CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.70/2002 in
OA No.649/2000

29th Nov, 2002

Hon'ble Smt Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt Shanta Shastry, Member(A)

Mr.S.V.Nair
Inspector of Central Excise,
Residing at 12/135, Shell Colony,
Chembur, Mumbai - 400 071. ... Petitioner
(None present)

V/s

1. Mr.S.Narayan,
Secretary, Department of Revenue,
Ministry of Finance, North Block,
Central Secretariat, New Delhi-110 001

2. Mr.Shishir Kumar,
The Commissioner of Central Excise,
Mumbai VII Commissionerate,
CGO Complex, CBD Belapur,
Navi Mumbai - 400 614. ... Respondents

(By Advocate Shri M.I.Sethna, learned
senior counsel)

ORAL ORDER

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

.....Shri M.I.Sethna, learned senior counsel for respondents has submitted that against the order passed by the Tribunal in OA No.649/2000 along with seven other matters, the respondents had filed writ petition in the Hon'ble High Court which has since given a stay order against the Tribunal's order.

2. Shri G.K.Masand, learned counsel who is present in Court submits that he is one of the counsel in two of the ~~aforesaid~~ seven matters and confirms the position. It is also relevant to note that none has appeared for the petitioner in the contempt petition today.

...2.

3. In view of the above facts and circumstances and the Hon'ble High Court's order, CP-70/2002 is disposed of. Notices to the alleged contemners are disposed of. File to be consigned to the record room.

(SMT.SHANTA SHASTRY)
MEMBER(A)

(SMT.LAKSHMI SWAMINATHAN)
VICE CHAIRMAN(J)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.605/2000, 606/2000, 607/2000, 610/2000,
643/2000, 642/2000, 611/2000, 649/2000.

Dated this Thursday the 3rd day of April, 2003.

CORAM : Hon'ble Shri A.V.Haridasan, Vice Chairman (J)

Hon'ble Shri S.K.Hajra, Member (A)

1. OA.NO.605/2000

A.D.Kambli,
Asstt. Commissioner of Central
Excise, Pune-II, Commissionerate
ICE House, Sasoon Road, Pune. ...Applicant

By Advocate Shri V.S.Masurkar

vs.

1. Union of India
through Secretary,,
Ministry of Finance,
Deptt. of Revenue,
North Block, New Delhi.

2. Collector of Central Excise
Pune II Commissionerate,
ICE House, Sasoon Road, Pune.

3. Chairman, Union Public Service
Commission, Dholpur House,
New Delhi.

4. Central Board of Excise and
Customs, North Block, New Delhi. ... Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

2. OA.NO.606/2000

C.M.Amrute,
Ex.Inspector of Central Excise,
Belapur - 1 Division, CGO Complex,
5th Floor, Konkan Bhavan, Navi Mumbai. ...Applicant

By Advocate Shri V.S.Masurkar

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Deptt. of Excise & Customs (ADV),
Jeep Deep Building 10,
Parliament Street, New Delhi.

2. Collector of Central Excise
Mumbai VI Commissionerate,
Nav Prabhan Chamber, IVth Floor,
Ramble Road, Mumbai.

3. Chairman, Union Public Service
Commission, Dholpur House,
New Delhi.

4. Central Board of Excise and
Customs, North Block, New Delhi. ... Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

3. OA.NO.607/2000

B.N.Bhangare,
Superintendent, O/O Dy.Commissioner
of Central Excise, Bhoisar Division,
Mumbai III Commissionerate, Mumbai. ...Applicant

By Advocate Shri V.S.Masurkar

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi.

2. Collector of Central Excise
Mumbai III Commissionerate,
Nav Prabhat Chamber, 4th Floor,
Ranade Road, Dadar, Mumbai.

3. Chairman, Union Public Service
Commission, Dholpur House,
New Delhi.

4. Chairman, Central Board of Excise
and Customs, North Block, New Delhi. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

3. OA.NO.610/2000

S.M.Hiremath,
Retd. Supdt. of Central Excise

Bombay III Commissionerate,
Dadar, New Prabhat Chamber,
D'Silva High School, Mumbai. ...Applicant

By Advocate Shri V.S.Masurkar

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi.

