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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.57 of 2011

Cuttack this the **11th** day of **December**, 2013

Sri Krushna Chandra Panda...applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi or not ? ✓

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Krushna Chandra Panda

Aged about 42 years

S/o. late Bauri Bandhu Panda

Vill-Kailashpur

Dengausta

PO-Chhanameri

PS-Digapahundi

Dist-Ganjam

...Applicant

By the Advocate(s)-M/s.B.Dash

C.Mohanta

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Additional Divisional Railway Manager
East Coast Railway
Khurda Road
PO-Jatni
Dist-Khurda
3. Sr.Divisional Electrical Engineer
East Coast Railway
Khurda Road
PO-Jatni
Dist-Khurda

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4. Divisional Mechanical Engineer
East Coast Railway
Khurda Road
PO-Jatni
Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

Applicant in the present Original Application, who was working as Assistant Loco Pilot in the East Coast Railways has approached this Tribunal with a prayer that the orders of punishment of dismissal from service passed by the Disciplinary Authority vide Annexure-A/19, orders of the Appellate Authority upholding the orders of punishment imposed by the Disciplinary Authority vide Annexure-A/21 and the orders of the Reviewing Authority rejecting the prayer of the applicant vide Annexure-A/23 be quashed and the Respondents be directed to reinstate the applicant in his former post and allow him to draw all the benefits including the back wages.

2. The facts of the case in short are that while working as Assistant Loco Pilot under the Crew Controller, Khurda, applicant was placed under suspension by the Divisional Mechanical Engineer, Khurda Road under Rule-4 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short Rules, 1968). The Divisional Mechanical Engineer-cum-Disciplinary Authority framed a charge sheet on 5.5.2009 wherein it was alleged that the applicant while working on Train No.8410 committed gross negligence by refusing to work in the Train at Kharagpur on the plea of excess temperature and thereby violated S.R. 2.008(1) and Rule 3.1.(ii) of the Railway Servant Conduct Rules. The Disciplinary Authority vide Office Order dated 20.5.2009 appointed one J.V.Appa Rao as the Enquiry



Officer to enquire into the charges framed against the applicant. The applicant, on 22.5.2009 requested the Disciplinary Authority to supply the documents so that he will be in a position to give a suitable reply. On 8.6.2009, the preliminary enquiry was conducted. Thereafter on the instructions of the Disciplinary Authority, the Enquiry Officer posted the hearing of the case to 14th and 15th June, 2009. The applicant requested the authorities to fix a date after supplying documents and after giving time to the defence counsel to attend enquiry. The Enquiry Officer, then fixed the regular date of hearing to 25th and 26th June, 2009. In the meantime, the defence counsel requested the Enquiry Officer to postpone the date of inquiry and suggested the date as 4th and 5th July, or 8th and 9th July, 2009. On 25.6.2009, the Enquiry Officer being instructed by the Disciplinary Authority fixed the next date of hearing to 8th and 9th July, 2009. Again on the instructions of the Disciplinary Authority, the Enquiry Officer fixed the enquiry to 20th and 21st July, 2009. After conclusion of the inquiry, the applicant submitted his final defence statement on 31.7.2009. On 14/15.9.2009, the Disciplinary Authority wrote to the applicant requiring him to submit his final defence against the inquiry report and the applicant submitted his final defence on 29.9.2009. Thereafter, the Disciplinary Authority, vide Office Order dated 13.1.2010 imposed the punishment of dismissal from service on the applicant. The applicant on 29.1.2010 submitted his appeal before the Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road ventilating his grievance and praying therein for exoneration from the charges. Further being instructed by Senior Divisional Electrical Engineer, he made an appeal to the Senior Divisional Electrical Engineer as he was the competent Appellate Authority on 5.4.2010. The Appellate Authority vide office order dated 25.6.2010 upheld the punishment as imposed by



the Disciplinary Authority. Again the applicant filed a petition before the Additional Divisional Railway Manager, who was the Reviewing Authority and the Reviewing Authority also rejected the prayer of the applicant on the ground that no new facts and grounds were taken in the petition.

