(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,JODHPUR

.....

DATE OF ORDER : 31.08.2000

O.A.NO.26/1995

Suresh Chandra Ajmera aged about 50 years, S/o Shri Kesar Lal, By Caste Ajmera (Jain), Resident of 13-A, Umaid Bhawan Road, Near Circuit House, Jodhpur, Inspector (Under Dismissal), Income Tax Department, Raika Bagh, Jodhpur.

.....Applicant.

versus

1. The Union of India through the Secretary to the Government, Ministry of Finance, Government of India, New Delhi.
2. The Chief Commissioner of Income Tax, Rajasthan, Jaipur.
3. The Commissioner of Income Tax, Jodhpur.
4. Shri P.C.Hadia, Former Commissioner of Income Tax, Income Tax Colony, Durgapura, Tonk Road, Jaipur.

.....Respondents.

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CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH,ADMINISTRATIVE MEMBER

.....

Mr.M.S.Singhvi, Counsel for the Applicant.

Mr.U.S.Bhargava, Counsel for the Respondents No. 1 to 3.

None present for the Respondent No.4.

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O R D E R

(PER HON'BLE A.K.MISRA,JUDICIAL MEMBER)

Applicant, Suresh Chandra Ajmera, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985, praying as under :-

That the order dated 8.12.93 and 20.5.94 (Annexs. A/1 and A/2), be declared illegal and be quashed and the respondents be directed to reinstate the applicant in service with all consequential benefits. Alternatively, the applicant has prayed that the respondents be directed to pay to the applicant the amount due towards leave encashment along with interest at the rate of 24% per annum from the date the amount became due till the date of payment with cost of the litigation.

2. The applicant has stated in his O.A. that he was initially appointed as U.D.C. in the Income Tax Department in the year 1965. Thereafter, the applicant worked-out his promotion to further higher post. In the year 1980, the applicant was promoted to the post of Inspector. The applicant has further alleged that in the year 1977 the applicant was elected as Additional General Secretary of the Rajasthan Income Tax Employees Association and thereafter was actively espousing the cause of the association. While the applicant was working as Inspector of Income Tax, respondent No. 4 was posted as Assistant Commissioner of Income Tax. Respondent No. 4 did not like the union activities of the applicant and in order to oust the applicant from Jodhpur, he transferred the applicant to Barmer vide order dated 30.5.85. The transfer order was carried-out by the applicant after the stay order granted by Hon'ble High Court was vacated. It is further alleged by the applicant that in September 1985 the respondent No. 4 got his house raided by the Central Bureau of Investigation but nothing incriminating was found there. Thereafter respondent No. 4 suspended the applicant vide his order dated 25.11.85 while the applicant was working as Inspector of Income Tax, Barmer. Thereafter, a Chargesheet under rule 14 of CCS (CCA) Rules, was served upon the applicant on 18.2.86 which contained as many as 32 charges. It is alleged by the applicant that respondent No. 4 was not the disciplinary authority of the applicant yet the chargesheet was served by him and inquiry officer was also appointed

by the respondent No.4 after the applicant had filed his reply to the chargesheet. It is further stated by the applicant that after due inquiry, the inquiry officer held only 13 charges as proved and submitted the report to the disciplinary authority. The disciplinary authority after due consideration of the inquiry report, held only 8 charges (charges No. 1,6,9,10,15,18,25 and 31) as proved and imposed the penalty of dismissal upon the applicant vide its order dated 8.12.93 (Annex.A/1). The appellate authority after considering the memo of appeal submitted by the applicant found only 6 charges (charges No. 1,6,10,15,18 &31.) as proved and the penalty of dismissal of applicant from service was maintained vide its order dated 20.5.94 (Annex.A/2). Thus, it is seen that charges No. 9 and 25 which was proved held by the disciplinary authority, was held not proved by the appellate authority.

3. The applicant has challenged the disciplinary inquiry on the ground that the Commissioner of Income Tax was the appointing authority of the applicant yet the chargesheet was issued by the respondent No.4 who was only an Inspecting Assistaing Commissioner of Income Tax, that the respondent No.4 in violation of rules appointed the inquiry officer whereas as per rules only the appointing authority was competent to appoint the inquiry officer, that charges No. 21 and 24 were relating to respondent No.4 and, therefore, he should not have issued the chargesheet to the applicant, that there was abnormal delay in conducting the inquiry against the applicant, that the documents demanded by the applicant, were not made available and the applicant was not provided reasonable opportunity of cross examining the witnesses, that the pre-recorded statements of various witnesses were made basis of holding the charges as proved without the witnesses being subjected to state the facts relating to the charges, that inspite of the demand of the applicant he was not permitted the assistance of a legal practitioner to defend his case, that the

inquiry was not fair and procedural lapses caused great prejudice to the applicant and the disciplinary inquiry is vitiated. The applicant had pleaded many facts relating to the malafide activities of respondent No. 4 against the applicant. Challenging the finding of appellate authority, the applicant has alleged that the finding of the appellate authority is perverse and illegal, the order of the appellate authority is a result of non-application of mind, the appellate authority had caused the appellate order to be written by one retired Commissioner of Income Tax, that the appellate authority failed to appreciate the various grounds raised by the applicant in his memo of appeal relating to the disciplinary inquiry and the order of the disciplinary authority in the real perspective as envisaged by Rule 27 of the CCS (CCA) Rules. Hence, this O.A.

4. The respondents have filed their detailed reply in which it is alleged by them that the O.A. is pre-mature, the applicant has not availed all the available remedies under the CCS (CCA) Rules, 1995 in as much as he did not file any revision against the order of the appellate authority. Thus, the application is barred as per the provisions of Section 20 of the Administrative Tribunals Act. That the Commissioner of Income Tax was no doubt the appointing authority of the applicant yet the Inspecting Assistant Commissioner of Income Tax was fully empowered to issue the chargesheet to the applicant, the inquiry relating to the charges was fairly conducted, the time taken in completing the inquiry was reasonable looking to the volume of the record and the number of cited witnesses, all the demanded documents, as far as possible, were made available to the applicant, reasonable opportunity was provided to him to cross-examine the witnesses, the department was not represented by a legal expert, therefore, the demand of the applicant to provide assistantce of a legal practitioner had no basis and was rightly rejected. In the inquiry, no legal aspect was involved, therefore, assistance of a

legal practitioner was not at all necessary to the applicant and the delay in completion of departmental inquiry has not resulted into any prejudice to the applicant. It is further stated by the respondents that the orders of the disciplinary authority and the appellate authority are well reasoned and speaking orders and the allegations of malafide levelled against the respondent No.4 have no foundation and have only been made to give colour to the inquiry proceedings. It is also stated by the respondents that the scope of consideration by the Tribunal in such matter is very limited and the scrutiny of the departmental evidence cannot be made by the Tribunal as if sitting in appeal against the impugned orders. Only the legal aspect relating to the lapses in conducting the departmental inquiry can be seen by the Tribunal. Thus, there is no scope of detailed appreciation of prosecution evidence in the instant case. All the charges which have been found proved by the appellate authority are well proved. The penalty imposed on the applicant is proportionate to his guilt and the findings of the disciplinary authority and that of the appellate authority, are not required to be interfered with. The O.A. deserves to be dismissed.

5. The applicant had filed a detailed rejoinder running almost in equal number of pages as that of petition in which he has reiterated the facts mentioned in the O.A. and has added argumentative explanation to the factual aspect of the matter, which, if necessary, would be considered at the appropriate stage and time in order to dispose of the matter in hand.

6. We have heard the learned counsel for the parties who had argued the case in great detail and perused the record of the case.

