CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1273 of 1987
T.A. No.

DATE OF DECISION 29th Oct.,1990

R.K.Vashisht — Petitioner

Mr. A.K.Goel — Advocate for the Petitioner(s)

Versus

Union of India — Respondents

Mr. M.L.Verma — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.S.Sekhon, Vice Chairman

The Hon'ble Mr. P.C.Jain, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(P.C.JAIN) 29/10/90
AM

(B.S.SEKHON)
VC
29-10-90

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

Regn. No. OA 1273 of 1987 Date of decision: 29-10-90

R.K.Vashisht, IPS,
Commandant, State Reserve Police,
Ahmedabad (Gujarat).

.. .. .. Applicant

Versus

Union of India, through:
the Secretary, Ministry of Home Affairs,
Government of India, New Delhi and others.

.. .. .. Respondents

CORAM: Hon'ble Sh. B.S.Sekhon, Vice-Chairman.
Hon'ble Sh. P.C.Jain, Administrative Member.

PRESENT: Sh. K.Goel, Advocate for the applicant.
Sh. M.L.Verma, Advocate for the respondents.

JUDGEMENT

B.S.SEKHON:

Applicant, a member of the Indian Police Service (for short 'the Service') was dismissed from service with immediate effect vide Presidential order No. 1-26012/24/79-IPS(NSG) dated 14.8.1987 (Annexure 'A') issued by the Government of India, Ministry of Home Affairs. The applicant was borne on the Gujarat Cadre of the Service. He has prayed for quashing the order dated 14.8.1987 impugned in the instant Application as also for a direction to the respondents to reinstate him with all benefits of pay, rank and seniority as are due to him according to his original seniority under the Service Rules.

2. Factual matrix germane to the adjudication of this case may be noticed briefly:

3. The applicant was serving as District Superintendent of Police, Bulsar during the period January, 1968 to December, 1968. Some gold biscuits and currency notes were seized by the local police at Sanjan on 25.5.1968. In respect of the aforesaid incident, certain allegations were levelled against the applicant. A discreet enquiry in the matter was conducted in the first instance by Shri M.M.Sheikh, D.S.P.(C.I.D.) and thereafter a preliminary enquiry in regard to these allegations was carried out by the Director, Anti-Corruption Bureau and after considering all the papers, the State Government of Gujarat, Respondent No. 2 took a decision to hold a regular enquiry into the matter in accordance with the provisions of All India Services (Discipline and Appeal) Rules, 1969. The following charge-sheet along with the statement of imputations of misconduct/misbehaviour was accordingly served on the applicant as per Home Department's Memo. No. Enqs-1769/224/S-I dated 19.10.1970. The applicant was also called upon to state why charges or any of them, if proved, should not be considered as good and sufficient ground for imposihg upon him any of the punishments specified in Rule 6 of the Rules:-

> " Government has decided to inquire into the conduct of Shri R.K.Bashisht, IPS, Deputy Commissioner of Police, Ahmedabad City in that while he was working as District Superintendent of Police, Bulsar, during the period from January, 1968 to December, 1968, he was guilty of serious misconduct amounting to corruption and dereliction of duty with respect to the incident about the seizure of gold biscuits and currency notes on 25th May, 1968 at Sanjan in the manner indicated hereinbelow :-
>
> 1) Even through Head Constable Rupchand Pandit and Police Constable Pitamber had seized a jacket containing 98 gold biscuits and had

Contd...3....

recovered a large number of currency notes, each of the denomination of Rs.100/-, from one Bhana Khalpa in the early hours of the morning of 25th May, 1968 at Sanjan Shri Basisht placed on record only 74 gold biscuits (i.e.740 tolas) and Rs.2000/- as the quantity of gold and money seized and misapproriated the remaining 24 gold biscuits (i.e. 240 tolas) and a large amount of cash.

2) Though the notorious smuggler Bhana Khalpa of Moti Daman andhis associate Shri Kantilal Oza, Sarpanch of Pali Karambela were detained, handcuffed and roped by the Sanjan Police on 25th May, 1968 in connection with the seizure of jacket containing at least 98 gold biscuits and a large number of money, Shri Basisht, the then District Superintendent of Police, Bulsar, released them without taking any legal action, and at his (Shri Basisht's) instance Bhana Khalpa was taken in the jeep of the District Superintendent of Police by some of the Subordinate police officers (as shown in the statement of allegations) from Umbergaon to Moti Daman to Bhana Kalpa's bungalow with a view to supressing his complicity in the incident.

3) Though a jacket containing 98 gold biscuits was seized and a number of currency notes were recovered from the smugglers by Head Constable Rupchand Pandit and Police Constable Pitamber in the early hours of the morning of 25th May, 1968 at Sanjan, Shri Basisht, the then District Supdt. of Police of Bulsar allowed his subordinate PSIs to prepare two false panchnamas stating the seizure to have taken place at two different places and times as follows:-

(i) One stating that 20 gold biscuits were found unclaimed in the morning of 25th May, 1968 near Sanjan Out Post.

(ii) The other stating that 54 told biscuits and currency notes of Rs. 2,000/- were seized near the Masjid at Sanjan in the evening and were attached as unclaimed.

With a view to conceal the misappropriation of the remaining gold biscuits and currency notes by Shri Basisht, Moreover, these panchnamas were not made at the place where the gold and the currency were found but at the Umbergaon Rest House and at the residence of PSI Shri Raizada respectively.

4(i) On apprehending the disclosure of the true facts of the entire episode as a result of a conversation he had with Dy.Supdt. of Police, CID, Shri M.M. Sheikh on 12.9.1968, Shri Basisht between the period from 13.9.1968 to 6.10.1968 recorded false statements of 16 persons so as to

show that Bhana Khalpa was not in the picture at all and was not present there at Sanjan on 25.5.68 nor was any one handcuffed and roped.

(ii) Among the false statements thus recorded by Shri Basisht was that of one Dolat Desai whichwas recorded in the fictitious name of Shri Ramlal Gupta, even though the real identity of this person was known to Shri Basisht when he recorded his statement in a fictitious name."

4. The applicant submitted written statement of defence under his letter dated 27.9.1971. The Inquiring Authority (IA) was constituted under rule 8(2) of the Rules vide order dated 5.8.1972. IA was reconstituted by further orders dated 6.2.1973, 11.12.1973 and 7.5.1975. By the last mentioned order S/Shri B.T. Trivedi, I.A.S. and P.B.Malia, I.P.S. were appointed as the Inquiring Authority. IA submitted their report to the Disciplinary Authority. IA submitted their report to the disciplinary authority (copy at pages 65 to 159 of the paper book enclosure to as/Annexure 'C'). Copy thereof was also sent to the applicant. The findings of the IA in respect of the charges in question were as under:-

" In respect of charge No. 1, we have come to the conclusion that the Sanjan police had seized a substantial quantity of gold in the early hours of 25.5.68. This quantity should have been approximately 98 to 100 gold biscuits each weighing 10 tolas. Some currency notes were also recovered along with gold. On record, only 74 gold biscuits and Rs.2000/- have been accounted for and deposited with Vapi police station on the same evening. It has not been proved that Shri Basisht misappropriated the remaining gold biscuits and a large amount of cash. Thus, charge no. 1 is partly proved.

