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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NO.636 OF 1993

Cuttack, this the 10th day of August, 1999

Sri Manik Banara

....

Applicant

Vrs.

Union of India and others

....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No .

20.8.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.636 OF 1993

Cuttack, this the 10th day of August, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Manik Banara, aged 45 years, son of
late Kanda Banara, Village-Billohori, P.O-Goberghati,
Via-Dangadi, Dist.Jajpur Applicant

Advocates for applicant - M/s S.Kr.Mohanty
S.P.Mohanty

Vrs.

1. Union of India, represented by its Secretary,
Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Cuttack North Division,
Cuttack-753 001.
3. Director of Postal Services, Office of the Chief PostMaster
General, Orissa Circle, Bhubaneswar Respondents

Advocate for respondents - Mr.S.B.Jena,
A.C.G.S.C.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative
Tribunals Act, 1985, the petitioner has prayed for quashing
the order dated 30.6.1992 (Annexure-5) imposing penalty of
recovery of Rs.12,000/- from the applicant in thirty equal
monthly instalments. The second prayer is for a direction
to the authorities to refund the amount already recovered
from the applicant.

2. By way of interim relief it was prayed that further recovery from the pay of the applicant should be stopped. On the day of admission of this petition on 23.11.1992 further recovery in pursuance of Annexure-5 has been stayed.

3. The applicant's case is that while he was working as Office Assistant in the office of Superintendent of Post Offices, Cuttack North Division (respondent no.2) he received memo dated 20.3.1992 (Annexure-1) initiating minor penalty proceeding against him under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965.

There were two charges against him which would be discussed at a later stage. The applicant in his letter dated 25.3.1992 (Annexure-2) requested for supply of four documents to him for preparation of his defence statement. He also requested that an enquiry should be held in order to give him an opportunity to disprove the charges. In response the disciplinary authority (respondent no.2) in his letter dated 29.4.1993 (Annexure-3) refused his request for perusal of records on the ground that the applicant had already examined the relevant records at the time of his examination and also on the ground that the applicant had not indicated the reasons for which the documents were necessary. His other prayer for holding an oral enquiry was also refused on the ground that there were no cogent reasons to accede to his request for holding oral enquiry under Rule 16(1)(A) of the CCS(CCA) Rules. The applicant submitted his explanation on 25.5.1992 (Annexure-4). After perusing the representation the disciplinary authority issued the impugned order at Annexure-5 holding the applicant guilty of negligence and

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directed recovery of Rs.12,000/- from the applicant's pay in thirty equal monthly instalments. The petitioner's appeal dated 12.10.1992 to the Director of Postal Services (respondent no.3) against the punishment order is still pending. The applicant has stated that even during the pendency of his appeal, in accordance with the punishment order recovery is being made from his pay. The applicant has challenged the impugned order of recovery on the ground that reasonable opportunity has not been given to him and he has been made to submit his explanation without reference to the relevant material and his prayer for holding an oral enquiry into the matter has been rejected without application of mind. On the above grounds, the applicant has come up in this petition with the prayers referred to earlier.

4. The respondents in their counter have submitted that in 1987 the applicant was working as Postal Assistant in Jajpur Head Office and was dealing with Savings Bank work at Jajpur Head Office relating to Dala Extra Departmental Sub-Post Office. While working as such, the applicant failed to exercise proper check over the work of one Jitendra Kumar Mohapatra, E.D.S.P.M., Dala E.D.S.O., who failed to account for several deposits and withdrawals in S.B. Account Pass Book No. 345233 of Dala E.D.S.O. in the name of Damodar Parida and thereby violated Rule 452(5) of P & T Manual, Vol.VI, Part-II. Besides, the applicant while working as such issued duplicate Pass Book in respect of Time Deposit Account No.76032 standing in the name of Ayub Ali without verification of the bona fide of the application for Duplicate Pass Book

