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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2750/90

NEW DELHI THIS THE 6th DAY OF FEBRUARY, 1996

HON'BLE MR.N.V.KRISHNAN, ACTING CHAIRMAN
HON'BLE MRS.LAKSHMI SWAMINATHAN, MEMBER(J)

Shri Mahender Singh
D/o Shri Daryao Singh
R/o FB-15/2, Tagore Garden
New Delhi-110027.

... Applicant

(BY ADVOCATE SHRI K.K.JAGGI)

vs.

1. Union of India.
through
The Secretary
Ministry of Agriculture &
Cooperation, Krishi Bhawan
New Delhi-110001.

2. The General Manager
Delhi Milk Scheme
Govt.of India
New Delhi.

... Respondents

(BY ADVOCATE SHRI N.S.MEHTA)

ORDER

MR.N.V.KRISHNAN:

The applicant had been removed from service in disciplinary proceedings and hence he has filed this OA challenging the order of removal.

2. This case has a chequered history. The applicant was a Cash Clerk in the Delhi Milk Scheme and was posted at the Milk Collection & Chilling Centre, Sonepat which is required to make payments for milk supplied by the suppliers. It was alleged that he misappropriated Rs.42,057.20 from the Delhi Milk Scheme by drawing money from the account of the Delhi Milk Scheme from State Bank of India, Sonepat by presenting a cheque dated 17.3.1976 forging the signature of Shri Pyare Lal, Manager of the Centre. Shri Pyare Lal,

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Manager, came to know about this drawal by the applicant when he went to the Bank for encashment of another cheque and was told that the balance in the amount was not sufficient to make the payment, because of ~~the~~ payments the above /made to the applicant which reduced the balance in the account. Thereupon, Shri Pyare Lal, the Manager, Shri G.P.Nigam, Security Officer, Shri Mithu Lal, Assistant Security Officer and Shri G.C.Joshi, Project Officer came to Delhi and visited the house of the applicant. Though the applicant denied the above allegation, it is stated that ,ultimately, he admitted his guilt. He had left all this with a girl friend. He,therefore, went to her house and produced Rs.21,820 in cash and three Bank drafts for Rs.10,000, Rs.6,000 and Rs.4,000. All these were seized from him.

3. The matter was reported to the police and the applicant was placed under suspension. A criminal case was filed on 11.11.1976 in the court of the Chief Judicial Magistrate. In the meanwhile, the applicant's services were terminated under Rule 5 of the Central Civil Services(Temporary Services) Rules, 1965 by an order dated 10.1.1978.

4. The Chief Judicial Magistrate, Sonepat acquitted the applicant on 7.3.1980 by giving him the benefit of doubt. On 5.1.1981, the applicant filed a civil suit against the termination of his services which came to be transferred to the Tribunal and was registered as TA 351/86. This was disposed of by the

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judgement dated 5.9.1988 which contained the following directions:

"(i) The impugned order of termination dated 10.1.1978 is quashed. Consequentially status quo ante as regards the applicant being under suspension will continue from 10.1.1978.

(ii) It will be open to the competent authority to take a final decision on the continuance or otherwise of the suspension, in the light of the judgment of Chief Judicial Magistrate dated 7.3.1980 in case No.57/2. It will be open to the competent authority to revoke the order of suspension and reinstate the plaintiff into service as Cash clerk. In that event, the pay and allowances of the plaintiff during the period of his actual suspension from 27.3.1976 to 10.1.1978 and deemed suspension thereafter shall be regulated in accordance with the provisions of F.R. 54-B. Necessary adjustments, if any, should be made in regard to the subsistence allowance already paid to him. The defendants shall also consider and decide whether the period of actual and deemed suspension shall be treated as a period spent on duty or not.

(iii) It will also be open to the competent authority, if so advised, to continue the plaintiff on suspension if it is decided to initiate disciplinary proceedings against him based on his conduct which led to his prosecution before the criminal court. The disciplinary proceedings if initiated should be completed within a period of six months from the date of communication of this order.

(iv) The competent authority shall take appropriate decision as regards (ii) and (iii) above within a period of two months from the date of communication of this order.

(v) The parties will bear their respective costs."

