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Reserved

Central Administrative Tribunal, Allahabad.

Registration No. O.A.186 of 1986.

Ashok Kumar

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Applicant

Vs.

1. State of U.P.

2. Union of India

3. Union Public Service
Commission, New Delhi

Respondents.

Hon. D.S. Misra, AM
Hon. G.S. Sharma, JM

(By Hon. G.S. Sharma, JM)

This application under section 19 of the Administrative Tribunals Act (XIII of 1985) has been moved by the applicant who is a member of Indian Administrative Service (in short IAS) in the cadre of Uttar Pradesh for 3 reliefs noted below :-

- (i) the respondent no.1 be directed to promote the applicant to officiate in the selection grade of the Indian Administrative Service with effect from 1.1.1986,
- (ii) the order of the State Government- respondent no.1 dated 31.1.1985 withholding the increments of the applicant for two years without cumulative effect be quashed and the applicant be totally and completely exonerated of the charges; and
- (iii) the adverse remarks in the annual confidential report for the year 1982-83, as communicated to the applicant vide U.P. Government's order no. 4104(I)/II-5-83-2(3)-83 dated 2.9.1983 be totally expunged.

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2. The material facts of this case are that the applicant was selected in the IAS through respondent no.3 and was appointed on probation on 7.7.1973. While posted as Joint Magistrate, Agra, the applicant was also the President of Uttar Pradesh Krishi Utpadan Mandi Samiti, Agra and one Km. Asha Mahajan was posted as a Clerk in the Mandi Samiti. The said Km. Mahajan is stated to be a lady of ill-repute and vide his D.O. letter dated 26.12.1965 (copy annexure 1), the Deputy Director, Mandi Parishad, U.P. Lucknow had asked the applicant to retrench 3 clerks and some other officials who were in excess of the sanctioned strength. Km. Asha Mahajan was the junior most and as such, she had to be retrenched by the applicant in view of the direction of the Deputy Director. On the termination of the services of Km. Asha Mahajan, without lodging any report with the Police, she made a complaint to the Chief Secretary and Governor Uttar Pradesh against the applicant alleging that the applicant had committed rape on her on 23.12.1975 in the inspection house of Sikandara. The Secretary to the Governor sent the said complaint to the District Magistrate, Agra to enquire it personally and the Chief Secretary to the U.P. Government endorsed a copy of the complaint received by him to the Commissioner, Agra with the direction to enquire it personally. In this way, both

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the District Magistrate, Agra and the Commissioner Agra made inquiry into the allegation of rape made by Km.Asha Mahajan against the applicant. The District Magistrate submitted his report dated 13.1.1976 (copy annexure SCA I) and the Commissioner submitted his report dated 25.1.1976 (copy annexure SCA II) to the Chief Secretary. After a consideration of the said reports, the respondent no.1 did not feel satisfied about the allegation of rape levelled by Km.Mahajan against the applicant but it decided to initiate disciplinary proceedings against the applicant in respect of certain other matters relating to the misconduct of the applicant coming to its notice through the reports of the District Magistrate and the Commissioner, Agra and suspended the applicant on 5.3.1976. He was served with a charge sheet dated 5.3.1976 (copy annexure 2) by the Commissioner & Secretary Sri Dharmendra Mohan Sinha containing 5 charges. In the disciplinary proceedings held by Sri S.B.Sarany the applicant was found guilty of charges 1 and 4 reproduced below for the sake of convenience :-

" Charge No.1

You, Sri Ashok Kumar Trivedi, IAS probationer are hereby charged as follows :-

That during Dec.75/Jan.76 while posted as Joint Magistrate, Agra and

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also President Mandi Samiti, Agra, the enquiry made by the Commissioner Agra Division, Agra dated Jan.25, 1976 and the District Magistrate, Agra dated Jan. 13, 1976 in connection with a complaint received against you about the alleged rape by you of one, Km. Asha Mahajan, a Clerk in the office of Mandi Samiti, Agra on Dec.23, 1975 it was found that :-

(1) You on Jan.7, 1976 surreptitiously removed the statement dated Dec.26, 1975 of Sri Gaya Prasad Chaudhari, Naib Tahsildar, Barara Area, district Agra and the letter dated Dec.26, 1975 of the Deputy Director Mandis, U.P., from the file in the custody of the District Magistrate and despite being asked by the District Magistrate, Agra, you did not return those documents in original and later on you passed on photo-stat copies of the statement of Sri Gaya Prasad Chauhari Naib Tahsilder and letter of the Deputy Director, Mandis.

Thus ,you are guilty of misconduct which was highly unbecoming of a member of the Service to which you belong and thus you have committed a breach of Rule 3(1) of All India Services (Conduct) Rules, 1968.

