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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 310 of /19⁸⁸ Decided on : 24.11.1995

Krishan pal ... Applicant(s)

(By Shri G.D. Gupta Advocate)

versus

Union of India & Ors. ... Respondent(s)


(By Shri N.S. Mehta Advocate)

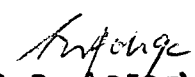
CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ? Y
2. Whether to be circulated to other Benches
of the Tribunal ? Y


(DR. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

(26)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.310/88

New Delhi: ^{NOVEMBER} 24th, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER(A)

HON'BLE DR. A.VEDAVALLI, MEMBER(J)

Shri Krishan Pal,

s/o Late Shri Brahananand,
r/o 29-B, Baba Kharak Singh Marg,
New Delhi.

.....Applicant

By Advocate Shri G. D. Gupta.

Versus

1. Union of India through
The Secretary to the Govt. of India,
Ministry of Works & Housing,
Nirman Bhawan,
New Delhi.

2. Director General(Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.

3. Shri M.K.Dixit(Enquiry Officer)
Commissioner,
Departmental Inquiries,
Central Vigilance Commission,
Jamnagar House,
Hutments, New Delhi

4. The Union Public Service Commission
through its chairman, Dholpur House,
Shahjehan Road,
New Delhi.

.....Respondents.

By Advocate Shri N.S.Mehta.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member(A).

In this application, Shri Krishan Pal, Former Executive Engineer, CPWD has impugned the order dated 26.12.85 (Annexure -P1) dismissing him from service and the order dated 10.2.87 (Annexure -P2) rejecting his revision petition. He has also challenged the findings of the Enquiry Officer in the departmental proceedings conducted against him

which led to his dismissal as also the order dated 20.2.1986 (para-2 of O.A.310/88) whereby the period of suspension has been treated as not spent on duty. He has also challenged the order dated 11.7.86 whereby his appeal addressed to the Secretary, Works & Housing Ministry was allegedly not forwarded to the President of India and he was directed to file a revision petition under Rule 29 CCS (CCA) Rules, 1965.

2. Shortly stated the applicant who was initially appointed as Asstt. Executive Engineer in the CPWD on 25.2.74 and was promoted as an Executive Engineer on 15.4.78, was proceeded against departmentally on 13.12.83 (Annexure-P14) on the charge that while functioning as Executive Engineer 'R' Division, CPWD, New Delhi in 1982, he failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. Servant in as much as on 3.9.82, he demanded Rs.1000/- and accepted Rs.1000/- on 4.9.82 from Shri R.K.Jain, Contractor in the matter of sending performance report of his brother Shri Bhopal Singh Jain for registration as a Contractor in CPWD. The applicant thus contravened Rule 3(1) (i) (ii) and (iii) of the CCS (CCA) Rules.

3. The applicant was placed under suspension w.e.f. 17.12.82 but the suspension order was revoked with immediate effect vide order dated 8.6.83 (Annexure-P10). Subsequently vide order dated 8.12.83 (Annexure-P13), it was decided to

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to grant full pay and allowances to the applicant for the suspension period in terms of F.R. 54-B(1) but it was stated that this order would be without prejudice to the power of review under F.R 54-B(6).

4. The applicant in his letter dated 21.12.83 denied the charges levelled against him and reserved his right to adduce defence at the time of detailed enquiry to be conducted by the Enquiry Officer.

5. The Enquiry Officer, who was appointed for the purpose, conducted a detailed enquiry and in his report dated 31.5.84 (Annexure-6) held that the charges as framed against the applicant stood proved.

6. The Disciplinary Authority (President of India after taking into consideration the Enquiry Officer's report and all other aspects relevant to the case and in consultation with the UPSC had concluded that the applicant is not a fit person to be retained in Govt. service and imposed the penalty of dismissal from service on him, vide impugned order dated 26.12.85 (Annexure-P1). Along with that order, a copy of Enquiry Officer's report and the UPSC's advice contained in letters dated 29.3.85 and 4.12.85 were sent to the applicant. Against that order of dismissal, the applicant filed an appeal to the Secretary, Works & Housing Ministry for being forwarded to the President of India but was informed that no appeal would lie and was advised

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to file a revision petition under Rule 29 CCS (CCA) Rules, 1965. Thereupon the applicant submitted a revision petition (Annexure-P2) addressed to the President of India who directed him in the first instance to exhaust the departmental remedies available to him. Thereafter he submitted another representation dated 10.6.86 (Annexure-P2) which was dismissed by the President of India on 10.2.87 (Annexure-P2).

