CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 486 of 2006

Wednesday, this the 2nd day of April, 2008

CORAM :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE DR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

S Rajan
Barbar(under order of removal),
Defence Security Corps Centre,Kannur
Pullimoottikattil Puthenveedu,
Karichiyal, Attingal Post,
Thiruvananthapuram District. ... Applicant

(By Advocate Mr.P.K.Mahdusoodhanan)

V/s

1 The Commandant,
Defence Security Corps Centre,
Cannanore-13.

2 The Deputy Director General,
Defence Security Corps,
Army Head Quarters, West Block III,
RK *Puram,New Delhi-66*

3 The Director General,
Defence Security Corps,
Army Head Quarters,,West Block III,
RK *Puram,New Delhi-66*

4 Dy. Chief of Army Staff(P&S)
Dy.Dte. General DSC,
General Staff Branch.Army Head Quarters,
RK *Puram,New Delhi.*

5 Union of India, Represented by
its Secretary, Ministry of Defence
New Delhi ... Respondents

By Advocate Mrs.K.Girija, ACGSC

The application having been heard on 2.04.2008, the Tribunal on the same day delivered the following :

(ORDER)
HON'BLE Dr. K.B.S.RAJAN,JUDICIAL MEMBER

The applicant has challenged the Inquiry Report (Annexure A-6), penalty order of removal from service (Annexure A-7) as well as the rejection of his appeal before the appellate authority (Annexure A-24).

2 Brief Facts:-

(A) The applicant entered the service of respondents in 1981 and in 1995 he was posted under the first respondent. As he was absenting himself without due sanction of leave, he was proceeded against under Rule 14 of the CCS(CCA) Rules. The articles of charge as reflected in the charge memo are as under:-

Article-1

> "During the period from 02 Nov 95 to 31 Aug 98 for which he was on the posted strength of DSC Centre No 484827 S Rajan, Barber remained absent from duty for 896 days. This shows utter disregard towards his official duties and habitual offender. Despite repeated counselling, both verbally and in writing, he did not show any improvement so much so that he is presently unauthorisedly absent from duty w.e.f. 31 Oct 97 to 31 Aug 98, without any intimation or permission. He has not joined his duties despite our letter No.110/A/DSC/Leave dt. 28 Oct 97 warning him of a disciplinary action.

Article-II

> That No 484827 S Rajan while functioning as barber in the aforesaid office, remained unauthorisedly absent for the period 11 Mar 96 to 17 Jun 96 and produced a bogus medical certificate. In that the doctor whose certificate has been furnished was not holding any official post in the Department of Nephrology while issuing the Medical Certificate."

(B) Regular enquiry was held in which the applicant participated. The Enquiry Officer had submitted his report vide Annexure A-16.

(C) In his report the Enquiry Officer had recorded the Articles of charge, which are as under:-

> **"Article I:-** That the said Shri S Rajan, while performing the duties of barber in the Defence Security Corps Centre, Cannanore, absented from duty on various occasions for two years and 73 days (803 days) and continuously from 24 August 96 to 27 Oct 97 and again from 31 Oct 97 to 22 Apr 99, which shows that he had no interest left for the job. His absence has naturally created a lot of problems to the administration due to forced deficiencies of tradesman of his category.
>
> The individual has been instructed on various occasions to avoid the absence from duty, but he evidently disobeyed the instructions of his superior officers. He has been advised to report for duty by 17 Apr 97 vide registered letter No.110/A/DSC/Leave/Civ dt 10 Apr 97 and again 18 Aug 97, 18 Sep 97, 18 Oct 97 and 08 Nov 97 and if failing, then action will be taken to initiate disciplinary action as per Rule 14 of CCS (CCA) Rule 1965, and Rule 20 of the CCS (Conduct) Rules 1964 but he remained absent and still doing so. It appears that he has no interest to serve any more and therefore, disciplinary action as per Rule 14 of CCS(CCA) 1965 to be initiated against him to terminate him from service.
>
> **Article II** That No.484827 Shri S Rajan while performing as barber in the DSC Centre, Cannanore remained unauthorisedly absent for the period from 11 Mar 96 to 17 Jun 96 and produced a bogus medical certificate. In that the doctor whose certificate has been furnished was not holding any official post in the Department of Nephrology while issuing the medical certificate. The certificate and letter of Medical College, Trivandrum are attached as Exhibit No.1."

