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CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.276/1994

Date of Order: 9.3.2.1996

Pawan Singh

... Applicant

VERSUS

Union of India & Ors

... Respondents

Mr. K.L. Thawani

... Counsel for the Applicant

Mr. U.D. Sharma

... Counsel for the Respondents

CORAM :

HON'BLE MR. N.K. VERMA, ADMINISTRATIVE MEMBER

HON'BLE MR. PATTAN PPAJASH, JUDL. MEMBER.

Per Hon'ble Mr. N.K. Verma :

In this O.A. Shri Pawan Singh who was in Indian Postal Service Group A and who has been removed from service as per the impugned order Annex. A/l dated 8.6.94 has prayed for quashing the same as being arbitrary, biased, illegal, capricious, unconstitutional and without jurisdiction and direction to the respondents to continue the applicant in service and treat him on duty from the original date of removal from service, that is, 28.9.1978.

2. The facts of the case are that the applicant joined the Indian Postal Service in Group 'A' cadre in 1964 and was served with a charge sheet (5 charges) on 10.3.1976 for several irregularities including exhibition of lack of integrity and devotion to duty. As a result of the enquiry conducted by the Commissioner for Departmental Enquiries and as per his report dated 18.10.1977 three charges out of the five were found to be proved. However, the Union Public Service Commission (for short, UPSC) whose advice was sought in the matter, conveyed its disagreement on 17.8.1978 on the evidence regarding charges No.1 and 2. The UPSC, however, agreed with the Enquiry Officer in relation to the charge No.5 that is, regarding submission of a false medical certificate for grant of leave. As a result of the advice of the UPSC, the applicant while working as

Senior Superintendent of PMS 'J' Division, Ajmer was removed from service vide order dated 28.9.1978 by the Secretary, Department of Posts, Government of India.

The applicant instituted a civil suit in the court of Civil Judge, Ajmer against the order of removal, which was subsequently transferred to the CAT, Jodhpur for adjudication under T.A. No.825 of 1986. The said T.A. was decided by the Jodhpur Bench on 23.1.1989 by which the orders of removal were set aside with the direction that "the Enquiry Officer shall make over copy of the 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~~ of the Enquiry Officer."

3. The respondents did not take prompt action within the stipulated period and got extension of the time schedule for complying with the directions rendered in TA No. 825/86 through a Miscellaneous Petition No.43/89 on 2.5.1989 which was disposed of on 11.8.1989 by which extension of two months time was granted. However, extension of time limit was also requested by another Misc. Petition which was dismissed by the Tribunal as having become infructuous in view of the fact that the extension of time had already elapsed.

4. As per the directions of the Tribunal the respondents appointed Shri S.K. Agarwal, Director Postal Services, Rajasthan Eastern Region, Jaipur as the Enquiry Officer vide Memo. dated 25/30.1.90 to which the applicant took the basic objection by submitting a

representation dated 26.2.1990 that this Agarwal being appointee of 1968 batch of Indian Postal Service was junior to him and could not be appointed and act as Enquiry Officer. This representation, however, was rejected by the competent authority vide Memo dated 30.8.90 by stating therein that Agarwal was already an officer of Junior Administrative Grade of the Indian Postal Service working as Director, Postal Services while the applicant at that relevant time was only a Senior Time Scale Officer of the Indian Postal Service and therefore, was junior to Agarwal.

5. The applicant in the meantime also approached to the Supreme Court through SLP against the order of the Tribunal in which certain observations were made which could have been detrimental to the interest of the applicant during the enquiry to be conducted as per the Tribunals order. The Hon'ble Supreme Court gave directions as follows :-

"We have heard both the counsel. We are of the opinion that since the Tribunal had come to the conclusion that the impugned order of the disciplinary authority should be set aside and a fresh order should be passed after giving an opportunity to the appellant to look at the written brief submitted by the Presenting Officer and other relevant documents, the Tribunal was not justified in making observations and expressing opinion touching the merits of the various objections raised before it by the appellant. Therefore, though we uphold the order of the Tribunal in so far as it set aside the order of the disciplinary authority and remanded the case for fresh enquiry, we vacate the other observations of the Tribunal and we leave it open to the disciplinary authority to hear the matter afresh and pass an order in accordance with law ignoring those observations. The appeal is disposed of as above."

