructed which in other words, hampered government work.
- (d) That the applicant, after this incident remained absent from 2.15 P.M to 4.15 P.M.
- (ii) Applicant further submits that the memorandum in question lists the abovementioned charges against him despite the fact that there was no formal complaint from Samuel Singh to the respondent authorities regarding and quarrel, manhandling or snatching of money by the applicant.
- (iii) That the incident in question was used as a ploy by one Ram Ratan Sonker to foist false charges against the applicant in view of Union Rivalry. The applicant and Samuel Singh supported rival Trade Unions. These Unions were bitterly opposed to each other i.e. while the applicant belonged to Bhartiya Mazdoor Sangh, Shri Ram Ratan Sonker and Samuel Singh were members of the other Trade Union namely INTUC.
- (iv) That while furnishing list of documents relied upon in support of charges as well as the list of witnesses it was not specifically mentioned in the charge memo, as to which evidence was being relied upon in support of the charges.
- (v) That the Enquiry Officer furnished only one document alongwith his letter dated 11.9.1998 and rejected his request in respect of other five documents and also stated that neither the first information

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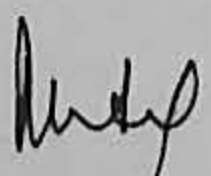
report (FIR) was lodged with the police nor any preliminary inquiry was conducted, hence the two documents cannot be supplied. Hence, there is a clear violation of the principles of natural justice in as much as he had been denied adequate opportunity to defend his case.

- (vi) That in passing the orders of removal/compulsory retirement by disciplinary/appellate authorities, his defence has been completely ignored by the respondent authorities and they passed the impugned orders only on the basis of interested witnesses ignoring other material evidences on record.
- (vii) That there has been a complete non-application of mind on the part of disciplinary/appellate and the revisional authorities.

3. In view of the above, the applicant seeks the following relief(s) as per the O.A.

(1) To quash,

- "(1) The orders dated 31.10.1998 passed by respondent No.3 (the Disciplinary Authority) removing the applicant from service.
- (ii) Order dated 10.5.99 of respondent No.2 (the appellate authority) which modified the order of punishment of removal of applicant from service to compulsory retirement.
- (iii) Order dated 21.10.1999 of respondent NO.1 (i.e the revisional authority) rejecting his revision application against the abovementioned orders of punishment.
- 2. To issue "a mandamus directing the respondents to heat the applicant as continuous in service with all consequential benefits of arrears of salary etc.
- 3. To issuing other order or direction as may be deemed fit and proper in the circumstances of this case.
- 4. To award costs, in the regard, to the applicant".



4. Respondents, on the other hand, have contested the O.A. on the following grounds:-

- (i) That the charges against the applicant regarding quarreling with a fellow employee namely Samuel Singh and snatching money from him, which were held as proved, are of serious nature and hence the penalty of removal from service, imposed on the applicant was in accordance with law and commensurate with the gravity of offence.
- (ii) That the applicant was served with memorandum of charges, listing out clearly the evidences relied upon in framing the charges, and was also given full opportunity to make written submissions. In his written submissions, the applicant denied all the charges leveled against him and hence the Disciplinary Authority appointed an inquiry officer and a Presenting Officer to conduct an open inquiry proceeding against the applicant, in which, the applicant was given full opportunity to defend his case.
- (iii) That, on conclusion of the enquiry proceedings the Enquiry Officer submitted his report on 29.9.1998 to the Disciplinary Authority who is respondent NO.3, in the O.A. In his enquiry report, the enquiry officer held that charge No.III and IV of chargesheet dated 27.11.1997, fully established against he applicant and that the charge NO.II was proved only "to the extent that there was some quarrel/fighting" of the applicant with Shri Samuel Singh. The charges of forcible snatching of money from Shri Samuel Singh as per charge II as well the

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allegation of lending money inside a Government factory during working hours as per charge I were however, not held as established/proved by the Enquiry Officer.