(D) Ultimately, the Enquiry Officer had rendered his findings which is as under:-

> "23 I conclude the Enquiry Proceedings with the following recommendations:-
>
> (a) The charged officer has committed offence by absenting himself for a total period of 590 days on various occasions and continuously for 540 days without any valid reasons and was unable to produce any proof for the absence even after clear directions and opportunities given to him by the authorities.
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> (b) The charged officer has produced a medical certificate which was proved as bogus certificate by the concerned medical authorities. He was given another fresh opportunities to produce clear medical certificates but failed to produce the same.

(c) The charged officer was given chance to participate in the *domestic enquiry conducted on* 30 May 99 to *prove his facts*, but he did not participate in the enquiry proceedings or forward any reason for his inability to participate and which shows his *lackadaisical attitude towards Government service.*

23. In view of the above, I am of the considered opinion that the above charged officer should be given minor penalties as mentioned below which is considered essential to avoid further commission of misconduct by the individual, since a public servant apart from the official rules and regulations and directions expected to maintain certain standard of good conduct in his official dealings and he should exhibit integrity, honesty, sincerity and personal conduct befitting to official code and failing which he commits misconduct exposing himself for disciplinary action.

(a) Withholding of five annual increments of pay.

(b) The whole absence period should be regularised as Extraordinary leave without pay and allowances and waiving of production of medical certificate for the entire period of absence.

(c) To be permitted to continue in the service while over looking the negligence on the part of the individual being a low paid employee.

(E) A copy of this enquiry report was sent to the applicant with a direction to him to make representation if any within 15 days from the date of receipt. However, the applicant had not filed any representation against the Enquiry Report.

(F) The Disciplinary Authority vide Annexure A-7 order dated 23.12.99 endorsed the findings of the Enquiry Officer that the charges stood proved and awarded the penalty of removal from service which shall not be a disqualification for future employment under the Government.

(G) The applicant had not filed immediately any appeal but by various correspondence he had been requesting for reinstatement. As late as on 2nd March, 2005, the applicant had preferred Revision Petition which however was not considered on the ground of limitation.

(H) Aggrieved by the non consideration of his Revision Petition, the applicant had moved OA 658/05 which was disposed of by the Tribunal

vide Annexure A 22 order dated 8.9.2005 directing the respondents to consider the Revision Petition filed by the applicant.

(I) Respondent No.4 had rejected the Revision Petition vide Annexure A-24.

(J) The applicant has come up against the Enquiry Report, penalty order of the disciplinary authority and Annexure A-24 order passed by respondent no.4.

3. Respondents have contested the OA. They have justified the action taken against the applicant and have also contended that the applicant is one of unsound mind and as such the retention of applicant in service would endanger the security of the Troop as the applicant by virtue of his profession had to handle sharp weapons like Razor Blade, etc.

4. The applicant has filed his rejoinder reiterating his contention as contained in the OA. To the same, the respondents have also filed their additional reply.

5. Counsel for the applicant argued that the proceedings are vitiated right from the stage of inquiry report. The Inquiry Officer has exceeded his jurisdiction. In addition to bringing in as charges matters which did not form part of the charge sheet itself. He has not followed strictly the provisions of Rule 14 of the CCS(CC&A) Rules, 1965. The Disciplinary Authority simply endorsed the views of the Inquiry Authority which again is not legal. Further when the applicant filed a comprehensive appeal, surfacing a good number of deficiencies in the decision making process, the appellate authority had, without due application of mind, confirmed the order of the Disciplinary Authority.

6. In so far the inquiry report is concerned, counsel for the applicant had laid stress on the following aspects:-

(a) The articles of charge when kept in juxta position with that as reflected in the inquiry report, would reveal that the two do not tally at all.

(b) The inquiry authority had not analyzed the evidence at all as is evident from para 20 and 21 of the Inquiry report.

(c) The inquiry authority does not enjoy any power to suggest or recommend the quantum or nature of penalty whereas he had so prescribed vide para 23 of the inquiry report.

