

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 774 OF 2007

Dated Tuesday the 2nd June, 2009

CORAM:-

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MS K. NOORJEHAN, ADMINISTRATIVE MEMBER**

S. Nagajyothi,
S/o Lakshmanan, Ex-Postal Assistant,
Trivandrum (North) Dn.
Now residing at VP/8/518,
"Bharathabhadra",
Nerrazhithalakal, Vellnad,
Trivandrum-695 543.

..... Applicant

[By Advocate: Mr PV Mohanan]

-Versus-

1. The Union of India,
Represented by the Secretary to the Govt. of India,
Department of Post India, New Delhi.

2. The Director of Postal Service,
Department of Post India,
Office of the Chief Post Master General,
Kerala Circle, Trivandrum.

3. The Senior Superintendent of Post Office,
Department of Post India,
Office of Senior Superintendent of Post Office,
Trivandrum North Post Office.

...Respondents

[By Advocates: Mr S Abhilash, ACGSC]

This application having been heard on 5th February, 2009, the Tribunal delivered the following -

ORDER

[Hon'ble Mr. George Parackal, J.M.]

The applicant is aggrieved by the Annexure-A/4 order dated 9.8.06 by which he was dismissed from service with immediate effect and the Annexure-A/6 order dated 25.6.07 of the appellate authority by which his appeal was considered but the penalty imposed upon him was only reduced to that of "removal from service" which would make him eligible for other employment as an OBC candidate.

[2] Briefly stated, the facts are that the applicant while working as Postal Assistant, he was served with the Annexure-A/1 Memorandum of charges dated 29.6.95 proposing to hold enquiry against him under Rule 14 of the Central Civil Service (CCA) Rules, 1965. The charge against him was that he "secured initial appointment in the Department as postman falsely claiming that he belonged to 'Malai Pandaram' ST Community and filed the attestation form on 25.9.80 accordingly, in contravention of the warning contained in the attestation form and thereby rendered himself unfit for employment in Government service." The statement of imputation in support of the aforesaid charge was that the Applicant was initially appointed as postman Trivandrum Central Sub Division in 1980 through special recruitment for filling up of unfilled vacancies reserved for Scheduled Tribe community candidates", he also sought the appointment claiming himself as a Scheduled Tribe candidate belonging to Malai Pandaram community, he also filed the attestation form on 25.9.80 stating that he belonged to Malai Pandaram, Scheduled Tribe Community and subsequently he was promoted as Postal Assistant. As the applicant denied charges denying the charge, the respondent had conducted an enquiry against him as per provisions contained in CCS(CCA) Rules, 1965 and by Annexure-A/2 enquiry report dated 28.11.05

the Enquiry Officer absolved him from the charge of 'falsely claiming' of Community status, but held that the applicant does not belong to 'Malai Pandaram' ST Community and to that extent the charge against him was proved. The applicant submitted the Annexure A-3 representation dated 4.2.06 on the findings in the enquiry report. However, the Disciplinary Authority, by the impugned Annexure-A/4 order dated 09.08.2006 imposed the punishment of dismissal from service. However, on appeal, the punishment was reduced to that of "removal from service" which would make him eligible for other employment as an OBC candidate. Hence, he has filed this Original Application praying for setting aside the Annexures-A/4 and A/6 orders and to direct the respondents to reinstate him in service with all consequential benefits including arrears of pay and seniority in service.

[3] The applicant contended that the Community Certificate was issued to him by the competent authority as early as on 16.6.79. By virtue of Section 30 of the Kerala Scheduled Castes and Scheduled Tribe Regulation of Issue of Community Certificate Act, 1996 (herein after called the 'Act 11 of 1996'), which is extracted below, it is valid, unless it is cancelled under the Act by the Scrutiny Committee.

"30 Transitional provision: A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act."

[4] Even though the enquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was on and from 29.06.1995 vide Annexure A-1 Memorandum, the report was finally submitted only on 3.1.2006 i.e. after 10 years. The Enquiry Officer has also recorded that there was no evidence to show that he had managed to get the community certificate by any bogus means. The operative part of the enquiry report is as under:

"From the foregoing discussions and the documents referred to therein, it is clear that Shri S Nagajyothi, secured employment in the Department of Posts and Postman as an ST candidate whereas the official does not actually belong to the Scheduled Tribe community of Malaipandaram, as claimed by him, as per enquiry conducted later. It is also clear that at the time of his school admission, his community was shown as 'Malaipandaram', as intimated in Exhibit P8. Exhibit P13 community certificate dated 16.6.79, issued by Tahsildar, Taluk Office, Trivandrum states that Shri S Nagajyothi belongs to Malipandaram community. This certificate dated 16.6.79 has been produced by CGS in response to the letter Exhibit P11 dated 7.7.94. The caste certificate produced by the CGS shows he belongs to Malaipandaram community. The report of the District Collector based on the study conducted by KIRTADS indicates that the official does not belong to that community certificate is to be examined the above circumstances.

In all probability it occurs to my mind that at the time of his school admission, the caste of the CGS was got recorded as Malaipandaram' definitely by his parents. The CGS, a child of 5 or 6 at that time cannot have a hand in that. The caste certificate issued by Tahsildar, Trivandrum is probably based on the school records. It may also be that the Tahsildar may not have made discreet local enquiries before issuing the caste certificate as may be seen from Exhibit P8(i), Govt. circular.

FINDING

Thus the only inference that can be made from all the available evidence is that Shri S Nagajyothi was got admitted in School, claiming his community as ST (Maaipandaram). Later, based on the school certificate, the Tahsildar Trivandrum issued him a community certificate showing his caste as Malaipandaram, which is a Scheduled Tribe community. Shri S Nagajyothi secured a job in the Department of Post, as Postman on the strength of this community certificate. However, on verification of his caste status, it is revealed that he does not belong to ST Malaipandaram Community. Anthropological study conducted by KIRTADS, indicate that he and his parents and relatives belongs to 'Pandaram', OBC community. Thus his claim that he belongs to Malaipandaram ST Community is wrong.

