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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 180/2006

Date of decision 28/11. 2008

Hon'ble Mr. George Parackan, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Paras Mal Sankhla, S/o Shri Shiv Ramji, aged about 50 years, resident of 31, Vivekanand Nagar, Ramdev Road, Pali, District Pali Rajasthan. Ex-Assistant Superintendent of Post Office (East) Sub Division, Jodhpur District Jodhpur (Rajasthan)

: Applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director, Postal Services, Rajasthan, Western Region, Jodhpur, District, Jodhpur, (Rajasthan)

: Respondents.

Rep. By M. Godara Proxy counsel for
Mr Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. George Parackan: Judicial Member.

The applicant in this case is aggrieved by the Annex. A/1 Order dated 28.7.2004 by which the disciplinary authority in exercise of disciplinary powers conferred upon him vide Rule 19 of the CCS (CCA) Rules, 1965 has dismissed him from service with immediate effect and by the Annex. A/2 order dated 20.9.2005 by

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which his Annex. A/7 appeal dated 15.1.2005 was rejected by the appellate authority.

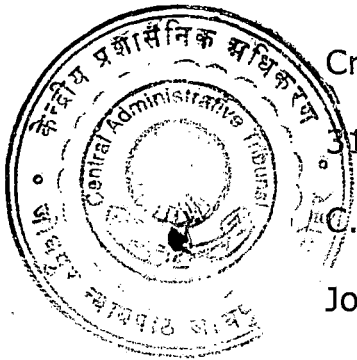
2. Brief facts : A case under Section 13 (2), 13 (1(d) of the Prevention of Corruption Act, 1988 [For short 'the Act of 1988'] was registered against the applicant vide Case No. RC/JDH/1999/A/0010 on 21.8.1999 passed on a complaint lodged by one Shri Mohan Lal, EDMC, Barni Khurd Branch, Post Office, alleging that the applicant, in his capacity as ASPOs (East) Jodhpur, has demanded a bribe of Rs. 1500/- on 16.6.1999 from him out of the amount of Rs. 3364/- paid to him on 15.6.1999 towards arrears from 1.3.1998 to 30.4.1999. While Shri Mohan Lal refused to pay the aforesaid amount, applicant threatened him to stop payment of his salary for the month of July 1999 and it was with-held. On the basis of the complaint made by Shri Mohan Lal, a trap operation was laid by the CBI and the applicant was caught red-handed. Thereafter, the applicant was placed under suspension by the Respondent No.3, namely the Director of Postal Services, Rajasthan Western Region, Jodhpur, vide its Memorandum dated 23.8.1999. Later, on obtaining the prior sanction from the said respondent under Section 19 (1) of the Act, 1988, he was prosecuted under Section 7 & read 13 (2) (d) read with 13 (1) (d) of the Act of 1988 in the Court of law. The Hon'ble CBI Judge, Jodhpur, pronounced the judgement in the said case on 3.3.2004 and held that the applicant was guilty of the



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charges leveled against him and convicted and sentenced him to under-go imprisonment for a period of one and a half years with a fine of One thousand rupees in each case. In case of failure to pay the amount of fine, further simple imprisonment of three months in each misconduct was also ordered. Thereafter, the disciplinary authority decided to proceed against him under Rule 19 of the CCS (CCA), Rules, 1965 and issued the Annexure A-5 show cause notice dated 22.3.2004 and directed him to make representation, if any, against the proposed penalty of dismissal from service. Applicant submitted his Annex. A/6 reply dated 5.4.2004 to the aforesaid show cause notice. After considering his reply, the disciplinary authority observed that the applicant could not come-up with any new material or fact warranting consideration which have any bearing on the case. The disciplinary authority has also considered his submission that he had filed a Criminal Appeal No. 271/2004, along with Bail Application No. 310/2004 against the aforesaid judgement of the Special Judge, C.B.I., Jodhpur before the Hon'ble High Court of Rajasthan at Jodhpur and the Bail Application was allowed vide Annexure A-3 order dated 15.3.2004 under Section 389 of the Criminal Procedure Code suspending the sentence till final disposal of the appeal. According to the disciplinary authority unless the appeal is allowed and the conviction itself is set aside by the appellate court, there is no prohibition under law for the disciplinary authority to proceed against the applicant under Rule 19 of the CCS (CCA) Rules and



