promoted as an Inspector and in March,1977 he was promoted to the Selection Grade Inspector. From February,1978 he was attached to Range XI of Bombay Division "G". On the evening of 21st April,1979, at about 6.00PM the Preventive staff of Bombay Collectorate intercepted a hand-cart bearing registration No.6109 on Dr.E.Moses Road,Near Mahalaxmi Bridge. It was loaded with 38 cartons containing crimped nylon. It was found that Central Excise duty was paid in respect of 16 cartons but no duty was paid in respect of 22 cartons. After inquiry a charge was framed against the applicant and it was as follows :-

"Shri S.K.Damle while functioning as Inspector of Central Excise,Range XI,Bombay Division 'G' during the period from 1-2-1978 to 27th September,1979 appears to have failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant inasmuch as he verified D-3 No.11 presented by M/s.Stretch Fibres (India)Ltd. under Rule 173(H)on 21-4-79 at 2.15 pm the receipt of duty paid excisable goods mentioned in the said D-3 No.11 even though these never entered the factory premises of M/s.Stretch Fibres (India)Ltd. and he falsified the entries in XT 1 diary and Survey Book relating to verification of goods received under D-3 No.11 dated 21-4-79 by M/s.Stretch Fibres(India)Ltd., with ulterior motive with a view to cover up the action on the part of M/s.Stretch Fibres(India)Ltd. in removing 22 cartons of crimped Nylon Yarn without payment of duty. Shri S.K.Damle by his above acts appears to have failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of Govt.servant and thereby contravened Rule 3(1)(i)(ii)(iii) of CCS(Conduct)Rules,1964." ...3/-

Along with the charge the necessary documents were supplied to the applicant. After examining a number of witnesses and after giving proper opportunity to the applicant, the inquiry officer (Mr.M.K.Patwe) found that the charge was not proved. His report dated 12-4-84 is annexed as Ex.'O' to the application. But the Collector of Central Excise, Bombay-I(Mr.K.S. Dilipsinhji)who was the disciplinary authority disagreed with that report and held that the charge was proved. Regarding penalty he found that the proper penalty in the circumstances of the case would be dismissal from service and hence he imposed that penalty on the applicant. His report is dated 25th October,1982 and it is attached as Ex."P" to the application. The applicant preferred an appeal against that order and the appeal was decided by the Chief Vigilance Officer, Mr.Malhotra, who agreed with the finding of the Disciplinary Authority as well as the penalty imposed upon the applicant by him. His report is dated 13th January,1984 and it is attached as Ex.'Q' to the application.

Thereafter on 19th November,1984 the applicant preferred the Writ Petition in the High Court praying for quashing the reports of the Disciplinary Authority and the Appellate Authority and for his reinstatement in service with all the back wages. The record shows that in the High Court the Petition was dismissed for default on 22-8-1984 as the applicant and his advocate were absent. But subsequently that order was set aside and the petition was restored. But again on 10th October,1984 the applicant and his advocate remained absent and hence the petition was again dismissed. Against that order the applicant preferred Appeal No.1122 of 1984 in the High Court. On 29th November,1984 the High Court after hearing the applicant's advocate and Mr.M.I.Sethna for the Respondents not only admitted the appeal but set aside the impugned order passed on 10th October,1984 and directed ...4/-

that the petition should be fixed for admission before the single Judge on 17-12-1984. On 17-12-1984 the single Judge of the High Court passed the following order :-

> "Mr.Kankaria confines his arguments and the petition to the question of quantum of punishment only. It is therefore only to that extent that the present petition is admitted because the punishment of dismissal has been imposed admittedly without giving an opportunity to the petitioner to show cause why that punishment should not be imposed".

Thereafter by an order passed on 25th March'86 the petition was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act,1985.

Yesterday we have heard Mr.Kankaria the learned Advocate for the applicant and Mr.Mehta for Mr.Sethna the learned advocate for the respondents. As stated in the High Court, Mr.Kankaria the learned advocate for the applicant and Mr.Mehta for restricted his arguments to the quantum of punishment. He urged before us that the extreme penalty of dismissal from service will not be the proper sentence in this case considering the facts and circumstances of the case. He pointed out that the applicant was neither heard in person by the Disciplinary Authority while reversing the finding of the Inquiry Officer and impossing the highest penalty which could have been awarded by him, nor by the Appellate Authority while confirming the finding and the penalty. He is factually correct on both the points.