2. Collector of Central Excise
Mumbai III Commissionerate,
Nav Prabhat Chamber, 4th Floor,
Ranade Road, Dadar, Mumbai.

3. Chairman, Union Public Service
Commission, Dholpur House,
New Delhi.

4. Chairman, Central Board of Excise
and Customs, North Block, New Delhi. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

5. OA.NO.643/2000

Abhijit Roy,
Inspector of Central Excise,
A-7, Commissionerate, 1st Floor,
CGO Complex, Navi Mumbai. ...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Deptt. of Revenue, New Delhi.

2. Commissioner of Central
Excise, Mumbai III. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

6. OA.NO.642/2000

Vilas Shivram Mahapadi,
Inspector of Central Excise,

Mumbai II Commissionerate,
Piramal Chambers, 9th Floor,
Jijibhoy Lane, Lalbaug, Mumbai. ...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Deptt. of Revenue, New Delhi.

2. Commissioner of Central
Excise, Mumbai II, Piramal Chambers,
9th Floor, Jijibhoy Lane, Lalbaug,
Mumbai. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

7. OA.NO.611/2000

N.M. Mulla,
Retd. Supdt. of Central
Excise, Mumbai III Commissionerate,
Dadar, Nav Prabhat Chamber,
D'Silva High School,
Mumbai. ...Applicant

By Advocate Shri V.S.Masurkar

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Deptt. of Revenue, New Delhi.

2. Collector of Central Excise
Mumbai III Commissionerate,
Nav Prabhat Chamber, 4th Floor,
Ranade Road, Dadar, Mumbai.

3. Chairman, Union Public Service
Commission, Dholpur House,
New Delhi.

4. Chairman, Central Board of Excise
and Customs, North Block, New Delhi. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

8. OA.NO.649/2000

S.V.Nair
(Group C), Ex.Inspector of
Central Excise, Mumbai VII
Commissionerate, Mumbai. ...Applicant

By Advocate Shri S.N.Pillai

vs.

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

2. The Commissioner of Central Excise,
Mumbai VII Commissionerate,
CGO Complex, CBD, Belapur,
Navi Mumbai. ...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

O R D E R

[Per: S.K. Hajra/ Member (A)]:

Common Departmental Enquiries were instituted against the applicants who were officials of Central Excise Department. The Inquiry Officer (I.O.) who conducted the proceedings submitted his reports holding that Charge No.1 against all applicants stood proved, that charge No.2 partly proved in respect of all applicants, except Shri B.N. Bhangare, and that Charge No.2 against Shri Bhangare was not proved. On consideration of Inquiry Reports and the advice of the Union Public Service (UPSC), the Disciplinary Authority passed orders imposing penalties as tabulated below:

Sl.No.	Name of Officer and Designation	Date of Order	Penalty imposed	Exh.
1.	Mr. A.D. Kambli (Assistant Commr.)	29.5.2000	Dismissal from service	A-1

2.	Mr.C.M.Amrute (Inspector)	29.5.2000	Dismissal from service	A-1
3.	Mr. B.N. Bhangre (Supdt.)	30.5.2000	Reduction by three stages in the time scale of pay for a period of three years without cumulative effect.	A-1
4.	Mr. S.M.Hiremath (Retired Supdt.)	16.6.2000	Withholding of entire pension on permanent basis and forfeiture of gratuity.	(A)
5.	Mr. Abhijit Roy (Inspector)	29.5.2000	Dismissal from Service	(A)
6.	Vilas Shivram Mahapadi	30.5.2000	Dismissal from Service	(A)
7.	Mr. N.M. Mulla (Ex.Inspector)	30.5.2000	Dismissal from Service	(A1)
8.	Mr. S.V.Nair	30.5.2000	Dismissal from service	(A1)

2. Aggrieved by the penalty orders, the applicants filed 8 separate O.As seeking quashing, among other things, the impugned orders of penalty.

