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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 158 OF 2004

Cuttack, this the 29th day of September, 2005


Krishna Choudhary 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? *yes*


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 158 OF 2004

Cuttack, this the 29th day of September, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER

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Krishna Choudhary, aged 44 years, son of late Baldeo Chaudhary,
Prasari, P.O. Prasari, District Nawada, Bihar, at present serving as
Assistant Provident Fund Commissioner, Sub Regional Office,
Bhabishya Nidhi Bhawan, Panposh Road, Rourkela,
Dist.Sundargarh Applicant

The applicant appeared in person.

Vrs.

1. Union of India, represented through Secretary to
Government of India, Ministry of Labour, New Delhi.
2. Central Provident Fund Commissioner, Employees
Provident Fund Organization, Bhabishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi 110 006.
3. Shri P.C.Pati, Deputy Director (Vigilance), East Zone,
Employees Provident Fund Organization, Salt Lake City,
Kolkata 700 091.

..... Respondents.

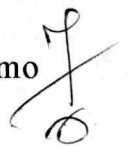
Advocate for the Respondents - Mr.S.S.Mohanty

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ORDER

SHRI M.R.MOHANTY, JUDICIAL MEMBER

In this Original Application under Section 19 of the
Administrative Tribunals Act, 1985, Shri Krishna Choudhury, the
applicant challenges initiation of disciplinary proceedings against
him and prays for quashing of the charge memo



No. Vig. XIII(1)2002/2068, dated 8.7.2003, issued by Respondent No.2 in respect of the period the applicant was posted as Assistant Provident Fund Commissioner (APFC), Durgapur S.R.O., during the period from 23.10.1997 to 28.7.1999.

2. The grievance of the applicant, in a nutshell, is that after joining the respondent organization with effect from 3.8.1994 he was posted to Siliguri from where after about three years he was posted to S.R.O., Durgapur and from there he was transferred to S.R.O., Rourkela, on 28.7.1999 where he has been working till date. In the meantime, he became eligible for promotion to the grade of Regional Provident Fund Commissioner (RPFC), Grade II and he was considered along with others by the Departmental Promotion Committee (DPC) which met on 25.6.2003. His name was also included in the select list for promotion to RPFC, Grade II. While he was waiting for promotion order, on 8.7.2003, a charge memo, referred to above, was served on him bringing some allegations about his acts of omissions and commission during the period February-March 1998 when he was working at S.R.O., Durgapur. This resulted in withholding of his promotion and his juniors have been given promotion with effect from 21.7.2003.

3. The applicant has assailed the charge memo, firstly, on the ground of delay. He has pointed out that the departmental proceeding for his alleged acts of omissions and commission was initiated after a lapse of five years which speaks of bias of the

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respondents against him. The delay in initiating disciplinary proceeding renders the same illegal and liable to be quashed. He has also challenged the charge memo on the ground that it is a mala fide exercise of power, an outcome of bias against him harboured by the Deputy Director (Vigilance), East Zone. He has stated that it is not in dispute that he, while working as Officer-In-Charge, S.R.O., Durgapur, purchased certain office equipments, like, a FAX machine for office use, an Electronic Typewriter for official use, an EPBX system for official use, 30 big racks, one Executive Table and Chair. But these purchases were made not according to his whims and fancies, but only on the specific direction of the Central Provident Fund Commissioner (CPFC) who had carried out inspection/ work review of his office on 22.1.1998. In the course of his office inspection the CPFC passed order for purchase of office equipments, as listed above. Not only that, he gave specific direction to the effect that "All these equipments may be procured during the financial year 1997-98". The said authority further gave direction to the applicant to send action taken report by fifth of every month till final compliance. He had also directed the Regional Commissioner (Inspection), Headquarters, to submit action taken report for his perusal after obtaining feedback from the S.R.O., Durgapur, and from the principal officers of Head Office. The RPFC, West Bengal, who was present during the review/inspection also received a copy of the instructions issued by

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the CPFC, vide his letter CPFC/TP/8(17)96/WB/1591, dated 4.4.1998. His stand is that he was not only given sanction for purchase of office equipments, but he was also given a target for completion of the work and to report compliance to the coordinating officer at the Headquarters office, i.e., RPFC (Inspection). The disciplinary authority in the articles of charge alleged that he had carried out purchase of those articles in violation of the government instructions exceeding his financial power and his actions indicate "a possible collusive arrangement between him and the firm" or that he had made those purchases by grossly abusing his official position. His allegation is that the charges are blatantly fabricated only to malign him by ignoring the order of the CPFC and that the vigilance authorities have targeted him for action taking advantage of the fact that the concerned CPFC is no more alive to confirm that his approval for purchase of the office equipments within a target period also contained necessary administrative and financial approval for carrying on those transactions by the applicant.