(iv) That the Disciplinary Authority, on going through the inquiry report applied his mind independently to the facts of the case and, on appraisal of evidences on record, came to his own finding that even these charges which the Enquiry Officer held as not proved were also established as per evidences. He relied on the testimony of Shri Samuel Singh (PW-6) during the inquiry proceeding in arriving at his finding that the applicant was, in fact, engaged in the business of lending money unauthorisedly. He also relied on the testimony of one P.K. Mishra, PW-3, before the inquiry officer on 19.9.1998 that the applicant had snatched the money forcibly from Shri Samuel Singh on 24.10.1997. On appraisal of these evidences, the Disciplinary Authority passed a reasoned and speaking order imposing the penalty of "Removal from Service" on the applicant.

(v) On being aggrieved by the aforesaid order of removal from service, the applicant preferred an appeal before the Competent Authority namely respondent NO.2 in the O.A, who, on perusal of record, moderated the impugned order of removal from service passed by the Disciplinary Authority, to compulsory retirement vide order dated 10.5.1999.

(vi) Being aggrieved by the aforesaid orders, the applicant filed a revision petition before the President through the Ministry of Defence vide his Revision Petition dated 22/23.6.99 which too, was rejected



by the President of India vide his order dated 21.10.1999.

- (vii) That all documents relevant to enquiry proceeding were made available to the petitioner. There was no F.I.R lodged with the Police nor any Board of Enquiry conducted in the matter. Hence, there was no infringement of any principles of natural justice in the case.
- (viii) That Disciplinary authority, on perusal of the enquiry report and on appraisal of evidences on record, was competent to arrive at his own finding and would choose to disagree with the enquiry report on certain points and hence the question of any non-application of mind on his part does not arise.
- (ix) That the appellate authority, on perusal facts and evidences on recorded, moderated the punishment of removal from service to compulsory retirement clearly suggests that there was full application of mind on his part and so is the case with the Revisional Authority namely the President of India. All the three orders assailed in the O.A. are fully speaking and supported by valid reasons.

5. On the basis of the above, respondents submit that none of the points mentioned in the O.A stand the test of law. Accordingly they submit that O.A. in question is devoid of merits and should be dismissed.

6. The applicant and the respondents were also heard in person through their respective counsels, on 7.2.2006. In their oral submissions, they only

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reiterated their arguments mentioned in their written submissions.

7. We have given our anxious consideration to the submissions made by learned counsels on behalf of the applicant as well as respondents in this case and have also perused the evidences on record. Our findings, on various points raised in the O.A., are as under:-

(i) In the first place, the principles, laid down by the Apex Court, for holding of inquiry proceedings can be summarized as under:-

(a) The proceedings in question are quasi-judicial in nature. In the case of Nand Kishore Prasad Verma Vs. the State of Bihar (Reported in AIR 1978 SC 1277), the Apex Court held that "the disciplinary proceedings before a domestic Tribunal are of a quasi judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence i.e. to say such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicious cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer will be perverse".

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- (ii) In the case of Jagannath Prasad Sharma Vs. State of U.P (1962) 1 SCR 151, the Apex Court while reiterating the same principle held that "the enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the material placed before the enquiring body should be judicial".
- (iii) In the case of Canara Bank Vs. Debasis Das (2003) 4 SCC 557 of page 570, the Apex Court further held that in such proceedings "Principles of Natural Justice would be fully followed and principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the Individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.
- (iv) The third principle enunciated by the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (reported in (1999)3 SCC 679) is that "...in departmental proceedings the standard of proof is one of preponderance of probabilities". The Apex Court reiterated the same principles in State of Rajasthan Vs. B.K. Meena and others (reported in 1997(1) SLJ 86 SC).
- (v) The fourth principle enunciated by the Apex Court in the case of Vijay Kumar Nigam Vs. State of Madhya Pradesh, 1996 (11) SCC 599, is that non supply of report of preliminary enquiry conducted

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against the delinquent officer does not violate the principles of natural justice. It observed in the aforesaid judgment that, "the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee.....".

(vi) Similarly in the case of Narayan Dattatraya Ramteerthankhar Vs. State of Maharashtra and others (reported in 1997 (1) SCC 299) Apex Court reiterating its earlier view held that "...The Preliminary enquiry has nothing to do with the enquiry conducted after issue of the chargesheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full fledged enquiry was held, the preliminary enquiry had lost its importance, SLP dismissed."