3. The facts of the case resulting in the initiation of departmental action against the applicants are summed up below. The applicants S/Shri A.D. Kambli, C.M. Amrute, B.N.Bhangare, S.M. Hiremath, and Abhijeet Roy, were Superintendent Group B, LDC, Inspector, Sr. Grade Inspector and Inspector respectively in Central Excise, Patal Ganga Range, of Mumbai III Commissionerate. The other applicants viz. S/Shri V.S. Mahapadi, N.M. Mulla and V.S.Nair were Inspector, Sr. Grade Inspector and Inspector respectively and were attached to Audit Section/Wing, of Mumbai III Commissionerate during the period 1989-90. They were further promoted to the posts mentioned in the table given above.

4. The Collector of Central Excise, Mumbai III Mumbai received complaint that M/s. Prestige H.M. Poly Container Ltd. manufacturer of H.D.P.E. Barrels had been suppressing production figures and receiving Modvat Credit illegally and removing the excisable goods without paying Central Excise Duty. Following this complaint, the factories of the company at Patal Ganga and Talasari and other premises were raided by the Central Excise Department. During the the raid, certain documents were seized under Panchanama dated 8.1.1991. Certain documents called "Note of Fixed Factory Imprest A/c" (Exhibit S2) giving details of the suppressed stocks and payment on them. Statements of Shri H.S. Kaamthan, General Manager, and other employees of the company were recorded on different dates in January and February 1991. Following this preliminary enquiry and the advice of the C.B.I. records of the company were audited by Audit Section of Central Excise. A Special Audit Party highlighted the irregularities committed by the company from June 1989 to June 1990. A Show Cause Notice was issued to the Company for suppression of production figures and illegal availment of Modvat and evasion of excise duty. Preliminary Enquiry was conducted by the C.B.I. against 13 officials including applicants as the department was of the view that there was prima facie case of excise duty evasion by the company and payment of bribes to the applicants. On completion of investigation by the C.B.I., departmental enquiries were instituted against the 8 applicants of these O.As. and chargesheets issued to them by the following Memos:

Memo dated 15.4.1994 to Shri A.D. Kambli, Assistant Collector under Rule 14 of CCS (CCA) Rules, 1965.

Memos dated 12.9.9.1994 to the S/Shri N.M. Mulla, Supdt., S.M. Hiremath, Supdt., C.M. Amrute, Inspector; Abhijeet Roy, Inspector; V.S. Mahapadi, Inspector and S.V.. Nair, Inspector under Rule 14 of CCS (CCA) Rules, 1965.

Memo dated 12.9.1994 to Shri B.N. Bhangare, Supdt. under Rule 16 of CCS (CCA) Rules, 1965.

The following charges were framed against the applicants:-

(i) Shri A.D. Kambli (Memo dated 15.4.94)

Shri A.D. Kambli, while functioning as Superintendent, Central Excise of Patalganga Range, Bombay III during the period from 26.6.88 to 11.1.90 committed gross misconduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. amounting to Rs. 14000/- on different dates for showing undue favour to the factory in evading the Central Excise duty and over looking other irregularities committed by the factory as pointed out in the special audit report and briefly summarized in the statement of imputations.

(ii) Shri C.M. Amrute (Memo dated 12.9.94)

Shri C.M. Amrute, while functioning as Inspector, Central Excise of Patalganga Range, Bombay-III during the period from 6.10.87 to 14.8.89 committed gross misconduct in as much as he received illegal payments from M/s. Prestige H.M.

Polycontainer Ltd. amounting to rs.43,000/- on different dates for showing undue favour to the factory in evading the Central Excise duty and over looking other irregularities committed by the factory.