4. The Respondents have opposed the Original Application by filing a detailed counter. They have submitted that the disciplinary proceeding has been initiated against the applicant on finding a prima facie case warranting further probe and that the said decision was taken by the competent authority in a bona fide and fair manner. It is also their claim that the applicant was treated

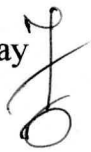
fairly to the extent that after considering his written statement of defence two articles of charge were dropped. They have further submitted that a perusal of the memorandum of charges clearly shows that the applicant is being proceeded against for effecting purchases without obtaining financial sanction of the competent authority, for approving expenditure far in excess of financial power vested in him, and for non-adherence to the laid down procedure as prescribed under the General Financial Rules (GFR). They have denied that the applicant is being harassed on account of his social background. They have also denied that the Deputy Director (Vigilance), East Zone, is biased against him. They have submitted that there exists no reason for the latter to harbour any ill will towards the applicant and merely because the applicant has been shown in an adverse light in his report, it cannot be said that the said Deputy Director (Vigilance) is biased and prejudiced against him.

5. They have also raised the question of jurisdiction stating that the Respondents are holding their office at New Delhi and at Calcutta and the subject-matter of the charges relates to the period when he was discharging the duties in West Bengal and hence only the Tribunal having territorial jurisdiction over Durgapur would be having jurisdiction to decide the case of the applicant. They have further submitted that the applicant having not challenged any action/order of the RPFC, Orissa, he cannot invoke the jurisdiction

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of this Bench of the Tribunal and on this ground alone, the Original Application is liable to be dismissed.

6. On the merits of the Original Application, the Respondents have submitted that the allegations against the applicant were duly investigated. It was established in the inquiry that the applicant failed to maintain transparency in the purchase deals. While the applicant in his capacity as Officer-In-Charge was the sanctioning authority, he made himself Chairman of the Purchase Committee and thus the entire purpose of separating the function of recommending authority and the sanctioning authority was lost. It is their submission that the applicant failed to maintain procedural propriety in processing the purchase proposals. The lapses committed by the applicant relate to according financial sanction to the purchases far in excess of his financial power; exercising financial power by an ineligible officer is a serious misconduct which warrants a deeper probe; that the memorandum of charges catalogues such omissions and that the purchases have been made from private vendors without following the open tender or limited tender method. Regarding the delay in initiating the disciplinary proceeding, they have explained that the misconduct committed by an officer do not generally surface immediately after commission. There is often a time lag between the commission of irregularity and its coming to the notice of the authority and thus the delay which has occurred in this case is reasonable.



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7. We have heard the applicant in person and the learned counsel for the Respondents and have also perused the records placed before us.

8. The applicant has filed a detailed rejoinder and has relied on the following case-laws in support of his pleadings:

- (i) State of Andhra Pradesh v. N.Radhakishan, 1998(23) LLN 452;
- (ii) State of Punjab and others v. Chaman Lal Goyal, (1995) 2 SCC 570;
- (iii) A.R.Antulay v. R.S.Nayak, (1992) SCC 225; and
- (iv) State of Madhya Pradesh v. Bani Singh and another, 1990(1) LLN 780.

The Respondents have also filed a reply to the rejoinder.

9. The Respondents have raised the question of maintainability of the Original Application before this Bench on the ground that the Respondents are holding their office in New Delhi and in Kolkata and that the subject-matter of the charges relates to the period when the applicant was serving in West Bengal Region. Hence this Bench is without jurisdiction. We are not impressed by this argument. Rule 6 of the CAT (Procedure) Rules, 1987 reads as follows:

“6. Place of filing application.- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction –

- (i) the applicant is posted for the time being. or



- (ii) the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

As the applicant is now working in S.R.O., Rourkela and he received the charge memo while working in this office on in July 2003, it cannot be said that cause action in part has not arisen in the State of Orissa. That being the facts of the case, the objection about maintainability is overruled.

