IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 635/98

Date of Decision: 28.4.1999.

Y.D.Mathur .. Applicant

Shri M.S.Ramamurthy. .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri V.S.Masurkar. .. Advocate for Respondent(s)

CORAM:

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

The 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

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.635/98.

Wednesday, THIS THE 28th DAY OF April, 1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Y.D.Mathur,
Post Master General of
Aurangabad, residing at
P.M.G.'s Quarters,
Cantonment, P.O. Compound,
Aurangabad - 431 002. ... Applicant.
(By Advocate Mr.M.S.Ramamurthy)

Vs.

1. Union of India,
   through the Secretary,
   Department of Posts,
   Dak Bhavan, Sardar Patel Chowk,
   Parliament Street,
   New Delhi - 110 001.
2. Senior Deputy Director General
   (Vigilance), Ministry of Communications,
   Government of India,
   Department of Posts,
   Dak Bhavan, Parliament Street,
   New Delhi - 110 001.
3. Chief Post Master General,
   Maharashtra Circle,
   C.P.M.G.'s Office,
   Mumbai - 400 001.
4. Union Public Service Commission,
   Dholpur House,
   Shahajahan Road,
   New Delhi - 110 001. ... Respondents.

(By Advocate Mr.V.S.Masurkar)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard Mr.M.S.Ramamurthy the learned senior counsel for the applicant and Mr.V.S. Masurkar, the learned counsel for the respondents.

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2. The applicant has been working as a Post Master General at Aurangabad till the impugned order of dismissal from service dt. 22.7.1998. The applicant's case is as follows.

During the applicant's tenure as P.M.G. at Haryana, he had initiated disciplinary action against some subordinate officials. Those officials in order to escape punishment started a false campaign against the applicant and made some allegations that he is demanding money and articles from his subordinate officials. On the basis of the statements made by some of those subordinate officials of the applicant, the applicant's explanation oiwas called for and then the department issued a charge sheet dt. 20.4.1993 for disciplinary action against the applicant. The applicant sent a reply to the charge sheet denying the allegations. Then by order dt. 1.9.1993 Mr.J.D.Verma the Commissioner for Departmental Enquiry attached to the Vigilance Commission was appointed as the Enquiry Officer. The applicant was intimated about a hearing date for preliminary hearing on 6.12.1993. The applicant could not attend that preliminary hearing due to official work, but the proceedings went ex-parte on 6.12.1993. Then a date for regular enquiry was fixed on 28.11.94 and 29.11.1994, but the applicant could not appear on those days due to some official work and sent a request to the Enquiry Officer to adjourn the regular hearing, then the regular enquiry was adjourned. Subsequently, the Enquiry Officer fixed the next dates for regular enquiry on 2nd and 3rd February, 1995. The applicant was again not in a position to attend the regular hearing on 2nd and 3rd February, 1995 and hence contacted the Enquiry Officer on phone and expressed his inability to attend and also sent a written request for adjournment by Fax. Subsequently, the applicant received copies of proceedings dt. 2.2.1995 along with copies of depositions of 5 witnesses which shows that the Enquiry Officer proceeded ex-parte and examined 5 witnesses and closed the departmental case and closed the applicant's case and reserved the case for submitting report. Then the applicant sent one more representation

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after receiving a copy of the order sheet dt. 2.2.1995 from the Enquiry Officer, but nothing was heard. Subsequently, the applicant received a copy of the Enquiry Report along with a letter dt.12.12.1995 from the Government asking for his comments regarding the Enquiry Report. But the applicant did not send any representation against the Enquiry Report. Then, subsequently, he received the impugned order dt. 22.7.1998 passed by the Disciplinary Authority imposing a punishment of removal from service. Being aggrieved by the order of the Disciplinary Authority the applicant has filed the present application challenging the legality of the same.

The applicant's main contention is that conducting of ex-parte enquiry inspite of the request of the applicant for adjournment is illegal and is in violation of principles of natural justice. It is further alleged that the Enquiry Officer has not given opportunity to the applicant to examine himself and to adduce his defence evidence. The Disciplinary Authority has relied on the advise of the UPSC and that advise was not furnished to the applicant before the impugned order of punishment was passed. That there was violation of provisions of Rule 14 of the CCS (CCA) Rules, 1965 in conducting the enquiry. It is also alleged that the recording of evidence by the Enquiry Officer is faulty and reliance has been placed on the statements of witnesses recorded during preliminary enquiry and this procedure is wholly illegal. The Enquiry Officer should have granted adjournments when the applicant made request for adjournment for official reasons. The applicant being the Head of the Organisation at Aurangabad could not have left the Headquarters due to exigencies of work and hence had to pray for adjournment on all the three occasions for which he was asked to appear by the Enquiry Officer. On merits it is alleged that the allegations made by the witnesses are fabricated and false and should not have been relied upon in holding the applicant guilty of

...4.

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the charges framed against him. That those witnesses, it is alleged, are interested witnesses since the applicant himself had recommended disciplinary action against them. The applicant therefore, prays that the Enquiry Report and the impugned order of the Disciplinary Authority be quashed and the applicant be ordered to be reinstated forthwith with all consequential benefits and for other consequential reliefs.

