Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT SITTING : BILASPUR

Original Application No.203/00387/2015

Jabalpur this Tuesday, the 31st day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Manish Pradhan S/o Shri Radheshyam Pradhan, aged about 43 years,
(Ex-Sub Divisional Inspector, Post Jagdalpur) at present Qua.No.705/706,
Donde Khurd, Housing Board Colony, Post Office-Mandhar,
Dist.-Raipur (C.G.)Pin-493111 **-Applicant**

(By Advocate –**Shri Vinod Deshmukh**)

V e r s u s

1. Union of India through its Secretary,
Postal Board, Department of Post, New Delhi, Pin-110001

2. Chief Post Master General (Appellate Authority)
Office of Chief Post Master General,
Chhattisgarh Circle, Raipur (C.G.), Pin-492001

3. Director, Postal Services, Department of Post,
Office of Chief Post Master General,
Chhattisgarh Circle, Raipur (C.G.), Pin-492001

4. Senior Superintendent, Office of Superintendent,
Postal Division, Raipur (C.G.), Pin-492009 - **Respondents**

(By Advocate –**Shri Vivek Verma**)

(Date of reserving the order: 23.02.2018)

O R D E R

By Navin Tandon, AM:-

By filing this Original Application, the applicant has challenged the order of penalty of compulsory retirement passed by the disciplinary authority as well

as the order of appellate authority enhancing the penalty to removal from service, on the allegation that he misappropriated the government money.

2. The brief facts of the case are that the applicant was initially appointed as Sorting Assistant in Railway Mail Service, Raipur Division, Raipur on 18.07.1992 and he was promoted to the post of Sub Divisional Inspector (Post) on 31.03.2001. He was posted at Raipur on 30.07.2002. It has been alleged against him that while he was working at Raipur as Manager, Speed Post Centre Raipur he misappropriated government money as per the details given below:-

(i) He got Rs.1200/- from MATS University, Raipur on 26.05.2004 but he deposited Rs.12/- only in Raipur Head Office vide ACG 67 No.81 Book No.1678. Hence he misappropriated government money of Rs.1188/- in business post/BNPL.

(ii) He got Rs.9800/- from Shri Chandrabhushan Sahu, Lab.Assistant, MATS University Raipur on various dates but he deposited Rs.98/- only (Rs.19/- on 15.05.2004, Rs.35/- on 15.05.2004 and Rs.44/- on 18.05.2004) in Raipur Head Office vide ACG 67 No.36,40 and 47 book no.1678 respectively, hence he misappropriated government money of Rs.9702/- business post/BNPL.

(iii) Also he got Rs.1590/- on various dates from Chhattisgarh Sanwad Raipur, as under:-

Dated	Rupees
05.03.2004	Rs.320.00
11.02.2004	Rs. 312.00

04.02.2004	Rs.310.00
21.02.2004	Rs.324.00
25.02.2004	Rs.324.00
Total	Rs.1590/-

He gave receipt in ordinary paper to Chhattisgarh Sanwad Raipur with seal of Manager Speed Post Centre Raipur and his initial but he did not deposit Rs.1590/- in Post Office account.

2.1 The applicant was suspended on 16.07.2004 and a charge sheet was issued to him on 07.07.2006 (Annexure A-2). The applicant denied all the charges leveled against him vide his letter dated 11.07.2006 (Annexure A-3) and requested for an open enquiry. After completion of enquiry, the enquiry officer vide his report submitted on 13.05.2013 (Annexure A-9) held both the charges as partially proved. However, the disciplinary authority vide his letter dated 21.11.2013 (Annexure A-10), while serving a copy of the enquiry report upon the applicant, stated that as per documentary evidence and the inquiry proceedings both the charges are found to be proved and accordingly gave an opportunity to the applicant to submit his representation within 15 days. In response to that the applicant submitted his representation on 02.12.2013 (Annexure A-11). After considering all the material, the disciplinary authority, vide his order dated 04.02.2014 (Annexure A-1) imposed the penalty of compulsory retirement on the applicant. The applicant submitted his appeal on 14.03.2014 (Annexure A-12). Since the said appeal was not decided, he

