

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 13th DAY OF July, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Original Application No.327 of 2008
(U/s 19, Administrative Tribunal Act, 1985)

Dr. Roshan Lal Arya Son of Sri R.S. Arya Resident of G - 1039
Awas Vikas No. 1, Kalyanpur, Kanpur (UP) - 208017.

..... Applicant

By Advocate: Shri K.P. Singh

Versus

1. The Union of India, through Secretary (Agriculture),
Krisi Bhawna, New Delhi.
2. The President, Indian Council of Agricultural Research,
Krishi Bhawan, Dr. Rajendra Prasad Road New Delhi.
3. The Director General ICAR Krishi Bhawan New Delhi.
4. Dr. Masood Ali, Director, Indian Institute of Pulse
Research, Kanpur.
5. Indian Councilor of Agricultural Research (ICAR)
Through Secretary ICAR Krishi Bhyawan, New Delhi.

..... Respondents

By Advocates: Shri V. K. Singh
Shri N.P. Singh

ORDER

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

1. This is a case of disciplinary proceedings. The applicant, on a grave charge, was proceeded against and the inquiry officer has rendered his finding that there being no clinching evidence, the charges were not held proved. However, disagreeing with the finding of the inquiry officer, the disciplinary authority had held the charges having been found proved. Opportunity has been given to the applicant to file representation against the inquiry report with the reasons for disagreement by the disciplinary authority and ultimately the penalty of compulsory retirement was imposed. The applicant has come before us challenging the said penalty order.

2. Before plunging into the facts of the case, a look at the legal position relating to disciplinary proceedings would be relevant as in this case, the respondents have arrived at the conclusion that the charges remain proved not on the basis of 'clinching evidence' but on preponderance of probability. If the extent of evidences is sufficient to come to that conclusion on the

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basis of preponderance of probability, the applicant would have no case.

3. A few decisions of the Apex Court as to how to conduct the departmental inquiry and what is the standard of proof required for this purpose would be very much useful, rather essential in deciding this O.A. The same are as under:-

(a) *Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties.*

Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570

(b) *A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt.*

Union of India v. Sardar Bahadur, (1972) 4 SCC 618

(c) *The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.*

Moni Shankar v. Union of India, (2008) 3 SCC 484,

4. Now a dunk into the facts of the case. The very article of charge succinctly brings out the facts of the case, the statement of imputation elaborates the same, and hence, these are reproduced as hereunder:-

"Article of Charge-I

Dr. R.L. Arya while, functioning as Sr. Scientist, I.I.P.R. Kanpur (now Sr. Scientist, CTRI, Rajamudry) took Ms. Siddhi Datri Gupta, Apprenticeship Trainee, IIPR on 28.02.2003 out of the Institute in Institute's Motorcycle on the pretext of going to CSAU&T, Kanpur for attending a National Symposium. Instead of going to the University, he took her to a Mustard field in a nearby village Gajner & attempted to outrage her modesty.

His act of sexual harassment of women at work place is unbecoming of a Govt. servant. By his above misconduct, Dr. Arya has violated Rule 3C read with Rule 3(1)9ii) of CCS (Conduct) Rules, 1964 as made applicable to ICAR employees.

Statement of Imputation of Misconduct of Dr. R.L. Arya, Sr. Scientist, IIPR (Now Sr. Scientist, CTRI, Rajamundry)

Mr. Siddhi Datri Gupta was appointed as Apprentice Trainee at IIPR Kanpur w.e.f. 3.1.2003. She was posted with Dr. A. Ganeshmurthy, Head Division of Crop Production & H.O.D., IIPR for performing secretariat work.

2. Ms. Gupta used to sit initially in the room of Dr. Ganeshmurthy. She used to take lunch with Ms. Vinamrata Jain, SRF (NATP) attached with Dr. R.L. Arya, Sr. Scientist (Agr.), Division of Crop Production. Due to her proximity with Ms. Jain and the presence of a Heater in her room she started sitting in the room of Dr. Arya. After couple of days Dr. Arya also offered her to continue to sit in his room. On the orders of Dr. A. Ganeshmurthy she did the typing work given by the Scientists in the room of Dr. Arya/Dr. Ghanshyam Singh.