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5. Keeping in view these directions, the applicant was reinstated in service. He was simultaneously placed under suspension retrospectively by the order dated 10.11.1988. A departmental enquiry was conducted against him after the issue of a chargesheet on 4.2.1989. It will be useful here to refer to the charges framed against the applicant and the statement of imputations. They read as follows:

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SH. MOHINDER SINGH, CASH CLERK, DELHI MILK
SCHEME

CHARGE

That the said Sh.Mohinder Singh, while functioning as Cash Clerk and posted at M.C.& C.C. Sonepat had withdrawn an amount of Rs.42057.20 from S.B.I. Sonepat on 17/3/1976 by making forged signature of Sh.Pyare Lal Raturi Ex-Manager, M.C.&C.C.Sonepat on the cheque No.0B/11-027985 and thus attempted to misappropriate the said Govt.money. He is thus charged with a drawal of an amount of Rs.42057.20 from S.B.I.Sonepat by submitting a cheque by making forged signature of Sh.Pyare Lal & Attempted to misappropriate the said amount which acts of a Govt.servant show dishonesty, highly unbecoming & are in violation of Rule 3 of CCS(Conduct) Rules, 1964.

STATEMENT OF IMPUTATION OF MISCONDUCT OR
MISBEHAVIOUR ON THE BASIS OF WHICH THE ABOVE
SAID CHARGE HAS BEEN FRAMED AGAINST SH. MOHINDER
SINGH CASH CLERK, DELHI MILK SCHEME

It was reported that Sh.Mohinder Singh Cash Clerk who was deputed at M.C.&C.C. Sonepat for disbursing the cash to milk suppliers of Sonepat Centre had submitted a cheque bearing No.0B/11-027985 dt.17/3/76 in S.B.I.Sonepat which was issued in the name of one Shri Ramesh Kumar for Rs.42057.20 by making forged signatures of Sh.Pyare Lal Raturi Ex-Manager Sonepat. It was also reported that Mohinder Singh used to get the cheque from Sh.Pyare Lal for encashment from S.B.I. for making the payment to Milk suppliers of Sonepat Centre. This cheque as reported was removed secretly earlier by Shri Mohinder Singh from the Cheque Book and put forged signatures of Sh.Pyare Lal

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himself on 17.3.76. He along with a person posed as Ramesh Kumar went to S.B.I. and told them that he was on leave on that day and Sh. Ramesh Kumar was newly appointed in place of him. The cheque was encashed by misleading the Bank authorities.

It is further reported that Sh. Pyare Lal had come to know on 19.3.76 about this withdrawal when he visited S.B.I. Sonepat in order to withdraw Rs.18000/- . He was told by the Bank authorities that there was approximately Rs.5000/- in their account. He immediately contacted higher authorities of Delhi Milk Scheme at Delhi and informed them about the incident. Thereafter he along with Security Officer, Sh. Nigam, G.C.Joshi, Ex-Project Officer and Mithu Lal Asstt. Security Officer went to the house of Sh. Mohinder Singh bearing No.FB 15/2, Tagore Garden, New Delhi and made enquiry from Sh. Mohinder singh. Initially Sh. Mohinder Singh denied the encashment of the amount but later on he confessed the guilt. He told them that some amount was given to a girl living in J.J. Colony. He along with a friend went on Motor cycle and brought an amount of Rs.21,820/- in cash, three bank drafts of Rs.10,000/-, Rs.6,000/-, Rs.4000/- which were issued in the name of Rajinder Kumar & Veenà Kumari. The same were taken into possession by Sh. Pyare Lal in the presence of Security Officer, Asstt. Security Officer and Project officer of D.M.S. Thereafter Shri Pyare Lal lodged a F.I.R. in City Police station Sonepat and also deposited the cash and bank drafts with the police authorities. Later on the Chief Judicial Magistrate Sonepat had acquitted him of the charge by giving benefits of doubts. Finally CAT vide judgment pronounced on 5.8.88 had directed competent authority to take disciplinary action.

He is thus charged with withdrawing an amount of Rs.42057.20 from S.B.I. Sonepat by submitting a cheque under the forged signatures of Sh. Pyare Lal & had attempted to misappropriate the said amount which acts of a Govt. servant show dishonesty, highly unbecoming and are in violation of Rule 3 of CCS (Conduct) Rules, 1964. He is also liable to refund balance amount of Rs.257.20."

