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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH
JODHPUR

Date of decision: January 23, 1989

T.A. 825 of 1986

Pawan Singh
Mr. M.S. Singhvi

Petitioner
Counsel for petitioner

VERSUS

Union of India
Mr. R.N. Mathur

Respondent
Counsel for respondent

CORAM:

THE HON'BLE MR. B.S. SEKHON
THE HON'BLE MR. G.C. SINGHVI

VICE CHAIRMAN
ADMN. MEMBER

B.S. SEKHON

Concisely stated, the facts necessary to be noticed for the ad-judication of the instant Application are:


Vide memorandum No. 7-4-74/Disc. 1 dated March 10, 1976, a departmental enquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity's sake called 'the Rule') was initiated against the plaintiff. The plaintiff was then posted as Senior Superintendent Post Offices, Ajmer. The enquiry was conducted in respect of the following articles of charge :

Article I: That the said Shri Pawan Singh while working as SSPOs, Jaipur during the period from 26.2.73 to 28.5.74 conducted two examinations on 3rd June, 1973 and 30th Sept., 1973 for recruitment of departmental candidates to the cadre of postmen and committed the following irregularities:-

(i) He did not notify the number of vacancies before conducting the examination on 30.9.73, as required by the instructions on the subject.

(ii) He declared as successful the candidates who had failed to secure the minimum qualifying marks

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Shri Pawan Singh by his above acts exhibited lack of integrity and devotion to duty and thereby contravened the provisions of Rule 3(i) and (ii) of CCS (Conduct) Rules, 1964.

Article II: That during the aforesaid period and while functioning in the aforesaid office, the said Shri Pawan Singh conducted a test on 26.8.73 for selecting Town Inspectors but failed to give a written test consisting only of writing a report in English to the candidates as prescribed in Rule 279/3 of P&T Man. Vol. IV.

Shri Pawan Singh by his above act exhibited lack of devotion to duty and contravened the provisions of Rule 3(1) (ii) of CCS (Conduct) Rules, 1964 and Rule 279/3 of P&T Man. Vol. IV.

Article III: That during the aforesaid period and while functioning in the aforesaid office, the said Shri Pawan Singh, vide his memo. No. F1-13/14/72-73 dated 17.12.73 irregularly revoked the order of suspension of Shri Shyam Lal, Postman, Adarshnagar, Jaipur against whom the case of fraudulent payment of money order was still pending for which he had been placed under suspension.

Shri Pawan Singh by his above act exhibited lack of devotion to duty and contravened the provisions of Rule 3(1) (ii) CCS (Conduct) Rules, 1964.

Article IV: That during the aforesaid period and while functioning in the aforesaid office, the said Shri Pawan Singh accepted sub-standard furniture from M/s Mahalaxmi Traders, Jaipur in March, 1974.

Shri Pawan Singh by his above act exhibited lack of devotion to duty and contravened the provisions of Rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

Article V: That during the aforesaid period and while functioning in the aforesaid office, the said Shri Pawan Singh submitted a false medical certificate dated 27.7.74 for the period from 26th July, 1974 to 9th August, 1974 purported to have been signed by Dr. Kali Charan Sharda, Principal, SMS Medical College, Jaipur, whereas actually there was no Doctor of that name on the strength of the SMS Medical College, Jaipur at that time.

Shri Pawan Singh by his above act exhibited lack of integrity and conduct unbecoming of a Government servant and thereby contravened provisions of Rule 3 (1) (i) & (ii) of CCS (Conduct) Rules, 1964.

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List of documents and that of witnesses whereby the charges framed against the plaintiff were sought to be substantiated were enclosed as Annexures-3 and 4 to the aforesaid memo. As per addendum dated November 4, 1976, 13 additional documents were included in enclosure 3. After considering the report of the Enquiry Officer dated October 18, 1977, the disciplinary authority afforded an opportunity to the plaintiff of making representation on the tentative proposal for imposing upon him

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the penalty of removal from service. The penalty of removal from service was imposed on the plaintiff vide order No.7-4-74/ disc.1 dated September 28, 1978 signed by the Secretary to the Government of India.