3. The applicant has taken the following grounds challenging the sustainability of the orders passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority.

4. Order of appointment of the Enquiry Officer was made before the supply of the documents and the posting of the Enquiry Officer was made before the expiry of the time granted for naming the defence counsel. The E.O. did not conduct the inquiry with an independent mind since all along he was functioning on the instructions of the D.A. The Respondents have also reduced the subsistence allowance from 50% to 25% revealing their mala fide intention in this matter. The charge sheet should have been served along with the documents basing upon which the charges were drawn. But the same were not provided to the applicant thereby depriving him of chance of making a decent explanation. The Presenting Officer was not appointed and therefore, the E.O. did not play a neutral role. All along he was working at the behest of the Disciplinary Authority and functioned both as a Presenting Officer and Enquiry Officer.

5. Coming to the facts of the charge, the applicant has mentioned that the running room at Kharagpur was not having the basic requirements which have been substantiated by the statement of the staff also. Because of unbearable temperature on that day nobody could have slept. This fact got corroborated from the deposition of the prosecution witness also. During the enquiry, the running room caretaker stated before the E.O. that the applicant had said on that

day that he could not work on the link Train No. 8409 Express. But after taking some rest he can work on any other train to Khurda. On that day, the temperature was high and the water from the tap was just like boiling water. The beds were also hot. The aforesaid depositions were sufficient to come to a conclusion that the applicant could not take rest and in the said circumstances, he only politely declined to drive the train and he has acted rightly because he did not want to risk the lives of passengers of an Express Train since he was feeling drowsy. The Disciplinary Authority did not consider this evidence in its right perspective and passed the order of dismissal. He also did not take into account the statement of the Caretaker of the resting room and also the statement of the Crew Controller.

6. Although the applicant has urged several such grounds, to sum them up, it is adequate to mention that the applicant has alleged that various evidences regarding weather condition and unsuitability of the resting room were ignored and the punishment of dismissal was imposed on him. The applicant has also pleaded that the process of inquiry was not of an independent kind since the E.O. was acting under the direct guidance of the D.A.

7. The Respondent-Railways by filing their counter affidavit have opposed the prayer of the applicant. In the counter affidavit, the Respondents have submitted that on 21.4.2009, one message of the Divisional Power Controller acting on behalf of the Senior Divisional Mechanical Engineer, S.E.Railway was received by the Power Controller in the Office of the Senior Divisional Mechanical Engineer, Khurda Road intimating that Incoming Loco Pilot of 8410 Express, one P.K.Sahoo and Assistant Loco Pilot Shri K.C.Panda arrived at Kharagpur at 6.50 hrs. After serving Call Book at 18 hours, they refused to work on the link Train 8409 Express

ex-KGP on the plea of not taking proper rest due to excess heat at Kharagpur Running Room. Thereafter, the applicant was placed under suspension. He was served with a major penalty charge sheet vide Memo dated 5/6.5.2009 consisting of one article of charge to the effect that while working as Asst.Loco Pilot from Khurda Road to Kharagpur, the Train Number 8410 arrived at KGP at 6.50 hours and after taking complete 14 hours rest, the applicant refused to work with the Train Number 8409 at Kharagpur at 20.500 hours despite having received Train Order, on the plea of excess temperature. The charge sheet was received by the applicant on 7.5.2009 to which he submitted his explanation on 15.5.2009 denying the charge. The D.A. after going through the show cause reply appointed Shri J.V.Appa Rao, Additional Divisional Mechanical Engineer-I as the Enquiry Officer to investigate into the charge levelled against the applicant. After receiving the charge memo and the order of appointment of the I.O., the applicant submitted an application dated 25.5.2009 requesting the Disciplinary Authority to supply the documents already asked for by him, but at the same time, participated in the preliminary enquiry conducted on 8.6.2009 by the I.O. The I.O. also allowed for employing a defence counsel on behalf of the applicant and accordingly, the sitting of the enquiry was rescheduled. On 8.6.2009 the applicant was supplied with the documents that he had asked for. On 20th and 21st July, 2009 the regular enquiry was held wherein the charged officer and his defence counsel attended the enquiry. The prosecution witnesses were also examined and their statements were recorded. The defence counsel cross-examined the prosecution witness. All reasonable opportunities were afforded to the charged officer during the course of enquiry. On conclusion of the enquiry proceeding the applicant submitted his defence statement on 31.7.2009 to the