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on 6.6.1987 in violation of the Director General, P & T's letter No.34-38/82-SB dated 12.1.1984. On the very same day, i.e., on 6.6.1987 he also issued final sanction for closure of the aforesaid Account No.76032 without production of the Pass Book in violation of Director General, P & T's letter dated 21.3.1984. These irregularities of the applicant provided scope to the E.D.S.P.M., Jitendra Kumar Mohapatra not only to manipulate the duplicate pass book but to take payment of the final withdrawal by forging the signature of the depositor. Due to manipulation of the duplicate Pass Book and due to fraudulent payment of withdrawal, the Department was put to a pecuniary loss of Rs.11,500/- and Rs.8,100/- respectively. It is further stated that because of such irregular practice of the applicant, the EDSPM, Jitendra Kumar Mohapatra got enough scope to defraud several Savings Bank, Recurring Deposit and Time Deposit Accounts and NSC investments putting the Department to a huge pecuniary loss amounting to Rs.2,47,734.15. The applicant was examined on the above two specific allegations on 17.1.1991 and 8.1.1992 with reference to all relevant records, but he could not explain his lapses satisfactorily. Accordingly, minor penalty proceeding under Rule 16 of the CCS(CCA) Rules was initiated against him. The applicant received the chargesheet on 23.3.1992 and asked for certain documents for preparing his defence. He also prayed for holding an enquiry under Rule 16 of CCS(CCA) Rules. The respondents have stated that respondent no.2 considered ^{and} the representation/came to the conclusion, after considering all facts and circumstances of the case, that holding a detailed oral enquiry is not necessary. The applicant also did not mention the reasons

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elaborately in his letter at Annexure-2 as to why a detailed oral enquiry is necessary. The decision of respondent no.2 for refusing the request for holding oral enquiry was communicated to the applicant. He was also informed that his request for further perusal of certain documents could not be acceded to as he had twice perused the records on 17.1.1991 and 8.1.1992 and no reason has been advanced in his letter on the need for further perusal of these documents. The respondents have stated that Rule 77 of the P & T Manual, Vol. III, enclosed at Annexure-R/1, does not make it incumbent on the part of the disciplinary authority to permit inspection of the relevant documents where no formal enquiry is considered necessary. The applicant submitted his explanation on 25.5.1992 and the same was taken into consideration before passing the impugned order. The applicant was held guilty of the charge against him as it was squarely established that he has displayed gross negligence in performing his duty and thereby committed grave misconduct. As a result the Department sustained pecuniary loss of more than Rs. Two Lakh and only an amount of Rs. 12,000/- has been ordered to be recovered from the pay of the applicant. It is stated that the amount sought to be recovered is too meagre considering the gravity of the offence. It is further stated that the appeal filed by the petitioner against the order of punishment has already been rejected and rightly by the appellate authority. The respondents have stated that all reasonable opportunity has been afforded to the applicant to disprove the charges.

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In the impugned order of punishment the charges and the explanation have been elaborately discussed. The respondents have in their counter discussed the charges and explanation elaborately and these will be considered at a later stage of this order. In the context of the above submissions the respondents have opposed the prayers of the applicant.

Advocate, on behalf of
5. We have heard Shri P.K.Lenka, /the learned counsel appearing for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents. The learned counsel for the petitioner has filed written note of submissions with copy to the other side which has also been taken note of.

6. The learned counsel for the petitioner has urged that the documents asked for by the applicant to enable him to submit his explanation were not supplied to him. His prayer for oral enquiry under Rule 16 of CCS (CCA) Rules was also rejected. It has been submitted that because of this there has been denial of reasonable opportunity and the impugned order of punishment is liable to be quashed on this ground. For considering the above two points it is necessary to take note of the charges and the explanation submitted by the applicant.

