

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 328/2005

Date of order: 7-4-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Harsh Bahadur S/o Late Shri Thakur Srel Shamsheer Jung Bahadur, aged about 52 years, presently working as Superintendent of Central Excise Division, Udaipur, Resident of Udaipur.

...Applicant.

Mr. Manoj Bhandari, counsel for applicant.



VERSUS

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, Parliament Scheme, New Delhi.
3. The Commissioner, Customs and Central Excise Jaipur-I, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur (Rajasthan) – 302 005.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

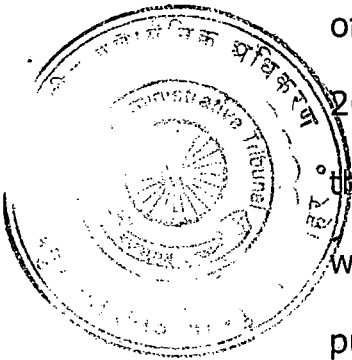
The applicant is working as Superintendent of Central Excise. On 08th July, 1999, a charge-sheet was issued to him.

There were four articles of charges as listed below:

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applicant has challenged the penalty imposed on him and has sought quashing of the penalty order 07.04.2003 (Annex. A/2), appellate order dated 15.09.2005 (Annex. A/1) as well as charge-sheet dated 08.07.1999 (Annex. A/6).

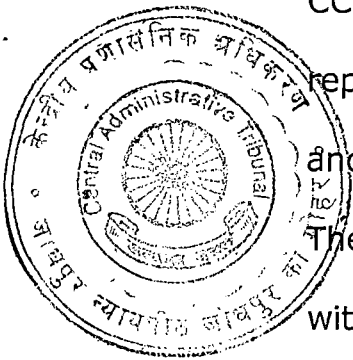
2. It is contended by the applicant that the respondent No. 3 namely the Commissioner, Customs and Central Excise, Jaipur-I is not competent to impose the penalty on the applicant since the applicant is working under the control and jurisdiction of the Commissioner, Customs and Central Excise, Jaipur-II. In an identical matter, in OA No. 269/2004 – Shri A.K. Jain vs. Union of India, this Tribunal had held vide order dated 31st August, 2005 that the respondent no. 3 was not competent to impose the penalty. Shri A.K. Jain, applicant in OA No. 269/2004, was working as Inspector in the same case in which the applicant is punished. The penalty order states that the minor penalty is being imposed on the applicant. However, the penalty that is imposed i.e. withholding of three increments with cumulative effect is a major penalty. There has been inordinate delay in finalizing the disciplinary proceedings. The alleged misconduct relates to the year 1995 whereas the appellate order is issued after 10 years in the year 2005. The Appellate Authority has failed to consider that it is a case of no evidence. The Inquiry Officer has given a report in favour of the applicant. The Appellate Authority has failed to consider that the product manufactured by the company has been exempted for payment of Excise Duty although this fact was brought to the notice of the



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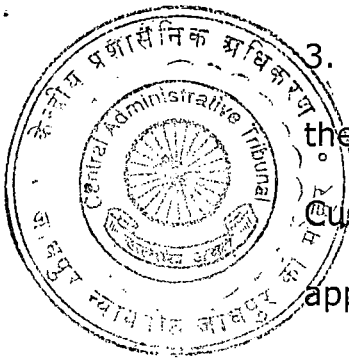
Appellate Authority. The Disciplinary Authority has also failed to consider that the applicant could not have taken any coercive steps against the company for recovery of differential excise duty since the company had filed an application before the Board of Industrial and Financial Reconstruction (BIFR) for declaration as a sick unit. The Disciplinary Authority had already come to the conclusion while issuing the disagreement memo that the findings of the Inquiry Officer in respect of charges at serial number 'b' and 'c' cannot be accepted even before receiving the reply to the disagreement memo. Thus, it is a case of post decisional show cause notice whereas under Rule 15 (2-A) of the CCS (CCA) Rules, the Disciplinary Authority has to consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter. The reasons given by the Disciplinary Authority for disagreement with the report of the Inquiry Officer are not sustainable in the eye of law. The applicant had taken all the steps, which were required to be taken by a prudent officer to avoid the evasion of excise duty. The applicant had joined as the Superintendent of the Range only on 21st April, 1995 whereas the assessment order was passed by the Assistant Commissioner on 09th February, 1995, no action has been taken against the previous Superintendent who was holding the post prior to 21st April, 1995. The applicant had taken action to recover the differential excise duty and had written to the company and also booked an offence against the company. Even though the applicant took substantive action to recover the differential duty, action is being



