CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 96/96 IN M.P. NO. 535/96. O.A. NO.: 1002/94.

Dated, this 28th, the Thursday day of November, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

S. S. Vartak ... Applicant

Versus

Union Of India & Others ... Respondents.

Tribunal's order by circulation :

The applicant has filed this review petition seeking review of the order dated 02.09.1996 wherein the M.P. filed by the applicant has been dismissed. In that M.P. the applicant was seeking extension of time to stay in the quarter though he has superannuated on 30.06.1996. However, in the review petition, the applicant is seeking review of the aforesaid order and direction to the State of Maharashtra not to evict him from the Government Quarters in his possession till final disposal of the proceedings before the Hon'ble High Court, Bombay, in the criminal appeal No. 436/92 etc. as well as till the final disposal of O.A. No. 1002/94 pending before the Hon'ble Tribunal. Since the applicant has already superannuated, the question of allowing him to continue in the quarter by virtue of final disposal of the criminal appeal as well as O.A. does not arise.

...2

2. In the circumstances, we do not see any merit in the review petition and the same is dismissed by circulation.

(M. R. KOLHATKAR)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

os*

28/11/96
order/Judgement despatched
to Applicant/Respondent (s)
on 5/12/96

5/12/96

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1002/9~~4~~199

Date of Decision: 7th Sept.98

S.S. Vartak — Petitioner/s

— Advocate for the Petitioner/s

V/s.

UOI Min. of Personnel & 2 ors. — Respondent/s

R K Shetty for R. *&3
V.S. Masurkar for R2 — Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member(A)

(1) To be referred to the Reporter or not ? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 1002/94

DATED: THIS 7th DAY OF SEPTEMBER, 1998

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, V.C.
HON'BLE SHRI D.S. BAWEJA, MEMBER(A)

Shreekant Sitaram Vartak,
Ex-member of the I.A.S. on
the Maharashtra Cadre,
R/O. 17/A-14 Govt. Officers Qts.,
Haji Ali, Mumbai 400034 ..Applicant

V/s.

1. The Union of India, New Delhi
(copy to be served on the
Secretary to Govt. of India,
Department of Personnel and
Training, Ministry of Personnel,
Public Grievances and Training,
North Block, New Delhi)

2. The State of Maharashtra
represented by the
Chief Secretary,
General Administration Dept.,
Mantralaya,
Mumbai 400032.

3. The Union Public Service Commission
Dholpur House
Shahajahan Road
New Delhi 110011
(to be served on the
Secretary, UPSC)

(By Adv. Mr. R.K. Shetty, Counsel
for Respondents 1 & 3;
Adv. Mr. V S Masurkar,
Counsel for Respondent No2) ..Respondents

ORDER
[PER:R.G.VAIDYANATHA, VICE CHAIRMAN]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the applicant appearing in person and Mr. R K Shetty, counsel for Respondents 1 and 3 and Mr. V S Masurkar for Respondent No.2. Learned counsel for the respondents has also made available the entire inquiry file.

2. The applicant was an I.A.S. officer of Maharashtra Cadre. Earlier he belonged to State Service of Maharashtra Government and later promoted to the I.A.S. cadre. During the relevant period viz., from 25.8.1975 to 2.1.1979 the applicant was working as Special Land Acquisition Officer for Ujjani Project, Pune District. It was an irrigation project across Bhima River. After receiving an anonymous petition against the applicant in the office of the Lokayukta a preliminary enquiry was held by the Anti Corruption Bureau. A special audit was directed of the affairs of the office of the Special Land acquisition Officer of Ujjani. Many financial irregularities were noticed. It was also noticed that the applicant had drawn lakhs of rupees from the Government funds for payment towards compensation of land to holders of the land under the Land Acquisition Act, but the applicant retained the amount for long period without paying the same to the awardees or without re-depositing the amount to the Government account. Thus the applicant temporarily misappropriated the funds. The applicant came to be suspended by order dated 2.8.95. Departmental enquiry was initiated against the applicant by issuing a charge sheet. Again there were parallel proceedings by lodging F.I.R. with the police. The police did investigation and filed a charge sheet in the criminal court against the applicant for for offence of misappropriation and criminal breach of trust in addition to offences under the prevention of Corruption Act. Mr.