However, it is to be recorded here that no evidence has been produced to show that the CGS managed to get the community certificate by any bogus means. His caste certificate has been issued by the Competent Authority. It is a genuine certificate, in that, it has been issued by the Tahsildar, Thiruvananthapuram. It appears to have been without making any discreet local enquiries as required by rules. Later, on verification it is found that the CGS does not belong to the

community (Malaipandaram). In the circumstances, I am inclined to absolve the CGS of the charge of 'falsely claiming' of community status, while I have no doubt that he does not belong to 'Malaipandaram' ST Community. To this extent I hold the charge against the CGS as proved."

[5] The Disciplinary Authority in his Annexure A-4 order dated 09.08.2006 stated that the true nature of the charge proved against the Applicant showed that even though he did not belong to ST community he got appointed as Postman against a vacancy reserved for a candidate belonging to ST community, by virtue of a caste certificate issued by the Tahsildar which did not reflect the correct position of the caste to which he belonged. The enquiry officer held that such an appointment is invalid ab initio and if the CGS is allowed to continue in Government service even after the finding that he was not eligible for the appointment in question then an eligible ST candidate will lose his opportunity to get appointed in the vacancy and such a position can never be allowed to happen. Therefore, by the impugned Annexure-A/4 order, he was dismissed from service with immediate effect. The relevant portion of the said order is extracted below:

" 12. I have gone through the charge memo, the proceedings of the Rule 14 inquiry, the inquiry report, the representation of the CGS and all the connected records of the case I agree with the findings of the inquiring authority that the charge that the CGTS does not belong to 'Malaipandaram' ST community stands proved despite the fact that the CGS was absolved of the element of 'false claim' contained in the charge. I also hold that by the said proved fact the CGS has rendered himself unfit for employment in Govt. service. The points raised by the CGS in his representation and his written brief are dealt with as follows:

- i) The CGS says that the charge is vague or not definite but does not say why he thinks so. I find that the charge is quite clear and specific.*
- ii) The main documents have been marked by the officials concerned who happened to handle them at some point or other and the witnesses who were produced to prove them had clear access to hem. No evidence was produced from the defence side to show that the witnesses concerned had no access to the said documents.*

- iii) The P-1 attestation form was identified by the CGS himself as submitted by him during questioning by the IA in answer to question No.1 and during at any stage of the inquiry the CGS had raised any dispute as to its admissibility with reference to the charge. This was one of the documents produced for inspection from the charge side when no objection was raised by the CGS about its genuineness. The CGS says in his written brief that he should not have been questioned by the IA on P-1 which was not identified by anyone previously. There is no merit in this contention as it is the job of the IA to find out the truth or otherwise the arguments either in support or against the charge on P-1 the CGS has against item No.9 (b) in page 2 of the form has noted that he belonged to Hindu Malai Pandaram marking the category as ST in the item. A document admitted by the CGS as true does not need any further identification and page 4 of P-1 shows that it was dated 25.09.80 and obtained in connection with appointment of the CGS as postman TV GPO.
- iv) Both in his brief as well as in his representation the CGS has set much score by the fact that his application for appointment as postman through special recruitment was not supplied. The non-supply of the same was due to non availability of the same as intimated to him in the sitting No. IV dated 16.9.96 but the want of the said document has not resulted in any miscarriage of justice as Ext.P2 dated 1.7.1980 unequivocally showed that the CGS was selected under Scheduled Tribe category and against a shortfall vacancy reserved for ST against a Vacancy of the year 1979 and the CGS had no dispute in marking this exhibit in sitting NO.X dated 9.X.97 and the evidence in the inquiry clearly shows that P-1 was obtained from the CGS as a follow up of the selection notified as per P-2.
- v) Another point is that the community certificate originally produced at the time of appointment was not produced by the custodian. Here the CGS does not say who exactly was the custodian of the certificate. However, here too the CGS was informed in sitting NO.IV that the certificate was not traceable. The non availability of the certificate has not adversely affected the interests of the CGS going by the fact that by Exhibit P.12 letter the CGS himself produced the original caste certificate dated 16.6.79 (Ext.13) on 16.7.94 as per the requirement in P-11 letter asking him to produce a certificate to prove his community which documents have been properly proved in the sitting of the inquiry held on 14.3.2005. The date of the certificate shows that it was obtained prior to the selection and

appointment of the CGS as postman against a ST short fall vacancy under that community.

vi) Another point urged is that the District Collector and the Director "Kirtads" were not examined as witnesses. Here it is to be noted that when the documents were produced in the inquiry for marking the CGS had no such case. It was proved by the witnesses concerned that these exhibits found their way into the files during the normal course of transactions and the CGS had not at any stage questioned about their authenticity for admitting them as evidence. The stand taken by the CGS is that objection by the defence or otherwise would not change the status of an exhibit. But the CGS should know that if he wanted to challenge a document or an argument he has to do it at the first instance itself when he had all the opportunity to state his case and that after adopting a particular conduct/stance at the first chance he cannot claim a diametrically opposite stand at a later stage that too after the entire evidence taking procedure is over, in the interest of justice to both the sides. This position applies to the similar arguments of the CGS on various points.

vii) One another point is that some of the additional documents requisitioned were not supplied. Here the IA had referred the matter to the authority concerned and the reply received is that they were then not available. The stand of the CGS is that the production of the documents should have been enforced. But here I find that when the reply received was communicated to the CGS he had by his letter dated 14.3.2005 requested only for recalling of the witnesses as an alternative and the IA had acceded to that request. Thus no injustice has occasioned to the CGS on that score.

viii) Yet another important point is whether Kirtads is the competent authority to conduct an investigation as to the correct caste status of the claimants. Here Ext. P-8(iii) copy of the judgment dated 2.1.1991 of the Hon'ble High Court of Kerala while dealing with a similar case has observed that the competent authorities on such material as was available had arrived at a conclusion. In this OP the Director, Kirtads was arrayed as the 4th respondent and the conclusion reached was upheld. And therefore, it cannot be argued that at the relevant time the authority (Kirtads) lacked jurisdiction to investigate and determine the merit of the claim as regards status.