After serving the notice under Section 80 of the Code of Civil Procedure (for short 'the Code') plaintiff instituted this suit in the Court of Civil Judge, Ajmer. He prayed for a declaration that the order dated September 28, 1978 removing him from service is illegal, void and inoperative and also prayed for consequential money decree for Rs.7,656.18 on account of arrears of salaries and allowances for the period October 4, 1978 to January 31, 1979 and a money decree for leave salary for the period October 29, 1977 to October 3, 1978 and amount of C.D.S. The plaintiff has also claimed interest under Section 34 of the Code. The plaintiff has assailed the impugned order on the grounds that the same has been passed in contravention of the provisions of Article 311 of the Constitution, of the Rules and violation of the principles of natural justice, as also on the numerous other grounds set out in paragraph 3 of the plaint. Prominent of these grounds being that the impugned order is non speaking, report of the U.P.S.C. which was pressed into service was obtained behind his back, he was neither given a copy thereof nor an opportunity of having his say with regard thereto. The substantial grounds and submissions in his reply dated March 5, 1978 to the show cause notice were not considered, he was wrongfully and illegally disallowed by the Enquiry Officer from inspecting material documents specified at serial Nos.5, 7, 8, 10 to 15. Items 21 to 32 were added to Annexure-3 illegally, wrongfully and after he had submitted his defence on April 5, 1976, notwithstanding the timely intimation about the passing away of his mother, the Enquiry Officer wrongfully declined adjournment on October 4, 1976 and also in his absence on the said date wrongfully found that the plaintiff had admitted



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The certain facts comprising the charges. /non examination of Shri S.B. Jain, reliance upon the written brief submitted by the presenting officer without furnishing a copy thereof to the plaintiff, non consideration of the written brief submitted by him, contravention of Rules 14 (15), 14 (19), 14 (23) and 15 (2) ~~14(4)(b)~~ treating ~~xx~~ all documents as proved and exhibiting them at the outset wrongfully assuming the certificate Exhibit-P/16 to have been signed by Dr.Kali Charan Sharda, non supply of the copies of the statements of S/Shri Kalyan Prasad, Bhairun Lal, Radha Govind and Ganpat Singh at the ^{liminary} pre/enquiry report of the Enquiry Officer against him and contravention of Rule 183 of the P&T Manual Vol.III are the other grounds on which the impugned order has been challenged.

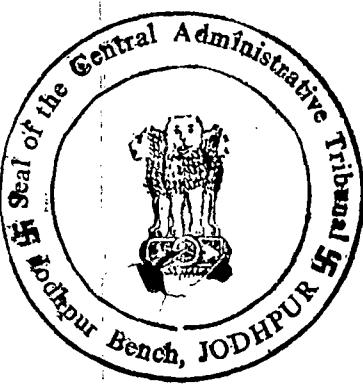
2. The defence as set out in the written statement is that the impugned order does not contravene any principle of law or rules. Saying that the impugned order is a speaking order, the defendant has controverted the allegations about 14 (4) (i) (b), infraction of Rules 14 (15), 14 (19), 14 (23) and 15 (2) of the Rules adding that plaintiff's reply dated March 5, 1978 to the show cause notice was duly taken into consideration before awarding the penalty, the enquiry officer has rightly dis-allowed the inspection of the documents in question for reasons which were communicated to the plaintiff as per Enquiry Officer's letter dated January 27, 1977. The plaintiff had been given several opportunities for inspecting the necessary documents and had finally inspected all the documents including document at serial No.15. According to the defendant it was not necessary to furnish a copy of the advice received from the Commission. The same had to be furnished and was furnished along with the order of imposition of the penalty in conformity with rule