V.T.Chari, the then Additional Chief Secretary, was appointed as Inquiry Authority in the departmental proceedings. The applicant did not file any written statement. 14 witnesses were examined during the inquiry. The applicant did not examine himself or any witness on his behalf. The Inquiry Authority submitted a Report dated 17.9.88 holding that the charges are proved against the applicant though he has mentioned that some of the charges are partially proved. After receiving a copy of the Inquiry Report the applicant submitted his representation to the Disciplinary Authority. The Disciplinary Authority viz., The President of India, after consulting Public Service Commission passed the impugned order dated 16.8.1993 by imposing penalty of dismissal from service against the applicant.

3. In the meanwhile there was progress in the criminal trial in special case No.5/85 on the file of Special Judge, Pune. The applicant and two other officials were accused in that case. Number of witnesses were examined in the criminal case. Then by judgment dated 12.5.92 the learned Special Judge, Pune acquitted all the three accused. Then the State filed an appeal before the High Court against the order of acquittal in Criminal Appeal No.436/92. By judgment dated 16.7.97 (during the pendency of the present application) a Division Bench of the High Court dismissed the State Appeal and confirmed the order of acquittal.

4. The applicant is challenging the order of the disciplinary authority on many grounds. His case is that he is innocent and he was a victim of circumstances. He had a blame less record through out and he was prosecuted and victimized at the instance of Mr. Kale and others. The inquiry authority was biased against the applicant since he had dealt with the file at the earlier stages. That the inquiry is bad for violation of principles of natural justice. The disciplinary authority has not taken into consideration the judgement of acquittal of the criminal court. The disciplinary authority has not accepted the recommendation of the UPSC regarding punishment. The order of the disciplinary authority is erroneous capricious and malafide. Hence he prays for setting aside the order of the disciplinary authority with all consequential benefits like reinstatement, backwages etc. He has, therefore, approached this Tribunal for quashing and setting aside the impugned order dated 16.8.1993 and for reinstatement with continuity in service with all back wages, proforma promotions, other consequential benefits. By way of interim order he wanted protection from eviction from the Government quarters. An interim order was passed by this Tribunal against eviction of the applicant till the date of his superannuation.

5. Respondents in their reply have justified the action taken against the applicant about initiating criminal proceedings as well as departmental inquiry. It was submitted that there was sufficient evidence adduced

during the departmental inquiry to substantiate the charges framed against the applicant. Respondents have justified the inquiry report and the order of the disciplinary authority in imposing the penalty of dismissal from service. They have stated that no grounds are made out for interfering with the impugned order.

6. At the time of arguments the applicant who appeared in person raised few grounds for challenging the impugned order of punishment. His submission was that enquiry authority was biased and prejudiced against him and therefore the inquiry is vitiated. That there is violation of principles of natural justice and the applicant had no opportunity to lead evidence. That in view of the acquittal by the criminal court, the finding of guilt recorded in the departmental enquiry is not sustainable and deserves to be quashed. That holding parallel proceedings both on the departmental side and criminal side is bad in law and the departmental inquiry should have been stayed till the termination of the criminal case. Then comment was made of non-examination of some material witnesses during the departmental inquiry. That the report of inquiry authority and the order of the disciplinary authority are perverse. The disciplinary authority has not taken into consideration the judgment of the criminal court which the applicant had sent.

7. In the light of the arguments addressed before us the points fall for consideration are :

i) Whether the applicant has made out any case for interfering in the departmental inquiry and the final order passed by the disciplinary authority ?

ii) Whether the applicant has made out a case for interfering with the penalty imposed by the disciplinary authority ?

iii) What order ?