Charge No.4

That on Feb.3, 1976 orders were issued by Government by Radiogram No.912/II-(2)/1976 transferring you from Agra to Unnao as Joint Magistrate and the District Magistrate, Agra was directed to relieve you within three days and direct you to take over charge at Unnao

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and orders of your transfer to Unnao along with charge certificate of handing over charge and with some other papers were sent to you at you residence in two envelops, several times and ultimately on Feb. 5, 1976 the said papers were received by you, but you refused to sign in token of their receipt and got your peon, Sri Bangali Mal to sign for you, but you did not return the charge certificate of handing over duly signed and you have not yet taken over as Joint Magistrate at Unnao as directed by Government and thus you are guilty of disobeying the orders of Government and also of the Collector ;

Thus you are guilty of misconduct which is highly unbecoming of a member of the Service to which you belong and you have thus committed a breach of Rule 3(1) of All India Services (Conduct) Rules, 1968. "

3. The suspension of the applicant was revoked by the respondent no.1 on 1.3.1977 and he was reinstated with immediate effect and posted as Joint Magistrate, Gorakhpur. The respondent no.1 accepted the report of disciplinary inquiry and decided to impose minor punishment of censure upon the applicant and sent the record to the respondent no.3 for its advise under the provisions of All India Services (Discipline and Appeal) Rules 1969 (hereinafter

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referred to as the D.A.Rules). The respondent no.3 took a more serious view of the matter and advised a punishment of withholding of 2 increments with cumulative effect. On account of this difference of opinion, the matter was referred by the respondent no.1 to respondent no.2, the Central Government for its decision. On the basis of the advise received, the respondent no. 1 vide its order dated 31.1.1985 (copy annexure 9) awarded the punishment of withholding increments for 2 years without cumulative effect to the applicant and the period of suspension was treated as on duty with full salary. The applicant preferred an appeal on 12.3.1985 under rule 16(2) of the D.A.Rules to the respondent no.2, which is still stated to be pending.

4. The applicant was confirmed in the IAS on 6.2.1981 with retrospective due date 7.7.1975. Though other batch mates of the applicant were promoted in the senior time scale of IAS in July/Aug.1977 and the applicant was superseded at that time, he was promoted in the senior time scale on 3.10.1979 and was confirmed in that scale on 20.7.1985 vide annexures 11 and 12. The applicant had made a representation against his supersession on 22.10.1979 to the respondent no.1, which is still stated to be pending.

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5. In the years 1981-82 and 1982-83, the applicant was posted as Additional Commissioner Agra. In the year 1981-~~and~~ 82, two Commissioners had worked in Agra Division and both had given good entries to the applicant and the same were approved and accepted by the reviewing and accepting authorities. Even in the year 1982-83, the Commissioner Agra gave a good entry to the applicant making a recommendation for giving him an opportunity to work against some senior field job and the reviewing authority had concurred with him. The accepting authority, however, made the following adverse entry in the character roll of the applicant :-

" He has not so far been able to impress with his work. He needs to develop better judgment and administrative ability."

The applicant made a representation to the respondent no.1 against the said entry which too is still stated to be pending decision.

6. According to rule 3 (2A) of the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as Pay Rules), the respondent no. 1 made promotions of the IAS officers of 1973 batch in selection grade and a large number of officers junior to the applicant were given promotion in the selection grade w.e.f.1.1.1986

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but ¹ and the applicant was superseded. The applicant made a representation against his supersession on 6.2.1986, copy annexure 15, but to no effect.

7. The facts stated above are almost admitted or undisputed. In his application, the applicant has alleged that the inquiring authority placed its reliance on inadmissible evidence, surmises and suspicions in holding the applicant guilty of the charge nos. 1 and 4. The disciplinary inquiry was not held according to law and the report of the inquiring authority as well as the opinion and advise given by respondent nos. 2 and 3 are against law and principles of natural justice. It is also his grievance that the evidence produced by him in his defence was not given due consideration and was brushed aside without giving any valid reason. According to him, the District Magistrate and the Commissioner Agra, who had made the inquiry into the complaint of Km. Asha Mahajan were prejudiced against the applicant and the inquiry held by them was not fair and the findings given by the inquiring authority against the applicant in the disciplinary proceedings on the basis of the said reports are perverse in law. The accepting authority (Chief Secretary) had no occasion to see the work of the applicant as Additional Commissioner, Agra in the year 1982-83 and there was no basis for giving adverse entry by him to the

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applicant in that year despite good reports from the initiating and reviewing authorities. It is also alleged that the promotion and confirmation of the applicant in the selection grade in 1985 has the effect of washing off all the previous adverse material against the applicant and in view of the pendency of appeal and representation against the punishment, the ^{not /} applicant should have been superseded in the selection grade.