As by the High Court's order passed while admitting the petition the scope of this application is confined to the quantum of punishment, it will be relevant to see what penalties are provided in the Central Civil Service(Classification

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Control and Appeal)Rules. Rule 11 prescribes the penalties which can be imposed. The penalties are divided into two categories - minor penalties and major penalties. Minor penalties are-Censure,withholding of promotions, recovery from pay of any peculiar loss caused to the Govt. and withholding of increment of pay. Though at one stage Mr.Kankaria urged that some minor penalty will be proper in this case,in view of the nature of the charge against the applicant he did not press his submission. Major penalties laid down in the Rule are 5 and they are as follows :-

(i) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the empiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(ii) reduction to lower time scale of pay,grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay,grade,post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Govt. servant was reduced and his seniority and pay on such restoration to that grade post or Service;

(iii) compulsory retirement;

(iv) removal from service which shall not be a disqualification for further employment under the Government;

(v) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

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At the fag end of the arguments Mr.Kankaria after consulting the applicant conceded that the penalty of compulsory retirement would be proper in this case. Mr.Mehta,Learned Counsel, for the Respondents was heard on this point and he also did not seriously object to substitute the penalty of compulsory retirement in place of dismissal from service.

After considering the circumstances and facts of the case I feel that the penalty of dismissal from service imposed by the Disciplinary Authority and confirmed by the Appellate Authority would be too harsh and the penalty of compulsory retirement will be most appropriate in this case.

I have already quoted the charge framed against the applicant. Mr.Kankaria the Learned ~~Counsel for~~ Advocate for the applicant contended that the charge was not specific. He also contended that after he was exonerated of all the charge by the Inquiry Officer it was incumbent upon the disciplinary authority to hear him before setting aside the finding of the inquiry officer and imposing the drastic penalty upon him. According to Mr.Kankaria this was necessary in view of the principles of natural justice. He submitted that the same mistake is committed by the appellate authority while confirming the finding and penalty. Mr.Kankaria was heard on this points because he submitted that they are linked with the quantum of punishment. I,however, feel that question of merits of the case is not relevant because while admitting the petition itself the High Court has specifically made it clear that it was being admitted only on the question of quantum of punishment.

Still the nature of the charge which was held proved will be relevant while considering the question of punishment. The charge in substance was that the applicant had falsified some entries in the Diary and Surtey Book relating to verification of the 22 carton crimped nylon. There cannot be any doubt that the applicant must have done this for

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favouring the assessee i.e. Stretch Fibres(India)Ltd. At the time of arguments we were told at the Bar that the value of the nylon in 22 cartons might be about Rs.62,750/- and the Excise Duty which was avoided on it might be about Rs.3,000/- This is not to suggest that the conduct of the applicant was not serious, because as a responsible officer he should not have acted like that. But the question is whether for such action the drastic penalty of dismissal from service was warranted.

At the time of the arguments it was conceded on behalf of the applicant that the Service Record of the applicant through out his career extending over a period of 25 years was without any blemish. No adverse remarks was reported or made against him by any superior officers. In fact he was promoted as Selection Grade Inspector in March,1979 i.e. just one month before the incident. When the order of the dismissal was passed he was about 48 or 49 years old. He has a family to support. Moreover to ignore the circumstances that he was exonerated by the Inquiry Officer who had heard the evidence cannot be completely brushed aside. I,therefore, feel that the penalty of dismissal from service awarded by the Disciplinary Authority and confirmed by the Appellate Authority deserves to be reduced to one of compulsory retirement from service. If the penalty of dismissal from service is maintained the applicant will not be entitled to get any pension and other benefits but on the contrary if the penalty is reduced to Compulsory retirement he will get the benefits admissible to him according to rules. Compulsory retirement, when he could have still served for 9 or 10 years before superannuation, cannot be said to be a light punishment in view of the circumstances of the case and the charge against the applicant.