approached this Tribunal by filing Original Application No.203/00109/2015 which was disposed of vide order dated 11.02.2015 (Annexure A-13) with a direction to appellate authority to decide the same within a period of 90 days. Thereafter, the applicant was served upon a notice dated 12.03.2015 (Annexure A-15) by the appellate authority for enhancement of penalty of compulsory retirement to removal from service. The applicant submitted his reply on 27.03.2015 (Annexure A-16) to said notice. After considering his reply, the appellate authority vide order dated 06.04.2015 (Annexure A-17) imposed upon the applicant penalty of removal from service.

3. The applicant has, therefore, prayed for the following reliefs in this Original Application:-

> "**8.1** This Hon'ble Tribunal be pleased to set aside/quash the order date 06-04-2015 issued by the appellate authority i.e. respondent no.2 vide Annexure A-17 and impugned order No.6-2/SRM "RP/2013 Raipur dated 04-02-2014 vide Annexure A/1 issued by the Director, Postal Services, Chhattisgarh Circle Raipur.
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> **8.2** This Hon'ble Tribunal be pleased to hold that the applicant is entitled for all the consequential benefit and back wages. The entire suspension period and period of out of employment should be treated as a continuity of service for all the practical purposes.
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> **8.3** This Hon'ble Tribunal be pleased to hold that the action on the part of the appellate authority in not deciding/considering the appeal of the applicant and enhanced the punishment of compulsory retirement from service to the removal from service is illegal and bad in law.
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> **8.4** This Hon'ble Tribunal be pleased to call for the entire records pertinent to the issuance of the impugned order as well as record of the departmental inquiry.

8.5 Award the cost of this O.A.

8.6 Any other relief as deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case".

4. The case of the applicant is that the allegations of misappropriation of government money leveled against him are totally false and fabricated without any documentary evidence, as the department before making allegation against the applicant did not make any enquiry from the MATS University and none of the officers or concerned employees of the said University were called as a witness in the enquiry proceeding before the enquiry officer in respect of giving Rs.1200/- & Rs.9800/- from the MATS University to the applicant and as to for what purpose the said amount was given to him. The department has also failed to refer the matter to the handwriting expert committee in respect of manipulation in the receipt. Similarly, before making allegation against the applicant in respect of obtaining Rs.1590/- from Chhattisgarh Sanwad Raipur, none of the officers and concerned employees of Chhattisgarh Sanwad Raipur were called in the enquiry proceedings and as to for what purpose the said amount was given to him.

5. On the other hand the respondents have submitted that the applicant was holding the post of Sub Divisional Inspector and was expected to maintain high degree of integrity by setting example to others working under him. Moreover,

as a government servant the applicant was expected to have a high standard of moral and integrity and promptly account for the money collected from the public during the course of discharge of his duties. Instead of doing so, the applicant was indulged in corrupt practices and more seriously in manipulating the records. The enquiry officer has issued several notices to witnesses but they did not attend the enquiry. All the listed documents were produced during the course of enquiry and the applicant had examined the same. On 28.01.2013 the applicant had submitted a letter that he does not want to examine any defence witnesses. The charge of misappropriation of government money was proved on the basis of documentary evidence.

6. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith. We have also gone through the written synopsis submitted on behalf of the applicant.

7. The learned counsel for the applicant has contended that the prosecution witness Shri Than Singh Sahu had admitted the fact that he himself issued the alleged documents in respect of charge No.1, even then the disciplinary authority has imposed the punishment only on the basis of presumption and without any documentary evidence. There is no prima facie evidence available with the department against the applicant in respect of the alleged charges. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the matters of **M.V.Bijlani** Vs. **Union of India**

and others, 2006 SCC (L&S) 919 : (2006) 5 SCC 88, wherein it has been held thus:

> **"(25).** It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with".