7. The applicant has vehemently denied the allegations maintained in the charge-sheet.

8. The applicant's case is that one Shri Bhopal Singh Jain, who was working as unregistered Contractor even prior to the applicant's posting in the 'R' Division on 28.1.82, had applied for registration as Contractor in Class III. The Director General of Works, ^{U.P.W.D} called for a performance report of the past work of the Contractor from the applicant who was the Executive Engineer at that time, before considering Shri Jain's application. As the applicant had joined 'R' Division recently on 4.1.82 and was not aware about Shri Jain's past performance and as ^{the} relevant record was also not available, the applicant had to refer the matter to the Asstt. Engineer in March, 1982, which was followed by five reminders between 30.3.82 and 26.3.82 but despite those efforts, the Assistant Engineer did not send his reply. Meanwhile, according to the applicant, the brother of one Shri R.K. Jain, Contractor had approached the applicant with a proposal to purchase a tender in the name of another Contractor. As this was against

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the rules, the applicant told Shri Jain categorically that he did not agreed with the proposal upon which Shri Jain became inimical towards the applicant and threatened him with dire consequences. The applicant further contends that the work which was assigned to him in 1982, was time bound in character and hence the work which he had assigned to the Contractor was also time bound and he had taken care that all the labourers of the Contractor work smoothly to finish the work within the stipulated time. Unfortunately, Contractor Shri Bhopal Singh Jain had a dispute with the labourers engaged by him on account of his inability to pay their wages. The applicant therefore intervened in the matter on 30.8.82 and tried to resolve the dispute by requesting another Contractor Shri Satish Chandra Garg to lend Shri Bhopal Singh Jain Rs. 1000/- so that he may clear the labourers' wages. Shri Bhopal Singh Jain promised the applicant that he would return the said amount of Rs. 1000/- within three days and a Kaccha receipt was also received from Shri Bhopal Singh Jain in token of receipt of the said amount. Meanwhile, as the applicant had refused Shri R.K. Jain, brother of Shri Bhopal Singh Jain, to issue an irregular tender to the former in the name of another Contractor, Shri R.K. Jain was trying to find out way to take revenge and waited for ^{an} opportunity when the tenders were to be opened on 3.9.82. Since Shri Bhopal Singh Jain had said the he would return the amount to Shri R.C. Garg within three days. Shri R.C. Garg approached the applicant on 3.9.82 and complained that Shri Bhopal Singh Jain has not paid

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the money which was lent to him at the request of the applicant. The applicant states that since the said money was given upon his surety, it was his duty to see that Shri Bhopal Singh Jain paid the amount taken by him from Shri R.C.Garg and accordingly the applicant told Shri R.K.Jain, the brother of Shri Bhopal Singh Jain that he should convey the applicant's message to Shri Bhopal Singh Jain that the amount of Rs.1000/- which had been taken by him from Shri Garg should be paid immediately. The applicant alleges that taking advantage of this incident, Shri R.K.Jain tried to take revenge from the applicant and on 4.9.82 he came to the applicant and handed over Rs.1000/- . When this amount was paid to the applicant, he accepted the same thinking that this was the money which was to be paid to Shri Garg, which according to the applicant is what any prudent man would have thought under the circumstances. He states that immediately after he accepted the money from Shri Garg, he found a few CBI Officers there who charged him with illegal gratification from Shri R.K.Jain . The applicant admits that a search was made and Rs.1000/- was recovered from him. A Panchnama was prepared and it was alleged that the applicant had taken illegal gratification from Shri R.K.Jain. The said officers had come for a raid on the complaint of Shri R.K.Jain. The CBI also searched the applicant's house and a panchnama dated 4.9.82 was prepared, but nothing incriminating was found.