13. Having found the charges as proved as discussed above the next issue to be decided is the quantum of penalty to be imposed on the

official. The nature of the charge proved shows that even though the CGS did not belong to ST community he got appointed as postman against a vacancy reserved for a candidate belonging to the ST community by virtue of a caste certificate issued by the Tahsildar which did not reflect the correct position as regards the caste of the CGS. Such an appointment is invalid ab initio and upon the correct finding of his caste status as discussed in the above paragraphs the CTGS is unfit for employment in Govt. service. If the CGS is allowed to continue in Government service even after the finding that he was not eligible for the appointment in question then an eligible ST candidate will lose his opportunity to get appointed in the vacancy and such a position can never be allowed to happen. I therefore pass the following order.

O R D E R

I, K.Sasi Sekharan Nair,SSPOs, Thiruvananthapuram North Division hereby order that Shri S Nagajyothi the charged Govt. servant who is now working as Postal Assistant, GPO,Thiruvananthapuram be dismissed from service with immediate effect. "

[6] The Applicant preferred the statutory appeal against the aforesaid order of dismissal. The Appellate Authority rejected the various grounds raised by the applicant in his appeal and held that the he has become ineligible to continue as a Government Servant. However, keeping in view of the long eligible years for employment ahead of him, the penalty of dismissal has been reduced to that of 'removal from service' which will make him eligible for other employment as an OBC candidate. The operative part of the appellate order reads as under:

"In sum, it is on record that the appellant is not belonging to the ST category. I find that the departmental inquiry has been conducted in a fair manner giving full opportunity to the appellant to defend his case. The appellant has erroneously availed and enjoyed the facilities for which he is not eligible by law. By doing so, he has deprived the opportunity of another eligible ST candidate. Since there is no ground in the appeal which merit consideration, it is crystal clear that the appellant has become ineligible to continue as a Government servant. The orders of the Disciplinary Authority is the obvious conclusion in such a scenario. However, keeping in view the long eligible years of employment the appellant has ahead of him, I m inclined to take a lenient view. Accordingly, I hereby order that the penalty imposed on the appellant be reduced to that of "removal from service" which will make him eligible for other employment as an OBC candidate."

[7] In the Miscellaneous Application (MA No. 804/08) filed in this OA by the applicant, he contended that that no reliance can be placed on the report made by the Director, Kerala Institute for Research, Training and Development Training of Scheduled Castes and Tribes (for short 'KIRTADS') as it was made without notice to him and there was no evidence to show that he managed to get the certificate by any bogus means. Moreover, KIRTADS is not a creature of statutes. Even assuming that the report of the KIRTADS is treated as if it is a report of the Expert Agency as defined under Act 11 of 1996, the status of the applicant has to be determined by the Scrutiny Committee as defined under Section 11 of the Act, 1966. In view of the judgment of the Apex Court in Kumari Madhuri Patel's case (supra), the Government has issued Annexure-A/7 executive order on 8.5.95 and prescribed the guidelines to streamline the procedure for issuance of Scheduled Caste and Scheduled Tribe Certificates, their scrutiny to keep clear of bogus SC/ST claimants and their approval thereof. Sub paras V (viii) and (ix) of Para V of the said order reads thus:

(viii) In case the certificate obtained or caste/tribal status claimed is found to be false, the claimant/parent/guardian shall be prosecuted for making the false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or parliament.

(ix) The government orders based on the findings of the committee should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due for cancellation of the admission or termination of the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority should cancel the admission/termination of the appointment without any further notice to the candidate employee and debar the candidate/employee from further study or continue in office in all post."

[8] The applicant has also produced a copy of the Act 11 of 1996. He submitted that the Scrutiny Committee was statutorily constituted under

Section 8 of the aforesaid Notification issued in the month of April, 2002 and therefore, only the Scrutiny Committee can take decision cancelling the caste certificate issued to the applicant. Rule 6 of the Act deals with the constitution of Screening Committee for verification of Community Certificate, which reads thus:

6. Constitution of Screening Committee for verification of Community Certificate- (i) The application from members of the Scheduled Castes and Scheduled Tribes for admission to the seats reserved for the Scheduled Castes and Scheduled Tribes in educational institutions shall be got scrutinized by a Screening Committee constituted by Government in the prescribed manner, to ensure that the Community certificate produced in support of the Scheduled Caste or the Scheduled Tribe claim of the applicant is genuine.

(2) The Screening Committee may cause detailed through the expert agency to ascertain if the applicant actually belongs to the Scheduled Caste or the Scheduled Tribe, as the case may be, and shall reject the application if the applicant does not belong to the Scheduled Caste or the Scheduled Tribe as claimed by him.

Provided that rejection of the application shall be without prejudice to the actions that may be taken under Section 11, 15 & 16."