8. The application has been contested on behalf of the respondents. In the reply/ counter affidavit filed on behalf of respondent no.1, it was stated that on account of the disciplinary proceedings pending against the applicant, his period of probation was extended from time to time and on the conclusion of the disciplinary proceedings, the respondent no.3 recommended only the stoppage of 2 increments, which related to the period after the period of probation, the applicant was, therefore, confirmed w.e.f. 7.7.1975 vide order dated 6.2.1981. The applicant was given full opportunity to defend himself in the disciplinary inquiry, which was held according to the rules and the report of the inquiring authority is based on evidence and it does not suffer from any defect. No representation dated 22.10.1979 of the applicant against his supersession in the senior time scale has been received by the State Government. The adverse entry given to } }

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the applicant is based on his work and conduct and his contention to the contrary is not correct. As his representation against the same is pending, his claim before the Tribunal is pre-mature and it is also barred by Section 20 of the Administrative Tribunals Act XIII of 1985. The selection grade is given on the recommendation of the selection committee and as it did not find the applicant fit for promotion in the selection grade, he was rightly superseded and his claim petition is misconcieved. A similar reply/ counter affidavit was filed on behalf of the respondent no.2 and it was stated that the applicant has not made out any good case for the reliefs claimed by him. The respondent no.3 did not file any reply in this case. The applicant filed 2 rejoinders reiterating the grounds taken by him in his application and denying the allegations made by the respondent nos. 1 and 2 against him in their counter affidavits.

9. We have heard the learned counsel for the parties and have also carefully perused the record in the light of the submission made before us. The relief (i) regarding promotion to selection grade claimed by the applicant directly or indirectly depends upon the remaining two other reliefs

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and as such, we will first like to examine the case of the applicant regarding relief (ii) for quashing the punishment of withholding the increments. The punishment of withholding increments of the applicant for 2 years without cumulative effect is based on the report of the inquiry officer, who had found the applicant guilty of charge nos. 1 and 4 quoted above in verbatim. It will be convenient to examine the case of the applicant regarding charge no.1 first.

10. The applicant was charged of surreptitiously removing two documents, namely, D.O. letter dated 26.12.1975, copy annexure 1, addressed to the applicant by the Deputy Director, State Krishi Utpadan Mandi Parishad, U.P. regarding certain indiscipline in the office of the Mandi Samiti Agra and the excess ~~go~~ staff in that office. The applicant was the President of the Mandi Samiti Agra at that time. This D.O. letter says that 3 clerks, 1 Amin and 1 Kamdar were in excess in the office and on the basis of seniority, Km. Asha Mahajan was the junior most among the clerks. This D.O. letter further mentions that Km. Asha Mahajan was reportedly having illegitimate intimacy with one other official Gupta Kamdar and the Deputy Director had asked the applicant to remove the services of said Gupta and retrench the extra staff in accordance with the rules. The other

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letter of the same date 26.12.1975 containing the statement of one Gaya Prasad Chaudhari, Naib Tahsildar, Barara area in district Agra is reported to have been removed by the applicant. Its copy is not on the record but it follows from the other material on record that when the applicant was faced with the charge of committing rape on Km. Asha Mahajan on 23.12.1975, he had collected some evidence to show that he had gone to other places on official work on that day and had not gone to Sikandara inspection house where the rape is alleged to have been committed by him on that day and in that connection, the Naib Tahsildar Choudhary had given him a letter containing his statement in support of applicant's contention of going on other official work. The inquiring officer and the respondents have interpreted these two documents very material for the defence of the applicant in connection with the charge of rape and as such, the finding of guilt against the applicant is very much based on this circumstance. This approach of the respondents has been criticised on behalf of the applicant and his contention is that the charge had to be proved against him on the basis of the evidence quoted in the charge sheet and produced before the inquiring officer and not on surmises or any wrong inferences.

11. The copy of Memo of Evidence, annexure 3, cites 3 documents (a) complaint of Km. Asha Mahajan addressed to the Governor (b) D.O. letter dated

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25.1.1976 of Commissioner Agra to the Chief Secretary to the U.P. Government and (c) report dated 13.1.1976 of the District Magistrate, Agra to the Commissioner Agra. Neither any oral evidence in support of charge no.1 has been cited in the Memo of Evidence nor was in fact produced before the inquiring officer. Regarding the nature of evidence mentioned in the Memo of Evidence, it was explained that the report of Km. Asha Mahajan will show that she had made a complaint against the applicant and the letters of the District Magistrate and the Commissioner will show that the applicant surreptitiously removed the aforesaid two letters from the official file and on being asked by the Collector to return the same, the applicant had informed that the documents were with him and he was getting their photostat copies.

