

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.151 of 2003.

Allahabad, this the 28th day of March, 2006.

Hon'ble Mr. A.K.Singh, Member-A.

Vishnukant Shukla,
S/o Sri Kalka Prasad Shukla,
R/o H.No.372/9-Civil Lines,
Gwaliyar Road, Jhansi.

...Applicant.

(By Advocate : Shri Anil Kumar Srivastava)

Versus

1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. General Manager, Central Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Central Railway, Jhansi.
4. Senior Divisional Electrical Engineer (T.R.S.), Central Railway, Jhansi.
5. Additional Divisional Railway Manager (Ist), Central Railway, Jhansi.

...Respondents.

(By Advocate : Shri D.C. Saxena)

O R D E R

Being aggrieved by the decision of the Respondents to deduct an amount of Rs.93,365/- from the amount of gratuity of Rs.1,66,525/- actually payable to the applicant at the time of his retirement on 30.9.2001, O.A. No.151 of 2003, has been filed by the applicant Shri Vishnukant Shukla (herein to be referred to as applicant) on the following grounds.

[Signature]

- (i) That the applicant was appointed as a clerk by the respondents on 25.2.1966 and he retired on 30.9.2001 on attaining the age of superannuation. At the time of superannuation, he was working on the post of Office superintendent 1st in the office of respondent No.4 namely railway Divisional electrical Engineer (TRS), Central Railway, Jhansi.
- (ii) That as per Railway Rules he was entitled to receive an amount of Rs.1,66,525 by way of gratuity from the respondents. But the respondents paid to him only Rs.86,960 against the aforesaid amount due and deducted an amount of Rs.93,365, which was illegal. This amount of Rs.12,800.00 and Rs.80,565.00 which collectively totals to Rs.93,365, was deducted from his gratuity in consequence of an order of punishment dated 10.8.2001 and another dated 27.9.2001 passed by respondent No.4 and order dated 6.11.2001 passed by respondent No.5.
- (iii) That he preferred an appeal against the aforesaid decisions/orders of the authorities before the 'Controlling Authority for payment of gratuity' at Kanpur under 'payment of Gratuity Act, 1972'. But his appeal/representation was rejected by the aforesaid authority on the ground of non-applicability of payment of Gratuity Act, 1092 in his case.
- (iv) That on 5.7.2001, respondent No.4, issued a S.F. II to him which contained allegations relating to loss of "Kanton Hydraulic Puller Remote Control Comprising of Hollow run Cylinder pump pressure gauge with adopter and 2 Mtrs, High Pressure Hose" valued at

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Rs.80,565 and an "OSCILLO SCOPE Sr.No.589/484 valued at Rs.12,80,565/- from the stores, for which respondent No.4, had *prima-facie* held the applicant responsible.

(v) That he had given full and satisfactory explanation for the loss of the above mentioned goods from the stores but the respondents, without proper application of mind rejected his request and passed an order to recover an amount of Rs.80,565/- and Rs.12,800/- respectively from his gratuity to cover the full value of the above mentioned goods. Total amount to be recovered on that basis comes to Rs.93,365/-

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(vi) That charges leveled against him for the loss of the above mentioned goods are incorrect, baseless, and concocted.

(vii) That no opportunity for personal hearing was also allowed to him and hence the punishment order, so issued, is clearly illegal, unjust and against the rules and is therefore liable to be quashed.

(viii) That his appeal before respondent No.5 i.e. Additional Divisional Railway Manager (Ist), central Railway, Jhansi against the impugned order of punishment was also rejected by the Appellate Authority without any reason or justification.

(ix) That there is nothing on record to suggest that the above mentioned lost goods, were entrusted to him and that the same were in his custody.

(x) That it is submitted in the punishment order dated 10.8.2001 and dated 27.9.2001 it is clearly mentioned that amount involved in the loss of goods should be recovered from the wages of the applicant (and not from the gratuity payable to him).