(CJ)

On 1.12.1989, the impugned order removing the applicant from service was passed by the disciplinary authority (Annexure A). On 15.12.1989, the applicant preferred an appeal before the appellate authority. Before the order of the appellate authority could be received, he filed this OA to set aside the order of dismissal dated 1.12.1989.

6. The applicant had moved the Supreme Court against the order dated 10.11.1988 which placed the applicant under suspension retrospectively from the date he was dismissed from service. It was directed by the Supreme Court that the suspension will be effective only prospectively and that he would be entitled to reinstatement with backwages till that date. This has been implemented by the order dated 7.2.1992.

7. The impugned orders have been challenged in the OA on a number of grounds. However, when the matter came up for final hearing, the learned counsel pressed only the important grounds which are considered hereinafter.

8. The first ground goes to the root of the matter. He contended that inasmuch as the applicant had been acquitted of the offences under Sections 380/420/468/471/120-B I.P.C. arising out of the allegations made against him by the competent trial court, / initiation of this disciplinary enquiry is bad. The disciplinary authority has not stated as

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to why he did not find the decision of the criminal court acceptable to him and as to why he felt it necessary to still initiate the disciplinary proceedings. In this regard, our attention has been drawn to an earlier decision of this Tribunal in Ram Niwas Vs. Commissioner of Police and others(1992 (2) SLR 721). Therein, the Bench came to the conclusion that the charge levelled against the applicant in the criminal case as well as in the departmental enquiry was substantially the same. The applicant had been acquitted by giving him the benefit of doubt. The question considered by the Bench was whether in such a case, it was open to the departmental authority to come to a different conclusion and impose the penalty of removal from service. Paras 13 to 15 of that judgement are reproduced below:

" 13. In Corporation of Nagpur V.Ram Chandra G.Modak,A.I.R.1984 S.C.636; the Supreme Court observed that normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence. The fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away, nor is its discretion in any way fettered.

14. The discretion of the department must be exercised judicially and some valid reasons must be given for differing with the conclusions of the criminal court. While such reasons may not necessarily be communicated to the employee, the relevant departmental file must disclose that the department/disciplinary authority had properly exercised the discretion and give plausible reasons for ignoring the criminal court's findings. the revisional

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authority in the instant case had before it the judgment of the Metropolitan Magistrate acquitting the applicant. He has not referred to the judgment of the criminal court or given any plausible reasons why the impugned order of punishment of removal from service in revision should be upheld by him in his order dated 15.3.1990 on the revision petition filed by the applicant. The counter-affidavit is silent on this aspect. The learned counsel for the respondents also did not place before us the relevant file in which the decision of the criminal court was considered by the authorities concerned and it was decided to disagree with the same before passing the final order in the instant case."

15. In the facts and circumstances of the case, we are of the opinion that there was no proper application of mind on the part of the authorities concerned as required by the decision of the Supreme Court in the above mentioned case."

9. We have carefully considered this matter. The learned counsel for the respondents has produced for our perusal File No.2-18/76-Vig(Vol.III), which contains the decision of the Deputy General Manager to institute the departmental enquiry. We notice that the judgment of the criminal court was adverted to and it was noticed that the acquittal was due to being given benefit of doubt. The competent authority decided to continue the applicant under suspension and to frame charges against him. But there is no discussion of the judgment and no other reasons are given for not accepting the judgment as to the conduct of the applicant.

10. We are of the view that in the circumstances of the case, the aforesaid objection cannot lie. The first and most important reason is that the decision to institute the departmental enquiry was taken on 29.10.88 and the memorandum of charges was issued on 4.2.89. The judgment of the Principal Bench in the case of Ram Niwas (supra) on which reliance is placed by the learned counsel, was delivered much later on 28.1.92. The second ground is based on the terms of the judgment in the earlier T.A. 351/86. The judgment of the trial court acquitting the applicant in the criminal case was brought on record in the T.A. vide para 2 of the judgement and it was noted that the Court gave the benefit of doubt and acquitted

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the accused. Yet in the judgment, the respondents were given certain liberties in the matter as can be seen from the direction in sub-para (iii) of the judgment which is relevant and which reads as follows:

"It will also be open to the competent authority, if so advised, to continue the plaintiff on suspension if it is decided to initiate disciplinary proceedings against him based on his conduct which led to his prosecution before the criminal court. The disciplinary proceedings if initiated should be completed within a period of six months from the date of communication of this order."