12. Annexure 7 is the copy of the report dated 20.7.1978 of the inquiring officer (Commissioner Lucknow). Dealing with charge no.1, the inquiring officer has mentioned in his report that "this charge really arose from the report sent to the Commissioner by the District Magistrate, Agra on 13.1.1976. On page 4 of this report of the District Magistrate wrote that on his return from Sikandara Dak Bungalow he discovered that the files which he had taken from Sri Trivedi (applicant) in the afternoon were not at the place where he had kept them. As Sri Trivedi was still at his residence, he called

him to his presence and recovered the files from him. He did not immediately look inside the files but at 10.00 PM he found that the statement dated 26.12.75 given by Naib Tahsildar Sri Chaudhary and the report of the Deputy Director Mandis were missing from the file. This District Magistrate called Sri Trivedi on phone and Sri Trivedi accepted that he had removed these papers for getting their photostat copies." Dealing with the explanation of the applicant, the report further says that " In his explanation Sri Trivedi has mentioned that Sri Chaudhari's statement dated 26.12.1975 had been given to him personally and was, therefore, a document which remained throughout with him in his personal custody. It was not addressed to the District Magistrate nor did it bear any endorsement by the District Magistrate or the serial paper number of District Magistrate's file. Similarly letters dated 26.12.1975 sent by Deputy Director Mandi Parishad was a confidential letter addressed to Sri Trivedi by name and not to the District Magistrate This letter was never kept on DM's file and there could be no motive for the removal of this document from DM's possession. Sri Trivedi has thus denied having removed these papers from the custody of the District Magistrate."

13. After considering these facts, the report of inquiry further says " As stated above, this

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charge is based exclusively on DM's report dated 13.1.1976. This statement has been mentioned in the memo of evidence of charge no.1 given as annexure 2 It was mentioned in para 7 of Government order no.4094 dated July 19, 1976 that Sri Trivedi would have the right to cross examine witnesses mentioned in support of the charges and also to produce witnesses in his defence. Sri Trivedi did not cross examine the District Magistrate Sri J.N.Pradham whose report dated 13.1.1976 formed the basis of this charge and on whose averment it was sought to be held that the papers were removed from the file which had been handed over to the District Magistrate. I have thus no reason to disbelieve the report of the District Magistrate about the removal of these papers. In the absence of any rebuttal even by way of cross-examination of the District Magistrate who has himself made this statement, this charge stands fully proved." (vide annexure 7). It is thus apparent that the inquiring officer in this case found the applicant guilty of charge no.1 solely on the basis of the letter dated 13.1.1976 of the District Magistrate, copy annexure SCA I. He did not take into consideration even the report of the Commissioner in this connection and was of the view that in case the applicant wanted to dispute the truthfulness of the contents of the report of the District Magistrate, it was the duty of the applicant to cross-examine him. As the applicant neither cross-examined the

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District Magistrate nor produced any evidence in rebuttal, the charge no.1 against the applicant was found as established. The Union Public Service Commission- respondent no.3 when moved for advise in the matter, took the similar view of the facts and evidence as appears from its letter dated 27.8.1980, copy annexure 8.

14. The report, annexure 7, clearly goes to show that the applicant refuted the facts stated in the report of the District Magistrate about his surreptitiously removing the 2 aforesaid documents from his file. The report of the District Magistrate thus became a disputed document. It could be read in evidence merely as a fact finding report without formal proof for initiating action against the applicant but in case the respondents wanted to rely on the statement of fact of the District Magistrate contained therein, it was the duty of the presenting officer to produce the District Magistrate as witness and in view of the clear denial of the disputed fact by the applicant in his explanation before the inquiring officer, the report of the District Magistrate could not be relied upon and accepted as a gospel truth/ and substantive evidence without examining the District Magistrate as a witness and affording an opportunity to the applicant to cross-examine him.

15. Our attention has been drawn on behalf of the applicant on the provisions of rule 8 of D.A.Rules. According to clause (b) of sub-rule (4) of rule 8, the disciplinary authority has to draw a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained. It will be worthwhile only to point out that the report of the District Magistrate has been mentioned in the list of documents and the name of the District Magistrate has not been mentioned in the list of witnesses by whom the charge no.1 was sought to be sustained. Sub-rule (15) of Rule 8 provides that on the date fixed for the inquiry, the oral and documentary evidence, by which articles of charge are proposed to be proved shall be produced by, or on behalf of, disciplinary authority. The witnesses shall be examined by, or on behalf of, the presenting officer and may be cross-examined by, or on behalf of, the member of the service. The contention of the applicant is that as the District Magistrate Agra, on whose report the charge no.1 has been found established against him, was neither cited as a witness nor otherwise produced, by or on behalf of the disciplinary authority, and as such, the applicant could have no occasion to cross-examine the District Magistrate and the inference drawn against him

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by the respondent no.1 and 3 in this connection is not correct. We fully agree with this view and are of the opinion that unless a witness is examined by a party in support of his case, the other party cannot exercise the right of cross-examining him. The applicant, therefore, cannot be blamed for not cross-examining the District Magistrate, Agra. The view taken by the respondents to the contrary is not correct.

