

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD

Dated: This the 21st day of October 2010

Original Application No. 55 of 2006

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Deo Narayan, S/o Sri Ram Dular Yadav, R/o Village – Badalpur, Post –
Rajepur Viz. Jalalpur, Distt: Jaunpur.

..... *Applicant*

By Adv: Sri A. Tripathi,

V E R S U S

1. Union of India through it's Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Superintendent of Post Offices, Jaunpur Division, Jaunpur.
4. Sub-Divisional Inspector of Post Offices, Karakat Distt: Jaunpur.

..... *Respondents*

By Adv: Sri S. Srivastava.

O R D E R

Delivered by Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicant was appointed as EDDA/EDMC in the Branch Office Rajepur, Jaunpur in 1982 and on the basis of some alleged fraudulent payment of Money orders, the applicant was put off duty. The bogus order of Put off duty was revoked at a later point of time. The bogus money orders were issued from the Head Post Office, Jaunpur in favour

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of 12 persons in the Village Lalapur, diwanmau, Mahimapur Post Office, Jalapur. These Money orders reflected "District Social Welfare Officer, Jaunpur" as the remitter of the money orders. The money orders were towards scholarship for some, widow pension for some other and towards some other type of welfare measure financial help from the State. The applicant worked only for a day as EDDA at the said Jalapur on which day he was directed by the Sub Post Master, Jalapur to receive the money orders and to distribute the payment to the respective payees. Accordingly, these money orders were delivered to the respective payees on 17.12.1999.

2. The applicant was issued with a charge sheet on 06.09.2000 by the Sub Divisional Inspector (P) Kerakat Sub Division of Jaunpur. The charges as contained in the charge sheet are as under:-

धारा - 1

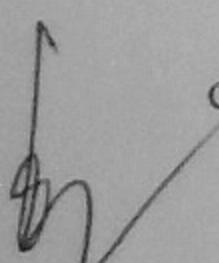
उक्त श्री देव नारायन यादव ई डी ई/ई डी एम सी (कार्य पृथक) दिनांक 25-2-99 को कार्यवाहक ग्राम डाकिया जलालपुर के पद पर कार्य करते हुये प्रधान डाक घर जौनपुर के निम्न धनादेश सं 4263/90 दिनांक 17/2/99 कीमती 1500 प्रापक श्री रामनारायन पुत्र श्री सुन्दर यादव, 4263/90 दिनांक 17-2-99 कीमती 1500 प्रापक श्रीमती हुबराजी देवी पत्नी श्री रामनारायन, 4263/91 दिनांक 17/2/99 कीमती 1500 प्रापक श्रीमती इन्द्रावती देवी पत्नी श्री 4263/93 दिनांक 17.2.99 कीमती 1500 प्रापक श्रीमती सुशीला जयप्रकाश तथा 4263/93 दिनांक 17.2.99 कीमती 1500 प्रापक श्रीमती सुशीला देवी पत्नी श्री जय प्रकाश सभी ग्राम बिन मज जलालपुर जौनपुर के निवासी हैं। का धनादेश मुगतान हेतु डिलवरी में उप डाकघर जलालपुर से प्राप्त प्राप्त किया, बिना वास्तविकता का पता लगाये बिना जो पेन्शन के भागीदार नहीं थे, मुगतान करते हुये डाक नियम पुस्तक खण्ड VI भाग III के नियम 127 (1) का स्पष्ट उल्लंघन करते हुये कर्तव्य निष्ठा परायणता का परियंत्र न देते हुये अतिविभागीय अभिकर्ता (आचरण) नियमावली 1964 के नियम 17 का स्पष्ट