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I, therefore, hold that the penalty of dismissal from service deserves to be set aside and in its place the penalty of compulsory retirement should be substituted.

Before disposing of the case on the above lines, that is by altering the sentence, it is necessary to deal with one more point. It is about the effect of a recently reported judgment of the Supreme Court in Ram Chander v. Union of India 1986(2) SLR 608(1986 ATR 252). In fact the point is not important in this case but it is being raised often in such cases and hence it has become necessary to deal with it here.

The point is this: When the appellate authority has decided the appeal without giving a personal hearing to the appellant and without discussing and deciding all the relevant points, is it necessary in every such case to send back the case to the appellate authority for deciding the appeal on merits and after giving a personal hearing to the appellant ?

For understanding the point it is necessary to state the facts of Ram Chander's case and the final order passed by the Supreme Court in it. The facts of that case as stated in the Judgment were these:-

"The appellant Ram Chander, Shunter, Grade B, was inflicted the penalty of removal from service under Rule 6(viii) of the Railway Servants(Discipline and Appeal) Rules,1968 by an order of the General Manager, Northern Railway, dated 24th August,1971. The gravamen of the charge was that the appellant was guilty of misconduct in that he had on 1st October,1969 at 7.30PM assaulted his immediate superior Banarasi Das, while he was returning after performing his duties. The immediate cause for the assault was that the appellant had on the previous day applied for medical leave for one day i.e.

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on 1st of October,1969. On that day there was a shortage of Shunters, and he accordingly asked Banarasi Das to resume his duties, but Banarasi Das refused to cancel the leave already granted and therefore the appellant nursed a grouse against him, because he was already deprived of the benefit of one day's additional wages for October 2, 1969 which was a national holiday. Apparently, Banarasi Das lodged a report with the police but no action was taken thereon. More than a month later i.e. on November 17, 1969 Banarasi Das made a complaint against the appellant to his superior officers and this gave rise to the departmental proceedings. The Enquiry Officer found the charge proved. The General Manager, Northern Railway, agreed with the report of the Enquiry Officer and came to the provisional conclusion that the penalty of removal from service should be inflicted and issued a show-cause notice dtd.26th May, 1971. In compliance the appellant showed cause, but his explanation was not accepted by the General Manager who by his order dated August 24,1971 imposed the penalty of removal from service. The appellant preferred an appeal before the Railway Board under Rule 18(ii) of the Railway Servants(Discipline and Appeal)Rules,1968 but the Railway Board by the impugned order dated March 11,1972 dismissed the appeal. Thereafter the appellant moved the High Court by a petition under Article 226 of the Constitution. A single Judge by his order dated 16th August,1983 dismissed the Writ Petition holding that since the Railway Board agreed with the findings of the General Manager there was no duty cast on the Railway Board to record reasons for its decision. The appellant therefore preferred a letters patent appeal, but a Division Bench by its order dated February 15,1984 dismissed the appeal in limine. After considering the case law and the amendment to Article 311(2) of the Constitution the Supreme Court held that the appellant should have been heard by the Appellate Authority i.e. the Railway Board before passing the final order on his appeal. The final order passed by the Supreme Court is as under :-

> "In the result, the appeal must succeed and is allowed. The judgment and order of a learned Single Judge of the Delhi High Court dated August 16,1983 and that of the Division Bench dismissing the letters patent appeal filed by the appellant in limine by its order dated February 15,1984 are both set aside. So also the impugned order of the Railway Board dated March 11, 1972. We direct the Railway Board to

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hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants(Discipline and Appeal) Rule,1969 as expeditiously as possible, and in any event, not later than four months from today"

Coming to the facts of the case the order of the Appellate Authority dtd. 13-1-1984 is attached at Ex.'Q' to the petition. Admittedly the order was passed without giving a personal hearing to the applicant. In the last paragraph the question of sentence is considered. While confirming the penalty of dismissal from service awarded by the Disciplinary Authority, the Appellate Authority has merely observed that the charges levelled and proved were very grave and an officer who connives with unscrupulous assessees in the matter of evasion of duty do not deserve any leniency. This order is no doubt vitiated because it was passed without hearing the applicant personally. It is possible that the applicant might have put forth some good reasons as he has done before us for showing leniency to him. Hence in view of the judgment of the Supreme Court in Ram Chander's case this order is liable to be set aside.