16. The fact finding report dated 13.1.1976 of the District Magistrate Agra has been read in evidence in this case as a substantive evidence, which was not permissible under the law and rules of natural justice. We will like to quote below the observations of the Hon'ble Supreme Court in the case of M/S. Bareilly Electricity Supply Co., Ltd., Vs. The Workmen and others (AIR 1972 SC-330) in support of this view :-

" But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that

and the correctness of the procedures adopted in disciplinary proceedings had held that the High Court while considering the findings recorded against a Government servant during disciplinary proceedings cannot reappraise the evidence and arrive at a different conclusion. The High Court does not exercise any appellate power. Since the High Court exercises supervisory jurisdiction, it has limited power to ascertain as to whether the findings are based on legal evidence on the basis of which a reasonable person could come to the conclusion to which the inquiring officer may have arrived. It was further held that the technical rules of evidence which regulate criminal trials do not apply to the disciplinary proceedings but nonetheless, the finding of the inquiring officer must be based on legal evidence and it should not be based on conjectures, surmises or on suspicion. Suspicion, howsoever strong cannot take the place of proof. We fully agree with the view expressed by the Hon'ble Judges of the Allahabad High Court in that case and hold that as the report dated 13.1.1976 of the District Magistrate Agra was not a legal evidence, it could not be relied upon by the inquiring officer and thereafter by the respondents for holding the applicant guilty of charge no.1.

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naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles."

17. In the Union of India Vs. Sardar Bahadur (AIR 1972 SLR-355), the Hon'ble Supreme Court has held that even the statement recorded in Court proceedings under the Prevention of Corruption Act cannot be relied on in departmental inquiry and the fact has to be proved by calling the said witness again the departmental inquiry.

18. In G.S.Sial Vs. President of India (1980 LLT (service) 162), the Allahabad High Court while considering the powers and jurisdiction of the High Court in a writ petition challenging the findings

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19. In view of this clear legal position, it is unnecessary for us to examine the case of the applicant regarding charge no.1 in any other manner and we hold that the finding on charge no.1 against him is not based on any legal evidence and is liable to be set aside.

20. Coming to the charge no.4 quoted above, radiogram dated 3.2.1986 of the Government to the District Magistrate, Agra containing the transfer order of the applicant from Agra to Unnao, radiogram dated 6.2.1976 of the District Magistrate Agra to the Chief Secretary, U.P. Government stating that the applicant did not hand over the charge and was traceless and D.O. letter dated 8.2.1976 of District Magistrate, Agra with a report dated 7.2.1976 of the ADM Sri Varshney to show that the applicant was absent from the office prior to the receipt of the transfer order and despite the information, rejecting his application for permission to leave the station sent to the applicant as well as the transfer orders served on him, he neither came to the office nor returned the charge certificate of handing over charge and the oral statement of Sri Shanti Swaroop Peon were cited as evidence in support of the charge. The defence of the applicant was that he had left for Aligarh in the early morning on 5.2.1976 after obtaining permission on telephone from the District Magistrate in the evening on 4.2.1976 in connection with the betrothal ceremony and on account of his falling sick there, he

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could return to Agra only on 8.2.1976 as a sick person and thereafter remained on medical leave duly recommended by the Divisional Medical Board and the transfer order was not served on him nor he refused to sign in token of his having received the transfer order on 5.2.1976 at his residence at Agra and the charge is incorrect. He had examined Sri R.K.Sharma Assistant Sales Tax Commissioner, Mujaffarnagar with whose daughter the applicant was married on 27.2.78 in his defence.

21. The report of inquiry, copy Ex.7, shows that the inquiring authority first considered the evidence and thereafter the statement of Shanti Swaroop, Peon and formulated a point saying ' here again the main issue is whether Sri Trivedi obtained the District Magistrate's permission to leave station in the morning of Feb.5, 1976 or whether the District Magistrate had been trying to contact him for serving him with the orders of transfer from February 4 onwards'. After considering the fact finding reports of the District Magistrate dated 13.1.1976 and Commissioner dated 25.1.1976, the inquiring authority held that in view of the grave charges pending against the applicant, it was unthinkable that a District Magistrate in his senses would permit him to proceed on leave after orders of his transfer had already been received. The betrothal ceremony being arranged from before, the applicant could not take the leave from the District Magistrate

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in the early morning on 5.2.1976 for leaving the station. The sanction of leave from Feb.9 onwards on the recommendation of the Medical Board is not relevant to the issue and he saw no reason to disbelieve the version of the District Magistrate in this behalf.

22. The contention of the applicant is that the reports dated 13.1.1976 and 25.1.1976 of the District Magistrate and the Commissioner Agra respectively relied upon by the inquiring authority in his finding on charge no.4 were not quoted as an evidence for establishing this charge and the inquiring authority committed an error in placing his reliance on such evidence. It has been further contended that the inquiring authority did not write a single word for discarding the evidence of Sri R.K.Sharma, a respectable witness produced on behalf of the applicant in his defence and did not discuss the evidence of Sri Shanti Swaroop Peon, which was ^{& self-} contradictory, oscillating and unreliable and in the end, he again wrongly placed his reliance on the version of the District Magistrate contained in some D.O.letter or radio-gram without calling the District Magistrate in the witness box to afford the applicant an opportunity of cross-examining him.