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impose a penalty. He has also relied upon the Office Memorandum No. 371/23/92-AVD.III dated 4.3.1994 issued by the Government of India Department of Personnel and Training regarding the action to be taken in cases of Government servants who are convicted by a Criminal Court. According to the said O.M., if the person is convicted by a Criminal Court, the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal and mere filing of an appeal and/or stay against the execution of the sentence do not take away the effect of conviction. While issuing the O.M. the Government has relied upon the judgement of the Full Bench of this Tribunal in Om Prakash Narang Versus Union of India and Others (1990 (12) ATC 365 in which it was held as under :-



“.....17. In the instant case, as already noted, the applicant was convicted for abetment of the commission of offence of suicide by his wife and sentenced to 5 years R.I. He was arrested and placed under suspension. After his conviction the disciplinary authority has found that his conviction renders his retention in the public service undesirable. The mere fact that the order does not specifically refer to the fact that the appeal is pending and the sentence is suspended does not in the circumstances of this case affect the validity of the order.

18. This order was made on October 1, 1985. The applicant made a representation in which he had specifically brought out that he had preferred an appeal and the sentence was suspended. His representation was considered and rejected by the appellate authority. The appellate authority addressed itself to the question whether in view of the pendency of the appeal against his conviction and sentence, any penalty should be imposed or not and held that the conduct of the applicant is such that in the absence of the order of the criminal court to reinstate him in service, it is not desirable to continue him in service. It also held that the conduct which has led to his conviction necessitates the imposition of the penalty of dismissal and in this context referred to the decision of the Supreme Court in **Union of India vs. Tulsiram Patel [1985 3 SCC 398]**. The appellate authority has come to a categorical conclusion that no rule or constitutional provision has been violated and that the conduct of the delinquent official in abetting the commission of suicide by his wife was such that the penalty of dismissal

from service consequent on his conviction by the court, is appropriate....." and accordingly rejected the appeal.

19. We, therefore, find that no illegality or irregularity has been committed in passing the order of dismissal made against the applicant based on the conduct which has led to his conviction. Any failure on the part of the disciplinary authority to refer expressly to the pendency of the appeal against the conviction has not prejudiced the applicant inasmuch as the appellate authority has specifically taken note of it while disposing of the appeal.

20. In the result, this application fails and is accordingly dismissed but in the circumstances with no order as to costs."

3. The disciplinary authority has therefore, imposed the penalty of dismissal from service upon the applicant under Rule 19 of the CCS (CCA) Rules, 1965. The applicant preferred Annex. A/9 appeal dated 28.12.2005 to the appellate authority against the aforesaid imposition of penalty by the disciplinary authority. The appellate authority vide Annex. A/2 impugned order dated 20.9.2005, rejected his appeal. According to the appellate authority, the applicant did not deserve to be continued in government service. It has also agreed with the disciplinary authority's decision based on the Department of Personnel & Training's O.M. No. 371/23/92/AVD.III dated 4.3.1994 wherein, it has been clearly held that mere filing of an appeal and/or stay of the execution of the sentence do not take away the effect of conviction, unless the appeal itself is allowed and the conviction is set aside by the appellate court.

4. The applicant has referred to a number of similar cases in which the respondents have not taken any action under Section 19 of the CCS (CCA) Rules. In all such cases sentences were



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suspended by the appellate court as in the case of the applicant. He has pointed out the case of Sh. M.S. Quereshi, Shri U.R. Meena and one Shri R.N. Pareek. Shri U.R. Meena and Shri R.N. Pareek have been convicted and sentenced by the Court but the disciplinary authority has imposed only a minor penalty under Rule 19 of the CCS (CCA) Rules. In the case of Sh. M.S. Quereshi, the respondents have not even taken any action as per the advice given by the Central Government standing counsel, a copy of which has been annexed as Annex. A/8. According to the said advise, since the sentence was suspended by the appellate court, it was not the appropriate stage to take any action against him under Rule 19 of the CCS (CCA) Rules. It was Further advised the department to wait for the finalization of the appeal filed by Qureshi before the learned Sessions Court, Sri Ganganagar before any action is taken against him.