(iii) Shri B.N.Bhangare (Memo dated 12.9.94)

The allegations against the C.O. was that while holding the additional charge of Patalganga Range (in addition to his charge of Rasayani Range) from 14.8.90 to 30.10.90 he received illegal payments from M/s Prestige H.M. Polycontainers Ltd., amounting to rs.2000/- on different dates. The seized note book of imprest amount shows this payment as below:-

Amount	Date	Page	Remarks
Rs.1000/	8.9.90	27	Regular payment for August, 1990
Rs.1000/-	3.9.90	29	Regular payment for September, 1990

On 7.1.91, simultaneous raids were conducted at both the factories of M/s Prestige H.M. Polycontainers Ltd., manufacturer of H.D.P.F. barrels falling under sub-heading No.3923.00 of C.E.T.A., 1965.

Twenty five drums selected at random from the goods seized, were physically weighed at the time of provisional

releases which showed the average weight per drum as 9.02 Kgs. as against is 9.2 Kgs. The consumption of raw material indicated by the assessee at the rate of 10.5 Kgs. The drums manufactured from the balance raw material of 9.3 Kgs.(10.5 - 10.2 Kgs.) were being cleared without accounting for in the Central Excise records and without payment of Central Excise duty leviable thereon.

Patalganga factory, during the period from January 1987 to January, 1991, consumed a total quantity of M.T. 5840.036 raw materials, as verified from their private records viz. daily stock register and based on average weight of barrel, it is observed that party has cleared 18030 barrels without payment of duty, amount Rs. 22,98,825 basic plus Rs.1,14,941.25 as S.E.D. (considering the value of one drum at as Rs. 425/- and duty 30% Adv.) as evident from Show cause Notice No.V/Adj/15-3/91 dated 5.7.91, issued by the Collector, Bombay-III.

The evasion of Central Excise duty shown above and the corresponding illegal payments made on regular monthly installments as per the note book seized ascertained that Shri B.N. Bhangare committed a misconduct in showing undue favour to M/s Prestige Polycontainers Ltd., Patalganga.

The aforesaid act on the part of Shri B.N. Bhangare clearly showed that he did not maintain absolute integrity and acted in a manner unbecoming of Govt. servant and thereby contravened Rule 3 (I) (i) and (ii) of CCS (conduct) Rules, 1964.

(iv) Shri S.M. Hiremath (Memc dated 12.9.94)

Shri S.M. Hiremath, while functioning as Superintendent, Central Excise of Patalganga Range, Bombay-III during the period from 11.1.90 to 14.8.90, committed gross misconduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. amounting to ars.11000/- on different dates for showing undue favour to the factory in evading the Central Excise duty and over looking other irregularities.

(v) Shri Abhijeet Roy (Memo dated 12.9.94)

Shri Abhijeet Roy, while functioning as Inspector, Central Excise of Patalganga Range, Bombay-III during the period from 14.8.89 to 16.4.90 committed gross misconduct conduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. amounting to Rs.117,500/- on different dates for showing undue favour to the factory in evading the Central Excise duty and over looking other irregularities committed by the factory.

(vi) Shri V.S. Mahapadi (Memo dated 12.9.94)

Shri V.S.. Mahapadi, while functioning as Inspector, central Excise, Audit H. Qrs. Bombay-III during the period July, 1990 to Sept. 1990 committed gross misconduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. amounting to rs.30,000/- for himself as well as other members of the audit team for showing undue favour to

the factory in over looking the irregularities committed by the factory by raising no audit objection and thereby giving clean chit to the factory.

(vii) Shri N.M. Mulla (Memo dated 12.9.94)

Shri N.M. Mulla while functioning as Superintendent, Central Excise, Audit H. Qrs. Bombay-III during the period Sept. 1989 to Sept. 1990, committed gross misconduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. amounting to rs.30,000/- for himself as well as other members of the audit team for showing undue favour to the factory in over looking the irregularities committed by the factory by raising no audit objection and thereby giving clean chit to the factory.