3. The respondents in their reply have justified the action taken against the applicant. It is stated that applicant did not give any written statement except denying the charges. He did not make any allegations in reply to the serious allegations made in the articles of charges and the statement of imputations. It is stated that there were serious allegations of mis-conduct against the applicant for which major penalty charge sheet was issued against the applicant. The applicant did not cooperate with the Enquiry Officer and did not participate in the enquiry proceedings inspite of adequate opportunities being given to him. After the Enquiry Officer submitted his report, the same was sent to the applicant for his comments and reply and four to five reminders were issued to the applicant, but he did not avail the opportunity to send a reply to the Enquiry Report. After considering the record, the President formed a tentative opinion that major penalty should be imposed on the applicant and sought advise of the UPSC, which by its letter dt. 13.1.1998 advised imposition of penalty of dismissal from service. Afterwards, the President passed the impugned order accepting the report of the Enquiry Officer and held the charges are proved against the applicant and imposed the penalty of dismissal from service. The order of dismissal from service was served on the applicant on 20.4.1998 and on the same day P.M.G., Pune took charge as the P.M.G. at Aurangabad and since then the applicant has ceased to be in government service. The applicant has neither attended the preliminary hearing nor the two days fixed for regular enquiry and therefore

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the Enquiry Officer was forced to proceed ex-parte and record evidence in the absence of the applicant. The reasons given by the applicant for not attending the hearing before the Enquiry Officer are not acceptable. In the additional reply filed on behalf of the respondents it is clearly stated that the applicant was granted sufficient opportunity to defend himself in the enquiry proceedings, but he did not avail the opportunity and did not participate in the enquiry. Hence, it is therefore stated that no case is made out for interfering with the impugned order.

4. The learned counsel for the applicant questioned the correctness and legality of the impugned order on many grounds. On the other hand, the learned counsel for the respondents has supported the impugned order and refuted all the contentions of the applicant. We will consider the contentions urged by the learned counsel for the applicant one by one.

5. The main ground of attack of the learned counsel for the applicant is about ex- parte Enquiry Proceedings which resulted in the impugned order. That it is an ex-parte enquiry and the applicant has been prejudiced and there is violation of principles of natural justice. It was submitted that there was no fair enquiry and the applicant had no fair opportunity to defend himself in the enquiry. On the other hand, the learned counsel for the respondents maintained that throughout the applicant adopted a non-cooperative attitude and never participated in the Enquiry Proceedings and went on seeking time on one ground or the other and he did not even avail the earlies opportunity of making his grievance known when he received the Enquiry Report and number of reminders. He did not avail the opportunity to give representation on the ex-parte enquiry and seeking an order from the Disciplinary Authority to remand the matter to the Enquiry Officer for conducting the enquiry afresh.

In this case, admittedly, the applicant had three opportunities to appear before the Enquiry Officer, the one was the preliminary enquiry, then

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another date of regular enquiry and it was adjourned on the request of the applicant and even on the next date of regular enquiry the applicant did not attend and again sought adjournment which was refused by the Enquiry Officer. It may be in the usual course one might say that the Enquiry Officer could have given one or two more opportunities to the applicant, so that he could appear in person and take part in the proceedings. If such a view is taken, no doubt the applicant deserves one more chance now by setting aside the impugned order and remanding the matter to the Disciplinary Authority to give opportunity to the applicant to cross-examine the witnesses and to adduce his own defence evidence. But after giving our anxious considerations to the materials on record and the admitted non-cooperative attitude of the applicant from day one till the last day of the impugned order, we are not inclined to accept the argument of the learned counsel for the applicant that even now the case should be remanded and the applicant should be given one more opportunity to participate in the enquiry. It may be, in many cases, Courts and Tribunals have interfered with ex-parte orders or ex-parte enquiries and remanded the matter so that affected party may get one more opportunity to defend himself. In the usual course we would have accepted this argument and adopted the same procedure in the present case also. But, after deeper examination of the facts and circumstances of this case, we are not inclined to accept the submission made on behalf of the applicant that he should be given one more opportunity to defend himself in the enquiry. It is well settled that in a matter like this, each case depend upon its own peculiar facts and circumstances. Nobody can lay down a hard and fast rule as to in what particular cases ex-parte enquiry should be confirmed or in what particular cases ex-parte enquiry should be set aside and the cases should be remanded. We have to examine the facts and circumstances of each case and then take a decision whether in a given case the ex-parte enquiry should be upheld or not. There cannot be any straight jacket formula in a matter like this.

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6. Here is a case where the applicant is a responsible and senior officer of the Postal Department of the rank of P.M.G. We are not dealing with a Group 'D' or Group 'C' official who may not be well versed in departmental enquiries or service matters and therefore he might adopt a non-cooperative attitude due to ignorance of rules. But, here is a person who is of the rank of the Joint Secretary to the Government of India and what is more, he himself is a disciplinary authority against his subordinate officials and in certain matters he is the appellate authority in service matters decided by his subordinates. He cannot plead any ignorance of rules or law in a matter like this. The articles of charge and statement of imputations show serious allegations of mis-conduct against the applicant which amounts to corruption. When he receives articles of charges which are five in number supported by details of imputations of allegations, what is the reaction of the applicant in submitting his written statement, regarding those allegations? On the other hand, as rightly argued on behalf of the respondents, applicant being such a senior officer sends one sentence reply to the charge sheet which reads as follows:

"This is to deny all the charges contained in the Memo dt. 20.4.93"
(vide Ex.R-1 at page 124 of the paper book)

When so many serious allegations of corrupt practise is alleged against the applicant and there are five charges and detailed statement of imputations, here is a senior officer who gives one sentence vague denial and does not give any defence at all. It is all the more necessary since the learned counsel for the applicant at one stage contended that the articles of charges are vague and no detailed particulars are given in the imputations about time, place etc. In our view, no useful purpose would have been served even if some particular details had been given in the articles of charges or in the

statement of imputations in view of the applicant's one sentence reply. This shows from day one the applicant's attitude was one of non-cooperative attitude. At the earliest point of time by filing a written statement to the charge sheet he could have come out as to why the charge sheet is issued against him, as to why witnesses are making allegations against him etc. But, he remained content and replies with one sentence reply as mentioned above.