It should be noted that it is only the continuance of the plaintiff on suspension that is a matter which should be decided by the competent authority, if so advised, i.e. by discussion of all aspects of the law. In so far as the initiation of the disciplinary proceedings against the applicant, based on his conduct which led to his prosecution is concerned, there is no stipulation that he could do so, only if so advised. In short, the permission granted to initiate the departmental enquiry proceeding is unconditional and did not require him to consider whether there were grounds to disagree with the judgment of the trial court acquitting the applicant.

In our view, this decision gave untrammelled liberty to the respondents to initiate the disciplinary proceedings.

11. That apart, we are respectfully of the view that the observations made by the Bench in the case of Ram Niwas ~~in~~ extracted above, are totally contrary to the observations made by the Supreme Court in the case of ~~in~~ & anr. Corporation of Nagpur Vs. Ram Chandra G. Modak/(AIR 1984 SC 626) which we have seen.

12. That was a case where the respondents were suspended in connection with an accident which took place during the construction of a stadium resulting in death

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of seven persons and injury to eight others, pending a departmental enquiry, which too had been initiated. In this connection, a criminal charge under Section 304 I.P.C. was filed against the respondents. The main dispute in the Supreme Court was about the competence and jurisdiction of the authority concerned to suspend the respondents. After that issue was decided, the Supreme Court observed as follows:

" The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental enquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted, we direct that the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sanghi states that if it is decided to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follow." (Emphasis added)

13. It is quite clear that the Supreme Court was dealing with a hypothetical situation where the respondents would be completely exonerated of the charges. Even in such a situation, it held that, in law, the power of the authority concerned to continue the departmental enquiry is



not taken away nor its discretion is in any way fettered. That is the position even where there is honourable acquittal and complete exoneration. If the discretion to continue the departmental enquiry even in this circumstance is in no way fettered by the judgment, we see no reason why there should be any fetter on the institution of disciplinary proceedings after such acquittal. For, there is a world of difference between criminal proceedings and disciplinary proceedings which is too well known to need repetition. That seems to be the ratio of the above declaration of the Supreme Court. An accused who is acquitted only on technical grounds and by granting benefit of doubt cannot be said to be either acquitted honourably or fully exonerated. The above declaration of the Supreme Court cannot give him more protection than to the type of accused referred to in that judgment. Therefore, in our respectful view, the judgment in Ram Niwas's case in this regard goes against the declaration of the Supreme Court. It, however, relies upon that judgment and, therefore, cannot be ignored as a per incuriam judgment. That finding in the case of Ram Niwas (supra) will have to be reconsidered in an appropriate case.

14. The second objection of the learned counsel for the applicant is that the departmental enquiry was not completed within the time-limit fixed in the earlier order for that purpose. A direction was given that the disciplinary proceedings should be completed within a period of six months from the date of communication of the order. We are not impressed by this argument for two reasons. Firstly, the respondents had filed a M.P. for extension of time on which orders had not been passed. What is more important is that the Bench did not further direct that in case the departmental enquiry was not so completed, it would either abate or that the charges would be deemed to have been dropped. Such being the position, this direction was

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more in the nature of impressing upon the respondents the need for expediting the enquiry. The delayed completion of the departmental enquiry did not vitiate the proceedings.

15. It is next contended that this is a case of no evidence, that his defence has not been examined properly, and that the order of the disciplinary authority is not a speaking order, particularly because it does not refer to the representation which the applicant gave after receipt of the report of the inquiry officer from the disciplinary authority. A copy of that representation was annexed by him to the appeal filed by him to the appellate authority (Annexure D).

16. A perusal of the report of the inquiry officer, an English translation of which has been furnished to us by the learned counsel for the applicant, shows that the applicant did not remain present on most of the dates of hearing of the case. The inquiry officer received the case on 10.3.1989. The applicant remained present on 3.4.1989 only and was absent on 12.4.89, 20.4.89, 28.4.89, 16.5.89, 17.5.89, 18.5.89, 1.6.89, 14.6.89 and 21.6.89. He did not demand any additional documents and he filed his statement of defence on 8.6.89 and also filed a written brief on 13.6.89. Hence, the proceedings were conducted ex parte.