But the more important point to be decided is whether it is necessary to send back the case to the Appellate Authority for deciding the question of sentence after giving a personal hearing to the applicant and after considering the grounds which he may give for the purpose of showing leniency.?

After carefully considering the judgment of the Supreme Court I am of the view that it is not necessary to send back the case to the Appellate Authority for deciding the question of punishment on merits. The judgment of the Supreme Court is an authority on the point that the Appellate Authority in a departmental proceeding must give a personal hearing to the appellant and decide the appeal on merits and in conformity with the provisions of the relevant rules. The judgment cannot be treated as an authority

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on the point that the course which was followed by the Supreme Court in that case should be followed in each and every case in which the appellate authority's judgment is held to be vitiated. The Supreme Court seems to have sent back the case to the appellate authority in view of the arguments advanced before it and the facts of that case.

The above view is supported by 2 judgments of the Supreme Court. The first is Bhagat Ram v. State of Himachal Pradesh 1983SCC(L&S)342 decided by a Bench of three Judges and the second is Arjun Choubey v. Union of India 1984SCC(L&S)(290) decided by a Bench of 5 Judges. In Bhagat Ram's case a Forest Guard was charged in a departmental inquiry for (1) illicit felling of trees and thereby causing loss to the Government; (2) negligence in the performance of government duty; and (3) doubtful honesty. The inquiry officer in his report held that the charges 1&2 were proved against the appellant, Bhagatram, but charge(3), of doubtful honesty was not proved. The Disciplinary Authority accepted the report and provisionally decided to impose the penalty of removal from service, and served a show-cause notice under article 311(2) of the Constitution. After considering the explanation, the penalty of removal from service was confirmed. The appellant's writ petition under Article 226 was dismissed by the High Court in limine. Allowing the appeal the Supreme Court held that the departmental inquiry was vitiated because the principle of natural justice, viz. right to be represented by another Govt. servant was not followed. The Supreme Court pointed out that "ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of

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certiorari. Though in a petition under Article 226 of the High Court does not function as a Court of appeal over the findings of Disciplinary Authority, where the finding is utterly perverse, the court can always interfere with the same. Still the Supreme Court did not feel it proper to direct that a fresh inquiry shouldbe held, but ordered that 2 increments with future effect shall be withheld and he should be paid 50 percent of the arrears of salary from the date of termination till the date of reinstatement.

In Arjun Choubey's case, the appellant,Arjun Choubey, was working as a Senior Clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. On May 22, 1982 the Sr.Commercial Officer, wrote a letter to him, calling upon him to offer his explanation in regard to 12 charges of gross indiscipline. The appellant submitted his explanation to the charges by his reply dated June 9, 1982. On the very next day, the Deputy Chief Commercial Superintendent served a second notice upon him saying that another chance was being given to him to offer his explanation regarding the specific charges which were conveyed to him by the letter of May 22,1982. By this letter, the appellant was also called upon to submit his explanation within three days as to why deterrent disciplinary action should not be taken against him. The appellant submitted his further explanation on June 14,1982 but on the very next day, the Deputy Chief Commercial Superintendent passed an order dismissing him from service onthe ground that he was not fit to be retained in service.

The appellant filed a writ petition in the High Court of Allahabad challenging the order of dismissal on various grounds. But that writ petition was dismissed by the High Court and hence the appellant preferred in the Supreme Court an appeal by special leave. The Supreme Court held that the principle of natural justice was violated in holding the departmental inquiry because the witness himself had acted as a Judge. Hence the order of dismissal was

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set aside, but in order to avoid needless complications in working out the mutual rights and obligations of the parties, the Supreme Court directed that the appellant, who was due to retire within about six months should be treated as having retired from service w.e.f. 1st April, 1984. The Supreme Court further directed that he should be paid arrears of his salary due to him until 31st March'84 on the basis of the salary last drawn by him on June 15,1982 but without taking into account the increments which he might have earned subsequent to that date.

