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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

**Original Application No.812 OF 2002
Cuttack, this the 30th day of August,2005.**

PITABASH MOHAPATRA APPLICANT

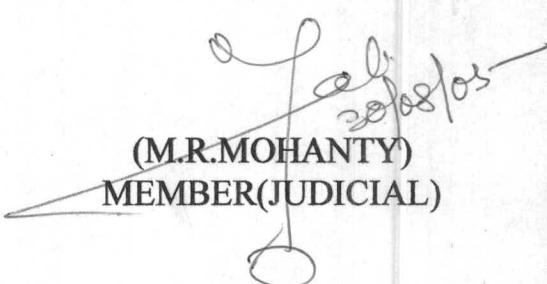
VERSUS

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of CAT or not?


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.812 OF 2002
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C O R A M:-

**THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)**

SHRI PITABASH MOHAPATRA, Aged about 70 years,
S/o.Late Arjun Charan Mohapatra, Village: Koraput,
PS/Dist: Bhadrak, At present Plot No.692, Sahid Nagar,
Bhubaneswar-751 007, DIST.KHURDA.

..... **APPLICANT.**

For the Applicant: M/s. J.M.Mohanty, D.Samal,
N.K.Das,K.C.Mishra,
Advocates.

VERSUS

1. Union of India, represented through its Secretary,
Ministry of Environment of Forest (Dept.of Posts)
Paryavarana Bhawan, CGO Complex, Lodhi Road,
NEW DELHI- 110 003.
2. Government of Orissa represented through its
Secretary, Forest and Environment, Orissa,
Secretariat Building, Bhubaneswar, Khurda.
3. Commissioner of Departmental Enquiry, G.A.Department,
Secdretariat Building, Bhubaneswar, Dist. Khurda.

..... **RESPONDENTS.**

For the Respondents: Mr. U.B.Mohapatra, Sr. Standing Counsel(Central).
Mr. A.Routray, Government Advocate(Orissa)

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O R D E R

MR.M.R.MOHANTY, MEMBER(JUDL.):-

Applicant, while serving as a member of Orissa (State) Forest Service, was charge-sheeted (in a Departmental/Disciplinary Proceedings) during October, 1987. On 09-11-1987, he was promoted and became a member of Indian Forest Service and remained in Orissa State Cadre. While continuing as an I.F.S. Officer of Orissa cadre, the Applicant submitted a written statement of defence to the charge-sheet on 09-05-1988. The State Government of Orissa drew an additional charge-sheet against him on 12-06-1989; to which the Applicant placed his written statement of defence on 28-09-1989 and, ultimately, faced the superannuation from Indian Forest Service on 30.06.1991. Upon his retirement, the Applicant faced the enquiry (in the pending disciplinary proceedings) and, ultimately, faced punishment (of reduction of his pension by 25% and forfeiture of entire gratuity) by an order dated 31-08-2004 passed by the Government of India. In this Original Application (as it stands now, after amendment) under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has, virtually, challenged the above said actions of the Government of Orissa and that of the Government of India.

[Signature]

2. The Applicant was permitted to amend the Original Application; for which the Respondents/State Government of Orissa had not only filed a counter; but also filed an Additional Counter. The Applicant, accordingly, filed a rejoinder and also an Additional rejoinder; to which the Respondents filed a reply in this case.

3. In the above premises, we gave full hearing to the learned counsel appearing for both the parties , perused the materials placed on record and examined the law governing the field.

4. Only point that has been raised, at the hearing, by Mr. J.M. Mohanty, Learned Counsel appearing for the Applicant, is that since the Applicant was a member of an All India Service, the State Government (of Orissa) was incompetent to proceed against him departmentally and, as such, final order (by which punishment of 'reduction of pension by 25% and forfeiture of entire gratuity' was imposed on the Applicant) even if passed by the Government of India is not available to be sustained; especially because the proceedings continued after his retirement from Government Service.