10. The applicant has come in this O.A. at the interlocutory stage seeking judicial review. Normally, the Tribunal would not like to interfere at this stage. However, the Tribunal may take a view in such cases if it is found that the charge memo is either vague or is based on suspicion or supposition or conjecture ~~and~~ ^{or} ~~or~~ ^{out come of} hence mala fide, or if the delinquent officer has been denied the benefit of natural justice and has not been treated fairly in the process. The applicant has drawn our intervention on the ground of delay in framing charges and that it has been done with mala

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vide intention. He has given instances of harassment caused to him by the Deputy Director (Vigilance), East Zone, referring to the case of a minor penalty charge memo dated 20.3.2000 served on him (which ^{was} ~~but~~, later on, dropped on 9.12.2000) and that in another case a memo dated 17.3.2003 was served on him (at the instance of the Deputy Director, Vigilance, East Zone) alleging certain irregularities, but the matter was dropped subsequently on consideration of his representation dated 17.7.2003. The present charge memo, he alleges, has also been foisted on him at the behest of the same Deputy Director (Vigilance). The Respondents in their counter have denied these allegations and have sought to clarify that the Deputy Director (Vigilance) did not harbour any ill will towards him and that the said Deputy Director (Vigilance) was only carrying out his given duties. In their reply to the rejoinder, they have stated that an investigation was undertaken by Assistant Director (Vigilance) during June 7th and 8th 2001 regarding purchase of Xerox Machine, after which the matter was referred to the Deputy Director (Vigilance) who after going through the report, passed an order for registration of the complaint taking the same as source information and directed the Assistant Director (Vigilance) to submit investigation report. In the investigation it was found that the Xerox Machine purchased was though new was an outdated model. They had also found that there were certain other irregularities in the purchase and further that the purchase was not

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confined to one item, but to a number of office equipments and hence a full-fledged investigation was made into the matter.

11. We had also called for the relevant file of the Vigilance Section, bearing No. XIII(1)02/Vol.II in which the preliminary investigation report submitted by the Deputy Director (Vigilance), East Zone, has been further examined at the headquarters office. The Assistant Director (Vigilance) Headquarters in his note dated 3.4.20042 stated that the Deputy Director (Vigilance), East Zone, had recommended placing the applicant under suspension and initiation of major penalty proceeding against him and also action against other officials. The Deputy Director (Vigilance), Headquarters, however, in his note dated 4.4.2002 did not agree with the recommendation of the Deputy Director (Vigilance), East Zone, giving reasons for holding a different view. For the sake of clarity, the relevant portion of his note may be quoted as below:

“3. I have gone through the entire file including depositions made by Sh. K.Chowdhury and other employees of SRO, Durgapur. The following inferences can be drawn:-

- (i) It was a new office being established. To make an office functional, essential infrastructure is to be created. The CPFC in his review meeting had accepted necessity of FAX, photocopier, electronic Typewriter, EPABX, on 22.1.98, and had desired that these items be procured from the budget of 1997-98. Hence purchase of these items had to be made within a period of two months only.

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- (ii) The APFC was the only officer at SRO, Durgapur. Hence there is nothing wrong in his being Chairman of Purchase Committee. It would have rather been inappropriate to leave the selection of items and negotiations regarding price to junior functionaries.
- (iii) There was no expert in purchase procedure and canons of financial propriety to advise APFC. Deviations to purchase procedure therefore primarily appear to be due to lack of knowledge and also due to short time available at the close of financial year.
- (iv) The case is now 4 years old. No indication of bribe or mala fide appears to be there. For non-compliance of laid down rules and regulations, knowingly or unknowingly, the case does not merit suspension of Sh. K.Chowdhury, APFC. No useful purpose will be served by the same. At the best, we can consider the case for initiation of disciplinary proceedings for minor penalty only.”

The Deputy Director (Vigilance) Headquarters had sought to put the whole matter in correct perspective and had gone to say that the case was then 4 years old, that there was no indication of taking of bribe or mala fide intention but it was a case of mere non-compliance with laid down rules and regulations , ‘knowingly or unknowingly’ by an officer, who lacked adequate knowledge in financial matters, had no expert assistance and hence it does not

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merit either suspension or taking any major penalty action. He suggested initiation of minor penalty proceedings.

