Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No.OA-1049/86 Date: 11.1.1989.

Shri M.K. Sarkar .... Applicant

Versus

Union of India & Another .... Respondents

For the Applicant .... Shri R. Kapur, Advocate.

For the Respondents .... Shri P.P. Rao, Sr. Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P. Mukerji, Vice-Chairman(Admn.).

1. Whether Reporters of local papers may be allowed to see the judgement? yes

2. To be referred to the Reporter or not? yes.

(Judgement of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice-Chairman)

The question whether imposition of the penalty of dismissal on a Grade I Officer of the Central Government for possession of disproportionate assets to the tune of Rs.6,736/- during a span of ten years (1966 to 1977) and for not reporting to the competent authority regarding the transaction concerning the lease of a horse from the Tollygunge Club, Calcutta, of which he was a member, is legally sustainable is the issue in the present application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant joined the Ministry of Finance as an Income Tax Officer, Class I in 1966. He was promoted as Assistant Commissioner of Income Tax w.e.f. 1.4.1977. The alleged misconduct which led to the disciplinary inquiry and imposition of penalty against him took place during this period. A search was conducted by the C.B.I. at the residence and office of the applicant in October,

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1977 and thereafter, on the recommendation of the C.B.I., departmental proceedings were initiated against the applicant in February, 1985. The inquiry was held expeditiously and the impugned order of dismissal was passed by the disciplinary authority on 29.10.1986. The applicant filed the present application before the Tribunal on 25.11.1986. By an order dated 21.12.1987, another Bench of this Tribunal, after hearing the learned counsel for both the parties, adjourned the case to 29th February, 1988 and directed that in the meantime, under Rule 29 or 29-A of the C.C.S.(CCA) Rules, 1965, the petition be regarded a representation and a decision thereon by the respondents be taken and the respondents were further directed to inform the Court of the outcome before that date. Pursuant to the above direction, the Reviewing Authority passed an order on 26th February, 1988 under Rule 29 of the C.C.S.(CCA) Rules, 1965 confirming the penalty awarded to the applicant by order dated 29.10.1986. Thereafter, with the leave of the Tribunal, the original application was amended on 23.8.1988 whereby the applicant also sought to quash the review order dated 26.2.1988, in addition to his original prayer for quashing the impugned order of dismissal dated 29.10.1986.

3. The Articles of charge accompanying the memorandum issued to the applicant on 5th January, 1984 read as follows:-

"Article No.I

That said Shri Manoj Kumar Sarkar while functioning as Income-tax Officer/Assistant Commissioner of Income-tax at Calcutta, Bombay and other places during the check period commencing from 16.8.1966 to 11.10.1977 acquired assets in his name as well as in the name of other members of his family valued Rs.154386 which was highly disproportionate to his known sources of income, amounting to

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Rs.290294.83 i.e. 290295 leaving likely saving of Rs.115044.00 after taking into account the total expenditure amounting to Rs.175251.18 i.e. Rs.175251, to the extent of Rs.39342.00 approximately.

That said Shri Monoj Kumar Sarkar by his above acts exhibited lack of integrity and conduct unbecoming of a Govt. servant and thereby violating the Rule 3 of the Central Civil Service (Conduct) Rules, 1964.

Article No.II.

That said Shri Monoj Kumar Sarkar during the aforesaid period and while functioning in the aforesaid office failed to report to the prescribed Departmental Authority about the transaction regarding purchase of 2 Racing Horses named Luna and Haridas in Tollygunge, Calcutta.

That said Shri Monoj Kumar Sarkar by his above acts contravened Rule 18(3) of Central Civil Service (Conduct) Rules, 1964.

Article No.III

That said Shri Monoj Kumar Sarkar during the aforesaid period and while functioning in aforesaid office failed to report to the prescribed Departmental Authority regarding the transaction of purchase of one Television Set valued Rs.5,800/- found in his house during the search.

That said Shri Monoj Kumar Sarkar by his above acts contravened Rule 18(3) of Central Civil Service (Conduct) Rules,1964."

4. The Inquiry Officer submitted a report on 31.7.85 holding that Article I of the charge is proved to the extent that during the period of ten years mentioned above, the asset of the applicant was disproportionate to his known sources of income to the tune of Rs.17560.17, that Article II was also proved and that Article III was not proved.

