**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**
**HYDERABAD BENCH: HYDERABAD**

**Original Application No. 1375 of 2014**

**Reserved on: 15.4.2019**

**Pronounced on: 26.04.2019**

Between:

Dr. Lanka Prabhakara Rao,
S/o. late Chandranna, aged about 53 years,
Occ: Chief Medical Officer (NFSG),
Government of India, Ministry of Health and Family Welfare,
Central Government Health Scheme, Hyderabad,
R/o. H. No. 17-1-383/48 & 49, Flat No. 103,
Sai Kiran Residency, Vinaynagar Colony,
Saidabad, Hyderabad – 500 059.

… Applicant

And

1. Union of India, Rep. by
The Secretary, Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, Moulana Azad Road,
New Delhi – 110108.

2. The Director General (LW),
Government of India,
Ministry of Labour and Employment,
Jaisalmer House, Mansingh Road, New Delhi-110 011.

3. The Welfare Commissioner,
Government of India,
Ministry of Labour and Employment,
Kendriya Sadan, Sultan Bazar,
Hyderabad (AP) – 500 095.

4. The Union Public Service Commission,
Rep. by its Secretary, Dholpur House,
Shahjahan Road, New Delhi – 11.

5. T. Koteswara Rao, Welfare Commissioner (Retd.),
LWO, Hyderabad, R/o. Plot No. 136, Street No. 6,
Sri Ramakrishna Puram, Alkapuri Colony,
L.B. Nagar, Hyderabad

… Respondents

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| Counsel for the Applicant | … | Mr. K.R.K.V. Prasad |
| Counsel for the Respondents | … | Mrs.K. Rajitha, Sr. CGSC<br>Mr. M.C. Jacob, Advocate for<br>Mr. B.N. Sharma, SC for UPSC |

***CORAM:***
***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***
***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***
***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. Applicant challenges the penalty of reduction to lower stage imposed by the disciplinary authority and confirmed by the appellate authority.

3. Brief facts of the case are that the applicant, who was working as Chief Medical Officer for the respondents organisation, was issued with a charge memorandum on 12.2.2009 for not following departmental guidelines in procuring medicines as a member of the purchase committee causing a loss of over Rs.9 lakhs to the respondents organisation. The purchase committee had the Welfare Commissioner, as Chairman with 5 other doctors and the Asst Administrator officer (AAO) as members. The norm for procuring medicines is to buy them from Public Sector Undertakings. However, the then Welfare Commissioner (Mr.A.Prabhakar) decided to procure through quotations. The AAO did obtain quotations in March /April 2001 and placed before the Purchase committee which approved the procurement. In the meanwhile, Welfare Commissioner had received a DO letter on 25.4.2001 from the Ministry of Labour about the procedure to be followed in regard to procurement of medicines. This was not circulated by the Welfare Commissioner amongst the members of the committee. The Welfare Commissioner Mr A.Prabhakar Rao was succeeded by Sri T.Koteswara Rao, the 5$^{th}$ respondent who justified the procurement by claiming that the best rates were obtained by tedious negotiations from 13 firms and made payments for the medicines procured. The 5$^{th}$ respondent has also made the medical officers of the dispensaries to accept the non indented medicines despite their objections. Later the 5$^{th}$ respondent

made a complaint to the CBI alleging purchase of medicines from private firms in 2001-02 and a case was registered by the CBI in 2003. CBI recommended major penalty proceedings against all the committee members including the 5th respondent for paying bills even after detecting procedural irregularities. CVC gave first stage advice agreeing with the recommendation of major penalty proceedings. Applicant moved the Tribunal for directing the respondents to initiate common proceedings in OA 1288/2012 but was not conceded to. Three independent proceedings were initiated against different members of the committee. 5th respondent was imposed with the penalty of censure, Asst Administrative Officer and Dr Albert King were exonerated. Three doctor members were imposed with the penalty of Reduction to Lower Stage in the time scale of pay by one stage for a period of one year without cumulative effect and not adversely affecting pension. Applicant represented on 29.7.2013 against the charge memo and without considering the pleas made, penalty cited was imposed. It was followed up with a review petition to the President which was rejected on 18.12.2013. Aggrieved the instant OA has been filed.