Considering the final orders passed by the Supreme Court in the above two cases it is not possible to hold that the view taken in these cases regarding the final order to be passed in such cases is over ruled by the Judgment in Ram Chander's case. On the contrary all the judgments show that the Courts have to pass an appropriate orders in each case depending upon the facts and circumstances of that case. No hard and fast rule can be said to have been laid down by the Supreme Court in Ram Chander's case.

Another question which arises in this case is whether this Tribunal has power to interfere with the punishment awarded by the Disciplinary Authority and confirmed by the Appellate Authority to the applicant. It is not necessary to cite the other judgments of the Supreme Court on this point to show that the courts do have such a power, because the Supreme Court did pass appropriate orders regarding punishment in Bhagat Ram's case and Arjun Choubey's case referred to above. In the former case the Supreme Court has reiterated the principle that the punishment imposed upon the deliquent must be proportionate to the gravity of misconduct.

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In this connection we may visualise a few cases: Suppose in a particular case it is undisputed or proved beyond doubt that - (i) some important principle of natural justice is not followed while conducting the departmental inquiry, (ii) or a finding is arrived at by the inquiry officer though there is absolutely no evidence to justify it, (iii) or the punishment awarded is disproportionate to the gravity of the misconduct proved. We may further assume that the appellate authority in these cases had not decided the appeal on merits and by passing a reasoned order after giving a personal hearing to the appellant. Can we say in such cases on the basis of the decision of the Supreme Court in Ram Chander's case that we should invariably send back the case to the appellate authority for deciding the appeal on merits and after giving a personal hearing to the appellant ? My answer to this question is in the negative, because what the appellate authority can do in such cases can be conveniently and effectively done by this Tribunal also.

We cannot forget that the Tribunal is constituted so that the grievance of the Government employees can be redressed as cheaply and expeditiously as possible. The applicant is out of service for the last more than 4 years. He is prepared to accept the punishment of compulsory retirement to which the respondent's Advocate has no serious objection. The High Court has admitted the writ petition only regarding the question of sentence. In these circumstances it will not be proper to send back the case to the Appellate Authority for deciding the case, that too on the point of sentence only, after giving a personal hearing to the applicant. Hence I am of the view that though the order regarding punishment passed by the disciplinary authority and confirmed by the Appellate Authority is liable to be set aside, it will not be necessary to send the case back to the Appellate Authority to decide what punishment shouldbe given to the applicant.

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In view of the above discussion I pass the following order in this case :-

1. The order of the Disciplinary Authority i.e. the Collector of Central Excise,Bombay-I dt.25.10.1982 (which is attached as Ex.P to the petition)and the order in appeal of the Chief Vigilance Officer dtd. 13-6-1984(which is attached as Ex.'Q' to the petition) so far as they relate to the penalty of dismissal from service are concerned, are set aside.

2. Instead, the applicant is compulsorily retired w.e.f. 25-10-1982.

3. The applicant will be entitled to all benefits due to him according to the rules w.e.f. 25-10-1982.

4. No order as to cost.

6-3-1987

(M.B.MUJUMDAR)
Member(J)

(Per J.G.Rajadhyaksha,Member(A) Dissenting)

I have read the judgment prepared by my brother Member. With respect, I wish to dissent on certain aspects which I shall now proceed to deal with.

2. The facts have been recounted by my brother Member and I need not repeat them fully, but briefly it can be stated that the applicant who was an Inspector in Central Excise entrusted with the responsibility of checking excisable goods and levying and recovering appropriate duty thereon was charge sheeted and punished with dismissal from service had filed this Writ Petition in the High Court which has been transferred to us. The two main charges were that he (i)colluded with some parties, allowed excisable goods to escape duty and (ii) in order to protect the party involved as well as himself, falsified the records required to be maintained in this behalf. He did this after some 476 kgs of stretched fibre was seized by the Vigilance Squad on way. He then signed false certificates and made false entries in the relevant diaries and registers. This invited departmental action against him.