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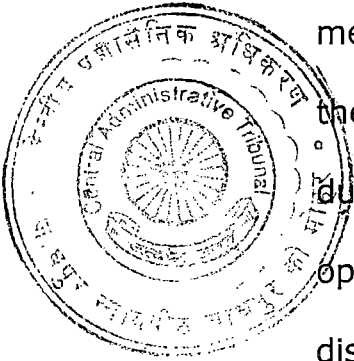
taken against the applicant. The applicant has lost his promotional opportunities as a result of the penalty order and several of his juniors have been promoted since then. The applicant was not given opportunity as required under Rule 14 (18) of the CCS (CCA) Rules, 1965. The company has been paying the excise duty at the lower rate right from the year 1991 and the matter was finally decided in favour of the company by the Custom Excise Service Tax Appellate Tribunal, New Delhi vide its final order No. 672-688/04-B, dated 25.08.2004 on the basis of the decision given by the Hon'ble Supreme Court in Civil Appeal No. 6360/1995 on 22.01.2002.



3. The respondents have filed a detailed reply. It is stated in the reply that the question of competency of the Commissioner, Customs and Central Excise, Jaipur-I to take action against the applicant has been settled by the decision of the Hon'ble High Court of Rajasthan in the matter between Shri Anil Kumar Jain vs. Union of India & Ors., who was also charge-sheeted in respect of the same misconduct. Although this Tribunal had allowed the O.A. No. 269/2004 (Anil Kumar Jain vs. Union of India) on the ground of competence of the Disciplinary Authority to impose the penalty, the Hon'ble Rajasthan High Court had held that Commissioner, Customs and Central Excise, Jaipur-I was competent to proceed against the applicant in OA No. 269/2004. The applicant has not availed of the remedy of revision under Rule 29 of CCS (CCA), Rules, 1965. There has been no procedural irregularity or infirmity in the disciplinary

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proceedings against the applicant. The applicant was given full opportunity of hearing and defending his case. The issue of classification of goods has nothing to do with the instant disciplinary proceedings against the applicant. The applicant was not charged on the basis of wrong classification of product; rather he was charged for not executing the orders of his superiors and for not recovering the differential duty as per the orders of his superior authority. The applicant was fully competent to seize the goods and force the assessee to pay appropriate duty but he failed to do so and restricted his action only to the extent of writing letters and booking an offence. The BIFR provisions are applicable only to the extent that no coercive measures should be taken to recover the outstanding dues but these provisions do not debar collection of appropriate rate of duty as per law on subsequent clearance. The necessary opportunity was given to the applicant to respond to the disagreement memo as required under Rule 15 (2) of the CCS (CCA), Rules, 1965. The penalty of withholding of three increments of pay with cumulative effect is minor penalty under Rule 11 (iv) of the CCS (CCA) Rules, 1965. The enquiry proceedings were conducted as per Rule 14 of the CCS (CCA) Rules, 1965 and the respondents could have imposed a major penalty. However, Disciplinary Authority in its own wisdom has decided to impose a minor penalty under Rule 11 (iv) of the CCS (CCA) Rules, 1965. The UPSC's advice has been taken into consideration while deciding the appeal. The applicant never raised the objection during the course of enquiry regarding any



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violation of Rule 14 (18) of the CCS (CCA) Rules, 1965. The Disciplinary Authority has followed the Rule 15 (2-A) of CCS (CCA), Rules, 1965.