5. In order to examine the above aspect of the matter (as raised, on behalf of the Applicant at the hearing) we had to first go through the

impugned punishment order placed at Annexure-A/10 (issued by Government of India, in the Ministry of Environment and Forests, order No. 24033/01/1997 AVU dated 31-08-2004) to the O.A.; contents of which read as under:-

“ ORDER

WHEREAS disciplinary proceedings under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 were instituted against Shri P. Mohapatra, IFS (Rtd.) vide the Government of Orissa Charge Memo No. 19081/FFAH dated 28-10-1987 and No. 12955/FFAH dated 12.06.1989 in respect of the following articles of charges:

- Expenditure has been incurred in excess of allotment;
- No stock register for the purpose of polythene bags has been maintained;
- Misuse of power;
- Misappropriation of Govt. Money;
- Negligence of duty.

2. WHEREAS a statement of imputations/facts was also given in the charge memo forwarded to Shri Mohapatra. The Member of Service denied the charges vide his letter dated 9-05-88 and dated 28-09-1989.

3. WHEREAS the Inquiring Authority vide its report dated 10-11-1995 held the MOS guilty of the following three charges:

- Double payment of Rs.27,000/- for purchase of 1000Kg. Polythene bags in the year 1984-85;
- Non-availability of any voucher for payment of Rs. 803,866=90 p to M/s.Ranjita Steelex, Bhubaneswar;
- Purchase of 1199 Kg. 500 gms of Bacterial Fertilizers at a cost of Rs.35,985/-. On these accounts total Rs. 8,66,851=90 p are to be got realized from him to make good the loss sustained by Government.

4. WHEREAS a copy of the report of inquiry was sent to Shri Mohapatra vide Government of Orissa Memo dated 26-03-

1999 and he was given opportunity of making such submission on the report of inquiry as he desired.

5. WHEREAS Shri Mohapatra submitted his representation dated 01-04-1999 against the report of inquiry.

6. WHEREAS after careful consideration of the Inquiry Report, the representation of the officer and other relevant aspects of the case, the Government of Orissa came to a provisional conclusion to impose a penalty of 25% cut in his pension and forwarded the case to the Government of India to obtain its concurrence for imposition of said penalty on the officer, under Rule 6 of AIS (DCRB) Rules, 1958.

7. WHEREAS the Union Public Service Commission (UPSC) who were consulted in the matter, vide their letter No. F.3/49/2001-S.1 dated 04-01-2003 advised penalty of Twenty-five percent (25%) cut in pension on permanent basis be imposed on Shri Mohapatra and further his entire gratuity be also permanently forfeited.

8. NOW THEREFORE after considering all the facts, circumstances, the case records of the inquiry and the advice of the UPSC, the President after careful consideration has come to the conclusion that the charges established against Shri P. Mohapatra, IFS (Rtd.) constitute grave misconduct on his part and the ends of justice would be met if the penalty of Twenty-five percent (25%) cut in pension on permanent basis is imposed on him and further his entire gratuity be also permanently forfeited. Accordingly the above said penalty is hereby imposed on Shri P. Mohapatra, IFS (Rtd.).

For and on behalf of the President of India

Sd/- (Veena Upadhyaya)

Joint Secretary to the Government of India”

6. The contents of the impugned order dated 31-08-2004 go to show that the Applicant, an AIS Officer, faced a proceedings under Rule-8 of the AIS (D&A) Rules 1969 under Government of Orissa Charge Memo

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No. 19081/FFAH dated 28-10-1987 and No. 12955/FFAH dated 12-06-1989 and, upon enquiry, the report dated 10-11-1995 was supplied to the Applicant by Government of Orissa Memo dated 26-03-1999; on receipt of which the Applicant submitted a representation on 01-04-1999 and that, on giving consideration to the enquiry report, the representation of the Applicant and other relevant aspect of the matter, the State Government formed a provisional opinion to reduce 25% of the pension of the Applicant but it submitted the case to Government of India for taking needful action under AIS (DCRB) Rules, 1958. The impugned order passed by the Government of India also discloses that the Union Public Service Commission was consulted in the matter (by the Government of India) and it furnished its advise (by their letter No. F. 3/49/2001-S.I. dated 04-11-2003) forming an opinion not only to reduce the pension by 25% but also to forfeit his gratuity permanently and that, only after that stage, the Disciplinary Authority, after careful consideration, came to a conclusion and passed the impugned order under Annexure-A/10 dated 13/31-08-2004.