7. Now we find that preliminary date of hearing was fixed by the Enquiry Officer on 6.12.1993. The applicant does not appear on that day. The reason given is that he made a request for adjournment that he could not attend the preliminary hearing date as he has some official work. After completion of the preliminary hearing the Enquiry Officer fixed the date for regular enquiry on 28th and 29th November, 1994. The applicant again sends an application with a request for an adjournment on the ground that Audit Party is visiting Aurangabad and therefore his presence is required. In our view, this reasoning of the applicant about his inability to leave Headquarters due to arrival of Audit Party does not appeal to us. When regular enquiry has been fixed with serious charges of corruption against him, the applicant should have promptly attended the enquiry and participated in the enquiry by giving cooperation to the Enquiry Officer. If, however, due to exigencies of service, the applicant's presence was absolutely necessary at Aurangabad he should have immediately contacted his superior authority viz. the Chief PMG and sought his instructions whether he should stay at Headquarters or he should attend the the enquiry. If the Chief PMG had told him that he should not leave the Headquarters due to visit of Audit Party, then the applicant could have given refusal of permission by Chief PMG, then the Enquiry Officer would have no reason for refusing an adjournment. But the applicant has taken a decision himself and states that audit party are arriving and he cannot attend the regular enquiry.

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Fortunately for the applicant, the Enquiry Officer did not record evidence on 28.11.1994 and accepted to the request of the applicant and adjourned the case.

8. The next hearing date was fixed on 2.2.1995. The applicant was given notice of the hearing date well in advance. It is on record and not disputed that applicant about four five days earlier contacted the Enquiry Officer on phone and again sought an adjournment and pleaded his inability to come. There is some controversy between the version of the applicant and the Enquiry Officer as to what transpired in the telephonic conversation;having regard to the non-co-operative attitude of the applicant from day one to the last day, we are not prepared to accept the version of the applicant. On the other hand, we are inclined to accept the version of the Enquiry Officer as to what transpired. The Enquiry Officer has put in writing in the Enquiry Report itself that he did get a phone call from the applicant seeking adjournment and he refused and he told him to come in person on 2.2.1995 failing which proceedings will go ex-parte. Inspite of refusal of adjournment on phone the applicant has chosen to remain absent on his own on 2.2.1995. He even sends a fax message on the evening of 1.2.1995 seeking adjournment. But, according to the Enquiry Officer the fax message came to his notice only on the evening of 2.2.1995 and by which time he had already recorded evidence ex-parte and had closed the case and reserved it for orders.

Now, the reason given by the applicant for his inability to come on 2.2.1995 was that assembly elections were due in the first week of February, 1995. We put a specific question to the learned senior counsel for the applicant whether the applicant had been appointed as an Election Officer or as and Observer or had he been given any special duty by the Election Commission in the assembly election. On taking instructions the learned counsel for the applicant fairly submitted that the applicant had not been

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appointed as Returning Officer or given any specific election duty or as an Observer. But, his argument is that in every election Postal Ballot has to be arranged and therefore, the presence of the applicant is necessary to supervise the postal ballot. In our view, it is a routine duty of attending to a postal ballot by the subordinate officials. The presence of the applicant was not necessary as a duty connected with election if he had been specifically appointed as an Observer in the Election or as an Officer on special duty by the Election Commission, the matter would be different. Even granting for a moment that the applicant's presence was necessary as allowed by him, the least the applicant should have done was to seek the instructions of his official superior viz. Chief PMG whether he should attend the enquiry at Delhi on 2.2.1995 or he should stay in the Headquarters due to the ensuing election. The Chief PMG would have given direction one way or the other. If the Chief PMG had refused permission to the applicant to leave the Headquarters then the applicant could have brought that fact to the notice of the Enquiry Officer and probably the Enquiry Officer would have no discretion in refusing the adjournment. But the applicant takes a decision on his own and sits pretty at Aurangabad and refuses to go to Delhi to attend the Enquiry. It is all the more reprehensible because on telephone the enquiry officer has refused the request for adjournment. At least, at that stage the applicant could have sought the instructions of the official superior on the question whether he should go to Delhi to attend the enquiry or he should stay at Aurangabad due to the assembly election. He did neither and sits with impunity taking a decision on himself. Why we are commenting on this aspect of the applicant taking decision on his own is because there is some material on record to show that the superior officers were insisting the applicant to cooperate with the Enquiry Officer and get the enquiry completed expeditiously.

9. In this connection, we may refer to some documents which have been

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placed on record by the respondents and which has a direct bearing on the conduct of the applicant.

It may be recalled that the Enquiry Officer by notice dt. 11.11.1994 fixed the date of regular enquiry on 28th and 29th November, 1994. Since the applicant had not attended the previous preliminary hearing inspite of notice, the Enquiry Officer marked a copy of this notice not only to the applicant, but also to the Deputy Director General (I & V) Department of Posts, New Delhi with a request to him to kindly direct the charged officer viz. the applicant to attend on the hearing date. In response to this notice the Deputy Director General of the Ministry of Communications (Vigilance Section) by letter dt.16.12.1994 wrote to the applicant that he should promptly attend the hearing date and the department has come to know that applicant has not attended on the previous hearing dates. It is further mentioned in this letter that the action of the applicant in not attending the enquiry has not been viewed favourably by the Secretary (Posts). Further it is stated in this letter that if there is any urgent work due to which the applicant is unable to leave the Headquarters he must take instructions from the Chief PMG. Therefore, this letter dt. 16.12.1994 (Ex. R-5 at page 129) from the Head of the Department makes the position very clear that the applicant should promptly attend the hearing date and in case he is unable to attend due to official work he must take instructions from the Chief PMG, Maharashtra at Mumbai. Therefore, the applicant on his own cannot take a unilateral decision that he does not want to leave the Headquarters and seek for adjournment of the enquiry.

Then we have one more letter (Ex. R-3 at page 126 of the paper book) and it is dt. 24.11.1993. It is written by the Chief PMG of Maharashtra Circle, Mumbai to the applicant. There is a specific direction in this letter that applicant should attend positively the preliminary hearing on 6.12.1993.

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Inspite of a specific direction by his boss viz. the official superior the applicant dis-obeys the official superior's directive with immunity and now wants to come and plead before the Tribunal that he had genuine reasons for not attending the enquiry.

We have on record two directions one by the immediate superior viz. Chief PMG and another by the Head of the Department directing the applicant that he should positively attend the enquiry, but still the applicant, for reasons best known to him adopts a non-cooperative attitude and does not attend the enquiry and allows it to go ex-parte.