5. The U.P.S.C. which was consulted before the penalty was imposed on the applicant, vide their letter dated 13.10.1986 endorsed the finding of the Inquiry Officer. However, as regards the disproportionate assets, the U.P.S.C. estimated it to be only Rs.14,185/-.

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As regards Article II, the UPSC was of the view that the failure of the applicant to inform the Government about entering into a lease agreement with the Tollygunge Club in respect of the horse 'Haridas' is in contravention of Rule 18(3) of C.C.S.(Conduct) Rules, 1964, though no direct evidence was forthcoming in respect of transactions relating to the horse 'Luna'. The U.P.S.C. also found that with reference to Articles I and II of the charge, the applicant exhibited lack of integrity and conduct unbecoming of a Government servant in violation of the C.C.S.(Conduct) Rules, 1964.

6. The Reviewing Authority by its order dated 26th February, 1988, also endorsed the finding of the U.P.S.C. but scaled down the amount of disproportionate assets to Rs.6,736/-.

7. We have gone through the records of the case carefully and have heard Shri R. Kapur, the learned counsel for the applicant, and Shri P.P. Rao, Senior Advocate for the respondents. The learned counsel for the applicant submitted that Shri M.S. Narayanan, the then Chairman of the Central Board of Direct Taxes, was not favourably disposed towards the applicant. Though allegations of mala fides have been made against Shri Narayanan, the applicant has not impleaded him by name as one of the respondents. In view of this, we accept the contention of the respondents that the allegation of mala fides against Shri Narayanan cannot be gone into in the present proceedings.

8. During the hearing, the arguments centered round

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the following issues, namely:-

(i) whether the quantification of disproportionate assets made by the respondents is open to review by the Tribunal;

(ii) whether in the present case, the respondents were justified in imposing the penalty of dismissal, regard being had to the fact that the disproportionate assets were only to the tune of Rs.6,736; and

(iii) whether there was non-compliance with the provisions of the Conduct Rule regarding reporting about the alleged transaction concerning the lease of a horse from a sports club and if so, whether imposition of the penalty of dismissal was justified.

9. On going through the report of the Inquiry Officer and other documents on record, we are satisfied that the enquiry was made by giving reasonable opportunity to the applicant to defend himself and that the Enquiry Officer, the U.P.S.C., the disciplinary authority and the Reviewing Authority acted fairly in the matter of estimating the alleged disproportionate assets. In such a case, we are of the opinion that the Tribunal should not reassess the evidence and recompute the quantum of disproportionate assets. We agree with the contantion of the learned counsel of the respondents in this regard. We,therefore, do not consider it appropriate to reassess the quantum of disproportionate assets as finally arrived at by the Reviewing Authority.

10. With regard to the second issue, the contention of the learned counsel of the applicant is that admittedly, the disproportion of the assets, according to the reviewing order, is even less than 2½ per cent of the total estimated income. He vehemently argued that according to the judgement of the Supreme Court in Krishnanand Agnihotri Vs. The State of Madhya Pradesh, A.I.R. 1977, S.C. 796, any disproportionate asset which is below 10 per cent of the income, deserves

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to be ignored. As against this, the learned counsel for the respondents forcefully contended that the decision of the Supreme Court was given in a case involving criminal prosecution under the Prevention of Corruption Act, 1947 and that the ratio of that judgement would not be applicable to a case of misconduct. He also urged that an authoritative ruling on this aspect of the matter is not available and submitted that we should consider it as a legal issue for our decision.

11. The learned counsel for the respondents argued that the ratio in Krishnand's case would not apply to departmental proceedings and that the expression 'disproportionate assets' has been used in Article I of the charge in a loose sense. According to him, the correct expression to be used is 'surplus income'. He contended that the ratio laid down by the Supreme Court in a criminal case would not be applicable to a case of misconduct.

12. As a general proposition, we agree that the evidence or finding in a criminal case may not be automatically applied to a departmental proceeding. However, as regards the possession of assets by a Government servant beyond the known sources of his income, any decision of the Supreme Court, while interpreting the provisions of Section 5(3) of the Prevention of Corruption Act, 1947, would be relevant in the context of a departmental proceeding for the misconduct of possession of assets by the charged officer, beyond his known sources of income.

13. In A.R.R. Deshpande Vs. Union of India & Another, 1971, SLR 776, Shri V.S. Deshpande, J. of the Delhi High Court, as he then was, observed that a departmental inquiry held under the CCS(Conduct) Rules is not a criminal trial for the imposition of a punishment.