7. The learned counsel for the respondents argued that the O.A. is pre-mature in as much as the applicant has not exhausted the

departmental remedy available under Section 29 of the CCS (CCA) Rules, therefore, the O.A. should be treated as pre-mature and disposed of accordingly. He has cited (1994) 26 ATC 289 - P.Rupert Samuel Raj Vs. UOI & Anr. and 1986 (1)SLJ (CAT) 50-Arun Kumar Jain Vs. UOI & Ors. in support of his contention. In reply the learned counsel for the applicant submitted that the applicant had availed the departmental remedy by filing an appeal before the appellate authority. The remedy of revision being an extra-ordinary remedy the applicant was not obliged to avail the same before filing the O.A. He further submitted that Section 21 of the Administrative Tribunals Act is very clear on the point which envisages the necessity of filing departmental appeal only before filing the O.A.

8. We have considered the rival arguments. In our opinion, the provisions of Section 21 of the Administrative Tribunals Act are very clear which provide that a person shall be deemed to have availed-of all the remedies available to him under the relevant service rules as to redressal of his grievance if a final order has been made by the Government or any authority or officer or other person competent to pass order under such rules rejecting an appeal preferred or representation made by such person in connection with the grievance; or (b) ... . In this case, the applicant had filed an appeal before the appellate authority which was disposed of by the order dated 20.5.94 (Annex.A/2) passed by the appellate authority. From the ruling cited by the learned counsel for the respondents it appears that in (1994) (26) ATC 289, a consent order was passed probably soon after the presentation of the O.A. Similarly, another case cited by the learned counsel for the respondent was disposed of soon after the institution of the OA with a direction to the applicant to exhaust the departmental remedy of revision. But in our opinion the departmental remedy of filing a revision is not a regular remedy which is required to be availed-of by the applicant and consequently the case in hand

cannot be disposed of on such preliminary objection. Now when the case has remained pending for almost five years. Hence, the argument of the learned counsel for the respondents is rejected.

9. The learned counsel for the respondents further argued that the power of Administrative Tribunals is very limited in respect of interference in the order of the departmental authorities. In this case no intricate legal point is involved. The charges are related to conduct of the applicant. The evidence relating to such conduct is question of fact, therefore, the Tribunal cannot reappreciate the evidence which has been tendered by the parties in the course of disciplinary inquiry, as an appellate authority. The scope of the Tribunal for interference is very limited. He has cited 1994 SCC (L&S) 768- U.O.I. & Ors. Vs. Upendra Singh and AIR 1994 SC 1918- S.R.Bommai and Others Vs. UOI & Ors., in support of his arguments. On the other hand, it was argued that scope of the Tribunal is not limited in such matters. The Tribunal has to see whether there is at all any evidence against the applicant so as to up-hold the finding of guilt and charges held proved by the inquiry and the disciplinary authorities. In order to find out whether it is a case of no evidence or a case of some evidence the factual aspect of the case including the evidence led by the parties vis-a-vis the documents has to be examined by the Tribunal and, therefore, besides the procedural lapses committed by the departmental authorities in conduct of the inquiry the evidence has to be examined. Therefore, the jurisdiction of the Tribunal is not limited as argued by the learned counsel for the respondents.

10. We have considered the rival arguments. The principles laid down in the rulings cited by the learned counsel for the respondents cannot be disputed. Neither there can be two opinions about that. We are conscious of our power in this respect. The Tribunal cannot interfere in departmental inquiry by re-appreciating

the evidence and coming to its own conclusion interpreting the evidence afresh. In AIR 1994 SC Page 1918, it was held by the Hon'ble Supreme Court that "the purpose of judicial review is to ensure that the individual is given fair treatment by the authority or the Tribunal to which he has been subjected to. ..... . The duty of the court, therefore, is to confine itself to the question of legality, propriety or regularity of the procedure adopted by the Tribunal or authority to find whether it committed an error of law or jurisdiction in reaching the decision or making the order. The judicial review is, therefore, is a protection, but not a weapon." Therefore, we have to see whether the inquiry was fair and no procedural lapse has been committed in conducting the departmental inquiry and whether the conclusion arrived at by the disciplinary authority is proper and lawful. Keeping these limitations in our view, we now proceed to discuss various grounds raised by the learned counsel for the parties in support of their contentions in the pleadings.

11. The first ground of attack taken by the applicant is that the Chargesheet was issued by the respondent No.4 and the Inquiry Officer and the Presenting Officer were also appointed by him, though he was not the competent authority to do so in terms of Rule 14 (3), 14(4) and 14 (5) of the CCS (CCA) Rules ("**the Rules**" for short). It has been contended by the respondents that since the respondent No.4 was empowered to impose minor penalties mentioned at Sl.Nos. (i) to (iv) of Rule 11 of the Rules, he was competent to issue chargesheet to the applicant in terms of Rule 13(2) of the Rules. Therefore, the chargesheet was properly issued.

12. We have considered the rival arguments. Rule 13 (2) reads as follows :-

> "13(2).A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of

the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties."

13. From a perusal of chart indicating disciplinary authority for imposing penalties under the rules, it is clear that the Assistant Commissioner of Income Tax is competent to impose minor penalties on an Inspector. At the relevant time, undisputedly, Shri P.C.Hadia, was posted as Assistant Commissioner (IAC),Income Tax Department,Jodhpur. Therefore, in our opinion, he was quite competent to issue chargesheet for major penalties to the applicant. In view of the Rule 13 (2) of the Rules and the said chart of powers, the objection of the applicant in this regard is devoid of any force and deserves to be rejected.

14. We have considered the argument relating to appointment of Inquiry Officer and Presenting Officer by the respondent No.4. It is very clear from the provisions of the relevant rule that it is only the Disciplinary Authority, competent to impose major penalty who can appoint the inquiry officer and the presenting officer. In this connection, it would be relevant to quote Sub Rules 2 and 5 of the Rule 14 of the Rules, which are as under :-

"(2).Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth thereof.

(5(a).On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

(b).If no written statement of defence is submitted by the Government servant the disciplinary authority may itself inquire into the articles of charge, or may, if

considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

14. From the foregoing provisions, it would be clear that for appointment of inquiry officer and presenting officer, the disciplinary authority has to take decision after the written statements of defence, is submitted by the delinquent. Serving of major penalty chargesheet by a disciplinary authority competent to impose minor penalty is different than consideration of reply relating to the major penalty chargesheet by the competent disciplinary authority. Therefore, authority competent to impose only minor penalty on a delinquent cannot appoint inquiry officer and the presenting officer, in relation to the major penalty chargesheet. In this case, Shri Hadia, who was only competent to impose minor penalty on the applicant, had also appointed the inquiry officer and the presenting officer, which according to rules, was not within his competence. In this regard, the order of the respondent No.4, was, therefore, violative of the rules. Due to this action of the respondent No.4, the applicant was deprived of an opportunity of consideration of his reply by the competent disciplinary authority. Thus, in our opinion, the applicant has been prejudiced in the instant inquiry.

15. It was next argued by the learned counsel for the applicant that two of the charges against the applicant as enumerated in the chargesheet, were about the incidents which related to respondent No.4 and, therefore, it was not proper on the part of the respondent No.4 to have issued the chargesheet to the applicant. On the other hand, it

was argued by the learned counsel for the respondents that the respondent No.4 was competent to issue chargesheet to the applicant, therefore, the issuance of chargesheet by the respondent No.4 is not illegal even if some of the charges were relating to him. Moreover, the charges relating to respondent No.4, were not held proved. Therefore, this aspect of the case is of no consequence.