I.O. On 31.8.2009 the I.O. submitted the inquiry report holding the applicant guilty of the charges whereafter the applicant was also supplied with the copy of the inquiry report to which he submitted an explanation in the shape of final defence statement challenging the findings of the I.O. The Disciplinary Authority after taking into consideration the entire record of the proceedings passed a reasoned and speaking order imposing punishment of dismissal from service and a copy of this order was communicated to the applicant. The Appellate Authority, i.e., Senior Divisional Electrical Engineer, considered the appeal filed by the applicant and after going through entire D & A case and taking into consideration the entire record, rejected the appeal on the grounds that he did not find any reason for reversing the orders of the Disciplinary Authority. Consequent upon rejection of the appeal, the applicant submitted a review application before the ADRM, Khurda Road who also considered the same and rejected with a reasoned order. Regarding the allegations made by the applicant that the I.O. fixed the dates of inquiry on being instructed by the D.A., Respondents have completely denied this. During the regular inquiry held on 20th and 21st July, 2009, the applicant was supplied with the documents asked for by him. Thereafter, being assisted by his defence counsel, the applicant examined and cross-examined the witnesses produced by the prosecution side. Finally, the I.O. closed the enquiry proceeding with due satisfaction of all the parties. With regard to allegation of the applicant that he was given subsistence allowance at the reduced rate of 25%, it has been submitted by the Respondents that the reduction order was revoked and his subsistence was restored as the order reducing the subsistence allowance by 25% was found to be outcome of an inadvertent mistake, which was subsequently detected by the Railway Administration and therefore, there was no

mala fide involved in this. The applicant was given a copy of the IC's report after the conclusion of the departmental proceedings. The D.A. also having gone through the entire file and final statements of the applicant had come to the conclusion that the charge of refusal to work levelled against the applicant was proved in the enquiry. The applicant had disobeyed Subsidiary Rule 2.8(1) and failed to maintain devotion to duty and as such, having taken the gravity of misconduct into consideration, the punishment of dismissal from service was imposed on the applicant vide Annexure-A/19 to the O.A. The Appellate Authority also while dealing with the grievance of the applicant took note of all the relevant points as raised by him and passed a reasoned order as would be seen at Annexure-A/21. The Reviewing Authority, i.e., ADRM also passed a reasoned and speaking order vide Annexure-A/23 rejecting the prayer of the applicant. Therefore, all reasonable opportunities have been provided to the applicant at all stages of the proceedings to defend his case and due and proper procedure has been followed in the disposal of the disciplinary case. The applicant has not maintained total devotion to duty in discharging his responsibility and this has been proved during the process of inquiry. There was no departure from the procedure in conducting the departmental proceedings and there is no iota of truth in the allegation made by the applicant in this O.A.

8. Applicant has filed a written note of submission in this case. His argument is that the documents based on which the charge sheet was drawn were supplied to him on 21.7.2009, i.e., on the last date of inquiry as admitted by the Railway Authorities and therefore, the applicant was deprived of his opportunity to put forward his explanation in a perfect manner. It has been submitted that although a major penalty proceeding was conducted no Presenting Officer was appointed.