4. We have heard the learned counsel for the applicant Shri Manoj Bhandari and the learned counsel for the respondents Shri M. Godara for Shri Vinit Mathur. We have also perused the records carefully.

5. The learned counsel for the applicant has relied on the following citations / cases:

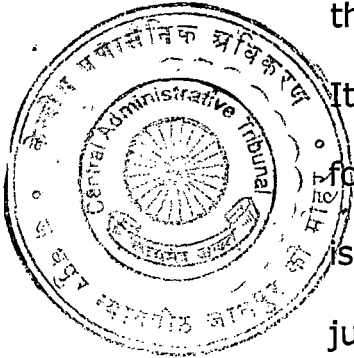


- (1). (1998) 7 SCC 84 – Punjab National Bank and others vs. Kunj Behari Misra : with – Chief Personnel (Disciplinary Authority), Punjab National Bank and others vs. Shanti Prasad Goel.
- (2). (1998) 3 SCC 227 – Ministry of Finance and Another vs. S.B. Ramesh.
- (3). (1990) 2 SCC 440 – Gram Panchayat and another vs. Shree Vallabh Glass Works Limited and Others.
- (4). 1991 Supp. (1) SCC 504 – Kulwant Singh Gill vs. State of Punjab.
- (5). (2003) 2 SCC 494- Kedia Agglomerated Marbles Ltd. vs. Collector of Central Excise.
- (6). (1998) 4 SCC 154 – State of A.P. vs. N. Radhakishan.
- (7). (2009) 2 SCC 570 – Roop Singh Negi vs. Punjab National Bank and others.
- (8). (1993) 2 SCC 144 – Maharashtra Tubes Ltd. vs. State Industrial & Investment Corporation of Maharashtra Ltd. and another.
- (9). (1993) 4 SCC 727 – Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others.
- (10). AIR 1990 SC 1984 S.N. Mukherjee vs. Union of India.

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6. Following the judgments of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India** (1995 6 SCC 749) and the case of **High Court of Judicature at Bombay vs. Shashikant S. Patil** - (2000) 1 SCC 416), the scope of judicial review in disciplinary proceedings is limited to examination of whether there is a violation of the principles of natural justice or the proceedings have been held in violation of rules and regulations or whether the decision is vitiated by extraneous considerations or whether it is arbitrary or capricious.

We have examined the facts of this case on the basis of the aforesaid principles laid down by the Hon'ble Supreme Court.

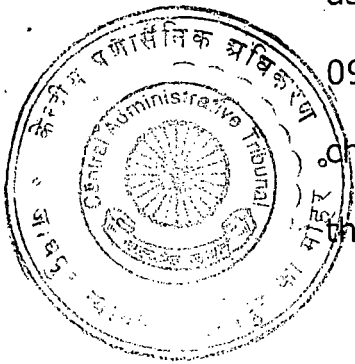


It is seen from the available records that the respondents have followed the required procedure before imposing the penalty. It is also seen that there is no violation of principle of natural justice. That gives us only two other grounds namely (i) whether the conclusions are vitiated by extraneous consideration, and (ii) whether the conclusion made by the authority is ex facie arbitrary, capricious or unreasonable. These two grounds are discussed in the following paragraphs.

7. The charges leveled against the applicant relates to his failure to take effective action to recover the appropriate rate of excise duty from M/s Polar Marmo Agglomerates Pvt. Ltd., Udaipur. The first charge states that the applicant failed to execute the orders issued by his superiors in case of M/s Polar Marmo Agglomerates Pvt. Ltd., Udaipur. The second charge