7. As regards the Disciplinary Authority's action, the counsel submitted that notwithstanding the fact that the applicant did not make any representation against the Inquiry Report, the minimum consideration by the Disciplinary Authority required was to first ensure that the Inquiry Officer has gone into inquire about that charge which was reflected in the charge sheet and that he does not exceed his jurisdiction. This has not been done by the Disciplinary Authority.

8. In so far as the order of the Appellate Authority is concerned, though sufficient number of grounds have been raised in the appeal dated 2nd March, 2005 (Annexure A-20), none of the grounds had been considered and thus, the order of the Appellate authority suffers from thorough non application of mind.

9. The counsel for the applicant also pleaded that the applicant had put in as many as 16 years of service during which period his conduct was good. It has also been submitted that the penalty imposed was grossly disproportionate and hence, even if it be assumed that the applicant should be imposed penalty, the same could be a diluted one, taking into account the fact that the applicant was indeed not well due to which he had to absent himself from duty and that he had

put in 16 years of service and because of the grave punishment, he could not get his pension.

10. Counsel for the respondents submitted that here is a case, where the applicant himself has accepted the fact of his unauthorized absence. As such, one of the charges need not be gone into but could be taken as having been proved by clear admission of the applicant. As regards false medical certificate, it has been argued by the counsel for the respondents that the I.O has dealt with the same and has arrived at the conclusion that the said that charge also stands proved since the person who issued the certificate was not at the material point of time functioning in the Department of Naphrology. It has also been stated that the very applicant himself had conceded that he was not in a balance position mentally. Under these circumstances, his continuance in the organization would be detrimental, as, obviously, a barber with unsound mind cannot be allowed to perform the duties since he has to handle with sharp weapon like blade, shaving knife etc., which, if not carefully used, would endanger the troops.

11. Arguments were heard and documents perused. First as, to the legal issues of the case. Admittedly the applicant had been served with a charge sheet for major penalty. Major penalty ranges from reduction to a stage or post/withholding of increments with cumulative effect to Termination of service. Termination of service could be either compulsory retirement or removal from service or compulsory retirement. Both removal and dismissal would wipe out the benefits of past services, while compulsory retirement would enable the delinquent to derive the terminal benefits and pension, subject to completion of minimum years of service. Generally, when action is contemplated, the authority would have in its mind, proceedings under Major Penalty Proceedings or Minor

Penalty, without predetermining or concentrating the extent of penalty to be imposed, for, the same depends upon the outcome of the inquiry. In the instant case, as per the Presenting Officer's brief, the very initiation of the proceedings appears to be with certain pre-determination to 'terminate' the services of the applicant. In para 5 of Annexure A-12, the Presenting Officer had, citing a specific reference of the respondents' communication, stated, "The case of above individual with a proposal to initiate the disciplinary action as per Rule 14 of CCS(CCA) Rules, 1965 **to terminate** him from service has been forwarded to DDG, DSC, Army HQ vide letter No. 110/DISCIP/A/DSC dated 17 Jul 98". This amounts to pre-determination even before conducting the inquiry. **This is neither appropriate, nor justified and goes against the respondents.**

12. As regards the inquiry report, there is certainly variation in the actual charge and the charge as extracted by the inquiry officer in his report. The power of the Inquiry Officer cannot extend to the extent of altering the original charge or imputation. In this regard, support could be had from the decision of this Tribunal in the case of **P. Parameswaran Nair vs Sr. Superintendent of Post Officers, (1990) 12 ATC 108.** To this extent the Inquiry Report has certainly to be held as vitiated. In the case of **M.V. Bijlani vs Union of India (2006) 5 SCC 88**, the Apex Court has held, that the inquiry officer ***cannot enquire into the allegations with which the delinquent officer had not been charged with.***

13. Counsel for the applicant is right when he submitted that the analysis and assessment of evidence as indicated in the Inquiry Report is sketchy and the same cannot be said to have met with the requirement of conducting proper inquiry. For proper appreciation, the relevant portion of the report is extracted

below:-

> " 20 The charged officer Shri S Rajan, Barber was posted to DSC Centre on 01 Nov 95 and he reposted to DSC Centre on duty on 16 Nov 95 after absenting for a period of 15 days. After reporting for duty at DSC Centre, he was found absenting a number of times without any valid reasons. It shows that the individual is a habitual absentee and it appears that he is not interested in his Government job.
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> 21 As per the documentary evidence and statement of witness adduced before me, the charged officer has committed offence which leads to misconduct and merits disciplinary action against him."

