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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A. NO. 716/90

New Delhi this the 6th of October, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Shri A.C. Srivastava,
S/o late Shri M.B. Srivastava,
R/o C-II/64, Bapa Nagar,
Zaqir Hussain Marg,
New Delhi.

...Applicant.

By Advocate Shri Madhav Panikar.

Versus

1. Union of India through
The Secretary
Department of Revenue,
Ministry of Revenue,
North Block,
New Delhi.

2. Union Public Service Commission,
through
Secretary,
Dholpur House, Shahjahan Road,
New Delhi.

..Respondent.

By Advocate Shri R.S. Aggarwal.

ORDER

Shri N.V. Krishnan.

The applicant is aggrieved by the disciplinary proceedings initiated against him in which he has been dismissed from service. The applicant joined as Income Tax Inspector on 30.3.1957 and was promoted as Income Tax Officer Grade-II in November, 1964. He was further promoted as Income Tax Officer (Class-I) in 1976 on an ad hoc basis. He was given the senior scale Grade 'A' in 1981 and he was re-designated as Assistant Commissioner of Income Tax w.e.f.

1.4.1988. He got married in May, 1959. His first child (son) was born in June, 1961. In January, 1965 twin children (one son and one daughter) were born. His wife has been in employment since 1961 as Lecturer.

2. A raid was conducted on the residence of his wife at Ahmedabad on 1.11.1980, when the applicant was posted as Income Tax Officer, Mehsana. Consequent upon the raid, disciplinary proceedings were initiated against him on 11.12.1984 when the memorandum of charges (Annexure-2) was issued. There is only one charge which reads as follows:

"That said Shri Avinashchandra C. Srivastava while functioning in various capacities in the Income-tax Department of Government of India during the period between 1.4.57 to 31.10.80 was found on 31.10.80 in possession of assets which are disproportionate to his known sources of Income to the extent of about Rs.1,42,486.08 ps. suggesting that the aforesaid Shri Avinashchandra C. Srivastava acquired the said disproportionate assets by questionable means and or from dubious sources and that thereby he failed to maintain absolute integrity, contravening Rule 3 of Central Civil Service (Conduct) Rules, 1964".

3. A regular enquiry was thereafter held. The Enquiry Officer found him guilty of possessing assets of Rs.96,066/- as on 30.10.1980 disproportionate to his known sources of income. The first respondent provisionally decided that the applicant should be dismissed from service and consulted the Union Public Service Commission (UPSC for short). The UPSC advised by its letter dated 30.5.1988 (Annexure-12) that the value of the unaccounted assets has

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to be increased by Rs.260/- being extra-expenditure resulting in lesser savings. The UPSC gave an allowance of 10% of the gross income, relying on the Supreme Court judgement in AIR 1977 SC 796 and concluded that, after this adjustment, the value of the assets exceeded the savings by Rs.40,190/- and hence the charge has been found proved. It advised that the ends of justice would be met if the penalty of dismissal from service was imposed on the applicant. Agreeing with this advice of the UPSC, the impugned Annexure-9 order dated the 10th August, 1988 was passed dismissing the applicant from service.

4. The applicant preferred a Revision Petition (Annexure-13) on 11.10.1988 which was also rejected by the order dated 12.6.1990 (Annexure R-I) filed by the respondents with their reply. The O.A. has been amended to impugn this order also.

5. It is in this circumstance that this O.A. was filed for a direction to quash the impugned orders of the President of India, the disciplinary authority, by which the applicant was dismissed and the further impugned order dated 12.6.1990 by which the revision filed by the applicant was also dismissed.

6. The respondents filed a reply in which it is contended that the applicant is not entitled to any relief. It

is stated that the disciplinary proceedings have been held in accordance with law. The applicant has been given full opportunity of defending himself and the impugned orders have been passed on a proper appreciation of the facts and the evidence on record, after consulting the UPSC. The respondents have produced for our perusal the Ministry's file C-14011/14/25, the Character Roll of the applicant and copies of the Defence Brief and the Enquiry Officer's report.

7. The statement of imputations in support of the charges (Annexure-2) indicates the computation made by the respondents to allege that the applicant was holding assets of the value of Rs.1,42,486/- disproportionate to his known sources of income, suggesting the acquisition of such assets by questionable means or from dubious sources. It is, therefore, alleged that the applicant failed to maintain absolute integrity and contravened Rules 3 and 4 of the CCS(Conduct) Rules. At the conclusion of the enquiry, the Presiding Officer summarised the proceedings in his brief. The applicant furnished his reply to this - defence brief for short - which contains his claims and contentions in regard to the charges.

8. Before proceeding further, it would be better to summarise in tabular form the details of income, expenditure, etc. as contained in the charge, the claim made by the applicant and the findings of the Enquiry Officer. These are shown in the statement below, hereinafter referred to as the statement.

STATEMENT (in Rs - rounded off)

<u>Particular</u>	<u>As in the memo of charges</u>	<u>As claimed by the applicant</u>	<u>As determined by the E.O.</u>
1. Salary income of charged officer	1,87,862.00	1,91,435.00	1,89,417.00
2. Other income of CO	34,944.00	47,138.00	43,463.00
3. Salary income of CO's wife	1,18,091.00	1,23,385.00	1,22,419.00
4. Other income of CO's wife	53,594.00	59,645.00	59,645.00
5. Loans taken by CO's wife	1,63,000.00	1,63,000.00	1,63,000.00
A. Total income	<u>5,57,491.00</u>	<u>5,84,603.00</u>	<u>5,77,944.00</u>
<u>Expenditure</u>			
6. Rent	30,705.00	29,275.00	29,840.00
7. Household expenses	1,79,360.00	1,32,860.00	1,75,190.00
8. Electricity charges	8,867.00	— —	— —
9. Sanitation charges	119.00	— —	— —
10. Education Exp.	36,489.00	30,061.00	30,061.00
11. Telephone	2,169.00	— —	1,000.00
12. LIC premium	26,764.00	26,764.00	26,764.00
13. Gas charges	2,521.00	— —	— —
14. Income Tax	6,594.00	6,594.00	6,594.00
15. Road Tax	976.00	976.00	976.00
16. Maintenance of Vehicle	12,720.00	— —	12,720.00
17. Repayment of loans	34,000.00	34,000.00	34,000.00
18. Share money to Coop. Society	3,205.00	3,205.00	3,205.00
B. Total expenditure	<u>3,44,489.00</u>	<u>2,63,735.00</u>	<u>3,20,350.00</u>

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Assets

18.	Plot, Building	2,36,288.00	2,28,223.00	2,36,288.00
19.	Household articles	43,625.00	15,669.00	43,625.00
			(Derived figure)	
20.	Vehicles	10,927.00	10,927.00	10,927.00
21.	Deposits, shares etc.	30,535.00	30,535.00	30,535.00
22.	Bank balance and other bank deposits	34,113.00	32,325.00	32,285.00
C.	Total Assets	<hr/> 3,55,488.00	<hr/> 3,17,679.00	<hr/> 3,53,660.00

Summary.

23.	Total income of charged officer	2,22,806.00	2,38,573.00	2,32,880.00
24.	Total income of his wife.	3,34,685.00	3,46,030.00	3,45,064.00
D.	Total income	<hr/> 5,57,491.00	<hr/> 5,84,603.00	<hr/> 5,77,944.00
E.	Total expenses	<hr/> 3,44,489.00	<hr/> 2,63,735.00	<hr/> 3,20,350.00
F.	Savings	<hr/> 2,13,002.00	<hr/> 3,20,868.00	<hr/> 2,57,594.00
G.	Assets	<hr/> 3,55,488.00	<hr/> 3,17,679.00	<hr/> 3,53,660.00
H.	Disproportionate Assets (G-F)	<hr/> 1,42,486.00(-)	<hr/> 3,189.00	<hr/> 96,066.00

(In excess i.e. savings)

9. The following points can be noticed at this stage from the above statement.

(i) In so far as income is concerned, the overall claim of Rs.5,84,603/- in respect of total income has been disallowed only to the extent of Rs.6,659/- and the Enquiry Officer has determined income at Rs.5,77,944/- The amount disallowed hardly works out to 1.2% and is negligible.

