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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**O.A.No. 327/2010 with M.A. 164/2011**

Date of decision: . 20 .07.2012.

**CORAM:**

**HON'BLE DR. K.B.S.RAJAN, MEMBER (J) &  
HON'BLE MR. B.K.SINHA, MEMBER (A)**

Vijay Bhatnagar S/o Shri Jagdamba Prasad,  
aged 61 yelars, R/o 5-D-89, J.N.V. Colony,  
Bikaner. Ex. Principal, Kendriya Vidyalaya No. 2,  
Air Force, Suratgarh (Raj.).

..... Applicant

[By Mr.K.S.Chouhan, Advocate]

**Versus**

1. The Union of India through Secretary, Ministry of Human Resource and Development (HRD), Shastri Bhawan, New Delhi.
2. The Additional Secretary (Higher Education), Ministry of HRD, Vice Chairman, Kendriya Vidyalaya Sangathan (KVS) and Appellate Authority, Shastri Bhawan, New Delhi.
3. The Commissioner, Kendriya Vidlyalaya Sangathan (KVS), 18, Institutional Area, Sahid Jeet Singh Marg, New Delhi.

..... Respondents


[By Mr. V.S.Gurjar. Advocate]

**ORDER**

**{Per Dr. K.B. S. RAJAN JUDICIAL MEMBER}**

The applicant, at the material point of time, was functioning as the Principal of Kendriya Vidyalaya, AF, Jaisalmer. An FIR was registered against him on a complaint made by one Smt. Manju Dubey, who was working as UDC in the said school.

The complaint related to certain incident of sexual harassment of the said complainant by the applicant. Criminal case was prosecuted before the First Class Magistrate, Jaisalmer



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and finally on the basis of 'benefit of doubt ' the applicant was acquitted. Annexure A-7 judgment dated 18-02-2010 in Criminal case No. 67 of 2010 refers.

2. While the above was the result of criminal case, the respondents had initiated the case under the Disciplinary Procedure by a Committee constituted under the provisions of Rule 3-C of CCS(Conduct) Rules, 1964. The committee furnished its report and a copy of the said report was furnished to the applicant who had made a representation against the same. The disciplinary authority by order dated 25 - 09 - 2009 (Annexure A-2) passed the following order:-

“Considering the totality of the case, I am satisfied that Shri Vijay Bhatnagar, charged officer has sexually harassed his lady colleague at work place. This is a very serious misconduct. The role of a Principal in Kendriya Vidyalaya is very important as the fate of the institution largely depends upon his character and conduct while performing the assigned duties. Therefore, I strongly feel that continuance of Shri Bhatnagar in the pay rolls of the Kendriya Vidyalaya Sangathan will be detrimental to the interest of the whole organization. Accordingly, I hereby order that Shri Vijay Bhatnagar be removed from the services of KVS forthwith.”

3. The applicant preferred appeal dated 28 - 10 - 2009 (Annexure A-6) which however was dismissed by Annexure A-1 order dated 03-01-2010. It is against the aforesaid orders of the Disciplinary Authority and the Appellate Authority that the applicant has moved this OA seeking the following reliefs:-

(i) That the order dated 3.11.2010 (Annexure.A1) and Order dated 25.9.2009 (Annexure.A2) are deserves to be quashed and set aside and the applicant be entitled to get all the consequential benefits follows thereto.

(ii) That any other order just, proper and appropriate in the facts and circumstances of this case may please be passed in favour of the applicant.

(iii) That the application be allowed with costs.

4. The grounds taken up by the applicant in support of his case included that the enquiry committee has not found the applicant guilty of any of the charges and the disciplinary authority has failed to arrive at a conclusion rationally but his decision exhibits nonapplication of mind. The misconduct of sexual harassment by the applicant alleged against him has not at all been proved. The criminal court has also acquitted the

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applicant on account of no evidence. And, the punishment is excessive of the misconduct proved or complained of.

5. Respondents have contested the OA. They have stated that the Inquiry Committee had gone into the entire facts of the case and arrived at a right conclusion that the applicant was guilty of the misconduct alleged against him.

6. The applicant has filed his rejoinder in which he has annexed the communication dated 04 – 07 – 2011 confirming the fact that the order of acquittal has not been appealed against. He has reiterated his contentions as contained in the original application.

7. Counsel for the applicant had submitted that a bare perusal of the enquiry report would reveal the fact that there has been no finding to the effect that the applicant had indulged in sexual harassment as alleged. He had taken the Tribunal through the entire report to hammer home his point that by no stretch of imagination could it be held that there has been a positive finding to the effect that the applicant had indulged in the misconduct complained of.