12. The case was thereafter examined by the Director (Vigilance). He agreed with the Deputy Director (Vigilance), Headquarters, that the "situational necessity of going for quick purchase of various items to set up a new office and create necessary infrastructure that are essentially required for setting up a new office, as was the case in SRO, Durgapur during the relevant period". He further noted: "Similarly, even if no blame is fastened on the OIC, SRO, Durgapur and his version that the approval of CPFC and RPFCL was available for all the purchases is accepted, yet he is still to be blamed for using the approval in principle as per his convenience and for violating procedures to suit to his requirement thereby committing gross financial improprieties and indulging in acts of financial indiscipline." Thereafter quoting paragraph 11.4, Chapter X of the Vigilance Manual, Vol.I, he felt that it was a fit case for taking major penalty action as the transactions involved vigilance angle and mala fide is to be inferred or presumed. Before taking final decision, it was decided to call for further statement of the applicant. However, the concerned authorities did not actually wait for the explanation to be submitted by the applicant on the ground that he was taking more than 15 days time for furnishing reply and, therefore, it was decided to refer the matter to the Central Vigilance Commission for the first stage

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advice. Although in their note to the Central Vigilance Commission, it was mentioned that the then CPFC, late Shri R.S.Kaushik, visited the office and gave approval in principle to procure certain items during the financial year 1997-98, but also stated that the applicant as O.I.C., SRO, Durgapur, carried out the purchase showing 'wilful negligence and possible collusive arrangement between the APFC in charge and the firm". A perusal of the note also reveals that it only contained the findings/opinion of the Vigilance Branch. It did not at any place reflect the defence/view points of the applicant made in support of the action taken by him. In the circumstances, the advice of the Central Vigilance Commission dated 28.5.2003 could have been nothing but total endorsement of the note of the Respondent-Department because the Central Vigilance Commission had no opportunity to hear the other side version of the matter to come to a fair and reasonable conclusion.

13. From the facts of the case, as narrated above, it would appear that the allegations brought forth by the applicant of bias, or of foisting charges on him, or that he was victimized appear to be neither unreal nor imaginary. The applicant has repeatedly submitted that it is the then CPFC who had given approval to make the purchases and had also set a time limit of less than three months to complete the purchases and that had he been alive, the applicant could have come out clear on the subject and his conduct



would not have been misunderstood. We are surprised to find that this point repeatedly made by the applicant had never been considered by the disciplinary authority/Respondents. The disciplinary authority similarly failed to take note of the analysis of the case and the action recommended in this case by the Deputy Director(Vigilance) Headquarters, vide his note dated 4.4.2002, nor could he see the apparent contradiction in the views expressed by the Director (Vigilance) in his note dated 11.4.2002. The Deputy Director (Vigilance) Headquarters in his note had not only put the actual perspective in which the purchases were made and had gone to the extent of stating that the case being an old case and there being no allegation of taking of bribe, or any other mala fide motive, it was not a case for imposing major penalty. The disciplinary authority's decision to initiate major penalty action against the applicant was made on the basis of the recommendation of the Director (Vigilance) whose note, as stated earlier, was both contradictory as well as illogical. The views/recommendation of the Director (Vigilance), as reflected in his note dated 11.4.2002 were both contradictory and illogical because he could not disagree with the views of the Deputy Director (Vigilance) Headquarters, nor he wanted to, it appears, totally disagree with the recommendation of the Deputy Director (Vigilance), East Zone. As quoted above, he had admitted that no blame could be put on O.I.C., SRO, Durgapur, but then, without any evidence on record, he observed that the

officer had violated the procedure to suit his requirement. Further, when no mala fide, or no act of corruption was found during investigation, it was wholly incorrect on his part to have stated that the action taken by the applicant involved 'vigilance angle and mala fide'. In sum, it is the perversity in the note of the Director (Vigilance) which led to the initiation of the disciplinary action against the applicant. It is now a well settled law, as held by the Apex Court in the case of B.C.Chaturvedi v. Union of India, 1995 (5) SLR 778, if a disciplinary action is found to be perverse, such action is liable to be quashed. We are bound by the above decision.

14. The applicant's plea is that initiating disciplinary proceeding after a long delay of five years for some action that he had taken during January – March 1998 has seriously prejudiced him. He has repeatedly submitted both in his Original Application and during oral argument that the then CPFC had given him not only written order but also verbal order to complete the purchases before the end of the financial year. But unfortunately as the said CPFC had died, he has become defenceless. The delay in initiation of the disciplinary proceeding has been sought to be defended by the Respondents in the counter stating that there is always a time lag between commission of an irregularity and its coming to the surface. Although the above statement of the Respondents is not untrue altogether, the delay when takes place to the extent of four

to five years, the question naturally arises whether digging out the past was an act of mala fide or not. This question has already been answered by the Apex Court in Chaman Lal Goyal's case (supra).