[Signature]

3. A National Symposium was organized by Division of Agronomy, CSAU&T, Kanpur at their Campus on 26 - 28 February, 2003. The Scientists of the IIPR participated in the said symposium. On 27.2.2003, Dr. Arya asked Ms. Gupta to accompany him to the University. She had declined to visit as she had not been assigned any work relating to the symposium.

4. On 28.03.2003 Dr. Arya insisted Ms. Gupta to go to the University with him. She refused and remained busy in doing the work (given by the Scientists) in the computer. Dr. Arya again forcefully asked her to switch off the computer and urged to proceed immediately to the University. Ms. Gupta (did not doubt the intention of Dr. Arya, an officer of the Institute) bonafidely agreed to visit the University.

5. On the pretext of going to CSAU&T, Dr. Arya took her in the Institute's Motorcycle (No.UP78Q 8435) at about 10.30 AM. He initially took her to a village (via Kalpi Road) where he had done research in Gram and told her about the research. Feeling that they were getting late, Ms. Gupta (at about 11.10 AM) enquired about the time required to reach the University Dr. Arya told that they would reach the University in 10 minutets.

6. Dr. Arya then took her further to a village and told that the name of the village was Gajner. Ms. Gupta saw the name 'Gajner' written on the Board. He took her to a research filed where Mustard & Gram Crop were grown in two lines. Ms. Gupta was told about the research done by him. Then they started walking though the Mustard Crop filed.

7. Dr. Arya was walking in the front followed by Ms. Gupta. As Ms. Gupta was not feeling comfortable in walking through the filed. Dr. Arya asked her to walk in front of him. When she did not come in front, Dr. Arya pulled her hand towards him and desired for a kiss from her. When the girl tried to remove his hand, he forcibly made her to sit on the ground. The girl threatened him to leave her otherwise she would make noise. But Dr. Arya did not

relent and continued to make advances towards her. She stared crying and covered her face with her hands. Dr. Arya shamelessly removed her chunni and kissed on her hand. When Ms. Gupta started screaming vociferously, Dr. Arya released her from his clutches.

8. Ms. Gupta exhorted him if he had committed the same with her daughter also. Dr. Arya asked her to forgive him. The girl remained seated on the filed in a traumatic state. Dr. Arya then asked her if she would remain there crying or would return. As Ms. Gupta was alone in the crop filed having no acquaintances, she had to accompany him. On the way, Dr. Arya repeatedly tendered apology to her. She told him to go straight as she did not want to talk him.

9. Dr. Arya left her at Crossing No.9. He asked her to go the office and gave her a ten rupee note and keyes of his room. He persuaded her not to speak about the incident and advised to tell in the office that she had gone to CSAUA&T. Ms. Gupta took a tampo and reached IIPR at about 1300 hrs.

10. Ms. Siddhi Datri Gupta fist reported the matter to Dr. Nigam at 2.00 P.M. later she met Dr. A. Ganeshmurthy and gave a written complaint dated 28.02.2003 to Director. IIPR alleging her sexual harassment by Dr. R.L. Arya.

11. To sort out the matter and save himself from embarrassment. Dr. Arya on 28.02.2003 itself went out of the Institute in the Motorcycle at about (16.55 hrs.) and met Ms. Vinamrata Jain, SRF at her hostel at about 1900 hrs. he requested Ms. Jain to ascertain from Ms. Gupta about any complaint made by the latter against him. On the following day (i.e. 1.3.2003) he again enquired about Ms. Gupta from Ms. Jain. Ms. Gupta had not come to the office on 1.3.2003. Dr. Arya, in this anxiety, sent Ms. Jain and Sh. N.S. Rana, a skilled worker to Ms. Gupta's residence to enquire about reasons for her absence. The parents of Ms. Gupta told them that Siddhi not come to office. Ms. Jain and Shri Rana then came back to the office.