[9] According to the learned counsel for the applicant, the aforesaid position has been confirmed by the Division Bench of Hon'ble High Court of Kerala in MFA No. 1318 of 1999 (*Natarajan -v- Vigilance Officer, Directorate of Kirtads, Kozhikode & ors*). It has been held therein that - "The certificates on the strength of which the petitioners obtained employment were issued as per the Rules and orders then in force. Therefore, there shall be deemed as valid and issued under the provisions of this Act unless it is cancelled under the provisions of this Act. The cancellation is, as envisaged in Sec. 11, on the basis of a report of a committee constituted under Sec. 8. That constitution came only on 24.4.2002. Therefore, it is clear that the impugned order is not one in terms of Sec. 11 of by a committee appointed in terms of Sec.8. Naturally, the appeal has to be allowed setting aside the order impugned. This will not disable the scrutiny committee only constituted in terms of the notification dated 24.4.2002 in considering the issue afresh.

The judgment shall not be understood as if we are affirming the cast status in one way or other."

[10] The applicant challenged the Annexure-A4 order and the Annexure-A/6 appellate order on the following grounds:

- (i) Clause 12.3 of Chapter 12 of the Brochure on Reservation for SC and ST in services, states that 'cases in which a doubt arises whether a person is a SC/ST or not may be referred to the Ministry of Welfare'. In the instant case, neither the issue was referred to Ministry of Welfare nor any opinion was sought from them before initiating the disciplinary proceeding against him, therefore, it is without jurisdiction. In support of his contention he has relied on the judgment of the High Court of Kerala in **OP No.961/93** (L. Ushadevi - v- Union of India and ors) in which it has been held as under:

"7. There is no substance in the contention urged by the learned counsel for the petitioner. Irrespective of what view the Central Government might have taken in the matter, when the Division Bench judgment of this Court after perusal of the brochure pertaining to Scheduled Caste/Scheduled Tribes reservation to be made by the Central Government held that in such a situation the doubt as to veracity of the caste claim had to be referred to the Ministry of Social Welfare, it was not possible for the State Government to act contrary thereto on the basis of a communication received from the Ministry of Social Welfare, without the correctness of the view expressed by the Division Bench judgment being set aside in any manner. For that reason alone the petitioner is entitled to succeed in this petition.

8. The fact that the petitioner succeeds in this petition does not put an end to the controversy. Fortunately after the judgment of the Supreme Court in Kumari Madhuri Patil -v- Add. Commissioner (1994) 6 SCC 241, in which the Supreme Court directed the State Government to evolve a State machinery for verification of caste claims, the State Government has passed an Act known as the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (Act 11

of 1996). A detailed machinery has been set up thereunder for verification of genuineness of claims belonging to Scheduled Castes and Scheduled Tribes. We are, therefore, of the view that, if there still persists a doubt as to the genuineness of the petitioner's claim it can be resolved by having resort to the machinery under this Act.

9. In the result, we set aside the order of the State Government at Ext.P.18 and leave the respondents to have the caste claim of the petitioner verified by resort to the machinery prescribed under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates, Act, 1996 by following the procedure prescribed under the Act. It is preferable that the claims are disposed of within a period of six months from today so that there is no undue delay in taking a decision in the matter.

Original petition is accordingly allowed. No order as to costs."

(ii) The community certificate issued by the Tahsildar as early as on 16.6.1979 has to be accepted and the insistence of recent caste certificate is contrary to the law declared by the Apex Court in **R. Kandaswamy -v- Chief Engineer, Madras Port Trust, (1997) 7 SCC 505**, in which it was held as under:-

"6. In our opinion the Community Certificate issued to a Scheduled Tribe candidate by the Tehsildar prior to 11-11-1989 is a good and valid Community Certificate for all purposes so long as such a certificate is not cancelled. The authorities cannot decline to take that into consideration and insist upon a fresh Community Certificate from the Revenue Divisional Officer."

(iii) The disciplinary proceeding had commenced as far back on 29.6.95 and it took 10 years to submit its final report causing him much hardship, therefore, the proceedings were vitiated as held by the Apex Court in the case of **M.V. Bijlani -v-Union of India and Ors., (2006) 5 SCC 88**. The apex Court held in the said case as follows:

"16...The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated

after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

(iv) The entire disciplinary proceedings were stamped with illegality and lack of jurisdiction. The entry in School records and certificate of caste issued by the competent authority after the commencement of the Act 108 of 1976 has got probative value and has to be accepted. In this regard, the applicant relied on the judgment of the Apex Court in ***Kumari Madhuri Patil -v- Addl. Commissioner (1994) 6 SCC 241***, in which it was held as under:

"10. The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records as the then census rules insisted upon."

(v) The Government of Kerala in terms of the order passed by the Apex Court in Madhuri Patel's case (supra) has issued GO (P) No.16/95 dated 8.5.1995 (Annexure-A/7) setting the procedure by which the verification of false claim status and the authority competent to issues orders in this regard. The order envisages a detailed verification by Vigilance Officer. Based on the report, the Scrutiny Committee after conducting the enquiry should come to the conclusion that the claim is false or spurious and should pass an order cancelling the certificate and thereafter the Government has to pass a consequential order. In the absence of order passed by the Scrutiny Committee cancelling the caste certificate issued to the applicant on 16.7.79, the whole proceedings of the enquiry is illegal.

(vi) The Annexure-A7 executive order dated 8.5.95 had been replaced by Annexure-A8 Act 11 of 1996, known as the Kerala (Scheduled Castes Scheduled Tribes) Regulation of Issue of Community Certificate Act 1996, which comes into force with effect from 1.10.1996 and Section 30 thereof states thus:

"A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act."

(vii) In the light of Annexure-A9 judgment in MFA No.1318 of 1999 dated 17.9.2002, passed by the High Court of Kerala, the Caste Certificate issued by the Authority Competent to issue the same shall be valid unless it is cancelled under the provisions of the Act. The operative part of the order reads as under:-

"The certificates on the strength of which the petitioners obtained employment were issued as per the Rules and orders then in force. Therefore, there shall be deemed as valid and issued under the provisions of this Act unless it is cancelled under the provisions of this Act. The cancellation is, as envisaged in Sec 11, on the basis of a report of a committee constituted under Sec. 8. That constitution came only on 24.4.2002. Therefore, it is clear that the impugned order is not one in terms of Sec. 11 of by a Committee appointed in terms of Sec.8. Naturally, the appeal has to be allowed setting aside the order impugned. This will not disable the scrutiny committee only constituted in terms of the notification dated 24.4.2002 in considering the issue afresh. The judgment shall not be understood as if we are affirming the caste status in one way or other.