23. As the applicant has placed the copies of the statements of Sri Shanti Swaroop Peon and Sri R.K.Sharma as annexures 4 and 5, we feel inclined to examine the same to see whether there was some evidence before the inquiring authority to

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accept the case of the prosecution and reject the defence of the applicant and not with a view to make out or reconstruct a new case. This approach to the matter was found within the jurisdiction of the High Court in a writ petition under article 226 of the Constitution by the Hon'ble Supreme Court in a special appeal in Nand Kishore Prasad Vs. the State of Bihar (AIR 1978 SC-1277).

24. The Peon Shanti Swarup was first examined on 25.7.1977. He did not state a single word concerning this case on that day. Again, he was examined on 13.4.1978 and it was stated by him that he went with two envelopes to the bungalow of Sri Trivedi. He was not found there. He had handed over the envelopes to Bangali Peon. The said envelopes were given to him by ADM Sri Varshney. Without explaining his this clear statement that the applicant was not found and he had handed over the envelopes to his Peon Bangali, this witness further stated that the applicant was not available on the first date of his going to his residence. He again went on the second day at 3 p.m. The applicant was not again present and on his arrival after 2-3 hours, he went upstairs and requested the applicant to receive 2 envelopes. The applicant refused to make ^{receipt} signatures to acknowledge ^{their} and on his insistence, he threw the envelopes on the ground.

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(the witness) }
He thereafter picked up the envelopes from
the floor and went down stairs and found
Bangali Peon there. On the request of Bangali,
he waited there for a while and in the meantime
Bangali went upstairs and on his return,
obtained the envelopes, signed the acknowled-
gement. On his return, he had stated about all
this to the Office Superintendent. In his
cross-examination, it was stated by him that
formerly, whenever he had taken the dak to the
applicant, only his Peon had given the acknow-
ledgement. As on that day, he was asked by
the ADM and the Office Superintendent to give
the dak to the applicant himself, he had
waited till his return. He further stated
that it was informed to him by Bangali that
Saheb had gone to Delhi and would return in
the evening. He could not deny the fact that
to the Office Superintendent, he had stated
that the applicant had gone to Aligarh.

According to him, the applicant had returned
to his residence at about 6.30p.m. ^{but} and could
not deny the ^{suggestion} fact that he had earlier stated
that the applicant had returned at 8 p.m.

He had not given written report about the
delivery of the above 2 envelopes in the
manner stated by him. He neither stated any
date on which he had taken the two envelopes
in question to the applicant nor could say

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anything about the nature of the contents ~~of~~ the said envelopes. It is perhaps due to these various discrepancies in the statement of this witness, the inquiring authority thought it better to skip over his statement in his report.

25. In case the statement as a whole of this witness is accepted, the ^{both} _{versions} that on the first day, the applicant was not found and he had delivered the 2 envelopes to his Peon Bangali and on the second day, when he went, he served them in the manner stated, cannot be accepted. The fact that the applicant was not available atleast from 3 p.m. to 6.30 p.m. at his residence and was reported to have gone to Delhi or Aligarh, supports the case of both the parties as on the next day i.e. 6.2.1976, the District Magistrate Agra had reported the applicant as traceless and the stand of the applicant was that he was at Aligarh.

26. Further, even if we accept the statement ^{{so far as it goes in favour of the prosecution, of Shanti Swarup/ignoring the aforesaid discrepancies,} it simply shows that the applicant threw away the envelopes and did not accept them. It further says that on the ground floor, the envelopes were taken by the applicant's Peon Bangali. He did not say that the Peon Bangali had taken the same under the direction or in the presence of the applicant. In this way, the charge no.4 that the applicant accepted the transfer order, if contained in the said two envelopes, and refused to give

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acknowledgement and asked his Peon to sign for him in that connection, has not been established. We are, therefore, of the view that there was no evidence before the inquiring authority to find even the charge no.4 as established against the applicant.

27. On the other hand, there was the consistent statement of Sri R.K.Sharma, though a near relation of the applicant, to support his defence version. Sri Sharma had stated that the illness of the applicant related to his being upset and he used to get perspiration and had some pain in the abdomen, finds corroboration from the subsequent event that the applicant returned to Agra in the state of sickness and thereafter remained on medical leave approved by the Divisional Medical Board for a long period up to 19.4.1976. This important circumstance was ignored by the inquiring authority by saying that it is not relevant to the issue, which does not appear to be correct. The applicant was facing a serious situation on account of the allegation of rape by one of the women employees of the Mandi Samiti Agra, of which the applicant was the President and as such, it could not be unusual for him to get upset. Not a single question was put by the presenting officer or the inquiring authority to Sri R.K.Sharma to suggest that he was not speaking the truth.