7. There were two charges against the applicant.

✓ Som . The first charge was that while he was working as Postal Assistant, Jajpur Head Office on 11.5.1987 and was dealing with the SB work of Jajpur HO relating to Dala EDSO, the EDSPM, Dala, one Jitendra Kumar Mohapatra did not account for 12 items of deposits and withdrawals entered in the SB Pass Book Account No. 345233 in the name of Damodar Parida and

withdrawal of Rs.250/- was allowed from this SB Account on 9.5.1987 and the same was posted to H.O. ledger on 11.5.1987. The applicant posted the above withdrawal of Rs.250/- on 9.5.1987 in the H.O. Ledger Card on 11.5.1987. The annual interest for the year 1986-87 was not posted to that S.B. Pass Book Account. As per Rule 452(5) of the P & T Manual, Vol.VI, Part-II, if any transaction takes place in an SB Account after 31st March and the Pass Book is not received for addition of interest, then the fact should be noted in the Special Error Book and the Pass Book should be called for. The allegation against the applicant is that while he posted the above withdrawal of Rs.250/- he did not ensure entry in the Special Error Book and did not call for the Pass Book. Had the Pass Book been called for then non-accounting of those 12 transactions would have been detected and further fraud committed by the EDSPM, Dala, beyond 9.5.1987 could have been avoided. Due to failure of the applicant to call for the Pass Book and also to mention about non-adding of interest in the Special Error Book, the EDSPM, Dala got the chance to commit further fraud not only in this Pass Book but also in many other SB/RD/TD Pass Books and NSC investments putting the Department to a huge pecuniary loss amounting to Rs.2,47,734.15. The second charge is that while working as Ledger Clerk-II, Jajpur H.O. on 6.6.1987 he received application for Duplicate Pass Book in respect of T.D. Account No. 76032 standing at Dala 30 in the name of the depositor Sk.Ayub Ali. This was forwarded by EDSPM, Dala, in his letter dated 3.6.1987. Another application of the same depositor for closure of the TD Account No. 76032 prematurely

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without production of the Pass Book along with certain other documents was also received by the applicant on the same day on 6.6.1987. This application was enclosed to the earlier application for duplicate Pass Book. According to the instructions dated 12.1.1984 of Director-General, P & T, the applicant was required to verify the bona fide of the application for duplicate Pass Book and endorse his remark on the application before issue of the duplicate Pass Book, but he did not do so. The applicant issued the duplicate pass book without verification on 6.6.1987. On the same day on 6.6.1987 he issued final sanction for closure of the above TD Account No.76032 without production of the Pass Book in violation of the Director General, P & T's circular dated 21.3.1984 and did not make the endorsement "Pass Book Lost". He also did not make any endorsement in the H.O. Ledger Card that the Account has been closed without production of the Pass Book. The application for issue of duplicate Pass Book and the application for closing the Account were received on the same day. This by itself was adequate for the applicant to suspect the bona fide of the above applications and he was required to take action as per Rule 404(4) of the P & T Manual, Vol.VI, Part-II. But the applicant did not ~~raise~~ ^{raise} any objection and did not also take the appropriate action as required of him. His failure to ensure proper action ~~as~~ provided scope to the EDSPM, Dala, not only to defraud the warrant of payment sanctioned by the applicant on 6.6.1987 for Rs.8100/- but also the Duplicate Pass Book so issued by the applicant was mutilated by the