Even granting for a moment that the Enquiry Officer had conceded the applicant's request and adjourned the case from 2.2.1995 by one or two weeks or one month later, what guarantee is there that the applicant would have attended on the next date particularly having regard to his non-cooperative attitude and what is more, not attending the enquiry inspite of directions by the Head of Department and by the immediate official superior. We are using the word Head of Department because, it is brought to the notice of the applicant that the Secretary (Posts) has not favoured applicant's non-attending the enquiry, which is disclosed in the Deputy Director General's letter mentioned above. There is one more circumstance which probablises that even if one or two more adjournments had been given it would not have yielded any result, the applicant would have continued to remain absent by sending repeated representation asking for adjournment on one ground or the other.

After coming to know that ex-parte evidence had been recorded and applicant's case had been closed and the case is reserved for orders, except sending one more letter to the Enquiry Officer, the applicant took no steps in his case. The applicant should have rushed to Delhi and met the enquiry officer and gave a written application for re-opening the case and to give him opportunity to examine the witnesses. We have already pointed out that

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applicant is not a Group 'D' or Group 'C' official who may not be aware of the legal provisions. But here we are concerned with a senior official who himself is the Disciplinary Authority and who himself is an Appellate Authority in many cases which are decided by his subordinate officials. Let us for a moment accept that applicant had some genuine reason in the beginning, at least he could have become cautious and careful after noting that the evidence had been recorded ex-parte and the Enquiry Officer has reserved the case for submitting his report. Except sending one letter and keeping quite, he took no further action in the matter. Either the applicant should have rushed to Delhi and met the Enquiry Officer and sought an appointment with him and gave a representation explaining his difficulties and asking for a date to cross-examine the witnesses. Otherwise, he could have sent an application or a representation to the Disciplinary Authority not to accept any report given by the Enquiry Officer and give him a chance to participate in the enquiry. But, applicant sits quite and takes no action from February or March, 1995 and onwards. Let us see his further conduct. He receives the Enquiry Report along with the letter of the Disciplinary Authority asking for his comments in December, 1995. From March, 1995 to December, 1995 applicant took no further action in the matter. At least, when he received the enquiry report along with the letter dt. 12.12.1995 the applicant has come to know that the Enquiry Officer held that all the charges are proved. Therefore, his immediate reaction should have been to send a reply immediately to the Disciplinary Authority with a request not to accept the ex-parte enquiry report and to set aside the same and to remand the matter to the Enquiry Authority giving him an opportunity to cross-examine the witnesses and for permission to adduce defence evidence. That would have been the logical and natural reaction of the applicant when he gets a copy of the enquiry report which holds that all the serious charges of mis-conduct, articles 1 to 5 are

held to be proved. But, what is the attitude of the applicant? He keeps quite without sending any reply to the Enquiry Report. In fact, after the decision of the Supreme Court in the leading case of Mohammed Ramzan Khan's case (AIR 1995 SC 471) sending of enquiry report to the delinquent officer is made mandatory, so that he can give his representation to pursuade the Disciplinary Authority not to accept the Enquiry Report and exonerate him. Here, we are concerned with a very senior official of the rank of PMG of Post Office who keeps quite inspite of receiving a copy of the Enquiry Report which holds him guilty in respect of serious allegation of corruption. Let us for a moment accept that the applicant might have kept quite on receiving the enquiry report for some time. The record shows that due to the applicant's silence for three months and no reply received, the Disciplinary Authority writes a reminder letter dt. 19.3.1996 asking the applicant about his comments on the Enquiry Report. No reply by the applicant. Then the Disciplinary Authority wrote one more reminder letter on 2nd June, 1996, but no reply from the applicant. Then the Disciplinary Authority writes one more letter dt. 24.7.1996, but no reply from the applicant. Then the Disciplinary Authority writes one more letter dt. 7.10.1996 again calling for the applicant's comments on the Enquiry Report, but no reply from the applicant. Therefore, we find that inspite of one letter and four reminders ranging over for a period of 8 or 10 months, there is no reaction by the applicant. Suppose, in this case, after the first letter the Disciplinary Authority had taken action the applicant would have contended before this Tribunal that he was not given one more opportunity of giving a reply. But, we see the cordial manner in which the applicant has responded in this matter. How can he, now complain that ex-parte enquiry is bad, when on his own conduct and showing he kept silent for over 8 to 10 months after receiving four reminders and does not send the reply to the Disciplinary Authority with a request not to accept

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the Enquiry Report and to give him opportunity to cross-examine the witnesses. How can he now after two years and after the final order of the Disciplinary Authority he can approach this Tribunal and state that he had no fair hearing, that he had no sufficient opportunity to defend himself and there is violation of principles of natural justice. If he does not avail opportunities given to him, how can he now contend that he had no fair opportunity. That is why we say his conduct throughout was with a non-cooperative attitude. Right from sending one sentence reply to the charge sheet till the date of impugned order. We have seen that there is no reply even to the last reminder sent to the applicant. The Enquiry Report is dt. 7.10.1996, even then the impugned order is dt. 22.7.1998, that means even after the last reminder in October, 96 and the impugned order in July, 1998 there is a gap of nearly one year and 10 months. The applicant did not know as to when, why and how final order will be passed by the Disciplinary Authority. Even during this one year and ten months the applicant could have sent representation to the Disciplinary Authority to reject the Enquiry Report and to give him opportunity to cross-examine the witnesses. How can he sit idle and silent for months together and years together and now come and plead before this Tribunal that there is violation of principles of natural justice. There are no equities in favour of the applicant for this Tribunal now to take an extraordinary step for quashing the order of the Disciplinary Authority and quashing the enquiry report and reinstating the applicant with all back wages and then remanding the case for further enquiry. Therefore, we have considered the case with peculiar facts of this case. We cannot simply say that one more adjournment could have been given by the Enquiry Officer and that he should not have proceeded ex-parte. Even if one or more adjournments had been granted it would have served no purpose, having regard to the applicant's cavalier and non- cooperative attitude from the beginning. If he does not send a reply to