POINT No. (i):

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8. The first contention of the applicant is that V.T.Chari, the inquiring authority, was biased or prejudiced against the applicant and the only reason given before us is that he had occasion to handle some papers of the applicant pertaining to sanction of prosecution etc. The applicant did not say that there was any personal ill will, or animosity or hostility between him and the inquiry officer. The only submission is that the inquiry officer had an occasion to handle the papers pertaining to sanction of prosecution. Even if it is so, Mr. V T Chari would have dealt with the same as Secretary to the Government and not in his personal

capacity. It cannot be a case of prejudice or bias in a matter like this. Further no such objection was taken before the inquiry authority that he should not conduct the inquiry since he has dealt with applicant's file at an early stage in his official capacity. No such representation was given before the disciplinary authority objecting the appointment of V T Chari as inquiry authority. The objection of such a type should be taken at the earliest point of time. It is now being raised in this Tribunal for the first time in 1994 when this application was filed in respect of inquiry which commenced in 1987 and completed in 1988. Suppose the applicant had raised this objection at the earliest point of time before the inquiry officer or before the disciplinary authority and if there was any merit in that stand of the applicant the inquiry authority would have excused himself from conducting the inquiry and requested the Government to appoint another officer as an Inquiry Officer. Having not taken any such step when the inquiry was pending and raising the point in 1994 when this application was filed is too late. If we accept this contention the whole enquiry proceedings are to be quashed and direct the Government to hold de-nova inquiry by appointing another inquiry officer. We can not set back the clock after a lapse of so many years on the ground that is now pressed into service, a position which was never taken at the earliest point of time when it should have been taken. We have carefully gone through the very lengthy report of the inquiry officer. The

order does not give any indication of any prejudice or bias in his report. He has prepared a well reasoned order meeting all the contentions of the applicant and giving detailed reasons for his conclusions. Therefore, the first contention urged by the applicant has no merit and accordingly rejected.

9. The argument of the applicant about violation of principles of natural justice has absolutely no merit. Charge sheet was served on the applicant. He was given opportunity and time to file his written statement. He declined to give a written statement. Even now he supports his stand that he did not file written statement since there was a criminal case pending. He fully participated in the inquiry. He fully cross examined the witnesses at length, then at the end of the inquiry he was again examined by the inquiry officer, and then the applicant submitted that he would give all his contentions in a written brief. Then applicant submitted a lengthy written brief running into 136 pages. He has taken all possible contentions on merits both on facts and law in his written brief. The applicant declined to examine himself or any witnesses on his behalf. Therefore, we find that the applicant had full and sufficient opportunity to defend himself in the inquiry. Hence the argument that there was violation of principles of natural justice has absolutely no foundation in the facts and circumstances of the case. One of his contentions was that during the inquiry the inquiry

officer orally made a statement that he will not consider the question of misappropriation, but in the inquiry report he has given a finding on this. We find no merit in the contention of the applicant since it is not borne out from the proceeding sheet maintained by the inquiry officer. There is nothing to show that inquiry officer held out any such assurance to the applicant so as to deprive him from producing any evidence. We therefore see no merit in this submission.

10. The argument of the applicant that departmental proceedings should not have been proceeded with till the completion of the criminal proceedings has also no merit. In law there is no bar of parallel proceedings on the criminal side and departmental side. On the other hand the trend of decisions of the Supreme Court is that departmental inquiry need not wait till the conclusion of the criminal trial. It is pointed by the Supreme Court that criminal cases may take long time and in the interest of administration, the departmental proceedings should be expedited. In fact in one case the Supreme Court rejected an application for stay of the departmental inquiry till the disposal of the criminal case. It is also held by the Supreme Court in one or two cases that criminal case and disciplinary case can go on simultaneously. [vide 1997(1) AISLJ 241 DEPOT MANAGER ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION Vs. MOHD. YUSUF MIYA & ORS.; 1997(1) AISLJ 86 STATE OF RAJASTHAN Vs. B.K. MEENA & ORS.]. Therefore, we find

no merit in the applicant's contention that the departmental inquiry should have been stayed till the conclusion of the criminal case. Even here we may mentioned that no such attempt was made by requesting in writing either to the inquiry officer or the disciplinary authority to stay further proceedings till the conclusion of the criminal case. No attempt was made to approach a court or tribunal for stay of the departmental inquiry till the conclusion of the criminal trial. Hence it is too late in the day now after the final order to say that departmental inquiry should have been stayed till the disposal of the criminal case. Hence we see no merit in this contention.