Nor is it a proceeding in a court of law.

It is not even a lis between two parties which is being decided by a third person. It is only a proceeding instituted by the Government in its capacity as the employer against the petitioner in his capacity as the employee for the satisfaction of the mind of the Government as to whether the petitioner has committed misconduct. Such misconduct is merely relevant to the contract of service between the parties. The learned Judge referred to the provisions of Article 311 of the Constitution and the C.C.S.(CCA) Rules providing for imposition of punishment in certain cases and subject to certain proceedings being followed and added as follows:-

> "At times, a particular kind of misconduct may also be punishable as a criminal offence. Even then the misconduct for the purposes of a departmental proceeding is distinct from the criminal misconduct for which a criminal Court can convict and sentence a person. For, a lesser degree of proof than is required for conviction in a criminal Court may be regarded as sufficient to prove the same type of misconduct in a departmental proceeding. Secondly, even if certain requirements of an offence are not proved in a departmental inquiry, still the conduct of the civil servant may amount to misconduct if it is unworthy of a civil servant. Similarly, any lapse from the character or integrity expected of a civil servant may be regarded as misconduct even though it may not amount to the commission of any offence.
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> Just as the concept of misconduct in a departmental proceeding is not based on any susbstantive law, similarly the procedure in a departmental proceeding need not be governed by any law relating to procedure but may be regulated merely by the rules of natural justice or by general ideas as to fair-play. It is only to avoid vagueness of such ideas of fair procedure that the CCS(CCA) Rules are framed. Though they are statutory rules, they do not apply to departmental inquiries. Therefore, it is only the basic principles of the rules of fair-play embodied in Evidence Act that would be applicable to the departmental inquiries. The presumption that an accused person is not guilty until he is proved to be guilty is of course a part of the general rule of law. Such general rules of law would include not only the Criminal Procedure Code and the Evidence Act but also the presumption which was then contained in Section 5(3) of the Prevention of Corruption Act, 1947 prior to its amendment in 1964. The general rule of law

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> regarding the presumption of innocence of the accused and the burden of proof to prove to the contrary on the prosecution is, therefore, subject to an equally general exception analogous to section 5(3) of the Prevention of Corruption Act, 1947".

14. In the case before the Delhi High Court, one of the contentions raised by the petitioner was that a presumption could be drawn under Section 5(3) of the Prevention of Corruption Act, 1947,as it then stood prior to the amendment of 1964,only in a trial for the offence of criminal misconduct. But the ordinary rule that the petitioner is innocent unless proved to be guilty, applied to the departmental inquiry. The finding of disproportionate assets against the petitioner was based on the presumption which could be drawn under Section 5(3) of the Prevention of Corruption Act and was vitiated.

15. The aforesaid argument was rejected by the learned Single Judge with the following observations:-

> "The argument of the learned counsel for the petitioner is that only the general rule of the presumption of innocence should be applied to the departmental inquiries because it is fundamentally a rule of fair procedure. He, however, strongly urges that the presumption analogous to section 5(3) of the Prevention of Corruption Act, 1947 is not a fundamental rule of fair-play and should not, therefore, be made applicable to a departmental inquiry. What is a general principle of fair-play is to be determined on broad considerations of justice. It is well-known that the making of illegal gains by a civil servant is an extremely secret activity, the proof of which by direct evidence is very difficult. But indirect evidence in such a case ought to be given importance when it cannot be rebutted by the civil servant concerned. If a civil servant is found in possession of assets disproportionate to the known source of his income, then it would be fair to presume that the excess assets must have been obtained by him by corrupt means unless he can explain that they were obtained by legal means. It is because the Legislature thought that such a presumption could be justly raised that it was embodied in section 5(3) of the Prevention of Corruption Act, 1947. Indeed the Legislature

went further and later converted this presumption into a substantive offence of criminal misconduct. In view of the deleterious effect which corruption of public servants has on society and administration, it was a very salutary rule which was laid down by the presumption embodied in section 5(3) of the Prevention of Corruption Act. It cannot reasonably be urged, therefore, that the presumption does not represent a principle of justice and fair-play.

If the argument of Shri S.S. Chadha, learned counsel for the petitioner is to be accepted, it would mean that a person can be convicted of a criminal offence on the strength of this presumption but a civil servant cannot be regarded as having committed civil service misconduct in a departmental inquiry by resorting to such a presumption. What would be sufficient to prove a serious crime would be regarded as insufficient to prove a mere civil service misconduct. Such a result would be unreasonable and almost absurd.