3. At the outset it has to be observed that the Writ Petition filed in the High Court was admitted only in respect

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of the question of quantum of punishment and that was the only relief on which arguments of the learned advocate Mr. Kankaria were to be heard. Of course this could not imply that the High Court would have necessarily interfered with the quantum of punishment, unless it could be clearly established as being too harsh, excessive or disproportionate to the delinquency. In the meanwhile, the Writ Petition came to be transferred to this Tribunal. In view of the orders already passed by the High Court, it would be in the fitness of things if consideration of the transferred application is confined to the question of quantum of punishment only. By implication, questions regarding procedure followed in the Departmental Inquiry, in the appeal thereon and the other steps taken by the applicant for the redressal of his grievance are conceded by the applicant and cannot be discussed in this Tribunal. It will, therefore, have to be held that the Departmental Inquiry does not suffer from any procedural infirmity. Similarly, it will have to be held that the guilt of the applicant vis-a-vis the charges levelled against him has also been established, and there will, therefore, be no question of discussing whether there was adequate evidence to establish the guilt, leading to the findings and conclusion of the disciplinary authority, or the findings were in any way perverse.

4. Yet in arguing before us the learned advocate for the applicant did raise certain aspects contending that they were germane to the question of quantum of punishment. He was, therefore, heard on those, but was also made aware that he had agreed to confine himself to the arguments on the question of quantum of punishment only.

5. After these observations, I would like to turn to one material fact in these proceedings. The learned advocate

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for the applicant suggested that the delinquency of the applicant was a very minor one inasmuch as the loss to the Government by evasion of duty was not likely to exceed Rs. 3,000 or so. It is significant to note that this was not an averment in the petition nor the defence of the applicant before the Inquiry Officer. It is equally significant to note that in the reply the respondents also did not very strongly make a mention of the magnitude of the delinquency, except by attaching Annexure 'C' to the reply. This 'Annexure C' is a Demi-Official letter dated 20.11.1979 addressed by the Assistant Collector (Preventive) to the Assistant Collector (Vigilance). The Demi-Official letter lists the cases in which there was evasion of duty in which the applicant was alleged to have colluded. The concluding paragraph shows that the duty demanded in the Show Cause Notice is of the magnitude of Rs. 8.83 lakhs (Rs.8,82,790.29 to be exact). I am mentioning this because all angles of this aspect have not been brought out fully in the contentions before us by advocates on either side, and omission to take this into account might lead to miscarriage of justice. If this is the total demand inclusive of penalty for evasion, but the amount of evasion covering the seized goods of parties mentioned in the DO letter vis-a-vis the applicant's role therein is only Rs. 3,000/- or Rs. 4000/- or so. I am still of the view that not the amount evaded but the applicant's dereliction of duty in the matter would have to be borne in mind. The officer whose responsibility is to check such goods for levy of excise duty colludes with the parties to enable them to evade duty. This in itself is reprehensible. Besides, if we take into consideration the fact that apart from this charge of collusion in evading duty, there is also

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a charge of falsification of Government records, then the total guilt of the applicant becomes glaringly aggravated. Again, I would like to mention that there is no challenge to the inquiry as such and the facts proved in the inquiry and, therefore, I have to hold that both these charges stand absolutely proved against the applicant.

6. That brings us to the question of quantum of punishment. The punishment imposed is that of dismissal from service. My brother has suggested reduction therein to bring it to compulsory retirement. It would be relevant to note that neither in the original petition nor in the brief for defence is there any request for reduction in punishment in the event of the applicant being found guilty. The learned advocate for the applicant suggested infliction of a minor penalty, but later indicated the applicant's willingness to be compulsorily retired. The learned advocate for the respondents did not vehemently object to any reduction in the punishment. I gathered the impression that he did not have instructions to make any such concession nor could he get such instructions on the spot. I am, however, inclined not to agree to any reduction in punishment.