16. We have considered the rival arguments. No doubt, two charges i.e. charge No. 21 and 24 were regarding the incidents involving Mr.Hadia, who had served the impugned chargesheet on the applicant but in this case he was neither the inquiring officer nor the disciplinary authority nor the presenting officer nor he was a witness before the inquiry officer, therefore, serving of chargesheet in respect of incident relating to respondent No.4, cannot be said to have caused prejudice to the applicant, as has been tried to be made-out during the course of arguments. Moreover, these two charges were not held proved against the applicant by the inquiry officer, therefore also this aspect of the case cannot be given any importance. In the foregoing circumstances, serving of chargesheet by the respondent No.4 containing two incidents relating to respondent No.4, cannot be termed as an act prejudicial to the applicant. It, in our opinion, does not affect the inquiry also.

17. The learned counsel for the applicant has argued that the applicant was not allowed to engage a legal practitioner to defend his case before the inquiry officer inspite of the fact that the chargesheet contained as many as 32 charges. For proving these charges 85 witnesses were cited by the department and near about 200 documents were relied-upon. Looking to the volume of oral as well as documentary evidence, the applicant should have been permitted by the disciplinary authority to be represented by a legal practitioner. By

denying the assistance of a legal practitioner to the applicant, he has been denied a fair chance to defend himself. On the other hand, it was argued by the learned counsel for the respondents that there was no legal intricacy in the matter for which the applicant should have been permitted the assistance of a legal practitioner. Moreover, the department was not being represented by a legal practitioner, therefore, the applicant could not as of right, claim to be assisted by a legal practitioner. He has further argued that permitting the applicant to be represented by a legal practitioner was the sole discretion of the disciplinary authority who after due consideration of relevant rule did not accede to the request of the applicant. Therefore, it cannot be concluded that the applicant has been prejudicially affected in conduct of inquiry in absence of a legal practitioner.

18. We have considered the rival arguments. As per sub rule 8 (a) of Rule 14 of the Rules, the delinquent Government servant can be permitted to engage a legal practitioner only if the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits. In this case, the presenting officer was not a legal practitioner, therefore, the applicant could not claim assistance of a legal practitioner as of right. It was discretionary on the part of the disciplinary authority to permit the assistance of a legal practitioner to the applicant. The disciplinary authority after considering the request of the applicant refused the same with the reasons vide his letter dated 10.10.1990, Annex.A/237. Looking to the reasons contained in the letter we do not find that the disciplinary authority had arbitrarily turned-down the request of the applicant in this regard. Therefore, arguments of the learned counsel for the applicant in this regard are hereby rejected.

19. It was next argued by the learned counsel for the applicant that the entire inquiry was bad in law because the chargesheet was served on the applicant with inordinate delay. For the incidents of 1982-83 and 1985, chargesheet was served on the applicant in 1986 and the inquiry was un-reasonably delayed. It was concluded in December 1993. It was also argued in support of the charges, pre-recorded statements of witnesses were used without subjecting the witnesses to testify the same before the inquiry officer. Thus, the applicant was deprived of the opportunity of hearing the witnesses for meaningful cross-examination. No opportunity to cross-examine the witnesses was given to the applicant after detailed re-examination by the presenting officer and the inquiry officer. Thus, the principles of natural justice were violated and all these lapses amount to illegalities in conducting the inquiry, therefore, the entire inquiry is vitiated. It was also argued by the learned counsel for the applicant that the charges are devoid of essential details in respect of the incidents and the dates, therefore, the applicant could not properly defend himself. Statement of a witness was not relied-upon in respect of many charges yet the same statement was relied-upon in holding the charge No.10 as proved. The documents as demanded during cross-examination by the applicant and directed to be produced were not made available to the applicant for for cross-examination of the witness and thus, the applicant was highly prejudiced in conducting his defence. There is absolutely no evidence against the applicant in respect of the charges. Few of the important witnesses, cited in the list, have been with-held by the department, therefore, adverse inference deserves to be drawn in this respect. It was further argued by the learned counsel for the applicant that Shri P.C.Hadia, was highly prejudiced against the applicant and the witnesses were either forced or compelled to give statement against the applicant, therefore, such witnesses cannot be relied-upon for holding the charge as proved. Criticizing the evidence of the witnesses, the learned counsel for the appliant has further argued that the evidence of the department, is full of contradictions and is grossly unreliable. The case suffers from irregularities amounting to

illegalities. In respect of few other charges, there is no evidence against the applicant, therefore, the applicant is entitled to be exonerated.

20. On the other hand, learned Advocate for the respondents, has argued supporting the findings of the inquiry officer and the disciplinary authority. He has further argued that a fair opportunity was accorded to the applicant for cross-examination of the witnesses. The applicant was not denied any opportunity to defend himself. Charge held proved against the applicant, are fully supported by cogent and reliable evidence. No case of mala fide action by Shri P.C.Hadia, due to prejudice, has been made-out. He has also argued that the evidence, led by the department in the case, cannot be re-appreciated by the Tribunal so as to come to a different conclusion than that of the disciplinary authority. There is no scope for interfering in the said findings, as there is sufficient evidence against the applicant in respect of each of the charges. He has also argued that the time taken in serving the chargesheet on the applicant and time taken in concluding the inquiry, cannot be said to be unreasonable looking to the number of charges, voluminous record and great number of witnesses. He has, therefore, argued that the O.A. deserves to be rejected.

21. We have given our anxious consideration to the rival arguments. These arguments will be dealt-with at the time of discussing the charges held proved by the disciplinary authority. For better appreciation of the arguments of the parties, it would be useful to deal-with each of the charges held proved against the applicant.

"ARTICLE NO.1.

Shri Suresh Chand Ajmera, Income-tax Inspector, while posted in the Income-tax-Office, Jodhpur extorted Rs. 9,000/- from Shri Dwarkadass Vaidya and his brother Shri Madan Gopal Vaidya of Jodhpur for not making any inquiry into the investments made by

them in their house property which was under construction. Thus, he failed to maintain absolute integrity and thereby violated Rule 3 (1) (i) of the C.C.S. (Conduct) Rules, 1964."

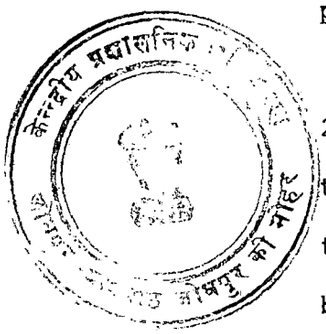
22. The Department had cited Shri Dwarka Das Vaidya, Shri Madan Gopal Vaidya and Shri M.L.Kalra, I.T.O. in support of this charge and had relied-upon four documents, i.e., letter written by Shri M.S.Darda, I.A.C., Jodhpur, to Shri G.C.Agarwal, C.I.T., Jodhpur, Annex.A/38, Exercise Book containing certain entries, Annex.A/39, and statements on oath of Shri Dwarka Dass Vaidya and Shri Madan Gopal Vaidya, dated 2.9.95, given before Shri Hadia, I.A.C., Jodhpur, Annex.A/40 and Annex.A/41 respectively

23. In respect of these two witnesses, it was stated that their pre-recorded statements were taken on record as Exhibits A/40 and A/41 and were relied-upon. This was not disputed by the respondents also. All that was said that such statements could be made use of against the applicant once the witnesses have stated that they had given the same and are correct.

24. We have considered the rival contentions. In our opinion, pre-recorded statements cannot be relied-upon even if, the witnesses have stated that the statements were given by them unless the facts essential enough to prove the charge, have been stated before the inquiry officer. But, in this case, this essential aspect while recording the statements of the witnesses, has been given a go-bye. Shri Madan Gopal Vaidya has stated in his statement in reply to the question of the Presenting Officer that he has gone through the statement Annex.A/41, and whatever is stated in it, is correct. The witness did not repeat the facts contained in his statement which formed the basis of the charge. The purpose of examining the witness is to testify the truthfulness of the allegations made by him against the delinquent either in the previous statement or in the complaint. But, this was not done in the instant

case, therefore, it cannot be argued by the respondents that the witness could have been effectively cross examined by the applicant as he was in possession of a copy of the pre-recorded statement of the witness.