Appeal is allowed. No costs."

(viii) The Scrutiny Committee, in exercise of the power conferred under section 11 of the said Act has not passed any order declaring that the applicant does not belong to Scheduled Tribe, Malai Pandaram. No orders have been issued cancelling the caste certificate issued to

the petitioner on 16.7.79. Therefore, the punishment imposed is without any authority of law. The learned counsel for the applicant relied on the decision rendered by the Hon'ble High Court of Kerala in **Prakash -v- State of Kerala [2002 (2) KLT 580]** in which it was held as under:

"13. Another aspect to be considered in this case is whether any action could be initiated against the petitioner to cancel his appointment at this distance of time. The advice of a candidate can be cancelled by the Public Service Commission within one year of the date of advice, in the light of R.(c) of Part II of the Kerala State and Subordinate Services Rules. There may be cases where a candidate may be advised out of turn by mistake while applying the communal rotation. Such wrong advices can be cancelled or corrected only within one year from the date of advice. In the case at hand, the case of the respondents is that the petitioner is a member of the Scheduled Caste. So he has been wrongly advised in the turn of Scheduled Tribe. But normally an advice, even if it is found to be wrong, cannot be modified or withdrawn after the lapse of one year, on the strength of any executive order. But in view of Ext. P52 Act, the government have got ample powers to take appropriate action to cancel the appointment, provided the jurisdictional preconditions stated therein are present. S. 11 of Act 11 of 1996 is the enabling provision by virtue of which the Government can cancel any caste certificate. S.11 (1) reads as follows:-

"11. Cancellation of false community certificate-

- 1) *Where before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community certificate to the effect that either himself or his children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel the certificate after giving the person concerned an opportunity of making a representation, if any."*(Emphasis supplied).

The jurisdictional pre-condition for taking action under S.11 (1) is that a person not belonging to any of the Scheduled Castes or Scheduled Tribes has obtained a false community certificate

fraudulently. So, the action is contemplated not against the members of the Scheduled Caste or Scheduled Tribe but against strangers who claim fraudulently that they belong to the Scheduled Caste or the Scheduled Tribe. In the case at hand, even according to the respondents, the petitioner is a member of the Scheduled Caste. It appears that the provisions of the Act are not meant for dealing with the case of a member of the Scheduled Caste claiming ST status or vice-versa(See the provisions employing similar words in S.3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities)Act, 1989. The atrocities committed by third parties on the members of the SC/ST alone are covered by this Act. In other words, a member of the SC/ST cannot be accused of an offence under this Act.)"

(ix) In the instant case there is no misconduct. The enquiry report concluded that there is no evidence to prove that the applicant managed to get community certificate by any bogus means. The applicant is absolved from the charges of falsely claiming of community status. Hence the substractum of charges falls to ground. Hence the finding of guilt is uncalled for.

(x) The applicant is entitled to get equitable consideration. The applicant admittedly had not made a false claim regarding his caste status and obtained the appointment. Therefore, in the light of the judgment rendered by the apex Court reported in **Raju Ramsing Vasave -v- Mahesh Deorao Bhivapurkar & ors(2008) 9 SCC 54** and in **Yogesh Ramchandra Naikwadi -v- State of Maharashtra & ors. (2008) 5 SCC 652** the appointment given to the applicant as early as in 1980 may not be cancelled after a span of 16 years and on equitable consideration the applicant may be adjusted against he post set apart for OBC community. In the case **Raju Ramsing Vasave -v- Mahesh Deorao Bhivapurkar & ors.(supra)** the apex Court has held as under:

"49. Invoking our jurisdiction under Article 142 of the Constitution of India, keeping in view the long history of the case and its backdrop, we are of the opinion that whereas it

would not be proper for us to disturb the very appointment of the appellant but it must be declared that his appointment shall be treated to be that of a general category in the matter of promotion or otherwise. He shall not be eligible to get any benefit as a member of a Scheduled Tribe."

(xi) In the case of *Yogesh Ramchandra Naikwadi -v- State of Maharashtra & ors.* (supra) the apex Court held as under:

"9. As observed in Milind, if the appellant's admission or degree is to be annulled, it is to nobody's benefit as his seat cannot be offered to someone else. There is also no allegation that the appellant forged or faked the caste certificate. His admission to engineering course was nearly thirteen years back and he secured the degree more than four years back. We are therefore of the view that the appellant herein should be permitted to retain the benefit of the degree but subject to terms. The first is that he shall not claim or seek any further benefit by claiming to be long to a Scheduled Tribe. The second is that if the State has spent or incurred by expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a Scheduled Tribe candidate, the appellant cannot retain such financial benefits. The third respondent may, on behalf of the State Government, take appropriate steps to enquire and assess the amount, if any spent on the appellant either towards fee, scholarship or by way of concession in fee and make a demand on the appellant for payment thereof. If the appellant fails to pay the amount so found due within six months of the demand by the third respondent, the third respondent may take steps for recalling the degree granted to the appellant. If no amount is found to be due or if the amount determined and demanded is paid by the appellant, he may be permitted to retain the degree obtained by him."

(xii) Being a case of no evidence to prove the charges the punishment is illegal.

(xiii) The punishment is shockingly disproportionate to the charges levelled against the applicant.