11. Then a submission was made about non-examination of some material witnesses. In particular it was submitted that Mr. Nimbhalkar, Mr. Gupte, Mr.Afjulpurkar, were material witnesses and they were not examined in the departmental enquiry. It is for the prosecution to decide as to which witnesses are material and relevant, the presenting officer examines those witnesses who are necessary to prove the case of the department. If the applicant felt that some more witnesses were necessary he could have examined them instead he did not choose to examine any witness on his behalf. The question is whether the evidence on record is sufficient to prove the charges framed against the applicant. If the evidence is sufficient then non-examination of some witnesses is of no consequence. If the evidence on record is

insufficient then the applicant is entitled to be exonerated. Therefore, the question for consideration is whether the evidence adduced during the inquiry was sufficient to sustain the charges framed against the applicant? The inquiry authority has given detailed reasons in support of its conclusion that evidence on record is sufficient to prove the charges framed against the applicant. The disciplinary authority has concurred with the reasoning and findings of the inquiry officer. Even the Public Service Commission while giving its opinion has examined the facts and concurred with the findings of the inquiry officer. Therefore, the question of examination of some more witnesses is wholly irrelevant if the material on record is sufficient to prove the charges against the applicant.

12. It was argued that the finding of the inquiry officer and the disciplinary authority are perverse and that the charges are not proved against applicant. In our view of this submission of insufficiency of evidence and the correctness of the findings recorded by the inquiry officer or disciplinary authority cannot be gone into while exercising judicial review by this Tribunal. The scope of judicial review is very very limited. We can only consider any illegal or irregularity in the decision making process and not in the actual decision itself. We have already seen some of the legal contentions raised by the applicant regarding holding of disciplinary enquiry and rejected all the contentions.

Now we cannot reappreciate the evidence on record and then come to one conclusion or the other as an appellate authority. We are not sitting in appeal over the findings of the inquiry officer or the disciplinary authority. We cannot reappreciate the evidence and take a different view, even if another view is possible from the material on record. The recent judicial trend is that while exercising judicial review the Court or Tribunal cannot reappreciate the evidence as an appellate court. It is held that it is no part of the function of the Tribunal to substitute it own decision in the place of the decision of the competent authority. [vide 1998(1) SC SLJ 74, UNION OF INDIA & ORS. Vs. B.K. SRIVASTAVA]. Therefore, we hold that this Tribunal cannot reappreciate the evidence or discuss the evidence.

13. However, we briefly consider the case against the applicant on merits. There were 11 charges framed against the applicant. The substance of the charges is as follows:

ARTICLE -1:

During his tenure for the three periods ie., from 25.8.75 to 11.4.77; 11.7.1977 to 16.1.19778 and 25.08.1978 to 2.1.1979, Shri Vartak had declared 13 awards in respect of the acquisition of various properties and had drawn from the Pune Treasury a total sum of Rs.1,30,12,007.05 for payment to the individual claimants of the 13 awards. He failed to disburse the same to the individual claimants within the stipulated period laid down in the Land Acquisition Manual for State of Maharashtra.

ARTICLE -2:

During the aforesaid three periods, Shri Vartak did not deposit the undisbursed amounts to the revenue deposits.

ARTICLE -3:

Shri Vartak declared Award No.19/71 in respect of village Dalaj and drew from the Treasure on 2nd June 1976 and the amount of Rs. 41,92,325.00 which was in excess of the requirement by Rs. 31,408.85.

ARTICLE -4:

During the aforesaid three periods, Shri Vartak failed to enter or cause to be entered in the cash book, the compensation amounts drawn from the Treasury and disbursed from time to time.

ARTICLE -5:

In respect of the amounts disbursed to the individual claimants Shri Vartak failed to maintain the necessary record to show the dated on which payments were made to the individual claimants.

ARTICLE -6:

On three occasions, i.e., on 11.4.1977, 16.1.1979, and 2.1.1979, Shri Vartak failed to hand over the cash balance to his respective successors, as required under Rule 78 of the Bombay Financial Rules, 1959 or to keep the said cash in the Treasury for safe custody, but kept it with him.

ARTICLE -7:

After 2.1.1979, Shri Vartak had ceased to hold the charge as Special Land Acquisition Officer, Ujjani Project II, he unauthorizedly disbursed amounts payable to individual claimants.