The I.O. conducted himself as the PO putting the leading questions to the parties for proving the charge by any means. The I.O. always functioned at the behest of the D.A. which is evident from the fact that the date of inquiry was fixed as per the desire of the D.A. Further, the facts of the case were also not at all considered by the I.O. in the right perspective. The applicant requested the authorities only for ¼ hours rest before he is asked to drive the Train. This request was wrongly interpreted as refusal to work for which he was dismissed from service without following the principles of natural justice. The Appellate Authority and the Reviewing Authority have not properly considered the appeal petitions and they have not considered the risk involved in allowing a drowsy person to drive a train putting several human lives at risk. The Hon'ble Supreme Court has categorically observed that in a major penalty proceedings P.O. has to be appointed to place the case on behalf of the prosecution before the I.O. The I.O. cannot put leading questions to prove the charge since the role of the I.O. is only to find out the truth. It has been mentioned by the learned counsel for the applicant that in a recent judgment of this Tribunal in **D.A. No.56 of 2011 disposed of on 20.06.2013(A.Z.Khan vs. UOI & Ors.)**, the law laid down by the Hon'ble Supreme Court has been relied on. Based on this, the learned counsel has submitted that the principles of natural justice were not followed while conducting the enquiry and therefore, the enquiry has been vitiated.

9. On the other hand, the learned counsel for the Respondents, by filing his written note of submission, has also submitted that as per the procedure for imposition of penalties, the D.A. is required to supply only those documents which are to be relied upon in the disciplinary proceedings and therefore, the contention of the applicant that relevant documents were not supplied to him

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along with the charge sheet was incorrect. The applicant has admitted that on receipt of the charge sheet he has submitted his explanation without any difficulty. The contention that before issuance of charge sheet and before submission of explanation, I.O. was appointed is factually not correct. On the point of appointment of Presenting Officer, the plea taken by the learned counsel for the Respondents is that the same is not mandatory under the Railway Servants (Discipline & Appeal) Rules, 1968. Moreover, no prejudice has been caused to the applicant by not appointing the Presenting Officer while conducting the proceedings in question. It is concluded that the plea made by the applicant regarding appointment of P.O should be ignored in view of the following case laws.

- i) 1990(1) SLR KER 127 (H.Rajendra Pai vs. Chairman, Canara Bank)
- ii) 1988(3) SLR MAD 665 (Secretary, Central Board of Excise & Customs, New Delhi vs. K.S.Mahalingam)

10. Further the reference of the I.O. in connection with some of his letters to the instructions of the Disciplinary Authority does not establish that the I.O was all through functioning at the behest of the Disciplinary Authority. On the evidence that was adduced during the enquiry, the argument of the learned counsel for the Respondents is that the factual findings of the authorities are not open for being reassessed in judicial review. In this regard he has quoted the decision of the Hon'ble Supreme Court in 1994(1) SLR SC 516 (State Bank of India vs. Samarendra Kishore Endow), which has laid down that the power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eye of the Court. Further in the case of Union of India vs. Sardar Bahadur reported in (1972) 4 SCC 618, it has been



held by the Hon'ble Supreme Court that where there are relevant materials which support the conclusion that the officer is guilty, it is not the function of the High Court to arrive at an independent finding. It has been held that if an enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the High Court. On these grounds, the learned counsel for the Respondents has submitted that the applicant has no case for challenging the legitimate orders passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority, which have been passed after following the due procedure of rule of law. Accordingly, he submitted that the O.A. being devoid of merit is liable to be dismissed.

11. We have heard the learned counsel for both the sides and perused the materials on record.

12. Part -IV of the Railway Servants (Discipline & Appeal) Rules, 1968, lays down the procedure for imposition of major penalties. The main contention brought out by the learned counsel for the applicant is that although this was a major penalty proceeding, no Presenting Officer was appointed and the I.O. acted as both I.O as also the P.O. thereby compromising his independent role as the I.O. The I.O. is supposed to be an impartial adjudicating authority and if he puts the leading question to the delinquent, then, he cannot ensure due discharge of his role as I.O.