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2. Respondents have contested the O.A. on the following grounds:-

- (i) Respondents concede that the applicant was entitled for payment of Rs.1,67,525/-on account of gratuity on his retirement on 30.9.2001. they also accept that an amount of Rs.80,565/- and rs.12,800/- was recovered on account of pecuniary loss caused to the Railway Administration vide punishment notice dated 10.8.2001 and dated 27.9.2001, in two separate cases, in accordance with the rules as the same could not be deducted from the wages of the applicant .
- (ii) That the applicant was working in Custody Stores of Electrical Loco-Shed, Jhansi, from the years 1989 to 1997. On the eve of his transfer from Custody Stores to Stores Department of the aforesaid Loco-shed in the year 1997, he failed to handover 'Kotan Hydraulic Puller Remote Control' comprising of hollow run cylinder pump pressure gauge to Shri Arun Kumar O.S. Grade-II. This item was available on 21.1.1993 and 22.6.1996 and also during the stock verification of custody stores during the working period of the applicant. Hence he cannot disown his responsibility for the loss of the impugned goods.
- (iii) That the applicant was also served with a show cause notice for minor penalty vide (S.F.11) No.JHS/TRS/DAR/11/2001/52 dated 5.7.2001. The applicant submitted his explanation to charge memo vide his letter dated 6.7.2001. Disciplinary Authority did not find his explanation to satisfactory and

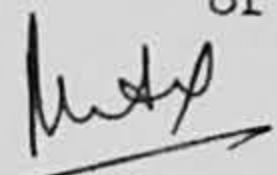
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hence imposed the punishment of recovery of Rs.12,800/- towards the cost of the aforesaid machine vide his order dated 10.8.2001. On an appeal preferred by the applicant to the appellate authority namely the Additional DRM (I), Central Railway Jhansi. But the same was rejected and to appellate authority upheld the impugned order of punishment.

(iv) That in another case, the applicant was given the charge of dead stock vide letter no.JHS/TRS/P/2 dated 24.11.1998 and he began his work with effect from 1.12.1998. During stock verification conducted in June 2000, a shortage of material amounting to Rs.80,565/- was detected. The applicant was accordingly served with another Memorandum (SF 11) for minor penalty vide memo No.JHS/TRS/DAR/2001/11/59 dated 7.8.2001 as he failed to submit a satisfactory explanation to the shortage in question as recorded in stock verification sheet. Hence, the Disciplinary Authority imposed the punishment of recovery of Rs.80,565/- on the applicant vide order dated 27.9.2001. The applicant filed an appeal against the aforesaid order which too, was rejected by Additional DRM (I), Central Railway, Jhansi the appellate authority in this case.

Thus the total amount of recovery of Rs.93,365, on account of these two cases, were recovered from the gratuity of the applicant after full opportunities were provided to him to defend his case.

(v) That on a representation from the applicant for restraining the respondents from recovery of the aforesaid amount, the Asstt. Labor



Commissioner, Kanpur rejected the representation of the applicant for want of jurisdiction under payment of Gratuity Act, 1992. The applicant and the respondents were also heard through their respective counsel on 17.2.2006 and were also allowed to file their written submissions. Both sides relied on important case laws on the subject. Respondents on their part relied on Supreme Court decision in the case of U.P. State Bridge Corporation Vs. U.P. Rajya Setu Nigam (Reported in 2004 SCC (L&S) page 637. The applicant on the other hand placed reliance on Apex Court decision in the case of Calcutta Dock Labour Board and others Vs. Smt. Sandhya Mitra and other reported in F.L.R. 1985 (50) page 322, and Bombay High Court decision in the case of V.H. Marrier Vs. O.M.G.C. Dehradun and others reported in F.L.R. 2003, (98) page 640 wherein it has been held that amount of gratuity cannot be attached against any due amount due.

On the basis of the above submissions, while respondents pray for dismissal of the OA in question, as devoid of any merits, while the applicant prays for allowing the same and for issue of a direction to grant the relief as claimed by them in the OA.

3. I have given my anxious considerations to the submissions made across the bar on behalf of applicant as well as respondents. As I can see, I have to answer the following questions involved in the case.

Answer

- (i) Whether the respondents are competent to deduct any deduction of dues from the gratuity of the applicant?
- (ii) And whether the amount of Rs. 93,365 is a lawful due permissible for deduction from the Gratuity of the applicant.

