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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK
ORIGINAL APPLICATION NO.09 of 2005
Cuttack this the 14th day of January, 2009

Sri Prafulla Kumar DashApplicant
-VERSUS-
Union of India and othersRespondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.09 OF 2005

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CORAM:

THE HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE MEMBER

Sri Prafulla Kumar Dash, aged about 50 years, S/o. Ambika Prasad Dash, resident of Babu Lane, Nandapara, Sambalpur, working as Commissioner of Income Tax (Appeals)-1, Aayakar Bhawan, Daba Gardens, Visakhapatnam-530020 ... Applicant

By the Advocates: M/s. Jaganath Patnaik, B. Mohanty, T.K. Patnaik, P.K. Nayak
S. Pattanayak, A. Patnaik

-VERSUS-

1. Union of India represented by the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi
3. Central Vigilance Commission, Satarkata Bhawan, G.P.O. Complex, INA, New Delhi-110 023
4. Chief Commissioner of Income Tax, Orissa, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-7
5. Sri N.C. Mohanty, Commissioner of Income Tax-IV, Aayakar Bhawan, Chowranghee Square, Kolkata ... Respondents

By the Advocates: Mr. U.B. Mohapatra, SSC

O R D E R

SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER:

Challenging Memorandum of charge dated 3/4.11.2003

(Annexure-A/6) issued by the Central Board of Direct Taxes, Department of Revenue, New Delhi, the applicant has filed this application praying to quash the same with incidental relief.

2. The brief facts which are necessary for the disposal of the application are as under:

(Signature)

While working as Deputy Commissioner of Income Tax, Special Range, Sambalpur, the applicant was issued with a Memorandum of Charge as per Annexure-A/6 on the allegation that he failed to report to the prescribed authority about the completion of construction of his house property along with the requisite details, including the valuation report, as required under Rule 18(2) of the Central Civil Services (Conduct) Rules, 1964. It was the further allegation that the applicant also failed to seek previous sanction of the prescribed authority under Rule 18(2) CCS (Conduct) Rules, before letting out the said house property to a Company with whom he had official dealings, he being an Assessing Officer of the said company. Apart from the above, it is alleged that the house property was let out to the company before its construction had been completed. According to the Memorandum of charge, since the applicant, by the aforesaid acts of omission and commission, had failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant, he thereby violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 and therefore, had been directed to submit the written statement within 20 days of the receipt of that Memorandum, besides, conducting inquiry in respect of those articles of charge which were not admitted. The applicant, as revealed from the

record, had submitted his representation dated 23.3.2004 (Annexure-A/7). While the matter stood, the applicant has moved this Tribunal in the present Original Application. It is the case of the applicant that he had taken House Building Advance from the Department for the purpose of constructing a house. Mahanadi Coal Field (in short MCL) came into existence in Sambalpur w.e.f. 2.4.1992. Sambalpur being a small town, there were no adequate houses for the purpose of residence for the executives and non-executives of the Company. The executives of MCL were in search of houses and in the process the applicant's house was hired. It has been averred by the applicant that no undue favour was shown to him by the MCL in this regard as the Company was at its initial stage of developing its building infrastructure. It is the further case of the applicant that the first return of income of the Company for the Assessment Year 1993-94 (previous year ending 31.3.1993) was filed before the Assistant Commissioner of Income Tax, Circle, Sambalpur on 30.11.1993. A revised return for the same Assessment Year was also filed before ACIT on 31.3.1994. These returns were filed before the ACIT, Sambalpur Circle as he had jurisdiction over new assessees. As Deputy Commissioner of Income Tax, the applicant had jurisdiction over cases where the returned income/loss was above Rs.5.00 lakhs. Accordingly, the