13. The learned counsel for the Respondents, on the other hand, has stated that although the Presenting Officer was not appointed in the present disciplinary proceedings, such appointment is not mandatory under the relevant provision of the Rules, 1968. In this regard it is pertinent to mention that in Rule- 9 (C) of Part-IV of the Rules, 1968, it is laid down that where the disciplinary authority

itself enquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing appoint a Railway or any other Government servant to be known as 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

14. From a plain reading of this provision it comes out that the word 'may' has been used instead of 'shall' indicating that it is not mandatory for the disciplinary authority to appoint a Presenting Officer in each major penalty proceeding. However, the insertion of such a provision under the Rules, 1968 indicates what is desirable in a major penalty proceedings. Definitely, the wording indicates that it will be desirable to appoint a Presenting Officer to ensure due process of inquiry even though it may not be exactly mandatory under the Rules, 1968.

15. The learned counsel for the Respondents in support of his argument harped on the point that the occurrence of the word 'may' means that this not mandatory provision. He has also cited the decision in H.Rajendra Pai and Secretary Central Board of Excise (supra) to prove the point that appointment of Presenting Officer is not mandatory, instead, it is only an enabling provision for the Disciplinary Authority to appoint a Presenting Officer in appropriate cases.

16. However, it will be desirable to deal with certain relevant and latest decisions of the Supreme Court of India and also Hon'ble High Courts. The decision of the Hon'ble High Court of Madhya Pradesh in in W.P.(S) No.4874/2004 filed against the order dated 25.3.2004 of the C.A.T. in O.A.No.408/2002 is relevant in this regard.

17. The Hon'ble High Court of Madhya Pradesh in that case has observed that although the use of the expression "may appoint Presenting Officer" indicates

that such appointment is not mandatory, a careful reading of the said rule shows that it is an enabling provision which gives discretion to the Disciplinary Authority to appoint any Railway or other Government servant as a Presenting Officer to present the case on behalf of the Disciplinary Authority. But the said provision does not permit an Inquiry Officer to act as the Presenting Officer and conduct examination-in-chief of the departmental witness and cross examine the defence witnesses. Another important observation of the Hon'ble High Court is whether the Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as the Presenting Officer depends on facts of each case. To avoid any allegation of bias and running the risk of inquiry being declared illegal and vitiated, the present trend appears to be invariably to appoint Presenting Officers except in simple cases.

18. In the case of **Moni Shankar v. Union of India (2008) 3 SCC 484**, the Hon'ble Apex Court has observed as follows.

“The examination-in-chief was conducted by the enquiry officer himself. As the proceeding was for imposition of a major penalty, why the presenting officer, who must have been engaged by the Department, did not examine the witness is beyond any comprehension. Even minimum safeguard in regard to the manner in which the examination-in-chief was conducted has not been preserved. The questions posed to the appellant were leading questions. The questions asked in this case (para 20 of the judgment) do not comply with Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968. What were the circumstances appearing against the appellant had not been disclosed (Paras 19 to 21)”.

19. Therefore, relying on the latest decision of the Hon'ble Supreme Court in **Moni Shankar case (supra)** it has to be noted that the Hon'ble Supreme Court has observed that as the proceeding was for imposition of a major penalty, why the Presenting Officer, who must have been engaged by the Department, did not examine the witness is beyond any comprehension. This means that in a major

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penalty proceedings the Disciplinary Authority should appoint a Presenting Officer in order to obviate the possibility of bias in the conduct of the enquiry. The Hon'ble High Court of Madhya Pradesh has also observed that to avoid any allegation of bias and running the risk of inquiry being declared illegal and vitiated, the present trend appears to be invariably to appoint Presenting Officers except in simple cases. Further, in the case of **Roop Singh Negi vs. Punjab National Bank & Ors. (2009) 1 SCC (L&S) 398**, it has been clearly laid down that the departmental proceedings is a quasi-judicial proceedings and the I.O performs a quasi-judicial function. In order to ensure that the I.O should correctly play his role of quasi-judicial authority, it is desirable on the part of the Disciplinary Authority to appoint a Presenting Officer for presenting the case of the prosecution.