4. My answer to the above question is reproduced below. Detailed reasons for the same are also recorded hereunder:-

- (a) In the first place, I find that Rule 1010 of Indian Railway Establishment Code (Vol. I) clearly lays down in support of:-

"1010 :- the Controlling Officer may, at any time before a gratuity is paid, order the deduction there from of any dues payable by the Railway Institute, Co-operative Credit Society or stores or Hospital. Any amount so deducted shall be adjusted against these dues."

5. In addition to the above, Rule 15 of Railway Services (Pension) rules, 1993, also empowers competent authorities to recover and adjust government or Railway dues from pensionary benefit. Rule 15 reads as under:-

"Recovery and adjustment of Government or Railway dues from pensionary benefits -

- (i) It shall be the duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement.
- (ii) The Railway or government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be

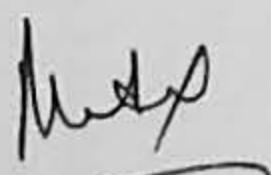
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regulated in accordance with the provisions of sub-rule (4)".

6. A three Judge Bench of the Hon'ble court, in the case of Secretary, ONGC Ltd. And another Vs. V.U. Warrier & (reported in 2005 S.C.C (L & S) 676), while placing reliance on Regulation 5, of Statutory Regulations framed by Oil and Natural Gas Commission, (which provides for recovery of dues from Gratuity of a retiring employee) held as earlier para-17:

"The above regulation leaves no room for doubt that the commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of 28.2.1990. According to commission, he could be allowed four months time to occupy the quarters which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarters, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarters. It was only after eviction proceedings were initiated that he vacated the quarters on 16.5.1991. In the circumstances, in our opinion, it cannot be said that the action of the commission was arbitrary, unlawful or unreasonable. It also cannot be said that commission had no right to withhold gratuity by deducting the amount which is found due to the commission and payable by the respondents towards penal charges for unauthorized occupation of the quarters for the period between 1.7.1990 and 15.5.1991."

Apex Court also held "it is no doubt true that the pensionary benefits, such as 'gratuity' cannot be said to be 'bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by



an employer but in the instant case, the apex Court held that ONGC was justified in recovering the penal charges for unauthorized occupation from the employee concerned." (Para 17)

7. The Apex Court, as per Para 20, of the aforesaid judgment also laid down the following principles, which equally apply to the facts of this case:-

"20 :- It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer.....

In Calcutta Insurance Corporation Ltd. Vs. Workmen, after considering earlier decisions, this court observed that long and meritorious service must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must be the continuity of meritorious service be a condition for entitling the Workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would, under the general law, have a right of action against the employee for the loss. Caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid the harmonious employment of laborers or workmen. The court proceeded to state that the misconduct may be such as to undermine the discipline in the workers - a case in which it would be extremely difficult to assess the financial loss to the employer."

8. In the case of Jarnail Singh Vs. Secretary, Ministry of Home Affairs (reported in (1993) 1), the Apex Court also examined the provisions of Central Civil Services (Pension) rules, 1972. The definition of pension included 'gratuity' also under Rule 3, Rule 9 confers on the President right to

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withhold or withdraw pension in certain circumstances. The order was passed against the delinquent employee withholding pension and the entire amount of death-cum-retirement gratuity otherwise admissible to him. The direction was given on serious irregularities found to have been committed by the employee. The appellants unsuccessfully challenged the order of the President before Central Administrative Tribunal and finally filed an appeal against the decision of the Tribunal before the Supreme Court. The Apex Court in this case held that "the power to withhold gratuity is conferred on the President under the relevant rules and hence, such action could not be said to be illegal. According to the decision of the Apex Court there could be adjustment of government dues against the amounts of death-cum-retirement gratuity payable to government servant."

Thus, in view of the above mentioned provisions of law as well as the Principles enunciated by the Hon'ble Supreme court of India in the above mentioned cases, the respondents were well within their rights to recover any dues of Central Government or Railway Administration, pending against any Railway employee. But, I may like to add, in this regard, that the dues in question should be legal and recoverable consequently from,

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the employee, in accordance with the provisions of law.