14. The above goes to show that the I.O. has not arrived at the conclusion on the basis of the evidences available, as there is no discussion as to the documents that have been analyzed, which is the minimum requirement.

15. Counsel for the applicant is equally right when he argued that the powers of the Inquiry Authority do not include any recommendations of penalty. Of course, this recommendation by the Inquiry Officer was thoroughly ignored by the Disciplinary Authority. From that point of view, this part of the Inquiry Report need not be further discussed.

16. As regards the Disciplinary Authority's order, though the counsel submitted that notwithstanding the fact that the applicant had not given any representation against the Inquiry Report, a duty is cast upon the Disciplinary Authority to see that the charge considered by the Inquiry Authority should be the same as per the original charge sheet, in the absence of representation pointing out this lacuna, omission by the Disciplinary Authority to consider the same cannot be fatal to the penalty order, if otherwise in order. It has also been argued that the penalty order is not a speaking order. This contention has to be

ignored for, it has been held in the case of ***National Fertilizers Ltd. v. P.K. Khanna,(2005) 7 SCC 597*** that *the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer.*

17. As regards the order of the appellate authority, the counsel argued that the same is expected to be manifesting due application of mind. The order lacks in this regard. The counsel took the tribunal through the appeal (Annexure A-20) wherein the applicant had raised various legal issues as to the conducting of the inquiry, and submitted that the Appellate Authority has not at all considered such legal issues. A look at Annexure A-20 confirms the fact that violation of Rule 14(4), (9), 14(14), 14(16), 14(18), 14(19) and 15(2) and (4) has been alleged. Details of some of the violations have also been given vide grounds thereof. Yet, none of the above had been incorporated in the appellate authority's order, much less considered, and the least decision recorded thereon. It has been held by the Apex Court in the case of ***Ram Chander v. Union of India, (1986) 3 SCC 103*** as under:-

> "**4.** The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt* v. *Union of India (1986) 2 SCC 651* this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed:
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> > It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (*1*) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (*2*) whether the findings of the disciplinary authority are warranted by the evidence on record; and (*3*) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit the case to the authority which imposed the same.

It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record."

18. In the case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713*** the Apex Court has reaffirmed the above in the following words:-

"37. Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.
* * *

32. *The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. ..... He was required to show that he applied his mind to the relevant*

facts. He could not have without expressing his mind simply ignored the same.

33. *An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.*

34. *In Apparel Export Promotion Council v. A.K. Chopra which has heavily been relied upon by Mr Gupta, this Court stated:*

> *16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)*

35. *The Appellate Authority, therefore, could not ignore to exercise the said power.*

36. *The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.*

19. The above drill is not only with reference to appeal, but applies for revision also, as has been held in Narendra Mohan Arya (supra) wherein in para 47, the Apex Court has held "**A revisional jurisdiction as is well known involves exercise of appellate jurisdiction** (See *Shankar Ramchandra*

Abhyankar v. *Krishnaji Dattatreya Bapat* and *Nalakath Sainuddin* v. *Koorikadan Sulaiman).* "Keeping in view the above law laid down by the Apex Court, if the case in hand is examined, it would be very much evident that the order of the appellate authority does not meet the above requirement. The appellate authority's order does suffer from this serious legal lacuna.

20. Now on the factual aspects of the case: Two charges have been levelled against the applicant. One of them relates to his absence and the other about furnishing false medical certificate. In so far as for former, the fact remains that the applicant was admittedly under some medical treatment and was an OPD patient. But he could not furnish necessary medical certificate for his absence. He was branded as an unauthorized absentee on account of his inability to produce medical certificate from competent medical authority. But at the same time his ailment was to the full knowledge of the respondents. As regards furnishing false medical certificate, in fact what the applicant produced was a certificate from a lecturer, who was not, at the time of issue of certificate, working in the Department of Naphrology. But the fact is that the said individual was in the employ of the department. The Principal who had informed the respondents about this fact has only stated that the medical certificate is invalid and not one of forged or false.