(viii) Shri S.V.. Nair (Memo dated 12.9.94)

Shri S.V.. Nair while functioning as Inspector, Central Excise, Audit H.Qrs. Bombay-III during the period July 1990 to Sept. 90 committed gross misconduct in as much as he received illegal payments from M/s Prestige H.M. Polycontainers Ltd. anounting to rs.30,000/- for himself as well as other members of the audit team for showing undue favour to the factory in over looking the irregularities committed by the factory by raising no audit objection and thereby giving clean chit to the factory.

The aforesaid act on the parts of S/Shri A.D. Kambli, S.M. Hiremath, C.M. Amrute, Abhijeet Roy, N.M. Mulla, V.S. Mahapadi and S.V.. Nair showed that they did not maintain

absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3 (I) (i) and (iii) of CCS (Conduct) Rules, 1964.

5. All the applicants submitted written statements denying the charges framed against them by the respondents. Shri J.D. Verma, Commissioner for Departmental Enquiry was appointed Inquiry Officer. Shri P.G. Ahiwale, Retired Assistant Commissioner, Shri V.M. Bhatia, Central Excise Inspector, Shri N.D.Gokhale and Shri M.P. Sehgal were examined as prosecution witnesses. None of the officers of the company whose statements were recorded during preliminary inquiry was examined as witness. None of the documents produced on behalf of the department was considered for examination by the authors of those documents.

6. The Inquiry Officer (I.O.) in his reports gave the findings that the Charge No.1 was proved against all the applicants and Charge No.2 against all applicants except Shri B.N. Bhangare stood partly proved and that Charge No.2 against Shri B.N.Bhangare was not proved. The applicants submitted representations to the Disciplinary Authority against findings of the Inquiry Report copies of which were made available to them. The Disciplinary Authority after obtaining the advice of the UPSC passed the impugned orders imposing penalty on the applicants as mentioned in the statement given above.

7. The applicants filed 8 separate O.As. before the Tribunal. This Tribunal, on consideration of pleadings and records and the submissions made on behalf of the the applicants and for the respondents passed a common order dated 18.4.2000 in all the 8 O.As. allowing the OAs and quashing the penalties imposed on all the applicants with all consequential benefits.

8. The respondents who filed Writ Petition No.5235 along with 5236, 5346 of 2002 in the Hon'ble High Court of Bombay against the orders of the Tribunal. The Hon'ble High Court of Bombay vide judgement dated 9.1.2003, set aside the order of Tribunal and remitted the O.As for speedy disposal. Since common questions of law and facts are involved in these OAs, we have decided to dispose them of by a common order.

9. We heard Shri V.S. Masurkar for applicants 1 to 4 and 7, Shri G.K. Masand, for 5 to 6, Shri S.N. Pillai for Applicant No.8 and Shri M.I. Sethna, for the respondents.

10. The arguments of the applicants which were almost identical are in brief as follows:

11. The I.O., the U.P.S.C. and the Disciplinary Authority wrongly relied upon the fictitious facts from Exhibit S2 and personal diary of General Manager Shri H.S. Kaamthan of the Company (Exh.14) and the statement of Shri Kamthan, Shri Anil Jain and Shri L.K. Sinha and Shri Rakesh Whig which were recorded in preliminary enquiry. These documents were obtained behind the back of the applicants. Exhibit S2 was written in a haphazard manner by different persons. This document was not maintained by the company in normal course of business, nor was it authenticated by any officer of the company. The identities of the authors of Exh. S2 were not known nor were they examined as witnesses. In spite of total lack of evidentiary value of Exh. S2 and Exh.S14 and non corroboration by their authors, the I.O. and UPSC as well as Disciplinary Authority relied on these documents. There was no evidence in support of their findings