25. It is further noted in this respect that the witness in his cross-examination, has stated that whatever he had written in the statement Annex.A/41 was written at the instance of Shri P.C.Hadia. Therefore, it was all the more necessary for the witness to have repeated the incidence before the inquiry officer so as to establish that the statement was made voluntarily by the witness. Even otherwise, the statement of the witness before the inquiry officer, does not help the department because he has said that he does not remember the things since eight years have passed. On the basis of such statement, the charges cannot be held as proved.



26. It is also seen from the statement of this witness (Annex.A/7), that after a single-line cross-examination, the witness was again allowed to be re-examined by the presenting officer inspite of serious objection by the defence nominee. In fact, the witness was cross-examined at length by the presenting officer in the garb of re-examination. But, on conclusion of the re-examination, the defence was not permitted to cross-examine the witness on the ground that no new point was covered by the witness in his re-examination. In our opinion, when the presenting officer was permitted by the inquiry officer to re-examine the witness then the defence should have been permitted to cross-examine the witness. But, this was not allowed by the inquiry officer. Action of the inquiry officer in this regard, thus, amounts to denial of reasonable opportunity to the applicant to defend himself. This also amounts to grave irregularity and is violative of principles of natural justice.

27. Another witness Shri Dwarka Dass Vaidya, was also examined by th

Presenting Officer. His statement is at Annex.A/8. In cross-examination, he had stated that his statement was also recorded by the Income Tax Officer in the proceedings under Sec. 132 of the Income Tax Act. On this reply, the defence assistant requested the inquiry officer that settlement file of the assessee (i.e. the witness) be got produced from the concerned officer. On this, cross examination was kept reserved and time was granted to the presenting officer for producing the said file. In this connection, a letter was also written by the inquiry officer to the Commissioner of Income Tax, Jodhpur, to make the file available to him for further action. This letter is dated 11.9.90 (Annex.A/203-A). Thus, the cross-examination of the witness remained incomplete. However, on 8.6.92, the cross-examination of the witness was closed by the inquiry officer observing that the presenting officer has not produced the said file which was permitted by the inquiry officer, vide order dated 16.11.89 and time cannot now be granted to the presenting officer for presenting the said file. From these facts, it appears that the defence was not provided with the demanded documents i.e. the file relating to settlement/assessment, which was even directed to be produced by the inquiry officer, during the cross examination of the witness. It may be noted that production of this file was not in the hands of the defence, therefore, closing the cross-examination of the witness on this ground, was neither reasonable nor fair. The defence assistance also prayed for adjournment for further cross-examination of the witness on the ground of illness of his wife which too, was turned-down on the ground that inquiry officer had come all the way from Indore to conduct the inquiry and the defence assistant had not informed him before hand that he would seek adjournment on the ground of illness of his wife. Thus, the action of the inquiry officer in this regard, is quite irregular and amounts to denial of a reasonable opportunity to the defence to cross examine the witness and to bring on record materia

facts through the documents in his defence. The production of assessment file of the witness was essential for the simple reason that due to income tax raid at the premises of the witness, an exercise book, said to have been written in coded words, was seized. On the basis of certain entries in that exercise book, this charge came to be framed against the applicant. Thus, when the witness was not allowed to be cross-examined by the defence to elicit the facts then such statement cannot be made use of in supporting the charge as the same remained untested. Even subsequent request of the defence to recall the witness for cross-examination, was turned-down by the inquiry officer. This was highly irregular on the part of the inquiry officer. The disciplinary authority and the appellate authority, also lost site off this irregularity which had caused prejudice to the applicant in properly defending the case.

28. The applicant through out, has been saying that Shri P.C.Hadia bore prejudice against him and was revengeful due to certain reasons and was acting in a mala fide manner against him. In this connection few facts are necessary to mention. In support of this charge a letter dated (illegible) July 1985, Annex.A/38 (Ex.SD/1(6) in the Enquiry) written by Shri M.C.Darda, I.R.S., I.A.C., of Income Tax (Assessment), Jodhpur to Shri G.C.Agarwal, Commissioner of Income-tax, was relied and has been produced. This letter contain the facts that Shri N.L.Kalra, Income-tax Officer, had brought to his notice that during raid at the premises of M/s Vaid Motilal Chunnilal and its Partner, Shri Madan Gopal Document's were seized. In one of the documents, name of Shri Suresh Ajmera, Income-tax Inspector (applicant) appears, to whom in all Rs. 9,000/- were paid on two dates and were entered in the exercise book in coded language. This fact was confirmed by the assessee during the proceedings under Sec. 132 (5) of the Income Tax Act. Hence, this letter is written

for taking appropriate action against Shri Suresh Ajmera. But, in this case neither Shri N.L.Kalra a cited witness, nor the author of the secret letter Shri M.C.Darda, nor the addressee Shri G.C.Agarwal, were produced by the department to prove the letter. Therefore, the facts contained in the letter cannot be treated as an evidence in support of the charge against the applicant. No doubt, it is for the department to chose as to how many persons or who should be produced as witnesses in support of the charge. But, holding back an important witness may lead to adverse inference in the matter because this also amounts to denial of an opportunity to cross-examination.

29. In this context, it is relevant to note that there is nothing on record to suggest that any preliminary inquiry or investigation, was ever entrusted to Shri P.C.Hadia in connection with the raid of the premises of M/s Vaid Motilal Chunnilal and its Partners, therefore, it is not understood why Shri D.D.Vaidya and Shri Madan Gopal Vaidya, appeared before Shri Hadia either to state something relating to the alleged conduct of the appliant or to file a complaint against him on 2.9.85. The statements of these two persons dated 2.9.85 Annex.A/40 and A/41, respectively, are in their own hand-writing. Both the statements were made on oath as is evident from these statements. If these statements were given to Mr.Hadia in connection with the inquiry entrusted to him, then the same should have been recorded by Shri Hadia himself or he should have caused them to be recorded by one of his subordinates in his presence but without administering oath to these persons. On the contrary, Shri Hadia only signed Annex.A/40 with his endorsement "Before me Sd/-.... dated 2.9.85 (P.C.Hadia)." and Annex.A/41 with his endorsement, "statement given before me Sd/- ... Dt. 2.9.8 (P.C.Hadia).", respectively. Since Shri Hadia was not empowered t administer oath, therefore, he could not have recorded the statement c

these two persons on oath. Shri Hadia was not produced to prove them either.

30. These statements in our opinion, at the most can be taken to be only complaints made to Shri Hadia. To ensure that the witnesses do not resile from the complaint they must have been told to state on oath whatever they want to state. Had these two complaints been made against Shri Ajmera, prior to the raid then they could have been termed valuable. But, this is not so. Making such complaints by these two witnesses after Shri Darda was in communication with the Commissioner of Income Tax and about the time of finalising the assessment under Sec. 132 of the Income Tax Act, creates doubt about the correctness of the same. Shri Darda was investigating the matter and had written a letter Annex.A/38 dated 1/2 July,1983 in his official capacity of Inspecting Assistant Commissioner of Income Tax (Assessment) to the Commissioner of Income Tax, Jodhpur. There was no reason with Shri Dwarka Dass Vaidya and Shri Madan Gopal Vaidya to complain to Shri P.C.Hadia at that time against Shri Ajmera as he was neither investigating the case nor was inquiring into the matter involving Shri Ajmera.