17. The inquiry officer examined only one of the two witnesses, Mitthu Lal, on 1.6.89 because the Presenting Officer mentioned that the other witness Shri G.C.Joshi had retired long back. A copy of the statement of Mitthu Lal was sent to the applicant.

18. The witness Mitthu Lal stated that he had given a statement earlier in the preliminary inquiry and that he stood by that statement. He identified that statement as exhibit 4. In the cross examination by the inquiry officer, this witness stated that the delinquent, Mahender Singh had then confessed to his guilt in his presence.

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Ex.4 was the statement he gave on 29.11.88 before the memo of charges was issued on 4.2.1989 and it is one of the documents cited in the memo of charges for being used to substantiate the charge. In other words, the applicant was made aware of the fact that this witness had given a statement before the departmental enquiry was initiated.

19. The statement of Mitthu Lal dated 29.11.1988 (exhibit 4) reads as follows:

" On 20/3/76 I was serving in DMS on the post of Asst. Security Officer while Sh. G.P.Nigam was then Security Officer in D.M.S. Sh. Pyare Lal Raturi the Manager MC&CC posted at MC&CC, Sonepat, Haryana came to Sh. Nigam and told that Sh. Mohinder Singh, Cash Clerk posted at Sonepat had drawn a cash amount of Rs.42057.00 from the bank against a cheque containing forged signature of Sh. Pyare Lal Raturi from the account of DMS fraudulently. Sh. Nigam, Security Officer, Sh. Joshi, the then Project Officer, Sh. Pyare Lal Raturi and myself went to the residence of Sh. Mohinder Singh at House No.F.B-15/2, Tagore Garden, New Delhi and made enquiries from Sh. Mohinder Singh. Initially Sh. Mohinder Singh denied the encashment of the amount but later on he confessed his guilt and produced a cash amount of Rs.21820.00, three bank draft - for Rs.10,000.00, 6,000.00 and 4,000.00 which were issued in the name of Rajinder Kumar, Veena Kumari. All the cash amount and bank drafts were taken into possession by Sh. Pyare Lal Raturi in our presence. Thereafter, Sh. Pyare Lal produced the cash amount and bank drafts at Police Station, City Sonepat, Haryana and lodged a F.I.R. No.81/20-3-76 P.S. City Sonepat U/S 380/420/468/471/120-B I.P.C.

Sd/- (Mitthu Lal) 29-11-88
Deputy Security Officer."

This statement is quite damaging to the applicant's interest because it alleges that Mohinder Singh, the applicant, initially denied the encashment of the cheque but later on confessed to his guilt and produced Rs.21820 in cash and three bank drafts totalling Rs.20,000/- These were taken

possession of by Shri Pyare Lal, the Manager, State Bank of India, Sonepat who produced them before the City Police Station and lodged an F.I.R. The statement of G.C.Joshi dated 31.1.1989 endorses the statement given by Mitthu Lal. It also refers to the statement he had given in the court i.e. in the criminal case.

20. When Mitthu Lal was examined as witness No.1 on 1.6.1989, he referred to the above earlier statement and affirmed it. In an answer to the enquiry officer he stated that the applicant had confessed to the offence in his presence.

21. It is surprising that having prior knowledge of the preliminary statement (Ex.4) given by Sh. Mitthu Lal, the applicant did not care to be present on 1.6.1989 to cross examine this witness. Therefore, the statement made by this witness, being unrebutted, can be relied as proper evidence of the facts mentioned therein. It is, therefore, factually incorrect to contend that the penalty imposed is not backed by any evidence of guilt.

22. We must consider the contention that the Inquiry Officer was biased because he did not consider the defence brief produced by him.

23. A perusal of the Inquiry Officer's report shows that he found that the defence statement merely referred to his various applications earlier given to the disciplinary authority and the Inquiry Officer, the burden of which was that the enquiry was illegal. The applicant submitted his final brief with his letter dated 30.6.89 to the Inquiry Officer. He merely stated that the Presenting Officer had not produced any evidence against him and that the cheque encashed bore the signature of the account holder himself. To support this claim, he enclosed a copy of the judgment dated 7.3.80 in the criminal case to show that it was not forged.