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says that the applicant had failed to safeguard the revenue of the exchequer by allowing and colluding with M/s Polar Marmo Agglomerates Pvt. Ltd., Udaipur to clear their product on payment of lower rate of Central Excise duty than that applicable to their product. The third charge states that the applicant has also failed to initiate concrete action to enforce the confirmed demand and to prevent the said unit from paying lower rate of duty. The fourth charge speaks about the lack of integrity and devotion to duty. A careful perusal of all these four charges clearly shows that all these charges are inter-related. They are related to the recovery of correct rate of Central Excise Duty as assessed by the Assistant Commissioner by his order dated 09.02.1995. The Inquiry Officer had held that all these four charges are not proved. The following extract from the report of the Inquiry Officer is relevant:



"(b) It is fact that A.O. 18/95 was passed on 9.2.05 and the then Assistant Commissioner has issued letter (SA-15) that coercive action will be taken after expiry of appeal period which had expired on 10.5.95. In the mean time the Range Superintendent had written letters dated 21.2.95 (SA-1) & 22.5.95 (SA-2) regarding payment of appropriate Central Excise duty and when appropriate duty was not paid an offence case was booked by the Range Officer in the first Week of July 95. It was only thereafter, a letter dated 14.8.95 (SA-7) was given to Range Officer for immediate preventive measures. Till that for execution of A.O. No. 18/95 Range Staff as well as Divisional Officers were collectively making efforts to pursue the assessee for making clearances on appropriate Central Excise duty as is evident from the EX-1, a letter written by the Range Officer to the Assistant Commissioner, Udaipur which shows that Financial controller of the assessee had a meeting with Assistant Commissioner on 16.8.95 where he had agreed to deposit differential duty. From this document and from the offence case booked by the Range staff in July 95 it is evident that efforts were made by the charged Officer along with other officers for implementation of the orders of Superiors. Hence the charge (a) non execution of the orders of superior is not proved.

(c). Second charge on the officer is of collusion with the assessee for clearance of duty at lower rate. The fact of clearance of goods at a lower rate, i.e. at the Rs. 20/- per square meters than that of Rs. 30% or 20% advalorem was known to the Range Officer as well as the Divisional Officer letters were written to the assessee from both offices. Meetings were also held with the management of the assessee. Since the unit was working under SRP date & time of clearance under taken by the assessee come in the knowledge of the Range staff (Charged Officer) after filing of the RT-12 returns. In such circumstances seizure of the goods cleared at lower rate of duty could only be affected at the destination, provided the goods were available there, for initiating action such action should have been taken by the Assistant Commissioner as the goods were cleared to depots of the assessee situated at Bangalore, Delhi and Bhiwandi (Ref. EX-1). In such a situation the Range Officer the Charged Officer could have either issued a demand notice or book an offence case. Since the offence case was booked against the assessee by the Range staff wherein penal provisions were also invoked, there appears no collusion on the part of the charged officer for evasion of duty.



(d) For the recovery of confirmed demand the Range Officer and the Sector Officers are certainly responsible. The Assistant Commissioner had also given directions for initiating action under Rule 230 of Central Excise Rules. I find that for payment of dues the Range officer had written letters too but coercive action was not taken by him since the unit had applied for registration in BIFR as a Sick Industrial unit. I agree with the defence reply that under section 22 of Sick Industrial Companies (Special provisions) Act, 1995 no coercive measure can be taken against a sick unit registered under BIFR and by booking offence case the Charged Officer has taken action to prevent the revenue. Therefore, this charge is also not proved against the Charged Officer.

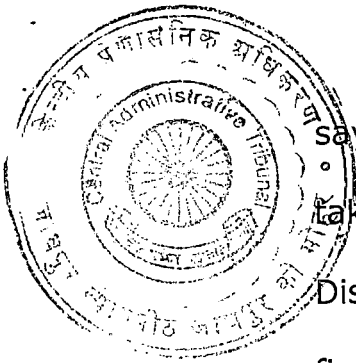
(e). I agree that the Charged Officer and Shri Anil Kumar Jain, Inspector, both were working under supervision of the Assistant Commissioner and adequate steps to prevent Govt. revenue by issuing letters to the assessee, apprising the position to the Assistant Commissioner and also by booking offence case against the assessee were taken by the Charged Officer with the help of Shri Jain, Inspector. Therefore, the charge of failure of integrity and devotion to duty of the officer posted under him is also not proved."