31. As per the statement of Shri Dwarka Dass, Annex.A/40, the entries in the diary were made by Shri Madan Gopal Vaidya but Shri Madan Gopal Vaidya had not proved the entires in question. He has not said even a word about these entries or about the fact of maintaining such diary. It may be noted that Shri Madan Gopal Vaidya had no interest in the house in connection of which the alleged diary was being maintained by and recovered from Shri Madan Gopal Vaidya, therefore, the genuineness of the diary and the entries become doubtful. In any case for proving this charge the relevant entries with their coded value should have been got proved from the author of the entries by the presenting officer to connect the applicant with the charge of corruption which has not been

done in this case. Whether this diary was held credit worthy in the assessment proceedings, is also not known in absence of any order in this regard.

32. This is also to be noted that after investigation relating to the charges of corruption and possession of wealth disproportionate to the known sources of income of the applicant, CBI came to the conclusion that the evidence adduced by the Firm M/s Vaid Motilal Chunnilal in the shape of Note Book and entries therein, are not reliable. The FR filed by the CBI in this matter was, therefore, accepted by the Special Judge, CBI, Jo. The same Note Book and entries therein relating to the said charge, are being relied-upon in this inquiry. The Note Book is not a properly and regularly maintained account book so as to be reliable as a sufficient proof of corrupt activities of the applicant, moreso, when there are allegations of interpolating and over-writing of entries in the note book relating to the charges. This note book in original was also not made available to the defence at the time of cross examination of the witness, hence, the same cannot be taken as a proof in support of the charges.

33. It cannot be forgotten that the departmental inquiries are quasi-judicial proceedings and, therefore, credibility of proof and sufficiency of evidence cannot be lost site off. If the evidence is laconic on the scale of credibility, the conclusion of no evidence can be safely arrived-at. In any case, many irregularities have been pointed-out by us, which were committed during the inquiry relating to this charge, therefore, the conclusion of guilt arrived at by the inquiry officer, has no legal basis. Therefore, the same deserves to be quashed.

"ARTICLE NO.6

Shri Suresh Chand Ajmera, Income-tax Inspector, while posted in

the Income-tax Office, Jodhpur impersonating as an Income-ta Officer approached Shri Shyamoomal Bilochi, Managing Partner of M/s Jodhpur Diesels, Chopasani Road, Jodhpur twice and threatened him with dire consequences if he did not withdrawn his complaint filed against two Income-tax Inspectors for extorting money from the employees of M/s Jodhpur Diesels. Thus, he failed to maintain absolute integrity and thereby violated Rule 3 (i) (i) of the C.C.S. (Conduct) Rules, 1964 and his acts also amounted to his conduct wholly unbecoming of a Government servant and thereby violated Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964."

34. The Department had cited Shri Shyamoomal Balochi, Managing Partner and Shri Vasudeo Javeri, as Partner of M/s Jodhpur Diesels, Jodhpur, as their witnesses and relied upon four documents i.e. statement of Shri Shyamoomal dated 14.2.83, Annex.A/42, letter of Shri Darda dated 24.3.83, Annex.A/43, statement of Shri Ajmera dated 8.10.84 and statement of Shri Vasudeo Javeri, dated 14.3.83 Annex.A/45.

35. During the proceedings before the inquiry officer only Shyamoomal was produced by the department. Prerecorded statement of the witness, Annex. A/42 was taken on record but in our opinion, prerecorded statement cannot be taken as proof in support of the charge simply because the witness had stated that whatever he had stated in the statement is correct. Unless the facts stated therein are repeated before the inquiry officer the incident cannot be held proved. Reproduction of the facts relating to the incident is also necessary to check the veracity of the witness. In fact, the witness had given the statement on 14.3.83 in connection with a complaint made by him in November 1981. From the statement, it appears that the complaint was against two Income-tax Inspectors (for short 'ITI'), i.e. i.e. Shri Bhandari and Shri Chowdhari. It is in connection with this complaint,

the applicant is alleged to have given the threat to the complainant by impersonating himself as Income-tax Officer. It is in connection with this complaint, the statement of the witness was recorded. But, in the pre-recorded statement no date of such visit by the applicant was mentioned. No fact of threat of dire consequence having been given by the applicant was mentioned. In the same statement, the witness has stated the names of other ITIs, who had come to him to pressurise him to withdraw the complaint. But, it appears that on the basis of this complaint, action was initiated only against the applicant whereas, other similarly involved persons have been left untouched probably without any action. Therefore, the action initiated by the department against the applicant amounts to discrimination. Law does not permit such discriminatory action in respect of similarly placed persons. The pre-recorded statement of the witness dated 11.3.83 cannot be used against the applicant as proof, only on introduction of such statement by the witness. In a grave charge like the one in hand, the incident was required to be stated before the inquiry officer. If for argument sake, it is held that the witness has stated the facts which are contained in the statement dated 11.3.83 even then the witness is not worthy of credence. He has exagerated the facts and improved the incident. Witness, who improves his statement is unworthy of credence. In the statement, he has stated that Shri Ajmera visited him two or three times and threatened him but in the earlier statement no such facts are available. No fact relating to threat was stated by the witness in the earlier statement then how the element of threat was incorporated in the charge, is difficult to understand.

36. For recording the statement of the witness, a very strange procedure was adopted by the inquiry officer. The charge was first read-over to the witness and then he was asked to read his earlier statement. Both these steps in fact, are not permitted by law.

reading over the charge to the witness, he was given a chance to understand as to what he has to support. This amounts to tutoring the witness and putting leading question to the witness. The Law does not permit such a procedure. Again by asking the witness to read his previous statement, he was given an idea, as to what he has to state in the inquiry. In fact, as per law, a witness can be allowed to refresh his memory from a document which is either in his hand-writing or bears his signature, if he says that he does not remember the same and not otherwise. But, in this case, he was at the very out-set was asked to read his statement after he was read-over the charge. This, in our opinion, amounts to irregularity of procedure. Then, again the portion of the statement relating to the involvement of the applicant, was read-over to him by the inquiry officer. After this, the same portion was again repeated to the witness by the presenting officer before asking him further question in this respect. From all these facts, it appears that everything was put into the mouth of the witness by the inquiry officer and the presenting officer repeatedly only to be repeated by the witness in his statement. This procedure in our opinion, has caused great prejudice to the applicant and amounts to illegality. It is on the basis of such motivated and suggestive statements, the charge was held to have been proved. From the statement of the witness, it also appears that he has considerably improved the statement in comparison to his earlier statement. There was no description of threat in the earlier statement yet it was mentioned in the charge that the witness had threatened Shri Shyamoo Mal. No date of such threat was mentioned in the statement, only one visit was mentioned in the earlier statement whereas two visits of the applicant were mentioned in the charge. If the earlier statement of the witness was the basis of the charge then the charge was framed incorporating the extraneous facts, therefore, the entire exercise in this respect can be termed as colourable. In fact, the improved

version of the incident as stated by the witness should not have been taken into consideration by the inquiry officer but it appears that the inquiry officer had relied upon such a statement which was also considered reliable by the disciplinary authority and the appellate authority for holding the charge, as proved. Therefore, in our view, the finding of guilt is perverse.

37. It is also noted that the earlier statement of the witness was recorded by the officer on solemn affirmation probably to ensure that the witness may not resile from his statement. But, in such preliminary inquiries, no oath can be administered and witness can not be asked to state on solemn affirmation. This statement was taken on record without formal proof. Such an irregular procedure vitiates the inquiry. For these reasons, it is difficult to sustain the allegation of impersonation by the applicant.

38. It was argued by the learned advocate for the applicant that the presenting officer had with-held Shri Vasudeo, who is a cited witness to the charge, hence, adverse inference should be drawn against the respondent. But, we are not impressed in this regard. It is for the presenting officer to decide as to who should be produced as witness from amongst the listed witnesses. This argument is, therefore, devoid of force.