ARTICLE -8:

On several occasions, Shri Vartak failed either to hand over huge case with him to the successors or to keep the same in revenue

deposit and thereby caused wrongful loss to the Government/individual claimants.

ARTICLE -9:

On 2.1.1979, Shri Vartak was to hand over charge to his successor, Shri M G Kale and he was aware that he could not have disbursed any amount, to the individual claimant on the date of his handing over the charge and yet he on that day withdrew from the Treasury, a sum of Rs. 71,002/- and took away the same, instead of handing it over to his successor or depositing in the Revenue Deposit.

ARTICLE -10:

Shri Vartak failed to deposit in the Treasury/ Civil Court, Pune, the amounts which were deduced by him while paying the amounts to two individual claimants.

ARTICLE -11:

Shri Vartak committed the above mentioned acts of commission and omission with the intention of committing fraud and prepared false cash book in order to conceal the fraud committed by him."

In support of the above 11 charges details of imputation of allegations are given to point out in what manner the applicant committed serious financial irregularities. Articles of Charge 1 to 10 mainly speak about the financial irregularities committed by the applicant. In charge 11 the allegation is that applicant committed fraud by resorting to financial irregularities. In other words it gives an indication about misappropriation by the applicant in respect of various amounts which came to his hand as Special Land Acquisition Officer.

14. The substance of the allegation is that applicant as Land Acquisition Officer had drawn various amounts of

nearly Rupees One Crore and did not disburse the amount to respective claimants within time and kept the amount with himself without proper accounting and without paying to the claimants or redepositing the same into the Government account. In other words the imputation is that the applicant has misappropriated this money temporarily.

15. During the enquiry 14 witnesses were examined on behalf of the department. No witnesses were examined by the applicant. The Presenting Officer filed a written brief which contained his contentions. The applicant gave a detailed written brief running into 136 pages, taking all possible contentions both on point of law and facts. Then the inquiry authority prepared a very lengthy and exhaustive report running into as many as 144 pages. He has minutely considered the evidence of each witness, the nature of charges and allegations, contentions of the Presenting Officer on each charge and the contention of the applicant on each charge and then he has discussed the evidence and given his findings on every charge separately. In our view the inquiry officer has taken into consideration all contentions of both the parties and has given his considered findings with sufficient reasons and justification. He has held all the charges proved except Charge 11, which he held to be partly proved. We have gong through the deposition of the witnesses, all the documents on record and the detailed inquiry report and we are satisfied that the

inquiry officer has applied his mind and has written a well reasoned and exhaustive order holding that the charges are proved. We do not find any illegality or infirmity in the reasoning or finding of the inquiry authority.

16. Then we find that the Public Service Commission, to whom the matter was referred, has given a very detailed opinion considering all the charges and observing that the charges are duly proved (vide page 19 of the paper book). Then the disciplinary authority has passed the impugned order dated 16.8.93 which is at page 16 of the paper book. The disciplinary authority has also applied its mind to the facts of the case and given some reasons for accepting the report of the inquiry authority and even further held disagreeing with the inquiry officer that even memorandum of Article of Charge-11 is fully proved. After going through the materials on record we are satisfied that on merits the finding of the inquiry, the opinion of UPSC and the finding of the disciplinary authority are fully based on material on record and there is no legal infirmity in the three orders, except may be about the finding of the disciplinary authority of criminal breach of trust against the applicant.

17. Now the question is as to what is the effect of acquittal by the special court. In the trial court the charges were misappropriation, criminal breach of trust and offences under the prevention of Corruption Act. In

the disciplinary enquiry charges 1 to 10 pertain only to financial irregularities which were not subject matter of the criminal case. May be part of charge No.11 pertains to fraudulent act of the applicant implicating him of breach of trust or misappropriation. In view of the acquittal of the applicant by special court the charge of misappropriation or criminal breach of trust cannot be again tried in the disciplinary case. A perusal of the special court judgment shows that the court has held that this charge is not proved by producing sufficient evidence. The order of acquittal has been confirmed by the High Court in the criminal appeal. Therefore, the applicant cannot be again held guilty of misappropriation or criminal breach of trust in the disciplinary enquiry, when he has been fully acquitted by the special court. That is why the inquiry authority confined himself to only financial irregularities and held that charge 11 is not fully proved. Unfortunately the disciplinary authority has not taken into consideration the judgment of the special court which had come by that time. The applicant had sent a copy of the judgement of the special court to the disciplinary authority, but there is no reference in the impugned order of the disciplinary authority of the judgment of the special court.