7. The Supreme Court decision dated 24.1.1983 in the case of Bhagatram V/s. The State of Himachal Pradesh and others has been cited as a precedent for reduction of penalty and non remand of the Departmental Inquiry to the Disciplinary Authority. With respect, I would like to say that the Supreme Court has not laid down any law in this decision. The peculiar circumstance of that case were that a Class-IV servant of the Forest Department viz., a Forest Guard was involved in a joint inquiry with his superior Block Officer of that Department; was not made aware of the fact that he

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could take assistance for his defence and that he had a right fully and properly to defend himself. The superior was examined as witness against him. Thus repeating some of the words used by the Supreme Court, the Class-IV servant was 'pitted against the Presenting Officer', who was far superior to him whereas the Class-IV servant was not "educationally" and intellectually equipped to defend himself. It was, therefore, that the Supreme Court held that the inquiry had been vitiated. Because the Departmental Enquiry itself was vitiated that the Supreme Court felt that the matter should not be remanded for a fresh inquiry or fresh proceedings subjecting the very junior official to the travails of a fresh Departmental Enquiry. Then again it was additionally on record in that case that the loss to Government had been made good by the Contractor and, therefore, that Forest Guard could not be charged with causing loss to the Government. After considering all aspects the Supreme Court exercised its prerogative and decided that the punishment of removal from service should be reduced to withholding of increments.

8. With respect, I would like to say again that in the present case before us there is not a single factor which could be considered as parallel to Bhagatram's case. Therefore, and following other observations in this and some other judgments of the Supreme Court, I would reiterate the well established principle of law that the High Court exercising its writ jurisdiction and, therefore, this Tribunal would not sit in appeal over Departmental proceedings. All that we would consider is whether there was total lack of evidence and, therefore, the findings in the Departmental Inquiry were perverse. Such is not the case in the application before

us as is clear from the fact that the writ petition was confined only to the quantum of punishment.

9. Another case cited by my brother is that of Arjun Choubey V/s. Union of India. In that case the Supreme Court held that the inquiry had been vitiated because the witness turned judge. The Petitioner therein was due to retire in about six months time. It was for that reason that the Supreme Court did not remand the matter to the Disciplinary Authority but held that the inquiry was vitiated and quashed it setting aside the penalty of dismissal. There the applicant before them was held by the Supreme Court to have retired six months ahead of his due date of super-annuation, perhaps adequate by way of penalty. Again I would repeat that there is no such peculiar circumstance in the application before us and therefore the question of quashing the inquiry or interfering with the punishment does not at all arise.

10. Having considered these two cases I come to the conclusion that the Supreme Court has not laid down any law as such in those two cases, but only paid heed to the peculiar circumstances of each of those two cases.

11. Again it has been held time and again that the adequacy or appropriateness of the penalty is not for the High Court in a writ before them, and therefore this Tribunal, to judge. If in the departmental proceedings, on the basis of the evidence before it, the disciplinary authority has come to the conclusion that a particular major penalty should be imposed, thennormally the Tribunal would not interfere with it. Only when the punishment appears to be excessive or grossly disproportionate to the offence there might be a cause for interference. In the case before us here, there

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is no such element involved at all. The offence is very grave indeed. It has been established beyond the shadow of a doubt and that question is not open for discussion, and therefore, we have no cause to interfere with the quantum of punishment.

12. The question of quantum of punishment also is a vexed question, as can be seen from not only the authorities cited viz., the cases of Bhagatram and Arjun Choubey, in which the Supreme Court modified the punishment, but also from some decision of various Benches of the Central Administrative Tribunal. Without going too deep into the details of such decisions, it would be adequate to take into account two decisions. The first to be mentioned will be that of the Madras Bench of the Central Administrative Tribunal in the case of P.H. John V/s. The Divisional Mechanical Engineer and Others, reported in ATR, 1986, CAT 237. This was a case of a Railway servant who under the influence of liquor demanded a cigarette from a lady passenger who was a foreigner. He also created a scene embarrassing her in a public place. Action was taken against him by the Disciplinary Authority and he was ordered to be removed from service. The Madras Bench of the Central Administrative Tribunal, however, held that though the serious misconduct was established, this punishment was excessive and quashed the order imposing punishment, reinstated the Government servant in service and directed that the Disciplinary Authorities should consider imposing a minor penalty, if at 11. In my opinion this decision cannot be law nor can it be binding on other Benches of the Tribunal. If our view on Tribunal's powers to interfere with the quantum of punishment differs materially from the view of the Madras Bench, then under section 26 of the Administrative Tribunals Act, 1985, it becomes necessary to

place the matter before the Chairman for considering constitution of a larger Bench for deciding the issue.