39. From the letter dated 21.3.83, Annex.A/43, it appears that in respect of the complaint of Shri Shyamoo Mal, a preliminary inquiry was conducted by Shri Darda and the information was sent to the Commissioner of Income Tax, Jodhpur. In this letter, name of Shri Ajmera, also appears together with other persons who had gone to Shri Shyamoo Mal Balochi for withdrawing the complaint. No action against the applicant was then proposed either for impersonation or for any

other misconduct although the same had come to the notice of the higher authority,then how all of a sudden in 1986 the same incident was considered as misconduct for framing the charge.This obviously means that the fact which was once considered unimportant was dug-up for action.Thus,serving the applicant with a chargesheet in 1986 for an incident which had taken place in early 1983,amounts to serving the chargesheet with inordinate delay.Normally,a misconduct of this nature of an employee,is not ignored and immediate action is taken against such person.Such incidents are also not allowed to accumulate for an action to be taken in future.In view of this,serving the chargesheet on the applicant with inordinate delay,gains importance and it is difficult to hold that the action of the department is bonafide one.

40. In our opinion,the charge cannot be held proved for the irregularities pointed-out earlier.Therefore,the findings of the inquiry officer and the disciplinary authority,deserve to be quashed.

"ARTICLE NO.10

Shri Suresh Chand Ajmera,Income-tax Inspector,while posted in the Income-tax Office,Jodhpur stood in the corridor just infront of the chamber of Shri S.K.Meena,Income-tax Officer,B-Ward,Jodhpur and abused him in most derogatory language in the hearing of the persons who were present there.The above acts of Shri Suresh Chand Ajmera amounted to his conduct wholly unbecoming of a Government servant and thereby violated Rule 3 (1) (iii) of the CCS (Conduct) Rules,1964."

41. The Department has cited Serv Shri S.R.Meena,N.L.Kalra,Manik Chand,H.M.Gandhi,M.L.Gusia and B.D.Gurjar,as witnesses to support the charge and has relied-upon number of documents.

42. In fact,the oral as well as documentary evidence relating to Charge Nos. 7 to 13, is common.The charges relate to use of abusive language by Shri Ajmera vis-a-vis Shri S.R.Meena on many different occasions.After considering the evidence relating to these charges, only this charge has been held proved by the inquiry officer,other charges have been held not proved.

43. The Department produced Serv Shri S.R.Meena, Manik Chand and H.M.Gandhi, in support of this charge whose statements are Annexs. A/10, A/11 and A/12 respectively. Other witnesses have not been produced by the department. Ofcourse, it is the choice of the department to decide as to how many witnesses should be produced out of the listed witnesses, therefore, it is to be seen whether the witnesses produced by the department lend support to the charge.

44. We have considered at length the statements of all the three witnesses who have been produced by the department to sustain the charge. We are of the opinion that these witnesses do not help the department in the least in this regard.

45. Shri Meena, has not stated anything in support of this charge. In fact, other similar charges were not held proved from the statement of Shri Meena although, all the incidents related to Shri Meena only. His statement cannot lend support to this charge on the basis of a letter written by him to the higher authority. The incident was required to be proved by Shri Meena by his specific statement so as to bring home the guilt of the applicant relating to the charge. Likewise, the statements of Shri Manik Chand and Shri Gandhi, are also of little help to the department when it claims that the charge is well proved by these witnesses.

46. Shri Manik Chand has stated that Exhibits 7 to 11 (five), now Annexs. A/50, bears his signature and he confirms the contents thereof. He has stated nothing more in his statement. He has also not repeated the incident relating to the charge. We have considered Annex.A/50. This is the statement of the witnesses which was recorded by Shri B.D.Gurjar on 12.10.1983 relating to the incident of 18.5.83. This prerecorded statement of the witnesses was taken as enough proof in

support of the charge which in our opinion, was not legal. In absence of clear and specific statement of the witness in respect of the incident, the charge cannot be held as proved. In fact, statement of the witness before the inquiry officer amounts to no evidence.

47. Likewise, Shri H.M.Gandhi, also did not speak a word about the facts and incident of the charge, which may help in holding the charge, as proved. In fact, all the three witnesses have not said a word about the incident that the applicant abused Shri S.R.Meena while standing in the corridor. Consequently, their statements do not help the department to say that the charge is established against the applicant. There is no evidence against the applicant. Therefore, the finding of guilt against the applicant, in respect of this chrge, is un-sustainable and deserves to be quashed.

"ARTICLE NO.15

Shri Suresh Chand Ajmera, Inspector of Income-tax, while posted in the Income-tax Office, Jodhpur forcebly entered into the room of Shri Chain Karan Income-tax Inspector (Judicial), Jodhpur and abused, threatened and tried to man-handle and insult Shri S.M.Gupta, Income tax Inspector (Judicial), Jaipur who was sitting there. The above acts of Shri Suresh Chand Ajmera amounted to his conduct wholly unbecoming of a Government servant and thereby violated Rule 3 (i) (iii) of the CCS (Conduct) Rules, 1964."

48. To support this charge, the department has cited Serv Shri S.N.Gupta, M.L.Gusia, S.R.Meena, M.L.Kalra, Chain Karain and Smt.Sita Krishanan, as witnesses and has relied upon complaint of Shri S.N.Gupta, dated 31.12.84, Annex.A/55, and official letters from

Annexs. A/56 to A/61.

49. The inquiry officer has found the charge proved. The disciplinary authority agreed to the findings of the inquiry officer. In spite of various objections raised by the applicant before the appellate authority the appellate authority had also concurred with the conclusion of the disciplinary authority which was based on the findings of the inquiry officer. But, in our opinion, the charge is not at all proved. There is no evidence on record by which the charge can be held as proved.

50. It is alleged that Sh.S.N.Gupta, was abused, threatened and manhandled by the applicant in the presence of Shri Chain Karan and Smt.Sita Krishanan but none of them have stated anything to support the charge. Shri S.N.Gupta has stated in his statement (Annex.A/13) that the letter dated 31.12.84 is in his hand-writing. When he was asked to confirm the version of events given in his letter, he stated that since 7 years have passed, therefore, he does not remember the events that had happened in 1984. The witness has neither stated the facts relating to the event before the inquiry officer nor could confirm the contents of the letter by a positive clear answer. He was the person who was allegedly abused, threatened and manhandled by the applicant. If he had stated nothing in support of his complaint, then no other evidence can help in bringing home the guilt of the applicant.

51. Alleged eye witnesses Shri Chain Karan and Smt.Krishanan, too have not supported the theory of the department. Smt.Sita Krishanan has stated in her statement that no un-parliamentary words were uttered by Shri Ajmera. She has also stated that in her presence the applicant did not give any threat to Shri Gupta. She also did not see any manhandling of Shri Gupta by Shri Ajmera. She has also stated that she

was called by Shri Hadia and matter was inquired by him and he further told her to give in writing whatever she wants to say and thus she gave letter dated 8.2.85. From the above statement of Smt.Sita Krishanan it is clear that she had not supported the theory of the prosecution. Rather she had clearly stated that Shri Ajmera did not abuse Shri Gupta, no threat was given by him to Shri Gupta and Shri Gupta was not manhandled by Shri Ajmera. But, all these facts were also not considered by the appellate authority. On the contrary, the appellate authority came to the conclusion that Smt.Sita Krishanan left the room because of the untowards happening and use of unparliamentary language otherwise why she should have left the room. But, in our opinion no such inference can be drawn on the basis of conjectures and surmises. The finding of guilt arrived at by the disciplinary authority is thus perverse.