(ii) In respect of expenditure, the memo of charges indicated the same at Rs.3,44,489/- while the applicant claimed that the total expenditure is to be estimated only at Rs.2,63,735/-. The Enquiry Officer determined it at Rs.3,20,350/-. In other words, the applicant's claim has been increased by Rs.56,615/- i.e. 21.5% of the claim. This is substantial.

(iii) It is, however, noticed that out of the 13 items of expenditure, the claim of the applicant in respect of 9 items have been allowed in toto. In respect of two other items (rent and telephone) they have been allowed partially. These 11 items involve a claim by the applicant of Rs.1,30,875/- as compared to Rs.1,52,409/- of the charge, against which Rs.1,32,440/- was allowed. In other words, the expenditure claimed by the applicant on these 11 items has been increased by Rs.1565/- (i.e. 1.2% only i.e. negligible).

(iv) The two other claims left relate to house hold expenses and maintenance of vehicles. In respect of the former, the applicant contends that it amounts to Rs.1,32,860/- only (i.e. a reduction of Rs.46,500/- from the charge) while the Enquiry Officer has estimated this at Rs.1,75,190/-. He has thus increased the expenditure claimed by the applicant by Rs.42,330/- i.e. 32%. In respect of maintenance of vehicles, the applicant claimed that the amount involved i.e. Rs.12,720/- already stands included in the house-hold and, therefore, this should be treated

as nil i.e. a reduction of the whole amount. This claim has been totally rejected by the Enquiry Officer.

10. The impugned orders have been challenged on various grounds. At the end of the arguments, the learned counsel submitted a written brief highlighting the issues for our consideration. We propose to examine in the first instance the grounds on which the proceedings have been impugned and take up thereafter other points for consideration.

11. Out of the 17 grounds taken, only one ground (para 5.10) relates to an item of income. The applicant contends that, after the death of his father, he was receiving some income from the ancestral undivided agricultural and house land, which were being managed by his brother. While dealing with household expenses, the applicant has stated in his defence brief (para 7(ii)(j) that he was in receipt of some money out of his share from this ancestral property. It appears that the Investigating Officer had recorded on 12.2.1983 the statement of his brother, late Shri K.C. Sinha, in which a specific reference to this aspect was made.

12. The applicant himself did not examine any of his brothers in this regard as witnesses. He did not indicate to the Enquiry Officer the specific amount that should be taken into account. In/revision filed by him (Annexure-13), the applicant has claimed a total receipt of Rs.3000/- on this account vide para 4.6 thereof. A perusal of the Ministry's file shows that a report was sent by the CBI on 26.10.1983.

Enclosure-I thereto is a 'Calendar of Evidence' giving the gist of evidence given to the Investigating Officer. At serial No. 46, on page 60, is the gist of evidence of Shri K.C. Sinha, Deputy Secretary, Government of U.P., the applicant's ~~bro~~ ^{bro} ~~father~~ ^{bro} father. He is reported to have stated that no agriculture income accrued. The rent from ancestral house was hardly sufficient to maintain it and nothing was given to the applicant. Therefore, in this regard, the Enquiry Officer has not been unfair to the applicant when he held that there is no proof of such income.

13. The applicant has referred to the expenditure on education in grounds 5.5 and 5.8 of the O.A. He does not allege that the amount taken note of ~~not~~ the Enquiry Officer is/warranted. In the defence brief, he has referred to this item at the end of para 7 and claimed that the education expenses should be restricted to Rs.30,061/- . This has been considered by the Enquiry Officer in detail and he has accepted the contention, as seen from Item No. 10 of the statement. The Enquiry Officer admitted that education expenses of Rs.6428/- stand included in house-hold expenditure and, therefore, accepted the claim of Rs.30,061/- . This includes Rs.28,000/- for the admission of the applicant's son at Ramaiah Technical Institute, Bangalore. Therefore, we are unable to understand why these grounds have been raised in this O.A.

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14. There are several objections relating to estimation of house-hold expenditure. It is alleged that the respondents have not relied on any definite information about expenditure. Instead, an estimate of expenditure has been made on the basis of the statistical data relating to per capita consumer expenditure in urban area from 1957 to 1988. This is not proper. It is contended that only actual expenditure should have been taken into account (para 5.7). It is also alleged (para 5.9) that the findings of the Enquiry Officer that the computation of house-hold is based on withdrawals from the banks by the applicant is also wrong. A summary of the bank account withdrawals was available to the Enquiry Officer which did not justify the inferences. It is also alleged in para 5.6 that presumptions have been made in regard to such items of expenditure. For example, it is assumed that a maid was engaged to help in domestic work.

15. In this connection, it is also relevant to refer to certain important objections taken by the applicant in his defence brief. Extracts from earlier part of para 7 of the defence/are reproduced

below:

"From page 6 to 8 expenditure under different heads covering the period 1.4.57 to 30.10.80 has been worked out and a figure of Rs.3,44,489.01 has been arrived. To begin with, it is submitted that there are many overstatements, pitfalls and pitched up figures for the simple reason that the J.O. has made up these figures on rough estimates and vague surmises. The approach of the J.O. that as the C.O. failed to give the details of H.H. expenses of such a long period of twenty three and a half years, the (the J.O.) has made estimates on the basis of cost of living and on the basis of bank withdrawals. To what extent the bank withdrawals depict the house hold expenses requires a detailed probe. The approach of J.O. had been that such withdrawals from the bank depict only food items in the domestic consumption. But let me submit that such conclusion are not correct. I have been withdrawing from the Bank immediately after the salary cheque was deposited. Such withdrawn amount I used to give to my wife to cover all expenses which would obviously include house rent, electricity charges, refuel charges and all other misc. items like tailoring, laundry bill, children's school fee and uniform. It would include even LIC premiums which though paid annually by me, would remain available with my wife for payments on due dates. It may be noted that none of the above expenses have ever been paid by me through cheque. At times when need be some amount would be withdrawn by my wife from her bank a/cs to meet with some unforeseen expenses. In this view of the matter, the approach of the J.O. to link up all my Bank withdrawals to mere food items of domestic consumption is an attempt not to appreciate the truth. Making separate estimates, of expenses under the head house-rent, Electricity, LIC premiums, educational expenses and expenses for vehicle maintenance will as a result give a highly exaggerated picture of overall expenses."

(Emphasis supplied)

In other words, the contention of the applicant is that withdrawals from the Bank were to meet all expenses and not merely house-hold expenses as strictly understood. This is clear from the portions emphasised in the above extract.

17. The merits of this statement will be considered later. If this is taken to its logical conclusion, the contention of the applicant would mean that Rs.1,79,360/- shown as house-hold expenditure in the charge should be deemed to include the expenditure separately shown under rent, Electricity charges, maintenance of vehicles(refuel charges), education expenditure and LJC premium, i.e. items 6,8,16,10 and 12 respectively of the statement adding to Rs.1,15,545/-. But that is not the ^{final} stand taken by the applicant. This is clear from the concluding portion of para 7 where he claims that the expenditure of Rs.3,44,489/- should be reduced to Rs.2,63,737/-. That portion reads as follows:

"To summarise, it is submitted that out of total expenses of Rs.3,44,489.01 worked out on page 8, the following expenses which clearly fall within the definition of non-food items and misc. items (as discussed supra) be completely deleted:

Salary for October, 80.	1,500
Electricity charges.	8,867
Sanitation charges.	119
Education expenses	6,428
Telephone expenses.	2,168
Gas charges.	2,520
Vehicle expenses.	12,720

Out of HH expenses estimated of Rs.1,79,360 - for submissions in the preceding paras approxi. amount of over-estimated figure. 45,000

Therefore, it is submitted that the figure of Rs.3,44,489.01 be treated as over-stated by Rs.79,322 as per the list above and by Rs.1430/ under the sub-head house-rent. The total over statement works out to Rs.80,752/- and thus the figure of Rs.2,63,737.01 be suitably adopted".