Against the aforesaid discussion and analysis done by the Inquiry Officer before reaching to his conclusion, the Disciplinary Authority in his Disagreement Memo states briefly as follows:

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".....Though the charged officer could not initiate coercive action to enforce the confirmed demand, as the unit had made a reference before the BIFR for declaring it as a sick unit, but no prompt action or effective step was taken by him to force the unit to pay the appropriate duty on the goods cleared after 09.02.05 i.e. from the date on which the A.O. No. 18/95 was passed by the Authority. The charged officer, being the Range Officer and immediate Revenue collection authority should have forced the unit to pay appropriate duty at the time of clearance of manufactured goods specially when the appropriate duty leviable on the goods was already decided by the jurisdictional Assistant Commissioner vide A.O. No. 18/95 dated 09.02.95 and there was no stay against the order.

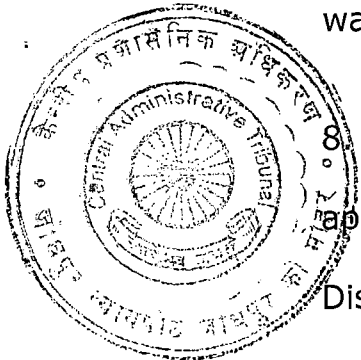
Thus, on the ground mentioned above it appears that the findings of the inquiry officer holding the charges at Sl. No. (b) and (c) as not proved appears not convincing though a part charge of collusion and failure of enforcement of confirmed demands seem not proved against the charged officer."



The aforesaid extract of the Disagreement Memo does not say what other specific concrete/effective step could have been taken by the applicant. The concluding remarks of the Disciplinary Authority further states that it appears that the findings of the Inquiry Officer holding the charges at Sl. No. (b) and (c) was not proved appears not convincing though a part charge of collusion and failure of enforcement of confirmed demands seem not proved against the charged officer. The statement of the Disciplinary Authority that he was not convinced about the findings of the Inquiry Officer in respect of charges at Sl. No. (b) and (c) except as regards the charge of collusion, does not give the specific reasons why he was not convinced. The failure of the applicant in not effecting seizure of the goods is found to be repeatedly figuring as an example of action that would have been taken by him even without any authority from his superiors. In this regard, the extract from

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the Inquiry Officer's report (supra) makes it very clear that the Range Staff as well as the Divisional Officers were making collective efforts to pursue the assessee. Therefore, singling out the applicant for not making the seizure on his own initiative is unreasonable. The only lapse that could be held against the applicant is that he failed to do timely assessment of the monthly reports submitted by the assessee. For that kind of a lapse, a less serious minor penalty such a withholding of one increment without cumulative effect or a censure could have been appropriate. We have also noted from the advice of the UPSC at Annex. A/14 that only "displeasure" of the President was conveyed to the concerned Assistant Commissioner.



After detailed discussion of the representation made by the applicant and contentions raised by the applicant, the Disciplinary Authority has passed order dated 07.04.2003 (Annex. A/2) on the basis of the conclusion that this case is fit for the imposition of a minor penalty and imposed the penalty of withholding of three increments of his pay with cumulative effect under Rule 11 (iv) of the CCS (CCA) Rule, 1965. The respondents have tried to explain in their reply that Rule 11 (iv) of CCS (CCA) Rules, 1965 provides for withholding of increments of pay. It does not distinguish between stopping of increment of pay with cumulative effect and without cumulative effect and therefore stopping of the increment of pay with cumulative effect is a minor penalty. However, Rule 11 (iv) of CCS (CCA), Rules 1965 read with Rule 16 (1-A) of CCS (CCA) Rules, 1965 would indicate that a penalty which has a cumulative effect cannot

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come within the purview of minor penalty. Rule 16 (1-A) of the CCS (CCA) Rule, 1965 reads as follows:

"16. (1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

In the matter between **Punjab State and others vs. Ram**

Lubhaya, (All India Services Law Journal 1982 (2) P. 62), the Punjab & Haryana High Court has held that stoppage of increment with cumulative effect is a major penalty. The following extract from that judgment is relevant:



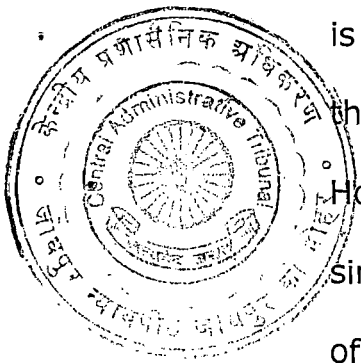
"6. The next question would be whether both the penalties would be minor penalties and come within the purview of sub-rule (iv) or only the first one would come within sub-rule (iv). A comparative reading of sub-rules (iv) and (v) shows that while in sub-rule (iv) only withholding of increments of pay is permissible, under sub-rule (v), which is a major penalty, there is reduction to a lower stage in the time-scale of pay for a specified period and it is to be specified in the order whether the employee will be earning increments during the period of reduction and whether the reduction will or will not have the effect of postponing the future increments of his pay. As provisions have been made in sub-rule (v), similar provisions could have been made in sub-rule (iv) also, if different eventualities were considered to flow by passing different kinds of orders and in that case the rule framers would have specifically provided so. On a literal reading of sub-rule (iv) as also the practical application of the same, so far, it is not disputed on behalf of the State that if simple order of withholding of increments of pay is passed then such an order does not amount of withholding of increments with cumulative effect. It appears that the rule framers only wanted to provide imposition of minor penalties under sub-rule (iv) of withholding of increments without cumulative effect so that there is a temporary loss to the employee not having a permanent effect on his increments; whereas sub-rule (v) provides for making a permanent loss in the increments and that is why it was included in the category of major penalties'.

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8. For the reasons recorded above, I answer the point in the affirmative and hold that the stoppage of increments with cumulative effect is a major punishment. Accordingly, the appeal is dismissed with costs."

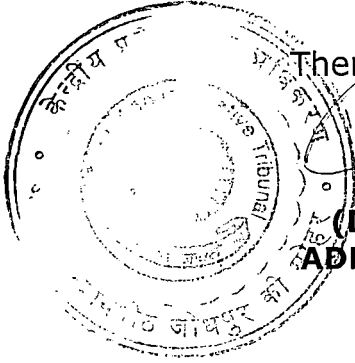
In the present case, the respondents have conducted the procedure required for imposing a major penalty. However, a reading of the penalty order very clearly indicates that the respondents intended to impose only a minor penalty. As discussed in the aforesaid paragraphs, withholding increments with cumulative effect cannot be considered as a minor penalty. Therefore, there is a clear-cut case for modifying the penalty order. Normally in such cases, the appropriate course of action is to remand the case to the Disciplinary Authority to consider the matter afresh regarding the quantum of punishment. However, considering the long period of time that has elapsed since the penalty order was passed i.e. 7 years, the present age of the applicant, and also the fact that the applicant has already suffered the consequences of the penalty by way of delayed promotion, we consider that it would serve the ends of justice if the penalty is modified in this order itself, to avoid further delay in the conclusion of the proceedings.



9. For the reasons stated above, this Original Application is partly allowed. The penalty order dated 07.04.2003 (Annex. A/2) and appellate order dated 15.09.2005 (Annex. A/1) are hereby modified and it is ordered that one increment of the applicant falling due after the date of the penalty order i.e. 07.04.2003 be withheld without cumulative effect. The applicant

will be entitled to consequential benefits arising out of the modification of the penalty including promotion after the expiry of validity of the penalty imposed by this order i.e. one year.

There is no order as to costs.



(Signature of Dr. K.S. Sugathan)
(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

(Signature of Justice S.M.M. Alam)
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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अनुपम अधिकारी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर न्यायपीठ, जोधपुर