13. A second decision to be mentioned is that of the Jodhpur Bench of the Central Administrative Tribunal in which a Civil Servant involved in a case of misconduct such as assault etc., was punished with removal from service. The Bench of the Central Administrative Tribunal upheld the punishment and felt that there was no cause for interference in the penal action taken by the Disciplinary Authority as it was neither arbitrary nor grossly excessive.

14. These two decisions are only two examples in which it is not clear if the Benches of the Central Administrative Tribunal followed any particular rulings of the Supreme Court or of any High Court which was brought to their notice. But in view of the well established principle that neither the High Court in its writ jurisdiction and therefore nor this Tribunal would re-appraise the evidence, and neither the High Court nor this Tribunal would go into the question of appropriateness of the punishment, these questions now become questions of law and of general interest which need to be decided by a larger Bench of the Central Administrative Tribunal, with special reference to the legal position thereon.

15. In the case before us personal hearing was not granted to the applicant but the order in appeal is a fairly detailed order. The question, therefore, arises as to whether merely for the purposes of enabling the applicant to be heard in person on the question of quantum of punishment, the matter ought to be remanded to the appellate authority in terms of the law laid down by the Supreme Court in the case of Ramachander V/s. The Union of India, reported in 1986(2)

SLR 608. My brother has discussed this decision in his judgment. That was a case of a Railway Servant who was involved in misconduct viz., assault on his superior. The punishment inflicted upon him was that of removal from service. He appealed to the Railway Board, the highest Depattmental Authority, which disposed of the appeal by a cryptic order without giving personal hearing to him. The matter had gone to the High Court which had upheld the Railway Board's decision. In that particular case of Ramachander, the Supreme Court has laid down the law in respect of departmental action by its decision dated 2.5.1986. This is so because the Supreme Court has held that with the 42nd Amendment to the Constitution and consequent modification in Article 311(2) of the Constitution of India, the requirement of a second show cause notice to a delinquent officer had been done away with in rules about Departmental enquiries. Therefore, he had no forum for agitating his plea that the inquiry was not properly held, or that the quantum of punishment inflicted upon him was excessive, except the forum in the shape of the appellate authority within the department. Since the Disciplinary Authority was not going to give a hearing on a second show cause notice to a delinquent, it became the duty and responsibility of the appellate authority to give him personal hearing. It further became the duty of the appellate authority to consider all points raised by the delinquent before them in the light of relevant rules underlying the consideration of appeals. Lastly, it became the duty of the appellate authority to pass a reasoned and speaking order so that in the event of a judicial scrutiny being called for the circumstances and the thinking of the appellate authority could become clear

....24/-

to the judicial authority. This briefly is the law laid down by the Supreme Court, and therefore, I feel, it is mandatory that it should be observed. There should not be two opinions about the binding force of the decision in Ram Chander's case.

16. Since according to the High Court, the only question to be decided by us was that of the quantum of punishment I am now now inclined to suggest remanding the matter to the appellate authority at this stage on that question alone since my brother has already taken a view on that aspect. In the light of the discussion earlier, however, I feel that there is no case for reduction in the quantum of punishment. I would, therefore, pass the following orders :

ORDER

1) The application is dismissed.
2) The orders passed by the Disciplinary Authority and confirmed by the Appellate Authority are hereby confirmed.
3) In the circumstances of the case there will be no order as to costs.

(J.G.RAJADHYAKSHA)
Member(A)

TRIBUNAL'S ORDERS:-

In view of the difference of opinion in the judgments above, the following points are referred to the Chairman of the Central Administrative Tribunal for necessary action under Section 26 of the Administrative Tribunals Act,1985.

1. What are the circumstances in which the Tribunal can interfere with the quantum of sentence awarded in the departmental proceedings ?

.... 25/-