9. While examining this question, I find that dues amounting to Rs.93,365/- which were deducted from the gratuity of the applicant emanated from a disciplinary proceeding against the applicant for loss of (i)- a Kanton Hydraulic Puller Remote Control comprising of Hollow run Cylinder pump pressure gauge with adopter and 2 Mtrs High Pressure Hose" and (ii) Oscilloscope Sl. No.589/484. The value of these goods collectively was estimated at Rs.93,365/-.

10. Memorandum of charges against the applicant reads as under:-

"आरोप

- (1) *Kanton Hydraulic puller Remote Control Comprising of Hollowrun cylinder pump pressure gauge with adopter and 2 MTRS High Pressure Hose'* आपके कार्यकाल में कस्टडी स्टोर से लापता है। इस आइटम को कभी आडिट की जांच के दौरान एस० वी० शीट नम्बर जे एवं एस०ए सी वस०ए एस० वी०एव के ए०/१११/१० दिनांक 16.12.1998 को मद संख्या 7 पर दर्शायी गई है जो कि आपके कार्य के प्रति धोर लापरवाली दर्शाता है।
- (2) एस० वी० शीट नम्बर जे एवं एस०ए सी वस०ए एस० वी०एव के ए०/१११/१० दिनांक 16.12.1998 की मद संख्या 8 पर अंकित oscilloscope Sr. No. 589/484 को आपने बिना इश्यू टिकिट लिये "Tool Room" के उक्त मद को Tool Room के Issue Ticket (चालान न० 7/16) दिनांक 4.3.99 से नियमित किया गया। वह कार्य के नियमों के विपरीत है एवं आपकी कार्य के प्रति लापरवाली दर्शाता है।

हृ (रणधाना सुलग)

M.L.P

वरिं मंडल विषुत अभियन्ता
टी० आर० एस/बांसी"

11. The applicant submitted his defence reply to the abovementioned charges vide his letter dated 16.8.2001 in which he denied the charges leveled against him for the alleged lapses. He further submitted:

"मलोदय,

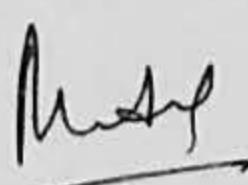
सविनय नम्र निवेदन है कि प्रस्तावित लाभन में जो सर्वेशीट में जो त्रुटियों वतार्ह गई है वो हेउ स्टोक से संबंधित है, जिसका स्टोक पोजीशन, प्रारंभ से ही बताया नहीं गया है जिसके कारण सामान का आवान प्रवान उल्लेख नहीं है। प्रार्थी विषुत अंडार अनुभाग में सन् 1987 मार्च माह में आया, और उस समय पूर्ण चार्ज नहीं दिया, ना ही हैन्डिंग ओवर व टेकेन ओवर नहीं हुआ और मेरे पूर्व कार्य करने वाले अप्टार इन्वार्ज (प्रमुख) ने भी उक्त बातों को देखते हुए नियमानुसार कार्य नहीं किया तथा व प्रार्थी के अप्टार अनुभाग नियुक्ति के पहले, जितने स्टोरेज व एक्सेस को पोजीशन नहीं दे सकते हैं। तभी जाकर उस सर्वेशीट को ठीक किया जा सकता है ऐसी दशा में श्री बी के जैन भूतपूर्व अप्टार इन्वार्ज को सर्वेशीट के जबाब देने के लिये आदेश करे, जब तक वो इस पद पर रहे तभी यह सम्भव होगा कि सर्वेशीट को सही तरीके से जबाब दिया जा सके।

कन्यवाद

आपका प्रार्थी
विषुक्तान्त शुक्ता।"

12. In his defence, the applicant has made the following submissions:

- (1) That no charge taking over or handing over was done at the time of his taking over the charge of the store.
- (2) The defects pointed out in the Audit report pertain to Head-Stock. There has been no system in place to verify the Stock position since the very inception of the Store, as a result of which

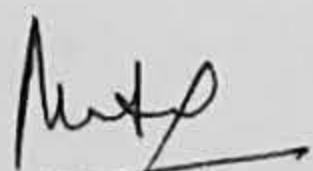


there is no entry in the records regarding the exchange of the goods.