4. The main contentions of the applicants are that the letter of the Ministry of Labour detailing the procedure to be prescribed for procuring medicines was not circulated. There was delay of 7 years in issue of charge sheet. Some of the members of the committee were not proceeded against on grounds that they retired or did not actively participate in the committee proceedings, despite CBI advice to initiate action against them. 5th respondent who was the Chairman of the purchase committee was let off with a censure. AAO was also exonerated. Censure imposed on the 5th respondent was set aside by this Tribunal on the grounds that acts of negligence, errors of judgment or innocent mistake do not constitute misconduct. UPSC advise was not furnished before imposing the

penalty. The charge sheet was not approved by the Minister. Documents sought vide letter dated 23.2.2009 were not supplied to defend his case. The 5th respondent and the CBI officer did not attend the inquiry though cited as witness. Exhibits s-1 to s-10 were marked by CDI without being identified by any witness. CCS (CCA) rule 14 (18) was not followed. Questions asked during the inquiry were leading questions. Being a doctor, applicant was not conversant with the administrative procedures which is usually taken care by the Welfare Commissioner and the AAO.

5. Respondents did not file any reply statement though 5 years have lapsed. After many adjournments on 3.4.2019 they were given the last opportunity to file the reply in 10 days lest they will forfeit the right to reply. However, even on the final hearing date they did not file the reply statement and the learned Counsel for the respondents argued the case in the absence of the reply statement as per directions of the Bench.

6. Heard both the counsel and perused documents plus the material papers submitted.

7. I) The applicant was a member of a purchase committee formed for procuring medicines. Being, a member of the committee he has every right to call for the rules which govern the procurement process. There is no plea nor did any document submitted which establishes the fact that the applicant made such an effort. Being a Group A officer he need to have acted responsibly. Claiming that being a doctor he was not conversant with the administrative procedures is not an excuse that can be put forward at his level. As a member of the committee he is as much responsible as all others. Trying to shift the blame to the Chairman of the Purchase of the Committee and the AAO will not relieve him of his responsibility. When value of procurement is in lakhs it is incumbent upon him

to peruse the rules and act. Purpose of a committee is that group wisdom will prevail instead of an individual decision. It was up to him to either agree with the findings of the purchase committee or append a dissenting note. There is no record to show that he was forced to sign nor was there any letter produced that he did not consent to the process. Nobody prevented him to make a complaint to the competent authority when the dispensaries were being supplied with medicines which were not indented. The applicant having not acted in the way he should crying hoarse at this juncture of time stating that for others mistake he is penalised does not further his cause. An onerous responsibility placed on him should have been discharged responsibly but there was utter neglect and lack of application of mind to the issue. Nevertheless, OA 1288/2012 was filed seeking common proceedings but it was not entertained by the Tribunal. Learned counsel for the applicant harped on the above time and again submitting that the Chairman and AAO are to be found fault with and not the applicant since he is a doctor not conversant with the rules. However, we find the submissions lacking force and substance as observed. Ld Counsel for the respondents pointed out that applicant being a senior officer, who is expected to be conversant with the rules, causing loss in lakhs to the respondents organisation, cannot be let off. UPSC and CVC did advice for initiating a major penalty proceedings against the applicant.

II) Against the above backdrop, if we analyse the action of the respondents we may arrive at a fair conclusion. Primarily it is despicable that the respondents did not file the reply statement for 5 years. The issue is about a disciplinary case which is hanging like a Damocles' Sword on the applicant from 2001 onwards. Delay in deciding disciplinary cases will affect the morale of the employees which is not in organisations interests. Employee will not be able to

concentrate on work in view of an uncertain future. This works at the back of his mind and this anxiety will impede his work efficiency. Therefore, organisations stipulate time lines to complete disciplinary cases. In the case at hand, incident took place in 2001-02 and the penalty was imposed after 11years. Thus there was abnormal delay in deciding the issue. Even the charge sheet was issued on 12.2.2009 and finalised on 31.5.2013, taking more than four years to decide. The outer limit to finalise disciplinary proceedings is a year as per Hon'ble Supreme Court directions in **Prem Nath Bali v. Registrar High Court of Delhi** Civil Appeal No.958 of 2010 on December 16, 2015**.**