He claimed that expenditure of Rs.35,752/- as per details given i.e. excluding the last amount of Rs.45,000/-, falls within the definition of non-food items for the purpose of statistical sample survey and, therefore, should be treated as already included in the house-hold expenditure of Rs.1,74,360/- and that, in addition, house-hold expenditure was over estimated by Rs.45,000/-. He, therefore, claimed a total reduction of Rs.80,752/- in the total expenditure. He claims only partial reduction of the expenditure under rent and education. He does not claim any reduction on account of L.I.C. Premium. The reduction claimed corresponding to Rs.1,15,545/- referred to above is only Rs.19,445/-. It is thus clear that the major dispute centres round house-hold expenditure and expenditure on maintenance of vehicles.

18. The applicant has urged under the head 'House hold Expenses' in sub-para (ii) of Para 7 of his defence brief, the reasons why he considers that the estimated expenditure mentioned in the memo of charges is unduly high. He refers to the income and expenditure for various periods in items (a) to (h) which are summarised below:

<u>Period</u>	<u>Income Estimated</u>	<u>Expen- diture esti- mated</u>	<u>Savings Estima- ted and percentage</u>	<u>Claim made</u>
(a) 30.3.57 to 31.5.58	2575/-	2100/-	475/- (18%)	Entire salary saved as he was unmarried and out of Rajkot for 25 days a month. Expenses met by T.A.
(b) 01.6.58 to 31.10.59	3758/-	3470/-	288/- (8%)	Married only in June, 59. No dependents. Capacity for saving was 40%.

(c)	1.11.59 to 31.5.61	3963/-	3314/-	649/- (16%)	No children. Only two persons.
(d)	1.6.61 to 31.12.64	10908/-	10926/-	138/- (11%)	Only three members in the family. Son not going to School.
	Wife's income	+ 1098/- <u>12007/-</u>			
(e)	1.1.65 to 31.12.67	13248/-	19113/-	(--3339/- (House- hold Expen- diture 14700/-))	Abnormal/over- estimation of expenditure. The family consisted of five persons but children not going to school. Even if 20% is taken as a fair rate of savings, expenditure should be only Rs.12,700/-.
(f)	1.1.68 to 31.12.69	16797/-	17838/-	(--1041/- (includes Rs.1924/- LIC Pre- mium))	As in item 'e' above.
(g)	1.1.70 to 31.3.73	40134/-	51,457/-	6685/- (House- expenditure (11%))	House-hold expen- diture over stated. (Special reasons given for higher saving, being considered separately in para 21)
	Wife's income	+ 18008 <u>58142</u>	Rs.31,650/- includes vehicle maintenance and premium)		
(h)	1.4.73 to 30.10.80	125048/-	1,98,933/-	10803/- (includes house-hold expenses and LIC premium; repayment of loan).	Considering the low savings, house-hold expenditure is highly over stated.
			+ 43625/-		
				(value of house-hold assets to be treated as house-hold expen- diture)	
				<u>2,42,558/-</u>	
TOTAL		366377/-	3,06,851/-		
		(394491)	+ 43,625/-		
			<u>3,50,476/-</u>		
				(3,44,489)	
				(Figure in brackets are as in charge)	

It is thus clear that the main thrust of the submissions made by the applicant to the Enquiry Officer was that the details mentioned in the statement of imputation regarding income and expenditure implies a very low rate of savings. It is contended that this is due to the house-hold expenditure having been unusually over-estimated. We notice that the Enquiry Officer has not considered the general issue raised about the quantum of savings as a percentage of total income. We shall consider this later on. For the present, the following can be noted:

- i) In the memo of charges, the total income excluding loan, is shown as Rs.3,94,491/- (i.e. Rs.5,57,491 - Rs.1,63,000 of statement). As against this, the income taken into account in para 7 (ii) (a) to (h) is only Rs.3,66,377/- i.e. less by Rs.28,114/-. This is about 7% of the total income and has not been taken into account for computing savings by the applicant.
- ii) The total expenditure excluding Rs.43,625/- added at the end - works out to Rs. 3,06,851/- as against Rs.3,44,489/- shown in the charge. The applicant has only stated expenditure that he is overstated. He does not state what ought to have been the reasonable expenditure. That is stated at the end of para 7 to be Rs.2,63,735/-.
- iii) The savings from income excluding loans taken are as follows:

a) As per charge memo	Rs. 3,94,491.00	
	(-) Rs. 3,44,489.00	
	Rs. 50,002.00	<u>(12.5%)</u>
		<u>(28%)*</u>
b) As per applicant	Rs. 4,21,603.00	
	(-) Rs. 2,63,735.00	
	Rs. 1,57,868.00	<u>(37.5%)</u>
		<u>(51.8%)*</u>
c) As per E.O.	Rs. 4,14,944.00	
	(-) Rs. 3,20,350.00	
	Rs. 94,594.00	<u>(22.75%)</u>
		<u>(36.25%)*</u>

(iv) The expenditure includes Rs. 26764/- on LIC premium, which is a savings and also Rs. 34,000/- for repayment of loan (item 17 of the statement). This is also a capital expenditure i.e. it has reduced liabilities. Therefore, this is to be treated as investment of savings. If these are added, the savings in each case mentioned in (iii) above will increase to the percentage marked by an asterix.

19. The Enquiry Officer has dealt with the merits of the claims in respect of each item of expenditure and, for the detailed reasons mentioned in his report, he has arrived at the conclusions which are summarised in the statement. It is seen from the Enquiry Officer's report (para (ii) under 'E' 'Total Expenditure) that reliance has been placed on the sample survey of the National Sample Survey Organisation for estimating the expenditure from June, 59 onwards upto the end of the check period, i.e. October, 1980. The Sample Survey Report was produced in the enquiry as Exhibit S-4. The Enquiry Officer states as follows in this regard.

"The household expenses for the remaining part of the check-period was calculated by the prosecution on the basis of the sample survey through National Sample Survey Organisation. The sample survey report was produced before inquiry as Ex. S-4. It was explained in Ex. S-4 that the information on expenditure incurred in any house-hold items of domestic consumption is calculated and then per-capita consumer expenditure is arrived at. It was also pointed out in Ex. S-4 that the house-hold items include both food items and non-food items such as fuel, light, clothing, foot-wear etc. The Deputy Director of the Bureau of Economics and Statistics, Shri P.S. Thakur, who prepared Ex. S-4 was produced as SW-23. He explained in page 25 of the deposition file that the sample survey of house-hold items is done by taking into account important items of domestic consumption like food and non-food items like fuel, light, clothes, foot-wear, durable goods and other similar miscellaneous items". (*emphasis added*)

It is for this reason that the Enquiry Officer concluded that electricity charges, sanitation charges, gas charges, a part of the telephone charges and a part of the education expenditure should not be accounted for separately as mentioned in the statement of imputations but should be deemed to have been included in the house-hold expenditure. The claim of the applicant on these counts has been accepted partly or fully as seen from items 8, 9, 10, 11 & 13 of the statement.

20. We have considered the estimates of house-hold expenditure adopted by the Enquiry Officer. In the absence of any concrete information given by the applicant, the Investigating Officer adopted the

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estimate based on the sample survey after having obtained the views of the Deputy Director Bureau of Economics and Statistics, Govt. of Gujrat. The Enquiry Officer has modified the estimates wherever justified. In the circumstance, we do not see that any injustice has been done to the applicant by adopting this method to calculate the expenditure. We shall, however, revert to this subject later.

21. The applicant has taken an objection in the ground No. 5.6 that the Enquiry Officer has made several presumptions. As an example, he mentions that it was assumed by the Enquiry Officer that a full time maid must have been engaged as both the applicant and his wife were employed. This allegation, as stated, is not correct. We notice that the Enquiry officer was considering the contention of the applicant in para 7(g) of the defence brief relating to over estimation of expenditure for the period 1.1.70 to 31.3.73. That contention reads as follows:

"In a family where both the parties of the spouse are highly educated, holding better jobs and the size of the family is very reasonable and there are no dependent parents, brothers, sisters or relations, the capacity of saving is much better compared to a family where there is only single earning member. Unfortunately, these basic truths have been completely overlooked by the I.O. in estimating my expenses".