उल्लंघन किया

धारा - 2

उक्त श्री देव नारायण यादव ई डी डी ए/ई डी एम सी राजेपुर (कार्य पृथक) दिनांक 25-2-99 को कार्यवाहक ग्राम डाकिया जलालपुर के पद पर कार्य करते हुये निम्न धनादेशों के मुगतान के समय गवाही किया धनादेश सं 4263/92 दिनांक 17/2/99 कीमती 1500 रु प्रापक श्री जय प्रकाश पुत्र श्री रामनारायण ग्राम - बीवन मज जलालपुर जौनपुर 4263/94 दिनांक 17-2-99 कीमती 1500 प्रापक श्री महादेव पुत्र श्री सुख नंदन ग्राम - लालपुर जलालपुर जौनपुर 4263/104 दिनांक 17/2/99 कीमती 1500 रुपये प्रापक श्रीमती रामावती देवी पत्नी श्री छविनाथ ग्राम - महिमापुर जलालपुर जौनपुर धनादेश सं 4263/106 दिनांक 17/2/99 कीमती 1500 रु प्रापक श्रीमती जडावती देवी पत्नी श्री बिरजू ग्राम - महिमापुर जलालपुर जौनपुर 4263/105 दिनांक 17/2/99 कीमती 1500 स्त्री प्रापक श्री अतिबल पुत्र श्री रामदुलार ग्राम महिमापुर जलालपुर जौनपुर 4263/102 दिनांक 17/2/99 कीमती 1500 रु प्रापक श्रीमती कमलावती देवी पत्नी श्री शीतला प्रसाद ग्राम - महिमापुर जलालपुर जौनपुर 4263/103 दिनांक 17/2/99 कीमती 1500 रु प्रापक श्रीमती जीतना देवी पत्नी श्री अतिबल ग्राम महिमापुर जलालपुर जौनपुर 4263/75 दिनांक 17/2/99 कीमती 1500 स्त्री प्रापक श्रीमती रामा देवी पत्नी श्री श्यामसुन्दर ग्राम - लालपुर जलालपुर जौनपुर को किया गया । इस प्रकार उक्त श्री देवनारायण यादव ने गलत गवाही करके धनादेशों का मुगतान कराकर विभाग को क्षति पहुँचाते हुये कर्तव्य निष्ठा परायणता का निर्वहन न करके अतिरि विभागीय अभिकर्ता (आचरण) नियमावली 1964 के नियम 17 का स्पष्ट उल्लंघन किया ।

3. The applicant having denied the charges, inquiry commenced and charge No. 1 was held to be not proved and charge No. 2, proved. The Disciplinary Authority disagreed with the inquiry report and came to hold that both the charges stood proved and imposed a penalty of removal from service (Annexure A-1 dated 31.01.2003 refers). Thus the applicant was removed from service. The applicant was not issued with any show cause notice over the disagreement part of the inquiry report. According



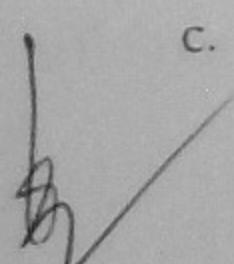
to the applicant, the Disciplinary Authority has also held that there is no loss of money to the department.

4. The applicant submitted an appeal dated 24.04.2003, but the same was rejected by the Appellate Authority (Annexure A-2 dated 22.08.2003 refers).

5. Undaunted by the rejection order of the Appellate Authority the applicant filed Revision Petition to the Revisional Authority (Respondent No. 2) on 05.01.2004 and 14.07.2005, but the Revisional Authority also rejected the Revision Petition (Annexure A-3 order dated 14.09.2005 refers).

6. It is against the aforesaid penalty order, appellate order and revision order that the applicant has moved this OA, *inter alia*, on the following grounds:-

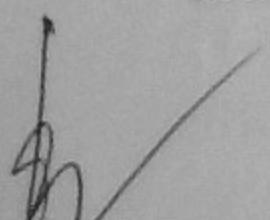
- a. No show cause notice was issued on the point of disagreement. The applicant came to know about the disagreement only through the penalty orders. This lacuna of non issue of show cause notice vitiates the inquiry proceedings as held by the Apex Court ***in Punjab National Bank Vs. Kunj Bihari Mishra : 1998 (5) SC 548*** and subsequent judgments.
- b. The Appellate Authority's order suffers from the vice of non application of mind, non speaking order and is also arbitrary.
- c. Equally the Revisional Order suffers from illegality and arbitrariness.