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EDSPM, Dala, showing a fake deposit of Rs.11,500/- thereby putting the Department into a pecuniary loss of Rs.19600/- in aggregate besides the loss mentioned in the first charge. The applicant in his letter dated 25.3.1992 at Annexure-2 asked for the Special Error Book maintained by Ledger Clerk-II of Jajpur H.O. during the period for May 1987 and June 1987, Error Book maintained by Ledger Clerk-II for the period for May 1987 and June 1987, SB-7 in respect of TD Account No.76032 sanctioned on 6.6.1987, and the TD Account No.76031 standing at Dala EDSO. The applicant's stand is that in the context of the two charges non-supply of these four documents has ^{that} prejudiced him. The respondents have stated in their letter dated 29.4.1992 the applicant was informed that he had not indicated the reasons for which the documents are necessary for submission of his explanation and therefore the documents were not supplied. In the counter it has been further mentioned that the applicant was examined on those two specific allegations earlier on 17.1.1991 and 8.1.1992 and at that time he had perused the relevant records. The applicant in his explanation which is at Annexure-4 has mentioned that the transaction relates to a period five years back and the perusal of the documents is necessary for submitting his defence. With regard to the first charge he has mentioned that at that time he was working as Ledger Clerk-IV and was asked, in addition to his duty, to manage the work of Ledger Clerk-II. Accordingly, he was overburdened. He also mentioned that at that time the interest posting work had not been concluded and there was no question of calling for the Pass Book. He had stated that the transaction

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was allowed in the normal way and the fact was not noted in the Special Error Book. From this explanation it is seen that the applicant has admitted that non-posting of interest was not mentioned by him in the Special Error Book. He also admitted that he did not call for the Pass Book because of pressure of work as he was managing the work of two Assistants and also because by that time, i.e., May 1987 the work relating to posting of interest for the year 1986-87 had not been completed. As the applicant has admitted that he had not mentioned about non-posting of interest with regard to SB Account No.345233 in the name of Damodar Parida, non-supply of Error Book to him cannot be said to have prejudiced him. He has admitted that he had not made the required entry in the Error Book and seeing the Error Book once again before submission of the explanation could not have changed this situation in any way. In view of this, it must be held that denial of supply of the first two documents has not prejudiced him in any way. As regards the other two documents he had asked for the documents in respect of closure of TD Account No.76032 which was sanctioned on 6.6.1987 and TD Account No.76031 standing at Dala EDSO. The second document is not at all relevant because here the charge did not relate to the deposits and withdrawals in the TD Account No.76031 prior to 6.6.1987. Therefore, the transactions which might have taken place in that Account prior to that date are not relevant at all so far as charge no.2 is concerned. In response to charge no.2, the applicant's explanation is that the

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instructions of Director General, P & T, dated 12.1.1984 and 21.3.1984 were never brought to his notice and therefore in the usual process he disposed of TD Pass Book as per the instruction of Group Supervisor. The application for duplicate Pass Book was duly authenticated by one witness known to the Post Office and basing on the authority of that witness the duplicate Pass Book was issued. He has also stated that SB 7 should have been checked by the concerned Supervisor and it was not his duty. In this case also the charge relates to the action, rather inaction of the applicant in the matter of dealing with the two applications for issue of duplicate Pass Book and for final closure of the account received and dealt with by the applicant on the same day. The charge is that he did not take appropriate action and make entries in the concerned Register with regard to these transactions. Therefore, these two documents asked for by him are also not relevant for the present purpose. In view of this, we hold that by not supplying these four documents to the applicant, he has not been prejudiced in any way. It is also to be noted that the applicant has not indicated any reason as to why these documents are required by him for the purpose of submission of his explanation. This contention is therefore rejected.

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8. The second contention of the learned counsel for the petitioner is that in his letter dated 25.3.1992 the applicant requested for an enquiry under Rule 16 of CCS (CCA) Rules to give him an opportunity to disprove the charges. This was rejected again in order dated 29.4.1992 (Annexure-3)