20. We agree with the learned counsel for the Respondents that appointment of P.O is not mandatory as strictly provided under the Rules. However, from the latest pronouncement of the Hon'ble Apex Court, it is quite clear that in a major penalty proceedings and except in simple cases, it is desirable to appoint a Presenting Officer in order to obviate the possibility of bias and prejudice. This also will enable the I.O to perform his quasi-judicial function correctly. The present case is one of major penalty proceedings which has culminated in imposition of punishment of dismissal from service. It was therefore, incumbent on the part of the authorities to ensure that all procedures must be followed strictly while finalizing such a disciplinary proceedings. The appointment of a P.O was therefore, desirable in this case in the true spirit of the provision as laid down under Rule-9© of the Rules, 1968 and also in view of the latest pronouncement of the Hon'ble Apex Court in this regard.



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21. The learned counsel for the Respondents has also brought to our notice the limitation of judicial review in a disciplinary proceedings^o as laid down by the Hon'ble Apex Court in State Bank of India vs. Samarendra Kishore (supra). This judgment enunciates the principle that power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eye of the court. We are entirely in agreement with this contention and therefore, it is not our intention to evaluate the evidence adduced during the course of enquiry. In the case of North Eastern Karnataka Road Transport Corporation vs. Ashappa and another in Civil Appeal No.2637 of 2006 (arising out of SLP (Civil) No.9644 of 2005 decided on 12.5.2006 reported in 2006(2) (SC) SLJ 141, it has been laid down that it is now well settled principle of law that the High Court and Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is also well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

22. In view of this pronouncement, it is quite clear to say that this Tribunal would not go into the question of quantum of punishment. In case of Jai Bhagawan vs. Commissioner of Police & Ors. 2013 (3) SLJ 56, the principle has been further reiterated that when any such order is challenged before a service Tribunal or the High Court, the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where same is found to be so outrageously disproportionate to the gravity of misconduct that the Court considers to be arbitrary in that it is wholly unreasonable.

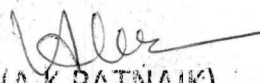
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23. In view of the settled principles of law as enunciated in the judicial pronouncements, we are not inclined to reassess the evidence in the disciplinary proceeding, nor to interfere with the quantum of punishment. However, the scope of judicial review extends to ensuring that the principle of fairness has governed the disciplinary proceeding, which is a quasi-judicial character. This is a case of major penalty proceeding that has resulted in imposition of the maximum punishment of dismissal on the applicant. But the disciplinary authority did not consider it fit to appoint a Presenting Officer in order to obviate the possibility of bias and prejudice. This created avoidable bottleneck in the discharge of an independent role as a quasi-judicial authority for the I.O. We have carefully considered the latest decisions of the Hon'ble Apex Court, and other judicial pronouncements concerning this matter, and after taking these into account along with the facts of this case, we are of the view that the Disciplinary Authority should have appointed a Presenting Officer in this proceeding, in the true spirit of the Rules provided in this regard.

24. In view of the above discussions, we quash the orders of the Disciplinary Authority at Annexure-A/19, orders of the Appellate Authority at Annexure-A/21 and orders of the Reviewing Authority at Annexure-A/23, and remand the matter to the Disciplinary Authority for conducting a fresh inquiry into the charges after appointing a Presenting Officer, and conclude the disciplinary proceedings in accordance with the extant rules and procedure.

In the result, the O.A. is allowed to the extent indicated above. No costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)

BKS