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7. Respondents have contested the OA. According to them the applicant has disbursed the money-orders to his own kith and kin and he has been a party to the making up the forged money orders (Para 8 and 9 to the counter affidavit refer). None of the payee of the money orders in question was available at Jalalpur Post Office/Jaunpur for receiving the payments; yet the applicant identified their signature and thus caused a loss to the Department. The proceedings were conducted in accordance with the relevant rules applicable to the applicant and as such they are fully valid and legal. The Disciplinary Authority passed the order of removal after considering all aspects of the case. None of the grounds raised vide para 5 of the OA is legal and tenable.

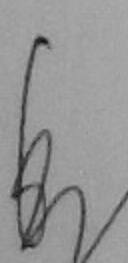
8. The applicant filed his rejoinder affidavit rebutting all the contentions raised in the counter affidavit and reiterated his contentions as in the OA. He has also stated that apart from the illegality in the impugned orders, the applicant has been meted with hostile discrimination in as much as none of the others involved in the issue of bogus money order was given the grave punishment as the one awarded to the applicant.

9. Supplementary counter affidavit was filed by the respondents to the rejoinder filed by the applicant, the contentions of which (against the applicant) were rebutted by the applicant in the supplementary rejoinder affidavit.

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10. Counsel for the applicant submitted that this is a classic example of complete violation of principle of natural justice. Though the exact provisions of CCS (CC&A) Rules, 1968 do not apply to the GDS employees, the spirit thereof shall be kept in view while conducting the inquiry. For example without putting to notice, the point of disagreement cannot be taken for granted. The Disciplinary Authority committed this grave legal error in not informing the applicant about the disagreement part of the inquiry report and came to the conclusion that both the charges are proved. This finding is undoubtedly behind the back of the applicant which cannot in any way be cured.

11. Counsel for the applicant further submitted that the sequence of events as narrated by the respondents itself would show as to how the applicant has been made a victim of circumstances. For example the applicant was not a regular EDDA in the place Jalalpur and he was sent for a day to perform the duties of EDDA and was directed by the Post Master to deliver the money orders in question. The counsel further argued that the inquiry report itself would go to show that the finding was to the extent that none of the payees of the money orders was in any way related to the applicant. As regards the contention that the applicant had his part of the role in the issue of bogus money order from Jaunpur, the counsel contended that there is no possibility at all for the applicant to be a part in that illegal act at Jaunpur as the applicant was not employed in the said Post Office as he was an EDDA at a place called Reja Pur Branch



Post Office which of course falls in the district Jaunpur. In any event this kind of allegation cannot be permitted to be raised in the counter by the respondents as the same was not a part of the charge. Again the counsel argued that the Disciplinary Authority has rightly come to one conclusion that no loss has taken place to the Government, though in the counter it has been so painted as if a loss of Rs. 12,000/- occurred to the Department. Thus, though the second charge relates to loss to the department which is stated to have been proved by the inquiry officer, as per the disciplinary authority, the amount has been refunded which means that there is no loss to the department.

12. The counsel further argued that in so far as the first charge, which is not proved by the Inquiry Officer, there is disagreement, which is not made known to the applicant prior to passing of the penalty order and thus, charge I goes. In so far as second charge is concerned, the main thrust being that the money orders having not disbursed to the correct persons, there was a loss to the department, and the finding of the IO was to that effect, whereas the same is diluted when the disciplinary authority held that the money was already refunded meaning thereby, there is no loss. This refund is stated to be prior to initiation of disciplinary proceedings.