This order was passed on 5.3.90 when the enquiry by Agarwal had already commenced. Agarwal submitted his report on 9.1.91 and he also agreed with the earlier findings of the enquiry report in which the Enquiry Officer had found four charges including charge No.5 as having been proved. A copy of the said Enquiry Report was supplied to the applicant on 18.1.91 to which a reply was sent by him on 3.3.91 followed by an additional representation dated 10.9.91. The matter was referred to the UPSC for their advice on 22.2.93. The UPSC conveyed its advice on 8.3.94 recommending removal of the applicant from service. The order regarding this was passed on 8.6.94 and the same was delivered to the applicant on 9.6.94 at Ajmer.

6. Together with this main occurrences there are other side issues which also emerged during this period. Once the Tribunal's order to set aside the removal order was passed, the applicant was again put under deemed suspension with effect from 27.2.90 and continued to be under suspension till 7.6.94 when that order was revoked by the respondents. During this period the applicant had filed an O.A. 381/93 challenging his continued suspension and the same was disposed of with the direction on 21.4.94 that he shall be reinstated forthwith and posted at a place which may be called to be non-sensitive, directing the respondents to take him on duty forthwith.

7. The applicant has assailed the impugned order on the ground that the time limit for conducting the fresh enquiry and deciding the case expired on 11.10.89. The request of the respondents for granting further time of 4 months to implement the order of the Tribunal was rejected on 18.8.92. Thus, the respondents were precluded from taking any further actions as the orders of the Tribunal dated 23.1.89 have attained finality. The other ground for assailing this order was that the order was addressed to the applicant as Assistant Post Master General, office of the Chief Post Master General, Rajasthan Circle, Jaipur on 7.6.94 or 8.6.94, where as he had not joined as Assistant Post Master General in the Office of the Chief Post Master General and these orders for his removal from service were delivered to him only on 9.6.94. The order bearing the date of 8.6.94 was also fabricated and altered malafidely by the Desk Officer A.P. Srivastava, respondent No.7 without any authority and jurisdiction as he knew if the date of removal order remained as 7.6.94, the removal order will get vitiated as the applicant had neither been posted as Assistant Post Master General nor had he joined as Assistant Post Master General at Jaipur on 7.6.94. A very unseemly hurry was evident from the fact that the order dated 8.6.94 was passed at the Postal Headquarters, New Delhi and the same was delivered to the Chief Post Master

General on the same date for being served on the applicant on 9.6.94. The Chief Post Master General, Jaipur also acted malafidely by posting him as Assistant Post Master General on 8.6.94 without having the copy of the orders of revocation of suspension by the President Of India. The respondents continued the applicant under suspension for more than four years after 27.2.90 even when a fresh enquiry report was available with them on 9.1.91 and there was further delay in referring the matter to the UPSC on 24.9.93 i.e. after more than four years of the judgment of the CAT dated 23.1.89. The applicant has also assailed the Enquiry Report in as far as the findings in regard to the false medical certificate is concerned. The Enquiry Officer relied upon the statement ^{before} ~~of~~ the previous enquiry officer and had not seen original documents himself at the relevant time, therefore, the enquiry report got vitiated.

8. The respondents have negatived all the arguments made by the applicant. As far as the enquiry by Agarwal is concerned it was not a fresh enquiry as brought out by the applicant. Agarwal was appointed as Enquiry Officer by ^{order} of the President ~~in pursuance~~ in pursuance of the judgment of the Tribunal as well as the order of the Hon'ble Supreme Court and he had conducted the enquiry as per the provisions of CCS (CCA) Rules, 1965. The delay in conducting the enquiry and the finalisation of the disciplinary proceedings have not been accepted by the respondents who have stated that the applicant himself was responsible for the delay. When the Enquiry Officer Agarwal was appointed, the applicant had represented against his appointment as the Enquiry Officer on the ground that Agarwal was junior to him in the Indian Postal Service. This point was replied by an order dated 30.8.90 rejecting that representation about Agarwal being junior to him. As per the directions of the ^{officer} Tribunal Agarwal had forwarded the written brief of the Presenting ~~to~~