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12. The facts/circumstances show that Dr. Arya took the girl out of the Institute and attempted to sexually harass and outrage her modesty. His act of sexual harassment of women at work place is unbecoming of a Govt. servant.

13. By his above misconduct, Dr. Arya has violated Rule 3C read with Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964, as made applicable to ICAR employees.

5. The inquiry officer had rendered his findings stating there being no clinching evidence, the charge has not been proved. It is against this finding that the Disciplinary authority has given his note of disagreements and reasons for disagreement have been elaborately furnished vide Annexure A-5.

6. The applicant sought certain clarification and did not give any representation to meet the tentative finding arrived at by the disciplinary authority. However, on the basis of preponderance of probability, the charge was held to be proved and the penalty order of compulsory retirement imposed vide order dated 29 February 2008.

7. The following are the grounds of challenge:-

“(a) Because the applicant has been subjected to victimization at the instance of the Respondents No.4 just on account of the fact that he belongs to Scheduled Caste.

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- (b) Because the impugned order is absolutely illegal, arbitrary and bad in the law.
- (c) Because when the applicant has increased the responsibility of maintaining his family, he has been punished by means of the impugned order.
- (d) Because once the inquiry was conducted and the applicant was exonerated from the charges leveled against him, there remains no justification for passing the impugned order.
- (e) Because even no reason has been shown for the dissatisfaction of the report submitted by the inquiry officer whereby the applicant exonerated from the charges.
- (f) Because by means of the impugned order, the applicant future career is going to be dark, since he has been compulsorily retired from the post of Senior Scientist at the age of 44 years on the pity charges which have not been proved in the inquiry proceedings.
- (g) Because the applicant had been not only the meritorious student, he having stood 1st Division throughout his educational career right from High School to M.Sc. Ph. D. agronomy, also got as many as 200 research papers published and has rendered a spotless service career but just on account of annoyance of grudge of the Respondent No.4, the applicant's bright future has been jeopardized by means of the impugned order.
- (h) Because in any view of the matter, the impugned order is not sustainable in law and as such is liable to be set aside. ”

8. The Relief claimed by the applicant is as under:-

- i) an Order be passed quashing the impugned order dated 29.2.2008 passed by the respondent No. 2,

whereby the applicant has been compulsorily retired from the post of Senior Scientist at the age of 44 years

- ii) an order be passed commanding the respondents not to give effect to order dated 29.2.2008 passed by the respondent No. 2;*
- iii) any other and further order may be passed as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case;*
- iv) The cost of the present original application may also be awarded in favour of the applicant, as against the respondents.*

9. Respondents have contested the O.A. and have contended that the penalty imposed was fully legal and justified.

10. Counsel for the applicant argued that the inquiry officer has given a clean chit to the applicant. The disciplinary authority, while disagreeing with the same, has come to the conclusion that the circumstantial evidences are sufficient to come to the conclusion that the charge stands proved and what exactly are the circumstantial evidences have not been indicated. Further, principles of natural justice have been completely violated and the innocent applicant punished with the grave penalty of compulsory retirement, which has shattered his entire life.



11. Counsel for the respondents, however, submitted that the proceedings were conducted within the parameters prescribed under the rules and no legal lacuna in the decision making process could be discerned and as such, judicial intervention is the least called for in this case.

12. Arguments were heard and documents perused. As stated at the very outset, all that is to be seen is whether there is that much evidence in the records to show that the case could be held to have been proved on the doctrine of preponderance of probability.

13. The Inquiry authority had divided the issue into various parts and made analysis and arrived at the conclusion that there is no clinching evidence to prove the charge and thus, rendered the finding, "*I therefore, based on the evidences made available during the course of this inquiry and deposition of all witness from both sides find no clinching evidences to prove charges number one of the articles of charges.*

With reference to the charge no. 2, there was no other complaint other than the one made by Ms. Gupta about the act of sexual harassment from

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any female officer or worker in the IIPR. Since charge number one was not proved, therefore, this charge is also not proved."