(vii) Apex Court has also held that Disciplinary Authority can disagree with the findings of the inquiry officer, on perusal of the inquiry report and can arrive at his own finding or conclusion on proper appraisal and evaluation of evidences recorded in the enquiry report. In the case of State of Rajasthan Vs. M.C Saxena (1998 SCC (L&S) 875), the Apex Court held as under:-

"6.3.....The Disciplinary Authority can disagree with the findings arrived at by the enquiring official and act upon his own conclusion. The only requirement is that the Disciplinary Authority must record reasons for his disagreement with the findings of the enquiry. If the Disciplinary Authority gives reasons for disagreeing with the findings of the enquiring Officer, the Court cannot interfere

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with those findings unless it comes to the conclusion that no reasonable man can come to the said findings. The Disciplinary Authority was, therefore, well within its powers to award punishment on the basis of findings arrived at by him."

8. However, in another case, i.e. Punjab National Bank and others Versus Kunj Behari Mishra (reported in JT 1998(5) SC 548), the Court further held that "when the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, the employee adversely affected by the decision should be granted personal hearing before the disciplinary authority differs with the inquiry officer's report and records a finding of guilt, on the part of the delinquent employee and imposes punishment him."

9. Last and the most important principle enunciated by the Apex Court is that penalty imposed should not be disproportionate or shockingly disproportionate to the gravity of the offence. In the case of Shamsher Bahadur Singh Vs. State of Uttar Pradesh and others (reported in 1993 (2) SLJ 16), the Apex Court held that quantum of penalty should commensurate with the gravity of charge. In another case of B.C. Chaturvedi Vs. Union of India (reported in JT 1995(8) SC 65), the Apex Court held ".....If the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing

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the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation , it may itself, in exceptional and rare cases, impose appropriate punishment with cogent resources in support thereof".

10. The Apex Court also reiterated the applicability of the doctrine of 'proportionality of punishment vis-à-vis charges held as proved' against a delinquent employee in the case of Union of India and another Vs. G. Ganayutham (reported in JT 1997 (7) SC 572 and 1998 (2) SLJ 102 SC). The Apex Court, however in Regional Manager, U.P.S.R.T.C Etawah and others Vs. Hotilal and another (reported in 2003 (3) SCC 605) further held that Court or Tribunal, while dealing with the quantum of punishment, have to record reasons as to why they felt that punishment does not commensurate with the proved charges.

11. If we apply these principles to the facts of this case, we find that many, procedural objections raised by the applicant against conduct of inquiry as well as subsequent disciplinary proceedings do not hold water.

12. It is a settled law that an enquiry officer has to conduct his proceedings within the confines of memorandum of charges issued to the delinquent officer, and the evidences relied thereon. He cannot take into account any extraneous facts or evidences which are not relied upon either in the memorandum of

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charges or during the course of inquiry proceedings. It is not the case of the applicant that evidences relied upon in the memorandum of charges were not supplied to him. Inquiry officer is not legally in bound to supply any extraneous evidence or document which have not formed the basis of foundation of the memorandum of charges. He is also not supposed to provide any other document which is not relevant to the inquiry proceedings. There is nothing in the request of the applicant to suggest that the documents, he was seeking, were relevant to the Inquiry proceedings.

13. In other words the applicant has not fully explained in the O.A. as to what other document or documents were required by him from the Enquiry Officer and how the same were relevant to the inquiry proceedings. He has also not explained how his defence had been prejudiced by the non supply of such documents. I find from the record that all relevant evidences which were relied upon and which formed the basis of memorandum of charges were, in fact, supplied to the applicant. As regards the objection relating to non supply of preliminary inquiry report the Apex Court has clearly held in the case of Narayan Dattatraya Ramteerthakar Vs. State of Maharashtra and others (reported in 1997 (1) SCC 299) that "the preliminary enquiry has nothing to do with the enquiry conducted after the issue of chargesheet. The former action would be to find whether disciplinary enquiry

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should be initiated against the delinquent. After full fledged enquiry was held, the preliminary enquiry had lost its importance. SLP dismissed". The Apex Court reiterated the same principle in the case of Vijay Kumar Nigam Vs. State of Madhya Pradesh (1996 (11) SCC 599).