9. The applicant further states that on enquiry

he came to know that Shri R.K.Jain, brother of Shri Bhopal Singh Jain had lodged a report against the applicant that the latter had demanded a bribe of Rs.1000/- for sending Shri Bhopal Singh Jain's performance report to the DG, CPWD. The applicant has stated that it was not Shri Bhopal Singh Jain the affected party, but his brother Shri R.K.Jain who lodged the complaint, who was inimical towards the applicant. The applicant further states that from Shri R.K.Jain's deposition, it is clear that he had gone to the CBI to complain without meeting Shri B.S.Jain, or verifying the facts as would appear from his letter dated 7.9.82 (Annexure-P5) in which he had stated that he was not aware that his brother had taken Rs.1000/- from Shri Garg on 30.8.82 on the applicant's surety. The applicant points out that in that letter dated 7.9.82, Shri R.K.Jain had further stated that he had gone out of Delhi on 30.8.82 and had returned back on 2.9.82 and after that he had met the applicant in his office. In that letter he had further stated that Rs.1000/- had been asked for by the applicant from him since he was not aware that B.S.Jain had taken Rs.1000/- from Shri Garg, and he misunderstood that the money was being demanded as illegal gratification, because he had returned home late in the evening by which time his brother had left for Baraut and hence did not learn of the transaction between his brother and Shri Garg. It is only when Shri B.S.Jain returned from Baraut on 6.9.82 that he

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learnt of the happenings and explained the position to his brother Shri R.K.Jain.

10. The applicant further contends that after Shri R.K.Jain came to know that full facts he felt disturbed and wrote the letter dated 7.9.82 in the presence of Shri B.S.Jain and Shri Garg, enclosing the Kacha receipt given by Shri B.S.Jain to Shri R.C.Garg in token of having received Rs.1000/- on the applicant's surety. In this connection, in his confession before the Magistrate Ist Class on 16.9.82 (Annexure-P5), Shri R.K.Jain had also stated that the money taken by the applicant on 4.9.82 was the money to be returned to Shri Garg and was not a bribe. Shri R.K.Jain was also interrogated by the C.E.(Vig) and had sworn an affidavit on 16.9.82 reiterating the above facts.

11. The applicant further states that Shri Garg also swore an affidavit before the Magistrate Ist Class that he had loaned Rs.1000/- to Shri B.S. Jain, but subsequently retracted from that position in his statement before the CBI Inspector on 29.9.82 (Annexure -P 15) in which he stated that he had signed Shri R.K.Jain's letter dated 7.9.82 under pressure and had also sworn the above affidavit under pressure, although he had not specify under whose pressure he acted. The applicant denies having pressurised Shri Garg and regrets that Asstt. Engineer Shri R.K. Vatsa was not examined who may not have thrown light on this aspect, because Shri Garg had categorically stated

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that Shri Vatsa and Shri Jain had met him in the hostel and had asked him to sign the letter dated 7.9.82. The applicant further states that Shri R.K.Jain's statement before the Inspector CBI on 29.9.82 contradicts his letter dated 7.9.82 and B.S.Jain's statement of 29.9.82 has also been referred to. The applicant contends that the other statements of witnesses before the CBI Officers for laying trap on 4.9.82 are not relevant, as he does not deny that he accepted Rs.1000/- from Shri R.K.Jain. What he denies is the taking of a bribe and categorically asserts that the said amount was taken in lieu of the loan given by Shri R.C.Garg to B.S.Jain, since he had stood surety for the same and the money had to be returned to Shri R.C.Garg. After referring to the evidence tendered in the D.E. by various witnesses, some of which according to the applicant was unfairly rejected by the E.O., he has referred to the closure of the criminal case against him by the Sub-Judge on 2.6.84 and the rejection of his revision petition addressed to the President of India by a non-speaking order. He has therefore prayed for judicial intervention.