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the Enquiry Report inspite of five to six reminders, what guarantee that he would have replied it after one more reminder had been given. Similarly, when he did not appear before the Enquiry Officer on three hearing dates at different intervals, what guarantee is there that he would have attended the hearing date if one more adjournment was given. It is all the more same, because he had been reprimanded and advised by the superiors that he should attend the hearing date and participate in the enquiry. The advise of the higher officers have fallen on deaf ears. It is in this context, we must consider the status of the applicant who is holding such a high position and still behaves in this cavalier fashion. If we are concerned with an official of a Group 'D' official like a Peon or a Clerk, may be we could have said that he was not aware of the consequences of his act and he might have acted due to wrong advise or wrong information or in ignorance of law. But, here is an Officer who himself is a Disciplinary Authority and who himself is an Appellate Authority in disciplinary matters has adopted this cavalier and non-cooperative attitude and it is too late in the day for him to request this Tribunal now to remand the case for further enquiry.

Therefore, on facts we find that having regard to the conduct of the applicant both before and after 2.2.1995 this is not a fit case in which the Tribunal at this stage should interfere with the impugned order only on the ground that it is based on a ex-parte enquiry.

10. Some of the decisions cited on both sides on the point under consideration may now be noticed.

In 1990 (1) ATJ 164 (P.Dasarathan V/s. Sub-Divisional Inspector) on which reliance was placed by the learned counsel for the applicant, we find that the ex-parte order in that case came to be set aside due to cumulative effect of number of grounds mentioned in para 7 and 8 of the reported Judgment. The Tribunal noticed that inspite of seeking adjournment on the

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ground of ill health it was refused by the Enquiry Officer. Copies of most of the documents which were sought for by the applicant were not furnished. Copy of the enquiry report was not furnished to the applicant before the penalty order was passed. After giving these reasons in para 7 and 8, in para 9 the Tribunal stated that in view of what is stated above, the impugned order is liable to be quashed. Therefore, the Tribunal has taken into consideration many grounds including refusal of adjournment on the ground of ill health, non-supply of material and what is more, non-supply of enquiry report, the order came to be quashed.

In 1991(2) ATJ 83 (Shri Jaidev Vs. Union of India), an ex-parte enquiry in which dismissal order was set aside which was passed on an ex-parte enquiry report. It was a case where the applicant had participated during the enquiry and he sought for an adjournment for the examination of defence witnesses which came to be rejected. On facts, it was found that the delinquent official had engaged one defence assistant who could not come because of his promotion to a higher post. What is more, the defence assistant wrote a letter to the Enquiry Officer that due to adverse family circumstnaces it will not be possible for him to assist the delinquent in the enquiry. In view of the peculiar facts and circumstnaces of that case the Tribunal interfered with the ex-parte enquiry proceedings. As already stated in that case the delinquent officer had fully participated in the enquiry proceedings from the beginning and only at the time of defence evidence a request was made for adjournment due to non-availability of defence assistant due to adverse family circumstances and due to his promotion, but the adjournment was declined.

In the present case the applicant has adopted a non-cooperative attitude from day one. We have already pointed out how both before and after the enquiry the applicant never participated in the enquiry and never

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responded to the enquiry report inspite of 5 to 6 reminders from the Disciplinary Authority.

11. We may make useful reference to a decision of the Supreme Court in the case reported at AIR 1976 SC 168 (H.C.Sareen V/s. Union of India) on which reliance was placed by the learned counsel for the respondents. That was also a case of an ex-parte enquiry. Since the delinquent did not participate in the enquiry, as the applicant in the present case, the Supreme Court noticed in that case that the delinquent official who was the appellant before the Supreme Court was adopting an attitude of non-cooperation from the beginning. The following observations of the Supreme Court in para 12 of the reported Judgment are relevant for our present purpose and they are as follows:

> "... Yet on one excuse or the other the appellant, it appears, was advised to adopt an attitude of non-co-operation which was likely to forge a ground of attack on the departmental enquiry, thinking that participation in it would, perhaps, worsen his case. It is found more often than not that Government servants who have no real defence to take against the accusations are advised, and some times not without success, to non-co-operate with the enquiry. It seems to us this was one such case."

The above observations, we say with respect, applies on equal force to the conduct of the applicant and the facts of the present case.

The conduct of the applicant in not attending the enquiries inspite of directions given by his own Head of Department and his own immediate superior has to be borne in mind.

The above Judgment of the Supreme Court has quoted with approval the famous words of Lord Denning which are reproduced in para 25 of the reported Judgment and it is as follows :

> " The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences".

Now the applicant having failed to appear before the Enquiry Officer on all the three hearing dates and not responding to the letter of the

Disciplinary Authority and the Enquiry Report inspite of five to six reminders now wants us to apply the rules of natural justice. By his own conduct and attitude the applicant has forfeited the right to claim the benefit of the rules of natural justice.

Then we come to another decision relied on by the respondents counsel reported in AIR 1962 SC 1344 (Major U.R.Bhatt Vs. Union of India). In this case the delinquent had participated in part of the enquiry and subsequently told the Enquiry Officer that he is not going to participate and said he would send a letter, which he did not send. Further enquiry was proceeded ex-parte and then Enquiry Officer submitted report holding that charges are proved. Accepting it, the Governor General of India,after issuing show cause notice to the applicant passed an order discharing him from service. One of the grounds pressed before the Supreme Court was that the applicant in that case had no fair hearing or did not have sufficient opportunity to defend himself. In that case one of the contentions was that previous statements of witnesses were taken into consideration. The applicant had denied the knowledge of the previous statement of witnesses. The Supreme Court commented that if really the applicant is ignorant of the previous statement of witnesses, it was the direct result of his own non-co-operation with the proceedings before the Enquiry Officer. Again in para 6 of the reported Judgment the Supreme Court observed that non doubt all the witnesses were not examined viva-voce before the Enquiry Officer and that was because the conduct of the appellant who did not participate in the enquiry.