It is while considering this contention that the Enquiry Officer observed as follows:

"It is true that there were two earning members in charged officer's family. But the argument that when two members earn in the family, less expenditure is incurred, is not correct because there are bound to be an increase in the expenditure rate. A working mother needs a helping hand, she spends usually more money on clothes as she is to go out regularly and to top it all, when the income increases with two earnings, the standard of living also becomes higher. Therefore, the first argument of the charged officer that his expenditure on house-hold items was less due to the fact that both himself and his wife, were working, is not correct. However, considering the fact that his family members were only two from June, 1959 to May, 1961, the calculation by the prosecution of the monthly expenditure at the rate of Rs.130/- appears to be on the higher side. I, therefore, accept charged officer's argument partly. The charged officer was able to run the house-hold @ Rs.100/-. There should be a reduction in the expenditure of these 24 months @ Rs.30/- per month and Rs.720/- in total".

In the context in which this remark is made, we cannot agree that the assumption implied in this observation is unjustified.

22. The other question is whether the expenditure of Rs.12,720/- on the maintenance of vehicle should be deemed to be an item of expenditure included in the estimate of house-hold expenditure or treated as a separate item of expenditure. There is no denial that this expenditure was incurred. The only question is whether the statement of imputations implied double counting, as alleged by the applicant, which will be to his detriment, because that would

reduce his savings correspondingly. It is argued by the learned counsel for the applicant that fuel is included in house-hold expenditure as would be clear from the extract reproduced in para 19 above. In the defence brief, the applicant has not dealt with this matter separately except to state that expenditure on non-food items and miscellaneous expenditure are included in house-hold expenditure and, therefore, the expenditure, among other things, includes expenses for maintenance of vehicle also. This was not accepted by the Enquiry Officer who took into account only domestic fuel, i.e. 'Gas Charges' under this Head and not fuel for maintenance of vehicles. As this was shown as an expenditure separate from house-hold expenditure, he could have obtained the views of ^{SW-23} Sh.P.S.Thakur/n cross-examination, whether this was correct and whether it should not be deemed to be included in house-hold expenditure. Apparently, his views on this specific question were not ascertained. Domestic fuel is an expenditure common to all, but not fuel for vehicles which is required by a very small percentage of the population. Hence, the sample survey, perhaps, includes only domestic fuel under the head Household expenditure.

23. We now proceed to consider the assets of the applicant. Out of the five items of assets, the applicant has not questioned the valuation in respect of vehicles, deposits, shares, etc. vide items 20 and 21 of the statement. Further, the Enquiry Officer has accepted the slightly reduced claim of the applicant in respect of item No. 22 i.e. Bank Balance and other bank deposits. The disputed amounts are only plot and building and house-hold articles.

24. In regard to the plot and building, there is no dispute about the valuation as mentioned in the statement of allegations, namely, Rs.2,36,288/- . What the applicant disputes is that - as mentioned in para 8.1. of the defence brief - this has not been fully paid for, as, an amount of Rs.8,065/- was paid only after 30.10.80. Therefore, investment in this asset should be reduced by this amount and taken as Rs.2,28,223/- . This has been referred to in ground 5.4 of the O.A.

25. This issue has been considered in detail by the Enquiry Officer in para (i) under heading 'F' Assets of the charged officer and his wife and rejected. It is stated that this outstanding amount was not reflected in the balance sheet as on 31.3.81.

26. According to the Annexure-13 to the defence brief relating to cost of bungalow, cheque of Rs.2988/- dated 28.3.1981 on the Union Bank of India was paid to Harjeevan Das Hathi Bhai Patel and a cheque dated 4.4.1981 for Rs.5000/- was paid to the account of Neelam Industries. The latter outstanding amount above could have been reflected in the balance sheet as on 31.3.81 but is not so reflected. Therefore, only Rs.2988/- can be accepted as an amount in respect of which payment was made after 31.10.80. For the reasons to be mentioned subsequently, we are of the view that this amount ought to have been taken note of by the Enquiry Officer.

27. The other major claim made by the applicant is in respect of house-hold articles. He has not specifically referred to this item in the grounds

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urged in the O.A. except to state in para 5.4 that it has been assumed that all these were acquired only after he joined service. He has dealt with this item in detail in para 8.2 of the defence brief read with Annexure-14 thereto. He states that some of the articles referred to as house-hold assets are articles which were given to him or were brought by his wife at the time of their marriage. In Annexure 14 to the defence brief, their value is stated to be Rs.6499/- . Therefore, they are not assets purchased out of savings. The second claim is that some of the remaining articles have been over valued to the extent of Rs.9,170/- . This totals to Rs.15,669/- . The balance (Rs.27,986) should be taken as the value of these so called assets. If this is taken as an asset - instead of being treated as house-hold expenditure - it is necessary to reduce the house-hold expenditure of Rs.1,79,360/- by Rs.27,986/- . In para 8 of the defence brief the applicant has concluded that the value of the assets is only Rs.3,17,679/- , i.e. it is overstated by Rs.37,809/- . As a matter of fact, the alleged over statement is only Rs.8,065/- for house + Rs.15,669/- for house-hold articles, i.e. Rs.23734/- mentioned above. Therefore, the value of the assets have to be taken at Rs.3,31,754/- in which the value of the house-hold assets is Rs.27,956/- . In the statement, it has been taken as a derived figure as Rs.15,669/- on the statement of the applicant that the total value of the assets is Rs.3,17,679/- .

28. We have seen the Enquiry Officer's report regarding this claim. The only point examined by him is about the dispute relating to the over valuation of the house-hold articles. He rejected the charge.

of overvaluation by stating that the list of articles found at the residence of the applicant's wife, along with the estimated cost, was produced as Ex. S-2A and that the cost of goods was recorded after it was agreed by the charged officer, as mentioned by independent witnesses. The other two questions, namely, whether some of them were received at the time of the marriage (value Rs.6499/-) and whether the balance (Rs.27,986) should be treated as already included in the house-hold expenditure have not been considered.

we notice from
29. In this connection the Ministry's file that the CBI had initially assumed the value of these house-hold goods at Rs.91,000/- but in the report sent to Government its value was reduced to Rs.43,625/-. It stated that the value of ornaments found in the locker (Rs.33,184) and the value of goods found in the house (Rs.57,861/-) were taken as Rs.91,000/- approximately - Later, the value of ornaments was deleted as also some other items. Therefore, the value of the house-hold goods was restricted to Rs.43,652/-.

30. No reason has been assigned by the Enquiry Officer for rejecting the claim that Rs.6499/- is the value of the articles mentioned in the list - including some ornaments - which were received by the applicant and his wife at the time of marriage. This ought to have been excluded. Therefore, the house-hold assets can be valued at Rs.37126/- only.

31. The Enquiry Report refers to the statement of Shri P.S. Thakur, Deputy Director of Economics and Statistics. He explained that the sample survey

included important items of domestic consumption like food and non-food items, like fuel, light, clothes, footwear, durable goods and other similar miscellaneous items. Thus, durable goods also stand included in the estimate of the sample survey. The Enquiry Officer has not considered and given any allowances for this. We have seen the list of the 248 items which were found in the house on rent Annexure-I. We cannot accept the claim of the applicant that all these items are to be deemed to have been acquired by the house-hold expenditure already acquired. The item like refrigerator, items of furniture, etc. are to be treated as assets.

~~we also~~, As those items which are not for normal domestic use in the kitchen have to be excluded. For example, the list also includes items like '25 steel plates- Rs.375/-' '60 Glass Cup, Rs.200/-, etc. whereas the family consisted of only 5 persons. Also to be excluded are items meant for show and display. Excluding these items, we feel that about 25% of the estimate of Rs.37,126/- referred to in the previous para (i.e. Rs.10,000/- in round) can be attributed to acquisition from house hold expenditure. This also works out to around 6% of that expenditure, which is reasonable. In other words, in our view out of Rs.43,625/-, Rs.6499/- should be excluded as articles received at the time of marriage. Out of the balance of Rs.37,126/-, Rs.10,000/- should be reduced as attributable to house-hold expenditure. The house-hold assets that remain to be taken into account are Rs.27,126/- only.