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28. Clause (c) of rule 8 (24) (i) of D.A.Rules provides that after the conclusion of the inquiry, a report shall be prepared and it shall contain an assessment of the evidence in respect of each article of charge and clause (d) further provides that the report shall also contain the findings on each article of charge and the reasons therefor. We feel that the inquiring authority has not given any reason whatsoever for accepting the solitary statement of Shanti Swarup Peon produced on behalf of the department and discarding the statement of the defence witness. The version of the District Magistrate on the basis of which charge no.4 was found established has also not been specified. The report so prepared is not in accordance with the rule 8(24) of the D.A.Rules. We further feel that despite his being conscious of the fact that the important question arising for determination in this connection was whether the applicant obtained the District Magistrate's permission to leave the station in the morning of Feb.5, 1976, was decided by him merely on the basis of his own inferences without considering the application given by the applicant for leaving station and the order of its rejection. In case, the application was given on 4.2.1976 or in the morning of 5.2.1976 before going to Aligarh, it could throw a flood of light on the point. It is further noteworthy that the applicant has not been charged in this case for leaving the station

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without permission or for abandoning his post in any manner. These points could assume great importance in case the applicant was traceless as reported by the District Magistrate. The inquiring authority, however, did not apply its mind to this aspect of the case.

29. Before we conclude our discussion on this point, it will be useful to consider some case law laying down the scope of the Courts and Tribunals before whom the orders passed in the disciplinary proceedings are challenged. In the Union of India Vs. H.C. Goel (A.I.R. 1964 SC-364), it was held that the High Court cannot consider the question about the sufficiency or adequacy of evidence and should only inquire whether there is any evidence in support of the impugned conclusion. It will take the evidence as it stands and only examine whether on that evidence ~~illegally~~ the impugned conclusion follows or not. The Hon'ble Supreme Court further held that the principle that the innocents are not punished applies as much to regular criminal trials as to disciplinary inquiry held under the statutory rules.

30. In Syed Yakub Vs. E.S. Radhkrishnan (A.I.R. 1964 SC- 477), it was held that if

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it is shown that the domestic tribunal erroneously refused to admit admissible or material evidence, or erroneously admitted inadmissible evidence, which had influenced the findings, the High Court can interfere. It was further held that if a finding of fact is based on no evidence, that would be regarded as error ^{of} law which can be corrected by a writ of Certiorari.

31. In Railway Board New Delhi Vs. Narayan Singh (AIR 1969 SC-966) it was held that if the findings of the disciplinary proceedings are not supported by any evidence and it can be shown that no reasonable person could have reached such a finding, the High Court can interfere.

32. In Nand Kishore Prasad Vs. State of Bihar (A.I.R. 1978 SC-1277), it was held that since disciplinary proceedings are of a quasi judicial character, the minimum requirement of the rules of natural justice is that the domestic Tribunal should arrive at a conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

33. Having ^{thus} _^ considered the case of the applicant regarding the finding on charge no.4 against him, we feel that the inquiring authority did not give due consideration to the evidence before him. It

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it ignored the material circumstance of applicant's subsequent long illness on medical leave as well as the message given by the District Magistrate to the Chief Secretary that the applicant was traceless. He did not give any reason for discarding the defence evidence and accepting the oral evidence of the Peon Shanti Swarup. The finding of the inquiring authority, is therefore, not based on legal evidence and on the basis of the material and the circumstances discussed above, no reasonable person could come to the conclusion to which the inquiring authority had arrived at. The finding on charge no.4 thus also deserves to be set aside and with this conclusion the punishment awarded to the applicant will also have to be set aside.

34. The next point arising for determination in this case is whether the adverse remark given in the annual confidential report, for the year 1982-83 has been given without any basis or justification and deserves to be expunged. In this connection, the case of the applicant is that in March 1980-81, he was posted as Additional Commissioner, Agra for doing judicial work only under the provisions of Land Revenue Act. His immediate office and the reporting authority Commissioner, Agra gave a very good entry to him for the period 1.4.1981 to 14.8.1981, which was approved and accepted by the reviewing and accepting authorities respectively. On the transfer

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of the first Commissioner Agra, his successor again gave a commendable entry to the applicant for the period 25.8.1981 to 31.3.1982 and the said entry was again approved and accepted. In 1982-83, the reporting authority again gave a good entry to the applicant and strongly recommended to give him an opportunity to work against some senior field job. The reviewing authority expressed its concurrence but the accepting authority gave the adverse remark quoted in paragraph 5 above. The applicant contends that the accepting authority, the Chief Secretary, did not have any occasion to see his work as a Judicial Officer and he had not done any administrative work. The adverse entry aforesaid is, therefore, uncalled for and is not based on any material. The respondent no.1 has tried to justify this entry ^{with} ~~on~~ the allegation that it was actually based on the work and conduct of the applicant as assessed by the accepting authority and the representation of the applicant against the said entry is under consideration of the respondent no.1 and his claim petition is premature.

35. The respondent no.1 did not dispute the fact that both the reporting authorities had given good entries to the applicant for the year 1981-82 and even for the year 1982-83 the entries, as alleged by the applicant, were given and recommended by the reporting and reviewing authorities.