In respect of charge No. 2, we have come to the conclusion that Kanti Oza and Bhana Khalpa were detained, handcuffed and roped by the Sanjan police in the morning of 25.5.68 before the arrival of the District Superintendent of Police from Bulsar; that the then District Superintendent of Police, Bulsar Shri Basisht released Bhana Khalpa and Kanti Oza without taking appropriate legal action; that it was at the instance of District Superintendent of Police Shri Basisht that handcuffs and rope were removed from the person of Bhana Khalpa after the arrival of District Superintendent of Police Shri Basisht at Sanjan outpost. The District Superintendent of Police had discussed something with Bhana Khalpa at Sanjan outpost as well as at Umbergaon Rest House. Bhana Khalpa was given better treatment in that he was given a seat in the jeep of the District Superintendent of Police. All these facts reveal that there was a consistent effort to give special treatment to Bhana Khalpa. It was quite consistent with these facts that Bhana Khalpawas taken in D.S.P's jeep to his bungalow in Moti Daman at the instance of District Superintendent of Police Shri Basisht with a view to ensuring a safe passage for him and with a view to suppressing his complicity in the incident. Thus charge no.2 is proved against Shri Basisht.

In respect of charge No. 3, we have come to the conclusion that Shri Basisht is

responsible for allowing his subordinate Police Sub-Inspectors to prepare two false panchanamas as described in charge No.3. Thus the charge no.3 is also proved against Shri Basisht.

In respect of charge no.4, we have come to the conclusion that 16 statements referred to in the charge do not give a correct picture of facts and they have been obviously recorded with a view to suppressing the correct facts and that the statement of Daulat Desai was recorded in the fictitious name of Ramlal Gupta even though Shri Basisht knew the real identity of this person. Thus charge no. 4 is also held to have been proved against Shri Basisht."

5. 42 witnesses were examined on behalf of the Government and 20 witnesses on behalf of the defence. Applicant was also examined regarding the circumstances appearing in the evidence against him. Parties also filed documents and written briefs under Rule 8(20) of the Rules.

6. Applicant's case as set up in the Application is that he had organised anti-smuggling raids and seized huge quantity of the contraband goods which was five times higher than the record seizure of any previous year for which he was also conveyed appreciation by the I.G.P. and D.I.G. Baroda Range. One Shri H.G. Bhatti who was incharge of the State Reserve Police Company in Bulsar and was concerned with anti-smuggling operations in the district was caught redhanded. Shri Bhatti was prosecuted and dismissed from service and he became inimical to the applicant. The applicant

had also got transferred one Police Sub Inspector Saiyed on the charge of collusion with smugglers. Both the above mentioned police officers were instrumental in engineering false complaints against the applicant. The local police at Sanjan in Police Station Ambergaon seized some gold biscuits and currency notes worth Rs.2000.00. The seizure was made by HC Roop Chand Pandi and Police Constable Pitamber. There were two separate seizures i.e. one of 20 biscuits of 10 tolas each and another of 54 biscuits of 10 tolas each with currency notes worth Rs. 2000.00. The gold and currency notes were deposited with Police Station Vapi and were handed over to the Customs Department under a reference from P.S.I. Raizada of PS Ambergaon. The applicant had submitted his statement of defence in September, 1971 but did not hear from the Government when he was asked to see Shri P.C.Gupta, the then Deputy Secretary, Home Department. Shri Gupta is stated to have shown him a copy of the notice meant to be served on him to show cause as to why he should not be dismissed from service. . According to the applicant, no show cause notice has till date been served on him. In 1980, he represented to the Government of India pointing out irregularities involving in the conduct of enquiry. Government of India made a reference back to the State Government in 1981. The State Government submitted its revised views to the Government of India in 1982 through the letter of Chief Minister stating that earlier decision suggesting imposition of major penalty was not correct. The Government of India, however, referred the matter to the UPSC in August,1982. It had also referred the matter to the Central Vigilance Commission in May, 1982 for reconsideration. The CVC was also consulted in March, 1980. The CVC recommended

that disciplinary action should be taken against him even without second show cause notice. He was not communicated the advice of the CVC rendered in March, 1980. Logbook had not been made available to the Government of India till 1985. UPSC in its advice dated 17.7.1987 held that charge No. 1 is not proved but the other charges had been proved.

7. While enumerating the grounds on which the applicant has challenged the impugned order, the applicant has also brought in lot of arguments and discussions on evidence. The salient grounds pleaded by the applicant are:-

(a) The order is based on non-application of mind and is colourable exercise of power.

(b) On the basis of evidence adduced during enquiry, no finding can be recorded that any of the charges alleged against the applicant is proved. The order of dismissal is thus violative of Article 311(2) of the Constitution of India.

(c) In the absence of proof of charge No.1, it is not possible to hold that charge No.3 is proved. In the absence of best evidence, the evidence produced would not be admissible and cannot be relied upon. The evidence of material witnesses has been withheld which witnesses are supporting the defence and contradict the version of the Government. Shri Nathu Dahya was absent from the Sanjan outpost at the time of his arrival on 25.5.1968. The prosecution version is not supported by the entries in the logbook. If charge No.1 fails,

charge No.3 cannot be sustained. Charge No. 2 has not been substantiated and for that reason charge No. 4 also cannot survive.

(d) The action of the Central Government including the order of dismissal is without jurisdiction and ultra vires as the Central Government was bound to stay its hands and return the records to the State Government after the State Government communicated its revised views in March, 1982 with the conclusion that the applicant was innocent and earlier decision of the State Government to suggest imposition of major penalty was not correct.

(e) The decision of the Central Government in holding that major penalty should be imposed is influenced to a great extent by the report of the CVC, copy of which has not been supplied to the applicant thus resulting in denial of reasonable opportunity to him.

(f) The finalisation of the enquiry has taken an unconscionably long period of 10 years even after the applicant had filed his defence. The incident in respect of which enquiry was held took place in 1968. The delay cannot be explained and is in violation of the rules framed by the Government.

(g) During the enquiry, there has been gross violation of applicant's fundamental rights like:

(i) some important documents relevant to the enquiry were denied to the applicant thus denying real opportunity to cross-examine the witnesses;

(ii) assistance of legal practitioner was denied even though the Government case was presented by a specially selected police officer of the rank of Dy.S.P.;

(iii) important and crucial direct witnesses have been withheld. Another witness was asked to meet a member of the Board separately and alone;

(iv) the Board of Inquiry did not render any assistance to procure defence witnesses nor did they render assistance and crucial defence witness was kept back;

(v) one of the defence witnesses was detained by the police on trumped up charge shortly after his evidence was recorded. This resulted in terrifying other witnesses whose cross examination had been postponed;

(vi) he could not persuade any police officer to assist him as a 'friend' in view of intimidating atmosphere and when he was able to persuade an officer to appear as a friend, he was transferred to a distant place;

(vii) the prosecution had manoeuvered to withhold a crucial witness Bhana Khalpa.

The other pleas taken by the applicant are that the evidence produced can at best give rise to some suspicion but/in no case can be equated to proof. The advice of the UPSC was received on the basis of incomplete material and that the penalty of dismissal is violative of Articles 14 and 21 of the Constitution.