32. In this connection, it has also to be pointed out that a perusal of the Ministry's file shows that when the applicant filed his revision against the order of dismissal, the grounds raised by him impugning the estimates of expenditure and the valuation of house-hold assets were considered in great detail.

33. The Deputy Director of Income Tax Vigilance put a note on 10.5.89 with particular reference to the following direction issued by Member (S&T) on 6.3.89 :-

"Shri A.C. Srivastava has contested the estimate of his family expenses at Rs.1,42,500/- as against Rs.87,760/- claimed by him during the period 1.1.69 to 31.10.80. He has referred to the withdrawals made by him from the bank account (which total to Rs.93,730/-). The claim of Shri A.C. Srivastava regarding lesser family expenses be examined -

- i) with reference to bank withdrawals;
- ii) with reference to average per capita consumer estimated by the Bureau of Economics Statistics.

He has further claimed that he received certain articles at the time of marriage (see Annexure XIV). A summary of the value of such receipts be prepared and examined from the point of view of the status of family and the customs prevalent in the family. It should then be commented as to whether in this background there is any disproportionate asset left".

Dy. Director
Inter alia, the/ pointed out that the Investigating Officer gave the/ applicant plenty of opportunities to furnish even an approximate estimate of his expenditure which he failed to do saying that he led a simple life and did not maintain accounts. Therefore, the Investigating Officer had to resort to estimation on the basis of the standard of living and the data furnished by the Bureau of Economics and Statistics

on house-hold expenditure. It was also pointed out that even before the Enquiry Officer, he did not furnish such an estimate. He only claimed a reduction of the expenditure by Rs.45,000/- which was allowed by the Enquiry Officer to the extent of Rs.4,170/- only. Before the Enquiry Officer, the Deputy Director of Bureau of Economics and Statistics was examined and the applicant had an opportunity to cross-examine him on the rates of expenditure furnished by him. He pointed out that withdrawals from the Bank alone cannot determine house-hold expenditure. But if that was the criterion to be adopted, no case of disproportionate assets can be made out at all. In regard to house-hold assets, he pointed out that initially the CBI had estimated this at Rs.91,000/-. However, after allowing for the jewellery found in the locker and certain articles, this was reduced to Rs.43,625/-. In conclusion he did not find merit in the revision petition.

34. Not satisfied with this analysis, Member(S&T) recorded his independent note. His approach was to make an estimate of house hold expenditure, based on the cost of living index with reference to the data furnished by the Bureau of Economics and Statistics, Gujrnat for the period 1967-68 to 1977-78.

The percentage increase was noted by him as follows:

"The rate of increase in the monthly per capita expenditure in the financial year 1969-70 to 1973-74 on the basis of increase given by the Bureau of Economics & Statistics, Government of Gujarat is worked out by me as under:

<u>Year</u>	<u>Percentage increase</u>	<u>Remarks</u>
1967-68	Base year.	
1969-70	6.21%	
1970-71	26.06%	
1971-72	0.06%	
1972-73	12.58%	
1973-74	6.80%	
1977-78	22.00%	(For four years)"

Rs.400/- per month is the house-hold expenditure taken by the Enquiry Officer for 1.1.67 to 31.12.67. and This figure was taken as the base/ then increased by the above mentioned percentages. He assured an increase of 8% in each of the years 78-79 to 80-81. He concluded this exercise as follows:

"Based on the above calculations which I have done, the total family expenditure amounts to Rs.94,726/- as against Rs.87,760/- claimed by the officer and Rs.1,42,500/- estimated by the Enquiry Officer. Under the circumstances, substantial reduction in the family expenditure to the extent of Rs.50,000 is due on account of the estimate of the family expenditure".

35. Member S&T also examined the claim of the applicant that the house-hold assets of Rs.43,625/- are over estimated, included articles received at his marriage by his wife and that this should stand included in house-hold expenditure. He observed as follows:

"The list contained in Annexure-J is a photocopy of the list prepared at the time of search and includes 248 house hold articles. It will be seen that this list consists of house hold utensils, furniture, fans, tubelights,

sarees, wall clock, lamps, wall painting, children cycles, jhula bench, earthen flower pots, water pots and the like. The total outgoing in the shape of family expenditure of the officer has been estimated by the Enquiry Officer at Rs.3,20,350.08. In the report of the CBI, the total expenditure of the family was estimated at Rs.3,44,489.01 which has been reduced by the E.O. to Rs.3,20,350/- out of which an estimate reduction of Rs.50,000/- approximately may be done. So the total family expenditure is approximately Rs.2,70,350/-. In the totality of the circumstances of the case and in the light of the fact that some of the items included in the household articles can be attributed to the aquisition at the time of marriage, in my opinion, it will not be wrong to say that there is no unexplained item of either household expenditure or of personal expenditure or of disproportionate assets.

9. The matter is one of revision under Rule 29(3) of the CCA Rules and requires to be dealt with as if it is an appeal and that is why the above exercise has been made. There is no direct evidence of the family expenses of the officer. These are based on broad estimates. In the formulation of estimates, there are various limitations and that is why a broad attempt has been made to make the estimates. It is not a case where the value of the assets wholly exceeds the income of the officer and that of his wife. There is a sum of Rs.2,70,000 and odd available for family needs. It is not a case where nothing is available for family needs. Further to say that out of the family expenditure of Rs.2,70,000

the person could not have acquired small effects like quilts, spoons, flower pots and small items of furniture will be stretching the imagination too much when considered in the light of the fact that some of the items could have been received at the time of marriage which is clearly pointed out in the statement of Shri Srivastava dated 28.5.86 contained at page 49 of the file titled as Deposition-II. Under the circumstances, I am of the opinion that the revision petition of Shri A.C. Srivastava deserves to be accepted under Rule 29 of the CCS(CCA) Rules".

36. The then Chairman C.B.D.T. violently disagreed with the note of Member S & T. He recorded/as follows:

"I do not at all agree with the views of Member (S&T) contained in pages 76-80n. ante. ^{31.3.89} He (sic:for) has only substituted his own estimate by / the estimate of the Inquiry Officer of the CVC and the UPSC. The household expenses of Shri A.C. Srivastava were examined in detail by the Inquiry Officer of the CVC and, subsequently, also by the UPSC. After considering the detailed submission of the officer and all the evidences they have arrived at the estimate of the disproportionate assets. On that basis, the officer was dismissed from service. Now, no fresh materials have come to indicate that the earlier decision was erroneous or perverse or vital facts were omitted to be considered. On the other hand, I find that the estimates of the household expenses and the disproportionate assets were quite fair and reasonable. Therefore, at the first instance, I doubt if there is at all any case for reconsideration.

2. A fair idea of the living style of the officer can be obtained from the list of articles found by the CBI at his two storied building in a posh locality and the CBI report. The list is given in Annexure-I to the petition dated 11th October, 1988 filed by Shri Srivastava. Shri Srivastava had alsatian dogs, maintained

scooter, (his son was maintaining a scooter when he was staying with him), had telephone installed at own expenses, a jhoola in the garden and table-tennis table in the house, son staying in Bangalore paying a donation of Rs.28,000/- (As per Shri Srivastava's statement Rs.300/- to Rs.350/- is sent to his son per month). He comes of a good family. His brothers are in IAS and in senior positions. His wife was serving and a serving lady needs more expenditure for her dress, transport, and household help. So if we can have an overall view picturing a house furnished with all these articles and the general family status of Shri Srivastava, it is difficult to imagine that his household expenses could be less than estimated by the Inquiry officer and the UPSC.

3. The Inquiry officer of CVC has not examined in details the genuineness of the source of loans of Rs.1,63,000/- taken by the wife of Mr. Srivastava who is only a lecturer in a college and the repayment of the loan without interest. This investigation might have brought out further materials. The approach of the Department has been right in clubbing the income and expenditure of both the husband and the wife because it has not been the case of the officer that his wife had unaccounted income. In reality, the chance of a lady lecturer having unaccounted income is much less than her husband who was an officer of the Department. Similarly, the bank withdrawals could not be the basis of estimating the expenses because a look at the bank accounts at Annexure VIII to the petition shows that in full years there have been no withdrawals.