8. Counsel for the respondents on the other hand submitted that the enquiry committee had dealt with the case properly and did arrive at a conclusion that the applicant's misconduct stood proved. Circumstantial evidence has to be taken into consideration, argued that the Council for the respondents.

9. Arguments were heard and documents perused. The enquiry committee was constituted under the provisions of CCS(Conduct) Rules, and the same is based on a direction given by the Apex Court in the case of *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, which is as under:-

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**17.** The *GUIDELINES and NORMS* prescribed herein are as under:  
 HAVING REGARD to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993,  
 TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,  
 It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

**1. Duty of the employer or other responsible persons in workplaces and other institutions:**

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

**2. Definition:**

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

**3. Preventive steps:**

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include

the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

#### 4. Criminal proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

#### 5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

#### 6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

#### 7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

#### 8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

#### 9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable

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manner.

**10. Third-party harassment:**

*Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.*

10. The committee was constituted as per the Conduct Rules and it took up the case and discussed the same as under: –

The complaint and misconduct alleged:

(a) molestation of Smt. Manju Dubey, UDC, KV, Jaisalmer by the applicant in a drunken state on 14<sup>th</sup> January, 2008 (night) at Jodhpur Hospital as alleged by the complaint.

(b) sexual harassment of Smt. Manju Dubey, UDC, KV, Jaisalmer from January 2008 to 16 September 2008 for which she had also lodged an FIR against the applicant.

(c) fracture of right shoulder clavicle bone (from X ray report through physical assault and mental imbalance of Smt Manju Dubey, UDC, KV Jaisalmer on 15<sup>th</sup> September, 2008 in the Principal's Chamber, caused by the applicant.

11. In so far as item (c) is concerned, the finding has been in negative and thus, the same went in favour of the applicant..

12. As regards the other two allegations, the discussion of the enquiry committee revolved around the presence of the applicant and the aforesaid Smt. Manju Dubey in the hospital on 14-01-2008, (stating that her presence at Jodhpur hospital could not be proved in absence of evidence and witness) and the committee arrived at the conclusion stating as under:-

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*The committee observed that Smt. Manju Dubey's body language pointed out that her dignity has been violated and the committee feels this kind of incidents take place when a person is alone.*

13. In addition to the above, certain other findings recorded by the committee are as under: —

(i) As per the official records, the work allotment is as per the directions of KVS.

No extra work pressure was noted. Only KVS time bound assignments were given to Smt. Manju Dubey and asked to be complete and to comply with KVS (R.D.)/IVS (Hqrs).

(ii) Both the complainant and the accused were in the habit of exchanging mobile messages.

(iii) The committee draws the inference that the applicant is guilty as he committed an offence by violating the leave rules of KVS in granting to Smt. Manju Dubey five days CCL for four days working and a holiday.

(iv) In addition, Shri Vijay Bhatnagar, the principal is very arrogant. He misbehaved with the Complaint Redressal Committee members at the very outset, especially with one of the female members of the committee; so the committee requests the KVS authorities to take necessary steps against Shri Vijay Bhatnagar, for violating the KVS rule of code of conduct.

14. A perusal of the above would go to show that there has been no discussion about the alleged sexual harassment. While normally, the act of sexual harassment only would have been entrusted to the Committee constituted as above, it is not exactly clear as to why the aspect of alleged violation of leave Rules of KVS has also been entrusted to the Committee/inquired into by the Committee. This finding and other extraneous matters such as the alleged misbehaviour and arrogance of the applicants before the Committee, an act, which was not the subject matter the enquiry are alien to the main meat of the matter i.e. Alleged sexual harassment by the applicant against the

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complainant Smt. Manju Dubey. In fact, the finding about the absence of the complainant in the Jodhpur hospital was in favour of the applicant. After arriving at the above findings, yet the Committee held against the applicant in its finding (as already extracted) as under -

*The committee observed that Smt. Manju Dubey's body language pointed out that her dignity has been violated and the committee feels this kind of incidents take place when a person is alone.*

The word "feels" in the above finding, is more in the nature of suspicion than in the nature of proof.

15. The question is whether the above would be taken as sufficient proof to hold the applicant guilty of the alleged misconduct of sexual harassment.

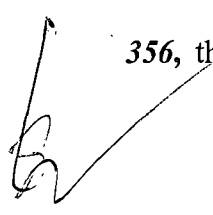
16. As stated above, the above finding of the enquiry committee could at best be a grave suspicion. Whether this kind of suspicion could be taken into account in arriving at a finding that the alleged misconduct stood proved? Various decisions of the Apex Court would answer the same.