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In view of this, it is not shown how the accepting authority came to the conclusion that the applicant could not impress with his work and he required to develop better judgment and administrative ability. The whole entry for the year 1982-83 given to the applicant is not before us but the letter dated 2.9.1983 of the Appointment Secretary, who conveyed the aforesaid adverse remark given to the applicant runs as follows :-

" In the annual confidential report of Sri Ashok Kumar , IAS , Additional Commissioner Agra for the year 1982-83, it has been stated that his judicial work and control over the Court staff are satisfactory. His Court inspections were of good standard. His working capacity is good but there were some set backs in the beginning of his service on account of which, he has developed a feeling of frustration. With this ^{also} the following adverse remark has been entered in his character roll :-

' He has not so far been able to impress with his work. He needs to rd develop better judgment and administrative ability. ' "

36. In our view, the adverse remark given to the applicant by the accepting authority is self-contradictory and inconsistent with the earlier statement that his judicial work is satisfactory and further his working capacity is

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good. The applicant has maintained that for his judicial work, he did not get any adverse comment from any higher Court or authority and as he was not called upon to do any administrative work in the year 1982-83, it is totally incorrect to say that he could not impress with his work and required to develop better judgment and administrative ability.

37. Admittedly, the applicant had made a representation against this adverse entry, copy annexure 14, in March 1984 but the same has not been disposed of so far despite a subsequent reminder dated 12.1.1986 while under rule 10 of the All India Services (Confidential Rolls) Rules, 1970, the same has to be disposed of as far as possible within 3 months of its submission. The undue time taken by the respondent no.1 in disposing of this representation cannot be appreciated and it leads to the inference that respondent no.1 has no ground to justify the adverse remark given to the applicant. It is further apparent that the respondent no.1 has not come forward with any specific instances on which the adverse remark given to the applicant by the accepting authority is based. The bald allegation that this remark was based on the work and conduct of the applicant as assessed by the accepting authority, cannot be accepted. We, therefore, find no good ground to justify the adverse remark given by the respondent no.1 to the applicant in the year 1982-83

and it deserves to be expunged.

38. The next and last question for determination in this case is whether the applicant has been wrongly superseded by ignoring his claim on 1.1.1986 for his promotion in the selection grade when the officers of his batch junior to him were promoted in this grade. The respondent no.1 has stated in paragraphs 30 to 33 of its reply that a selection committee was constituted by the respondent no.1 for this purpose and after the consideration of the entire service record of the applicant, he was not found fit for promotion to the selection grade by the said Committee and as such, the applicant was rightly superseded. In paragraph 20 of its reply, it has also been stated by the respondent no.1 that the character roll of the applicant had an adverse entry and he was earlier suspended, he was, therefore, not approved for promotion to the senior scale of IAS.

39. The stand of the applicant in this connection is that after his suspension on 5.3.1976, he was given the senior grade of IAS on 3.10.1979 and he was confirmed on this grade on 20.7.1985. He was confirmed on 6.2.1988 with retrospective effect. In view of his promotion to the senior scale of pay and confirmation in the IAS subsequent to the events on which his promotion to the selection grade has been denied could not be taken into consideration for the purpose of his promotion and his confirmation.

in the senior grade on 20.7.1985 will have the effect of wiping off of the previous bad entries on the record, if any, of the applicant. In support of this contention, he has placed his reliance on Hohd. Halibul Haque Vs. Union of India (1978 (1) SLR-637) ; the Collector of Customs Vs. Rehti Mohan (1976(2) SLR-897) and Dr. Girish Behari Vs. State of U.P. (1983 U.P. Service Cases-34).

40. The applicant has further placed his reliance on Gurdial Singh Vs. State of Punjab (AIR 1979 SC-1622), Jitendra Jayanti Lal Joshi Vs. State of Gujarat (1978 Labour & Industrial Cases-904) and Union of India Vs. Mohd. Habibul Haque (1978 (1) SLR-748) for the contention that during the pendency of his representation against the adverse entry, the same could not be considered as an adverse circumstance against the applicant by the selection committee.

41. Without entering into an elaborate discussion on this point, we feel that it will be expedient on the part of the respondent no.1 to refer the matter of promotion of the applicant to selection grade to the proper selection committee again after the judgment of the Tribunal in this case and as the entire service record of the applicant is not before us, we will not like to express our opinion regarding his suitability for promotion to the selection grade.

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42. In view of the above discussion, we set aside the report dated 20.7.1978 of the disciplinary proceedings and the order dated 31.1.1985 awarding the punishment to the applicant on its basis, direct the respondent no.1 to expunge the confidential adverse remark given to the applicant for the year 1982-83 and further direct the respondent no.1 to refer the matter of the promotion of applicant to selection grade to the competent selection committee and communicate its result to him within 3 months. We leave the parties to bear their own costs.

Member (A)

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Subhash
12/11/86
Member (J)

Dated 12.11.1986
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