4. Therefore, considering all the facts of the case, there is no case to reconsider the penalty of dismissal imposed on the officer."

37. Secretary, Department of Revenue agreed with the Chairman.

38. In view of the difference of opinion, the then Minister of State wanted this to be examined by the new Chairman. On 1.12.89, the latter expressed his agreement with the views of the Member(S&T) and recommended that the revision be accepted.

39. The Secretary (Revenue) however agreed with the earlier Chairman's views. Ultimately, the orders of Finance Minister were obtained rejecting the revision application.

40. The question is whether there is any merit in the views of Member (S&T). In our view, the Member (S&T) should not have attempted to examine the estimate of expenditure on a totally different basis i.e. cost of living index. The basis used for framing the charge is the letter dated 26.10.83 of the CBI which used consumer household expenditure (and not cost of living index) for this purpose.

41. The second reason why the Member (S&T)'s views are not sound flows from the contentions of the applicant. The applicant claimed in para 4.4. of the revision application (Annexure-13) as follows:

"The prosecution while estimating my household expenses has stated that since I was not maintaining any accounts for my household expenses, these expenses have been based on the strength of average cash withdrawals from the bank account for the period from July 1969 to October, 1980. A short summary of my bank account withdrawals for the period 1.4.1970 to 31.10.1980 (Please see Annexure VIII) would show that this claim of prosecution is totally false and that cash withdrawals from the bank are not the basis for adopting household expenses but these have been adopted on an arbitrary basis". (emphasis given).

Further, in para 4.5 of the revision he sets out what he considers to be the reasonable ~~is~~ monthly household expenditure. In this connection, it is also necessary to refer to para 7 of his defence brief

reproduced in para 15 supra. The contention, therefore, is that all expenditure, i.e. household, education, house rent, electricity and even LIC premium - is funded by such withdrawals. A summary of the bank withdrawals by both the applicant and his wife has been filed with the revision as Annexure VIIJ thereto, financial yearwise (P-208 of paper book). This summary shows that the bank account of the applicant started only from 14.5.70. In the table below we collate for some years the withdrawals from the bank by both the applicant and his wife with the reasonable household expenditure claimed in para 4.5 of the revision which is calculated yearwise:

<u>S.No.</u>	<u>Period</u>	<u>Withdrawal from Bank</u>			<u>Rate of monthly expenditure and months</u>	<u>Yearly Expenditure</u>
		<u>By Applicant</u>	<u>By his wife</u>	<u>total</u>		
i)	1.4.70 to 31.3.71	29	2000	2229	520x9 = 550x3 =	4680 1650 <u>6330</u>
ii)	1.4.71 to 31.3.72	nil	nil	nil	550x9 = 600x3 =	4950 1800 <u>6750</u>
iii)	1.4.73 to 31.3.74	5835	-	5835	620x9 = 640x3 =	5580 1920 <u>7500</u>
iv)	1.4.78 to 31.3.79	19379	-	19379	720x9 = 750x3 =	6480 2250 <u>8730</u>
v)	1.4.79 to 31.3.80	7987	-	7987	750x9 = 800x3 =	6750 2400 <u>8950</u>

It is thus clear that for the periods at serial No.(i) to (iii) and (v) the fair expenditure estimated by the applicant himself has not been met by the bank withdrawals. There was no withdrawal in 1971-72. For the period at serial No. (iv), the bank withdrawals are much in excess of the

fair estimate of expenditure. Perhaps this was applied to other items of expenditure. This shows that the claim made in para 7 of the defence brief is not substantiated. The house-hold expenditure could not have been reliably estimated from bank withdrawals. The Enquiry Officer's report does not make out such a claim. He only states that for a major part of the check period, in the absence of any other source, the expenditure has been estimated from the sample survey conducted by the Bureau of Economics and Statistics.

41. We have also to note that some of the comments made by the Chairman, C.B.D.T. appear to be based on the statements recorded in the preliminary enquiry. The Enquiry Officer's report does not state, for example, that the applicant had alsatian dogs or that he was sending Rs.300/- to his son at Bangalore. The comment that the loan of Rs.1,63,000/- taken into account has not been properly verified is also unfair. If any further evidence was needed, the matter should have been remitted to the Enquiry Officer for further enquiry. Otherwise, we are of the view that the Chairman, CBDT was correct in his criticism of the views expressed by Member(S&T).

42. An important ground raised in para 5.2 of the O.A. is that the applicant ought not to have been asked to render an account of his income and expenditure for a period of more than 23 years from 1.4.1957 to 30.10.1980. It is to be noted that an enquiry of this nature is provoked by some conduct of the Government employee or by some complaint. It is to be mentioned here that so far as the

Confidential Character Roll of the applicant is concerned, we find nothing therein to doubt the integrity of the applicant. The disciplinary proceedings also do not indicate how and in what circumstances the enquiry was initiated. A perusal of the Ministry's file shows that the Central Bureau of Investigations initiated the enquiry by its letter dated 28.10.1983. It indicates that the case was registered as R.C. No. 34/80 on 30.10.1980 by the CBI on the basis of Source Information. The information was thus received only in 1980, which led to the investigation. That involves a period of about 23 years. The applicant states that his contentions are disbelieved only because he was unable to produce any evidence. In this contention, the learned counsel for the applicant has drawn our attention to the following observations of the Orissa High Court in Hemanta Kumar Vs. State of Orissa (1973 (1) SLR 1121), in a case under the Prevention of Corruption Act:

"From the above reasoning it is clear that the learned Judge would have accepted the claim of the appellant if he would have provided vouchers, cash memos, or bills for purchase of petrol, spare parts, garage charges, Dak Bungalow or Circuit House charges, feeding charges and coolie charges, etc. To say the least, it is expecting too much not in consonance with law but contrary to it. The appellant is to satisfactorily account for the disproportionate assets and not to prove his claim with mathematical exactitude beyond all possibility of doubt. One in many might be keeping accounts of expenditure for his satisfaction;

but why should he procure and preserve supporting bills and vouchers? These are not government cash to be audited. Besides why should one keep them from the beginning of his career till his superannuation anticipating to be required in a Court of Law".

43. We have considered this issue. It is clear that the CBI initiated the investigation in 1980 on their own. One can only hazard a guess that what prompted the enquiry was the house constructed in the name of the applicant's wife. It is seen from the Annexure-I list of articles found in the house that it is a double storied house with a kitchen, drawing-dining room, three bed rooms on the ground floor, besides an ante-room and bed room on the first floor. Quite possibly, it is the size of this house that attracted adverse notice. Therefore, we cannot hold the disciplinary proceedings to be bad only on this ground that the applicant is asked to render an account of his income/expenditure for 23½ years. However, one has also to recognise that it would not be possible for any Government employee to render meticulous accounts of income and expenditure for such a long period and this consideration should be reflected in the enquiry and the decisions of the authorities. That is the requirement which is emphasised in the judgement of the Orissa High Court in Hemanta Kumar's case Supra. We have only to consider whether this principle has been kept in view.

44. In this case, we are satisfied that the enquiry has been fair despite the fact that it involved the investigation into the income and expenditure of 23 years.

45. As far as income is concerned, the charge itself is based on available records, i.e. salary certificates and income-tax returns. Therefore, there was not much scope for debate. Hence, the applicant could make certain claims of omission of Rs.27,112 - only (i.e. about 5% of the estimates as given in the charge-sheet). This was considered and Rs.19,453 - was accepted and added to the income.

46. In the case of expenditure, we have already found that reliance on sample survey in the charge and the imputation was fully justified. The Enquiry Officer has made a fair enquiry into these estimates on the basis of whatever was submitted by the applicant. We have to note here that the applicant did not put forward either before the Investigating Officer of the CBI or before the Enquiry Officer any estimates of expenditure considered fair by him. Para 4.4 of the revision seems to contend that the withdrawals from the bank (particulars of which are at Annexure VII of the revision) were to meet all house-hold expenditure including education, insurance premium, etc. In para 4.5 he has furnished an estimate of house-hold expenditure for the period 1.1.69 to 31.10.80 "arrived at by strict percentage of price rise during the period 1968-78 and 1978 cited in the statistics provided to the prosecution by the Bureau of Economics and Statistics, Gandhinagar, Gujarat."