on the ground that no cogent reason has been given by the applicant for holding the enquiry. The learned counsel for the petitioner has relied on the decision in the case of Mansa Ram v. General Manager, Telecommunications, Jammu and Kashmir Circle, Srinagar, decided by the Hon'ble High Court of Jammu & Kashmir and reported in 1980 5LJ 382. It is not necessary for the present purpose to go into facts of that case. It is only necessary to note that his Lordship of the Hon'ble High Court of Jammu & Kashmir held in the above case that where a minor punishment is sought to be imposed the procedure for holding an enquiry need not be followed, unless otherwise desired by the disciplinary authority. But it does not mean that the enquiry is barred or that it is entirely subject to the pleasure of the disciplinary authority. The latter must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is or is not necessary. In the absence of such finding, an order imposing penalty would be invalid and of no legal consequence unless, of course, it can show that the omission has not resulted in any material prejudice to the employee. The admitted position is that the normal procedure for imposing minor penalty under Rule 16 of CCS(CCA) Rules does not provide for an enquiry. But clause (b) of sub-rule (1) of Rule 16 of CCS(CCA) Rules provides for holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 in every case in which the disciplinary authority is of the opinion that such enquiry is necessary. From this it is clear that the normal procedure

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in proceedings under Rule 16 is not holding an enquiry for imposing a minor penalty. All that is necessary is for the disciplinary authority to communicate the statement of imputations to the charged official, receive and consider his explanation and if a lapse is noticed, impose a minor penalty. In view of the above legal position, it is for the applicant to indicate the reasons why he wants an enquiry to be held in a proceeding under Rule 16 of CCS(CCA) Rules. If such a request is made, then naturally the disciplinary authority has to consider that request in a judicious fashion taking into account the facts and circumstances of the case and come to a reasoned finding about the advisability or otherwise of holding an enquiry in a proceeding under Rule 16. The decision of the Hon'ble High Court of Jammu & Kashmir, referred to above, only emphasises the above point. In such a situation it is for the applicant to indicate the reasons why enquiry is necessary. Merely by a bland request for holding an enquiry, a need for such an enquiry is not established. In this case the applicant has merely stated that an enquiry should be held to enable him to disprove the charges. As we have already noted the charges here relate to inaction of the applicant in the matter of dealing with certain papers in accordance with the departmental instructions. No other person is involved in the alleged lapses. The two charges are that the applicant dealt with certain papers and while dealing with those papers, he had to take certain specified action which he did not take. Therefore, in this case, no evidence of witnesses was involved and the need for oral enquiry is not established merely by the applicant

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asking for the same. The applicant has also not mentioned in this OA how in the absence of an oral enquiry he has been prejudiced. This contention is also held to be without any merit and is rejected.

9. Having disposed of these two points raised by the learned counsel for the petitioner, the other point raised by him challenging the impugned order of punishment is taken up for consideration. It has to be noted that in departmental proceedings the scope of interference by the Tribunal is somewhat limited. The Tribunal does not act as an appellate authority and cannot substitute its judgment and conclusion in place of the judgment and conclusion arrived at by the disciplinary authority. The Tribunal can interfere in a case only where there has been denial of reasonable opportunity or violation of principles of natural justice, or where the findings are based on no evidence or are patently perverse. We have already dealt with the two contentions relating to denial of reasonable opportunity. It is therefore only left to be seen if the findings of the disciplinary authority are based on no evidence or are patently perverse. The two charges, the explanation given by the applicant and the findings of the inquiring officer are considered in the above context. So far as the first charge is concerned it is seen that the lapse alleged is that when the applicant posted the withdrawal of Rs.250/- from the SB Pass Book Account No.345233 on 9.5.1987 in the Head Office Ledger on 11.5.1987 he should have noted that the interest for the year 1986-87 has not been posted and therefore he should have entered it in the Special Error Book and called for the Pass