7. Keeping the above said facts in mind, we now proceed to examine the provisions of law governing the field. In order to find out as to who was disciplinary authority of the Applicant; we examined the

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provisions of Rule- 2 (b) and Rule 7 of the AIS (D & A) Rules of 1969; relevant portion of which are extracted herein below for ready reference:-

“1. Definitions- In these rules, unless the context otherwise requires-

- (a) ‘commission’ means the Union Public Service Commission;
- (b) ‘disciplinary authority’ means the authority competent under these rules to impose on a member of the service any of the penalties specified in Rule-6.”

“7. Authority to institute proceedings and to impose penalty-(1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in Rule 6-

(a) if such act or omission was committed before his appointment to the Service-

(i) the State Government, if he is serving in connection with the affairs of that State, or is deputed for Service in any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of that State or in a local authority set up by an Act of the Legislature of that State; or

(ii) the Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of Sub-rule (2), to

impose on him such penalty specified in Rule 6 as it thinks fit;

(b) If such act or omission was committed after his appointment to the Service-

- (i) while he was serving in connection with the affairs of a State, or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of the State; or
- (ii) while he was on training, the Central Government, unless the selection for the training was done by the State Government and the cost of the training was entirely borne by the State Government.
- (iii) While he was on leave, the Government which sanctioned him the leave; or
- (iv) While he was under suspension, the Government which placed him or is deemed to have placed him under suspension; or
- (v) If such act or omission is willful absence from duty after the expiry of leave, the Government which sanctioned the leave; or
- (vi) While he was absent from duty otherwise than on leave, the Government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty; or

(vii) The Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of Sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company, association, body of individuals or local authority, as the case may be, under whom he is serving at the time of institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceeding.

Explanation- For the purpose of Clause (b) of Sub-rule (7), where the Government of a State is the authority competent to institute disciplinary proceedings against the member of the Service, in the event of a re-organization of the State, the Government on whose cadre he is borne after such re-organization shall be the authority competent to institute disciplinary proceedings, and, subject to the provisions of Sub-rule (2) to impose on him any penalty specified in Rule-6.

((1-A) Notwithstanding anything contained in Sub-rule (1) the Director, Lal Bahadur Shastri, National Academy of Administration, the Director, Sardar Vallabhbhai Patel National Police Academy or the President, Forest Research Institute and Colleges, shall be empowered to initiate disciplinary proceedings against a probationer who is undergoing training at the Lal Bahadur Shastri National Academy of Administration, Sardar Vallabhbhai Patel National Police Academy or Forest Research Institute and Colleges, as the case may be, in respect of any misconduct or misbehaviour during the period he spends at the said Academy/Institute in accordance with the prescribed procedure laid down in Rule 10

of these rules. Thereafter the Director/President shall refer the case to the Central Government with the relevant records for passing order under Rule-6 in consultation with the Commission.)

(1-B) Notwithstanding anything contained in Sub-rule (1), in any case, a question arises as to the Government competent to institute disciplinary proceedings, it shall be decided by the Central Government so decided by the Central Government, as being competent to institute disciplinary proceedings (which may include the Central Government also), shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of Sub-rule (2) to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company association, body of individuals, or the local authority, as the case may be, under whom he is serving at the time of the institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

(2) The penalty of dismissed, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.

(3) Where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty specified in Rule 5 is imposed:

(Provided that the in relation to the members of the Service borne on any Joint Cadre, the punishing Government shall consult the Joint Cadre Authority:

Provided further that where the Government concerned are the Central



Government and the State Government or two 'State Governments and there is a difference of opinion between the said Government in respect of any mater referred to in this rule, the matter shall be referred to the Central Government for its decisions which shall be based in consultation with the Commission."

