

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 6/12/2001

OA No.170/2001.

Dilip Shivpuri s/c late Shri R.N.Shivpuri, Additional Commissioner of Income Tax, r/o B-120, Bhabha Marg, Tilak Nagar, Jaipur (Raj).

..Applicant

Versus

1. Union of India through Secretary, Department of Revenue, Ministry of Finance, Central Secretariat, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi.
3. The Chief Commissioner of Income Tax, Rajasthan, Jaipur

.. Respondents

Mr.M.Rafiq, counsel for the applicant alongwith applicant who appeared in person.

Mr. N.K.Jain, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The applicant, an officer of Indian Revenue Service (IFS) of 1977 batch, is presently working on the post of Additional Commissioner of Income Tax. At the material time relating to the facts of this OA, he was posted as Deputy Director Income Tax (Investigation) [for short DDIT (Inv)], Jaipur. Vide order dated 12.3.2001 a penalty has been imposed on the applicant under Rule 14 of

the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The applicant has assailed this order by filing this OA and he has made the following prayers for relief:-

- "a) By issue of mandamus or any other appropriate order or direction in the nature of quashing and setting aside the impugned order dated 12.3.2001 (Ann.A/1;
- b) By issue of mandamus or any other appropriate order or direction in the nature of directing the respondents to open the sealed cover and act upon the recommendations made by the DPC convened on 30th and 31st January, 2001 and 1st and 2nd February, 2001 qua the applicant for promotion to the post of Commissioner of Income Tax ignoring the impugned order dated 12.3.2001 (Ann.A/1.);
- c) Any other order or direction which this Tribunal may deem just and proper in the facts and circumstances of the present case may kindly be passed in favour of humble applicant including award of cost of this litigation."

2. The order of penalty has been issued in culmination of the departmental proceedings which were initiated against the applicant after serving upon him a chargesheet dated 20.6.1997. In the chargesheet the following charges were levelled against him as indicated in Ann.I of the memorandum dated 20.6.1997 :

"Article I

That the said Shri Dilip Shivpuri while functioning as Dy. Commissioner of Income Tax,


Jaipur, during the year 1991, with malafide intention of bestowing undue benefit to the assessee took possession of the record of search and seizure in the case of Shri Gurubachan Singh Anand of Kota on the pretext of recording statement under Section 132(4) of Income-Tax Act, 1961 and caused some important seized documents (detail mentioned in Annexure-II) to be interpolated, mutilated and lost.

Shri Dilip Shivpuri thus failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant, thereby violated the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1) (iii) of CCS (Conduct) Rules.

#### Article II

That during the aforesaid period while functioning in the aforesaid Office the said Shri Dilip Shivpuri with malafide intention of bestowing the benefit of waiver of penalty under section 271 (1)(c) of Income-tax Act to the assessee, directed the ADIT to record a statement under section 132 (4) of Income-tax Act, 1961 in the case of Shri Gurubachan Singh Anand of Kota on 21.9.92 though the search operation under section 132 had already been concluded on 11th August, 1992.


Shri Dilip Shivpuri thus failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant, thereby violated the provisions of



Rule 3(1)(i), 3(1)(ii) and 3(1) (iii) of CCS (Conduct) Rules."


The statement of imputation of misconduct and misbehaviour in support of the articles of charge is available at Ann.II of the chargesheet.

3. Factual matrix, as relevant to this case, is that in the year 1992 when the applicant was posted as DDIT (Inv) at Jaipur, the applicant had obtained authorisation from the Director of Income Tax (Inv), Ahmedabad and a search was carried out under the applicant's supervision on the business and residential premises of Shri Gurucharan Singh Anand, a Stone Dealer of Kota on 10.8.1992. This search operation was carried out by Shri P.D.Meena, Assistant Director of Income Tax (for short, ADIT), Kota. The ADIT was accompanied by two Inspectors for this search. The search party seized several documents which included a diary and a number of loose papers. These were taken over by Shri P.D.Meena and kept in his custody. On 7.9.92, the applicant visited Kota and took possession of some of the seized material from the ADIT, Kota on 8.9.92 and brought these along to Jaipur. These documents remained in the custody of the applicant from 8.9.92 till 21.9.1992. On 21.9.92, Shri P.D.Meena was at Jaipur and on that date he took over these documents from the applicant for recording the statement of the assessee Shri Gurucharan Singh Anand under Section 132(4). After recording the statement, the records were returned to the custody of the applicant by the ADIT and these were taken over by Shri Meena on



1.10.1992 when he again visited Jaipur. On 13.10.92, the ADIT telephonically informed the applicant that he had noticed tampering and interpolation of some of the pages of these documents. On 16.10.92 the ADIT came to Jaipur alongwith these documents for showing the same to the applicant and discussing the further course of action. On 19.10.92 the applicant met the Director of Income Tax (Investigation), Ahmedabad, Shri C.V.Padmanabhan at Jodhpur as he happened to visit Jodhpur on that date and the applicant reported the matter to him. The ADIT Shri Meena also met the Director on the same date at Jodhpur alongwith part of the seized material which has been alleged to have been tampered with. The Director <sup>General</sup> (Inv), Ahmedabad learning about this alleged tampering and interpolations visited Kota for conducting preliminary enquiry on 1.11.92 and 2.11.92 and submitted 'Tour Notes' vide letter dated 13.11.92 commenting on this aspect and directing certain course of action.