8. Prior to filing the instant Application, the applicant had also filed a writ petition in the Gujarat High Court agitating the question of his non-consideration for promotion to the post of D.I.G. The aforesaid writ petition was transferred to the Tribunal and was disposed of by the Ahmedabad Bench with the direction for finalisation

of the disciplinary proceedings within a period of two months. The Selection Committee was also asked to review the case of the applicant within three months and to take appropriate decision within the aforesaid period. It was observed in the concluding sentence that if the applicant is left with any grievance, he was at liberty to approach the Tribunal in due course. A copy of the judgement dated 10.4.1987 is Annexure 'D'. Applicant's Review Petition against the aforesaid judgement was rejected by the Ahmedabad Bench vide its order dated 19.5.1987.

9. All the respondents have contested the Application. Respondents 1 and 3 have resisted the Application on merits as also on preliminary grounds. The preliminary objections raised by the respondents are:-

(i) the application suffers from want of territorial jurisdiction;

(ii) issues already covered by judgement dated 10.4.1987 in TA 1 of 1986 by the Ahmedabad Bench cannot be re-agitated. The same are barred by the principle of Res Judicata as well as constructive Res Judicata.

On merits, regarding the allegations about the false complaints having been enginered by Sarvshri H.G. Bhatti and Saiyed, the respondents have pleaded that the applicant had been given full opportunity to defend himself. The enquiry has been conducted in accordance with the prescribed procedure. The same does not suffer from any infirmity. There has been no violation of Article 311(2) as also of Article 14 of the Constitution. According to the respondents, the disciplinary authority has taken a decision after giving careful consideration to the evidence, entire report of the departmental enquiry and the advice rendered by the UPSC. The findings have been given after objective consideration and on the basis of

the relevant and cogent material. The respondents have added that the Tribunal cannot re-evaluate the evidence and cannot act as a court of appeal. The other pleas raised by the respondents are that technical rules of evidence are not applicable to departmental enquiries and that consultation with the CVC is an internal matter and there was no obligation to furnish a copy of the advice rendered by the CVC to the applicant. The presenting officer was a police officer and therefore the presentation by a legal practitioner was not permissible under the Rules. The respondents have stated that there is no infirmity in the findings arrived at by the Inquiring Authority. The findings are based on positive evidence. The second show cause notice was kept in abeyance for the reason that the State Government had come to the conclusion of no guilt and had recommended to the Central Government to exonerate the applicant for the reasons set out in ground (L). The respondents have averred that the recommendation of the State Government for dismissal of the applicant was received on 29.5.1979. After examining the same, it was decided to issue show cause notice to the applicant but due to receipt of his representation Annexure R/2 as well as the request of the then Chief Minister of Gujarat, further proceedings against the applicant were stayed. The show cause notice could not be issued prior to the amendment of the provision for issuing second show cause notice. The penalty of dismissal is stated to have been imposed strictly in accordance with law, rules and regulations. Respondents have also joined issue on the plea that exoneration of applicant as regards charge No.1 would result in his exoneration in respect of remaining charges. Respondents 2 and 2 have averred that

Sarvshri Bhatti and Saiyed's cases have no relevance with the applicant's involvement in the incident that took place on 25.5.1968 at Sanjan. According to respondents 2 and 4 , a jacket containing 98 gold biscuits and a number of currency notes were recovered from the notorious smuggler Bhana Khalpa of Moti Daman and his associate Mr. Kanti Lal Oza by H.C.Roop Chand Pandit and P.C.Pitamber. The applicant allowed his subordinate Police Sub Inspectors to prepare false panchnamas stating the seizure to have taken place at two different places and times / saying that the applicant has now concocted the story ~~xxxxxxxx~~ that Shri Shaikh, Dy.S.P., C.I.D. had held enquiry mainly on the basis of information and the names of witnesses were furnished by Sarvshri Saiyed and Bhatti. The respondents have pointed out that this was not mentioned by the applicant S.C.A, No.4943/85 filed in the Gujarat High Court which was later on transferred to the Central Administrative Tribunal, Ahmedabad Bench bearing No. TA 1 of 1986. The applicant is stated to have filed criminal complaint in the court of Judicial Magistrate, Ist Class, Kalol on 4.12.1975 against (1) Shri Ram Chand D.Bhonsle, P.C.Driver Bulsar, (2) Shri I.H. Mansuri, the presenting officer in the departmental proceedings and (3) Shri P.N.Pant, the then I.G. of Police . The said criminal complaint is said to have been dismissed by Judicial Magistrate F.C. Kalol on 30.4.1976. The appeal against the aforesaid decision was also withdrawn from the High Court by the applicant as there was no substantial material. The applicant is stated to have filed another complaint in the court of Metropolitan Magistrate, Ahmedabad against the aforesaid persons on the same allegations.

The learned Magistrate issued process against the three persons on 23.11.1976. Shri Panit approached the High Court which was pleased to quash the order of the Metropolitan Magistrate issuing process against Shri Pant. The High Court also observed in the judgement that even a bare look at the order of issuing process showed ex facie non-application of mind on the part of the learned Magistrate. The complaint against Sarvshri Ramchandra Bhonsale and I.H.Mansuri was also dismissed under Section 203 of the Code of Criminal Procedure by the then Chief Metropolitan Magistrate, Ahmedabad on 6.5.1978 with the following observations:-

> "Because accused No.1 (i.e. P.C.Driver Ramchandra Bhonsale) took different stands in his examination before the Board of Inquiry, one cannot jump to the conclusion that it was he who had forged the log book. Thus, there is no ground to issue process against accused No. 1 for the offence under sec. 468 of the IPC.
>
> Thus it cannot be said that 'Presenting Officer' accused No. 2 (i.e. Shri I.H. Mansuri) aided and abetted forgery and it cannot be said that he 'used' the forged document knowing the same to have been forged."

The State Government is stated to have referred the matter to the Union Government with its findings on each of the charge under their letter dated 29.5.1979 as per the provisions of Rule 7(2) of the Rules. Admitting that the applicant saw Shri P.G.Gupta, the then Deputy Secretary in the Home Department on 29.3.1982,

respondents have stated that the applicant was given the original show cause notice received from the Government of India and was requested to give acknowledgement in token of its receipt but the applicant pointed out mistakes/over-writings as also that the enclosures were not authenticated. The applicant was told that he could represent this to the Home Secretary. It has been further averred by the respondents that the applicant submitted a representation to the then Chief Minister urging that one of the documents which is a fundamental one in the case against him had been held to be forged whereupon the then Chief Minister sent a Telex Message on 11.3.1981 to the then Home Minister requesting him to wait for the communication from the State Government and stayed further action in the matter. The Chief Minister also sent a DO letter dated 30.3.1982 to the then Home Minister in view of representation dated 17.9.1980 made by the applicant. The Chief Minister had also indicated that the State Government views have been recorded in the notes enclosed to the letter requesting the Home Minister not to take further action and to return the relevant case to the State Government to enable it to have further look at the case. In view of letter dated 30.3.1982, it was decided that the second show cause notice should not be served on the applicant till the receipt of final reply from the Union Public Service Commission . Similar instructions are stated to have been received from the Union Govt.also. Vide letter dated 19.3.1983, The Union Home Minister informed that Rule 9(4)(i) of the Rules having been deleted in view of 42nd amendment to the Constitution