(xiv) The appellate authority misread the evidence as the State Government had not passed any order cancelling the Caste Certificate issued to the applicant.

[11] Respondents filed the rely statement. It was contended that the applicant sought appointment claiming that he was a Scheduled Tribe candidate belonging to 'Malai Pandaram' community. An enquiry was conducted in this regard. The inquiry report stated that the Anthropological study conducted by KIRTADS, indicated that the applicant, his parents and relatives do not belong to 'Pandaram ST Community' vide Annexure-R2 DO Letter No.D-1559/86 dated 21.7.87 (Annexure R2) The Director, KIRTADS, reported to the State Government that 9 persons including the applicant secured employment by producing bogus community certificates to the effect that they belonged to the S.T. Malai Pandaram Community, whereas, they actually belonged to the Pandaram Community, which admittedly is not recognised as a Scheduled Tribe in Kerala. Therefore, the Caste certificate submitted by the applicant was forwarded to the District Collector, Thiruvananthapuram for verification of its genuineness. The District Collector in his letter No.A9/28130/90 dated 17.5.90 (Annexure-R1) reported that the certificate issued by the Tahsildar, Thiruvananthapuram was on the basis of the certificate from Village Officer, Kadakompally village and on its recommendation, the matter was referred to the Director, SC & ST, Thiruvananthapuram for conducting anthropological enquiry in this case. The Director, KIRTADS vide Annexure-R/3 letter dated 28.10.94 addressed to SSPOs, Thiruvananthapuram North Division stated that a detailed anthropological investigation was conducted in the case of Shri S Prahlad, who was a MBBS student and a relative of the applicant on the request of the Director of Medical Education and found that he does not belong to the 'Malai Pandaram, ST Community but belongs to the 'Pandaram, OBC community'. Similar requests were conducted/are being conducted in the case of other relatives of the applicant also and separate actions are being initiated. It is

the case of the applicant that after a detailed enquiry under Rule 14 of CCS (CCA) Rules, the Inquiry Officer came to the conclusion that the applicant does not belong to Malai Pandaram, ST Community, and the punishment of dismissal from service was awarded after a careful assessment of the evidence produced in the inquiry. Thereafter, on appeal the punishment of dismissal was modified to that of 'removal from service'.

[12] The respondents refuted the contention of the applicant that no reliance can be placed on the report of the KIRTADS in view of the judgment of the Hon'ble High Court of Kerala in OP 7111/87 filed by S Prahlad, one of the relatives of the applicant, in whose case the KIRTADS conducted the anthropological studies and came to the conclusion that S Prahlad and nine other relatives, including the applicant, did not belong to Malai Pandaram, but belong to Pandaram, the OBC community.

[13] Regarding the contention of the applicant that neither the Scrutiny Committee nor the Government declared that the certificate of Malai Pandaram issued by the authority is illegal, the respondents have stated that the constitutional authority after verification of the records and proper enquiry recommended the respondents to initiate proceedings against the applicant and after complying with all legal formalities the respondents have taken action against the applicant. Moreover the Hon'ble High Court of Kerala upheld the report of the KIRTADS and, therefore, there is no illegality or infirmity in initiating action against him.

[14] As regards the approvability of the judgment in Kumari Madhuri Patil's case (supra) the learned counsel for the respondent has submitted that the said judgment was pronounced only on 2.9.1994, and as per the principles laid down in it, the State of Kerala issued a Notification dated 8.5.1995 constituting a Scrutiny Committee and the Act of 11 of 1996 was enforced w.e.f. 1.12.1996. However, the applicant submitted the case certificate that

he belongs to 'Malai Pandaram' community in the year 1980 and by Annexure R/2 dated 21.7.1987 itself it revealed that he and his other relatives did not belong to 'Malai Pandaram' community. Thus much before the enforcement of Act 11 of 1996 it was found that the applicant does not belong to 'Malai Pandaram' community and he had produced false certificate claiming he belongs to that community which is a Scheduled Tribe Community.

[15] The learned counsel for the respondent has also submitted that Hon'ble Supreme Court of India in **Viswanatha Pillai -v- State of Kerala, 2004 (1) KLT 708 SC**, held that 'procedure rule laid down in Kumari Madhuri Patil's case is being applied to a case in which fraud was detected after the judgment. However, in the present case, the authorities have found as early as on 21.7.1987 that the applicant does not belong to Schedule Tribe, 'Malai Pandaram' community. Therefore, the contention raised by the applicant that this case was not considered by the Scrutiny Committee constituted after the judgment of Kumari Madhuri Patil's case is not tenable.

[16] It was further submitted that by Annexure-R2 and Annexure-R3, it is clear that the applicant obtained a bogus caste certificate in the year 1980 and filed attestation form on 25.9.1980 stating that he belonged to 'Malai Pandaram' Scheduled Tribe Community. Since the false community certificate was produced for obtaining a job in the year 1980, it cannot be said to be an offence under Act 11 of 1996, which was enforced w.e.f. 01.12.1996 only.