5. The learned counsel for the applicant has submitted that since the Hon'ble High Court vide its order dated 15.03.2004 (Annex. A/3) admitted the appeal and suspended the sentence passed by the Learned Special Judge, CBI, dated 03.03.2004, the matter is res integra to be treated as not yet decided. In support of his aforesaid argument, he relied upon the judgement of the Calcutta Bench of this Tribunal in T.A. No. 251/1986- **[Ajit Kumar Banerjee vs. Union of India & ors.]** While allowing the O.A and

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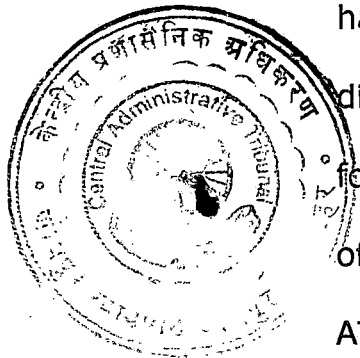
setting aside the impugned dismissal order, the Tribunal has held as under:

" Mr. Ashok Dey, counsel for the applicant has argued that the order of dismissal which is at Annex. F is bad in view of the fact that an appeal was preferred against the order of conviction by the Ld. Additional Special Judge (1st Court) and in the said appeal which is still pending before the Hon'ble High Court, a stay order was granted by P.C. Borooah and B.N. Maitra, JJ staying the operation of the order of conviction. The actual order has been annexed to the petition at page 39 which runs as follows:

" Pending the hearing of the appeal, let the accused appellant be released on bail to the satisfaction of the Chief Judicial Magistrate. Howrah and let also realization of the fine remain stayed."

A such the order of dismissal for all intents and purposes has been directed by the Hon'ble High Court to be stayed. Having been stayed it cannot be given effect to. Result is according to us, and that is the general principle of law too that when the appeal is admitted, the matter becomes res integra (that is to say to be treated as a matter not yet decided and the entire matter has been reopened for final adjudication by the appeal court. In the eye of law, the order of conviction passed by the said Ld. Special Judge ceased to have any effect or operative till the appeal is finally decided....

6. As regards the punishment imposed upon Shri U.R. Meena and R.N. Pareek on the one hand and the applicant on the other hand, the applicant's counsel has argued there cannot be any discrimination in punishment. In this regard the learned counsel for the applicant relied upon the order of this Tribunal in the case of **Shri Daulat Ram vs. Union of India and others** [2006 (2) ATJ 609] wherein it has been held as under:



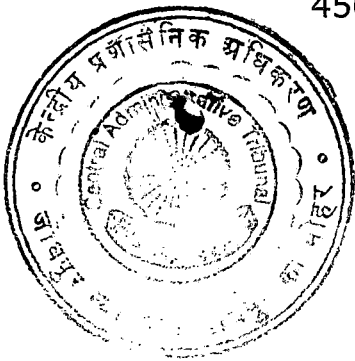
"13. Art. 14 forbids discrimination in a differential action which has to be explained and satisfied on the principle laid down under Art. 14 of the Constitution of India, foremost there should be a intelligible differential and this differential should have a reasonable nexus with the objects sought to be achieved, if the only ground of discrimination in the matter of punishment is that the disciplinary authority was different is not an intelligible differential and this does not satisfy any object sought to be achieved. Had there been a case where the applicant being a supervisory officer in a manner has been charged of rile in the form of misconduct, which is on the higher side and is more grave and alleged against others the

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discrimination would have been sustained. However, if the allegations are identical then meting out differential treatment in the matter of punishment without any reasonable basis is in anti thesis to the principle of equality and in such a manner the order of punishment cannot be sustained.