Even if we were to assume for the sake of argument that the provisions of section 5(3) of the Prevention of Corruption Act, 1947 were specially directed against a particular criminal offence and should not be regarded as a principle of general application in a departmental proceeding on the analogy of the statute, the Government should be able to invoke such a presumption against a civil servant in a departmental inquiry merely because it represents a principle of justice and fair-play quite apart from the statute. Therefore, even after the amendment of section 5(3) in 1964 when the presumption ceased to exist and became a substantive offence, the Government would be entitled to raise such a presumption against a civil servant purely as a rule of justice and fair-play not based on any statute. I, therefore, hold that quite independently of the former section 5(3), the presumption is a rule of justice and fair-play and its application to a departmental proceeding in no way vitiates it."

16. The fact that the legal position in regard to disproportionate assets dealt with in the Prevention of Corruption Act applies equally to departmental proceeding is also borne out from the Office Memorandum issued by the Ministry of Home Affairs on 16th December, 1964 which reads as follows:-

"A presumption of corruption fairly and reasonably arises against an officer who cannot account for large accretion of wealth which he could not possibly have saved from his known sources of income. This principle

has received statutory recognition in Section 5(3) of the Prevention of Corruption Act,1947 and its application in a departmental enquiry against an officer charged with corruption could not, therefore, be unjust or inequitable. In fact this principle has recently been upheld by the Supreme Court in the case of Shri G.R. Mankar Vs. Union of India (Civil Appeal No.160 of 1963).

Ministry of Finance etc. are requested to ensure that in a departmental enquiry against an officer charged with corruption and found to be in possession of assets disproportionate to his known sources of income, the Presenting Officer concerned brings the legal position, as set out in paragraph 1 above, to the notice of the Enquiring Officer.

[M.H.A., O.M. No.39/19/63-Ests.(A), dated the 16th December,1964]"

(Vide Swamy's Compilation, C.C.S.(Conduct) Rules, 22nd Edition, p.88)

17. It will be open to the Court to examine the inquiry report in a disciplinary proceeding pertaining to acquisition of disproportionate assets in order to ascertain whether the materials on record are reasonably sufficient to support the finding. In Shri Nand Lal Vs. Union of India, 1973(2) SLR 63, the Delhi High Court dealt with such a case where disciplinary proceedings had been initiated on the charge of acquisition of disproportionate assets by the petitioner while working as Controller of Imports and Exports in the Office of the Joint Controller of Imports & Exports, Bombay. The High Court went into the details of the estimates made by the Inquiry Officer in arriving at the quantum of disproportionate assets so as to ascertain whether the materials on record were reasonably sufficient to support the finding. In this context, the Court observed that the meaning of the word 'disproportionate', according to the Concised Oxford Dictionary, is "relatively too large or small".

It was further observed that "it would not be disproportionate, therefore, if the assets were not relatively too large or too small; in other words, a slight excess would not be sufficient". The Supreme Court has laid down an indicator in Krishnanand's case in this regard.

18. We have no doubt in our mind that the ratio of Krishnanand's case would equally apply to a case of disproportionate assets in regard to which a departmental proceeding has been initiated against a Government servant under the C.C.S.(Conduct) Rules, 1964.

19. In Krishnanand's case, the question which arose for determination was whether the prosecution was justified in invoking the applicability of the presumption contained in sub-section(3) of Section 5 of the Prevention of Corruption Act. That sub-section provides that in any trial of an offence punishable under sub-section (2) of Section 5, namely, the offence of criminal misconduct committed by a public servant in the discharge of his duty, the fact that the accused is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, may be proved and on such proof, it is presumed unless contrary is proved that the accused is guilty of criminal misconduct in discharge of his official duty and his conviction, therefor , shall not be invalid by reason only that it is based solely on such presumption. After a detailed examination of the income and expenditure of the appellant, the Supreme Court observed that the alleged disproportionate assets which work out to less than 10 per cent of the total income, should be ignored.

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The following observations made by the Supreme Court are relevant:-

> ".....The assets possessed by the appellant were thus in excess of the surplus income available to him, but since the excess is comparatively small - it is less than ten per cent of the total income of Rs.1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under sub-section(3) of Section 5."