14. At the very outset, it is to be clarified that the charge sheet contains only one charge and the same had been explained in two paragraphs, which the inquiry officer had misunderstood as if there are two charges. And playing with the grammatical construction of the term "women" at work place, and stating that no case other than the one of Ms. S.D. Gupta alleging the sexual harassment by Dr. R.L. Arya has been brought to the notice of IO by the PO, point No. 7 (repeating the second para of the article of charge), has been answered by the Inquiry Officer as "Based on the evidences produced by PO, this charge namely 'Act of sexual harassment of women at work place' is not proved."

15. The disciplinary authority has, while disagreeing with the report of the inquiry authority, stated that there is consistency in the statements/depositions of the main witness. Initially in her complaint dated 28-02-2003, immediately after the alleged incident, Ms. Gupta had narrated in nutshell as to the indecent act of the applicant and in her statement dated 19-04-2003, she had in detail narrated the incident. The latter statement was not

one of the relied upon documents of the prosecution but introduced as one of the documents of the defence side. The inquiry officer had discussed about the initial complaint, the detailed statement of 19-04-2003 and the deposition made at the time of inquiry and reply to the cross examination and arrived at a finding that the charge has not been proved. The exact report of the inquiry officer is as under:-

"Point No.4:- How and what incident took at the site i.e. in the Mustard filed in village Gajner?"

Findings:

Ms. N.D. Gupta in her initial complaint addressed to the Director IIPR, Kanpur dated 28.02.2003 wrote that "वहाँ पर इन्होने मुझे कुछ अत्यन्त शर्मनाक शब्द कहे और मेरा हाथ पकड़कर अपनी ओर खींच लिया। मैंने कहा सर! ये आप क्या कर रहे हैं। छोड़िये मुझे और कहा सर! क्या आप अपनी लड़की के साथ" In her statement recorded on 19.04.2003 and admitted in this inquiry she gave detailed but entirely different version of the incident reportedly happened in the field. It is important to reproduce the same in the original Hindi language as such, I quote "मेरा हाथ पकड़ कर अपनी तरफ खींच लिया। फिर कहने लगे कि मुझे किस करो। मैंने कहा कि सर ये आप क्या कह रहे हैं। मेरा हाथ खींच कर जमीन पर बैठा दिया। फिर मैं रोने लगी। मैंने कहा सर मुझे छोड़िये। नहीं तो मैं शोर मचाऊंगी लेकिन वह नहीं माने तो मैंने अपना मुँह हाथों से ढक लिया। फिर इन्होने मेरी चुन्नी खींच कर हटा दी और हाथों पर किस किया। जब मैं बहुत चिल्लाने लगी तो फिर इन्होने मुझे छोड़ दिया। मैंने कहा कि सर यदि मेरी जगह आपकी बेटी होती तो भी आप यह करते। / " The point 7 and 8 of the statement of imputation of misconduct is based on this statement of Ms. Gupta. Dr. Arya denied all these allegations stating that these are false and concocted story.

Analysis:

Once again it is understood that given the circumstances, there is little possibility of any eye witnesses to verify the

occurrence of such incidents. Generally, the description given by the sufferer, in this case a girl Ms. S.D. Gupta, is believed until and unless some glaring discrepancies in the description of incident and sequences of events leading to the incidents are noticed and brought forward. These discrepancies in the statements raise doubts about the authenticity of the incident.