12. The respondents in their reply have challenged the contents of the O.A. They state that the applicant was caught red handed by the CBI Officers on taking a bribe from Shri R.K.Jain, and his version that this money was taken in lieu of a loan given by Shri R.C.Garg to Shri B.S.Jain had

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not been mentioned by him to the raiding party at the time and was clearly an afterthought. They state that the true facts are that the bribe was demanded by the applicant from Shri R.K.Jain for sending the performance report of B.S.Jain to DG(W) and B.S.Jain had clearly stated in his statement that office and related matters were being dealt with by his brother R.K.Jain who had also confirmed this in cross-examination on 29.9.82. They state that the letter dated 7.9.82 was written by Shri R.K. Jain to the applicant with a view to save the later and for fear of reprisals from the department as indicated by ~~him~~ ^{Shri R.K.Jain} in his cross-examination. They have drawn attention to his statement dated 29.9.82 in which he had stated that his letter dated 7.9.82 and also his affidavit were given because otherwise he feared his payments would have been stopped and he would have been harassed by the applicant who continued to be Ex.Engineer, R Division and the one who cleared his bills. The katcha receipt was also got signed under pressure as stated by Contractor Shri B.S.Jain before the E.O. and in fact there was no money transaction between R.C.Garg and B.S.Jain. Denying that the evidence tendered by some of the witnesses was unjustly rejected, the respondents state that the impugned orders were passed on the basis of the D.E. which was conducted in accordance with law and warrants no judicial interference, and the O.A. is therefore fit to be rejected.

13. The applicant in his rejoinder has broadly

speaking rejected the contentions of the respondents as contained in their reply and reiterated the contents of the O.A.

14. We have heard Shri G.D.Gupta for the applicant and Shri N.S.Mehta for the respondents. We have also perused the materials on record and given the matter our careful consideration.

15. The first and second grounds taken are that the revision order dated 10.2.87 (Annexure -P2 Colly) is a non-speaking order, which betrays lack of independent and proper application of mind and does not come to its own findings, on each and every article of charge. These grounds are wholly baseless, because the charge is only one and the detailed revision order dated 10.2.87, after reproducing the charge verbatim, refers to the applicant's denial of the same; the findings of the E.O; the reference to the UPSC; the order of the Disciplinary Authority; and the grounds taken by the applicant in his revision petition. It has discussed the evidence that was tendered during the enquiry and has concluded that the I.O's report and the UPSC's advice, was based upon that evidence; the procedure laid down in the CCS (CCA) Rules, 1965 had been complied with, and the charge having been established, the penalty of dismissal was appropriate and did not require any interference. The related ground that the Deputy Secretary to

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Govt. was not competent to sign the revision order is also without merit, as Dy. Secretaries to Govt. are fully empowered to authenticate instruments of Govt.

16. The next set of grounds assert that no cogent reasons have been given by the Disciplinary Authority rejecting the applicant's defence, and agreeing with the prosecution and the E.O's findings the Disciplinary Authority acted on the UPSC's advice without applying its independent mind to the facts; and the Dy. Secretary had no authority to sign the impugned order dated 26.12.85. Support in this connection is sought from the ruling in R.C. Singh Vs. UOI & others-O.A.No.410/86 decided on 6.12.94. These grounds also lack merit because the impugned dismissal order dated 26.12.85 (Annexure-P1) refers to the charge against the applicant, his defence, the findings of the E.O. holding the charge against the applicant to be passed, the advice of the UPSC agreeing with the E.O's findings on the charge, and the conclusions of the Disciplinary Authority agreeing with the E.O's findings and the UPSC's recommendations and holding that the applicant is not a fit person to be retained in Govt. service. A copy of the E.O's report and the UPSC's advice has been communicated to the applicant with the Disciplinary Authority's order. It may be mentioned that the UPSC in their detailed letter dated 4.12.85 had examined the entire case including the applicant's defence to the charge, the evidence

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tendered in the inquiry and the findings of the E.O. thoroughly and exhaustively, and saw no reason to disagree with the E.O.'s conclusions that the charge against the applicant stood proved, and they did not consider the applicant a fit person to be retained in Govt. service. From a perusal of the impugned dismissal order, it is manifest that the Disciplinary Authority agreed with the findings of the E.O. and the UPSC's recommendations for the reasons contained therein and imposed the punishment of dismissal. The argument that the Dy. Secretary had no authority to authenticate the dismissal order, had already been rejected in the preceding paragraph, and the judgment in R.C.Singh's case (Supra) which relates the facts and circumstances of that particular case have no application in the present case before us. In this connection, applicant's counsel has said that the Disciplinary Authority's order should have confined itself only to the E.O.'s report and should not have taken into account " all other aspects relevant to the case " as mentioned in paragraph 3 of the impugned order dated 26.12.85. It is for the applicant to establish what other aspects relevant to the case were considered by the Respondents in respect of which he was denied the right to defend himself which resulted in violation of the principles of natural justice. Till that is established by the applicant, the impugned dismissal order warrants no judicial interference on that score.