13. Counsel to the respondents argued that the departmental proceedings have taken place strictly in accordance with the rules governing the services of GDS and as such there being no legal lacuna in

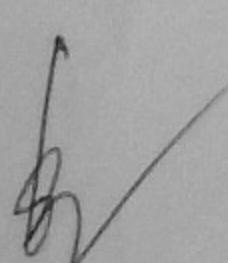
the decision making process, permissibility of judicial review is the least in this case.

14. Arguments were heard and the documents were perused. At the very outset, we have to hold that the contention of the counsel for the applicant that because the other persons alleged to have been involved in the fraudulent issue of money orders have not been punished with such a sever punishment, and as such, the applicant cannot be penalized in the fashion as has been done by the department, has to be summarily rejected. We are not having the full facts of the other cases and the gravity of each misconduct has to be weighed independent of other cases.

15. In so far as the other arguments are concerned, the following are the viatal points and hence are duly considered.

a. Admittedly show cause notice was issued in respect of the point of disagreement. In reply to para 4.15 and 4.19 wherein the applicant has raised this crucial legal point, though the respondents have made a bald denial of the contention, they have never indicated that a show cause notice was issued by them. The Revisional authority has fully appreciated the legal issue that there should be the show cause in such case (see para 'e' below).

b. The applicant was deputed to Jalapur only for very short period. Thus he had not performed any duty either at Jalapur or Jaunpur Head Post Office for a considerable time. There has been no denial to the averment of the applicant that the Branch Post Master had directed the applicant to disburse the money order (Para 4.4 to the OA and corresponding reply at para 21 of the



counter refer). Instead a new contention has been raised that the applicant should have asked the payees if they have moved any application before the District Social Welfare Officer, Jaunpur for making the payment either for Scholarship or for Widow Pension or any other type of financial assistance. This contention is to say the least is absurd. No Postman can be permitted to ask a question of this nature. He may ask about the identity of payee and on being satisfied either by way of the popularity of the payee or identification by known persons that the payee is the proper person, the postman/EDDA shall have to disburse the money. Though the respondents stated that the money was disbursed without genuine knowledge of the receiving persons vide last sentence of para 21 of the Disciplinary Authority there has been no loss to the department (the amount has been refunded).

c. The Inquiry Officer has rendered a clear finding that none of the payees was related to the applicant.

d. The Appellate Authority has rejected the appeal inter alia on the ground that the payees are in the age group of 20 to 30 and within the same house amongst husband, wife and other related family members. Perhaps the Appellate Authority may be swayed by the fact that the some of the money orders relating to the pension and as such, the payee must be sufficiently aged. That is not the case. The amount pertains to scholarships, widow pension and other financial assistance and hence, age is not a factor to reckon with.

e. The Revisional Authority entirely agrees with the important legal requirement that the Disciplinary Authority ought to have issued show cause notice to the applicant. However, he has stated that such is not the requirement in respect of that charge about which the finding of the Inquiry Officer is "Proved". This legal lacuna of non issue of show cause notice though referred to and

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accepted by the Revisional Authority has not been addressed further as to the relief claimed by the applicant on account of this legal lacuna. Undoubtedly such a legal lacuna is incurable as it has deprived the applicant of his valuable right to rebut the finding. The decision by the Apex Court in ***Kunj Bihar Mishra*** relied upon by the applicant squarely applies in this case. In addition, as recently as on 7th September, 2010, in the ***Punjab National Bank & ors vs K.K. Verma***, the Apex Court has held as under:-

7. Action on the Inquiry Report:

(1)

(2) *The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*

(3)

(4)

22. Regulation 7 thus, speaks of four kinds of orders to be passed by the Disciplinary Authority after receiving the report of the inquiry. (1) Order once again remitting the case to the inquiry officer, (2) Order recording disagreement with the inquiry officer, (3) Order imposing a penalty and (4) an order exonerating the employee. Regulation 7 (2) makes it clear that where the disciplinary authority disagrees with the findings of the inquiry officer on any article of charge, it must record its reasons for such disagreement.....