4. A show-cause notice was issued to the applicant vide memorandum dated 23.5.1994 wherein the applicant was asked to explain as to why action should not be initiated against him for the missing documents, interpolation in the documents and mutilation in some other seized documents. The applicant replied to the said memorandum vide his letter dated 28.9.95 addressed to the Deputy Secretary (V&L), Central Board of Direct Taxes, New Delhi. On 20th June, 1997, a chargesheet was issued to the applicant under rule 14 of the CCS (CCA) Rules, 1965 listing two articles of charges in Ann.I and statement of imputation of misconduct or mis-behaviour in support of these articles of charges as Ann.II. A list of documents by which and a list of witnesses by whom the articles of



charge was proposed to be sustained were also enclosed as Ann.III and Ann.IV. The applicant replied to the chargesheet on 28.7.97. A departmental inquiry was held by the Commissioner for Departmental Enquiries, Central Vigilance Commission. A copy of the enquiry report was given to the applicant under letter dated 8.12.1998 giving him an opportunity for representation or submissions within 15 days of the receipt of that letter. The applicant submitted his representation on 3.2.99. The Enquiry Officer had held the first charge as proved and the second charge as not proved. On the first charge the Enquiry Officer concluded as follows:-


"(1) Sh.Dilip Shivpuri gave undue favour to assessee/authorised representative and took possession of the record of search and seizure in the case of Sh. Gurucharan Singh Anand of Kota on the pretext of recording statement under section 132(4) of Income-Tax Act, 1961 and caused some important documents to be interpolated and mutilated."

The Disciplinary Authority consulted the Central Vigilance Commission (CVC) for the second stage advise. The CVC recommended acceptance of Enquiry Officer's report and advised imposition of major penalty on the applicant. The Disciplinary Authority consulted the Union Public Service Commission (UPSC) after sending a copy of the enquiry report to the Commission. The UPSC, vide their advise dated 24.10.2000 concluded that the tempering, interpolation and cutting in the records seized were done at Jaipur and with the connivance of the applicant. The Commission held the charges against the applicant as proved and proposed imposition of a penalty of reduction




by four stages in the time scale of pay for five years during which the charged official will not earn increments and this will have the effect of postponing his increments of pay. After taking into account the advice tendered by the UPSC, the Disciplinary Authority accepted their proposal. Accordingly, a penalty of reduction by four stages in the time scale of pay for 5 years was imposed with the stipulation that the applicant will not earn increments of pay during the period of reduction and on expiry of the period of 5 years the reduction will have the effect of postponing the future increments of his pay. This order was passed by the Disciplinary Authority on 12.3.2001 and the same was communicated to the applicant vide impugned order dated 9.4.2001 (Ann.A1).

5. The applicant has assailed the impugned order on various grounds including that the principles of natural justice have been disregarded and the proceedings were not conducted in a fair and equitable manner. According to the applicant, his being exonerated on charge No.2 should have automatically led to disproving of charge No.1 as it was not established that anything was done by the applicant to extend undue favour to the assessee. Regarding tampering and interpolation, the applicant's case is that the conclusions arrived at are not based on any established fact on record and this is a case of no evidence. It has been stated that not even iota of evidence is available to suggest any nexus whatsoever between the applicant and the assessee. The impugned order, as per the applicant, is not sustainable as the findings of the Enquiry Officer are perverse and based on



no evidence. These are based on mere conjectures and surmises and there is no legally admissible evidence against the applicant. Another plea raised by the applicant is that even though the incident pertains to the year 1992, the respondents had taken as many as 5 years to issue a chargesheet in the matter. Even after the enquiry report was submitted in June, 98, the respondents have taken almost 3 years to pass the order of punishment. Thus, the applicant has suffered immensely on account of prolonged continuation of enquiry and ultimate imposition of penalty. The applicant claims that throughout the proceedings there has been no delay on his part and he has continued to cooperate at every stage. The applicant has submitted that he has suffered immensely in his career prospects because a DPC has met on 30-31 January, 2001 and 1st and 2nd February, 2001 to consider the cases of promotion to the post of Commissioner, Income Tax. This DPC met to consider a very large number of candidates because of large scale upgradations in the cadre. The applicant's plea is that because of ongoing proceedings and subsequent punishment imposed on him, he has been made to suffer irreperably as a number of juniors have stolen a march over him.


6. The applicant has repeatedly emphasised on one aspect that at every stage of the proceedings right from the preliminary enquiry in the Department and later on the departmental enquiry under the CCS (CCA) Rules and the advice given by the UPSC the statement and evidence of Shri P.D.Meena, ADIT has been treated as a gospel truth and the applicant's version has been totally ignored.






Contention of the applicant is that in the occurrence of this nature when the seized records were in the custody of the ADIT for a longer period than the period for which they were with the applicant, this should have led the authorities to investigate the conduct of the ADIT Shri P.D.Meena also, but they have chosen not to act against him at all and accepted his version of the events to prove the applicant guilty.