17. The next set of grounds relate to non-supply of the E.O.'s report and the UPSC's

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recommendations dated 4.12.85 before imposing the punishment of dismissal. However, in the light of the Hon'ble Supreme Court's ruling in M.D. ECIL Hyderabad Vs. Karunakar-JT 1993(6) SC 1 making it mandatory for supply of Enquiry reports where the punishment order was passed after 20.11.90, the non-supply of the inquiry report dated 31.5.84 on the UPSC's letter dated 4.12.85 to the applicant along with the dismissal order dated 26.12.85 does not vitiate the proceedings. Applicant's counsel Shri G.D.Gupta has argued that the vigilance report should also have been supplied to the applicant, and in this connection has relied upon a ruling D.C.Agarwal Vs. SBI (citation not given) but in the absence of any material to show that such a report was relied upon by the respondents during the D.E. or was utilised by them, in coming to a decision on the E.O's findings and the UPSC's recommendations, this ground also fails.

18. The next set of grounds relate to the credibility of the witnesses. It has been argued that R.K.Jain, B.S.Jain and R.C. Garg have been making statements at different points of time which were inconsistent with each other and where a person was making two inconsistent statements, the same could not be relied upon. Reliance in this connection was sought to be placed on Suraj Mal Vs. State-AIR 1979 SC 1408 and J.T. Tatade Vs. M.N.Bhagat-1991(6) SLR 123. Flowing from this it was argued that if the evidence of R.K.Jain, B.S.Jain and R.C.Garg were disregarded on account of inconsistency ,

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it would be a case of "no evidence" against the applicant, and in that event it would be a case of the E.O. having come to a perverse finding which warranted judicial interference. Reliance in this connection was placed on a Gujarat High Court's decision B.B.Gadhavi Vs. State of Gujrat & others-1986(2) SIR 19; UOI Vs. H.C.Goel-AIR 1964 SC 364; a Kerala High Court Ruling P.B.Rocho Vs. UOI-1984 (2) SIR 359 and Dir.General ESIC & others-1988(7) SIR 526. Attention was also invited to Section 155(3) Indian Evidence Act dealing with impeaching the ^{credibility} ~~credit~~ of witnesses. It was contended that if the evidence of these allegedly unreliable witnesses were rejected, and the testimony of a witness such as the driver was not discarded, merely because he was a low paid employee (reliance being placed on Bombay High Court's decision in Deonath Vs. State of Maharashtra- AIR 1967 Bombay 1) there was no incriminating evidence against the applicant.

19. We must recall here that in UOI Vs. Upendra Singh 1994(27) ATC 200, the Hon'ble Supreme Court has observed that the jurisdiction of the CAT is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and constraints which apply to the said jurisdiction, would also apply equally to the Tribunal. If the O.A. of the applicant was to ^{have} been filed in the High Court, it would have been termed properly speaking as a writ of prohibition. A writ of prohibition is issued only when a patent lack of jurisdiction

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is made out . It is not within the jurisdiction of the Tribunal to take over the function of the disciplinary or appellate authority and to go into the truth or otherwise of the charges, or into the correctness of their findings, much less evaluate the credi-bility of the witnesses. Noting that the function of the Court/Tribunal is one of judicial review, their Lordships have quoted with approval the following extracts from their decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons- 1992 Supp (2) SCC 312 :

" Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. 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 by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

20. While applicant's counsel Shri G.D.Gupta is no doubt correct, when he states that the testimony of a witness cannot be disregarded or discounted, merely because he happens to be lowly paid we must categorically state that the Tribunal would be traversing far beyond the parameters defined by the Hon'ble Supreme Court above, if we were to evaluate the credibility of the witnesses and reappraise the evidence thrown up in the departmental

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enquiry. For this reason the set of grounds relating to the credibility of the witnesses and the prayer made to the Tribunal to reappraise the evidence fails, and the rulings cited by Shri Gupta do not help the applicant.