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17 of the Rules. The other pleas raised by the defendant are: The plaintiff was given due notice of the addendum adding document Nos. 21 to 32. He could if so desired submitted a further statement of defence in respect thereof. Non examination of Shri S.B. Jain has not at all prejudiced the plaintiff, who could if he so liked examine Shri Jain or any other witness as a defence witness. The plaintiff never requested the Enquiry Officer for a copy of the written brief filed by the presenting officer, there is no rule or law obliging the Enquiry Officer to furnish suo moto a copy of the written brief submitted by the presenting officer, to the delinquent public servant. No further proof was needed to prove Exhibit-P/16 purporting to have been signed by Dr. Kali Charan Sharda as it was submitted by the plaintiff and the Enquiry made from the Principal, S.M.S. Medical College, Jaipur reveals that the doctors ~~do~~ in that college do not issue medical certificates and no doctor by the name of Kali Charan Sharda ever served in that college or its associate hospitals. The copies of the statements of S/Shri Kalyan Prasad and Radha Govind Agarwal are stated to have been supplied to the plaintiff. The defendant has further averred that the Dy. Director (Vigilance) had the jurisdiction to issue the show cause notice by the order and in the name of the President of India. The impugned order was signed by the Secretary, Ministry of Communication, Government of India for and on behalf of the President of India who is the disciplinary authority of the plaintiff. Defendant has also refuted the claim for salary adding that C.D.S. amount will be paid to the plaintiff if found due after adjusting the other recoveries to be made from him. Still another plea raised by the defendant is that plaintiff is not entitled to claim the reliefs at serial No. 3 and 4 of the relief clause as he has not paid any court fee thereon.



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3. The following issues were framed by the learned Civil Judge:-

- (1) Whether the order dated 28.9.78 is illegal, void and inoperative ?
- (2) Whether the plaintiff is entitled to Rs.7656.18 ?
- (3) Whether the plaintiff is not entitled to reliefs 3 and 4 as he has not paid Court -fees.
- (4) Relief .

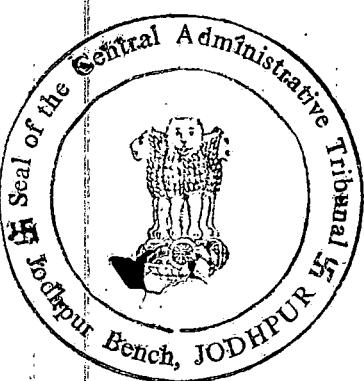
4. We have considered the arguments addressed by the learned counsel for the parties, pleadings and documents on record including the written representation submitted by the plaintiff.

Issue No.(1)

5. This is the most crucial issue in this T.A. We will confine ourselves to the points canvassed by the learned counsel for the plaintiff.

6. During the course of arguments, the learned counsel for the plaintiff contended that the order made by the Disciplinary Authority is not a speaking order. The learned counsel for the respondents countered by submitting that whenever the Disciplinary Authority agrees with the findings given by the Enquiry Officer, as in this case, it is not necessary to make a speaking order. In support of his submission the learned counsel placed reliance on the dictum of the Supreme Court in *Tara Chand Khatri v. Municipal Corporation of Delhi and others* (1). The submission made by the learned counsel for the respondents is supported by the dictum of the S.C. in *Tara Chand Khatri* supra. Thus the aforesaid contention of the learned counsel for the plaintiff is hereby repelled.

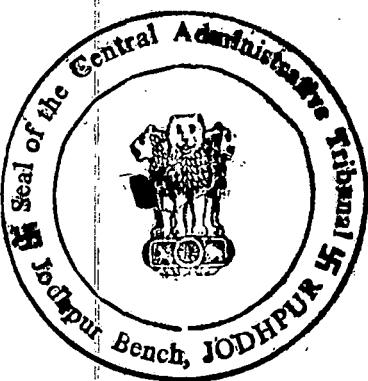
7. It was then urged by the learned counsel that the failure of the Disciplinary Authority to furnish a copy of the report of the U.P.S.C. which had been taken into consideration by the Disciplinary Authority deprived the plaintiff from stating his point of view regarding