7. As per the averments made in the OA the seized documents remained in the custody of Shri P.D.Meena till 8.9.1992. During this period Shri Meena allowed inspection of these documents to the assessee and his authorised representative at Kota itself and he also permitted them to get photocopies of these documents. The applicant submits that he received a request from the assessee and his Chartered Accountant that the seized documents be brought to Jaipur so that the assessee could inspect the same and make up his mind as to the quantum of surrender. Case of the applicant is that since success of the search of this nature is always measured by the maximum amount of surrender obtained by the assessee, the applicant in a bonafide manner brought these documents to his office at Jaipur. The statement of the assessee was recorded on 21.9.1992 at Jaipur by Shri P.D.Meena, ADIT. Shri Meena took possession of the seized records from the almirah of the applicant and recorded the statement of the assessee in an adjoining room. The assessee reported to having surrendered the income of Rs. 66 lakhs for the purpose of taxation. At that stage, the applicant submits that Shri P.D.Meena did not even slightly suggest any




tampering/loss/overwriting/interpolation/cutting in the seized documents/records. Thereafter Shri Meena is said to have visited his native place adjoining Jaipur. He carried the records back to Kota on 1.10.92 after giving receipt to the applicant in token of having received the seized documents but the applicant asserts that even at that stage Shri Meena did not mention anything regarding alleged tampering/loss/interpolation etc. It was only on 13.10.1992 that Shri Meena telephonically informed the applicant regarding certain tampering/interpolation/loss etc. The applicant has also questioned the imputation that this alleged action on his part was with a view to give benefit to the assessee, by stating that the matter was pending with the Settlement Commission and the final assessment of the income has not yet taken place. In that view, this cannot be said that any loss of revenue was caused to the Department by alleged tampering/loss/interpolation of the documents. While referring to Director General, IT, Ahmedabad's Tour Note the applicant has stated that the Director General had reached a conclusion that the tampering had been done by Shri S.R.Sharma, authorised representative of the assessee. In view of this, the applicant sent specimen handwriting of Shri S.R.Sharma to Director (Inv), Ahmedabad for seeking opinion of an handwriting expert. The applicant's apprehension is that opinion of the expert has been withheld from the proceedings, though that opinion would have been of considerable value and significance in the instant case. The applicant has also raised a ground that the very material witness Shri Gurucharan Singh Anand was not examined by the Enquiry Officer and his non-production obviously affects the case against the applicant.




Similarly, Shri P.N.Mittal, the then DGIT who had conducted the enquiry and can be an important witness was not even cited as a witness. The applicant's case is that he has been denied access to certain records which he had specifically asked for during the course of enquiry and which even the Enquiry Officer had directed the Presenting Officer to arrange for the applicant's inspection. This denial, according to the applicant has, jeopardised his defence. The applicant asserts that whatever tampering or mutilation had occurred in the records, the same could have happened only in Kota as the records were for major periods under the custody of Shri P.D.Meena, ADIT who at times had provided access to the assessee's representative and permitted photocopies to be made of the documents. The applicant has questioned the action of the respondents in treating Shri P.D.Meena as an approver and not conducting any investigation against him. The applicant had also raised doubt about tampering/mutilation of record having taken place at all as he has not been shown photocopies with which ADIT claims to have made comparison of the original record to establish tampering.

8. Reply to the OA has been filed by the respondents. On the ground of delay in initiating disciplinary proceedings as highlighted by the applicant, the respondents have submitted that the time taken in framing the charges and service of chargesheet was a result of adherence to the prescribed procedure under the CCS (CCA) Rules, 1965 and in their endeavour to provide reasonable opportunity to the delinquent/applicant. At no stage, there has been any avoidable delay. The charge




against the applicant was very serious and this required full opportunity to be provided to him so as to enable him to prove his innocence. In respect of sequence of events, the respondents have stated that the applicant ought to have waited for the directions of the superior authorities before accepting the assessee's unusual request for the documents to be brought to Jaipur as it entailed dislocation of the seized material from Kota to Jaipur. The applicant is stated to have agreed to this request in an unhealthy haste by transporting the material to Jaipur from Kota which was in flagrant violation of the laid down procedure in the Search Manual. The respondents submit that an assessee may, for his own reasons make a request for mitigating his inconvenience or hardship but the Government servant is required to follow the Rules and procedure which should alone guide him before he acquiesces to any request. While referring to submission of the applicant in para 13(iii) to 13 (xii) read together with deposition before the Enquiry Officer and those of Shri P.D.Meena, ADIT, the respondents have stated that this makes absolutely clear that the seized material was tampered with at Jaipur only. On the point raised by the applicant that whether any tampering had taken place, the respondents have rejected out right his contention by stating that this is not an occasion to examine whether tampering has taken place at all, as the applicant raised no such plea during the course of departmental enquiry. The report of the Enquiry Officer is stated to be self speaking and well reasoned and the Enquiry Officer has held one of the charges as proved only after taking into account request of the charged officer for certain




documents. On the issue of handwriting of the person who might have tampered with the documents, the respondents' plea is that it is immaterial whose handwriting it was, specially when it has been established that tampering took place at Jaipur where the applicant had carried the seized material against all norms and laid down instructions; without ensuring the procedure laid down in the Search Manual. The respondents have cast doubts on the intention of the applicant for the reason that he took possession only of specific documents and took them to Jaipur, not the entire seized material. The respondents also maintain that no material witness was withheld. It was not considered necessary by the Department to examine Shri Gurucharan Singh Anand. If the applicant so felt he could have produced him as a defence witness. The respondents contend that the penalty order was passed after considering the detailed enquiry report, advice from the UPSC and contend that the Disciplinary Authority has passed a reasoned and detailed order dated 12.3.2001 which is fully justified and sustainable in view of the facts established, as well as law.

9. The case was argued at length by the applicant himself who was assisted by the learned counsel Shri M.Rafiq. From the respondents' side the case was argued by the learned counsel Shri N.K.Jain.