> *"That every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit.*
>
> *Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."*

In the instant it was more than 4 years to initiate inquire and decide. Therefore strictly not in accordance with the principle laid down by the Hon'ble Supreme Court. Besides, Hon'ble Apex Court has directed in State of A.P. vs. N. Radhakishan, (1998) 4 SCC 154, that a balanced view need to be taken in disciplinary cases which are decided belatedly. Such a balanced view appears to be absent in the present case.

III) In addition documents sought were not supplied to defend the case. Non supply of documents is injurious to the principles of Natural Justice. It will disable a charged employee in effectively defend himself against charges framed. In this context the observations of the Hon'ble Supreme Court in *Kashinath Dikshita vs Union of India, (1986) 3 SCC 229* as cited below, are relevant to the instant case.

> *"And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? "*

The audit report which set out the loss was sought but not furnished since the loss suffered by the respondents organisation due to improper procurement was also a part of the charge. List of other documents vide applicant letter dated 23.2.2009 not being supplied has cast a shadow on the fairness of the disciplinary proceedings. The applicant was disadvantaged to defend his case as was observed by the Hon'ble Supreme court in the para supra.

IV) As is evident from the inquiry report, witness cited in the charge memorandum did not appear during the inquiry, in particular the CBI Inspector, who investigated the matter and the complainant who are critical to the case. Documents marked were not got introduced by the witness as is required in a rule 14 proceeding. This goes against the spirit of the directions of the Hon'ble Supreme Court in Union of India v. Prakash Kumar Tandon, (2009) 2 SCC 541

> *"summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice."*

It was for the inquiry officer to call all the witness listed in the charge sheet. By not calling them the opportunity to the applicant to cross examine is denied. Particularly in the present case the 5$^{th}$ respondent who complained to the

CBI. Unless the witness who are crucial to the disciplinary case are subject to examination and cross examination the inquiry remains to be incomplete. It is a major deficiency vitiating the inquiry process and is in violation of the Hon'ble Apex Court observation referred to.

V) Inquiry officer is supposed to be neutral. He needs to get to the truth and not pursue the case of the disciplinary authority in the words of Hon'ble Apex Court in State of U.P. v. Saroj Kumar Sinha,(2010) 2 SCC 772 as under :

> *"An inquiry officer acting in a quasi-judicial authority is in the position of pendent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. .... "*

The Inquiry officer question to the applicant that " How do you not feel yourself guilty of the charges levelled against you?" gives an impression that he has prejudged the issue. By doing so the inquiry officer has compromised the role of pendent adjudicator.

VI) While proceeding with the inquiry, Inquiry officer is expected to ask questions which should be fair, neutral and oriented to bring out the truth. Hon'ble Supreme Court has given an inkling of how an inquiry officer has to proceed in an inquiry in Union of India v. Bishamber Das Dogra, (2009) 13 SCC 102 as under:

> *20. The enquiry officer had put the following questions to the appellant:*
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> *"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief?*

> *Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"*
>
> *21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.)*
>
> *(h) Principles of natural justice cannot be put into a straitjacket formula and its observance would depend upon the fact situation of each case. Therefore, the application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case.*

The circumstances of the case and facts of the case are to be grounds on which the Inquiry officer has to quiz the applicant, as observed by the Hon'ble Apex Court above. Inquiry officer proceeded with a presumption that the applicant is guilty which is incorrect.