23. Regulation 7 (2) requires the Disciplinary Authority to record its reasons for disagreement wherever it disagrees with the findings of the inquiry officer. Regulation 9 provides for communicating to the employee concerned, the orders passed under Regulation 7, apart from providing him with a copy of the inquiry report. These regulations will have to be read as laid down only with a view to provide an opportunity to the employee to represent against the findings to the extent they are adverse to him. Then only they will become meaningful. The service regulations of the appellant are concerning the discipline and conduct in a nationalized bank which is an instrumentality of the state. The instrumentalities of the state have always been expected to act in fairness, and following the principles of natural justice has always been

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considered as a minimum expectation in that behalf. The above regulations will, therefore, have to be read as containing the requirement to furnish a copy of the inquiry report and the order of the Disciplinary Authority recording its disagreement therewith to the employee prior to any decision on the penalty being arrived at. That will secure to the delinquent employee an opportunity to make his submissions on the adverse findings and to prove his innocence.

24. The interpretation of regulation 7 (2) of the appellant bank is no longer *res integra*. In *Punjab National Bank v. Kunj Behari Misra* [1998 (7) SCC 84] this very question came up before this Court. Two Assistant Managers at the Lucknow Branch of the appellant bank viz. Kunj Behari Misra and S.P. Goel were charged for misconduct, when shortage of Rs. 1 lakh was detected in the branch on 10.11.1981. The inquiry officer held Mr. Misra guilty of only one out of the six charges viz. that he had not signed the concerned register at the relevant time. He exonerated Mr. Goel of all the charges. The disciplinary authority reversed the findings of the inquiry officer and held that the charges were proved. By his orders dated 12.12.83 and 15.12.83 he directed proportionate recovery of Rs. 1 lakh from both the officers.

25. In that case also the appellant bank canvassed the same submission viz. that since the inquiry was during the period prior to the judgment in *Mohd. Ramzan Khan* (*supra*) the appellant was not required to give the inquiry report or the report of the disciplinary authority differing with the inquiry officer. The very regulation 7 (2) came up for consideration. A bench of three judges of this Court held that the requirement to give these reports to the employee will have to be read into regulation 7 (2). The Court referred to and relied upon an earlier judgment of the constitution bench in *State of Assam vs. Vimal Kumar Pandit* [AIR 1963 SC 1612] and para 26 of *Karunakar* (*supra*) and specifically ruled in para 19 as follows:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

26. Apart from this, as seen from the legal position enunciated in para 33 of Karunakar (*supra*), earlier extracted, it is clear that where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employees, it would act as an exception. The direction that the judgment in Mohd. Ramzan Khan will not apply retrospectively, will not cover such service regulations and the concerned employers will have to continue to give a copy of the inquiry report to the delinquent employees, as provided in their service regulations.

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28. This being the position, in the instant case it is clear that the appellant had not followed their own regulations which clearly require the disciplinary authority to record the reasons where it differed from the inquiry officer. The regulations also clearly lay down that a copy of the inquiry report and the order of disagreement are to be provided to the employee. **In the present case, we are concerned with the stage where the Disciplinary Authority differs with the inquiry officer on his findings. This is prior to arriving at the guilt of the employee. His right to receive the report and defend at that stage before the guilt is established is very much recognized as seen above.** Counsel for the appellant submitted that Constitution Bench has held in *Union of India & Anr. v. Tulsiram Patel* [1985 (3) SCC 398] that after the 42nd Amendment, the employees are not entitled in law to be heard in the matter of penalty. In Karunakar's case (*supra*), another Constitution Bench has referred to Tulsiram Patel in paragraph 4 and then explained the legal position in this behalf in paragraph 7 as follows:-

"While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment."

Thus, the right to represent against the findings in the inquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. **The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable.**

29.