[17] We have heard Mr PV Mohan, learned counsel for the applicant and Sri S Abhilash, ACGSC on behalf of the respondents. We have also perused the record and the relevant rules mentioned above. No where in his submissions, the applicant himself has asserted that he belongs to 'Malai Pandaram' which is a Scheduled Tribe Community. But it is an undisputed fact that he got his appointment as Postman with the Respondent Department under the Scheduled Tribe Quota on the basis of the Caste Certificate produced by him

to the effect that he belonged to 'Malai Pandaram' Scheduled Tribe Community. His basic contention challenging the impugned disciplinary Authority's order 'dismissing him from service' and the modified Appellate Authority's order 'removing him from service' is that before the charge that he "secured initial appointment in the Department as Postman falsely claiming that he belonged to 'Malai Pandaram' ST Community and filed the Attestation form on 25.9.80 in contravention of the warning contained in the attestation form and thereby rendered himself unfit for employment in Government Service" was served on him and the subsequent disciplinary proceedings initiated against him which culminated in his removal from service, the Respondents have not followed the prescribed procedure in removing their doubt as to the genuineness of his claim that he belonged to the 'Malai Pandaram' ST Community. In our view, the aforesaid contention of the applicant is merely technical. So long as the applicant himself has not asserted that he actually belongs to 'Malai Pandaram' ST Community as entered in his educational certificate and the Caste Certificate issued on the basis of the said educational certificate, it is not necessary for us to go into the question whether the Respondents have cleared their doubt regarding the genuineness of his claim regarding his community status according to the prescribed procedure or not. Records reveal that vide Annexure-R/2 DO letter dated 21.7.1987, KIRTADS reported to the Government of Kerala that the applicant and nine of his other relatives were the beneficiaries of the Caste certificate produced by them for getting employment in different offices of the Central Government, State Government and Government Undertakings. The applicant's relative Shri S Prahalad, who secured admission for MBBS challenged his expulsion from the Medical College for producing the fake caste certificate that he belonged to the Scheduled Tribe of 'Malai Pandaram' before the Hon'ble High Court of Kerala in OP No.7111/87/V and vide Annexure-R/6 judgment dated 02.01.1991, it was held clearly that the said Prahalad was "not entitled to any of the benefits available to a member of the Scheduled Tribe". We have mentioned these facts here only to say

that the applicant was very well aware of the fact that his claim that he belonged to the Scheduled Tribe of 'Malai Pandaram' was not correct.

[18] Now the question is whether the charge levelled against applicant would amount to "misconduct" on his part or not. The charge against the applicant was that he secured his initial appointment falsely claiming that he belonged to 'Malai Pandaram ST Community' and filed attestation form on 25.9.80 in contravention of the warning contained in the attestation form. There is no dispute that the applicant was admitted in the school itself showing that he belonged to the Scheduled Tribe Community of 'Malai Pandaram'. The Respondents have produced the Annexure-R4 extract of Admission Register of Government High School, Karikkakom which shows that at the time of the applicant's admission on 01.6.66 itself, his religion was shown as 'Malai Pandaram (Hindu)". According to the Annexure-R/1 report of the District Collector also, the Caste Certificate in respect of the applicant was issued by the Tahasildar on the basis of the recommendation of the Village Officer, which in turn is based on the educational certificate. It is absolutely unfair to say that the applicant was responsible for showing his caste as 'Malai Pandaram' in his school certificate and in the caste certificate issued by the Tahasildar, based on which he got his initial appointment as Postman.

[19] The word 'Misconduct' has been defined in the various dictionaries.

In **State of Punjab v- Ram Singh, Ex Constable (1992)4 SCC 54**, it was stated: (SCC pp 57-58,para 5)

"5. Misconduct has been defined in Black's Law Dictionary, 6th Edition at p.999, thus:

' A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behavior' its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness'.

Misconduct in office has been defined as :

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

In **P. Ramanatha Aiyar's Law Lexicon, 3rd Edn. At p.3027**, the term "misconduct" has been defined as under:

"The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.

* * *

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

There is no finding by the Enquiry Officer that the applicant was guilty of transgression of any rule, committed any forbidden act, behaved improperly or wrongly.

[20] In **Alka Devi -v- State of Rajasthan & Anr. 2006(1) SLJ 88**, the Hon'ble Rajasthan High Court discussed "Misconduct" in three degrees and held as under:

"Minor misconduct

21. The expression "minor misconduct" would indicate that they are routine lapses or acts with no direct adverse financial implications or loss to be assets or pecuniary interest and for that, the decision of the Hon'ble Supreme court in Regional Manager and Disciplinary Authority, State Bank of India, Hyderabad -v- S Mohammed Gaffar (2002) 7 SCC 168 + 2003(1) SLJ 181 (SC) may be referred to.

Misconduct-

22. 'Misconduct' has been defined in Black's Law Dictionary, sixth Edition at page 999 thus, "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed ,misbehaviour, delinquency,

impropriety, mismanagement, offence, but not negligence or carelessness". Misconduct in office has been defined as "Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act."

23. *P. Ramanatha Aiyer's Law Lexicon, Reprint Edition 1987 at page 821 defines "misconduct" thus: "The term misconduct implies a wrongful intention, and not a mere error or judgment. "Misconduct" is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In unusual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as lawful behaviour or neglect by a public officer, by which the rights of a party have been affected."*

24. *Thus, the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character, forbidden act, as transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. In this respect the decision of the Hon'ble Supreme Court in State of Punjab v- Ram Singh, Ex Constable, (1992) 4 SCC 54= 1992(3) SLJ 160 (SC), Union of India v- J. Ahmed, (1979) 2 SCC 286 =1979 SLJ 79 (SC) and NG Dastane v- Shrikant S Shivde, (2001) 6 SCC 135, may be referred to.*

25. *It may be stated here that what amounts to 'misconduct' is a question of fact and it would be decided with reference to the facts, situation in which the act was alleged to have committed and the attending circumstances leading thereto.*

26. Therefore, no hard and fast rule can be laid down that a particular act in a particular case amounts to misconduct.

Gross or grave misconduct-

27. The term 'grave misconduct' is wide enough to include 'corrupt practice'. In cases where the charge of corrupt is proved after pension has been sanctioned, action to withhold or withdraw pension may be taken.

28. The expression "gross misconduct" in the on text of the definition with reference to the various enumerated acts and omissions on the part of an employee has to be seen after taking into consideration the following two aspects:

(i) doing any act prejudicial to the interest of the State or gross negligence or negligence involving or likely to involve the State in serious loss; and

(ii) knowingly making a false statement in any document pertaining to or in connection with his employment in the State.