Case of sexual harassment of a girl by an officer at work place is indeed a serious offence yet it needs to be subjected to a careful and critical scrutiny of all the facts statements made available during the course of investigation of the case. The significant differences in the description and sequences of events reported by Ms. S.D. Gupta herself in her two different statements raise doubts about the authenticity of the incident. *Further, during deposition of Ms. S.D. Gupta, PO failed to bring forward the true sequences of events and nature of incident in the statements made by Ms. Gupta during her deposition. She stated that she went out of IIPR along with Dr. Arya around 10.30 and went directly to village Gajner around 11.30 AM and what ever incident occurred there I wrote about this in my complaint dated 28.02.2003 addressed to the Director IIPR.*

Conclusions:

It is evident from the first complaint dated 28.02.2003, deposition dated 5th December 2006 and statement of imputation of misconduct (Annexure-II of the charge sheet) that the nature of event and sequences of events leading to the incident of sexual harassment are described entirely in a different manner. None of these sequences of events stated in the statement of imputation of misconduct given in Para 7 and 8 were proved during the deposition made by Ms. S.D. Gupta. This raise serious doubts about the authenticity of the incident itself and provides sufficient credence to the arguments that this case was a concocted story of lies.

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16. The disagreement part of the disciplinary authority in this regard is as under:-

"(d) In her complaint dated 28.02.2003 (PD-I), Ms. Siddhi Datri Gupta had verify mentioned about the occurrence of incident of molestation by Dr. Arya. She had stated that the Charged Officer took her away to Gajner Village via Kalpi Road and had done some very shameful acts which she was feeling shy to write. During her deposition before the Inquiry Officer she had accepted her statement dated 19.04.2003 (made before the ICAR Committee) on which she was cross examined by the Charged Officer. During cross-examination she confirmed the occurrence of the incident. In her statement (dated 19.04.2003) she had given detailed version of the incident happened on 28.02.2003. The inquiry has not revealed anything contrary to the incident occurred on 28.02.2003. The first complaint dated 28.02.2003 was made by her in a state of shock and trauma. Subsequently, when the Council constituted a high level Committee to enquire into the case, she narrated the incident in detail (vide her statement dated 19.04.2003) which are mentioned at para 5 to 8 of statement of imputation of misconduct in support of Article of Charge framed against the Charged Officer. The findings of the Inquiry Officer that there were glaring differences in the statements of Ms. Guprta are unfounded and do not mitigate the misconduct of the charged Officer. It seems that the Inquiry Officer failed to realize the mental condition of the victim (she was 19 years of age at that time) against whom sexual assault was done.

(e) Ms. Siddhi Datri Gupta has stated in her complaint (dated 28.02.2003) (PD-1) that Dr. Arya took her outside the Institute on the pretext of attending a symposium at the CSAUA*T. She agreed to go with him she the University without any suspicion of his motives. Instead of going to the University, the Charged Officer took her to a crops field. In her cross examination, she was asked why she did not jump

from motor cycle and why she did not make noise. To this, she had replied that she was not familiar with the CSAUA&T and she anticipated that the Charged Officer was going to the University. The inquiry has not revealed any contradiction about the incident. The finding of the Inquiry Officer that she could not give convincing reply as to why she did not stop Dr. Arya while going outside the city premises and she should be aware about the geographical condition of the Kanpur, does not absolve the Charged Officer of his misconduct.

(f) In her complaint (dated 28.02.2003) Ms. Gupta had reported about the incident occurred on 28.02.2003 to the Institute authorities. Subsequently, an internal inquiry was held by IIPR. Thereafter, preliminary investigation was conducted by a Committee of ICAR Hqrs. Ms. Gupta had given a detailed version (dated 19.04.2003) to the said committee. This documents was admitted in the inquiry. In the said statement she has given minute details of the incident. The inquiry has not revealed any inconsistencies in her depositions. During the inquiry, the Charged Officer was given adequate opportunity to defend his case. The circumstantial evidence adduced during the course of inquiry establish the guilt of the Charged Officer. Thus the finding of the Inquiry Officer that she had given entirely different version of the alleged misdeeds of Dr. Arya (and there is little possibility of any eye witnesses to verify the occurrence of such incidents) is not corroborated from the evidences adduced during the course of inquiry. ”

17. The above analysis of the Disciplinary Authority evokes full confidence that he has analyzed pragmatically and within the parameters of the Rules and arrived at the right conclusion that the preponderance of probability in this case is