30. It was then submitted that non supply of inquiry report is inconsequential if the employee does not show as to how he is prejudiced thereby. *Karunakar (supra)*, *S.K. Singh v. Central Bank of India and Ors.* [1996 (6) SCC 415] and *Haryana Financial Corporation and Anr. v. Kailash Chandra Abuja* [2008 (9) SCC 31] were relied upon in support. There cannot be any grievance with respect to the proposition. In the present case however, we are concerned with a situation where the finding of the inquiry officer on a charge has been reversed by the Disciplinary Authority, which was not the case in any of the three cases. Besides, by not giving the inquiry report and the adverse order of the disciplinary authority, the respondent was denied the opportunity to represent before the finding of guilt was arrived at and thereby he was certainly prejudiced. (Emphasis supplied)

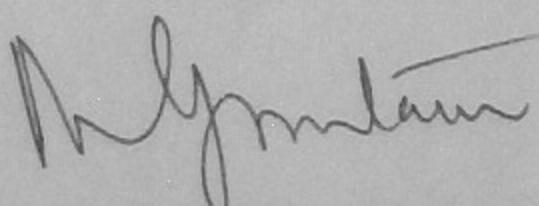
16. The above latest decision goes to show that whenever the disciplinary authority disagrees with the finding of the Inquiry Authority, the point of disagreement should be sent to the charged officer so that he could make an effective representation. Though in the above case, there has been certain regulations mandating such and in so far as GDS Rules are concerned, there is no such specific regulation, the fact that the spirit behind the provisions of CCS (CC&A) Rules is to be followed in the case of GDS, principles of natural justice being spine of any proceedings, the same holds good in the case of GDS service as well. As such, non issue of show cause notice at the time when the disciplinary authority disagrees with the inquiry officer is a serious legal lacuna which is incurable.

17. From the above discussion of facts and law, it is clear that the applicant was sent only for a day to a particular Post Office and was asked to disburse the money orders, and the applicant has bona-fide acted without any knowledge of the fact that the money orders are bogus. The

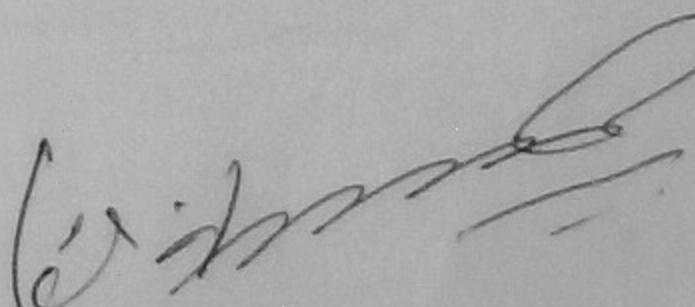
fact of the payees not being the relatives of the applicant having been rendered as a positive finding by the Inquiry Report coupled with the fact that the money was refunded to the department as stated by the Disciplinary Authority in his order, the contention of the applicant's counsel that the applicant has been made a victim of circumstances has full merit. The defect of non issue of show cause notice is incurable and the same vitiates that entire inquiry. The applicant has made out a cast iron case warranting the quashing and setting aside of the impugned orders dated 31.01.2003, 22.08.2003 and 14.09.2005. We accordingly quash and set aside the aforesaid impugned orders (Annexure A-1 to A-3).

18. The applicant shall be reinstated in the same office or in any other nearby place where vacancy of EDDA (with comparable TRCA as was drawn by the applicant) is available. He is entitled to the consequential benefits of payment of arrears of TRCA from the date of removal till the date of reinstatement. The period of absence shall be treated as qualifying service for the purposes such as seniority to promotion/appointment to Group 'D' etc.

19. The OA thus fully succeeds. This order shall be complied with a period of two months in so far as reinstatement of the applicant is concerned and within six months thereafter, in so far as the payment of arrears and other consequential benefits as mentioned above are concerned. Costs easy.



(Mrs. Manjulika Gautam)
Member-A



(Dr. K.B.S. Rajan)
Member-J