17. In the case of *Commissioner of Police, Delhi v. Jai Bhagwan*, (2011) 6 SCC 376, the Apex Court has, in a case under Prevention of Corruption Act, held as under:-

Albeit there could be a needle of suspicion pointed towards the respondent. However, suspicion cannot take the place of proof and, therefore, we find no merit in this appeal which is hereby dismissed.

18. A like observation had been made in earlier cases of **Kuldeep Singh vs Commissioner of Police**, (1999) 2 SCC 10 and **Nand Kishore Prasad vs State of Bihar** (1978) 3 SCC 366.

19. In the case of *Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356, the Apex Court has held -



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"Suspicion is no substitution of proof".

20. In the case of *Ministry of Finance vs S.B. Ramesh (1998) 3 SCC 227*, the Apex Court has held -

"However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding."

21. In the case of *Union of India vs Gyan Chand Chattar, (2009) 123 SCC 78*, the Apex Court has held

"There is a distinction in proof and suspicion".

22. In the case of *Rajasthan State Road Transport Corporation vs Bal Mukund Baiwa (2), (2009) 4 SCC 299*, the Apex Court has referred to another decision, dealing with the disciplinary proceedings and has observed as under:-

**11.** In *Narinder Mohan Arya v. United India Insurance Co. Ltd. (2006) 4 SCC 713* this Court held: (SCC p. 724, para 26)

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) The enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das (1970) 1 SCC 709*) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India AIR 1958 SC 300* and *State of U.P. v. Om Prakash Gupta (1969) 3 SCC 775*.) (3) Exercise of discretionary power involves two elements — (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. SBI (1984) 1 SCC 43*) (4) It is not possible to lay down any rigid rules of the principles of natural justice which

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depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State of Rajasthan* (1986) 3 SCC 454 .) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See *Export Inspection Council of India v. Kalyan Kumar Mitra* (1987) 2 Cal LJ 344.) (6) **Suspicion or presumption cannot take the place of proof even in a domestic enquiry.** The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain* AIR 1969 SC 983 , *Kuldeep Singh v. Commr. of Police* (1999) 2 SCC 10 )” (Emphasis supplied)

23. In the case of *Roop Singh Negi vs Punjab National Bank* (2009) 2 SCC

570, the Apex Court has observed as under:-

“The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

24. In view of the above, the Tribunal is of the concrete view that the way the inquiry was conducted proves it to be totally sketchy and is not at all in accordance with the laid down rules. The Disciplinary Authority has, on the basis of this sketchy inquiry arrived at the conclusion that he is satisfied that the applicant has sexually harassed his lady colleague at work place. The Appellate Authority endorsed the same, stating, “As per the findings of the Complaint Redressal Committee, Shri Vijay Bhatnagar was found guilty of sexual harassment with his lady colleague.” The decision by the appellate authority also, expressly reflects thorough non application of mind.

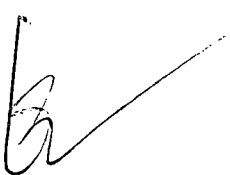
25. It is worth referring to the observation of the Apex Court in the case of *Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan* (2003) 1 SCC 197, wherein the Apex Court has held -

“3. An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example

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wherein a stitch in time would have saved nine".

26. Notwithstanding the aforesaid discussion there are certain facts which remain unexplained till writing of this order. Admittedly, the applicant was the Principal of the school KV Jaisalmer, where the complainant Mrs. Manju Dubey was employed as UDC. There is no denying that the Principal of a KVS School is an exalted position of power which he exercises over his subordinates particularly on the clerical and ministerial staff. This relationship is not only one of superior-subordinate but also has an element of authority and hence necessarily of coercion. Though both are employees serving the same institution one is far above the other in view of being the controlling authority over the other. The entire episode has to be viewed in the light of this relationship. The other relationship which continues to be one of mystery is that between one Ahalya Deka and the applicant Vijay Bhatnagar. Admittedly Mrs Ahalya Deka was admitted in Ward No.9 of Jodhpur Hospital for undergoing surgery. It also appears that Mrs Ahalya Deka was UDC KVS Shillong [A2 page 18]. It was known all around that Mrs Ahalya Deka was the wife of the applicant Vijay Bhatnagar, though the facts speak otherwise. It appears from the service record that one Mrs Sashi Bhatnagar was the wife of the applicant Vijay Bhatnagar. In his OA the applicant totally glosses over his relationship with Mrs Ahalya Deka. It appears that this matter has not been sufficiently probed so as to bring out the true nature of relationship between the applicant Vijay Bhatnagar and Mrs Ahalya Deka. There is no other explanation for her presence in Jodhpur hospital except through the applicant Vijay Bhatnagar. This constitute a charge in itself. Strangely it is found that the applicant Vijay Bhatnagar who is also an accused in criminal case No.67/2010 U/S 354, 323 and 325 IPC appears to have not examined as a witness in the DE. The next part of the complaint and the main part relates to the action of the applicant in outraging the modesty of the complainant Mrs. Manju Dubey. It is found that the enquiry report of the CRC suffers from a major lacunae of not highlighting the relationship and not questioning the applicant as to how and in what capacity Mrs Ahalya Deka came to be admitted in the hospital so far away from her home town Shillong.