Had he presented this to the Investigating Officer or later, to the Enquiry Officer, this would have been considered after ascertaining the views of the Deputy Director of Economics and Statistics. For, a view could then have been taken by the Enquiry Officer as to which estimate was more dependable after examining them in depth, i.e. the estimate based on per capita expenditure or the estimate based on price rise index.

47. In regard to the assets, the applicant had only thrown doubts about the valuation of the assets. As the charge was that the assets were disproportionate to his known source of income, the department was only required to establish that, considering the total income of the applicant and his wife and their expenditure, he did not have the necessary savings to acquire the assets. As pointed out above, the applicant did not give any estimates of expenditure to enable the Enquiry Officer to examine how much savings could have accrued. He, therefore, only examined the data in the statement of imputations in the light of the representation made in the defence brief and came to the conclusion that the savings fell short of the value of the assets by Rs.96066/-. It was, therefore, the duty of the applicant to explain to the Enquiry Officer the sources from which funds were available to acquire these assets. For example, the imputations state that a loan of Rs.1,63,000/- was raised by the applicant's wife. This must have certainly been available for construction of the house valued at Rs.2,36,288/- which is in the name of the applicant's wife.

There is nothing on record to explain how the balance of Rs.73288/- was found to complete the construction of the house and from where Rs.34000/- were found to partly repay the loan as stated in the statement of imputations, Annexure VIII, to the revision application, which is exhibited at Annexure A.13 of the O.A. is the summary of the withdrawals from the bank by the applicant and his wife from 1.4.68 to 1980. What seems to be contended is that the withdrawals from the bank are to meet all house-hold expenditure in the wider sense, including rent, electricity charges, education expenses, fuel for vehicles and even insurance premium. This is also the stand taken in the defence brief, as is clear from the emphasised portion of para 7 thereof extracted in para 15 supra. It is not indicated that there were other substantial withdrawals from the bank accounts to finance the cost of construction of the house and to repay a part of the loan. The summary of withdrawals from bank accounts furnished did not show any withdrawals of the necessary magnitude after 1.4.75, from which we can conclude that the withdrawals have been made for acquiring the house asset or for reducing the loan liability. In our view, when once the statement of imputations allege that savings of Rs.2,13,002/- only are available while the assets held are valued at Rs.3,55,488/-, The applicant ought to have shown that more savings were available. As the charge is that the disproportionate assets have been acquired by questionable means and/or from dubious

sources he should also have shown how the assets were financed. This was not done by him. Therefore, the Enquiry Officer only considered the representation made in the defence brief and arrived at the conclusions that the value of the disproportionate asset is not Rs.1,42,486/- as alleged, but Rs.96066/-.

48. For the reasons given above, we have felt that the only modification needed in the computations of the Enquiry Officer is in respect of the valuation of assets. The investment in the house is to be reduced by Rs.2988/-, the household assets should be reduced by Rs.6499/- representing articles received at the time of marriage and by a further amount of Rs.10,000/- representing durable articles included in house-hold expenditure. We, therefore, conclude that the enquiry cannot be assailed as violating the guideline given in the judgement of the Orissa High Court (Supra).

49. We find strong corroboration for this conclusion from the savings allowed to the applicant by the estimates as finalised by the Enquiry Officer. As may be seen from para 18, the percentage of savings is 22.75% after providing for expenditure of Rs.26764/- on LIC premium and Rs.34,000/- on repayment of loans, and 36.25 after treating these expenditures also as savings. This cannot be considered to be unreasonable by any standard, particularly when the applicant himself had suggested by implication in para 7 of his defence brief

that a rate of 20% savings would be reasonable - vide the remarks against item (e) in para 18. We have also to note that the real saving is slightly depressed as the contributions required to be made to the provident fund by the applicant compulsorily have not been taken into account in these calculations.

50. An important ground has been taken in para 5.15 of the O.A. which reads as follows:

"That the entire proceedings are based on the fallacious assumption that where assets are attributable to two members of a family, whatever is alleged to be disproportionate could be attributed to one of them who happened to be a Government servant. This basic premise on which the charge-sheet has been issued is fallacious".

In the order passed by the 1st respondent rejecting the revision petition of the applicant (Annexure-I to the reply of the respondents) this objection is met as follows:

"The standard practice adopted by the CBI while investigating cases of disproportionate assets is to take into account the income and the assets of all members of family staying together. This is a logical approach as well. The CBI had, therefore, rightly taken into account income of Shri Srivastava as well as his wife, while calculating disproportion, and this approach was accepted by the Inquiry Officer, the CVC, the UPSC and the Disciplinary Authority".



51. We have carefully considered this submission. We are of the view that when a person becomes an employee under Government, he is subjected to a number of restrictions. One set of restrictions is contained in the CCS (Conduct) Rules. No doubt, those rules do not specifically govern the situation arising in the present O.A. Rule 3 requires a Government servant to maintain absolute integrity. This has to be interpreted in the wider sense to ensure purity in administration. It is necessary to ensure that a Government servant does not indirectly resort to any misconduct through any member of his family. Therefore, when a case was registered about the disproportionate assets held by the applicant, the CBI naturally investigated the income, expenditure and assets of both the applicant and his wife. However, in any such investigation, it is always open to a Government employee to state that he has no concern with the income and the expenditure of his spouse. It would then have been the responsibility of the Investigating Officer to take appropriate action. If the Investigating Officer is of view that the spouse of the Government employee has misused or taken advantage of the position of the Government employee for earning income unlawfully he could still ask the Government employee to account for such income.

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52. In the present case, the applicant had not taken any such stand. His case always was that there was no ground for instituting any enquiry as there was no disproportionate assets at all. He could certainly have asked for a separation of his wife's accounts from his so that his responsibility could be specifically fixed. He did not do that. In the circumstances, we are of the view that there was no irregularity in initiating the disciplinary proceedings on the basis of the combined income, expenditure and assets of both the applicant and his wife.

53. We have also to observe that it is only a Government employee, particularly one holding a reasonable or powerful position, who has an opportunity to earn illegitimate income while a person, like the applicant's wife who was only a Lecturer could not have had any such opportunity.

54. Nevertheless, we wanted to assure ourselves that no injustice has been done to the applicant on this account. In fact the Investigating Officer could have segregated the disproportionate assets attributable to the applicant from the data already on file. Thus, from the statement, the following

inference can be drawn:

1)	Total income of applicant's wife including loan income (S.No.24 of statement).	3,45,064.00
2)	Assets attributed to the applicant's wife - details are in the statement of imputations to the charge-sheet. They are:	
i)	Plot & House	2,36,288
ii)	Shares	180
	Shares	410
iii)	Bank balances	17,138
		1,055
		274
	TOTAL	<u>2,55,345</u>
		<u>2,55,345.00</u>
3)	Surplus available for expenditure (1(-) 2)	89,719.00
4)	Total expenditure (B of statement)	3,20,350.00
5)	Funded by applicant's wife's surplus (3 above). Loan repayment = Rs.34,000 Others = <u>Rs.55,719</u> TOTAL <u>Rs.89,719</u>	89,719.00
6)	Expenditure funded by applicant (4 (-) 5)	2,30,631.00
7)	Total income of applicant (23 of statement)	2,32,880.00
8)	Disposable surplus of applicant (item 7 (-) 6)	2,249.00
9)	Total assets attributable to applicant. (Item C of statement (-) item 2)	3,53,660.00
		<u>2,55,345.00</u>
		<u>98,315.00</u>
10)	Surplus available to acquire assets (i.e. 8) Disproportionate assets (9(-)10)	2,249.00
		<u>96,066.00</u>

Thus, it is established that the disproportionate assets are attributable to the applicant and not to his wife.

55. We have to now consider the authorities cited by the learned counsel for setting aside the order.

56. An important contention made by the applicant is that while it is alleged that the applicant has acquired disproportionate assets over 23 years, not a single instance of his having demanded or taken a bribe has been cited. It is contended that if there are no such specific instances, such a charge cannot be made. The learned counsel for the applicant has relied heavily for this proposition on the judgement of the Jabalpur Bench of this Tribunal in Jagdish Chand Jhamb Vs. Union of India (ATR 1990(1) CAT-27). Admittedly, in the present case no such instances have been cited.