VII) Further, applicant was not given an opportunity to get himself examined which is a mandatory requirement under sub rule 18 of rule 14 of CCS(CCA) rules. Special emphasis was laid on this requirement by Hon'ble Supreme Court in Moni Shankar v. Union of India,(2008) 3 SCC 484, wherein the Apex Court has held ***:***

> *"The mandatory requirement of the inquiry officer asking the questions on the circumstances appearing against the charged officer after the prosecution closes its evidence when the charged officer himself does not enter the witness box, vide Rule 14(18) of the CCS(CC&A) rules, 1965 and corresponding provisions in the Railway Servants (Department and Appeal) Rules, has to be properly should be fulfilled to in strict sense. –"*

Similar observation was made by the Hon'ble Supreme Court in Ministry of Finance & Anr vs S.B.Ramesh on 2nd February,1998.

VIII) Being a Group 'A' officer, UPSC advise was sought and rightly so. The advice of UPSC has to be given to the applicant so that he can frame his defence based on the UPSC advise tendered. Particularly, when the disciplinary authority has based his decision on the advice of UPSC. Without supplying copy

of the UPSC advise and going ahead in imposing the penalty is against the observations of Hon'ble Supreme Court in Union Of India & Ors vs R.P.Singh on 22 May, 2014 reported in civil appeal no.6717 of 2008

> *"14. In the case of S.K.Kapoor, the Court accepted the ratio laid down in the case of T.V.Patel as far as the interpretation of Article 320(3)(c) is concerned and, in that context, it opined that the provisions contained in the said Article 320(3)(c) of the Constitution of India are not mandatory. While distinguishing certain aspects, the Court observed as follows:*
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> > *"7. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V.Patel's case is clearly distinguishable."*

IX) One another major infirmity noticed is that the other members of the purchase committee were let of by the respondents on the grounds that Dr Eswara Prasad retired from service and hence no action could be taken. Similarly in regard to Dr A.A.K Bernett, he was let off without any penalty since he did not actively participate in the purchase committee. Was it a reward for not being efficient. A question arises as to intent of the respondents organisation in taking the cited ground to drop action against Dr Bernett. Are the respondents sending a message that if you are not committed to the job then you will be steer clear of any disciplinary action. Respondents need to introspect on the same. Taking such a stand in disciplinary cases is detrimental to organisational interests. More so, when CVC has advised disciplinary action against both the doctors. The two doctors when they have signed the purchase committee minutes they too are equally responsible like any other member. If Dr Eswara Prasad retired he could have been proceeded under rule 9 with the approval of the Honourable President. Similarly in respect of Dr B. Chandrahas one another purchase committee

member, as respondents did not act on the directions of the Hon'ble Banglore Bench of this Tribunal in time, they dropped the penalty imposed on 25.5.2016. Therefore, respondents letting off these two doctors would imply that the applicant was discriminated though all were equally responsible. Targeting the applicant to impose the penalty would tantamount to legal malice. Even in imposing penalty there has to be uniformity as per Hon'ble Apex Court observation in Vijay Shanker Pandey vs. Union of India, 2014 (1) SCC 589 extracted here under:

> *"Besides, no action was taken against co-petitioner (another employee of respondent Union of India) which makes bona fides of respondent Union of India suspect and virtually brings it within the ambit of legal malice.."*

The concept of equality applies equally when benefits are extended and penalties are imposed. There cannot be any discrimination on either of the counts. Parity has to be there in order to usher in a fairness as stated by Hon'ble Supreme Court in **Rajendra Yadav vs State Of M.P.& Ors on 13 February, 2013** civil appeal no. 1334 of 2013.

> "*12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offence"*

The respondents have thus committed legal malice by penalising the applicant and leaving the others. Discrimination is thus out in the open.

X) Besides, the most important aspect pointed out by the Ld counsel for the applicant, is that the approval of the concerned Minister for

initiating disciplinary was not taken which is compulsory while initiating disciplinary action against a Group A officer. Unless the charge sheet is approved by the concerned Minister, it is invalid, according to the Hon'ble Apex Court observation in Union Of India & Ors vs B.V.Gopinath on 5 September, 2013 in civil appeal no 7761 of 2013, which is extracted hereunder:

> *"45. Much was sought to be made by Ms. Indira Jaising on clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by the CVO. According to the learned Addl. Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a Satisfaction Memo prepared by the CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo. We are unable to accept the submission of the learned Addl. Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DOP & T, issuance of show cause notice in case of disagreement with the enquiry officer report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty; and revision/review/memorial have to be taken by the Finance Minister. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rule 3(1)(i) and (3) (1) (iii) of the Central*

*Civil Services (Conduct) Rules against the officers mentioned in the note which included the appellant herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo."*

Therefore, as claimed by the Ld counsel by the applicant if the charge sheet is not approved by the concerned Minister then it is as good as not being issued. There is no document submitted by the applicant to support this averment.