52. We have also gone through the statements of Shri Chain Karan (Annex.A/15). Although, in his examination in chief, the witness has stated that the contents of the letter dated 2.2.85 addressed to the IAC are correct but has not stated a word about the charged incident. On the contrary, he has stated in the cross-examination that he did not hear Shri Ajmera threatening Shri Gupta that his hands and legs would be broken. Shri Ajmera did not threaten Shri Gupta. Shri Ajmera did neither abuse Shri Gupta nor try to manhandle him. However, the contents of the letter were made use of in recording the finding of guilt which in our opinion, was not proper.

53. The appellate authority has held that conclusion of the disciplinary authority cannot be faulted as the letter written by the witness to the I.A.C. was proved by the witness but in our opinion, in absence of positive evidence relating to the charge, conclusion of correctness of the charge cannot be drawn simply because the witness

has stated that the letter was written by him narrating the incident. If somebody is heard speaking loudly that does not mean that abuses were used or the behaviour of the person speaking loudly, was not proper. This is a matter of individual inference. Support cannot be drawn on the basis of such evidence. No inference can be legally drawn on the basis of such evidence. The necessity of proof cannot be given a go-bye. In our opinion, the appellate authority did not consider the evidence of any of the witness produced by the department in support of this charge, in the right perspective. There is lot of difference between 'might have happened' and 'had happened'. The so called eye-witnesses of the incident have not supported the incident.

54. From the foregoing discussions, we come to the conclusion that the prosecution has not been able to establish the charge against the applicant. The findings of the disciplinary authority in this respect deserves to be quashed.

"ARTICLE NO.18

Shri Suresh Chand Ajmera, Income-tax Inspector, while posted in the Income-tax Office, Jodhpur shouted at Shri M.S.Darda, Appellate Assistant Commissioner of Income-tax, B-Range, Jodhpur in a most abusive and derogatory language and threatened him not to speak any further in the Rajya Bhasha Samiti Meeting. He also spoke in abusive and derogatory language to Shri S.A.Khan, Hindi Officer, and walked out from that meeting. The above acts of Shri Suresh Chand Ajmera amounted to his conduct wholly unbecoming of a Govt. servant and thereby violated Rule 3 (i) (iii) of the CCS (Conduct) Rules, 1964."

55. To support this charge, the department has cited Serv Shri S.A.Khan, S.R.Meena, M.S.Rajoria, N.L.Kalra, K.C.Sharma, R.P.Sharma, N.L.Sharma, A.S.Yakun and A.Rehman, as witnesses and relied-upon two documents i.e. the complaint of Shri M.S.Darda dated 7.10.83 and Minutes of the Rajasthan Bhasha Samiti Meeting dated 6.10.83 in the chamber of Sh.B.M.Sharma, C.I.T.

56. As per the complaint or letter of Shri Darda, the applicant behaved in a most derogatory manner in the meeting of Rajya Bhasha Samiti which was held in the chamber of Shri B.M.Sharma, Commissioner of Income Tax. But, Shri Darda has not been cited or produced as a witness to prove his complaint. After-all, it was the complaint of Shri Darda which formed the basis of the charge initially.

57. We have gone through the evidence of the witnesses. Shri N.L.Sharma, has not stated a word about the charge or the incident ~~mentioned~~ in his statement. Likewise, Sh.A.Rehman has only stated that the minutes of the meeting were drawn. He has also stated that Shri Ajmera did not shout or used abusive language in the meeting. He has further stated that Shri Ajmera did not use abusive language or derogatory language against Shri Darda or Shri Khan. Thus, in our opinion, his statement amounts to no evidence against the applicant relating to the charge. Another witness Shri A.S.Yakuni has stated that he does not remember whether he was present in the meeting or not because the minutes do not bear his signature. It only describes his name amongst the participants. He has not stated anything relating to the incident which is the subject matter of the charge. Hence, his statement too, amounts to no evidence against the applicant in support of the charge.

58. It may be noted that the meeting of the Rajya Bhasha Samiti was

chaired by the Commissioner of Income Tax, Jodhpur, and the applicant was a participant in that meeting as a representative of RITA. He was not attending the meeting in the capacity of Income Tax Inspector, therefore, his walk-out or boycott of the meeting cannot in any way interpreted as an act of in-subordination. Putting one's own point of view or insisting on a point to be disucssed first, is not derogatory. Shri Darda had written a letter (Annex.A/62) to Shri B.M.Sharma, Commissioner of Income Tax, on the next day i.e. 7.10.83, but in this letter too, there is no mention of any derogatory language having been used by the applicant. This letter only calls for an appropriate action against the applicant by the Commissioner of Income Tax, whereas the Commissioner of Income Tax himself was presiding over the meeting and could have himself taken action against Shri Ajmera. But, no action whatsoever, was taken against him. For the incident of October 1983, the chargesheet was served on the applicant in the year 1986. The Minutes do not contain any fact relating to derogatory or abusive language having been used by the appliant at the meeting before he staged a walk-out. Had he used the language in the meeting as described in the charge, the same or fact relating to that would have found place in the minutes.

59. The letter Annex.A/62, which was written by Shri Darda, had also not been proved by producing Shri Darda in support of this charge, therefore, when Shri Darda has not proved his letter which is more in the nature of complaint, when the minutes do not contain the fact relating to the use of abusive and derogatory language and when the witnesses produced by the prosecution do not state even a word about the incident, then the charge cannot be said to have been proved against the applicant. These facts go to show that this is a case of no evidence against the applicant.

60. Mr.S.R.Meena has stated in his statement that Shri Ajmera abused Shri Khan and Shri Darda in presence of members and the chairman and then walked-out. But, this statement does not find any support from any of the witnesses produced by the department. The veracity of the statement of Shri Meena remained un-corroborated. We know that in departmental proceedings strict proof in respect of charge is not needed and the rule of preponderance of probabilities is the guiding rule but that does not mean that proper scrutiny of proof can be ignored to hold the charge as proved on the basis of such statement. It may also be noted that this witness was not believed in respect of other charges. This also puts a question-mark about the correctness of the statement of the witness. Thus, his statement does not lend support to the charge in question. Shri Rajoria who was said to have been present during the Rajya Bhasha Samiti meeting on 6th October,1983, has not stated even a word about the misbehaviour or use of abusive language by Shri Ajmera at the commencement of the meeting. No question regarding misbehaviour or use of abusive language by Shri Ajmera at the commencement of the meeting, was asked to him by the presenting officer. Hence, it can be concluded that no such incident occurred on 6th October 1983 in the Rajya Bhasha Samiti meeting as alleged, otherwise the witnesses would have stated the same.

61. The charge in our opinion has not been proved. The findings of the inquiry officer, disciplinary authority and the appellate authority are perverse and deserve to be quashed.

"ARTICLE 31

Shri Suresh Chand Ajmera, Income-tax Inspector,while posted in the Income-tax Office, Barmer on 30.9.1985, deliberately misinformed the Income-tax Officer, Barmer that he was called upon to Jodhpur to hand over the charge of F-Ward, Jodhpur, left his headquarters and remained unauthorisedly absent from his

duty on 3rd and 4th October,1985. Thus he failed to maintain devotion to his duty and thereby violated Rule 3(i) (ii) of the CCS (Conduct) Rules, 1964. His above acts also amounted to his conduct wholly unbecoming of a Government servant and thereby violated Rule 3(i) (iii) of the CCS (Conduct) Rules,1964."

62. In respect of this charge, the department has cited Serv Shri M.S.Rajoria, J.L.Dashora and N.C.Jain and has relied upon six documents which are official letters, office orders, office notes and memorandum. Statements of Shri M.S.Rajoria and Shri J.L.Dashora, are Annexs. A/19 and A/21 respectively.