20. In the present case, the quantum of alleged disproportionate assets of the applicant which was mentioned in Article I of the charge, was Rs.39,342/-. It was merely an estimate. That estimate was further reduced to Rs.17,560/- by the Inquiry Officer and again to Rs.14,185/- by the U.P.S.C. It was still further reduced to Rs.6,736/- by the impugned review order dated 26th February, 1988. It is well settled that the order of the disciplinary authority merges with the order passed by the Reviewing Authority and, therefore, what is relevant for our present purpose is to consider whether the surplus income or disproportionate assets standing in the name of the applicant is liable to be ignored altogether in view of the ratio in Krishnanand's case, or whether notwithstanding the ratio in that case, one can come to the conclusion that the applicant is guilty of the misconduct of lack of integrity and conduct unbecoming of a Government servant within the meaning of Rule 3 of the C.C.S.(Conduct) Rules, 1964.

21. Here again, we have no doubt in our mind that the ratio in Krishnanand's case will be applicable and the estimated disproportionate asset of Rs.6,736/-, being less than 2½ per cent of the total income, ought to be

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ignored. This fact also does not establish the charge that the applicant lacked integrity and conduct unbecoming of a Government servant within the meaning of Rule 3 of the C.C.S.(Conduct) Rules, 1964.

22. The learned counsel for the applicant argued that even the estimated amount of Rs.6,736/- will be wiped out if two items of expenditure (Rs.2,400 representing the alleged purchase of a saree by the applicant, and Rs.4,460/- representing the alleged expenses incurred by the applicant in connection with the maintenance of a dog), are found to be bogus and not substantiated by evidence. Generally speaking, it is too much to expect from a Government servant to keep the vouchers, accounts, etc., of the purchases of cloth made by him, or of the food-stuffs consumed by him or his pet dogs. The applicant was living in a joint family with his in-laws and the dog was being fed from the joint family kitchen. Hence, it is all the more difficult to assess the expenditure incurred. In this context, we may recall the following observations made by the Orissa High Court in Shri Hemanta Kumar Mohanty Vs. State of Orissa, 1973(1) SLR 1121 at 1137:-

> ".....The appellant is to satisfactorily account for the disproportionate assets and not to prove his claim with mathematical exactitude beyond all possibility of doubt. One in many might be keeping accounts of expenditure for his satisfaction; but why should he procure and preserve supporting bills and vouchers? These are not government cash to be audited. Besides why should one keep them from the beginning of his career till his superannuation anticipating to be required in a Court of Law?"

23. In view of the conclusion reached by us in para.21 above, it is not considered necessary to embark upon a detailed examination of the correctness of the computation of disproportionate assets in the instant case. The check period in the instant case was spread over a span of ten years. The possession of surplus income to the tune of Rs.6,736/-by a Group A officer during such a period,which is less than 2½% of his total income, does not, to our mind, indicate lack of integrity and conduct unbecoming

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of a Government servant within the meaning of Rule 3 of C.C.S.(Conduct) Rules, 1964.

24. Therefore, the impugned order of punishment of dismissal from Government service is not legally sustainable on the alleged Article of charge of possession of disproportionate assets.

25. The position is slightly different as far as Article II of the charge is concerned. Rule 18(3) of the C.C.S.(Conduct) Rules, 1964 provides, inter alia, that where a Government servant enters into a transaction in respect of movable property either in his own name or in the name of a member of his family, he shall, within one month from the date of such acquisition, report the same to the prescribed authority if the value of such property exceeds Rs.2,000/- in the case of a Government servant holding a Class I (Group 'A') post. The proviso under sub-rule (3) is to the effect that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with a Government servant or otherwise than through a regular or reputed dealer. The expression 'movable property' has been defined in explanation 1 to include inter alia, "jewellery, [illegible], insurance policies, the annual premia of which exceeds Rs.2,000/- or 1/6 of the total annual emoluments received from Government, whichever is less, shares, securities and debentures". Explanation 2 occurring under sub-rule(3) defines the expression 'lease' to mean "except where it is obtained from or granted to, a person having official dealings with the Government servant, a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent".