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above case was subsequently transferred by ACIT to DCIT. This being the situation, the applicant has submitted that he was not the Assessing Officer of the Company by the time his house was taken on rent. The applicant has further submitted that his house has been vacated by the Company since 1997, soon after the completion of Company's office and residential colony, etc. The applicant has added that at the time of vacation of his house by the Company he was continuing as DCIT(Special Range) and Assessing Officer for MCL. The applicant has stated that his relationship with the tenant was purely as that of a landlord and tenant and the same had no bearing or any nexus with his official position as DCIT and in the circumstances, it should not be construed that the applicant has exerted any influence over the company to take his house on rent. As regards submission of completion certificate regarding construction of house, it has been submitted that in pursuance of letter dated 13.3.2002 issued by the office of the Chief Commissioner of Income Tax, Bhubaneswar, the applicant had submitted the valuation report in the prescribed format. However, immediately after completion of the construction of the building, the applicant informed the same at the moment when he was asked for. It is the further case of the applicant that even applying Rule 18(2) of CCS (Conduct) Rules, 1964, the applicant had already

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given prior intimation regarding estimated investment of the construction of the house during 1993 itself. It is the further case of the applicant that even applying Rule 11 in the light of the Government of India decision, an order of censure will be the ~~maximum~~ ^{minimum} punishment for violation of Rule 18(2) of the CCS CCA (Conduct) Rules and in that event the proceeding for conducting inquiry is not permissible. It is also the case of the applicant that even under Rule 14 of the CCS(Conduct) Rules, there is no provision to inflict minor or major punishment, as the case may be, for any inadvertent mistake. It has been submitted that the nature of disciplinary action and quantum of punishment commensurate with the gravity of offence committed are of vital importance while contemplating initiation of proceedings under Rule 14 of CCS(Conduct) Rules, as per Government of India decision No.3 below Rule 14. The applicant has submitted that the nature of offence committed by him is not such which warrants initiation of disciplinary action under Rule 14 of CCS (Conduct) Rules and/or inflicting punishment thereby and in the circumstances, the charge levelled against him is not tenable as he had not conducted any professional misconduct nor should it be construed that the applicant has got any official dealing with the company concerned

and therefore, the impugned Memorandum as per Annexure-A/6 is liable to be quashed.

3. Replying to the above contentions, the Respondent-Department, by filing a counter, have taken the stand that the O.A. is not maintainable inasmuch as the disciplinary proceedings have so far not been finalized nor any penalty has been imposed on the applicant. The Respondents have submitted that the disciplinary proceedings are now pending at the stage of inquiry before the Commissioner for Departmental Inquiries. It is also further stated that though the construction of the house has been admitted by the applicant, but the completion certificate and the lease arrangements made with the MCL company have not been submitted to the authorities as per rules. It is further stated in Paragraph 9 of the counter as follows:

“That in reply to Para 4.3, it is submitted that it is not understood as to how a house, the construction of which was admittedly not complete, could be hired by a public undertaking company for the ostensible purpose of residence of its executive rank officers. The applicant’s averment that only external plastering was remaining to be done at the time of hiring out the house, cannot be believed because of the fact that, if a comparison is made between the IPRs of the applicant as on 1.1.95 and that on 1.1.96, an amount of Rs.1,25,000/- (out of the total cost of Rs.2,75,000) ad declared by the applicant) was spent on construction of the house during the calendar year 1995. This is in addition to the amount which must have been spent from July, 1994 till December, 1994. It may also be mentioned that the first installment of House Building Advance of Rs.90000/- was

received by the applicant only on 31.1.1994. All these facts *prima facie* indicate that not only the house was incomplete in July, 1994, but the same was, in all probability, not fit for the purpose of occupation for residential purposes. In such circumstances, if the company, viz., M/s. Mahanadi Coal Field Limited (MCL) still chose to 'hire' the incomplete structure, it is nothing but an undue favour obtained by the applicant from a company with which he was having official dealings".

Further, it is stated in the counter that it was incumbent on the part of the applicant to file written statement of defence to the Memorandum of charge, which he though filed, was late and therefore, it was considered to continue with the inquiry, as it is in the opinion of the Respondents that there remains nothing in the said written statement of defence to drop or modify the proceedings. In Paragraph 13 of the counter, it has been stated that the Chief Commissioner of Income Tax, Patna had requested the applicant as per letter No. CC/pat/Vig/VI-40/98-99/882 dated 11.3.99 to give clarification regarding information furnished by him in his IPRs as also his failure to comply with the provisions of CCS (Conduct) Rules in regard to completion of construction of house and renting it out to MCL. After due consideration of the reply thereto given by the applicant and having considered that a *prima facie* case of misconduct is made out, the applicant has been issued with the Memorandum of charge. In the above

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circumstances, the Respondents have prayed for dismissal of the O.A. being devoid of any merit.