It is therefore clear that if a particular official adopts a non-co-operative attitude and does not participate in the enquiry, it is too late in the day for him to contend at a later stage that he was denied fair hearing or fair opportunity. Inspite of three hearing dates and inspite of directions of higher authorities the applicant never participated in the enquiry.

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The last decision on this point relied on by the learned counsel for the respondents is reported in 1998 (1) SLJ (SC) 7 (Staste of Tamil Nadu and Ors. Vs. M.Natarajan and Anr.), where also the question was about an ex-parte enquiry. In that case, the Enquiry Officer fixed a date for recording evidence, but the delequent officials sent letter stating that they cannot participate in the enquiry since criminal case on identical facts is pending, but the enquiry officer did not wait till the disposal of the criminal case and and proceeded ex-parte in conducting the enquiry and gave a report. The applicants in that case did not appear during the enquiry inspite of number of opportunities. Then a belated request was made to the Competent Authority, after the disposal of the criminal case, for permission to the delinquents to cross-examine the witnesses and it was refused by the Competent Authority. When the matter was challenged before the State Administrative Tribunal at Madras, the Tribunal allowed the application on the ground that there was violation of principles of natural justice. The Supreme Court set aside the order of the Tribunal and stated that in view of the conduct of the applicants in not appearing before the Enquiry Officer and cross-examine the witnesses, they cannot now say that any illegality has occurred in conducting the ex-parte proceedings.

Therefore, from a perusal of the above decisions, what follows is that ex-parte enquiry cannot be set aside mechanically or as a matter of course. The question in such a case is whether there was denial of fair opportunity to the delinquent official to defend himself in the enquiry or not. If by his own conduct the delinquent official does not take part in enquiry proceedings and even afterwards, he cannot later turn around and say that he was denied opportunity to defend himself. As already stated no hard and fast rule can be laid down on a matter like this. It all depends upon the peculiar facts and circumstances of the case. In the present case, having regard to the status of the applicant and the non-co-operative attitude adopted by him both

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before and after the enquiry we do not think that this is a fit case in which the ex-parte enquiry proceedings should be quashed on this ground.

13. The next submission of applicant's counsel is that the statements of witnesses recorded in the preliminary enquiry are taken as evidence during the regular enquiry and this cannot be done in law. No rule or provision of law was brought to our notice which bars taking of prior statements as evidence during their regular enquiry. It is well settled and there can be no dispute that strict rules of evidence do not apply to domestic enquiries.

The applicant's counsel has placed reliance on 1996(1) ATJ 42 (Shri Khairati Lal Vs. Commissioner of Police) where the Principal Bench of this Tribunal has held the previous statements of witnesses taken in preliminary enquiry cannot be considered as evidence in the regular enquiry. A perusal of the Judgment shows that the said view was taken by the Tribunal because of a special provision viz. Rule 15 (3) of the Delhi Police Rules, 1980. But, we are concerned with CCS (CCA) Rules where there is no such prohibition at all. Therefore, in our view, that decision must be read in the light of the special legal provision in the Delhi Police Rules and it has no application to an enquiry under CCS (CCA) Rules where there is no such provision.

In this connection, we may refer to two Judgments of the Supreme Court where previous statements in preliminary enquiry were treated as evidence. In AIR 1976 SC 1080) (K.L.Shinde Vs. State of Mysore), it is pointed out that reliance on statement of witnesses made in the preliminary enquiry does not vitiate departmental enquiry. Then, we have the latest Judgment of the Apex Court in the State of Tamil Nadu V/s. M.A.Waheed Khan (1999 SCC (L&S) 257), where also it is held that statements recorded during preliminary enquiry can be treated as substantive evidence in the departmental enquiry, even when the witnesses examined during regular enquiry retract and deny their previous

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statements. Therefore, the argument of the learned counsel for the applicant that previous statements in preliminary enquiry should not have been taken as substantive evidence during regular enquiry has no merit. The main thing in a Disciplinary Enquiry is that the official must be told as to what case he has to meet and what evidence is going to be let in against him and he must have a chance to cross-examine the witnesses and to adduce his own defence evidence. The rules do not provide as to in what matter or in what mode evidence should be recorded.

In the present case, the charge sheet itself relies on the earlier statements of five witnesses. The prior statement of all the five witnesses during preliminary enquiry were furnished to the applicant. Therefore, the applicant knows what case he has to meet and what evidence is going to be produced against him. The five witnesses were examined by the Enquiry Officer. They confirm their previous statements and they were taken on record.

We have already referred to the case of U.R.Bhatt's case earlier, where the Supreme Court has commented on the non-co-operative attitude of the applicant. Even, in that case the previous statement of witnesses were taken on record and relied on by the Enquiry Officer. In para 4 of the reported Judgment the Supreme Court has observed that as the appellant did not take part in the proceedings, the statement's previously made by these witnesses were taken into consideration by the Enquiry Officer. It is further pointed out that the Enquiry Officer is not governed by strict rules of law of Evidence and hence it is open to the Enquiry Officer to consider the materials placed before him. Here also the applicant knew about the prior statements of witnesses since they have been furnished to him along with the charge sheet. Those witnesses were examined before the Enquiry Officer and they confirmed their previous statements and they are taken on record. Since

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strict rules of evidence are not applicable to Disciplinary Enquiry, we do not find that any illegality is committed by Enquiry Officer in relying on the previous witnesses which were confirmed by the witnesses who were examined before him. On this point we are fortified by a recent judgment of the Apex Court in the case of State of Tamil Nadu V/s. M.A.Waheed Khan (1999 SCC (L&S) 257). That was a case where two women had given earlier statements during preliminary enquiry against the delinquent official, but during regular enquiry the witnesses turned hostile and denied their earlier statement. The delinquent official was dismissed from service and it was challenged before the Tamil Nadu Administrative Tribunal. The Tribunal set aside the order and one of the grounds was that there was no legal evidence before the Enquiry Officer, since particularly the two ladies had turned hostile and they have denied their previous statements during preliminary enquiry. The Supreme Court set aside the order of the Tribunal and held that strict rules of evidence are not applicable to departmental enquiries and Enquiry Officer can rely upon the earlier statements of the witnesses though they are subsequently denied by the witnesses.