24. It is true that the Inquiry Officer has not

examined the issue whether the cheque was forged and if so, whether it was forged by the applicant only as alleged in the memo of charges. A copy of the cheque was enclosed to the charge memo and is exhibited in the enquiry as document D-2. The only person who could have testified about this aspect was the account holder, Sh. Pyare Lal. He was not examined. Only Mitthu Lal was examined as a witness. He did not state anything in this regard when he appeared as a witness before the trial court. Nor has he said anything about forgery by the applicant in his preliminary statement Ex.4. Further, in the criminal trial, it has been held that forgery has not been established and even if Shri Pyare Lal was to be believed, there was no evidence led to prove that the applicant committed the forgery. Therefore, there is no evidence in regard to forgery. Yet the inquiry officer found that the applicant has forged the signature of the account holder in the cheque. That finding being without any evidence is quashed.

25. However, this circumstance by itself does not affect the final result in any way. In his defence brief referred to above, he has not stated anything about the allegation that he encashed the cheque and misappropriated the amount and that Rs.21820/- in cash and three drafts for Rs.20000/- in all were produced by him and were seized from him. This is established from the judgment he has produced with his brief. The applicant did not say in the defence brief that he never went to the bank at all. In para 9 of the judgment, it is found that he and one Ramesh Kumar had gone to the Bank. Sham Sunder PW 13 testified that the accused Mohinder Singh (applicant) was known to him earlier. This accused and one Ramesh Kumar came to the bank to encash the cheque for Rs.42057.20 in favour of Ramesh Kumar. This witness issued token No.40 to Ramesh Kumar. In para 10 of the judgment, it has come out from the statement of PW 5 Ram Bilas that payment was made to Ramesh Kumar. However, none

knows the identity of Ramesh Kumar who appears to be a fake person. The court found that there was no evidence to identify Ramesh Kumar with either of the two persons facing trial.

26. Yet a very large sum was recovered from the applicant as is established in the trial as can be seen from para 13 of the judgment reproduced below:

" It has further come in the statement of Pyare Lal P.W.6 that thereafter he went to head office Delhi and met the officers and in the company of Nigam Security Officers Mithu Lal P.W. 3 and Sh. Joshi P.W. 4 went to the house of Mohinder Singh in the company of one ASI called by D.S.P. of their security Department. It has been further stated by Pyare Lal P.W. 6 Mithu Lal P.W. 3 and G.C.Joshi P.W. 4 that initially Mohinder Singh denied of any knowledge about the amount but later on he produced Rs.21820/- in cash and went to the house of Veena Kumar and produced three draft worth Rs.10,000/-, 6000/- and 4000/- issued in the name of Veena Kumari and Rajender Kumar and thereafter this amount along with cheque book were produced on the evening of 20.3.76 before ASI Arjan Lal registered the case. No doubt recovery of Rs.21820/- and three bank drafts were effected from Mohinder Singh as testified by Mithu Lal P.W. 3, Sh.Joshi P.W. 4 and Pyare Lal P.W. 6. However there is no charge against Mohinder Singh accused that he had committed theft of this property, or even there is no charge under section 409 IPC because it is not even the case of the prosecution that this amount was entrusted to him on behalf of the centre. Again the accused had totally denied the recovery in the manner stated by these witnesses in their statements." (Emphasis given)

It is thus clear that the recovery from the applicant has been established even in the trial court. It is because of certain other technical deficiencies referred to later on in the judgment that this was not attached the importance which it should have otherwise received.

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27. The failure to examine the defence brief by the Inquiry Officer and the disciplinary authority would have vitiated the proceedings only if the brief contained something more. It confined itself to only the allegation of forgery, which, no doubt, has been held to be not proved by the trial court and has not been established in the departmental inquiry also. The defence brief has nothing to offer by way of explanation about the presence of the applicant in the bank, presentation of the cheque drawn in favour of Ramesh Kumar, when applicant was also present, encashment of the cheque by Ramesh Kumar who is not identified, and recovery of Rs.41,820/- in cash and cheque from the applicant. These are strong and reliable pieces of evidence to establish the charge made against him, except to the extent that it alleges forgery of the cheque by the applicant, as they have come out from the evidence recorded in the connected criminal case and from the judgment delivered therein. Therefore, the non-examination of the defence brief in detail has neither affected the applicant adversely nor has it led to any injustice.