- (3) Hence, all his predecessors, who were equally responsible for the stock of goods must also be directed to come forward and explain the position in this regard.
- (4) In view of these facts, his predecessor Shri V.K. Jain former Store-in-charge should also be directed to explain the correct position in this regard.

13. (1) I find that respondents have relied only on Audit report and fixed up responsibility on the applicant merely on the basis of a mere vicarious liability (2) A full and in-depth investigation should have been ordered into the entire episode to establish these charges against the applicant. It was necessary to identify the person who was actually responsible for the loss of the impugned goods as several hands were involved in handing and taking over the charge of the store in question since the inception of the store in question as submitted by the applicant.

14. Moreover, on receipt of explanation from the applicant, the respondents should have gone into full facts of the case and recorded their decision by passing a speaking order supported by valid reasons why they found the reply of the applicant unacceptable. I find that no opportunity for personal hearing has also been allowed to the

A handwritten signature in black ink, appearing to read 'N.M.P.' followed by a horizontal line.

applicant. It is a settled law that in administrative decisions which affect the rights of a citizen, the matter becomes quasi-judicial and it is obligatory on the part of the executive authority not only to allow to make the person affected by it to written submissions but also to grant him an oral hearing taking a final decision in the matter.

15. In the case under reference, it is clear on record that the applicant was not granted any personal hearing before passing of the impugned orders of punishment. The applicant has assailed the orders of punishment of the disciplinary as well as appellate authority on this basis, in the O.A.

16. Moreover, as I have already stated above, the applicant to the Memorandum of charge, the respondent NO.4, who is the disciplinary authority in this case, while imposing punishment of deduction of the amount of Rs.93,365.00 from the wages of the applicant, passed a clearly non-speaking order. He has not even explained or discussed the reasons for rejecting the explanation of the applicant in reply to the charge memo. So is the case with the order passed by the appellate authority.

17. Impugned order of disciplinary authority reads as under:-

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"संख्या जे एव एस/टी आर यस/डी ए आर/11/2001/52 नियमित्यान व
रि० म० वि० अधिकृता टी आर एस ज्ञांसी

दिनांक 10.8.2001

सेवा में

श्री वी के शुक्ला
05-1/स्टोर अनुच्छेद
वि० लो० शेड, ज्ञांसी ।
द्वारा वरि० जनु० अधिकृता/ स्टोर

आपके विस्तृद दिनांक 05.07.2001 के आरोप पत्र ज्ञापन संख्या जे एव एस/टी आर एस/डी० ए० आर/11/2001/52 में लगाये गये आरोप के अनुच्छेद (अनुच्छेदो) / अवचार या कदाचार का (के) लाभन लगाया गया है। उनके लिये मैं आपको, संलग्न ज्ञापन में दिये गये कारणों से दोषी ठहराता हूँ।

2. आरोप पत्र ज्ञापना के उत्तर में प्राप्त आपके दिनांक 10.7.2001 के अन्यादेन पर व्यानपूर्वक विचार करने के बाद मैं आपके विस्तृद लगाये गये अनुच्छेद अनुच्छेदो/अवचार या कदाचार के लाभन लाभनों अर्थात् आरोप पत्र में दिये गये कारणों के लिये मैं आपको दोषी ठहराता हूँ।
3. अतः मैं लापरवाली या आदेशों का उत्तर्यन करने के कारण सरकार को हुई रु 12,800 (बारह हजार आठ सौ) रु की आधिक लानि को आपके वेतन से पूर्ण वसूली करने की शक्ति आप पर अधिरोपित करता हूँ।
3. कृपया नोट करें कि वह शक्ति आपके सेना रजिस्टर में दर्ज की जायेगी और 12800 रु आपको वेतन से वसूली की जायेगी।"