In the present case, it is a reverse case. Here the witnesses appear before the Enquiry Officer and confirmed their previous statements. The previous statements are therefore legally brought on record. The applicant did not appear before the Enquiry Officer to cross-examine the witnesses. Even when the witnesses denied their earlier statements, still the Supreme Court has held that previous statements can be relied upon to hold that the official is guilty of mis-conduct. But in our present case all the five witnesses have confirmed their previous statements and therefore the Enquiry Officer has not committed any illegality of irregularity in relying upon the earlier statements of the witnesses which are proved by examining the witnesses and then coming to the conclusion that the charges are proved.

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At this stage itself, we may dispose of another point urged by the learned counsel for the applicant that no detailed examination-in-chief is recorded. Since strict rules of evidence is not applicable to Disciplinary Enquiry and mode of recording evidence is not mentioned, we do not find any illegality is committed by the Enquiry Officer in recording a brief examination-in-chief where witnesses have confirmed and supported their earlier statements recorded during preliminary enquiry.

14. Another comment by the learned counsel for the applicant is that there is violation of rules of procedure, particularly Rules 14(16), 14(17) and 14(18) of the CCS (CCA) Rules. He also relied on an unreported Judgment of a Division Bench of this Tribunal (O.A. NO.1360/92) decided on 12.7.1995, where it is observed that even under ex-parte enquiry one more opportunity should have been given to the delinquent official to adduce his defence evidence etc.

As already stated, there is no straight jacket formula as to under what circumstances a Court or Tribunal can interfere in respect of an ex-parte enquiry. We have already stated repeatedly that each case has to depend on its own facts and circumstances.

Even granting for a moment that there is some violation of procedural rules, the question is whether the order gets vitiated. The Supreme Court has recently held in the case of State Bank of Patiala & Ors. V/s. S.K.Sharma, reported in 1996(1) SC SLJ 440, where the Supreme Court has mentioned that mere violation of procedure rules do not vitiate a departmental enquiry. The Supreme Court has pointed out that in all such cases, the test is one of test of prejudice.

In the present case, the applicant did not take part in the enquiry proceedings even after the Enquiry Report. He does not care to send a reply inspite of five to six reminders. How can he now say that he is prejudiced since he was not given an opportunity of adducing defence evidence etc. He never appeared before the Enquiry Officer to cross-examine the witnesses or

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for permission to examine his own witnesses. At least,after getting the Enquiry Report and knowing that the case has been held proved against him he could have made representation to the Disciplinary Authority to reject the Enquiry Report and permit him to cross-examine the witnesses and permission to examine his own defence witnesses. Inspite of five to six reminders by the Disciplinary Authority he keeps silent and mum; even after the last reminder letter, there was further time of nearly one and a half years before the final order was passed. The applicant made no attempt to put forward his grievance before the Disciplinary Authority. Now after everything is over and he is dismissed from service, he now comes with the theory of violation of principles of natural justice etc. In the facts and circumstances of the case, the applicant cannot be heard to say at this belated stage that there was some violation of rules of procedure and thereby he is prejudiced.

15. Another grievance made before us is that for passing the final order the Disciplinary Authority has taken into consideration the report of the Union Public Service Commission (UPSC), but copy of that advice was not furnished to the applicant and hence there is violation of principles of natural justice.

The President after forming an opinion that case of the applicant had been proved and forming a tentative opinion about the punishment sought the advise of the UPSC, then UPSC gave its advice stating that the case is proved and dismissal from service would be proper punishment. Then the President passed the order imposing a penalty of dismissal from service. Now the grievance of the applicant is that the advise of the UPSC was not furnished to the applicant before the President passed the final order, it was furnished to the applicant along with the final order of the President.

The learned counsel for the applicant placed strong reliance on an unreported judgment of a Division Bench of this Tribunal dt. 9.2.1996 (OA Nos.

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545/89 and 593/99 - Amar Nath Batabyal Vs. Union of India & Ors.) where no doubt there is an observation that the advice of the UPSC should be furnished to the delinquent officer before the final order is passed. A perusal of the facts of that case show that there were three irregularities noticed by the Tribunal. The major one was that the enquiry authority had exonerated the applicant, but the Maharashtra Government had dis-agreed with that finding and recommended to the Central Government that the charges are proved. Since the officer in that case was an IAS officer, the final decision had to be taken by the Central Government, but the State Government order disagreeing with the view of the Enquiry Officer was not furnished to the applicant in that case. Then further the advice of the UPSC and advice of the Central Vigilance Commission were also not furnished to the applicant.

In this case, let us for a moment accept that UPSC's advice should have been furnished to the applicant before the final order was passed by the President. Now, admittedly it was not furnished. The question is what is the consequences of not furnishing a copy of UPSC's advice to the applicant?

We know that in Mohd. Ramzan Khan's case (AIR 1991 SC 471) the Supreme Court has held that supply of Enquiry Report to an official is mandatory and failing which the final order is liable to be quashed. But, subsequently, the Constituitional Bench of the Supreme Court in Karunakaran's case (AIR 1993 SC 704) held that even though the supply of enquiry report is mandatory, the Supreme Court observed that non-supplying of the enquiry report by itself will not vitiate the disciplinary enquiry. In such cases, the Supreme Court has pointed out, the Court or Tribunal should then ~~give~~ get a copy of the enquiry report given to the officer and then the applicant must be given an opportunity to demonstrate as to how any prejudice is caused to him due to non-supply of the enquiry report. If the court is convinced that the applicant has been prejudiced then the order of the Disciplinary Authority should be set aside

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and matter should be remanded to the Disciplinary Authority to proceed from the stage of supplying enquiry report to the applicant and then after his representation to pass final orders.

Therefore, merely because the UPSC advice is not given to the applicant does not by itself vitiate the order of the Disciplinary Authority. In the light of the observations of the Constitution Bench in Karunakaran's case mentioned above, the applicant must demonstrate as to how he has been prejudiced due to non-supply of UPSC advice.