and therefore issuance of second S.C.N. to the applicant was no longer necessary. Saying that the letter of the Chief Minister dated 30.3.1982 did not restrict the Home Department from independently looking into the matter and to deal with it in accordance with law, the respondents have averred that the letter written by the then Chief Minister did not absolve the applicant adding that since the State Government had communicated its fresh views in August, 1985 as per letter dated 2.8.1985 to the Government of India, the State Government had reviewed the matter again and held that no further reconsideration was called for at the State Government level, the case may be referred to the UPSC and decision taken at the earliest and that the recommendation made in the letter dated 30.3.1982 stood revoked. In regard to delay in finalisation of the enquiry, the respondents have averred that reply given in TA 1 of 1986 may be taken as a part of the State Government's reply and that the aforesaid reply goes to show that the applicant was himself responsible for delaying the departmental proceedings. The applicant is stated to have been given full opportunity to defend his case. About ground 'H' i.e. non-examination of Sub-Inspectors of Police viz. S/Shri V.J.Desai and M.D.Raizada, the State Government has stated that since they were found involved in the matter as per preliminary enquiry, the State Government did not think it proper to examine them as Government witnesses especially when the State Government had decided to hold separate departmental enquiry against them after completion of the departmental proceedings against the applicant and that it was in any case open to the applicant to examine them as defence witnesses. The respondents have also denied the other

grounds including the ground pertaining to violation of Articles 14, 21 and 311(2) of the Constitution.

10. We have heard and considered fairly exhaustive arguments addressed by the learned Counsel for the parties, the authorities cited at the Bar, the pleadings, documents on record and have also in addition perused the relevant notings and documents contained in file Nos.1-26012/24/79-IPS(NSG), Vol. I and 1-26012/24/79-IPS(NSG)-Vol. II produced by the respondents.

11. It would appear to be proper and feasible to deal at the very outset with the preliminary objections raised by respondents 1 and 3. The preliminary objection regarding the lack of territorial jurisdiction in the Principal Bench has little to commend itself. This is so for the reason that as laid down in Rule 6(1)(ii) of the Central Administrative Tribunal (Procedure) Rules, 1987, an Application under Section 19 of the Administrative Tribunals Act, 1985 can also be filed with the Registrar of the Bench within whose jurisdiction the cause of action wholly or in part has arisen. As the impugned order had been made at New Delhi, the cause of action to the applicant had arisen at New Delhi also. The objection of the respondents about seeking leave of the Hon'ble Chairman for filing the Application in the Principal Bench misses the point that the said leave is to be obtained if the Bench in question otherwise lacks territorial jurisdiction. Since the Principal Bench had jurisdiction in the matter, it was not necessary to seek such permission. This preliminary objection is thus hereby repelled.

12. The precise objection of the respondents in respect of the plea of Res Judicata/constructive

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Res Judicata is that the issues which have been adjudicated upon by the Tribunal vide judgement dated 10.4.1987 rendered in TA No. 1 of 1986 titled 'R.K.Vashisht versus Union of India and others' cannot be re-agitated and that the applicant is also estopped from raising the pleas which he ought to have raised in the previous case. A perusal of paras 7 and 11 of the aforesaid judgement reveals that the point of delay has already been considered and disposed of with the following observations:-

> "7. There is no doubt that there has been a great deal of delay in the disposal of the disciplinary proceedings but it is difficult from the facts to hold that the delay was on account of all the circumstances being within the control of the respondents or that the petitioner was quite free from blame in causing it, to some extent , at least."
>
> "11. The departmental proceedings against the petitioner have taken as long as 17 years which by any reckoning is an unconscionably long time for disposal and extends to about half of the service life of the officer. It is not fair for either the officer or to the Government or to the public interest in general that such delays are allowed by respondents 1 & 2. We note that respondent No.1 has stated that the advice of the UPS is not available and the disciplinary proceedings against the petitioner are being finalised. It would be reasonable to expect a decision to be taken within a period of two months."

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By virtue of conclusing para viz. para 12, the Tribunal had directed that the disciplinary proceedings against the applicant be finalised with a period of two months. It is significant to notice that the question of delay had been raked up by the applicant in the aforesaid case and that he had also prayed vide MA 321 of 1987 in TA 1 of 1986 for a direction to the respondents - Union of India and others totreat the disciplinary proceedings against him as dropped. Vide order dated 10.8.1987, a copy of which is at page 175 of the paper book, it was observed by the Ahmedabad Bench that any order adverse to the applicant, if passed by the respondents, be not given effect to for a period of fortnight. The M.A. was directed to be fixed on 27.8.1987 on which date it was disposed of by the order of the same date, copy at page 176. As per this order, order made on 10.8.1987 was extended for a further period of 15 days i.e. till 10.9.1987. The request of the applicant for dropping ~~xxx dxxxpxxixg~~ the disciplinary proceedings was neither allowed in this order nor in the judgement. On the basis of foregoing, it would appear to be correct to take the view that the plea for invalidating the impugned order on the ground of delay in finalisation of the disciplinary proceedings cannot be agitated in view of principle of Res Judicata. We, therefore, uphold the plea of Res Judicata to the aforesaid extent.

13. Adverting to merits, the learned Counsel for the applicant opened his argument by submitting that the applicant had been exonerated by the disciplinary authority - Central Government as also by the UPSC in respect of charge No. 1 and that in view of the aforesaid

exoneration, the other charges could not be sustained. The precise point made by the learned Counsel was that the other charges are consequential to charge No. 1. A good deal of emphasis was placed by the learned Counsel on the allegation in the Memo. dated 19.10.1970 to the effect that the applicant was guilty of serious misconduct amounting to corruption and dereliction of duty. According to the learned Counsel, the basic charge was charge No. 1 of which the applicant has already been exonerated and that other charges particularly charges Nos. 3 and 4 are consequential to charge No. 1. After giving a thoughtful consideration to the aforesaid submissions, we are unable to persuade ourselves to the view that charges 2 to 4, particularly charges 3 and 4 are consequential to charge No.1 and that the aforesaid charges would not stand in view of exoneration of the applicant of charge No.1. It would be pertinent to notice that the thrust of charge No. 2 is that though smuggler Bhana Khalpa and his associate Kantilal Oza had been detained handcuffed and roped by Sanjan police on 25.5.1968 in connection with the seizure of a jacket containing 98 biscuits of gold and a large sum of money, the applicant released them without taking any legal action at his instance. Bhana Khalpa was taken in his jeep from Ambergaon to Moti Daman with a view to suppressing his complicity in the incident. Charge No.3 pertains to the allegation about allowing his subordinate PSI to prepare two false panchnamas with a view to conceal-ing the misappropriation of remaining gold biscuits and currency notes by the applicant. The panchnamas were not prepared at the place of seizure but at Amergaon Rest House and at the residence of PSI Shri Raizada. Charge No. 4 relates to the

allegations about applicant having recorded false statements of 16 persons with a view to showing that Bhana Khalpa was not in the picture at all and was not present at Sanjan on 25.5.1968 nor was anyone handcuffed and roped. This charge also includes the allegation about recording the statement of Shri Dolat Desai in the fictitious name of Shri Ram Lal Gupta. xxx Charges 2 to 4 pertaining to dereliction of duty by the applicant canstand independently of charge No.1 which also includes the alleged misappropriation of 24 gold biscuits and a large number of currency notes by the applicant. These charges are thus distinct and separate from charge No. 1. At the best what can be said is that non-substantiation of charge No. 1 may have some effect on the motive which might have motivated the applicant in so far as some allegations contained in charges 2 to 4 are concerned. These charges cannot be said to be consequential charges and can stand even if charge No. 1 has not been substantiated (as it has not been substantiated). So the aforesaid submission is hereby held to be devoid of any substance.