14. In the matter of proportionality of punishment the law is crystal clear that if there is an illegality in decision making process or if the punishment suffers from the vice of discrimination and it is so grave and arbitrary and it shocks the judicial conscious than instead of remanding back the case the Court is empowered to substitute the punishment as held by the Apex Court in Damoh Panna Sagar Rural Bank vs. Munnalal Jain 2005 SCC (L&S) 567.
15. In our considered view when on identical allegations seven employees though involved in same incident and have been inflicted the punishment of reduction in pay scale then on the same allegations when the applicant has not been acted specifically alleged to have superior role as compared to his counter parts. The aforesaid punishment which is one the fact of it is discriminatory and after the applicant has rendered long years of service without any past history of the misconduct of making complaints and punishment imposed the aforesaid punishment not only shocks our conscience but it is against all parameters of law.
16. In the result, the O.A is allowed. Impugned orders are set aside. Respondents are directed to forthwith reinstate the applicant in service. The interregnum period would be decided as per FR. However, respondents are not precluded from imposing the same punishment to the applicant as imposed in case other seven employees. This shall be done within a period of two months from the date of receipt of the copy of the order.

7. The Hon'ble Rajasthan High Court in the case of DR. TRILOCHAN SINGH VS. STATE OF RAJASTHAN - 1983(1) SLR

456 held as under:-



"4. Shri Garg has submitted that in view of the pendency of the appeal of the petitioner against his conviction and sentence imposed on him by the Judicial Magistrate, Sri Karanpur, and in view of the suspension of the sentence of the petitioner during the pendency of the said appeal by the Sessions Judge, Sri Ganganagar, the Director could not have terminated the services of the petitioner on the ground that the petitioner has been convicted on a criminal charge under Section 408, 120B and 201 IPC. According to Shri Garg, provisions of Clause (a) of the proviso to sub-Article (2) of Art. 311 of the Constitution, which excludes the application of sub Article (2) of Article 311 to cases where a person is dismissed or removed in rank on the ground of conduct which has led to his conviction on a criminal charge and the provision of sub-rule (i) of Rule 19 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, which enables penalty being imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge without following the procedure laid down in Rules 16, 17 and 18 of the said Rules, can be invoked only in those cases where the conviction has become final and that the provisions would not be attracted in cases where the conviction is under challenge in

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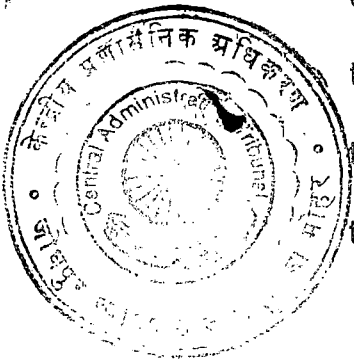
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an appeal and the appeal is still pending. In support of his aforesaid contention, Shri Garg has placed reliance on the decisions of this Court in Gulraj Khatri vs. State of Rajasthan, S.B. Civil Writ Petition No.1127/76, decided on 7th July, 1961, Gopal Singh vs. State of Rajasthan, S.B.Civil Writ Petition No.51/76, decided on 5th September, 1978, affirmed in appeal by the Division Bench of this Court in State of Rajasthan vs. Gopal Singh, D.B.Special Appeal No.10/79, decided on 2.4.1979, and Khem Chand vs. State and others, S.B.Civil Writ Petition No.77 of 1978, decided on 15th March, 1982.

5. The learned Deputy Government Advocate does not contest the legal position as laid down in the above mentioned decisions of this Court, on which reliance has been placed by Shri Garg, and it must, therefore, be held that so long as the appeal against the conviction, is pending before the Appellate Court, the services of a Government employee, cannot be terminated on the basis of the conduct, which has led to his conviction. There is no dispute that on the date of the passing of the impugned order dated 17th May, 1982, the appeal filed by the petitioner against his conviction in respect of the charges under Section 408, 120B and 201 I.P.C., was pending before the Sessions Judge, Sri Ganganagar and the sentence imposed on the petitioner by the Judicial Magistrate, Sri Karanpur, under his order dated 3rd August, 1981, could not be made the basis for removing the petitioner from service. The order dated 17th May, 1982, cannot, therefore, be sustained and must be quashed.