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the recommendations made by the U.P.S.C. and that in view thereof, the plaintiff has been denied a reasonable opportunity of defending himself. A perusal of rule 15(4) of the Rules, inter alia, lays down that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the developed Government servant. The learned counsel ~~said~~ his point by saying that the expression 'consideration' used in the proviso to the aforesaid sub-rule implies proper application of mind, which is missing in this case, and there has thus been infraction of sub-rule (4) of rule 5. So far as the question of making over a copy of the advice of the U.P.S.C. to the delinquent public servant is concerned, rule 17 is an answer thereto. As provided by this rule, copy of the advice of the Commission is required to be furnished by the Disciplinary Authority to the Government servant concerned along with the order communicating the imposition of penalty. It is also difficult to countenance the submission about the denial of reasonable opportunity to the applicant on the mere ground of non-supply of copy of advice of the Commission. In this connection it would be apposite to point out that and the brief of the Presenting Officer the enquiry report/contains the entire material which was relied upon by the Disciplinary Authority at the time of issuing show cause notice. This material/was made available to the plaintiff as he was given a copy of the enquiry report submitted by the Enquiry Officer. Adverting to the submission regarding the implication of the expression 'consideration', suffice it to point out that a perusal of the order of the Disciplinary Authority, President in this case, goes to show that the President had taken into consideration the advice tendered by the U.P.S.C.



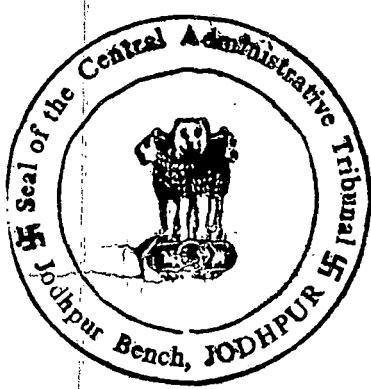
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8. It was further submitted by the learned counsel for the plaintiff that the delay in finalising the enquiry is fatal to the impugned order. Learned counsel elaborated by saying that the charge-sheet was given on March 10, 1976 and the impugned order was made on September 28, 1978 and that this prejudiced the plaintiff as Dr. Kali Charan Sarda had also expired. Reliance was also placed by the learned counsel on O.M. No.134/20/68-AVD dated 28.8.68 issued by the Ministry of Home Affairs. On the basis of the said O.M. the learned counsel submitted that the time limit of 3 months at the most has been laid down and that it was obligatory on the Disciplinary Authority to submit a report to the next higher authority indicating additional the/period within which the case is likely to be disposed of and the reasons for the same. The learned counsel for the respondents met this challenge on the reasoning that no such plea had been taken by the plaintiff in the plaint and that he should not be permitted to raise such a plea. There would appear to be force in the submission of the learned counsel for the defendants. It is pertinent to notice in this connection that the plaintiff has set out exhaustively all the conceivable pleas in the plaint. This plea thus appears to be merely an after-thought. That apart, the time limit in this O.M. is not applicable in cases requiring consultation with the U.P.S.C. This is manifest from the following sentence appearing in the O.M.:-

' In cases requiring consultation with the C.V.C. and the U.P.S.C. also every effort should be made to ensure that such cases are disposed of as quickly as possible.'

The aforesaid O.M., therefore, does not improve the plaintiff's case, particularly, when it does not specify the time limit in a case requiring consultation with the U.P.S.C. and for the additional reason that the Disciplinary Authority acted with due despatch and promptitude after

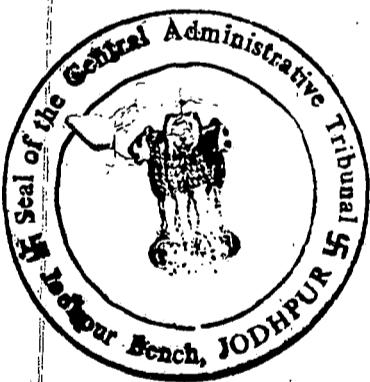


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receiving the advice from the U.P.S.C. The advice of the U.P.S.C. was conveyed vide their communication dated August 17, 1978. This communication would have taken few days to reach the Disciplinary Authority. The impugned order was made on September 28, 1978. It can be safely stated that the same was made within a reasonable time of the receipt of advice of U.P.S.C. by the Disciplinary Authority. The ground of delay and the alleged infraction of rule 15(4) of the Rules is, therefore, found to be groundless.