14. The learned Counsel for the applicant next submitted that the respondents had deliberately withheld the issuance of the show cause notice and that has caused him great prejudice. The assertion of the learned Counsel for the applicant that issuance of the show cause notice had been withheld deliberately is not well-founded. The reasons for the delay in the issuance of show cause notice as gathered from a perusal of the notings in Confidential File No.1-26012/24/79-IPS (NSG) Vol. I are mentioned hereinbelow. As per note

at page 32(N), a decision was taken to prepare a draft show cause notice after considering the advice of the CVC. It was proposed to show the case to the CVC (noting dated 2.7.1980). Shri Joginder Makwana, the then Minister of State minuted on 3.10.1980 that there are lacunae in conducting the enquiry. He directed that certain aspects indicated by him may be verified and that the opinion of the State Government be obtained before a show cause notice is issued. The matter took this turn in view of the representation of the applicant. In the first instance, the State Government declined to offer their comments on the ground that they had accepted the findings of the Board of Enquiry. The matter was submitted to M.S.(H) along with a letter from the Government of Gujarat wherein it was stated that they do not propose to make any changes in the earlier recommendation. With the approval of M.S., it was decided to issue a show cause notice. Before the draft show cause notice could be approved, a communication was received from the Chief Minister of Gujarat on 30.3.1981. The then Chief Minister of Gujarat had desired further action to be stayed.. At the official level, the State Government had been issuing reminders in respect of the action by the Government of India on the proposal submitted by them. The State Government was also repeatedly reminded to send their comments as promised by the Chief Minister in his message dated 12.3.1981. The Chief Minister of Gujarat addressed a secret DO letter No. CMS/GI(MB)/82 dated 20.3.1982 to the Home Minister, Government of India. The State Government also wrote that notice should not be served on the applicant till a reply from the Government of

India to the Chief Minister's letter is received. Meanwhile, a decision was taken not to issue a second show cause notice for the reason that the 42nd Constitution Amendment Act and Rule 9 of the Rules had done away with the requirement of issuance of a second show cause notice. The correct position which emerges from the foregoing is, that the issuance of show cause notice had been pended as desired by the Chief Minister of Gujarat State. The Chief Minister had moved in the matter pursuant to a representation made by the applicant. It is thus not correct to contend that the issuance of the second show cause notice had been deliberately delayed. It is equally incorrect to say that the omission of issue of second show cause notice had prejudiced the applicant. The issuance of second show cause notice was not required in view of amendment to Article 311(2) of the Constitution and to Rule 9 of the Rules. It may also be incidentally added that the Central Government in the Ministry of Home Affairs did not take any decision not to proceed further against the applicant. The CVC and UPSC had also recommended the imposition of penalty of dismissal from service.

15. It was next contended by the learned Counsel for the applicant that the State Government alone being the sole authority to institute proceedings against the applicant and to impose penalty as visualised by Rule 7(I)(b)(i) of the Rules and that as the State Government had taken a decision at the level of the then Chief Minister to exonerate the applicant and asked to return all the papers, the Central Government ceased to have the power and jurisdiction to proceed further in the matter. Cognisant of the subsequent

decision taken xxxxxxxxxxxxx by the State Government reiterating their proposal/recommendation to take action against the applicant, the learned Counsel further submitted that the review of the earlier decision was not carried out in accordance with the provisions of Rule 24 of the Rules and the matter was reviewed at the back of the applicant and without hearing the applicant, thereby infracting rules of natural justice.

16. As regards the first contention, the learned Counsel placed reliance on the provisions of Rule 7(I)(b)(i). The aforesaid provision provides that if a member of the Service has committed any act or omission which renders him liable to any penalty specified in Rule 6, the State Government is the authority competent to institute proceedings to impose penalty if the member was serving in connection with the affirs of a State, or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of that State, or in a local authority set up by an Act of the Legislature of the State. It is not in dispute that the applicant was serving in connection with the affairs of Gujarat State during the relevant period. It could thus be said on the basis of Rule 7(I)(b)(i) that the State Government was the authority competent to institute disciplinary proceedings and to impose penalty. The aforesaid provision cannot, however, be read in isolation. Provisions of Rule 7(2) have also to be kept in view while dealing with this contention.

As envisaged by sub-rule (2) of Rule 7, the penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government. The proposed penalty of dismissal in this case could thus be imposed by an order of the Central Government only. Since the Central Government on a proper proposal and reference received from the State Government was seized of the matter pertaining to imposition of penalty of dismissal on the applicant and had also consulted the UPSC as well as CVC, it is difficult to countenance the view that the Central Government ceased to have the jurisdiction and power the moment the Chief Minister wrote to the Home Minister for exonerating the applicant and for return of the papers. It was open to the Central Government to consider the matter as also to refer it back to the State Government. The Central Government instead of falling in line with the views of the Chief Minister opted to consider the matter further and also ultimately requested the State Government to reconsider its stand. Meanwhile, there was a change in the incumbent of the office of the Chief Minister and the State Government ultimately reiterated its earlier proposal to take action against the applicant . It may be that all this took lot of time and caused further delay in finalisation of the disciplinary proceedings. The relevant point urged by the learned Counsel for the applicant was that the Central Government neither considered the points made by the Chief Minister nor gave proper opportunity to the applicant prior to taking a decision and also did not consider the records which were with the Central Government after March,1985 and that such a decision was arbitrary. Since this was

a matter of internal consultation between the State Government on the one hand and the Central Government on the other, the question of giving an opportunity to the applicant as urged by the learned Counsel for the applicant simply does not arise. The assertion of the applicant that the decision was taken by the Central Government without considering the points made by the Chief Minister lacks factual foundation. The points made by the Chief Minister of Gujarat as also the comments of the State Government on the representation of the applicant dated 17.9.1980 had been duly considered and examined in the notings at pages 53 to 56(N) in file No.1-26012/24/79-IPS(NSG) Vol. I. It was only after threadbare examination of these points that a decision was taken at the level of Home Minister vide his minutes at page 57(N) in the aforesaid file and the matter was referred to the CVC for advice keeping in view the recommendations made by the Central Government. Vide para 2 of note at page 63(N), it had been noted that that the Chief Minister of Gujarat wrote a letter to the then Home Minister saying that injustice had been done to Shri Vashisht and his case should be reconsidered. He enclosed a note on the basis of which reconsideration of his case was sought. The points made in the DO of Chief Minister are dealt with at pages 53-56 ante. It is further indicated that the then Home Minister desired that the case should be referred to CVC again for their advice in the light of the recommendations of the State Government. It is thus absolutely incorrect to say that the points made by the Chief Minister were not considered. The matter was referred again to the CVC. The CVC found no ground to reconsider its