6. In the result, the writ petition is allowed, the order (Annexure 4) dated 17th May, 1982, passed by the Director, Animal Husbandry, Rajasthan, Jaipur, removing the petitioner from service, is quashed. There will be no order as to costs of this writ petition."

8. In the reply statement also the respondents has taken various grounds in opposing the O.A. As regards the specific cases of Shri M.S.Qureshi, Sh. U.R. Meena and Shri R.N. Pareek, referred to by the applicant in the O.A., respondents have submitted that the decisions in those cases were taken on a case to case basis taking into account the circumstances and facts of each case.



9. We have heard the learned counsel for applicant as well as the counsel representing the respondents and perused the records of the case. The order of the Calcutta Bench of this Tribunal in **Ajit Kumar Banerjee** case (supra) has already been considered

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exhaustively by the Full Bench in **Om Parkash Narang vs. UOI**

(supra) and it was held as under:

" 7. No doubt a contrary view has been taken by the Calcutta Bench of the Tribunal in Ajit Kumar Banerjee vs. Union of India. The Officer therein was dismissed in view of the conviction and sentence by the learned Additional Special Judge (1st Court) pending an appeal in the High Court after the High Court stayed the sentence in the following words:

Pending the hearing of the appeal, let the accused appellant be released on bail to the satisfaction of the Chief Judicial Magistrate, Howrah and let also realization of the fine remain stayed.

From this the Bench concluded that the order of dismissal for all intents and purposes was stayed by the High Court. We find it difficult to understand how such an inference could be drawn from the order of the High Court. The High Court was merely concerned in the Criminal appeal with the conviction and sentence against which the appeal was preferred. It did not even remotely refer to the order of dismissal made by the disciplinary authority consequent upon the conviction and sentence imposed by the criminal court. From the stay order made by the High Court on appeal, it is abundantly clear that the conviction was not suspended and the High Court was not at all concerned with the order of dismissal made by the disciplinary authority. The Bench proceeded upon the footing that :-

When the appeal is admitted, the matter becomes res integra (that is to say to be treated as a matter not yet decided) and the entire matter has been reopened for final adjudication by the appeal court. In the eye of law, the order of conviction passed by the said learned Special Judge ceases to have any effect or operative till the appeal is finally decided.

We are unable to agree with this. While the right of an appeal is vested right and the order of conviction and sentence made by the trial court may be set aside by the appellate court, after a review of the entire evidence, but until the appeal is heard and allowed, the conviction and sentence very much operate.



In fact, unless the accused appellant, who now stands convicted of the offences is released on bail; he would also undergo the sentence and the period of suspension which he undergoes under the amended Code of Criminal Procedure is set off against the sentence, if any, ultimately imposed by the appellate or revisional court. Unless the conviction operates, the sentence could not have been undergone. Only because the convicted accused is undergoing sentence, the appellate court may release him on bail. Merely because the appellate court is seized of the matter, the conviction and sentence does not stand suspended. Even the sentence stands suspended only if the appellate court chooses to suspend it and release the appellant on bail. The basis assumption that on a mere filing of the appeal or upon the appeal being admitted the conviction and sentence itself does not stand cannot be accepted as correct position of law. Neither Rule 19 (i) of the CCS (CCA) Rules, nor clause (a) to the second proviso to Article 311 (2) of the Constitution speaks of a final order of conviction, they only speak of conduct disclosed which has led to his conviction on a criminal charge. We are, therefore, unable to agree with the view taken by the Calcutta Bench in the aforesaid case.

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8. Strong reliance is placed on the judgement of the Madras Bench of the Tribunal in P.K. Prabhakaran vs. Union of India to contend that pending an appeal against the conviction and sentence, no penalty of dismissal or removal from service by the disciplinary authority can be imposed. But a close reading of that order shows that what all the Bench held therein was the fact that an appeal which was pending should also be taken into account in making an order of dismissal. It did not hold that merely because an appeal against conviction is pending, the disciplinary authority has not power and authority to dismiss. The Bench held:

There is nothing in the order to indicate that the disciplinary authority considered this to be a case where irrespective of the pendency of the appeal and the suspension of the sentence, immediate action was required to terminate the services of the applicant.