4. We have heard Shri J.Patnaik, learned senior counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel appearing on behalf of the Respondent-Department.

5. The learned counsel for the applicant, reiterating the averments made in the O.A. further contended that as per the principles laid down by the Apex Court in 1984(3) SCC 316 (A.L.Kalra VS. Project and Equipment Corporation of India Ltd), even considering the entire facts stated in the counter affidavit, Memorandum of Charge and the imputation of allegations are correct, it would not attract misconduct. The learned counsel for the applicant submitted that even if there was any delay in submission of completion certificate, the valuation report or the proceedings relating to leasing out the house, those by itself would not amount to misconduct so as to contemplate an inquiry under the provisions of the CCS (CCA) Rules. Further, the learned counsel invited our attention to the facts that the applicant was never an Assessing Officer of MCL and the file relating to assessment happened to be considered by the applicant during 1997 only for the reason that the income of MCL company exceeded the limit of Rs. 5.0 lakhs and that too on a reference being made by

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the Assistant Commissioner of Income Tax who was the Assessing Officer of MCL at that time, and if so, there is no reason to believe or conclude that the applicant was having any official dealing with MCL Company prohibiting letting out of the house constructed by him to the said Company. With regard to other allegations in the Memorandum of Charge, it is the further contention of the learned counsel that failure of the applicant to furnish the completion certificate or the valuation report to the authorities concerned will not amount to misconduct for being proceeded against within the meaning of Rule 14 of CCS(CCA) Rules nor the offence is punishable under Rule 11 of CCS (CCA) Rules. In the circumstances, the learned senior counsel prayed that Annexure-A/6 being not sustainable in the eye of law is liable to be quashed.

6. To the above contentions, it has been submitted by the learned counsel for the Respondents that the matters in respect of MCL being referred by the Assistant Commissioner of Income Tax to the applicant, it is an admitted fact that he was the Assessing Officer for MCL. It is also contended that as the applicant was bound to report completion of construction of the house and submit the valuation report and also the proceedings leading to letting out the house to MCL to the prescribed authorities he failed to comply with the same in spite of request made by the



Chief Commissioner of Income Tax, Patna, and if so, the charge, according to learned counsel for the Respondents is tenable and the applicant has to face the consequence of inquiry. Further, it is contended by the learned counsel for the Respondents that even if the first part of allegation contained in Annexure-A/6 would not amount to misconduct under the conduct rules, its propriety could only be decided on receiving the defence statement of the applicant to the proposed charge and in any event, this could also be canvassed before the Inquiry Officer to arrive at a just finding having regard to the decision of the Government of India. The learned counsel for the Respondents further submitted that the O.A. is too premature to interfere as the Tribunal is not empowered to intercede in the matter of issuance of the charge memo in contemplation of inquiry under Rule 14 of CCS (CCA) Rules.

7. In the light of the arguments advanced, the question to be decided is whether the applicant is entitled to any relief that he has claimed in this O.A. or not.

8. Before answering this question, it is only advantageous to quote hereunder as to what Annexure-A/6 charge memo dated 3/4th November, 2003 issued by the 1st Respondent, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, speaks of:



"The President proposes to hold an inquiry against Shri P.K.Dash, the then Deputy Commissioner of Income Tax, Spl.Range, Sambalpur and presently CVO, Mahanadi Coalfields, Sambalpur, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-1). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV) Advice of the CVC is also enclosed.

Shri P.K.Dash is directed to submit within 20 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

Shri P.K.Dash is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him *ex parte*.

Attention of Shri P.K.Dash is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, I will be presumed that Shri P.K.Dash is aware of such a representation

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and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964".