earlier decision. The log-book was also duly examined and considered in the Ministry of Home Affairs. This fact is clearly borne out from the noting at pages 110 to 112(N). In the noting at page 113(N), it has also been pointed out in the note appended by the then Additional Secretary that after the messages were received from the Chief Minister, the case had been seen on more than one occasion not only in the Ministry of Home Affairs but also in the Deptt. of Personnel. It had been seen by successive Home Ministers and a view had been taken that there are no adequate grounds to re-open the case and that the Gujarat Government is resisting all efforts to complete the process in UPSC by withholding the papers or by insisting on sending the papers back for reconsideration or re-enquiry into the matter. It also emerges from what has been stated hereinabove that the Chief Minister had sought reconsideration of the matter. In view of the foregoing, we are unable to find merit in the point that the decision taken by the Central Government after reconsideration was arbitrary or that the Central Government ceased to have jurisdiction in the matter after receiving secret DO from the Chief Minister. A good deal of debate also took place on the point as to whether or not it was the Home Minister or the Chief Minister who was competent to take a decision in the matter. The learned Counsel for the respondents submitted that it was the portfolio of the Home Minister to whom the subject stood allotted by virtue of item 8(i) of the items allotted to the Home Department. The learned Counsel for the applicant

submitted that the Chief Minister was incharge of the General Administration by virtue of proviso to Rule 4 of the Gujarat Government Rules of Business made under Article 166 of the Constitution. The concurrence of the General Administration Deptt had to be obtained. On the aforesaid premises, it was submitted that the Chief Minister was competent to take a decision in the matter. It was also urged by the learned Counsel that the power of imposition of penalty carries with it the power to withdraw the proposal for imposition of penalty adding that the source of this power is referable to Articles 154 and 162 of the Constitution. For the view we have taken in the matter, it is not necessary to delve further into this point. The point that the power to impose penalty carries with it the power to withdraw the proposal for imposition of penalty misses the important aspect that the power to impose the penalty of dismissal is vested in the Central Govt. This point, therefore, would not derogate from the conclusion recorded hereinabove.

17. As regards the second contention of the learned Counsel for the applicant referred to above, inviting our attention to the provisions of Rule 24, he contended that the State Govt. could not review its own order as the period for review had expired and that in any case the reviéw was arbitrary and was carried out without giving a reasonable opportunity to the applicant and as such stands vitiated for non-compliance with the mandatory provisions of Rule 24. The aforesaid contention misses the vital point that a final decision in the matter of imposition of penalty or otherwise had not been taken. The matter was still at the stage of consideration. It was at the stage of consideration that the State Govt. reconsidered its decision and reiterated its previous proposal. Such a reconsideration of its decision cannot be said to be a 'review' within the meaning of Rule 24 of the Rules. The omission to give a reasonable opportunity to the applicant visualised by the above said Rule is thus of no consequence. The period of limitation as specified in Rule 24 is also inapplicable to such a case. This contention is, therefore, hereby repelled.

18. The learned Counsel for the applicant next submitted that the findings arrived at by the IA as also by the Disciplinary Authority are unfounded and perverse thereby vitiating the impugned order. The learned Counsel for the applicant commenced his arguments on this aspect by stating that the allegations against the applicant are integral. The charges are inter-related, inter-dependent and that when the charge relating to misconduct, corruption and dereliction of duty with respect to seizure of gold biscuits and currency notes on 25.5.1968 had not been proved (i.e. charge No. 1 was held not proved though the IA held the same as partly proved), the other charges being inter-related cannot be said to have been substantiated. Elaborating, the learned Counsel stated that in the absence of finding of misappropriation and the following specific findings in para 60 of the report at page 144 of the paper-book, the other charges cannot be held to have been substantiated:-

> "...As observed by us while making the concluding remarks in respect of charge no.1, it has not been proved that Shri Basisht misappropriated the remaining gold biscuits and a large amount of cash since no evidence is led on this point. Shri Basisht is certainly held responsible for allowing his subordinates to prepare the false panchnamas but no evidence is led to establish that this was done with a view to concealing the misappropriation of the remaining gold biscuits and currency notes. At best, this could be only an inference."

As has already been pointed out hereinabove, it is difficult to countenance the argument that all the charges are inter-related and inter-dependent. We have already indicated that the charges are distinct and separate. It may not be inapt to add that the charge of serious misconduct pertains to corruption as also to dereliction

of duty. If the dichotomy between serious misconduct pertaining to corruption and serious misconduct pertaining to dereliction of duty is kept in view(this has to be kept in view), the contention of the learned Counsel for the applicant pertaining to the charges being inter-dependent or inter-related would be clearly rendered untenable. Thus non-substantiation of one charge cannot by itself justify the conclusion that charges 2 to 4 have also remained unsubstantiated.

We may pause here to point out the rather limited and correct province of the Tribunal in the matter of appreciation of the evidence considered by the IA/ Disciplinary Authority. Inviting our attention to the dicta of the Supreme Court in Union of India v. H.C.Goel* and in Nand Kishore Prasad v. State of Bihar & Others** the learned Counsel for the applicant submitted that the Disciplinary proceedings being quasi judicial proceedings, the authorities concerned should ensure that there is proper evidence or material which points to the guilt of the delinquent public servant qua the charges against him with some degree of definiteness. The learned Counsel added that suspicion cannot be allowed to take the place of proof. Reliance in particular was placed on the following weighty observations made by the apex court in paragraph 19 of the report:-

> " Before dealing with the contentions canvassed, we may remind outselves of the principles, in point, crystalised by judicial decisions.The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive

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* AIR 1964 SC 364

** (1978) 3 SCC 366 : AIR 1978 SC 1277

> at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charges against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India v. H.C. Goel, "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

It is indeed correct to say that the IA/DA cannot base its findings on surmises or conjectures or on irrelevant evidence. It is equally correct to say that in disciplinary cases the Tribunal is not to re-evaluate or appraise the evidence as may be done by a court of appeal and that the Tribunal is not competent to sit in judgement over the findings of the IA/DA and substitute the same by its own findings, unless it is a case of no evidence or the findings are arbitrary or perverse or are based on irrelevant or extraneous evidence. If there is evidence which though not conforming to the standards required to bring home the guilt to an accused in a criminal case; yet is relevant and points to the commission of the alleged act of delinquency on the part of delinquent public servant, the Tribunal would not be justified in setting aside the findings arrived at by the domestic tribunal in such a case. Bearing the aforesaid approach sanctified by the judge-made law including the authorities cited by the learned Counsel for the applicant as also the well established principle that conjectures and surmises are no substitute, we proceed to examine the submissions made on this aspect of the case.

We have perused the report of the IA along with other relevant material including the deliberations of the D.A. with due care and attention and are of the considered view that present is neither a case of no evidence nor a case in which the IA has reached his conclusions on the basis of extraneous or irrelevant material/evidence. It is also difficult to take the view that the findings arrived at by the IA and the DA in respect of charges 2 to 4 are arbitrary or perverse. As we will show presently these findings are based on evidence which is both relevant as also fairly satisfactory.