that the applicants were receiving bribes from the company. Shri Kaamthan, Shri Jain, and Shri L.K.Sinha on whose statements recorded during preliminary enquiry were relied upon by the I.O., the UPSC and the Disciplinary Authority were, strangely enough not examined as witnesses nor allowed to be cross examined by the applicants during departmental proceedings. Under these circumstances, the statements of these company officers and diary of Shri Kaamthan (Exh.S14) and Exhibit S2 were not worthy of credence. This apart, none of the officials of Excise Department who had raided the factories of the company were examined as witnesses nor was the applicants given an opportunity to cross examine them. Shri Kamthan whose diary and statement were treated as evidence retracted his statements dated 8.1.1991 and 15.1.1991 by letter dated 16.1.1991. This was revealed by the statement dated 26.4.1991 of Supdt. (Vig.) Shri P.G. Jadhav. The I.O. lost sight of this vital fact. None of the applicants were examined under Rule 14 (18) of the CCS (CCA) Rules. Exh.S2 and Exh.S14, in the absence of examination of the authors of these documents and without affording of an opportunity to the applicants to cross-examine them constitute no evidence. Thus, the findings of the I.O., the advice of the UPSC and the penalty orders passed by the disciplinary authority are liable to be rejected in toto as they are not supported by a shred of evidence. The respondents, singled out 8 applicants for disciplinary proceedings and punishment based on no evidence while allowing 5 other officers of Central Excise Department to go unscathed. Thus the applicants were subjected to hostile discrimination.

12. The learned counsel for the applicants relied upon the following judgements.

1. *Kuldeep Singh vs. Commissioner of Police 1999 SCC (LCS) 429*

2. *Sher Bahadur vs. UOI 2002 (2) SC (SLJ) 294*

3. *Ministry of Finance vs. S.B. Ramesh (1998) 3 SCC 227*

4. *V.D.Joseph vs. UOI (1990) 14 ATC 99 CAT Ernakulam.*

The learned counsel for the applicants further argued that the advice of the UPSC is based on surmises and conjectures. The UPSC lost sight of the fact that none of the key witnesses both of the company and of the raiding party of the excise department was examined. This apart, the audit report based on which excise duty evasion by the company was uncovered and nexus between excise duty evasion and the alleged payment of bribes to the applicants was established was not made available to the applicants during the enquiries. Nor were they allowed to examine its findings.

13. The learned counsel for the respondents, Shri M.I.Sethna advanced the following contentions. The contention of the applicant that the Inquiry Report and penalty orders were sustained by no evidence is untenable. Exh. S2 and Exh. S14 Imprest Statement and Personal Diary of Shri Kaamthan respondents established that there was a nexus between the evasion of Excise Duty and receipt of illegal payments from the company. The degree of proof required in departmental enquiry to establish the misconduct need not be of such a high standard as required to prove the guilt of an accused in a criminal case. What is required is some evidence and preponderance of probability as per the law laid down by the Hon'ble Supreme Court. The findings of the I.O., the consequential penalty orders are not vitiated in any way as preponderance of probabilities revealed by Exh. S2, Exh S 14 and statement of the Shri Kaamthan, and other company's employees demonstrated that the applicants had

received illegal gratification from the company. The officials who conducted the raid at the company could not be examined as Shri M.D. Kelkar Supdt. Central Excise had died before the commencement of departmental proceedings. The Tribunal is not the Court of Appeal nor can it go into the question of assessment of evidence in support of findings of the I.O. As regards the non examination of Shri Kaamthan and other officers of the company, the I.O. could not compel the attendance of these witnesses. The company officials did not turn up despite notices issued to them. The I.O. rightly relied on Exh. S2 and Exh.14 and statements of company officers recorded in preliminary enquiry which provided some evidence and preponderance of probability that the applicants had received illegal payments from the company.

14. The learned counsel relied upon the judgement of the Hon'ble Supreme Court in *UOI and Ors. v/s. B.K.Srivastava (Civil Appeal No.7458 of 1997) 1998 (1) SC SLJ 74* in support of his contention that the Tribunal cannot sit in appeal against the order of the Disciplinary Authority in its powers of judicial review.