7.1 The learned counsel has further placed reliance on the decision of Hon'ble Supreme Court in the matters of **Hardwari Lal** Vs. **State of UP and others**, (1999) 8 SCC 582, wherein it has been held thus:

> **"(3).** Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant".

8. We find that while imposing the penalty of removal from service the appellate authority has considered all aspects of the matter in detail in his order dated 12.03.2015 (Annexure A-15). We may reproduce relevant paragraphs of the order as under:

> *"I have gone through the appeal dtd.14.3.2014 of Shri Manish Pradhan and relevant records of the case. It is correct that finalization of disciplinary action has taken long time. However, it is observed that the required procedure has been followed and sufficient opportunity has been given to the appellant to defend himself. His submission that details narrated by him has not been included in the charge sheet does not have any impact on the charges as it is the prerogative of the disciplinary authority to level the charges. The non-appearance of prosecution witnesses also does not have any impact on establishment of charges, if those are proved on other available evidence. As far as the alleged irregularities on the part of Shri Than Singh Sahu is concerned, it is observed that it does not mitigate the charges leveled against the appellant. Regarding his submission that defence documents were not provided to him and defence witnesses were not called in the inquiry, it is found that 3 available documents were provided to the appellant and he had submitted that he did not require defence witnesses.*
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> *It is correct that GEQD has not given any opinion on overwriting on ACG-67 receipts(P-1 to P-4). This is because it was not referred to him for the advice. However, the available evidence discussed below establish that corrections were made by the appellant. On perusal of the statement of prosecution witness Shri P.V.Raju dated 22-06-2004)PD-09) it is found that Rs.1200/- was given by Shri P.V.Raju to the appellant on 26-05-2004 for posting of about 200 articles and after some time receipt no.81 [P-1] was given to him. The corrections have been made in the said ACG-67 receipt no.81 and amount of Rs.1200/- (Rs.Tweleve hundred) is mentioned therein, where as Rs.12/- [Rs.Twelve]is mentioned in the office copy of the receipt [P-5]. Similarly, Shri Chandrabhushan Sahu [PD-10] has stated in his statement that amounts as mentioned in the receipt no.36 [Rs.1900/- P-2] no.40,[Rs.3500/-P-3] and no.47 [Rs.4400/- P-4] were given by him at Speed Post Centre Raipur and generally amounts were given to the appellant. But office copy of receipts [P-6 to P-8] have been issued for Rs.19/-, Rs.35/-, and Rs.44/- respectively. Shri P.D.Babhre has confirmed statements of Shri P.V.Raju*

and Shri Chandrabhusan Sahu, which were recorded by him during the investigation. In this connection ShriThan Singh Sahu has stated that aforesaid ACG-67 receipts were issued by him for Rs.19/-, Rs.35/-, Rs.44/-, and Rs.12/- respectively and those were given by him to the appellant. As such it is clear that ACG-67 receipts mentioned above were issued for smaller amounts and were given by Shri Than Singh Sahu to the appellant. After that, the receipts were corrected for higher amounts and the work for the corrected amounts were done at the Speed Post Centre Raipur. Thus, the appellant misappropriated Govt.money to the tune of Rs.10,890/-, as alleged.

His submission in respect of charge II that he had accepted his writing on P-12 to P-16 is not correct. Instead, as per the DLI report dated 11th May, 2005 his statement could not be obtained due to his non-appearance despite giving instruction to him. Further, if he had accepted his writing on above documents, there was no necessity for referring them to GEQD for advice. Regarding these documents it is observed that there is no provision for providing signed and stamped calculations to customers. In view of this and the letter provided by the customer [P-11] it is established that the appellant misappropriated Rs.1590/- as alleged".