63. Shri N.C.Jain, could not be examined due to his sad demise. In respect of misrepresentation by the applicant Shri N.C.Jain, could have been the best witness but unfortunately, he died. We have gone through the statements of the witnesses and the documents produced in support of this charge. We are of the opinion that the charge is not proved at all and there is no evidence to support the charge. There is no application of the applicant on record seeking permission to leave the headquarter for handing over the charge of the post of Income Tax Inspector, 'F' Ward. Had there been an application to this effect, mis-representation could have been inferred. From the office order Annex.A/64 dated 30.9.85, it appears that the applicant was directed by the Income Tax Officer, Barmer, to book a berth for him for Jaipur on 3.10.85. In absence of any application of the applicant for permitting him to go to Jodhpur for handing-over the charge and in absence of any letter from the Income Tax Officer, 'F' Ward, Jodhpur, in this connection, it could be inferred that the applicant was deputed to go to Jodhpur by Shri N.C.Jain, Income Tax Officer, Barmer to secure reservation for him from Jodhpur to Jaipur and in order to make the trip of the applicant to JOdhpur, look official he was directed to

handover the charge of the post of ITI 'F' Ward on 3rd Oct,1985. It appears that the office order Annex.A/64, was passed by Shri Jain for his own convenience, as stated above and not on mis-representation of the applicant.

64. In this respect, few facts appearing in the statement of Shri C.L.Dashora, Annex.A/21, are to be noticed to appreciate the basis of the charge. Annex.A/64, is the copy of the office order dated 30.9.85 which was sent to the Inspecting Assistant Commissioner of Income Tax by the Income Tax Officer, Barmer. There was no occasion for Shri Dashora to receive the same. He has stated that Shri Hadia, IAC, called him and called for his comments on the same, therefore, he made the comments on the letter. In the comments, it is mentioned that no letter or telephonic message was sent to Shri Ajmera for handing-over the charge. If this is correct, then whey did Shri Jain pass an office order allowing the ITI to proceed to Jodhpur more specially when Shri Ajmera did not move any application in this regard. The reason is obvious. Shri Jain wanted Shri Ajmera be available at Jodhpur, as mentioned above. If Shri Ajmera had came to Jodhpur for allegedly handing over the charge as per the office order, he could have been refused duty certificate or could have been asked to apply for C.L. by the controlling officer.

65. Onething more, if Shri Ajmera had misrepresented to Shri Jain in respect of the charge being pending at Jodhpur then why Shri Jain before passing the office order, did not verify the fact from the Jodhpur Office or why he did not ask the applicant to move an application in this regard or show the order received by him from the Jodhpur office. The Office order drawn by Shri Jain is no doubt an official act but the same is required to be proved like any other document by specific evidence. But, in the instant case, there is no evidence in this regard to hold the office order as having been

passed by Shri Jain or mis-representation of the applicant. As stated earlier, the disputed office order seems to have been drawn by Shri Jain for his own convenience than at the instance of Shri Ajmera.

66. From the chargesheet, it appears that the charge Nos. 29 and 30 are related to unauthorised absence of the applicant and leaving headquarter without obtaining prior permission in the past. These charges were held not proved. If the applicant had remained unauthorisedly absent in the year 1984 on different dates then it could have been taken care of in the same year or soonafter such absence. But strangely enough the department allowed all these things to accumulate to enable Shri Hadia to frame the charge or in other words Shri Hadia in order to chase the applicant, dug up the past matters for framing these charges. It should be noted by the concerned that there is lot of difference in prosecuting a wrong door and persecuting a person on one count or the other, otherwise what was the justification for framing a charge in 1986 in respect of the incident of 1984 about leaving the headquarter without prior permission or C.L.

67. In our opinion, there is no evidence worth the name to hold this charge as proved. Therefore, the findings of the inquiry officer, disciplinary authority and the appellate authority, in this regard deserve to be quashed.

68. From the above discussion, we come to the conclusion that there is no evidence relating to charges No. 15,18 and 31, yet the conclusion of guilt has been arrived at by the disciplinary authority and up-held by the appellate authority,therefore, the finding of the disciplinary authority is hereby quashed and the applicant is exonerated of these charges.

69. In respect of Charges No. 1, 6 and 10, many procedural irregularites amounting to illegalities causing grave prejudice to the applicant have been noticed by us and consequently, the finding of guilt arrived by the disciplinary authority and upheld by the appellate authority is difficult to sustain. However, in the circumstances of the case, the only alternative could be to order re-inquiry. This aspect will be dealt by us in subsequent paras.

70. No doubt, no specific allegations have been made so far as the mala fides of Shri P.C.Hadia is concerned against the applicant but from the circumstances appearing in the statements of the witnesses, it is clear that the action initiated by Shri P.C.Hadia against the applicant was not at all bonafide. In respect of every event relating to the charges, the department became active only after Mr.Hadia took-over as Inspecting Assistant Commissioner of Income Tax, Jodhpur. Events which had happened during past few years and no action relating to them, was thought necessary at that point of time, became important for taking action against the applicant in the year 1985 and for serving the chargesheet in the year 1986. As many as 32 charges were framed against the applicant relating to the events of past number of years as if, the department allowed all these incidents to accumulate only for Shri Hadia to take action. This is the reason that as many as 19 charges were held not proved even by the inquiry officer. Further, five charges were held not proved by the disciplinary authority and the appellate authority. Over implication or false implication only results in such situation. We had at appropriate places, mentioned that conduct un-becoming of a Government servant, is not to be ignored if it is not ignorable. As and when lapses which were subject matter of the charges, were noticed by the

concerned authorities, action could have been taken against the applicant but if no action was taken at that point of time then the conclusion is that the action was thought not necessary. In view of this, if we further see the matter, then we find that at every stage, may it be recording of statements of witnesses, may it be filing of complaints by the concerned businessmen, may it be filing of complaint relating to incidents by the departmental employees or appointing the inquiry officer etc., Shri Hadia was in picture, as if, there was no other authority to whom the witnesses, the complainant or the department officials, could have approached for redressal of their grievances. All these facts, which emerge from the file, confirm our conclusion that the departmental action against the applicant in relation to the present chargesheet, was not reasonably bonafide.

71. Having come to the conclusion that the finding of guilt in respect of Charges No. 1, 6 and 10 are perverse because of procedural lapses and lacunic evidence we thought of remanding the case for re-inquiry relating to these charges but the incidents relating to these charges are more than 15 to 17 years old. In our opinion, no useful purpose would be served in ordering re-inquiry relating to these charges after lapse of such a long time. For this reason, we do not consider it fit to remand the case for re-inquiry. Since the findings of disciplinary authority have been quashed by us mainly on procedural irregularities and techanicalities in respect of Charges No. 1 and 6, therefore, the applicant cannot be granted back wages for the period of dismisal but he deserves to be reinstated in service.

72. In view of the above, the O.A. deserves to be accepted in part and the applicant deserves to be reinstated in service but in the circumstances without back wages.

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73. The O.A. is, therefore, partly accepted. The orders of the Disciplinary Authority dated 8.12.1993 Annex.A/1 and the Appellate Authority, dated 20.5.1994, Annex.A/2, are hereby quashed. The applicant is directed to be reinstated in service on the same post from which he was dismissed within a period of one month, from the date of communication of this order, but in the circumstances, without any back wages. The Period of dismissal i.e. from 8.12.1993 till the date of reinstatement of the applicant, shall only count for pensionary benefits and no other.

74. Parties are left to bear their own costs.

(GOPAL SINGH)
Adm.Member

31/8/2000
(A.K.MISRA)
Judl.Member

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jrm

Received copy
by
4/5/12 on
(SURESH ATMERAN)
Applicant.

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6/9

Part II and III destroyed.
In my presence on 9-2-07
under the supervision of
section officer (J) as per
order dated 10/1/06

Section officer (Record)