18. As far as financial irregularities are concerned, the applicant cannot escape the liability and responsibility in spite of acquittal by the criminal court. The judgment of the Special Judge in special case

No.5/85 dated 12.5.1992 is at page 185 of the paper book. In many paragraphs the learned Special Judge has referred to the financial irregularities committed by the applicant which may be found at pages 241, 242, 245, 251, 256, 257 and 260 to 262.

Similarly the High Court which disposed off the criminal appeal No.463/92 by its judgement dated 16.7.97 has also noticed the financial irregularities committed by the applicant. In para 41 (page 488 of paper book) the Division Bench of the High Court has observed as follows:

> " It is, therefore, a case wherein there have been certain irregularities and violations of financial rules and norms. But it does not hold the prosecution in establishing offences of criminal breach of trust or misappropriation. At the most such breach of rules may be a reason to hold departmental inquiry and we are told by the Accused 1, 2 and 3 that such an inquiry was held against them and Accused No.1 has been dismissed ..." [Underlining ours]

19. Therefore, the High Court has also recorded a categorical finding about the financial irregularities committed by the applicant and even observed that he may be liable for departmental inquiry and noticed the departmental enquiry has already stated and resulted in the dismissal of the applicant. Therefore, in our view the acquittal in the criminal case has no bearing on charges 1 to 10 and partly charge no.11. Further, the applicant's acquittal regarding offence of criminal breach of trust and misappropriation will certainly come to his rescue so far as charge 11 is concerned.

20. Taking the over all picture of the case and having considered the entire evidence on record and circumstances of the case, we have no doubt in our mind that the finding of misconduct recorded by the inquiry authority and disciplinary authority is fully justified and does not call for interference by this Tribunal. Point (i) is answered accordingly.

POINT No.(ii):

21. The applicant submitted that the penalty of removal from service is very harsh and grossly disproportionate to the misconduct alleged against him. The learned counsels appearing for the respondents supported the penalty imposed by the disciplinary authority and further submitted that the jurisdiction of the Tribunal to interfere with the question of penalty is very very limited.

22. There is no dispute that the Tribunals jurisdiction to interfere with the quantum of penalty is very limited. The Tribunal can interfere only when the penalty imposed is grossly disproportionate so as to shock the conscience of the Tribunal. But here in this particular case we find that the disciplinary authority has not considered the material circumstances which have a bearing on the question of penalty.

23. The inquiry authority has given a considered finding that Charge No.11 is partly proved and not fully proved. The disciplinary authority has no doubt a right to disagree with the finding of the inquiry authority. But the disciplinary authority has not given detailed reasons as to how and why it is disagreeing with the view taken by the inquiry authority on Charge No.11. As already stated Charge No.11 comprises two parts - one is about the financial irregularities and the other about dishonest intention in retaining the amount which indicates criminal breach of trust or misappropriation. The applicant had sent a copy of the judgment of the criminal court while sending his reply after receiving the report of the inquiry authority. Unfortunately there is no mention, much less a discussion, about the judgement of the criminal court in the order of the disciplinary authority. On identical charges of criminal misappropriation and breach of trust the applicant was tried by a competent criminal court. The learned Special Judge by a very lengthy judgment held that the prosecution has failed to prove all the charges against the applicant including the misappropriation etc. The disciplinary authority should have considered the judgment of the criminal court and then tried to find out whether in spite of the acquittal by the criminal court the applicant can be found guilty on the entire Charge No.11. We have already pointed out as far as financial irregularities are concerned the disciplinary inquiry is independent of the criminal trial. In fact both the

Special Judge and the High Court have noticed certain financial irregularities but they have given a considered finding that misappropriation or criminal breach of trust was not proved.