14. As regards non-supply of copy of FIR, the respondents have clearly informed the applicant that no FIR had been lodged by them with the Police and hence the question of supply of the same to the applicant did not arise. In view of the above, it is clearly established that the applicant has not been able to establish that non-supply of additional documents as requested by him had, in any way prejudiced his defence, in any manner. As held out by the Apex Court in 'State of Tamilnadu Vs. Thiru K.V Perumal and others (1996 (3) SLJ 43 SC, JT 1996 (6) SC 604), it was the duty of the applicant "to point out how each and every document (sought by him) was relevant to the charges". In the case of S.K. Singh Vs. Central Bank of India and others, the Apex Court had earlier reiterated the same principles.

15. The real test to determine whether there has been a violation of the principles of natural justice in such cases shall be whether the non-supply of documents has in any way prejudiced the case of the delinquent. As I have already discussed above, an enquiry officer has to conduct enquiry proceedings

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within the confines of Memorandum of charges issued to the delinquent employee and the evidences relied therein and hence it was not legally correct on the part of this applicant to make a request for supply of which was not relevant to the inquiry proceedings. Consequently we hold that there has not been any violation of the principles of natural justice in this regard.

16. We also find from the record that the enquiry proceedings have been conducted, as per law and procedure laid down in this behalf. The applicant was given full opportunity to submit his written defence, as well as to cross-examine the witnesses whose testimony was relied upon in framing charges against him. He was also allowed to present his defence witnesses for examination as well as cross examination before the inquiry officer during the enquiry proceedings. The fairness and impartiality of the enquiry proceedings can be gauged by this fact alone that the Enquiry Officer held only charge III & (IV) as proved, strictly on the basis of evidences recorded, and also held that charge II as partly proved i.e. to the extent that there was some quarrel/fighting with Sri Samuel Singh and the applicant and that charge (I) relating to lending of money inside the factory was, however, not proved in the inquiry proceedings.

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17. The Disciplinary Authority i.e respondent NO.3 applied his mind independently to the facts as well as evidences brought out in the enquiry report, and also appraised and evaluated the same as per his judgment and arrived at his own finding in difference to the report of enquiry officer. He accordingly held that even charge I was proved on the basis of the testimony of Shri Samuel Singh (PW-6) before the inquiry officer in regard to lending of money and even the part of charge II, which the inquiry officer held not proved, was also proved on the basis of testimony of Shri C.K. Mishra that the applicant snatched money forcibly from Shri Samuel Singh on 24.10.1997. Hence, we cannot hold either the enquiry officer or the disciplinary authority responsible for any procedural lapse or for violation of any principles of natural justice upto this stage. However on judicial scrutiny of ultimate the findings of the Disciplinary Authority, we find same lacuna and infirmity in the aforesaid finding. In order to establish that the applicant was regularly indulging in such an activity unauthorisedly inside the factory premises, the testimony of other supportive witnesses, who took loan from the applicant at different points of time and paid interest thereon should also have been brought out and established on record. Moreover, it is the allegation of the applicant, that the statement of Samuel Singh cannot be taken as an independent and acceptable evidence as he was an interested party in the case. In view of this, corroboration of the version of this witness by

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some other independent witness was also required before arriving at a positive finding that the applicant was habitually or regularly engaged in the business of lending money to employees in the factory unauthorizedly. As regards the charge of snatching money from Shri Samuel Singh by the applicant as levelled in the memorandum of charges, the Disciplinary Authority has relied on the sole testimony of Shri P.K. Mishra on 19.9.1998 before the enquiry officer. Respondents make a mention of it in para 10 (2) of their counter affidavit dated 24.9.2001. The respondents, however, have not enclosed any copy of the aforesaid testimony in support of their stand and hence the version of the respondents cannot be held as convincing. Moreover, the evidence of a single witness does not create a preponderance of probability "to establish the charge. All other witnesses namely Shri Sant Kumar, and Sri Ram Ratan, whose testimony was relied upon in framing the charges against the applicant contradicted their earlier version, and testified before the inquiry officer that they had not seen the applicant snatching the money from Shri Samuel Singh. The third witness Shri Shyam Raj Singh could not be produced before the inquiry officer by the Presenting Officer as he had already retired. As the main evidences relied upon in framing the charges against the applicant have crumbled, the charge of snatching money by the applicant from Samuel Singh cannot be held as established.