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to the applicant. However, the applicant had never conceded the point that Agarwal as junior could conduct the enquiry and had not taken advantage of the additional material supplied and accordingly the Enquiry Officer had to finalise his report without the reply from the applicant. The question of considering the document D/10 was also explained by saying that the Enquiry Officer had examined a Medical Officer Incharge of the P & T Dispensary who had given the statement in that document D/10. Since the Enquiry Officer relied upon the statement on examination of by this Medical Officer, ~~Non~~ perusal of document Exhibit D/10 by the Enquiry Officer will not vitiate the proceedings. As regards the delay, the respondents said that since the Tribunal's order got merged by the order passed by Hon'ble Supreme Court with directions to hear the matter afresh and pass an order in accordance with law, the respondents continued with the inquiry without any time limit as Hon'ble Supreme Court had not stipulated any time limit for the submission of the enquiry report. The direction of the Hon'ble Supreme Court was that it was left open to the disciplinary authority to hear the matter afresh and pass an order in accordance with law. This delay in concluding the disciplinary proceedings does not invalidate the same and the order of the punishment. The respondent also have explained why there was typographical error on the punishment order which was rectified and that there was no malafide involved in the matter. They have also annexed affidavits of the Stenographer who had carried out the corrections after having typed the punishment order on the 8th June, 1994 and the statement of the Respondent No.7 that he had not made any corrections on the typed order by a Manual typewriter as he did not know typing. He could not have any ulterior motive in changing the date from 7.6.94 to 8.6.94 and he had not been personally present while the memo was served to the applicant at Ajmer.

9. During the course of arguments learned counsel for the

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applicant Shri Thawani dwelt at length on this issue of fabrication of date 8.6.94 by making corrections through manual typewriter at Ajmer. He also questioned how it was possible for the respondents to pass the order in the morning at 10'0' clock at Delhi and have the same delivered in the evening at Jaipur. This entire exercise smacked of malafides and the overenthusiasm of the respondents to ensure the removal of applicant from service, after having slept over the matter for nearly 4 years. He also brought to our notice that while Hon'ble Supreme Court at Annex.A/11/ to hear the matter afresh, the respondents had based their/ on findings of the earlier enquiry report submitted in the year 1978. Then he also dwelt upon the seniority of the applicant vis-a-vis the Enquiry Officer and it was for this very reason that the applicant never cooperated with the inquiry. He reiterated that the enquiry was conducted in utter disregard of the order of the Tribunal and beyond the time limit prescribed by the Tribunal and again in disregard of the Hon'ble Supreme Court's directions for holding a fresh enquiry. He questioned the affidavit submitted by the respondent no.7 as also of the Stenographer.

10. Shri Sharma learned counsel for the respondents stated that the enquiry report itself mentioned at para 8 that the applicant had participated in the enquiry proceedings as is evident from the enquiry report itself. In para 1.3 of the report the applicant had requested vide his letter dated 19.2.90 to allow him atleast one months' time to reply the written brief submitted by the P.O. which was delivered to him on 12.2.90. Subsequently vide his letter dated 20.2.90 the applicant had requested the President of India to withdraw the order dated 30.1.90 by which Aggarwal was appointed Enquiry Officer. In the endorsement to that letter the applicant had requested Shri S.K. Agarwal to stay the proceedings till the decision of the President was made available. That representation to the President however was rejected on 30.8.90, after which the applicant vide letter dated 4.9.90 requested the Enquiry Officer to