With the above allegations, Articles of charge have been framed against the applicant (Annexure-1) which read as follows:

"Article-I

That the said Shri P.K.Dash while functioning as Deputy Commissioner of Income Tax, Special Range, Sambalpur, during the period 21 September, 1990 to 12 June, 1996, failed to report to the prescribed authority about the completion of construction of his house property along with the requisite details, including the valuation report, as required under CCS (Conduct) Rules 18(2). He further failed to seek previous sanction of the prescribed authority under CCS (Conduct) Rule 18(2), before letting out the said house property to a company with whom he had official dealings, by virtue of being its assessing officer. Moreover, the said property was let out to the said company even before its construction had been completed.

By the aforesaid acts of omission and commission, Shri P.K.Dash failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant, thereby violating Rules 3(1) and 3(1)(iii) of the CCS (Conduct) Rules, 1964".

Further, it is stated in the statement of imputation of misconduct or misbehaviour in respect of Article of charge framed against the applicant that since the applicant, while functioning as Deputy Commissioner, Income Tax, Special Range, Sambalpur, during 1990-96, constructed a house having an area of 1860 Sq.Ft. and the said building was rented out to MCL, a Company of which the applicant was the Assessing Officer. Further, it is stated that while

renting out the building as aforesaid the applicant committed a misconduct under Rule 18(2) of the CCS (Conduct) Rules, 1964 and thereby he failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant in violation of Rule 3(1)(i) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

9. A reading of the above Memorandum of charge would show that the applicant *prima facie* appears to have committed a misconduct under Rule 18(2) of the CCS(Conduct) Rules, 1964. The sum total of the imputations of misconduct is that as the applicant had availed a loan of Rs.1,80,000/- and constructed a residential building by using the House Building Advance from the Department as well as personal savings of Rs.95,000/-, that after its construction the applicant failed to report to the prescribed authority about the completion of construction of house along with the requisite details including valuation report as required under the Conduct Rules and that further he failed to seek previous sanction of the prescribed authority under the Conduct Rules before letting out the said house property to a Company with whom he had official dealings by virtue of his being an Assessing Officer, though it is the further allegation in the Article of Charge that the said property was let out to MCL company even before its construction had been completed.

10. In order to analyze the charges framed against the applicant in line with the arguments advanced by the learned counsel appearing for the applicant, first of all, we have to find out the real ambit of the charges so framed. The learned counsel for the applicant vehemently contended that even though the applicant had taken house building advance from the Department, he had on construction of the house rented out to MCL Company, but the charge that the applicant failed to submit details of the construction including completion report of the construction, valuation report and the total expenses he made for the construction of the residential building. Even if such non-compliance of the above obligation on the part of the applicant amounts to misconduct so as to be enquired into under the provisions of Rule 14 of CCS (CCA) Rules, it is only a question to be considered, adjudicated and decided by the Department itself, which is the best judge in the matter. In this context, it is to be remembered that the applicant had already filed a statement of defence maintaining the stand that he had already intimated the above details as required under the Rule 18(2) of the Conduct Rules to the Chief Commissioner of Income Tax, Bhubaneswar as well as Chief Commissioner of Income Tax, Patna on 19.11.1999 and 25.6.2002 in pursuance of letter dated 11.3.1999. The above facts are also

clear from Annexure-A/1 and A/2. If so, it is a matter of verification by the authorities whether the allegations against the applicant on this aspect are sustainable or not. The learned counsel appearing for the applicant submitted that the imputations of misconduct as per Annexure-A/6 by itself do not warrant a major penalty as no major penalty could be imposed under Rule 11 of the CCS (CCA) Rules in so far as the gravity of offence is concerned. Further, it is the contention of the learned counsel for the applicant that even if the applicant failed to report the matters under Rule 18(2), it is only an accounting of a loan transaction which had been taken by the applicant. In this context, the learned counsel also relies on the decision Nos. 4 and 5 of the Government of India below Rule 14 of CCS(CCA) Rules. The said Government of India decisions have to be looked into by the Disciplinary Authority and the Tribunal is not at all empowered to look into this aspect of the matter as the latter is not a fact finding authority. If such a contention is worth raising, it has to be raised before the Disciplinary Authority. Therefore, we are of the view that with regard to first part of the allegations levelled against the applicant, i.e., failure on the part of the applicant in submitting the reports regarding valuation of the building, completion of the building and renting out the building to MCL Company, the aforesaid

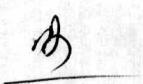
Government of India decisions have to be looked into by the authority competent in that behalf while considering the defence statement of the applicant. In the above circumstances, we hold that this Tribunal should restrain itself from fettering or disrupting the power, authority and jurisdiction exercisable by the Disciplinary Authority.