21. The next ground taken is that of bias on the part of the E.O. but there are no materials furnished by the applicant to support this allegation.

22. The next ground taken is that the E.O. did not take into account the circumstances leading to the initiation of the D.E. In this connection, the applicant has reiterated his version of the incident namely that the CBI trap was laid against the applicant because of R.K.Jain's complaint that he had asked for a bribe of Rs.1000/- for giving the performance report of his brother B.S.Jain, but when the matter was pending with the A.E. (who had to initiate the report) despite reminders, no reasonable person could conclude that he had asked for a bribe. It may be stated here that the E.O. in his enquiry report has discussed all^{the} available evidence, including the applicant's version of the happenings in considerable detail and in paragraph 6 of his report has categorically concluded that there was motive or cause for the applicant to demand the bribe; he did demand the bribe of Rs.1000/- from R.K.Jain on 3.9.82; he did accept Rs.1000/- from R.K.Jain on 4.9.82 and his defence that he accepted this sum as a refund of a loan to be passed on to R.C.Garg was not established. In this connection, it is relevant

to mention that in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and others- 1991(2)Supreme Court Cases 716 the Hon'ble Supreme Court has observed thus:

"It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic Tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable."

Applying the above yardstick and in the light of the fact that the applicant was caught red-handed accepting Rs. 1000/- in question, this ground taken by the applicant fails.

23. The next set of grounds relate to the relative worth of the affidavits filed by Shri R.K.Jain, R.C.Garg, and B.S.Jain and the letter written by R.K.Jain and witnessed by R.C.

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Garg and B.S.Jain vis-a-vis the evidence tendered by them in the D.E. In this connection, the applicant has also asserted that no proof had been produced to show that the affidavits and the letter dated 7.9.82 was given under pressure . They were therefore fit to be believed in preference to the evidence tendered in the enquiry. These grounds again involve reappraisal of the evidence, which for the reasons already discussed lies beyond the competence of the Tribunal. We may mention here that during hearing Shri Gupta asserted that the CBI had pressurised some of the PWs to give evidence against the applicant, but no evidence to support this assertion was furnished. These set of grounds therefore also fail.

24. The next set of grounds relate directly to the appreciation of evidence. It is asserted that the evidence of R.K.Jain, B.S.Jain and R.C.Garg was unreliable as they were making contradictory statements and should not have been considered by the E.O; the testimony of defence witness Bhagwan Kaushik, Jeep Driver was wrongly disregarded because he was a lowly paid employee; the evidence of J.E. Amar Singh who was summoned as a P.W. was also disregarded on the ground that he was a subordinate of the applicant, and till he was declared hostile , his evidence had to be given due credit. We have already stated unequivocally in the previous paragraphs and we reiterate that we would be traversing far beyond the parameters

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defined by the Hon'ble Supreme Court, if we were to reappraise the evidence. Hence these grounds also fail.

25. It has also been asserted that the UPSC did not properly assess the facts while making its recommendations, but this has not been established during hearing.

26. During hearing, applicants' counsel Shri Gupta invited our attention to the fact that the CBI had raided the applicant's house but discovered no incriminating materials, and found that the applicant was living in modest circumstances and without ostentation, and it was therefore not correct to say that the applicant had demanded or accepted a bribe. While the fact that the applicant was living in modest circumstances might well be true that per se would not warrant our judicial interference.

27. In this connection, in UOI Vs. Parmananda- AIR 1989 SC1185, the Hon'ble Supreme Court has observed:

"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 finding of the Inquiry 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 legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an

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enquiry consistent with the rules and in accordance with the 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. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

As the applicant has not succeeded in establishing that the enquiry has not been consistent with the rules, or in violation of the principles of natural justice, and as the applicant was given full opportunity to defend himself, we find ourselves unable to grant the reliefs prayed for by the applicant.

28. This OA. therefore fails and is dismissed.
No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A)

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