9. Another ground urged by the learned counsel for the plaintiff was that the findings of the Enquiry Officer are based on conjectures and surmises and the same are not warranted by the material on record. It may be straightaway pointed out that a judicial forum is not to reappraise the evidence and to substitute the findings of the Enquiry Officer/Disciplinary Authority by its own findings. The Court/Tribunal would, of course, intervene if it is a case of no evidence or the conclusions reached by the Disciplinary Authority are perverse or are based on mere conjectures and surmises or are based on extraneous material. After considering the entire material including the report of the Enquiry Officer we are convinced that it is not a case of no evidence nor can the findings of the Enquiry Officer be said to be perverse or founded on conjectures/ So surmises. /this ground is also hereby turned down.

10. Still another point made by the learned counsel is that the initiation of the enquiry is void in that the Deputy Director General (Vigilance) who had signed the Memorandum dated March 10, 1976 is not the Disciplinary Authority. A bare look at the aforesaid Memorandum makes it evident that the Deputy Director General (Vigilance) has merely authenticated the memorandum on behalf of the President. The following expression before the signatures of Shri R.R.Savoor,



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transpire from the report of the Enquiry Officer that he exonerated the plaintiff of charges III and IV and gave the following findings in respect of Articles I, II and V:-

Article I(i). Shri Pawan Singh, SSPO, should have ensured that the instructions of the DGP&T(Ex.P.1) are followed in his office. Obviously, he failed to do so. I do not, however, find any malafide intention on his part in this lapse.

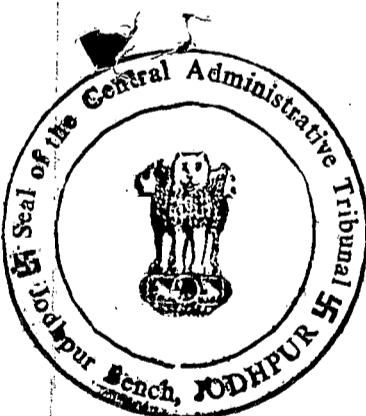
Article I(ii). The inescapable inference is that the charged officer wanted to show undue favour to certain candidates by departing from the normal procedure and the minimum qualifying standard. The charged officer thereby exhibited lack of integrity and devotion to duty.

Article II. I do not consider the defence plea of the charged officer to be acceptable. When a prescribed mode of test had been specifically provided in the P&T Manual there was no reason whatsoever for the charged officer to depart from the normal procedure. Any person subsequently could challenge the results of such test which was not held according to the prescribed procedure. In my opinion, however, it is a case of negligence of duties on the part of the charged officer.

Article V. The preponderance of probability under these circumstances is that the charged officer submitted a false medical certificate vide Ex.P.15 and P.16 in order to get his leave extended from 26.7.74 to 9.8.74. The charged officer thereby exhibited conduct unbecoming of a Government servant.

13. The Commission whose advice was accepted by the Disciplinary Authority opined that Article 1(i) of the charge stands proved, but the Commission were satisfied that the bona fides of the plaintiff are not in doubt and it was not a case of negligence on his part.

With regard to Article I(ii) the Commission advised that the charge of lack of devotion to duty is proved, but gave benefit of doubt to the petitioner so far as



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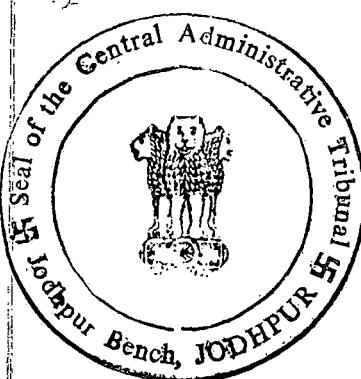
imputation of mala fide is concerned.