24. As already stated the disciplinary authority has neither mentioned nor considered the judgement of the criminal court in its order. Then there is a subsequent development viz., the order of the High Court in the criminal appeal No.436/92 by judgment dated 16.7.97. The judgment of the High Court has come recently during the pendency of this application and four years after the impugned order passed by the disciplinary authority. The judgement of the Trial Court was confirmed by the High Court has relevance to Charge No.11. The disciplinary authority must apply his mind and then decide whether charge No.11 is fully proved or not in the light of the judgement of the criminal court and the High Court, since the quantum of penalty depends upon finding on Charge No.11. The other charges are only financial irregularities and we will not know what would be the view of the disciplinary authority regarding penalty if the misconduct is only financial irregularities. In view of the non-consideration of the judgement of the criminal court by the disciplinary authority and in view of subsequent judgment of the High Court confirming the judgement of the criminal court we feel that the finding of the disciplinary authority regarding penalty should be set aside and the matter should be remanded to the

disciplinary authority to apply his mind and then decided as to what is the penalty that has to be imposed in the facts and circumstances of the case.

25. We may also place on record one more contention of the applicant that the applicant's daughter sustained fatal injuries in the Bombay Bomb Blasts which took place on 12.3.93. Unfortunately the applicant's daughter succumbed to the injuries and died on 16.3.93. Now by virtue of order of removal from service the applicant is deprived of all retirement benefits which he would have got otherwise since he has attained age of superannuation. The disciplinary authority will have to consider whether in the facts and circumstances of the case and particularly in view of the acquittal by the criminal court and confirmed by the High Court, whether removal from service is a proper and just punishment or whether he can impose a lesser punishment like compulsory retirement or withholding portion of pension etc. The applicant's contention that the penalty proposed by the UPSC viz., reduction in time scale of pay by three stages for a period of three years should have been accepted by the disciplinary authority. We are not impressed by this argument. The punishment proposed by the UPSC is very much on the lower side. The opinion of the UPSC is only recommendatory and not binding on the disciplinary authority. Therefore, the disciplinary authority was fully within its rights by disagreeing with the opinion expressed by the UPSC regarding question of punishment.

Since judgement of the criminal court has a direct bearing on charge no.11 and this charge no.11 is a gravest of all the charges we feel that the matter should be remitted back to the disciplinary authority to apply its mind afresh to the facts and circumstances of the case including the judgment of the criminal court and High Court and then decide as to what is the just and proper punishment to be imposed in this case. The disciplinary authority may also take into notice that the applicant has since attained the age of superannuation the period up to his superannuation can be treated as period of suspension and then the disciplinary authority can impose whatever punishment permissible in law having regard to the facts and circumstances of the case. Point No.(ii) is answered accordingly.

POINT No. (iii):

26. In view of our findings on Points (i) and (ii), the application will have to succeed partly and the matter will have to be remanded to the disciplinary authority to take an appropriate decision on the question of penalty. We find that there is earlier interim order in this case regarding applicant's possession of the quarter. Subsequently, the interim order has been vacated. We are told that eviction proceedings are pending against the applicant before the competent authority. We only observe that the question whether the applicant is liable

to pay penal rent or normal rent is left open to be decided by a competent authority according to law.

27. In the result the application is partly allowed. The finding of the disciplinary authority holding that the applicant is guilty of misconduct as per charges framed against him is confirmed subject to observations on charge no.11 made above. Portion of impugned order dated 16.8.93 imposing penalty of removal from service is set aside. The matter is remanded back to the disciplinary authority for the limited question of considering the quantum of punishment afresh in the light of the observations made in this order and in the light of the judgment of acquittal given by the criminal court and confirmed by the High Court. We give liberty to the applicant to make a representation to the disciplinary authority within two weeks from the date of receipt of this order regarding the penalty to be imposed. The disciplinary authority shall consider the representation of the applicant, the facts and circumstances of the case, and the gravity of charges and then impose any punishment permissible as per rules, and issue necessary orders within four months from the date of receipt of a copy of this order. In the circumstances of the case there would be no order as to costs.

(D S Baweja)
Member(A)

(R G Vaidyanatha) 7.9.94
Vice Chairman

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