stay the proceedings upto 3.10.90 when the Supreme Court would be hearing his petition and settle the fate of the order dated 30.1.90. However, the applicant could not provide any restraining order either from the Hon'ble Supreme Court or from the President of India and thereafter the E.O. had to prepare the present enquiry report under question on the basis of findings already available in the previous Enquiry report dated 18.10.77 conducted by the Commissioner for departmental enquiry. The Enquiry Officer had very thoroughly considered points regarding Medical Officer at para 8 of the enquiry report and after applying his mind came to the conclusion that the charges in Article 5 were proved alongwith the other charges in Article 1, 2 and 3. The only charge which could not be proved was Article 4. So far as the averments in regard to Tribunals order about the suspension continuing since 27.2.90 and removal from service on 8.6.94 Shri Sharma brought to our notice that the Chief Post Master General had been telephonically directed to revoke the suspension of the applicant on 7.6.1994 and he also produced the concerned file of the office of the Chief Post Master General wherein this telephonic conversation was recorded and orders were issued by the Chief Post Master General for revocation of the suspension. Shri Sharma also showed us the original file of the office of the Secretary, Department of Posts wherein the Deputy Director General (Vigilance) had signed the order of removal on 8.6.94 and the same was also corroborated by the affidavit of the Stenographer attached with him. Shri Sharma brought to our notice that it was quite normal that somebody typing out the first paper of a particular day, by habit could type out the previous date unwittingly. This error was rectified immediately by the Stenographer and after applying fluid, she corrected the error. It was also brought to our notice that there was nothing wrong in making the correction either by a typewriter or even by manual method so long the order in the file supported the contents of that orders of Removal from service issued on 8.6.94 and not on the previous date. In any case such a rectification does not prove fatal to the order. On our enquiry why such a great haste

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was shown in having the order of suspension as also the order of removal served on the applicant on the same date, the learned counsel Shri Sharma brought to our notice that this was done only with the objective of complying with the Tribunal's order regarding revocation of suspension which had not been complied with promptly. Shri Sharma also brought to our notice that there was no law which precluded the respondents to serve the order of removal from service on the applicant even while he was under suspension. This urgency in serving the order of revocation of suspension was only with regard to the compliance to the Hon'ble C.A.Ts order and there was no other malafide involved in the matter.

11. We have given very serious consideration to the averments, pleadings and arguments of Shri Thawani the learned counsel for the applicant. We consider that his entire arguments regarding the fabrication of date 8.6.94 was an exercise in futility as the correction of the date of the issue of the order of removal does not in any way affect the content of that order so long as the order was passed bona fide by the respondents as per the procedure prescribed. Deputy Director General, Vigilance is the officer who is duly authorised to sign the orders on behalf of the President of India and there was nothing wrong in issuing the orders of the President for removal of the applicant from service vide an order dated 8.6.94. That order became absolute the moment the typed order had been signed by the Deputy Director General (Vigilance) and had left his desk. As per Govt. of India instructions of the CCS(CCA) Rules, below rule 17(1)/ the orders made by the disciplinary authority is considered to be final once the decision is recorded by the disciplinary authority at the conclusion of the departmental proceedings and same cannot be varied by that authority itself or by its successor-in-office before it is formally communicated to the government servant concerned. "The decision taken by the Disciplinary Authority is a judicial decision and once it is arrived at it is final." Rule 30 of the CCS (CCA) Rules stipulates; "Service of orders, notices etc. - Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered

post. It is so in compliance of these stipulations of the Rule 30 of the CCS (CCA) Rules that the respondents had made special efforts of communicating and service of the orders on the applicant at Ajmer where he was located as Assistant Post Master General vide orders of the Chief Post Master General dated 8.6.94. It is immaterial whether the applicant was or was not working as Assistant Post Master General at the relevant time. Once the order for his posting has been issued by the competent authority i.e., the Chief Post Master General, that order could be presumed to be served on him. The Hon'ble Supreme Court in the case of State of M.P. Vs. L.P. Tiwari decided on 5.5.94, reported at 1995(1)AISLJ 211 had said in relation to the issued of a charge sheet that issuing of a charge sheet is not the same as service of the charge sheet. The Hon'ble Supreme Court held that; "service of the article of charge is not a condition precedent. Putting it in transmission within the period is sufficient compliance. No doubt every endeavour has to be made to have the charge sheet served on the delinquent but the delinquent who evades receipt of it, cannot be allowed to take advantage of such evasion." The ratio of this judgment is that once an order is issued, sufficient compliance of the same should be presumed once an order is ⁱⁿ transmission and the service of such an order is not a condition precedent for considering the order as having been complied with. In any case, the applicant is presumed to have joined as Assistant Post Master General in the Office of the Chief Post Master General at the material time when the orders of revocation of his suspension as well as his removal from service were served personally by the officers deputed for this purpose at Ajmer. The alteration of the date from 7 to 8.6.94 as explained by the Steno/P.A. to Dy. Director General, Vigilance cannot be disputed and also cannot be considered as act of malafide. The applicant at no stage has said that the PA/Steno. had malice against him nor has he been able to suggest