19. Charge no. 2 has been dealt with by the IA in paragraphs 33 to 40 of the report, internal pages 44 to 54. A perusal of paragraph 33 would show that charge no. 2 had been trifurcated by the IA for convenience sake into the following sub-charges:-

(i) Notorious smuggler Bhana Khalpa of Moti Daman and his associate Shri Kanti Oza, Sarpanch, Pali Karambele were detained, handcuffed and roped by the Sanjan Police on 25.5.68 in connection with the seizure of jacket containing at least 98 gold biscuits and big sum of money;

(ii) The then District Superintendent of Police, Bulsar Shri Basisht released them without taking any legal action;

(iii) At Shri Basisht's instance, Bhana Khalpa was taken in the jeep of District Superintendent of Police, Bulsar by some of the subordinate police officers from Umbergaon to Moti-Daman to Bhana Khalpa's bungalow in Moti Daman with a view to ensuring a safe passage for Bhana Khalpa and with a view to suppressing his complicity in the incident."

As is evident from paragraph 35, the IA considered the evidence of the following witnesses with regard

to sub-charge 4(i):-

(i) Nathu Dahya (GW I);
(ii) Yashwant Lahanu(GW 31);
(iii) Ramchandra Bhonsle (GW 2);
(iv) Parasram Pathak (GW 3);
(v) Gobar Natha (GW 20);
(vi) Fakir Mohmad Varishah (GW 40);
(vii) Rafuddin Ismail Nanabhai (GW 32);
(viii) Anwar Ahmed Daud Bhatti (GW 33)
(ix) Shahbuddin Yusuf Patel (GW 34);
(x) Rameshchandra D. Gandhi (GW 28);

Yashwant Lahanu and Nathu Dahya, Armed Police Constables were on deputation to the Forest Department and were posted at Sanjan. Their presence on the spot was natural.

The IA also considered the evidence of the following Defence Witnesses:-

(i) Haji Umar Khot (DW 1);
(ii) Harishchandra Desai (DW 2);
(iii) Surjit Singh Ramsingh (DW 3);
(iv) Mohamadali Manjra (DW 4);
(v) Daud Mohamad Patel (DW 5);
(vi) Daud Yusuf Patel (DW 6);
(vii) V.J.Desai, the then Police Sub-Inspector, Bulsar (DW 17).

20. After weighing the evidence adduced by both the parties, considering the defence version and on the basis of arguments which cannot be deemed to be perverse, the IA reached the conclusion that Kanti Oza and Bhana Khalpa were detained, handcuffed and roped by the Sanjan Police in the morning of 25.5.1968 before the arrival of the applicant from Bulsar. In regard to sub-charge (ii), the IA on the basis of relevant evidence reached the conclusion that the applicant released Bhana Khalpa and Kanti Oza without taking appropriate legal action after a proper examination and discussion of the relevant evidence, the IA returned the findings that charge 2(ii) also stands proved. While examining charge no.2, the IA

duly considered the question of non-production of HC SC Pandit and PC Pitambar by the Government as also the defence plea that Nathu Dahya and Yashwant Lahanu were not present on the spot in view of TA Bill of which much was sought to be made by the Learned Counsel for the applicant. The IA also elaborately discussed and examined the entries in logbook which are alleged to have been tampered with by Shri Ramchandra D.Bhonsle, the driver. This aspect has been discussed threadbare in paragraphs 43 to 47. On the basis of the entries in the logbook pertaining to 25.5.1968, the IA found that a total ~~xxxx xxxxx xxxx~~ of 293 KMs of distance was covered on the jeep on that day. After discussing the counter version of the applicant and his admission that total distance from Bulsar to Umbergaon and back is 157 KMs and the trip to MotiDaman and Umbergaon covers another 95 KMs, the IA reached the conclusion that the jeep had run extra 136 KMs which had not been accounted for by the entry dated 25.5.1968 and that this extra journey was more than sufficient to make the trip from Umbergao to MotiDaman and back. The appreciation of the evidence of the driver Ramchandra D.Bhonsle by the IA cannot be said to be perverse. Charge no.3 has also been thoroughly examined and decided in the light of the evidence and the material which are relevant. This has been done in paras 48 to 59 at internal pages 66 to 79 of the report. The findings reached by the IA in respect of this charge were that the applicant is responsible for allowing his subordinate Police Sub-Inspectors to prepare two false panchnamas as described

in charge No.3 and that it is also proved that these panchnamas were not made at the place where the gold and currency notes were found but at the Umbergaon Rest House and at the residence of PSI Raizada. The aforesaid finding is based on evidence which is not only relevant but is also sufficient to establish the charge. Likewise, charge no. 4 which had been bifurcated vide paragraph 61 has also been held to have been substantiated. The evidence and the relevant material has been examined and discussed by the IA in paragraphs 62 to 67 at internal pages 80 to 86 of the report. As regards sub-charge 4(i), it was held that 16 statements do not give a correct picture of facts and they have been obviously recorded with a view to suppressing correct facts. This sub-charge was accordingly held proved. In regard to charge 4(ii), the conclusion of the IA as set out in paragraph 73 is that the same is proved against the applicant. This conclusion is also based on relevant evidence which can well be regarded as quite satisfactory. The IA had thoroughly discussed this sub-charge in paras 68 to 73 of the report. During the course of arguments, re-lying on stray observations of the IA, the applicant's counsel stated that the IA had based its findings on conjectures. Specific reference in this behalf was made by the learned Counsel to the following observations appearing in paragraphs 38 of the report:-

> "...Though no effort has been made on behalf of the Government to prove when and how gold was seized in the early hours of 25.5.68, from the circumstantial evidence available on record, it is possible to imagine that HC Pandit and PC Pitamber had brought smuggled gold to Sanjan outpost along with its courier, Kanti Oza. Bhana Khalpa having come to know that his courier had been intercepted by the Sanjan outpost police, had gone to the outpost to secure the release of gold along with the courier

This is the only possibility in the natural course of events."

On the basis of the above extracted portion, the learned Counsel submitted that this is a conjectural approach. Particular emphasis was laid by the learned Counsel on the expression 'possible to imagine'. These observations are indeed unfortunate and are difficult to support. Even if these observations are excluded from consideration, there is adequate and reliable evidence to establish the presence of Kanti Oza and Bhana Khalpa on the spot as also about their having been detained/handcuffed and roped. It was next urged by the learned Counsel that the prosecution had withheld the best evidence like that of persons who are alleged to have seized the gold i.e. HC Roopchand Pandit and PC Pitamber as also that of PSI Raizada and PSI Desai. It does not require extraordinary reasoning to say that PSI Raizada and PSI Desai would not have made self-incriminating statements. The same would hold good about Roop Chand Pandit and Pitamber. The non-production of these witnesses would not, therefore, damn the prosecution case against the applicant. The learned Counsel for the applicant also submitted that the IA misread the entries in the log-book and also did not consider the correct effect and implications of the TA bills of Nathu Dahya and Yashwant Lahanu. These aspects have been considered by the IA. Maybe, another view could also be taken, but this would not, however, suffice to vitiate the findings of the IA. The learned Counsel for the applicant also made an issue of splitting up of the charges done by the IA. The learned Counsel stated that the IA could not split up the charges and that this has caused prejudice to the applicant. We are unable to find

merit in this submission. The splitting up seems to have been done for the sake of convenience and clarity. It is difficult to say as to how this can be deemed to have caused prejudice to the applicant if the findings of the IA are found to be sustainable. For the reasons indicated hereinabove, the findings reached by the IA on charges 2 to 4 are sustainable.