29. Whether a person has committed gross misconduct or not, the test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant.

30. Misconduct involving dishonesty can be regarded as grave misconduct.

31. Thus, from the above, it can be concluded:

- (i) That there is a distinction amongst grave or gross misconduct and minor misconduct.
- (ii) That the expression "misconduct" has to be construed with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute.
- (iii) That whether a particular act is misconduct or not or whether such misconduct is a serious one or not, it all depends upon the facts and circumstances of each case.
- (iv) That what amounts to misconduct is question of fact and it would be decided with reference to the facts, situation in which the act was alleged to have been committed and the attending circumstances leading thereto.
- (v) That no hard and fast rule can be laid down exhaustively as to what would constitute misconduct and the conclusion would depend on the examination of facts in each case. "

[21] Keeping in view of the above principle in mind, it is to be seen whether in the facts and circumstances of the case, what is the degree of misconduct committed by the applicant. The finding of the Enquiring Authority is very

relevant here. According to its report, there is no evidence to show that the applicant "managed to get the Community Certificate by any bogus means. His caste Certificate has been issued by the Competent Authority. It is a genuine certificate". The Enquiry Officer has, therefore, rightly absolved the applicant from the charge of "falsely claiming the community certificate". The Enquiry officer does not recorded any further findings on the charge. Instead, he went on to say that he has no doubt that the applicant does not belong to Malai Padaram ST Community. In fact the Enquiry Officer was not called upon to render his findings whether the applicant belongs to Malai Padaram ST Community or not. In our considered view, the Enquiry Officer has exceeded his brief and held that charge was proved to the extend that the applicant is not a person belongs to 'Malai Padaram ST Community'. His extraneous finding is, therefore, uncalled for and it is to be ignored. However, the Disciplinary Authority while agreeing with the findings of the Enquiry Officer arbitrarily held that the charge was proved when the findings of the Enquiry Officer itself were to the contrary. The Disciplinary Authority has not, in fact, appreciated the findings of the Enquiry Officer at all. Rather, the Disciplinary Authority failed to distinguish between the subtle difference between a person who obtained a false Caste Certificate by unlawful means for the purpose of securing a job under the Reserved Quota and a person who was born and brought up under the false notion that he was a Scheduled Tribe and got a job on account of that status. Therefore, we are of the considered view that the actual charge against the applicant has not been proved during the enquiry and the Disciplinary Authority had a closed mind while imposing the most severe punishment of dismissal from service. The Appellate Authority by modifying the punishment of dismissal from service to 'removal from service' has also not applied his mind.

[22] However, the fact remains that the applicant does not belong to the Scheduled Tribe of "Malai Padaram, but he secured the job earmarked for Scheduled Tribe candidates depriving the chance of another Scheduled Tribe

candidate. He could have very well admitted the mistake when he came to know that he actually does not belong to Scheduled Tribe. He did not do so. Therefore, as held by the Disciplinary Authority he has rendered himself not fit for any continued service with the Department. Consequently, his prayer to reinstate him in service cannot be allowed. However, in the facts and circumstances of this case, the past service rendered by the applicant cannot just be wiped out and a lesser punishment would meet the ends of justice. As held by the Apex Court in ***Bharat Petroleum Corporation Ltd.-v- Maddula Ratnavalli and others***, (2007) 6 SCC 81, reasonableness and non arbitrariness are the hallmarks of an action by the State. The apex Court held in that case as under:

"26. Reasonableness and non arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained."

[23] The Courts and Tribunals are not the authority to prescribe any particular punishment. By no stretch of imagination it can be said that the extreme punishment of removal from service is the proportionate one in this case. As held by the Apex Court in a catena of cases, latest one being in ***Noharlal Verma -v- District Cooperative Central Bank Ltd., Jagdalpur***, 2008 AIR SCW 7850, in exercise of 'judicial review' a Court/Tribunal will not substitute its own judgment or decision for the judgment or decision of a disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the Court or the punishment is such that no 'reasonable man' would impose such punishment or in the words of Lord Scarman in ***Nottinghamshire Country Council v. Secretary of State***, 1986 AC 240 : (1986) 1 All ER 199, that the decision is so absurd that one is satisfied that the decision maker at the time of making decision 'must have taken leave of his senses'. In our view, the punishment of removal from service imposed upon the applicant is grossly disproportionate and highly excessive. In ***B.Chaturvedi-v- Union of India and others***, (1995) 6 SCC 749, the Apex

Court has held that in exceptional cases, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal it would appropriately mould the relief and impose appropriate punishment. The relevant part of the said judgment reads as under:

" 18...The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

[24] In the instant case, the disciplinary proceeding against the applicant has been instituted on the charge issued to him vide Annexure-A1 order dated 29.6.1995. It took 12 years for the respondents to complete it and pass the final order of removal from service on 25.6.2007, wiping out his 27 years of service from 1980. Since then he was before this Tribunal. Remanding the case at this stage to the Disciplinary Authority would only prolong the case further.

[25] In the above facts and circumstances of the case, we are of the considered view that the punishment of dismissal from service awarded by the Disciplinary Authority and the modified order of punishment as removal from service are shockingly disproportionate, and the punishment of compulsory retirement from service from the date of the order of the Disciplinary Authority dismissing him from service would meet the ends of justice. Accordingly, we set aside the Annexures -A4 and A/6 orders and direct that the Respondents shall treat the applicant as retired compulsorily from service with effect from 9.8.2006 and all benefits as admissible to an employee who has been compulsorily retired from service shall be extended to him. Necessary orders in this regard shall be passed by the Respondents

within a period of 3 (three) months from the date of receipt of a copy this order. No order as to costs.

(Ms K. Noorjehan)
Administrative Member

(George Paracken)
Judicial Member

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