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26. In the present case, the admitted factual position is that the applicant had entered into a lease agreement with the Tollygunge Club Ltd., Calcutta on 26th March, 1976 for leasing the horse 'Haridas' for a period of 12 months w.e.f. 1.4.1976 on payment of a monthly fee of Rs.200/-. The relevant extracts of the said agreement are as follows:-

> "It is hereby agreed that the Club is leasing to you b.i.g. "HARI DAS" for a period of 12 months with effect from 1.4.76 on the following terms. We shall be glad if you will sign both copies of this letter in acceptance of these terms, and one copy will be retained for our records.
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> 1. The principal aim of the Club's lease scheme is to encourage Members to take an active interest in both our Gymkhana Racing and other equestrian activities at the Club, and our efforts will be directed thereto. The horse will be expected to accept to run on all Tolly Race Days, except only with the permission of the Stewards or against vet's certificate.
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> 2. Except only when this horse is racing at R.C.T.C. this horse should be kept in the Club's Stables at Tollygunge. You will, of course, have first priority of riding the horse, but it will be available for backing by members whenever you are absent.
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> 3. You will be charged a monthly fee of Rs.200/- for this lease. If you desire that it should be at Livery in the Club pool, the present charge for each is Rs.450/- per month. This is subject to amendment from time to time.
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> 4. In respect of total subsidies and stake-money earned at Tollygunge Gymkhana Races, 15% will be paid to this Club. In respect of gross stake-money earned at R.C.T.C., 15% will be paid to this Club.
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> 5. By the 15th of each month to which these charges refer, we would ask you to pay to the Club Rs.200/- lease fee referred to in (3) above, as also the livery fee of Rs.450/- per month. You will appreciate that the Club should not be out of pocket in respect of these charges, and we retain the right to cancel the lease if the charges are not paid by the last day of the month".

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27. According to the accounts furnished by the Tollygunge Club Ltd., the total earnings for the year 1976 in respect of Hari Das were Rs.2,803/- and the total expenses were Rs.3,634/-. This results in a deficit of Rs.831/- (vide Annexure IX to the amended application, p.127 of the paper-book). It is also noticed from the said accounts that the lease fees at the rate of Rs.200/- per month was paid from April to October, 1976 amounting to Rs.1400/-.

28. The learned counsel for the applicant contended that the value of the transaction of lease in question did not exceed Rs.2,000/- and, therefore, the applicant was not required to report about the transaction to the competent authority under Rule 18(3) of the C.C.S.(Conduct) Rules, 1964. Taking the monthly lease fee as Rs.200/-, or the total lease fee paid from April to October, 1976, the amount will be less than Rs.2,000/-.

29. As against the above, the learned counsel for the respondents contended that the lease fee for a period of 12 months has to be taken into account and if that is done, the amount will be Rs.2,400/- and, therefore, the applicant was required to report about the transaction under Rule 18(3).

30. We find considerable force and merit in the contention of the learned counsel for the respondents. The lease period cannot be split up into months merely because the lease fee for each month has been stipulated in the Lease Agreement. Whether the applicant paid lease fee only for 7 months and not for 12 months, is also not relevant. We hold that the transaction in regard to the

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leasing of Hari Das ought to have been reported to the competent authority by the applicant in accordance with Rule 18(3) of the C.C.S.(Conduct) Rules, 1964.

31. The contention of the learned counsel for the applicant that instead of earning a net income out of the transaction of lease of Hari Das, there was a deficit of Rs.831/-, is relevant only for the purpose of ascertaining the quantum of disproportionate assets and is not relevant for the purpose of reporting to the competent authority under Rule 18(3). As regards the quantum of disproportionate assets, we have already given our finding herein above.

32. In the light of the foregoing, we may come to the question of what reliefs, if any, are warranted in the facts and circumstances of the present case. Of the three Articles of charges, Article III was dropped by the Inquiry Officer and we have found that Article I cannot be sustained in view of the decision of the Supreme Court in Krishnand's case. We are, therefore, left with our finding that the applicant did not comply with the provisions of Rule 18(3) of the C.C.S.(Conduct) Rules, 1964.

33. With regard to the quantum of punishment, the learned counsel for the applicant contended that it was excessive and not warranted by the evidence on record. As against this, the learned counsel for the respondents argued that the quantum of punishment is a matter to be decided by the disciplinary authority and that the Tribunal should not interfere with the same.

34. In principle, we agree with the contention of the learned counsel for the respondents that the quantum of punishment should be left to be determined by the punishing

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authority and that the Tribunal should not ordinarily interfere with the same.

35. The disciplinary authority, after considering all the circumstances of the case, including the gravity of the charges, held as established, imposed the penalty of dismissal from service on the applicant vide his order dated 29th October, 1986 (vide Annexure XVI, p.144 of the paper-book). The Reviewing Authority, while endorsing this view, observed as follows:-

> "Considering that at the relevant time the applicant was working as a senior officer in a sensitive Government department with extensive public dealings, a serious view needs to be taken in regard to the misconduct established against him. Therefore, in the circumstances of this case, the penalty of dismissal from service imposed upon the applicant is just and fair and not excessive."