21. The question now is as to what should be the result of the above situation. Should the proceedings from the inquiry stage be quashed and set aside with liberty to the authorities to proceed from the stage of issue of charge sheet? Time distance prevents the Tribunal to order so. Should the proceedings from the stage of the penalty order be quashed for further action? Here again, it would amount to reinstatement of the applicant with a rider that he would be under

deemed suspension from the date of removal from service and subsistence allowance has to be paid all through these years and the mental condition of the applicant as on date is also no known. Respondents' contention that retention of the applicant may endanger the troops has also to be kept in mind. Since the applicant did not file any representation to the inqury report and as it cannot be held that the applicant is thoroughly innocent or not blameworthy, alternative options, if any has to be adopted to render substantial justice to this case.

22. Counsel for the applicant also argued that assuming without accepting that there is no legal lacuna in the conduct of the inquiry or the decision making process, yet, the penalty imposed is grossly disproportionate. For, the fact remains that the applicant was undergoing treatment in the OPD and therefore, he was not in a position to attend the office. Though technically, it is unauthorized absence inasmuch as he was not sanctioned leave, penalty of removal from service for such absence due to ill health cannot be justified and as such, the same is shockingly disproportionate and hence, the Tribunal may well consider reducing the quantum of penalty so that the applicant could be back in service. This aspect has been considered. First of all the powers of a Tribunal in modifying the penalty is very much restricted. It has been held in a recent decision of the Apex Court in the case of ***A. Sudhakar v. Postmaster General, (2006) 4 SCC 348***, as under:-

> "**28.** In *Hombe Gowda Educational Trust* v. *State of Karnataka* this Bench opined:
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> > "*17.* The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. ***The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.***

> *18.* This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. **The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the *management which would have direct bearing on* the question of quantum of punishment.** (emphasis supplied)

23. The inability of the applicant to attend the office could be well discerned from the facts of the case, for, admittedly the applicant had been suffering from ailment, which in the words of the respondents, 'unsound of mind'. For rendering a finding about unauthorized absence, this aspect should also have been considered but the inquiry authority had not kept this in view. At least, the Disciplinary authority could have kept in view the same, while considering the quantum of penalty. Neither he too had done so, nor did the appellate authority for that matter. Had any of the authorities kept in mind that to some extent the applicant's ill-health is responsible for his continued absence, there would have been the possibility of the authorities to show lenience. This was not done. So is the fact that the applicant's career in the past was unblemished and the same too was not considered while deciding about the quantum of punishment. It is trite law that while deciding the quantum of penalty, normally the past conduct is also taken into account and if the behaviour of a person had been consistently bad, the quantum of penalty would be at a higher level, whereas, if the previous conduct was blemishless, lenient view is taken. The misconduct complained of being one of unauthorized absence and furnishing of an invalid medical certificate, penalty imposed should be such that the same does not have detrimental effect to the past service rendered by the applicant. Even as per the respondents, earlier in 7 years plus, the applicant had taken only a few days' leave. Thus, had these relevant facts, which have direct bearing on the quantum

of penalty that could be imposed, been kept in view, perhaps, the authorities would have awarded a lesser punishment. Justice would have certainly been done, if the authorities, which did not want to retain the applicant service, **had imposed penalty of compulsory retirement.** For, the same would have entailed pension to the applicant for the future. Pension is a deferred payment of wages and when the applicant's services were unblemished for at least 16 years, depriving the applicant of the advantage of pension on account of the present proceedings, in the opinion of the Tribunal would make the penalty grossly disproportionate. Hence, this Tribunal is of the considered view that this is a fit case to be remitted back to the Appellate authority for review of the case vis-a-vis quantum of penalty imposed. By converting the penalty from removal to one of compulsory retirement, the authority's anxiety that retention of the applicant in service would endanger the troops would not subsist, while at the same time, the applicant's past service is not wiped out.

24. In view of the above, this OA is **disposed** of with a direction to the respondents to reconsider the case vis-a-vis quantum of penalty imposed upon the applicant. Annexure A-24 order dated 29-03-2006 is hereby quashed and set aside. The appellate authority may pass suitable orders within a period of two months of the date of communication of this order.

25. No costs.

(Dated, the 2nd April, 2008)

(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.