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could have been re-appreciated and differently framed. It is also not to be lost sight of that basically a miniscule of the incidents of sexual harassment of women employees that take place end in formal complaints being lodged. In view of the social stigma involved it is an example of extreme courage for the victim to come out in open with a complaint. The balance of convenience would, hence, weigh in favour of the victim most naturally. Considering the nature of accusation, which is definitely the most serious amongst serious, we are extremely reluctant to give a clean chit to the applicant. At the same time, suspicion, no matter howsoever strong, does not take the place of evidence. Hence, the following orders are given:-

- (i) *The impugned orders at Annexures-A/1 and A/2 are set aside.*
- (ii) *The applicant would be deemed to have retired from his due date of superannuation;*
- (iii) *The principle of no work no pay will apply for the period out of service to be taken on notional basis;*
- (iv) *The respondents are free to re-frame the charges and conduct fresh departmental enquiries.*
- (v) *The applicant shall be granted all terminal benefits barring gratuity and pension, which shall be provisionally given, as per the entitlement.*
- (vi) *Respondents are directed to pass suitable orders within a period of four months from the date of communication of this order.*

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No costs.



(B K SINHA)  
Administrative Member



(Dr. K B S RAJAN)  
Judicial Member

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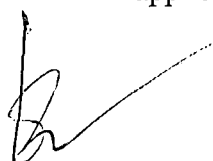
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27. The complainant has stated that right from his joining in August 2007 at KVS Jaisalmer the Principal was getting sexually harassed by the applicant. It appears from the enquiry report that relating to the second fact in issue that the applicant Vijay Bhatnagar was on official duty at KVS Banar, BSF Jodhpur and Airforce Jodhpur from 7.1.2008 to 15.1.2008. It is significant to note that Banar and Jodhpur are adjoining town separated by a distance of 7 kms and it is an extension of Jodhpur. It is the statement of fact that the applicant Vijay Bhatnagar was at Jodhpur from 6.1.2008 to 15.1.2008 a period during which the allegation of outraging the modesty of the complainant Mrs Manju Dubey has taken place. Here we place reliance upon the order dated 3 Sept 2009 of the Disciplinary Authority which had clearly brought out this fact while highlighting the contradictions between the evidence on record and the conclusions drawn by the CRC. This matter definitely stands proved from the circumstantial evidence and could have been differently concluded.

28. The third finding of the committee is that the presence of the complainant Mrs Manju Dubey is not proved in the hospital at the alleged time of occurrence. Admittedly the applicant Vijay Bhatnagar had sanctioned 5 days CCSL (07.01.2008 to 11.01 2008 in lieu of working four days on holidays to the complainant Mrs Manju Dubey. It is nowhere explained as to what she had done for 4 days during the holidays; during which holidays she had worked and why one day's extra leave had been granted against the rules. The only satisfactory answer to these queries points towards the presence of the applicant at Jodhpur during the same period. However, we find that the order of the Disciplinary Authority dated 25<sup>th</sup> September, 2009 has co-related in presence of the complainant and the applicant with the admission seat No.749 dated 05.06.2009, which shows that Ahalya Deka had been admitted to the Hospital and discharged on 15.01.2008. This coincides with the presence of all three at Jodhpur at the same time.

29. We find that there are strong grounds to believe with the complicity of the applicant to the incident under consideration. We further find that some of these issues



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could have been re-appreciated and differently framed. It is also not to be lost sight of that basically a miniscule of the incidents of sexual harassment of women employees that take place end in formal complaints being lodged. In view of the social stigma involved it is an example of extreme courage for the victim to come out in open with a complaint. The balance of convenience would, hence, weigh in favour of the victim most naturally. Considering the nature of accusation, which is definitely the most serious amongst serious, we are extremely reluctant to give a clean chit to the applicant. At the same time, suspicion, no matter howsoever strong, does not take the place of evidence. Hence, the following orders are given:-

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(B K SINHA)

Administrative Member

  
(Dr. K B S RAJAN)

Judicial Member

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