15. We heard both sides and perused the records. It is indisputable that the I.O., the UPSC and the Disciplinary Authority implicitly relied upon Exh. S2 and S14 as the key documents leading to the conclusion that the applicants had received bribes from the company. There is no material to show that the Exh.S2 was maintained in the normal course of business

of the company. The identity of the persons, who made random entries in the Exh.S2 was not brought to light, nor were they examined during departmental proceedings. The applicants had no opportunity to examine the authors of Exh. S2 which was written in haphazard manner by different unknown persons and which were not checked and endorsed by any Officer of the company. Strangely enough, the document of such dubious worth provided to the I.O. was accepted without thorough examination and firm corroboration as a material for establishment of the charges against the applicants. The Exhibit S2 cannot be regarded as evidence. Incidentally, the names of the applicants do not figure in the Exh.S2. Unless a document's authenticity is substantiated by its authors in the presence of the persons adversely affected, and the persons affected are given an opportunity to cross examine such authors, the contents of the such document constitutes no evidence. So is the case, of Exh. S2 and S14 the diary of Shri Kaamthan. Shri Kaamthan, Shri L.K.Sinha and Shri Anil Jain were not examined as witness. The I.O., the UPSC and the Disciplinary Authority relied upon these two documents (Exhibit S2 and S14) which, according to our view, constitute no evidence, leave aside, the sufficiet and tangible evidence to prove the charges against the applicants. The Hon'ble Supreme Court in the case of *Kuldeep Singh vs. Commissioner of Police 1999 SCC (LCS) 429* (supra) held as follows:

> *"32..... Reasonable opportunity contemplated by Article 311 (2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is*

proposed to be brought on record in the departmental proceedings, the law as laid down by his Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

35..... Having regard to the law as set out above and also having regard to the fact that the factors set out in Rule i6 (3) of the Delhi Police (P&A) Rules, 1980 did not exist with the result that Rule 16 (3) itself could not be invoked, we are of the opinion that the enquiry officer was not right in bringing on record the so called previous statement of witnesses, Radhey Shyam and Rajpal Singh."

16. The findings of the I.O. against the applicants based on no evidence are rendered worthless.

17. The next point for consideration is whether the Inquiry was conducted in accordance with the procedure. As mentioned above, Shri Kaamthan, General Manager of the company, Shri Jain, Shri L.K.Sinha, on whose statements recorded behind the backs of the applicants and during the preliminary enquiry were not examined as witnesses. The plea of the respondents that Shri Kamthan and other company officers did not turn up to tender their evidence in spite of notices issued to them does not carry conviction. The I.O. had ample power to summon and enforce the appearance of any witness and examine him. The I.O. did not take any action to enforce the appearance of Shri Kamthan, and other officers of the company as witnesses.

18. It is surprising that even the departmental officers who conducted the raid of the factories of the company were not examined as witnesses. It is true, as contended by the respondents, that Shri M.K. Kelkar,(Supdt.) Central Exise could not be summoned as a witness as he was not alive. But Shri P.G. Jadhav, Supdt. (Vig.) Central Excise who had recorded the statements of Shri Kamthan and Shri Anil Jain and Shri L.K.Sinha

employees of the company and Shri R.C. Mohapatra, Asstt.Commr. (Vig.) who had recorded the statement of Shri Rakesh Whig, Ex. General Manager of the company were not examined. It defies comprehension why the I.O. did not examine the departmental officers who were closely involved in the preliminary enquiry into the evasion of excise duty and irregularities committed by the company which resulted in institution of departmental proceedings against the applicants and imposition of penalties on them. The observations made by UPSC on this point are reproduced belows:

> "*What is surprising is that none of the listed witnesses from the Central Excise Department who were involved in the case, including Shri Kelkar, who led the raid on 8.1.1991 or Shri G.P. Jadhav, Supdt. (Vigilance) attended the I.O's departmental inquiry.*"

The non examination of the listed witnesses who recorded the statements of Shri H.S. Kaamthan, and other officers of the company in the preliminary enquiry which were accepted by the Inquiry Officer unambiguously is a glaring omission on the part of the I.O.