10. The applicant himself traced out the entire sequence of events which culminated into the impugned order imposing penalty on him. The arguments were developed mostly along the lines already covered in the OA. The focus of his arguments was that the respondents have treated Shri P.D.Meena, ADIT like an approver in this



case, though the facts and circumstances tilted the needle of suspicion more towards Shri Meena than towards the applicant. The applicant stated that right from the beginning the authorities in the Department have proceeded with the pre-determined notion that the alleged tampering or mutilation of the records had taken place only when the records were in the custody of the applicant from 8.9.92 to 1.10.92. The applicant had referred to the statement of Shri P.D.Meena to contend that as on 21.9.92 when Shri Meena recorded the statement of the assessee when the assessee disclosed an income of Rs. 66 lakhs, Shri Meena had admitted that there was no tampering with the records till then. The applicant vehemently denied that he retained the records after recording the statement at Jaipur at the instance of Shri S.R.Sharma authorised representative of the assessee. He referred to his own statement and statement of Shri S.R.Sharma before the Enquiry Officer where both have denied that any such talk took place on the day for retaining the records at Jaipur. According to the applicant it was Shri P.D.Meena himself who did not take the record to Kota as he wanted to go to his village for his 'Japmala'. He came to Jaipur again on 1.10.92 and took possession of the record under clear receipt on that day. He did not point out any tampering with the records. It was only on 13.10.92 that he telephonically informed the applicant that he had noticed tampering/mutilation in the records which he also reported to Director (Inv.), Ahmedabad. The applicant's case is that once having taken possession under clear receipt Shri Meena cannot now turn back and say that the tampering took place only between 21.9.92 and 1.10.92. Plea of the




applicant was that there was no reason for <sup>granting</sup> any access to any person at Jaipur after assessee's statement had already <sup>been</sup> recorded by ADIT on 21.9.92. The applicant also argued that he had been denied reasonable opportunity during the inquiry as access to some of the records which he specifically requested for had been denied to him. The learned counsel referred to the case of Kashinath Dixit vs. Union of India, AIR 1986 SC 2118 and S.K.Jain v. Union of India and ors. , 1989 (4) (CAT) 953 and State of UP v. S.P.Saxena 1987 (Supp) SCC 165 to contend that if the documents based on which the charge has been established and which are material to the case are not supplied to the charged official, such an inquiry stands vitiated and is liable to be quashed. The learned counsel has also referred to the decided cases where if the bias on the part of the Enquiry Officer is proved such inquiry report cannot form the basis of any action by the Disciplinary Authority. The cases cited are:- Shri Lacchman Dass Garg v. Union of India, 1990 (2) SLJ (CAT) 500, V.D.Joseph v. Union of India, (1990) 14 ATC 99; G.Selavathy v. Director, Social Welfare Department, Government of Pondicherry and anr., (1991) 18 ATC 33. Regarding the key witness not examined, he has referred to the case of V.D.Joseph v. UOI and G.L.Chopra, 1998 (7) ATC 40. Regarding unexplained delay in completion of proceedings, the learned counsel for the applicant has cited following cases of State of M.P. v. Beni Singh and anr., 1990 (2) RSJ 38 SC; M.D.Parmar v. Y.B.Zala and ors., 1980 SLJ 477; R.S.Saini v. Union of India, ATR 1988 (I) CAT 407; M.N.Qureshi v. Union of India, (1989) 9 ATC 500 and State of S.P. v. N.Radhakrishnan, (1998) 4 SCC 154 to contend that such an



unexplained delay is an indication of prejudice caused to the employee in the departmental proceedings and such proceedings are therefore liable to be quashed. The learned counsel for the applicant stressed on the point that the entire case against the applicant is based on no evidence and at every stage an attempt has been made to prove the applicant guilty merely on conjectures and surmises. Evidence in defence of the applicant has been not fairly considered. For this following cases have been cited:-

- i) Union of India v. K.S.Kittu and ors., (2001) 1 SCC 65.
- ii) Kuldeep Singh v. Commissioner of Police and ors., (1999) 2 SCC 10
- iii) K.Chalamaih v. DRM, SC Rly., (1990) 12 ATC 353
- iv) Ashok Kumar v. State of UP, (1987) 3 ATC 581


11. The learned counsel for the respondents referred to the inquiry report where the assessment of evidence has been made by the Enquiry Officer and also the advice of the UPSC, to contend that these clearly establish that the tampering of records took place only at Jaipur where the applicant had taken original records in a selective manner. The learned counsel submitted that if at all the applicant felt that an opportunity of inspection was required to be given to the assessee at Jaipur, he could have taken photocopies of the documents and it was not necessary to take the originals. He made a pointed reference to the fact that after recording the statement on 21.9.1992, there should have been no reason for the






applicant to retain the record at Jaipur in his own custody and he should have returned <sup>these</sup> / to the ADIT for being taken to Kota. The learned counsel also referred to the deposition of Shri C.V.Padmanabhan, Director, IT (Inv), Ahmedabad to prove the contention that tampering could have taken place only at Jaipur. The learned counsel rebutted the contention of the learned counsel for the applicant that he had to keep the record at Jaipur as the ADIT did not go back to Kota from Jaipur but went to his village for 'Japmala'. The learned counsel stated that ADIT Shri P.D.Meena went to his village only after he found that the applicant had already agreed to retain the documents at Jaipur at his office. Thus, the learned counsel contended that the guilt of the applicant has been clearly established and there is no infirmity in the order of punishment which has been passed on proper scrutiny of facts and evidence and it is a reasoned order.