From a reading of the above said statutory provision, it is clear that where a member of All India Service, for his acts or omissions (that was committed by him, before his appointment to such All India Service) is to face a disciplinary proceedings; then the State Government (to which cadre he belongs) alone is competent to institute the disciplinary proceedings against him and also equally competent to impose on him punishments (excepting the penalty of 'compulsory retirement', 'removal' and 'dismissal') that has been specified in Rule-6 of the Rules of 1969.

8. In the present case, the charge-sheet was drawn against the Applicant before his entry into All India Services, and an additional charge-sheet was drawn, after his entry to All India Services, by the State Government of Orissa; for which the learned counsel for the Applicant has raised a point that the very initiation of the disciplinary proceedings (by the State Government) against an AIS Officer, like the Applicant, was bad. But it is the case of Mr. A. Routray (Learned Additional Government Advocate)

representing the State Government of Orissa) and Mr. U.B. Mohapatra, (Learned Senior Standing Counsel for the Union of India) that for the reason of the clear provisions of Rules-7 of the AIS (D&A) Rules, 1969, the State Government was alone competent to initiate the proceedings against an AIS Officer; even for his alleged misconduct covering his past period of service under the said State Government. From a reading of Rule-7 of the Rules of 1969, it has already been made clear that for his acts and/or omission, committed in course of his past service under the State Government an AIS Officer is liable to be proceeded against (in a Departmental/Disciplinary proceedings) being instituted by a State Government; although major penalties specified under Rule-6 (1) (vii), (viii) and (ix) of the said Rules of 1969 are only available to be imposed by the Central Government. The law no where requires a State Government even to obtain prior clearance of the Government of India for instituting a departmental proceeding against an AIS Officer belonging to that State Cadre. When even for instituting a major penalty proceedings against an AIS Officer (for his past conduct in his previous employment/service) the State Government is competent (and for that purpose not even prior approval of the Central Government is essential); the State Government was certainly competent to proceed with the

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departmental proceedings that was initiated prior to his entry to service. Therefore, the proceeding that was lawfully started against the Applicant by the State Government was also available to continue against him, by the State Government, even without any leave from the Central Government.

9. Rule-9 of the Rules, 1969, reading together with Rule 7 thereof goes to make the position more clear. Relevant portion of the Rule-9 of the Rules of 1969 is extracted herein below for a better appreciation:-

“9. Action on the inquiry report-(l) The disciplinary authority may, for reasons to be recorded by it in writing remit the case to inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule-8 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge record its reasons for such disagreements and record its own findings on such charge, if the evidence on record as sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings, on all or any of articles of charge, is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 6 should be imposed on the member of the Service, it shall notwithstanding anything contained in Rule 10, make an order imposing such penalty:

Provided that, in every case, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the member of the Service.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 6 should be imposed on the member of the Service it shall make an order imposing such penalty and it shall not be necessary to give the member of the service any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the member of the Service."

Thus, even if the Central Government is the final Authority to impose major punishment of 'compulsory retirement', 'Removal' or 'Dismissal' on an AIS Officer, the State Government ~~cannot~~ only initiate the proceedings but also it can proceed further in the matter leading to drawal of the enquiry report serve the copy of the enquiry report on the delinquent AIS Officer, in order to give him an opportunity to represent his case) and then only it should place all materials before the Central Government/ Government of India for passing of the final order in consultation with the Union Public Service Commission.

10. In the present case all the above said procedures , as prescribed under the Rules, having been followed by the State Government and the

Union Government (of India) in consultation with the UPSC, the plea of the learned Counsel for the Applicant (so far it relates to initiation and continuance of the Disciplinary Proceedings against him by the State Government of Orissa) is hereby over-ruled.

11. In order to examine the second limb of the plea raised by Mr. J.M. Mohanty, learned counsel appearing for the Applicant (that the Applicant, was not available to be proceeded under AIS (D&A) Rules, 1969 after his retirement from AIS) we had to proceed with examination of the law (in the background of the facts) further.