14. As regards Article II, the plaintiff's action was considered to amount to a technical irregularity. It was also stated that the charge of misconduct cannot be pressed against him. In respect of Article V, the U.P.S.C. agreed with the Enquiry Officer that the charge has been proved.

15. Pressing into service the advice of the U.P.S.C. the learned counsel for the petitioner urged that only charge V had been substantiated against the petitioner and that this charge did not warrant the imposition of the extreme penalty of removal from service.

From the foregoing it is evident that the U.P.S.C. did not exonerate the plaintiff altogether in respect of charges I(ii) and II. In the case of former charge, they excluded element of mala fide. In respect of the latter charge, the U.P.S.C. thought that it is a technical irregularity and the charge of misconduct cannot be pressed against him. In view of the order we propose to make, we are not advisedly expressing our view on this submission.

16. It was next urged by the learned counsel for the plaintiff that non-furnishing of a copy of the written brief submitted by the Presenting Officer to the plaintiff which had also been considered by the Enquiry Officer prejudiced the plaintiff and deprived him of a reasonable opportunity to defend himself. In support of this contention, the learned counsel relied upon the decision of the Calcutta High Court in *Collector of Customs and others v. Md. Habibul Haque (2)*. We find substance in the aforesaid submission. In case the Enquiry Officer accepts written brief from the Presenting Officer, it is but just and fair and in



consonance with the principles of natural justice that the delinquent public servant should be furnished with a copy of the written brief so that he can meet the case set out by the Presenting Officer in the written brief and put forward his point of view in regard thereto. In the facts and circumstances of this case, we find that there has been violation of the principles of natural justice. In view thereof, the impugned order is likely to be set aside and the same is hereby set aside. The appropriate course to be followed would be to remit the case to the Enquiry Officer. The issue is decided accordingly.

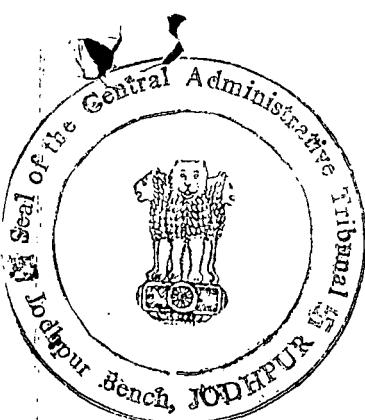
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17. Since the plaintiff was removed from service with effect from September 28, 1978, he is not entitled to the salary claimed as per Annexure 'A', which is in respect of the period subsequent to the date of removal of the plaintiff. In case the order of removal of the plaintiff is set aside by the Disciplinary Authority or ultimately by the Court different consequence may ensue. As at present, the claim embodied is not sustainable. The issue is decided accordingly.

Issue No. (3)

18. As is evident from the order sheet dated July 3, 1985, the plaintiff had given up relief prayed for vide para 8(3). In view of our findings on issue No.2, the question of awarding interest claimed vide paragraph 8 (4) of the plaint does not arise. That being the position of matters, this issue also does not survive.

19. In view of our finding on issue No.(1), the impugned order is hereby set aside with the direction that the Enquiry Officer shall make over copy of the



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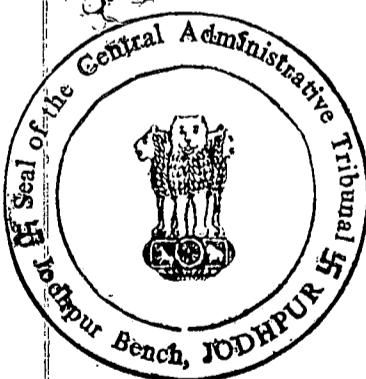
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Deputy Director General (Vigilance) leaves little doubt on this point:-

'By order and in the name of the President.' The opening portion of the memorandum also makes it clear that it was the President who had proposed to hold an inquiry against the plaintiff. This contention also does not assist the plaintiff's case.