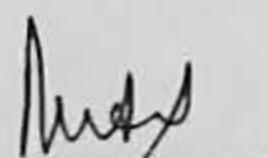
In the same manner, the second order of punishment communicated to the applicant vide letter of even No. dated 27.9.2001 reads as under:-

"सेवा में

श्री वी के शुक्ला
ओ एस -1, स्टोर सेक्सन
वि० लो० शेड, ज्ञांसी
(द्वारा ए० आर० - एवस०/स्टोर)

आपके विस्तृद दिनांक 7.8.2001 के आरोप पत्र ज्ञापन संख्या जे एव एस/टी आर एस/ डी. ए. आर/2001/11/59 में लगाये गये आरोप के अनुच्छेदो/अवचार या कदाचार का (के) लाभन लगाया गया है, उनके लिये, मैं आपको, संलग्न ज्ञापन में दिये गये कारणों से दोषी ठहराता हूँ।

2. आरोप पत्र ज्ञापन के उत्तर में प्राप्त आपके दिनांक 16.8.2001 के अन्यादेन पर व्यानपूर्वक विचार करने के बाद मैं आपके विस्तृद लगाये गये अनुच्छेद (अनुच्छेद) / अवचार या कदाचार के लाभन (लाभनों) अर्थात् आरोप पत्र में दिये गये कारणों के लिये आपको दोषी ठहराता हूँ।
3. अतः मैं लापरवाली या आदेशों का उत्तर्यन करने के कारण सरकार को हुई रु 80565 अस्ती हजार पाँच सौ पैसठ रु का आधिक लानि की आपके वेतन से पूर्ण वसूली करने की शक्ति आप पर अधिरोपित करता हूँ।

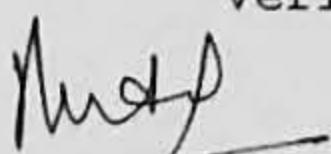


4. कृपया नोट करें कि यह शस्ति आपके सेवा में रजिस्टर में दर्ज की जायेगी और अस्ती हजार पाँच सौ पैसठ रु आपके वेतन से वसूली की जायेगी।"

From the above, it can be seen that both the orders of punishment are clearly non-speaking in as much as no reason or reasons, whatsoever, have been recorded for rejection of the explanation of the applicant. The orders of punishment have been passed in a very casual manner and in violation of the principles of natural justice. It has been held by the Hon'ble Supreme Court in S.N. Mukherje's case that a non-speaking order is not an order in the eye of law"

18. It is, therefore, clearly established on record that the entire proceedings have been conducted in gross violation of principles of natural justice. Hence the impugned orders of punishment is not at all sustainable in law and so is the case with the order of appellate authority which is equally non speaking. Since the edifice of the order passed by the appellate authority rests on the orders passed by the disciplinary authority, it also crumbles down like a rope of quick sands.

19. Hence the impugned orders directing punishment of recovery of amount of Rs.93,365 from the applicant have been passed without proper verification of facts on the basis of an in depth

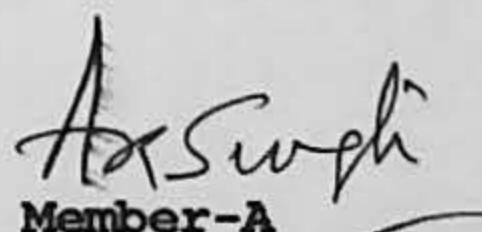


investigation, and also in denial of the principles of natural justice and as such are not unsustainable in law. Accordingly, the same are quashed. The respondents are accordingly liable to refund the amount of Rs.93,365/- deducted from the gratuity of the applicant in view of above. They will also be liable to pay an interest of 12% per annum on the amount illegally deducted from the gratuity of the applicant.

20. On the basis of the above, the following direction is issued to respondents:

- (i) Respondents will refund the amount of Rs.93,365 deducted from the gratuity of the applicant.
- (ii) They will also pay interest at the rate of 12% per annum on the amount so refunded.
- (iii) The entire exercise should be completed within three months from the date of receipt of this order.

21. The O.A. is, accordingly, allowed. Parties will bear their own costs.


Arvind Singh
Member-A

Manish/-