In the present case, pension of the Applicant has been asked to be reduced by 25% permanently and entire gratuity of the Applicant has been asked to be forfeited. Such reduction/forfeiture is not unknown to the AIS (D&A) Rules, 1969. Such an order, as available to be passed against retired AIS Officers (under Rule-6 of the AIS (DCRB) Rules, 1958) has also been taken note of in the proviso below Rule 6 (l) (vii) of the Rules of 1969. Rule 6 of the AIS (DCRB) Rules, 1958 reads as under:-

“6. Recovery from pension- (1) (The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity) of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a

departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission.

Provided further that –

- (a) such departmental proceedings, if instituted while the pensioner was in service. Whether before his retirement or during his re-employment, shall after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by way it was commenced in the same manner as if the pensioner had continued in service;
- (b) such departmental proceedings, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;
 - (i) Shall not be instituted save with the sanction of the Central Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;
- (c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution."

Explanation- For the purpose of this rule:

- (a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date; and
- (b) a judicial proceeding shall be deemed to be instituted-
 - (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and
 - (ii) in the case of a civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note 1. – Where a part of the pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five *per mensem*.

Note 2.. – Where Central Government decide not to withhold or withdraw pension but orders recovery of any pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the member of the service.

(2) Where any departmental or judicial proceeding is instituted under Sub-rule (1) , or where a departmental proceeding is continued under Clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, *he shall be sanctioned by the Government which instituted such proceedings*, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of

retirement, or if he was under suspension on the date of retirement, upto date immediately proceeding the date on which he was placed under suspension; but not gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereto:

(Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under Rule -10 of the All India Services (Discipline and Appeal) Rules, 1969 , for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Sub-rule (1) of Rule 6 of the said rules and continuing such proceedings under Sub-rule (1) of this rule after his retirement from service, the payment of gratuity of Death-cum-Retirement gratuity shall not be withheld).

(3) Payment of provisional pension made under Sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid, proceeding, but not recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period”.

A plain reading of the above noted Rule-6 of AIS (DCRG)

Rules, 1958 goes to show that the Central Government has retained powers to withhold/forfeit the pension, in part or in full, of a retired AIS Officer; provided a proceedings is initiated against him within four years of the superannuation. It also goes to show that where an AIS Officer faces a retirement (from Government Service) mid-way of a disciplinary proceedings, then the existing proceedings shall continue against him (being

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deemed to be a proceedings to reduce/withhold pension/gratuity under Rule-6 of AIS (DCRB) Rules of 1958 but the procedures, as were available to an AIS Officer in active service, shall continue to be followed. Thus, even if the final order is likely to be passed under Rule-6 of AIS (DCRG) Rules of 1958 for reduction/forfeiture of pension/Gratuity; the entire procedures under Rules 8 & 9 of AIS (D&A) Rules, 1969 are bound to be followed.

12. In the present case, after following the entire procedures as are available under AIS (D&A) Rules of 1969 (as the Applicant faced retirement during pendency of the Disciplinary Proceedings) final order (of reduction of pension and forfeiture of gratuity) as are available under AIS (DCRB) Rules of 1958 have been imposed on the Applicant by the Central Government (of India) as it is the competent Authority under both the Rules of 1958 and also of 1969. As regards the plea of the Applicant that he being an IFS Officer, no action can be taken on the report submitted by an officer who is below his cadre; is not sustainable; because the proceedings started at a time when the Applicant was a State cadre Officer and because no materials have been placed on record to show that the enquiry officer was in any way incompetent / inferior than him. In view of this, we are not

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very much impressed on such plea of the Applicant and the said plea is hereby overruled.

13. Apart from the hyper-technical plea, as discussed above, the learned counsel for the Applicant has not questioned the factual merit of the Disciplinary Proceedings nor about the quantum of punishment. Rightly he has done so, because this Tribunal is not to examine that aspect of the matter like an Appellate Authority.

14. In the result, the technical plea, as raised, having been answered against the Applicant (and in favour of the Respondents Government) this Original Application is dismissed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)