12. The scope of judicial review or interference by the Courts or Tribunal is narrow in respect of the departmental proceedings. The legal position in this respect has been settled by pronouncements of various Courts including the Apex Court. Principles established are that the Courts/Tribunals can interfere in the orders of the Disciplinary Authority only in case it comes to a conclusion that there was denial of rule of natural justice in the conduct of proceedings or there has been violation of statutory provisions relating to such departmental proceedings. In Kuldeep Singh v. Commissioner of Police (cited supra), Hon'ble the Supreme Court observed as under:-




6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the finding by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstances can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is



no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence or record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron Works v. Bhagubhai Balubhai Patel. In Rajinder Kumar Kindra v. Delhi Admn. it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.




9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the findings of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judiciary scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be re-lied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not <sup>be</sup> interfered with. "

13. We proceed to examine the action of the Disciplinary Authority against the applicant within the framework so established by the Apex Court. Out of the two articles of charge, article No.1 only had been held proved by the Enquiry Officer and the Disciplinary Authority having accepted these findings has imposed the punishment on the applicant vide letter impugned. Charge No.1 which has been held as proved by the Enquiry Officer reads as under:-


"Shri Dilip Shivpuri gave undue favour to assessee/authorised representative and took



possession of the record of search and seizure in the case of Shri Gurucharan Singh Anand of Kota on the pretext of recording statement under section 132(4) of Income Tax Act, 1961 and caused some important seized documents to be interpolated and mutilated."


14. We consider it necessary to discuss various grounds raised by the applicant in this OA and also during the oral arguments. According to the applicant, there has been a denial of natural justice, inasmuch as, he was not provided access to certain documents which he had specifically listed. His request for securing inspection and photocopies of documents at Kota was not considered. The applicant also attributes non examination of Shri Gurucharan Singh Anand, the assessee and Shri Hari Shankar Sharma, Inspector who were present at the time of alleged inspection at Kota having resulted into denial of natural justice. In respect of the charge as held proved which is tampering and mutilation of records, we do not consider that non-examination of Shri Gurucharan Singh Anand or Shri Hari Shankar Sharma, Inspector would have prejudiced the case of the applicant. The evidence of these persons could not have helped the case of the applicant. Even the inspection of photostat copies of the documents<sup>made</sup> at Kota cannot be stated to have caused prejudice to the applicant, insofar as, the charge held as proved is concerned.

15. During the course of arguments, the applicant vehemently stressed on the aspect whether "any undue




benefit" could have accrued to the assessee because of the alleged tampering of the records, the applicant referred to article 2 of the chargesheet which had been held as not proved to state that the element of undue benefit which could have accrued to the assessee or the loss which could have been caused to the Department has lost its foundation. The second article of charge itself alleged that intention of the applicant was to bestow the benefit of waiver of penalty under Section 271 (1)(c) of Income Tax Act to the assessee and this has not been proved. The conclusion was obvious that there was no loss to the Department of penalty and prosecution. Thus, the applicant contended that the question of undue benefit would not have arisen because of alleged tampering or mutilation.

16. We have carefully perused the entire record and the proceedings and also during the course of the oral arguments at no stage it has been established by the Department that because of the alleged tampering or interpolation any specific benefit has accrued in favour of the assessee or any loss has been caused to the Department in terms of revenue. To that extent it becomes immaterial whether any benefit accrued to the assessee or not but the charge for which the applicant has been punished is interpolation and tampering of the records, for which he has been held responsible by the Enquiry Officer. The case of the applicant is that insofar as this charge is concerned, holding him responsible for tampering or interpolation, is a case of no evidence as whatever evidence has come on record, can in no way establish any link between tampering and the applicant or to the fact that the alleged tampering took place at Jaipur only.




17. In view of this background, the only question which survives for our consideration is whether the charge of tampering having taken place at Jaipur when the seized documents were in the custody of the applicant is based on the evidence on record or is it a case of no evidence. This charge has been held as proved by the Enquiry Officer. The UPSC has also gone through the Enquiry Officer's report and concurred with the findings of the Enquiry Officer on this count. The Disciplinary Authority after taking into consideration the advice of the UPSC has also accepted the findings of the Enquiry Officer and on this basis the order of penalty has been issued. Primarily, the entire action is based on the findings of the Enquiry Officer. In this background, we have examined the findings of the Enquiry Officer vis-a-vis the evidence led before him by the state witnesses and the general examination of the applicant. We have perused the advice of the UPSC very carefully as also the stand of the respondents as indicated in the reply filed on their behalf. The different elements, which apparently have been taken into account to establish that the tampering has taken place when the records were in the custody of the applicant at Jaipur, are as under:-

- i) that the applicant had carried the original documents to Jaipur when he was already aware that the inspection of the same had already been done by the assessee and his representative at Kota and they had also obtained photocopies thereof,
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- ii) that the applicant himself selected only some of the documents to be taken from Kota to Jaipur and did not carry the entire record,
- iii) that the applicant had permitted access to the authorised representative of the assessee Shri S.R.Sharma even prior to 21.9.1992 when the statement of the assessee was recorded by the ADIT at Jaipur,
- iv) that after the statement of the assessee had been recorded at Jaipur on 21.9.1992, the applicant retained the seized documents at Jaipur only instead of permitting them to be taken back to Kota by ADIT,
- v) that the documents again remained in the custody of the applicant from 21.9.92 to 1.10.92 till they were taken back to Kota by ADIT.


It is on the basis of above stated reasons that the Enquiry Officer held article 1 of the charge as proved.