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anything of similar nature in case of the Desk Officer who carried the Presidential orders from Delhi to Jaipur for delivery to the Chief Post Master General. We find nothing extraordinary in the fact ~~that~~ telephonic instructions from the headquarters office at New Delhi to the Chief Post Master General, Jaipur for issuing revocation of suspension orders of the applicant. The telephonic orders were fully supported by the written communication and the same was carried by the Desk Officer personally. There is nothing unusual in delivering the orders the same day by starting in early hours of the morning from Delhi as the distance between Delhi and Jaipur can be travelled within 5-6 hours by any public transport. No prejudice seems to be have been caused to the applicant by this action of the respondents in having the revocation of suspension order and the removal of service order carried by the special messenger A.P. Srivastava, Desk Officer (Respondent No.7) personally and Srivastava can not be accused of malafide for having done so.

12. As regards the legalities about the conduct of the enquiry and other points raised thereto, we find no ground to assail the enquiry on legal grounds. The Tribunal had set aside the impugned order ~~of~~ 1978 only on the technical ground that the Presenting Officer's written brief had not been given to the applicant and therefore, this chance was given to the applicant under the directions of the Tribunal. The Tribunal had made its order very clear by saying that after the supply of the written brief of the P.O. to the plaintiff, the plaintiff shall be called upon to submit his own brief. The Enquiry Officer had to consider the material on record and the new material after the supply of the written brief and submit his report to the disciplinary authority within a time frame of two months of the submissions of the written brief by the plaintiff. The disciplinary authority was given a further two months to pass a fresh order after the receipt of the report of the enquiry officer. The Supreme Court again left it open to the disciplinary authority to hear the matter afresh and pass an order in accordance with law ignoring the observations made by the Tribunal/

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manner of relation to certain points. These orders leave no doubt in our minds that neither the Tribunal nor the Supreme Court had given any directions for totally a / fresh enquiry. The Tribunal had only given the opportunity to the applicant for having the benefit of the written brief of the Presenting Officer for filing any fresh written brief on his own part and the direction to the enquiry officer was to take that into account for submission of his enquiry report. The applicant himself chose not to take the advantage of this opportunity on the specific ground that the enquiry officer Agarwal could not hold enquiry as he was junior to him in the time-scale of Indian Postal Service. That objection having been negatived by the respondents, the applicant had to file a written brief with reference to the presenting officer's written brief which he failed to do and the enquiry officer was forced to go ahead with his enquiry without any fresh material from the applicant's side. The enquiry officer had applied his mind which is evident from the enquiry report itself and came to the conclusion regarding the several charges framed against the applicant and gave his findings accordingly. We, therefore, do not find any grain of truth that the enquiry became vitiated owing to the objections raised by the applicant either during the course of the proceedings or pointed out to us during the course of argument. Admittedly, Agarwal was senior to the applicant and he had given fullest opportunity to him for taking advantage of the presenting officer's written brief for submissions of his defence written brief. No fresh enquiry was required to be conducted either according to the Tribunal's orders or as per the Apex Court's orders and the same was not resorted to by the respondents. So far the reliance on D/10 is concerned which was not perused by the enquiry officer himself, we can only record that a domestic enquiry which is a quasi-judicial proceedings cannot be put into the same class as a judicial proceedings where the law of evidence has to be meticulously observed. The Supreme Court has held in *Union of India v. Sardar Bahadur* reported in 1972 (4) SCC 618 that "A disciplinary