57. We have seen that judgement. No such proposition has been laid down in that judgement as is clear from the final directions. The proceedings were not quashed on that ground. In that case, the Commissioner for Departmental Enquiry did not allow the charged officer to produce important defence witnesses on the technical ground that the employee did not furnish the list of defence witnesses on time. Therefore, one of the reasons given for quashing the order is that the applicant has been denied proper opportunity of defence and material defence witnesses were not examined. There is no such allegation in the present case. The applicant has been given a reasonable opportunity to present his case. Therefore, this judgement is of no help to the applicant.

58. The learned counsel for the applicant has found fault with the UPSC for adding Rs.960/- towards rent and house-hold expenses; thus, reducing the savings available for investment by the same amount. It is claimed that this action of the UPSC vitiates the proceedings. In support of this contention, he has relied on the decision of the Allahabad Bench of the Tribunal in Ram Rakha Vs. Union of India, 1990(14) ATC 406.

59. We have seen that judgement. The facts are quite different. In that case it was held that the function of the UPSC is neither to investigate nor to act as an appellate authority over the Enquiry Officer. It was held that the Commission had no right to call for documents not on record. The UPSC looked into such a document behind the back of the delinquent official. Hence, the advice of the UPSC was held to be vitiated. In the present case, the UPSC has not gone beyond the record. It is entitled to form its own opinion on the basis of the available record. Therefore, we do not find any merit in this contention of the application.

60. According to the modification made by the UPSC the disproportionate assets is Rs.97,026/- i.e. by adding Rs.960/- to the estimate of Rs.96,066/- of the Enquiry Officer. (However, in para 6.3 of its advice (Ann.A-12) the UPSC has wrongly ~~assessed~~^{assumed} that Rs.97,026/- is the estimate of the Enquiry Officer and that Rs.960/- has to be added to it. It has, therefore, treated the disproportionate assets as Rs.97,986/-). Based

on the judgement of the Supreme Court in Krishnanand Vs. State of M.P., AIR 1977 SC 796, the Commission gave an allowance of 10% of the total income from Rs. 97,986/- and found that the balance of Rs.40,190/- alone is the amount of assets which are disproportionate to the known source of income. (This should really be Rs.39,232/- only but for the above mistake). In that case the Supreme Court found, after a recomputation / against the aggregate known sources of income determined at Rs.1,27,715.43, savings available after meeting the expenditure was only Rs.44,383.59. As against this, the assets determined amounted to Rs.55,732.25. The quantum of assets found to be disproportionate to the total income was Rs.11348.56. The Supreme Court held that as this excess was comparatively small - it is less than 10% of the total income of Rs.1,27,715.43. It would not be right to hold that the assets are disproportionate to the known sources of income so as to justify rasing the presumption u/s 5(3) of the Prevention of Corruption Act. The ratio is that though the law permits a presumption to be raised, that may be done only if the unexplained assets are fairly substantial, i.e. more than 10% of the income.

61. It is no doubt desirable to allow a 10% provision to take care of any possible errors in a D.E. also. in computation/ The UPSC's decision raises the academic question as to what is the income on which the 10% margin should have been allowed. The UPSC has allowed the margin on the entire income of Rs.5,77,944/-. The other alternatives are as follows:

(i) Strictly speaking, the provision should have been computed only on the applicant's total income,
gross

(ii) The /total income includes a loan of Rs.1,63,000/- which, undisputedly, is only applied for the creation of assets. Therefore, there is, at least, no reason for including that amount for computing the 10% allowance which should have been computed on the balance of Rs.4,14,944/-.

(iii) The deployment of the income of Rs.1,82,064/- of the applicant's wife i.e. excluding the loan - are known. This is explained in para 54. It is seen therefrom that a surplus of Rs.55,719/- was available to the applicant to incur expenditure. Therefore, the 10% provision should have been made on the applicant's income plus this surplus, i.e. Rs.2,32,880/-
(+) Rs. 55,719/- = Rs.2,88,599/-.

(iv) One can also contend that it should be computed on that portion of the gross total income - inclusive of loan - which would be available for expenditure if that income is first applied to creation of the admitted assets, i.e. gross income (-) the value of admitted assets, i.e. Rs.5,77,944/-
(-) Rs.3,17,619/- = Rs.2,60,265/-.

61. In our view neither the gross total income nor alternative (ii) above may be taken into account to give the allowance. The three other alternatives i.e. (i), (iii) and (iv) alone are relevant. The provision should have been given on the highest of these alternatives which is Rs.2,88,599/- i.e. alternative (ii). The provision to be allowed is Rs.28,860/-.

62. We have considered the case of the applicant from all angles after taking note of the pleadings and the arguments and the special features of the case viz., that the expenditure is based on estimates. We now set out our conclusions:

- (i) In the circumstances of the case, the disciplinary proceedings cannot be impugned on the ground that it requires an investigation of income and expenditure for the period from 1.4.57 to 31.10.80.
- (ii) The enquiry cannot also be assailed on the ground that the applicant has been asked to render an account not only of his income, expenditure and the assets acquired by him but also to render an account of the same particulars relating to his wife.
- (iii) We are unable to find any fault either ^{in the} procedure adopted by the Enquiry Officer in determining the income of the applicant and his wife or the conclusions reached by him.

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(iv) We are satisfied that in the absence of better information, expenditure can reasonably be determined on the basis of per capita expenditure based on the sample survey conducted by the Bureau of Economics and Statistics.

(v) We find that the Enquiry Officer has reasonably estimated the expenditure of the applicant and that it could not have been done better, especially when the applicant himself did not furnish any estimate to the Enquiry Officer.

(vi) The estimates given in the revision are too belated for any consideration.

(vii) The findings of the Enquiry Officer leave a savings of Rs.94,594/- out of the income of the applicant and his wife. This stands reduced by Rs.960/- as a result of the UPSC's advice i.e. Rs.93,634/-. This represents 22.5% of income excluding loan of Rs.1,63,000/-. That itself is sufficient proof of the fact that the estimates of income and expenditure are reasonable. This is an understatement because it does not include the savings of Rs.26,764/- on LIC premium and Rs.34,000/- on repayment of loans, besides contribution to provident fund which is not referred to.

(viii) The savings of Rs.93,634/- and the loan of Rs.1,63,000/- = (Rs.2,56,634/-) are available for investment in assets.

(ix) The Enquiry Officer's valuation of assets at Rs.3,53,660/- need modification to the extent of excluding therefrom (i) Rs.2988/- in respect of investment in the house (ii) Rs.6499/- in respect of articles received at the time of marriage and (iii) Rs.10,000/- being value of durables included in house-hold assets which are treated as financed by house-hold expenditure. Thus in our view, the total value of assets is Rs.3,34,173/-.

(x) Therefore, the value of assets disproportionate to income is Rs. 3,34,173/- (-) Rs.2,56,634/- = Rs.77,539/-.

(xi) The relative magnitude of the disproportionate assets and the disproportionate assets adjusted for errors by 10% reduction, in relation to different levels of income, are shown in the following table:

	<u>Gross Total Income</u>	<u>Gross Total income less loan</u>	<u>Total income of applicant only.</u>
	Rs.5,57,944.00	Rs.4,14,944.00	Rs.2,32,880.00
a) Disproportionate assets of Rs.77,539/- as a percentage of	13.4	18.7	33
b) Disproportionate assets reduced by Rs.55794/- (i.e. 10% of gross total income) as done by U.P.S.C. (Rs.19745/-) as a percentage of	3.4	4.75	8.4

We only add that the percentages against (b) above would be much higher, if the adjustment of 10% had been restricted to Rs.28,860/- as stated in para 61 supra.

63. After having examined the case from various angles, we are satisfied that the charge against the applicant stands proved to the extent indicated above. Therefore, we do not find that any interference is called for. In the circumstances, the O.A. is dismissed. No costs.

M. Roy
(C.J. ROY) 6/10/94
MEMBER (J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

'SRD'