18. Regarding i) above, the respondents have submitted in their reply that the applicant has taken a plea that he had carried the records to Jaipur because of the request received from the assessee that the seized records be brought to Jaipur for his inspection. According to respondents, the applicant ought to have waited for directions of the superiors before transporting the seized material from Kota to Jaipur as the request made by the assessee entailed dislocation of the records and the applicant on his own was not compelled by his duties to






accede to such unusual or unreasonable request of the assessee. The respondents have termed the action of the applicant of transporting the seized material to Jaipur as a flagrant violation of the procedure laid down in the Search Manual. If we were to consider this stand of the respondents then the applicant was also guilty of violating the departmental rules of transporting the seized documents from one location to another. During the course of arguments, no rules were produced before us which could suggest that this action of the applicant was against the rules. The respondents also chose not to charge the applicant on this count. The charge is not that he violated any departmental rules while transporting the seized record from Kota to Jaipur. The charge is that he did so with the intention to give undue benefit to the assessee and of causing tampering with the records while they were at Jaipur. The UPSC have divided this particular charge into two components (i) he took possession of the records of search and seizure with malafide intention to bestow undue favour to the assessee, Shri Gurucharan Singh Anand of Kota on the pretext of recording statement under Section 132(4) of the Income Tax Act, 1961 and (ii) caused some important seized documents to be interpolated, mutilated and lost. Insofar as, the fact that he took possession of the record, the matter is not in dispute. The charge is that the applicant caused some important documents to be interpolated, mutilated and lost. This charge is of very grave nature. The Enquiry Officer has found, and also accepted by the UPSC and the Disciplinary Authority, that when the applicant decided to take these original documents from Kota to Jaipur, he was aware that




the assessee had already inspected the same at Kota earlier and had obtained photocopies of the record and in that view it was not necessary for him to take the original record to Jaipur. It is an agreed fact in this case that the Khosla and Co. Chartered Accountants had submitted an application to the applicant on 3.9.1992 requesting that the record seized at Kota may be called at Jaipur for inspection purposes. Alongwith this, request of the assessee Shri Gurucharan Singh Anand had also been enclosed. The applicant had acted on this request and brought the records in original from Kota to Jaipur, though he had brought only selected records. For establishing that the applicant was aware of the assessee or his representative having seen the record at Kota earlier or of having made photocopies thereof at the time he decided to bring the record at Jaipur, the Enquiry Officer has referred to deposition of Shri C.V.Padmanabhan, the then Director of IT (Inv) SW-1 who quoted from his letter dated 3.9.1993 addressed to the Director General that the inspection of the seized material was allowed to the authorised representative of the assessee by the CO (i.e. the applicant) was somewhat unusual in view of the claim made by the ADIT that he had supplied photocopies of the documents asked for by the assessee. He further goes on to say that it was stated by the charged official that fresh inspection was requested at Jaipur on the ground that photocopies supplied at Kota were neither clear nor complete. The same statement had also been made by Shri P.D.Meena, ADIT before the Enquiry Officer. The stand of the applicant is that at no stage prior to 13.10.1992 he had been told by the ADIT that the




assessee had already inspected the records in August, 1992. The Director of Income Tax (Inv) in his statement in the reply to the question had directly attributed this statement that photocopies supplied to the assessee at Kota were neither clear nor complete, to the applicant. In his deposition the Director, IT (Inv) has referred to his report to DGIT wherein in paragraph IV he had stated as under:-

"Having given due consideration to all the relevant materials, I am inclined to believe (emphasis supplies) that the tampering and mutilation of the seized materials have taken place only at Jaipur. However, I am unable to say whether this was done with the full prior knowledge of the D.D.I.T. (Inv.) or due to his negligence. Since Shri Shivpuri is now under administrative control of the C.C.I.T. Jaipur, I would suggest that if any further enquiries have to be made, it may kindly be made by the C.C.I.T. Whatever assistance is required will be provided by the present DDIT Shri Girish Dave."

19. The reason given by DIT<sup>(Inv)</sup> as to why he considered that tampering took place at Jaipur only is available in his answer to a question in the cross examination where again he has referred to para 3 of his letter dated 3.9.93 which in his words gives cogent reasons for his conclusions. It has been stated that since ADIT had taken precaution of keeping photocopies which was highly unlikely that he would have allowed tampering to



take place (emphasis supplied). He further goes on to state that action of the DDIT (Inv) i.e. the applicant in allowing the authorised ~~representative of the assessee~~ representative of the assessee to inspect the documents at Jaipur was unusual in view of the claim made by the ADIT that he had supplied the photocopies of the documents asked for by the assessee. Further statement has been attributed to the DDIT that fresh inspection had been requested at Jaipur on the ground that (i) the photostat copies supplied at Kota were neither clear nor complete (ii) the ADIT (Inv) had used very strong language with the assessee while at Kota as such he was afraid of appearing before the ADIT. The applicant had been repeatedly denying that he had any knowledge that before taking over the documents from ADIT at Kota he was made aware by the ADIT that the assessee or his authorised representative at Kota had taken photocopies thereof. On the point whether the tampering could have taken place at Kota, the DIT had again relied upon the information given to him by the ADIT that he had noticed interpolation etc. on 13.10.1992. On why the ADIT failed to take notice of these earlier, the DIT stated that it was only Shri Meena who could answer that question. The DIT also mentions that after the handwriting of the person who could have tampered the documents has been established after examining his handwriting that valid suspicion could be that tampering might have taken place at Kota. The Enquiry Officer has apparently based his finding on the deposition of Shri C.V.Padnabhan to say that it was clear that CO was aware of the fact that the assessee has been provided with the photocopies by the ADIT, Kota. The Presenting Officer has also attributed this knowledge on the part of the