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sufficient to prove that the applicant is guilty of the misconduct alleged. The President of the I.C.A.R., after analyzing the entire issue, thereafter decided as hereunder:-

"7. *Whereas*, the President ICAR, after taking all circumstances and materials on record into consideration has come to the conclusion that Dr. R.L. Arya did take Ms. Siddhi Digi Gupta on his motorcycle under a false assurance of taking her to the CSAU&T for a seminar, but instead took her to farmers fields where Dr. Arya's behaviors caused enormous trauma to the lady. The President ICAR has noted that when Ms. Siddhi Datri Gupta went to meet the officiating Director on 28.02.2003 after the incident , she was in a state of trauma, was crying and was unable to speak. This important aspect has not been taken into cognizance by the Inquiry Officer. The lady might have been unsuspecting and guillible to accompany Dr. Arya, but that does not mitigate Dr. Arya's offence. In regard to the Inquiry Officer's findings that there was no clinching evidence to prove the allegations, it is to be noted that the standard of proof in a departmental proceedings in preponderance of probability and not proof beyond reasonable doubt which is required in a criminal prosecution case. In this case there is a preponderance of evidence to prove the charge against Dr. Arya.

8. *Now therefore*, having regard to the facts and circumstances of the case as stated above, the Disciplinary Authority i.e. president, ICAR is satisfied that good and sufficient reasons exist for imposition of the penalty of Compulsory Retirement on Dr. R.L. Arya Sr. Scientist, with immediate effect.

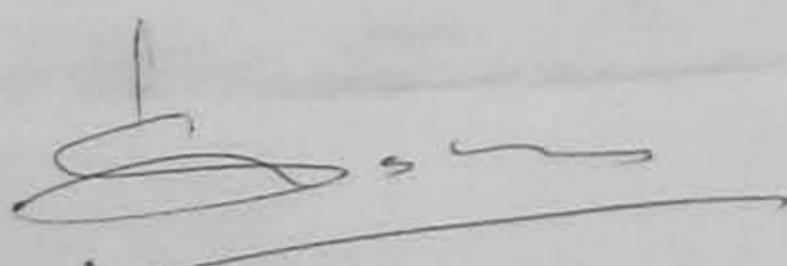
9. *Accordingly*, the penalty of Compulsory Retirement from ICAR service is hereby imposed on Dr. R.L.Arya, Sr. Scientist, with immediate effect."

18. The so called inconsistency or contradictory statements as discussed by the inquiry officer would hold good,

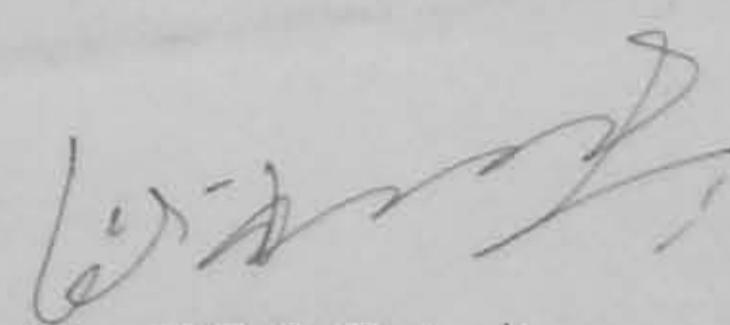
where the requirement is to prove beyond reasonable doubt. In disciplinary proceedings, microscopic difference or hair splitting technicalities are not required. The totality of the situation would suffice. In case the defence is able to prove that the preponderance of probability is in his favour, then it is for the prosecution to prove to the hilt. As held by the Apex Court in the case of *Maharashtra State Board of Secondary and Higher Secondary Education vs K.S. Gandhi (1991) 2 SCC 716*,

The standard of proof is not proof beyond reasonable doubt “but” the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

19. We are able to clearly see that the view taken by the Disciplinary Authority cannot be faulted with. As such, the application has to fail. Accordingly, the O.A. is dismissed. No cost.



(S.N. Shukla)
Member-A



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

Sushil