Their Lordships in paragraph 9 observed:

“9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances.....”

15. There is another factual aspect of the case which requires our attention to find out the truth. From a perusal of the records, we find that it is not disputed that the CPFC had during

his visit to SRO, Durgapur, on 22.1.1998 given both verbal as well as written order for purchase of some office equipments before the close of the financial year, i.e., within a period of less than three months. He had also given responsibility on the applicant to send compliance report by fifth of every month. The RPFC, West Bengal, the controlling authority of the applicant was also present and the RPFC (Inspection) was given the task of coordinating the job in consultation with other principal officers from Head Office to ensure that the direction/order given by him was properly carried out. It would appear that nobody objected to the report submitted by the applicant as OIC, SRO, Durgapur, about the purchases made. No questions were raised as to whether financial sanctions had been obtained before carrying out the purchases or whether the necessary codal procedures were followed in carrying out the purchases. It is also a fact that the codal procedures are elaborate and it may not be possible for an officer having three years service to his credit to carry out this onerous task without proper support and guidance. It was the duty of the inquiring authorities to find out whether RPFC, West Bengal or the RPFC(Inspection) had given necessary support to the O.I.C., SRO, Durgapur, to carry out this onerous task within the given time. In the reply to the rejoinder, the Respondents have admitted that payments were released for the purchases made and that no recovery from the concerned officer/officials having been made, the Department had accepted

that the purchase so made had been made for use in the office and the same were a bona fide office requirement. Even then the applicant was found guilty on two counts that he had exercised his financial power beyond the limit delegated to him and that he had effected purchases in violation of the prescribed procedure. As it has come out clearly in the note of the Deputy Director, Vigilance, Headquarters, that there was no evidence or whisper of bribe taking or mala fide involved in the purchases. It was surely a case of not following the tender procedure or the prescribed procedure. In sum, therefore, it appears his lapses involved irregularities and not illegalities. Hence these were curables and not punishable. We have no doubt that the applicant being new to his job deserved better consideration. The applicant on his part has brought to our notice that the purchases so made were also subjected to scrutiny by the internal audit as well as the statutory audit (AG's audit) in 1998 and 1999. But no irregularity was pointed out by either of these two audit parties. In view of these facts of the case, the reason given by the Respondents explaining how all of a sudden, after four years, they started enquiring into the purchases appears to be wholly insufficient and smacks of prejudice. Further, framing of the charge that 'possibly acted in collusion' clearly brings out that the charges were not framed on hard evidence but on suspicion and supposition or conjecture and therefore, are liable to be set aside. The law is settled long back in the case of Union of India v.

H.C.Goel, AIR 1964 SC 364 that mere suspicion should not be allowed to take the place of proof. It was also held in the case of State of Madras v. A.R.Srinivasan, AIR 1966 SC 1827 that a public officer cannot be punished without the proof of any corrupt practice. It was held in the case of State of Assam v. M.Chandra Kal, AIR 1972 SC 2535 that a charge cannot be sustained on mere conjectures in the absence of evidence. In this case, we find that both the Deputy Director(Vigilance), East Zone and the Director (Vigilance) Headquarters had relied more on their imagination and conjectures in finding fault with the applicant than on evidence and therefore, the disciplinary action ab initio becomes illegal and bad in law.

16. The allegation of mala fide also cannot be brushed aside when it is seen that during the year 2003 the applicant was served with three charge memos, two of which have already been dropped and the third one was served on him on 8.7.2003 when his promotion to the next higher grade was in the offing. From the facts of the case, as revealed from the perusal of the relevant records, the allegation of mala fide is substantially proved. The role played by some of the functionaries of the Vigilance Branch calls for introspection and review by the head of the organization.

17. The disciplinary action initiated against the applicant also fails on another ground that the charge sheet was drafted by the Vigilance Branch and the disciplinary authority merely



accepted whatever was dictated by the Vigilance Branch to him. The disciplinary authority, therefore, had failed to apply his mind and acted irrationally. In this regard, we refer to the law well settled by the Supreme Court in the case of *Nagaraj Shivarao Karjagi v. Syndicate Bank*, 1989 (2) SLR 789, where their Lordships have observed as under:

“The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer.”

18. In the conspectus of the facts and circumstances of the case, the *Original Application* succeeds. We have no hesitation to quash the charges as framed against the petitioner in Annexure-1 dated 8.7.2003. We order accordingly. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
JUDICIAL MEMBER