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18. Hence in the ultimate analysis we find that the findings of the enquiry officer were based on acceptable and cogent reasons and should have been accepted by the Disciplinary Authority. These findings are reproduced below:-

"Considering all the circumstances explained above and on the basis of witnesses it is found that Shri C.K. Mishra T NO.17/SM-I is guilty to the extent of fighting and quarreling in the section with Shri Samuel Singh at the time of taking payment and prosecution has failed to establish the charge of forceful money snatching by Shri C.K. Mishra from Sri Samuel Singh".

19. As regards the charge relating to obstruction in disbursement of arrears of salary to the employees, all the three prosecution witnesses namely Sri Shiv Das Banerji, Shri R.N. Tripathi and Sri Harvir Singh, have testified that the payment process was disturbed as a result of this quarrel. As regards the charge of applicant's absence from duty from 2.15 PM to 4.15 PM Enquiry Officer has relied upon the testimony of Shri Sushil Kumar (PW-5) which is also corroborated by the material fact that the applicant did not raise any objection against proportionate deduction of his wage for the period of absence from duty on the material date and time. Hence, he has held the charge as clearly established, which appears to be correct in law.

20. In nutshell, only the following part of the allegations, leveled in memorandum of charges are established on enquiry.

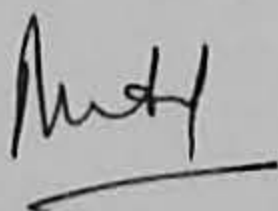
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- (i) That the applicant was involved in fighting and quarreling with Shri Samuel Singh in the section.
- (ii) and as a result thereof the work relating to disbursement of arrears of salary had to be stopped.
- (iii) and that applicant was unauthorisedly absent from duty during the period from 2.15 P.M to 4.15 P.M.

Since the respondents have already made suitable deduction from the wages of the applicant, for the absence of applicant from 2.15 PM to 4.15 PM, we feel that the interest of justice has been fully met by the aforesaid deduction and hence imposing any further punishment on him again might on this basis may appear unfair and harsh.

21. As regard to remaining two charges which are held as established, the same are not so serious enough justify the drastic punishment of removal or compulsory retirement of the applicant from service. The punishments of removal or of compulsory retirement vide orders dated 31.10.1998 and 10.5.1999 clearly are grossly disproportionate to the gravity of offence committed and hence deserve to be quashed and set aside.

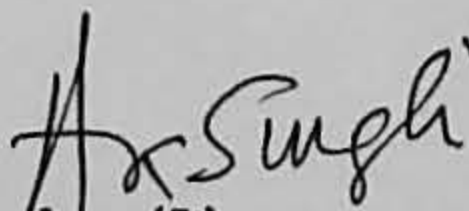
22. In view of the above, the impugned order of Disciplinary Authority dated 31.10.1998 is hereby quashed and set aside as grossly disproportionate to the gravity of charges established. As the impugned




orders of the appellate authority dated 10.5.1999 and the order of the President dated 21.10.1999, are based on the findings of the Disciplinary Authority, the same fall under their own weight and are accordingly quashed and set aside.

22. In the final analysis, we feel that interest of justice will be adequately met if the Disciplinary Authority is directed to reconsider the quantum of penalty on the applicant afresh, on the basis of only those charges which are held as established as per report of the inquiry officer as discussed above. We also feel that drastic punishments of dismissal, removal and compulsory retirement may be grossly disproportionate to the gravity of charges, held as proved. Accordingly, we feel that the interest of justice will be adequately met if we direct the Disciplinary Authority to consider imposing any other punishment on the applicant within his discretion, after a fresh evaluation of proved charges, as discussed above. We order accordingly.

23. O.A. is disposed of in the above manner.


Member (A)


Member (J)

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