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Book. It is further alleged that his failure to do so is in violation of the departmental instructions. It is also alleged that because of this failure, the EDSPM, Dala, could commit further fraud not only in this Pass Book but also in several other SB/RD/TD Pass Books and NSC investments putting the Department into a huge pecuniary loss amounting to Rs.2,47,734.15. We have already noted the explanation given by the applicant with regard to this charge. The disciplinary authority has stated that the applicant never brought to his notice that he was hardpressed with work and therefore his plea that he was hardpressed as he was managing the work of two Ledger Assistants is an afterthought and is not convincing. The disciplinary authority has also noted that it was the applicant's responsibility to call for the Pass Book and to mention non-addition of interest in the Special Error Book. Be that as it may, the first part of the charge is that from 10.2.1987 to 11.5.1987 the EDSPM, Dala, showed six items of deposits and six items of withdrawals in the SB Pass Book Account No.345233, but did not account for these deposits and withdrawals. Eleven of these transactions had taken place before 11.5.1987 when the applicant dealt with the withdrawal of Rs.250/- from this Pass Book Account. Therefore, mentioning about non-posting of interest and non-calling for the Pass Book would not have in any way prevented the misappropriation by the EDSPM, Dala, with regard to twelve items of deposits and withdrawals. The other aspect that had the pass book been called for, further frauds by the EDSPM, Dala, could have been stopped cannot also be accepted because

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the respondents have not indicated what was the exact nature of fraud committed by the EDSPM, Dala, after 11.5.1987. It has been stated that EDSPM, Dala, got the scope to commit fraud not only in this ^{S.B.} Pass Book No. 345233 but in many other Pass Books and NSC investments. By calling for the S.B. Pass Book No. 345233 standing in the name of Damodar Parida, the frauds committed in other Pass Books and NSC investments could not have been stopped. In view of the above, this aspect is considered not relevant so far as the lapse of the applicant with regard to the first charge is concerned. But the fact of the matter is that the applicant admittedly did not enter in the Special Error Book the fact of non-addition of interest and did not call for the Pass Book. The finding of the disciplinary authority holding him guilty of this lapse therefore cannot be called perverse.

10. As regards the second charge, the applicant's plea is that the two circulars of the Director General, P & T were not brought to his notice. This is patently untenable because an Assistant dealing with financial matters is expected to ^{know} ~~note~~ the financial instructions and act accordingly. Moreover, ^{J.S.M.} as has been rightly pointed out in the charge, the two applications, one for issue of Duplicate Pass Book and the other for final closure of the Account were received on the same day by the applicant and he dealt with both these applications on the very same day. He should have smelt a rat and taken appropriate action as required under the departmental rules and instructions, but he has not done so and has taken the plea that he was not aware of the circulars

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of the Director General, P & T. Because of this, the order for final closure of the Account was issued and warrant of payment amounting to Rs.8100/- was sanctioned against the TD Account No. 76032. Apparently, the EDSPM, Dala, misappropriated this amount of Rs.8100/-. Moreover, the EDSPM, Dala, after getting the Duplicate Pass Book, showed a fake deposit of Rs.11,500/- in that Pass Book and misappropriated that amount also. With regard to this charge, it is clear that the lapses of the applicant have directly provided scope to the EDSPM, Dala, to defraud the Department to the tune of Rs.19,600/-. This charge has therefore been rightly proved against the applicant.

11. Lastly, it has been submitted by the learned counsel for the petitioner that for imposing the penalty of recovery, it is necessary to precisely determine the amount of loss which the Department have suffered because of the lapse of the applicant, but this has not been done. It has been pointed out by the learned Additional Standing Counsel that the applicant has been held guilty of contributory negligence and in a matter of contributory negligence, such precise determination of loss is not possible and it has to be on the basis of an approximation. In the instant case we have held that the applicant's lapses have been rightly held proved against him. The loss arising out of the second charge is Rs.19,600/- as against which an amount of Rs.12,000/- has been ordered to be recovered from the pay of the applicant. In view of this, we hold that the order of punishment cannot be held to be illegal on the ground

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of alleged non-determination of the precise amount of loss. The amount of loss arising out of charge no.2 has been determined at Rs.19,600/- out of which Rs.12,000/- has been ordered to be recovered from the salary of the applicant in the impugned order. We find nothing illegal in this.

12. In the result, therefore, the Original Application is held to be without any merit and is dismissed. The stay order issued on 23.11.1993 is vacated. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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