applicant when he states that the charged official i.e. the applicant in general examination had stated that the records were taken to Jaipur to provide opportunity of photocopying/inspection as the photocopies taken at Kota were incomplete/unclear. We have seen the general examination of the applicant and we do not find any statement made which has been attributed to him by the Presenting Officer suggesting that he had taken the records to Jaipur to provide an opportunity of photocopies/inspection as the photocopies taken at Kota were incomplete or unclear. In fact, in the general examination of the applicant no question has been asked to him to ascertain whether he had prior knowledge of the assessee having inspected the record at Kota before these were taken over by the applicant for taking them to Jaipur. Even in the brief submitted by the applicant after the enquiry, the applicant has been denying any knowledge of this fact. The applicant's case is that he came to know about this for the first time only from a letter dated 13.10.92 written by the ADIT, Shri P.D.Meena wherein in para 2 of the letter he had mentioned that the photocopies of the seized material were made available to the assessee on request before these were handed to you (i.e. the applicant). On this, Enquiry Officer has referred to the applicant's letter dated 21.10.1992 wherein he had mentioned about the photocopies having made earlier at Kota to hold that the applicant was aware of the factum of inspection having been taken by the assessee prior to 7.9.92 at Kota. But this date of 21.10.92 is after the letter of 13.10.92 wherein ADIT had mentioned about this fact. Based on that fact, if the applicant has mentioned



that these photocopies had been taken at Kota did not mean that he had knowledge of this fact even earlier i.e. before 13.10.92. The Enquiry Officer's conclusion is that "CO was aware of the fact that the assessee had been provided photocopies by ADIT Kota". In our considered view, it is not <sup>a</sup> reasonable conclusion which has been arrived at based on the available evidence. The DIT (Inv) had no firm basis to conclude this, as he went only by the versions of ADIT. The Presenting Officer has attributed a statement to the applicant, which he i.e. the applicant actually did not make. The Enquiry Officer finds the letter dated 21.10.92 of the applicant himself as the firm evidence to suggest that he had prior knowledge, notwithstanding the fact that this letter of 21.10.92 had been written by the applicant only in response to ADIT's letter of 13.10.92 wherein the ADIT had mentioned that the assessee had examined the documents earlier and had made photocopies thereof. In this background, the Enquiry Officer's conclusion is only a mere surmise without any reliable proof.


20. The second element is that the applicant selected only some of the documents to be taken to Jaipur. On this, there is no dispute that the assessee or Ms. Khosla and Co. had not mentioned any specific documents which they wanted to see at Jaipur. The applicant's plea is that he had not selected the documents which he brought along as it was only the ADIT who had gone through these documents deeply and was aware of the significance of these documents. He took over the documents whichever were handed over to him by the ADIT. On the other hand, the



ADIT in his deposition has stated that the specific documents were selected only by the applicant. In view of this opposing contentions of the applicant and the ADIT, the Enquiry Officer has stated that since there was no request for any specific documents but the CO carried only a few documents to Jaipur, it appears he himself selected important documents to be taken to Jaipur for inspection (emphasis supplied). It is obvious that this factum as to who selected the documents has not been clearly established. It is the conjecture of the Enquiry Officer that it could have been done by the applicant himself.

21. Next element is that the applicant has permitted access to the authorised representative of the assessee even prior to 21.9.92 when the statement of the assessee was recorded by the ADIT. This fact has not been denied by the applicant but no inference has also been drawn by the Enquiry Officer that because of this fact on the part of the applicant, the tampering could only have done at Jaipur.

22. Next point is that after the statement of the assessee had been recorded at Jaipur on 21.9.92 the applicant retained the documents at Jaipur only and these remained with him up to 1.10.92. This is alleged to have been done by him at the instance of Shri S.R.Sharma, representative of the assessee. The applicant has denied that he wanted the records to be retained at Jaipur after 21.9.92. He has also referred to the statement of Shri S.R.Sharma before the Enquiry Officer where Shri Sharma has denied that he ever made any request for retaining the




record at Jaipur after assessee's statement has been recorded by the ADIT. The applicant has stated that these records were left at Jaipur by the ADIT because Shri Meena did not go back to Kota after recording the statement of the assessee but instead went to his own village for his 'Japmala'. The version of the ADIT is that he went to his village after the applicant had decided to retain the records at Jaipur. Between these two versions, no attempt has been made by the Enquiry Officer to establish as to which is correct but he does mention that the documents were retained from 21.9.92 to 1.10.92 by the applicant though there was no specific need to retain these at Jaipur. There is no attempt on the part of the Enquiry Officer to resolve the rival contentions of the applicant and the ADIT on this aspect of this case whether the records remained at Jaipur because the ADIT decided to go to his village or ADIT went to his village only after the applicant had decided to retain them at Jaipur.