9. On a perusal of the order passed by the appellate authority it is found that the prescribed procedure has been duly followed during the conduct of the enquiry and sufficient opportunity has been given to the appellant to defend himself. The appellate authority has duly considered all the grounds taken by the applicant in his appeal. Regarding applicant's submission that defence documents were not provided to him and defence witnesses were not called in the inquiry, it has been specifically stated in his order that 3 available documents were provided to the applicant and he had himself submitted that he did not require to examine any defence witnesses. As regards the allegation of the applicant that the matter was not referred to the handwriting expert, the appellate authority has examined this issue and has held that the available

evidence established that the corrections were made by the applicant and therefore it was not felt necessary to refer the matter to the handwriting expert. The statement of prosecution witness Shri P.V.Raju dated 22-06-2004 (PD-09) clearly establishes that Rs.1200/- was given by Shri P.V.Raju to the applicant on 26-05-2004 for posting of about 200 articles and after some time receipt no.81 [P-1] was given to him. The corrections have been made in the said ACG-67 receipt no.81 and amount of Rs.1200/- (Rs.Tweleve hundred) was mentioned therein, whereas Rs.12/- only was mentioned in the office copy of the receipt [P-5]. Similarly, Shri Chandrabhushan Sahu [PD-10] has stated in his statement that amounts as mentioned in the receipt No.36 [Rs.1900/- P-2], No.40 [Rs.3500/-P-3] and No.47 [Rs.4400/- P-4] were given by him at Speed Post Centre Raipur and generally amounts were given to the applicant. But office copy of receipts [P-6 to P-8] have been issued for Rs.19/-, Rs.35/-, and Rs.44/- respectively. Shri P.D.Babhre has confirmed statements of Shri P.V.Raju and Shri Chandrabhusan Sahu, which were recorded by him during the investigation. Shri Than Singh Sahu has stated that aforesaid ACG-67 receipts were issued by him for Rs.19/-, Rs.35/-, Rs.44/-, and Rs.12/- respectively and those were given by him to the applicant. As such it is clear that ACG-67 receipts mentioned above were issued for smaller amounts and were given by Shri Than Singh Sahu to the applicant. After that, the receipts were corrected for higher amounts and the work for the corrected amounts were done at the Speed Post Centre Raipur. Thus, the appellate authority has rightly

found that the applicant had misappropriated Govt. money to the tune of Rs.10,890/-, as alleged. Similarly, the appellate authority found that the applicant misappropriated Rs.1590/- as alleged on the basis of material produced during the course of enquiry.

10. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in **B.C.Chaturvedi** Vs. **Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under :-

> "**(12)**. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings***. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. ***The disciplinary authority is the sole judge of facts.*** Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. ***The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence*** and to arrive at its own independent findings on the evidence….."

> **(13)**. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C.Goel (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.
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> **(18)**…the disciplinary authority and on appeal the appellate authority, being fact finding ***authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.*** The High Court/Tribunal, while exercising the power of judicial review, ***can not 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".
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> **(emphasis supplied)**

11. Thus, having considered all pros and cons of the matter as well the settled legal position in the matters of disciplinary enquiry we do not find any illegality or irregularity in the conduct of departmental enquiry conducted against the applicant, warranting interference by this Tribunal.

12. As regards the proportionality of punishment, imposed upon the applicant of removal from service by the appellate authority, we find that the Hon'ble

Supreme Court in the matters of **Rajasthan Tourism Development Corporation Limited and another** Vs. **Jai Raj Singh Chauhan,** (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below:

> "**(19)** In **Union of India** Vs. **Parma Nanda** (1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:
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> > "*27.* We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."
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> **(20)** In **B.C. Chaturvedi** Vs. **Union of India,** (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgments and held:
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> > "18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. 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/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."

(21) In **Apparel Export Promotion Council** Vs. **A.K. Chopra** (1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on ***no evidence*** or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is ***not*** concerned with the ***correctness*** of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in **Chief Constable of the North Wales Police** v. **Evans** (1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:

> '… The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.'
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> 17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

13. Thus, it is settled law that jurisdiction of courts/Tribunals in the matter of quantum of punishment is also rather limited. In the instant case we find that the punishment of removal from service imposed upon the applicant also does not shocks our conscience, keeping in view the gravity of the proved misconduct of the applicant.

14. In the result, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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