Rule 14 (18) of the CCS (CCA) envisages as follows:

> "The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question

him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

19. The I.O. did not comply with this rule. He merely asked the applicants whether they had received any illegal payments from the company for showing undue favour to them. The applicants denied this charge. No other questions on the circumstances appearing against the applicants were put to them. We are of the view that the manner in which the I. O. held the general examination of the applicants was perfunctory and casual. The applicants were denied an opportunity to explain their conduct in the circumstances appearing in the material produced by Exh.S2 to Exh. S14. Both these Exhibits as mentioned above cannot be regarded as evidence in view of non examination of authors of the Exhibits and denial of opportunity to the applicants to cross examine them denying the charges framed against them.

20. The applicants submitted comprehensive representations to the Disciplinary Authority. The Disciplinary Authority did not examine these representations in depth nor recorded reasons for rejecting the submissions made by the applicants in these representations. The summary disposal of the submissions made by the applicants in their representations without assigning any reasons was unfair and arbitrary. The impugned orders are stereotyped and conventional orders passed against the applicants, based on documents of no evidentiary value and without in depth analysis of material.

21. The I.O. , the UPSC and the Disciplinary Authority, all three authorities came to the conclusion that the charges framed against the applicants were proved by preponderance of probability. The Hon'ble Apex Court held that what is required in departmental enquiry for proving the charges is preponderance of probability. It does not mean without concrete evidence tendered by listed witnesses and reliable documents, and without affording an opportunity to the applicants to cross- examine such witnesses, preponderance of probability can be arrived at. There was hardly any preponderance of probability leading to the proof of the charges. Preponderance of probability is not the same as medley of conjectures and surmises based on documents of dubious worth obtained during preliminary enquiry and accepted implicitly without examination of the authors of documents as witnesses and denying the applicants an opportunity to cross examine the authors of those documents. Thus, there was no preponderance of probability proving the charges.

22. It may be relevant to reproduce the observations made by the Hon'ble Supreme Court in Civil Appeal No.5055/2002 *Sher Bahadur vs. UOI 2002 (2) SC (SLJ) 294 (supra)* on the nature of evidence required for proving the charges.

> *"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links that charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer is no evidence in law. The mere fact that the enquiry officer has noted in his report "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle*

..23/

satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh. R.A. Vashist, Ex. VCI/N Rly. New Delhi in support of the charges, he was not examined. Regarding documentary evidence, Ex. P.I, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in thelight of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgement and order of the High Court and the order of the disciplinary, authority, under challenge, cannot be sustained, they are accordingly set aside."

23. In our considered view, there was no evidence to link the applicants with the charges framed against them, leave aside "sufficiency of evidence". The aforesad judgement of the Hon'ble Supreme Court is applicable to this case. This apart, there were glaring procedural irregularities like non-examination of witnesses and charged officers.

24. In the light of the facts stated above, the impugned penalty orders against the applicants are liable to be set aside. Accordingly, we pass the following orders.

(i) OA No.605/2000 A.D. Kambli vs. UOI

(ii)OA No.606/2000 C.M. Amrute vs. UOI

(iii)OA No.643/2000 Abhijit Roy vs. UOI

(iv) OA No.642 Vilas Shivram Mahapadi vs. UOI

and

(v) OA 649/2000 S.V.. Nair vs. UOI are allowed

and impugned orders of dismissal of the aforesaid five applicants from service are set aside. The above mentioned applicants shall be reinstated in service forthwith with all consequential benefits including arrears of salary, promotion, seniority etc.

(ii) OA 607/2000 B.N. Bhangare vs. UOI is allowed and the impugned penalty order against him is set aside. The applicant will be given all consequential benefits.

(iii) (i) OA 610/2000 S.M. Hiremath vs. UOI (ii) OA 611/2000 N.M.. Mulla vs. UOI are allowed. The impugned penalty orders against these two applicants are set aside with all consequential benefits to them. The respondents are directed to immediately release all the pensionary benefits including the gratuity to the applicants of these OAs along with interest @ 9% per annum on the amount due till the date of actual payment.

25. These directions shall be carried out within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

(S.K.Hajra)
Member (A)

(A.V. Haridasan)
Vice Chairman (J)

sj*