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proceedings is not a criminal trial. The standard of proof required is that of pre-ponderance of probability and not proved beyond the reasonable doubt"..... "where there are some relevant materials which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under the Article 226 to review the materials and to arrive ^{at} independent finding on the materials, if the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the High Court." The enquiry officer had relied on materials available to him which were neither controverted at the time of the earlier enquiry nor at the subsequent enquiry and the findings arrived thereon now cannot be questioned by the applicant as having vitiated the enquiry report. We, therefore, find no illegality in the enquiry report submitted by the enquiry officer Shri Agarwal.

13. As for the delay is concerned in processing the disciplinary proceedings we do find that there has been certain gaps, which were not explained by the learned counsel for the respondents. After the enquiry report was made available to the department in January, 1991 the UPSC's advice was sought only on 20.2.93 after a lapse of two years. The UPSC also took another ~~one~~ year for giving its advice of removal of the applicant from service and then the department itself took 15 months to pass an order and communicate the same to the applicant. However, this delay in passing the order has not caused ^{any} / prejudice to the applicant. The applicant was under suspension since February, 1990 and was drawing subsistence allowance as per rules. It was in respondents interest to have the enquiry report processed with due diligence so that the proposed punishment could be made effective without any avoidable delay and save the exchequer of the additional expenses incurred in paying the

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subsistence allowance to the applicant. However, this delay will not be able to render the entire disciplinary proceedings invalid in so far as it was in contravention of the Tribunal's order which stipulated 4 months for the whole process. The point made by the respondents that since no time limit was fixed by the Hon'ble Supreme Court and that is the reason why they proceeded without any urgency has some force and we really cannot find too much of fault with the respondents in delaying the matter without any rhyme or reason. In this we are also supported by the judgment of the Madras Bench in the case of M.P.Venkataraman Vs. Union of India - 1992 (1) SLJ CAT page 346 wherein the Hon'ble Members of the Division Bench held that "the period of 60 days fixed in the order cannot be considered as a self contained default clause restraining the department from proceeding further beyond the specified period." The delays will therefore not vitiate the proceedings in this case. However, we cannot but express our dissatisfaction that the respondents have acted in fits and starts while they really slept over the matter for more than two years after the enquiry officer's report was made available to them in making the first move to obtain the UPSC advice. They showed extraordinary enthusiasm and zeal in having the orders of revocation of suspension and removal from service served through the special messenger and even the submission that the revocation of suspension orders had to be issued in compliance with the Tribunal's order dated 21.4.94 does not cut much ice. We would like to observe that in matters where the fate of a very senior officer of the Indian Postal Service was concerned, the respondents should have shown more promptitude in processing the matter specially in view of the directions from this very bench of the Tribunal which had directed respondents to reinstate the applicant without any delay in ^a non-sensitive post. We cannot but record that the Tribunals directions were not complied with in letter and spirit. However, since the applicant himself chose not to pursue this matter through a contempt petition when his revocation of suspension was not complied with by the respondents, Such action on the part of the respondents, howsoever irregular, will not render the disciplinary

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proceedings invalid.

14. In pleadings, specially in the rejoinder the applicant prayed that the quantum of punishment is very harsh in relation to the mis-conduct of submitting a false medical certificate and therefore, the impugned order should be quashed. We do not want to express any opinion on the quantum of punishment in view of a *cautela* of the judgment of Hon'ble Supreme Court which has precluded the Tribunal and High Courts from interfering with quantum of punishments in disciplinary proceedings which are held to be without any infirmity and illegalities. Since learned counsel for the applicant has not been able to establish any illegality and infirmity in the disciplinary proceedings and the orders of the competent authority in removing him from service, we do not find the O.A. having any merit. The O.A. therefore, fails and is dismissed without costs.

Rattan Prakash
(RATTAN PRAKASH)

Judl. Member

N. K. Verma
(N. K. VERMA)
Administrative Member