23. One of the suspects in tampering as per the DGIT's report could be Shri S.R.Sharma. His handwriting was admittedly sent to DIT by the applicant as soon as he learnt of apprehension of the DGIT. Nothing has been brought out by the respondents on this count as to what was the report of the handwriting expert. The reasons for the respondents to keep silent on this aspect are not forthcoming and are not clear, though this would have been a very vital source of evidence to determine the possibility of tampering whether it took place at Jaipur or Kota. The respondents in their reply have brushed aside this requirement by saying that it is immaterial whose




handwriting it was especially when it was established that tampering took place at Jaipur where the applicant had carried the seized material against norms and procedure and allowed inspection. We find this response intriguing as the opinion of the handwriting expert was required only to establish the very fact whether tampering took place at Jaipur or tampering was done by Shri S.R.Sharma. The respondents have taken the factum of tampering having taken place at Jaipur as established and then have suggested that the opinion of the handwriting expert was immaterial in the case. We do not see any rational in the arguments advanced by the respondents and the same needs to be rejected. In fact, we are left wondering at the way this vital aspect has been handled by the Enquiry Officer. While he did observe in his report that report of the handwriting expert was not produced before him, he did not insist on its being produced during the enquiry. Why he left this undoubtedly important evidence be not produced and considered raises a question on the manner, the proceedings have been conducted and concluded. The Enquiry Officer should have directed the department to produce that evidence. DIT (Inv) was a state witness to whom the specimen handwriting had been sent by the applicant. The Enquiry Officer did not consider it necessary to question him on this point.

24. We find that the Enquiry Officer has not discussed the implications of the statement made by the applicant as admitted by the ADIT that the ADIT had taken over the documents from the applicant on 1.10.92 after giving clear acknowledgement. He has also not investigated as to why ADIT decided to come to Jaipur only on 1.10.92




record to conclude in a definite manner that the tampering did not or could not have taken place when the records were in the custody of the ADIT at Kota. The needle of suspicion tilts as much against the occurrence taking place at Kota as at Jaipur. The Enquiry Officer's overlooking the significance of the opinion of the handwriting expert and not insisting at calling for the expert's report is also baffling. We have no doubt that the Enquiry Officer has reached his findings merely based on conjectures and surmises and not on the proof arising out of evidence led before him. The inferences drawn by the Enquiry Officer have remained in the realm of probability and are not based on conclusive evidence. The UPSC also apparently approached the matter by presuming the guilt of the applicant and then proceeding to tender their advice with a pre-determined mind. The Disciplinary Authority has merely accepted the enquiry report and the advice of the UPSC elaborately bringing in its order the reasoning given by the Commission leading to their conclusion of holding the applicant guilty. As we have found, the findings of the Enquiry Officer are based on no evidence but are merely his own conjectures and surmises. Any action on such findings is vitiated. Thus, we are unable to uphold the order of penalty which is based on such findings and consequently this order is not legally sustainable.

27. In the light of discussions aforesaid, we allow this OA and quash and set-aside the order of the Disciplinary Authority dated 12.3.2001 as communicated under letter dated 9.4.2001 (Ann.A1). With the quashing of



and not earlier. Another important aspect missed by the Enquiry Officer is that in examination-in-chief, Shri P.D.Meena, the then ADIT, has deposed that he wanted to take back the records at Kota as the time for writing appraisal report was about to expire. This was on 21.9.92. The records were taken over by Shri Meena on 1.10.92, but then he started writing the appraisal report only on 13.10.92. If the time was about to expire on 21.9.92 then why the ADIT waited till 13.10.92 to start writing the appraisal report, has not come for scrutiny by the Enquiry Officer.

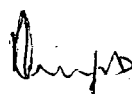
25. The level of proof required in a departmental enquiry is not at par with the amount of proof required in criminal proceedings. In criminal cases, the charge against the delinquent has to be established beyond any reasonable doubt, but in a departmental enquiry the conclusion arrived at has to be such that based on the evidence adduced before the Enquiry Officer, it would be reasonable for any person of ordinary prudence to arrive at the conclusion which the Enquiry Officer has arrived at. This would naturally mean that the reasonable nexus can be established between the findings reached by the Enquiry Officer and the evidence on record. In the instant case, it cannot be said that based on the evidence which has come on record during the enquiry, the only conclusion which could <sup>have</sup> be emerged was that the applicant was responsible for tampering and manipulation took place only when the seized records were in the custody of the applicant at Jaipur. In fact, the conclusion could be as strongly in favour of the applicant as there is nothing on



record to conclude in a definite manner that the tampering did not or could not have taken place when the records were in the custody of the ADIT at Kota. The needle of suspicion tilts as much against the occurrence taking place at Kota as at Jaipur. The Enquiry Officer's overlooking the significance of the opinion of the handwriting expert and not insisting at calling for the expert's report is also baffling. We have no doubt that the Enquiry Officer has reached his findings merely based on conjectures and surmises and not on the proof arising out of evidence led before him. The inferences drawn by the Enquiry Officer have remained in the realm of probability and are not based on conclusive evidence. The UPSC also apparently approached the matter by presuming the guilt of the applicant and then proceeding to tender their advice with a pre-determined mind. The Disciplinary Authority has merely accepted the enquiry report and the advice of the UPSC elaborately bringing in its order the reasoning given by the Commission leading to their conclusion of holding the applicant guilty. As we have found, the findings of the Enquiry Officer are based on no evidence but are merely his own conjectures and surmises. Any action on such findings is vitiated. Thus, we are unable to uphold the order of penalty which is based on such findings and consequently this order is not legally sustainable.

27. In the light of discussions aforesaid, we allow this OA and quash and set-aside the order of the Disciplinary Authority dated 12.3.2001 as communicated under letter dated 9.4.2001 (Ann.A1). With the quashing of

the order, the applicant shall be entitled to all consequential benefits. The respondents are directed to review the case of promotion of the applicant at par with his next junior subject to his fitness having been determined by the DPC. The respondents shall review the case of the applicant's promotion within two months from the date of receipt of certified copy of this order. In the facts and circumstances of this case, there shall be no order as to costs.

  
(A.P. NAGRATH)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member