11. It was next urged by the learned counsel for the plaintiff that the penalty of removal awarded to the plaintiff is harsh and disproportionately excessive to the alleged acts of delinquency. The learned counsel for the respondents countered the aforesaid submission by saying that the charges found to have been established against the plaintiff are grave and pretty serious and that in the facts and circumstances of this case the penalty of removal from service was the appropriate penalty to be awarded. A perusal of para 2 of the impugned order goes to show that the Disciplinary Authority had agreed with the findings of the Enquiry Officer. In para 2 of the show cause notice dated January 6, 1978 it was recited that on a careful consideration of the inquiry report, the President agrees with the findings of the Enquiry Officer and holds that Articles I, II and V of the charge are proved and the President has provisionally come to the conclusion that Shri Pawan Singh is not a fit person to be retained in service. The plaintiff was also given an opportunity of making representation on the proposed penalty on the basis of evidence adduced during the enquiry.

12. As per the impugned order, the penalty of removal was imposed by the President after careful consideration of the representation dated March 5, 1978 submitted by the plaintiff and after consultation with the U.P.S.C. accepting their advice. It would



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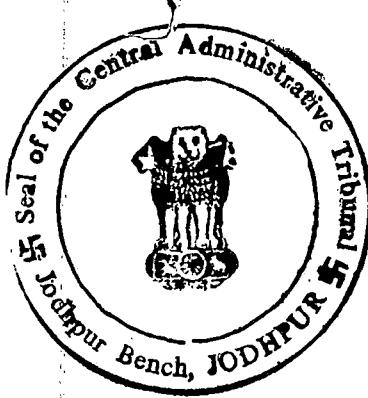
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written brief submitted by the Presenting Officer to the plaintiff and shall call upon the plaintiff to submit his written brief. After considering the material already on record and the new material, the Enquiry Officer shall submit his report to the Disciplinary Authority within two months of the submission of the written brief by the plaintiff. The Disciplinary Authority after complying with the prescribed formalities shall pass a fresh order in accordance with law within a period of two months of the date of receipt of the report of the Enquiry Officer.

20. The T.A. is disposed of accordingly.
No order as to costs.



G.C.Singhvi

(G.C.Singhvi)

Admn. Member.

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B.S.Sekhon
(B.S.Sekhon)
Vice Chairman.
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Copy received;

Pawan Singh (Petitioner),
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Copy Recd for Respondent court

[Collection
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14/2/89 Recd the following records given to court on 19-7-88 - (1) Dte letter no 25-2/87
vrg II 11-7-87 (2) File no 14/74 Disc I contg sl 1 to 126 along with 36 notes sheets.
(3) File 108/DE 76-CDE (RKK) sl no 1 to 53 along with write sheets. (4) co. letter
vrg 8-12/73 1 25/26-5-78 along with following enclosures (i) copy of D.C. letter
no 25/9/78 Disc I of 22-5-78. (ii) 31/2/78 v/s (iii) copy of letter no.
no 25/9/78 Disc I of 17-8-78 (sl 5) (iv) confidential file no 109/DE/76-CDE
F 3/5/78 1 17-8-78 (sl 5) (v) File no 109/DE/76-CDE (RKK) containing
(RKK) contg sl 1 to 12 (6) File no 109/DE/76-CDE
sl no 1 to 96 along with write sheets. (7) file no 109/DE/76-CDE
1 (RKK) contg sl 1 (a) to 1 (L) (7) Paravise comment.

(1) (2) (3) (4) (5) (6) (7)
(S.R. Shastri)
(R.S.H. Shastri contg file 109/DE/76-CDE
1 (a) to 1 (L) (7) (8) (9) (10) (11) (12)