36. The question, however, arises as to whether the non-reporting about the transaction of the lease of the horse, Hari Das, is a misconduct of such a grave nature as to warrant the extreme penalty of dismissal from service. The Reviewing Authority, while upholding the punishment on the applicant, was conscious of the fact that the applicant was a senior officer of the department. In our opinion, a senior officer leasing a horse from a Sports Club like the Tollygunge Club Ltd., would not per se be objectionable. Had he reported about the transaction of lease of the horse in question, the competent authority would have in all probability, noted the transaction or given its permission. Therefore, to our mind, what is involved in the present case is only a technical violation of Rule 18(3) of the C.C.S. (Conduct) Rules, 1964 which is somewhat of a trivial nature. Neither the disciplinary authority nor the

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Reviewing Authority properly applied its mind in regard to the quantum of punishment imposable on the applicant for the alleged misconduct.

37. In this context, we may refer to the trend of judicial thinking of the apex Court. In Shri Ramakant Misra Vs. State of U.P., 1982(3) S.C.C. 346 at 350, the Supreme Court observed that the punishment must be for misconduct and, therefore, "in order to avoid the charge of vindictiveness, justice, equity and fair-play demand that the punishment must always be commensurate with the gravity of the offence charged". The Court referred to the development in the industrial relations norms and observed that "we have moved far from the days when quantum of punishment was considered a managerial function with the Courts having no power to substitute their own decision in place of that of the management." In this context, it was observed that "more often, the Courts found that while the misconduct is proved, the punishment was disproportionately heavy.....As stated earlier, it is a well recognised principle of jurisprudence which permits penalty to be imposed for the misconduct that the penalty must be commensurate with the gravity of the offence charged".

38. In the subsequent decision of the Supreme Court in Shri Bhagat Ram Vs. State of Himachal Pradesh, 1983(2) S.C.C. 442, the Supreme Court reiterated the same view in the following words:-

> "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct, would be violative of Article 14 of the Constitution."

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39. In Bhagat Ram's case, the Supreme Court, instead of reminding the matter to the Industrial Tribunal for reconsidering the question of quantum of punishment, itself modified the penalty of removal from service imposed on the appellant to a penalty of withholding his increments with future effect. Accordingly, two increments with future effect of the applicant were ordered to be withheld and the respondents were also directed to pay 50 per cent of the arrears from the date of termination till the date of reinstatement.

40. In a more recent case of V.P. Gupta Vs. M/s Delton Cable India (P) Ltd., 1984(1) SLJ 569, the Supreme Court held that imposition of the penalty of dismissal on an employee on the charge of delivery of challan in an irresponsible manner was shockingly disproportionate and on that ground, he was ordered to be reinstated with full back wages and other benefits, including continuity of service. The appeal of the employee was allowed with costs.*

41. Having regard to the triviality and technical nature of the violation of Rule 18(3) of the C.C.S.(Conduct) Rules, 1964 by the applicant, we are of the opinion that in the interest of justice, the penalty of dismissal from service imposed by the disciplinary authority and upheld by the Reviewing Authority should be modified to the minor penalty of censure. Accordingly, the respondents may make an entry of the imposition of penalty of censure in the character roll of the applicant. The applicant should be reinstated from the date of his dismissal and he would also be entitled to all consequential benefits. In the circumstances of the

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* In appropriate cases, this Tribunal has, in moulding reliefs, ordered substitution of a lesser penalty,e.g., (i) P.J. John Vs. Sr. Divisional Mech.Engineer & Ors., ATR 1986(1) CAT 237; (ii) Abdul Hakim Vs. UOI & Ors., ATR 1987(1) CAT 193; (iii) Smt. Shahjahan Begum Vs. UOI & Ors., ATR 1988(2) CAT 257; and (iv) Abdul Gaffar Vs. U.O.I. & Ors., ATR 1988(2) CAT, 318.

....21..,

case, there will be no order as to costs. The respondents shall comply with the above directions within three months from the date of communication of this order.

11.1.89

(S.P. MUKERJI)
VICE CHAIRMAN(A)

11/1/89

(P.K. KARTHA)
VICE CHAIRMAN(J)