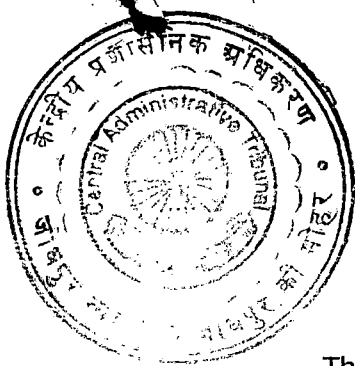
9. A similar view was taken by the Chandigarh Bench in Jawala Dass vs. Union of India. It did not express any view of its own.

10. The Chandigarh Bench of the Tribunal following the view expressed in P.K. Prabhakaran case in Kewal Chander Kumar vs. Union of India felt bound by the view expressed by the Madras Bench and did not discuss the matter at length.

11. On a closing reading of the judgement of the Madras Bench of the Tribunal we must observe that it had not opined that the disciplinary authority has no power to impose a penalty based on the conviction merely because an appeal is pending. The fact that the appeal is pending and the sentence has been suspended may be a consideration which may weigh with the disciplinary authority in exercising its undoubted power to impose a penalty based on conviction which discloses a conduct that the public servant is not fit to be continued in service. While the power is recognized, the order of dismissal may be bad for other reasons viz. that the disciplinary authority has not taken into consideration all relevant facts but that does not militate against the power vested under Rule 19 (i) of the CCS (CCA) Rules to impose the penalty based on conviction, merely because an appeal is pending.

12. The Allahabad Bench of this Tribunal in Union of India vs. Vijay Bahadur Singh in our opinion rightly held:

It is always open to Government to pass an order of dismissal or removal from service immediately after a criminal court records conviction. In that case the administrator runs the risk of the conviction being latter set aside in appeal or revision. It is for the administration to decide whether in a particular case it should pass an order of dismissal or removal immediately after conviction by the trial court, or wait for the result of a possible appeal or revision. Such considerations of expediency can have little bearing on the interpretation of Art. 311 of the Constitution [or Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968]



This view follows the view expressed by a Full Bench of the Allahabad High Court in Kunwar Bahadur vs. Union of India. The same applied with equal force to a case covered by Rule 19 (i) of the CCS (CCA) Rules 1965.

13. The Principal Bench of the Tribunal in P.K. Gupta vs. Union of India also took the same view. In para 15 of the judgement the Bench observed:

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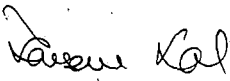
The fact that the applicant had filed an appeal against his conviction and sentence and that appeal was pending disposal with interim orders of enlarging him on bail and suspending the sentence, does not necessarily mean that the conviction and sentence entered by the criminal court does not exist. As long as the conviction of the applicant stands, it is undoubtedly open to Government to exercise the powers conferred on it by sub article (2) of Article 311 of the Constitution and Rule 19 of the rules.

The Bench rightly observed thus:

If the criminal appeal is decided by the High Court in his favour, it is undoubtedly open to the applicant to move the authority to reinstate him in service.....

14. In view of the above discussion, we hold that an order convicting an accused public servant which is the subject matter of an appeal and in which the court has merely released the accused appellant on bail, does not operate as a suspension of the conviction, much less does it take away the power of the disciplinary authority to take action under Rule 19 (i) of the CCS (CCA) Rules.

10. We are bound by the above said Full Bench decision. We also do not agree with the contention of the applicant's counsel that the applicant was discriminated in the matter of quantum of punishment imposed upon him vis-à-vis the punishment imposed upon Shri U.R. Meena and Shri R.N. Pareek. Uniformity of punishment is possible only when the charges and findings are the same. Resultantly, the O.A is dismissed. There shall be no order as to costs.


(TARSEM LAL)
MEMBER(A)


(GEORGE PARACKEN)
MEMBER(J)



Part II and III destroyed
in my presence on 11/11/11
under the supervision of
section officer (J) as per
order dated 11/18/2014

Section officer (Record)

Rec
S. I. Mahalik
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