XI) The AAO who was a member of the purchase committee was reported to be let off without any penalty as per the claim of the Ld counsel of the applicant. The 5th respondent was imposed with a minor penalty of censure, though he processed the bills, made the payments and complained to the CBI. This Tribunal in OA 885/2011 has set aside the penalty on the ground that negligence cannot be considered as misconduct.

The applicant conduct in approving the procurement was in the nature of negligence. Regrettable but fact remains to be so, as can be seen from the records. He did not ascertain the rules to be applied for procurement. Simply signed the minutes like all others in an innocent manner being unaware of the future in store. It was more a innocent mistake. Being a doctor he could not comprehend the administrative intricacies. A mistake which occurred due to negligence cannot be considered as misconduct. A single act or omission or error of judgment while holding a post of responsibility unaccompanied by serious or atrocious conduct would not constitute misconduct. There has not been any reference in any of the documents placed on record in regard to any adverse conduct of the applicant in the past. While being on the subject of

misconduct, Hon'ble Supreme Court Union Of India & Ors vs J. Ahmed on 7 March, 1979 reported in 1979 AIR 1022, 1979 SCR (3) 504,Hon'ble Supreme Court has observed as under :

> *"A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle .(Indicator Newspapers) (2)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur(1), and Satubha K. Vaghela v. Moosa Raza(2). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:*
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> *"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".*
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> *It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.(1)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty. "*

Thus the mistake committed was due to negligence, it need not be reckoned as misconduct and hence the charge of misconduct levelled against the applicant does not hold good.

XII) Lastly the action of the respondents also fails the wednesbury test as explained by the Hon'ble Supreme Court in *Union of India v. G. Ganayutham, (1997) 7 SCC 463 wherein it was held as under:-*

> *To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.*

We find no reasonableness in handling the case of the applicant as has been expounded in paras cited. Therefore action of the respondents does not measure up to Wednesbury test.

XIII) Therefore, to conclude , from the above stated facts it is evident that respondents have failed to provide documents required to the applicant to defend himself, key prosecution witness were not produced during the inquiry, prejudging the issue by the inquiry officer, sub rule 18 of rule (14) was ignored, inequality in imposing penalties between members for the same mistake, UPSC advise was not furnished to the applicant, absence of approval for the charge sheet by the Minister and unexplainable delay in processing and imposing the penalty. The decisions of the respondents at almost all the stages of the case were against the observations of the Hon'ble Supreme Court as pointed out in paras supra. This Tribunal has set aside the penalty of censure imposed on the 5$^{th}$ respondent and the respondents have let off two other members of the purchase

committee for committing the same mistake. The lapse was more in the nature of negligence. Ends of justice would be met if the applicant is also treated in a similar way like the other purchase committee members .

XIV) Therefore, in view of the above, the action of the respondents in imposing the penalty of reduction of pay is against rules, arbitrary, discriminative and illegal. Hence the impugned orders dated 31.5.2013 & 11.4.2013 are quashed. Consequently respondents are directed to consider as under:

i) With the setting aside of the impugned orders, the applicant be granted the consequential benefits as are to be granted as if the punishment were not to be imposed.

ii) Respondents have the liberty to proceed against the applicant along with the other members of the purchase committee by following rules and in accordance with law, without any discrimination against all those who were found fault with.

iii) Time permitted to implement the order is 3 months from the date of receipt of this order.

iv) With the above directions the OA is allowed.

v) No order as to costs.

**(B.V. SUDHAKAR)**
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**
**MEMBER (JUDL.)**

Dated, the 26th day of April, 2019

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