11. With regard to the next point canvassed before this Tribunal that the applicant had leased out the building to MCL with which he had official dealings, this part of the allegation would come under the proviso to Rule 18 of Conduct Rules, which reads thus:

“...provided that previous sanction of the prescribed authority shall be obtained by the Govt. servant if any such transaction is with a person having official dealing with him”.

The misconduct contemplated under the proviso is actually diverse from the misconduct narrated in the main rule. In this context, this Tribunal is called upon to give an answer to the contention that the applicant had not wittingly or unwittingly abused his position as Assessing Officer of MCL. It is the case of the applicant that the house in question was rented out to one of the Executives of MCL during 1992, though without completion of its construction as such. This was according to the applicant necessitated when the

MCL was in urgent need of residential accommodation for the executives and non-executives of the Company in the Sambalpur town. In this context, it is to be noted that the first return of income of MCL company was submitted in 1993-94 and the said return was filed before the Assistance Commissioner of Income Tax circle, Sambalpur on 30.11.1993. This return though was refused subsequently during 1993-94, was submitted before the same Assessing Officer, viz., Assistant Commissioner of Income Tax Circle, Sambalpur and thereafter the returns were verified by the Assistant Commissioner of Income Tax, Sambalpur, who had jurisdiction over the new assesses. As the returns submitted by the MCL exceeded the limitation of the Assistant Income Tax Commissioner, Sambalpur, over which he had no jurisdiction, the matter was referred to the applicant as the Deputy Commissioner of Income Tax, Sambalpur and if so, the applicant happened to become an officer having official dealings with the MCL only after the renting out of the building and in strict interpretation of the proviso to Rule 18(2), we are not in a position to hold that the applicant has got any official relation with the Company so as to prevent him from renting out his building to the Company as contemplated under the proviso to Rule 18(2) of the Conduct Rules, 1964. Apart from that it is the case of the applicant that the



building has been vacated during 1997, i.e., even before issuance of Annexure-A/6, Memorandum of charges to the applicant. If so, the 2nd limb of Rule 18(2) of the Conduct Rule is not applicable to the allegation levelled against the applicant and therefore, we make it clear that this part of the charge levelled against the applicant is not sustainable and is liable to be quashed and accordingly, we quash the same.

12. Before parting with this matter, the contention of the learned counsel for the applicant that non-furnishing of completion report, valuation report and intimation regarding the actual cost of construction to be prescribed authority does not amount to misconduct warranting punishment, has to be considered in the light of the judgment in A.L.Kalra (supra). In this connection, it is profitable to quote what their Lordships of the Hon'ble Supreme Court in Para 22 thereof have held:

“Rule 4 bears the heading ‘General’. Rule 5 bears the heading ‘Misconduct’. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behavior in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behavior befitting an offer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary

with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories (I) Ltd. V. Presiding Officer, Labour Court, Meerut where this Court held that "everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty". Rule 4 styled as 'General' specifies a norm of behavior but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charge are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such misconduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

The impact of the above judgment also has to be considered by the Disciplinary Authority while considering the Statement of Defence submitted by the applicant to the Memorandum of Charge.

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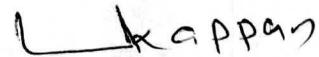
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13. Having regard to what has been discussed above, it is directed that the Disciplinary Authority shall consider as to if the first limb of the article of charge is sustainable or not in the light of the observations made above and with reference to the Written Statement of Defence submitted by the applicant to the Memorandum of Charge and pass appropriate orders and communicate the same to the applicant as expeditiously as possible, at any rate within a period of 60 (sixty) days from the date of receipt of this order.

14. With the above observation and direction, the O.A. is disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER



(K.THANKAPPAN)
JUDICIAL MEMBER

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