It may be recalled that inspite of supplying of enquiry report and inspite of five to six reminders, the applicant did not send any representation against the enquiry report to the Disciplinary Authority. Therefore, even if copy of the UPSC advice had been sent to the applicant it would be of no consequence.

Even otherwise, the applicant who has been supplied with the UPSC advice along with the punishment order knows the contents of the UPSC advice. In the OA which runs into 30 pages, except making allegation that UPSC advice was not furnished to him, no allegations are made as to how and in what manner prejudice is caused to the applicant due to non-supply of the advice of the UPSC. Even at the time of arguments, the learned counsel for the applicant was not able to demonstrate and point out to us as to what prejudice has been caused to the applicant due to non-supply of copy of the advice of UPSC. Mere fact that a copy was not supplied is not enough, but it must be demonstrated as to what prejudice is caused to the applicant due to that. Therefore, both in pleadings and in arguments applicant has not been able to show us as to what advantage he would have got had he been supplied with the UPSC advice or what prejudice he has suffered due to non-supply of UPSC advice. Hence, in the facts and circumstances of this case, the non-supply of UPSC advice is of no consequence and therefore, on that ground the order of the Disciplinary

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Authority cannot be said to be bad in law.

16. The last argument of the learned counsel for the applicant is about merits of the case.

The charges framed against the applicant are as follows :

"ARTICLE-I

That the said Shri Y.D. Mathur while functioning as Postmaster General Haryana Circle, Ambala during the period from 17.3.1990 to 5.8.91 is alleged to have demanded and accepted undue favours inkind from Shri A.P.Gupta while he was working under his administrative control as SSPOs, Karnal (now retired from service), thereby exhibiting lack of integrity and conduct unbecoming of a government servant in violation of provisions of Rules 3(1)(i) and (iii) of CCS (Conduct) Rules,1964.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Y.D.Mathur is alleged to have demanded and accepted undue favours in cash/kind from Shri K.L.Sharma while he was working under his administrative control as ADPS(PLI), office of the PMG, Haryana Circle, Ambala, and thereafter as SSPOs, Karnal, thereby exhibiting lack of integrity and conduct unbecoming of a government servant in violation of the provisions of Rules 3(1)(i) and (iii) of CCS(Conduct) Rules, 1964.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, Shri Y.D.Mathur is alleged to have demanded and accepted undue favours in kind from Shri R.C.Dhingra while he was functioning under his administrative control as ADPS(PLI), office of the PMG, Haryana Circle, Ambala, thereby exhibiting lack of integrity and conduct unbecoming of a government servant in violation of the provisions of Rules 3(1) (i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Y.D.Mathur is alleged to have demanded and accepted undue favour in kind from Shri S.C.Gulati while the latter was functioning under his administrative control as Superintendent RMS, Haryana Division, Ambala, thereby exhibiting lack of integrity and conduct unbecoming of a Government servant in violation of the provisions of Rules 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Y.D.Mathur is alleged to have demanded undue favour in cash from Shri R.N.Tyagi while the latter was working under his administrative control as APMG(Estt. & Mails) office of the PMG, Haryana Circle, Ambala (now stands retired from service), thereby exhibiting lack of integrity and conduct unbecoming of a Government Servant in violation of the provisions of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964."

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The charges are supported by a detailed statement of imputations.

The argument of the learned counsel for the applicant that the charge sheet is vague and it does not contain material particulars has no merit. There is sufficient material in the articles of charges and statement of imputations to show the nature of mis-conduct alleged against the applicant. We have already seen how the applicant sent one sentence writen statement just denying the allegations and now after six to seven years he cannot be allowed to say that the charge sheet is bad for want of particulars or details etc. In our view, there is no such infirmity in the articles of charges read along with the statement of imputations.

17. Then, we find that five witnesses were examined during the enquiry, confirmed their previous statements which are taken on record. The copies of the previous statements have been furnished to the applicant and he knew as to what case he has to meet.

The Enquiry Officer by a detailed order discussed the evidence and held that all the charges are proved. The Enquiry Report was sent to the applicant for his comments. As already pointed out, he never sent a reply inspite of five to six reminders. Hence, the Disciplinary Authority applied its mind and passed the impugned order dt. 22.7.1998 accepting the report of the Enquiry Officer and holding that all the articles of charges are proved and imposed penalty of dismissal from service. We have perused the original enquiry file and the file of Disciplinary Authority produced by the learned counsel for the respondents.

18. The question about reliability of the witnesses or sufficiency of evidence or whether witnesses should be believed or not are all matters in the realm of appreciation of evidence. This is not a case of "no evidence". This is a case where the case depends on acceptance of evidence of five witnesses whose evidence has remained unchallenged, since the applicant did

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cross-examine them. This Tribunal cannot re-appreciate the evidence and take a different view, even if it is possible to take another view. In view of the recent decisions of the Supreme Court, the law is crystalized viz. that a Court or Tribunal in the case of a domestic enquiry cannot sit as a Court of Appeal. It cannot re-appreciate the evidence and take a different view, even if another view is possible. It cannot go into the question whether evidence is sufficient or whether the evidence is believable etc. It is not necessary to refer to all decisions since all recent decisions are referred to in the latest judgment of the Apex Court reported in JT (1) 1998 SC 61, AIR 1999 SC 625 (Apparel Exports Promotion Council Vs. A.K.Chopra).

19. In view of the above discussion, we hold that applicant has not made out any case for interfering with the impugned order. The applicant must thank himself for being placed in this situation due to his own non-co-operative attitude from the beginning till the end. We have already pointed out as to how the applicant holding such a high position and being himself a Disciplinary Authority and Appellate Authority in many cases regarding his subordinates should not have adopted this non-co-operative attitude. We do not find any merit in any of the contentions of the applicant. Therefore, the application has to fail.

20. In the result, the application fails and it is hereby dismissed. In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER (A)

28/4/99

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.