21. After giving our earnest and anxious consideration to the evidence and the material considered by the IA, the arguments addressed by the learned Counsel for the applicant, we are of the considered view that the findings of the IA in respect of charges 2 to 4 are supported by the relevant evidence and the material which are fairly satisfactory and it is not a case of findings based on conjectures or surmises or a case of no evidence or of the findings being arbitrary and perverse. The submissions of the learned Counsel in this behalf therefore does not merit acceptance

22. Another submission by the learned Counsel for the applicant was that the applicant had been denied reasonable opportunity to defend himself and there has been violation of Articles 14 and 311(2) of the Constitution due to failure to supply a copy of the inquiry report prior to making the impugned order. Reliance in this behalf was pleased by the learned Counsel on the decision of the Supreme in 'Union of India and Others v. E.Bashyan' *** as also on the decision of the Full Bench of the Tribunal rendered in 'Premnath K.Sharma v. Union of India & Others'****. Our attention was specifically

*** AIR 1988 SC 1000
**** 1988(3) SLJ 449.

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invited to the observations made by the Full Bench in paragraph 17. The decision of the Supreme Court in E.Bashyan supra supports the submission of the learned Counsel for the applicant. The following observations of the Supreme Court in paragraph 5 of 'E.Bashyan' (supra) may pertinently be quoted:-

> "...In the event of the failure to furnish the report of the Enquiry Officer the delinquent is deprived of crucial and critical material which is taken into account by the real authority who holds him guilty namely, the Disciplinary Authority. He is the real authority because the Enquiry Officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt to assist the Disciplinary Authority who alone records the effective finding in the sense that the findings recorded by the Enquiry Officer standing by themselves are lacking in force and effectiveness. Non-supply of the report would therefore constitute violation of principles of Natural Justice and accordingly will tantamount to denial of reasonable opportunity within the meaning of Art.311(2) of the Constitution."

The real question to see, however, is as to whether the applicant had not been supplied with a copy of the inquiry report. A perusal of Annexure 'C' dated 6.8.1987 which document has been produced by the applicant goes to show that a copy of the inquiry report was sent to the applicant on the correct address. This was sent by Registered A.D. The material portion of Annexure 'C' reads thus:-

> " Please find enclosed herewith a copy of the Report submitted by Inquiry Officer, S/Shri B.T. Trivedi and P.B.Malia to the Disciplinary Authority. The Disciplinary Authority will take a decision based on the Inquiry Report."

We would, therefore, presume that the applicant was served with a copy of the Inquiry Report.

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In view of the aforesaid factual position, this submission is of little avail to the applicant.

23. During the course of arguments, the learned Counsel for the applicant also contended that the right to equality enshrined in Article 14 of the

Constitution has been infracted, inasmuch as the respondents have not taken any action against PSIs. This ground has been pleaded by the applicant as ground 'R'. While controverting this ground, the State Govt. in their reply have stated that the State Govt. has already taken a decision to hold departmental proceedings against S/Shri V.J.Desai, M.D.Raizada, PSIs, Pandit Roop Chand, Head Constable and Pitambar Tanaji, Police Constable about which the I.G. of Police had been informed vide Govt. letter dated 4.8.1973 and that the departmental proceedings could not be initiated against the aforesaid persons due to non-availability of the original documents which were produced before the Board of Enquiry. In view of the aforesaid factual position, this contention merits rejection. Even otherwise, such a contention has hardly any merit in that it is for the authorities concerned to decide as to against whom and if so, what action should be taken.

24. Ground (i) in para (O) pertaining to denial of some important documents to the applicant thereby denying him the opportunity to cross-examine the witnesses is being noticed only to be rejected. The petitioner has not only failed to specify the 'some important documents' relevant to the enquiry, but has also not made any averment that a prejudice has been caused to him by the failure of the prosecution to furnish copies of the relevant documents. The requests of the petitioner for supply of the documents from time to time have also been duly considered

and determined by the Board of Enquiry. This is clearly borne out from several orders made in this behalf. In this connection, it would be pertinent to point out that mere non-furnishing of some documents to the delinquent public servant is hardly of any consequence. As ruled by the Supreme Court in 'Chandrama Tewari v. Union of India*****, if a document has no bearing on the charges or if it is not relied upon by the Inquiry Officer to support the charges or if such document was not necessary for the cross-examination of witnesses during the enquiry, the delinquent officer cannot insist upon the supply of copies of such documents, as the absence thereof will not prejudice the concerned officer. It was further declared that the question whether a document is material or not will depend upon the facts and circumstances of each case. In the instant case, the petitioner has not shown as to copies of which material documents were not furnished to him and as to how any prejudice has been caused to him thereby.

25. The learned counsel for the applicant next put forward the submission that the disciplinary authority had based its decision mainly upon the advice tendered by the Central Vigilance Commission and that a copy of the report of the CVC was not furnished. According to the learned counse, this resulted in denial of reasonable opportunity to the applicant and principles

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***** AIR 1988 SC 117

of natural justice were also violated. Reliance in this behalf was placed by the learned counsel on the decision of Gujarat High Court in "A.K.Roy Choudhry vs. Union of India and others", ****** . In the aforesaid decision, the learned Single Judge of the High Court had held vide para 5 that any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. It is well-nigh possible that the Central Vigilance Commission might have given its own reasons and expressed strong opinion against the petitioner. It is equally well-nigh possible that some other records also might have been made available to the Central Vigilance Commission in the form of earlier confidential records of the employee concerned. The opinion of any august body like the Central Vigilance Commission would obviously carry great weight with the disciplinary authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived. It was further held by the High Court that the impugned order cannot be allowed to stand. The High Court declared that the impugned order is bad at law and is inoperative making it clear that it shall be open to the disciplinary authority to issue a fresh notice without the enquiry report which is already given but with other additional material while assessing the merits or demerits of the matter. The learned counsel for the respondents countered by stating that obtaining the advice of CVC is an internal matter and that while taking a decision, the disciplinary authority had taken into account report of the IA, all the relevant material including the advice of the UPSC.

****** 1982(1) SLR 443.

After giving our very careful consideration to the decision of the Gujarat High Court rendered in 'A.K.Roy Chaudhry'(supra), we find it difficult to persuade ourselves to countenance the view taken by the High Court. The reasoning adopted by the High Court,which has been set out in the preceding para is not applicable to the facts of the instant case as no records other than which were made over to the disciplinary authority had been furnished to the Central Vigilance Commission. A perusal of the order made by the disciplinary authority reveals that the disciplinary authority had also not relied upon the advice rendered by the CVC. It may also be added that obtaining the advice of the CVC is an internal function and the advice of the CVC is not obtained pursuant to any constitutional or statutory obligation as is the position in the case of obtaining the advice of the UPSC. The advice of the UPSC though directory, nonetheless, is entitled to great weight. The advice of the UPSC has to be obtained pursuant to the mandate contained in Article 320(3)(c) of the Constitution as also under the Rules. The advice rendered by the CVC,therefore, cannot be elevated to the level of the advice rendered by the U.P.S.C. or to a report of the inquiring authority in the sense that the omission to furnish a copy thereof would vitiate the order imposing penalty upon the delinquent public servant. In this view of the matter, this submission is also hereby negatived.

26. For all what has been said and discussed hereinabove, we hold that the Application merits rejection. Consequently, the Application is hereby rejected, but in the circumstances, we make no order as to costs.

(P.C.Jain) 29/10/90
AM

(B.S.Sekhon)
VC
29-10-90