28. Another ground pressed by the learned counsel for the applicant is that the onus of proof has been shifted on the applicant. We fail to understand how any objection can be taken to this approach in the circumstances of the case. This cannot be isolated from the circumstances leading to the recovery of the cash and the bank drafts which have been proved in the criminal case. Shri Pyare Lal, the Manager of the Delhi Milk Scheme got information from the Bank that a large amount had been drawn by the applicant from the Bank which reduced the bank balance of the Milk Scheme and rendered further payment to Shri Pyare Lal impossible. Thereafter, Shri Mitthu Lal accompanied by others went to the applicant's house. The applicant denied the allegation but later on produced Rs.21820 and three drafts totalling Rs.20000/- . In such a circumstance, it is for the applicant to explain how

he had with him Rs.21820/- in cash and three bank drafts amounting to Rs.20,000/- totalling Rs.41,820/- which is almost equal to the amount encashed i.e. Rs.42057.20. The learned counsel does not deny the factum of recovery. Indeed, the applicant cannot do so, particularly, after it is found established by evidence, in the judgement of the trial court, as stated above. Therefore, a heavy responsibility fell on the applicant to give a plausible explanation as to how he came by these amounts. Otherwise, in the circumstances above, the inquiry officer was right in holding that the charge of misappropriation was proved.

29. The last ground pressed by the learned counsel for the applicant is that the disciplinary authority has not passed a speaking order. It is pointed out that, he did not consider any of the points raised in the representation dated 4.9.1989 made by him when he received a copy of the enquiry officer's report from that authority. A copy of that representation is filed as an enclosure to the appeal memorandum (Annexure D).

30. The grievance is well-founded on facts. That representation runs into 25 pages but is practically ignored in the order of the disciplinary authority. In the normal course, this could have been a reasonable ground to quash the disciplinary authority's order. But, in the special circumstances of this case, we do not find that any interference with the disciplinary authority's order is called for, though that authority ought to have dealt with the important issues raised therein. In the first place, if the grounds in that representation were so well-

founded, they would have been raised in the OA also. As far as the OA is concerned, the grounds are contained in para 5. In para 5.1 itself, there are 18 grounds from (a) to (r). Besides sub para 1(i.e.5.1) there are as many as 61 sub paras ending with 5.62. Out of these, the learned counsel pre-ssed only the issues discussed above. Therefore, all the grounds are not necessarily important or relevant. Hence, their non-consideration may not have resulted in any prejudice to the applicant. Secondly, in that representation which runs into 25 pages, the applicant has not tried to explain how he came to possess money in cash and drafts amounting to Rs.41,820 which, as we have found earlier, he was duty bound to explain, in the circumstances of the case and the establishment of the recovery and seizure from him as facts. That consideration also lends support to the view that the failure to examine the representation does not vitiate the impugned order, though that authority ought to have considered it, howsoever briefly.

31. We are definitely of the view that in the light of the above circumstances, particularly when the fact of recovery from the applicant of such a large amount has been established in the trial court, the applicant cannot plead mere technical deficiencies to establish his innocence. Nor can mere irregularities vitiate the proceedings. For, unlike a prosecution in a criminal case where the offence has to be proved beyond reasonable doubt, in a disciplinary proceeding what is required is to find out what is preponderance of probabilities. The very fact

that the amount of Rs.41820 had been recovered out of which Rs.21,820 was in cash and Rs.20,000 were in the shape of three Bank drafts, lends credence to the allegation that the applicant had drawn Rs.42057.20 from the State Bank of India, Sonepat from the account of the respondents and, instead of keeping ^{it} in the office or disbursing it for meeting official expenditure, he took it home and got 3 drafts made out for Rs.20000/-, spent some amount and had kept with him Rs.21,820/- and thus misappropriated Govt. money. In the departmental enquiry, a copy of the cheque and the drafts had been produced. As these facts have been established in the criminal case, as seen from the judgement, the technical irregularities cannot be invoked to seek escape from the consequences, when guilt is written so large and when, basically, a reasonable opportunity to defend has been given, the minor infractions of procedure cannot come to the aid of the applicant. The matter would have been different if he had come out with an alibi and he was either not allowed to establish it or the merits of his alibi were not considered by the inquiry officer/disciplinary authority. That is not the case here.

32. In the circumstances, we do not find any merit in this OA. Accordingly, it is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V.Krishnan
(N.V.KRISHNAN)
ACTING CHAIRMAN