

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 552/2003.

Jaipur, this the 10<sup>th</sup> day of May 2005.

CORAM :HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.  
HON'BLE MR. A. K. BHANDARI, ADMINISTRATIVE MEMBER.

K. C. Pipal S/o Late Shri Dhani Ram, aged about 48 years,  
R/o 16, Mauji Nagar, Pratap Nagar, Sector-8, Sanganer,  
Jaipur.

.... Applicant.

By Advocate : Shri R. D. Rastogi.

Versus.

1. Union of India through Secretary, Department of Atomic Energy, Anushakti Bhawan, C.S.M. Marg, Mumbai.
2. Additional Secretary, Department of Atomic Energy, Anushakti Bhawan, C.S.M. Marg, Mumbai.
3. Director, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy Bugumpet, Hyderabad.

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

**: O R D E R :**

**By A. K. Bhandari, Administrative Member.**

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, to seek following reliefs :-

" In view of the facts and circumstances stated herein above, the applicant prays that this Hon'ble Tribunal may be pleased to allow this application and may also be pleased to call for and peruse the relevant record if so pleases and :-

By issue of appropriate order or direction the order dated 2<sup>nd</sup> June 2003 which is Annexure -1 in this OA may kindly be quashed and set aside and the respondents may be directed

to release all benefits, if deducted during the pendency of this application, as if no such punishment order was ever passed against the applicant.

2. The brief facts of the case are that on the basis of a preliminary inquiry a charge sheet was prepared for regular departmental inquiry against the applicant and three other persons namely Shri A. K. Srivastava (CO-1) who at the relevant time working as Scientific Officer /SD (Coordinator of the Prospect), Shri M. S. Hansda (CO-3) who was working as Sr. Clerk (Cashier) and Shri K. Ram, Tradesman <sup>✓</sup> at the relevant time. The charges concerned misconduct ~~of these officers~~ in connection with collusion to misappropriate government funds and fabrication of record. The charge sheet dated 30.9.92 is annexed as Annexure A/2. The applicant submitted a detailed reply vide letter dated 14.11.92 (Annexure A/3). Inquiry Officer was appointed and preliminary hearing in this case was fixed on 14.6.93. The articles of charges were read out and explained in Hindi as per request of the applicant but it is averred that regular hearing were conducted in English in spite of, applicant's request for the same in Hindi. After recording of evidence including statements of witnesses the presenting officer and the applicant submitted their briefs. The Inquiry Officer submitted his report on 30.6.94, a copy of which was forwarded to the applicant for his submission, if any, on it. The Disciplinary Authority by his order dated 5.11.99 (Annexure A/1) conveyed the penalty of dismissal from service to the applicant. It is stated that a bare perusal of this order would reveal that it is not a detailed order with regard to applicant's defence in the inquiry and it has been passed in a slip shod manner.

3. It is further stated that the applicant was promoted as Scientific Officer/SB vide order dated 31.5.90 (Annexure A/5) w.e.f. 1.2.90: This was a Class II Gazetted post, the appointing authority of which is the President and, therefore, the President is the Disciplinary Authority for this post also. Subsequently on 8.8.97 he was further promoted as Scientific Officer/SC w.e.f. 1.2.97 which was during the period when the Departmental inquiry was in progress. This is a Class I Gazetted post and here also the appointing authority is the President of India. A copy of this promotion order is annexed as Annexure A/6. From these details it is evident that the Additional Secretary of the Department was neither the Appointing Authority nor the Disciplinary Authority of the applicant due to which reason he was not competent to pass the order of dismissal of the applicant.

4. Due to these and other reasons, the applicant filed OA No.2243/2000 before the Principal Bench of the CAT, New Delhi with the prayer to quash and set aside the dismissal order dated 5.11.99. The Principal Bench of the CAT, New Delhi, decided the OA vide judgment dated 9.7.01 (Annexure A-7) and the dismissal order dated 5.11.99 was quashed and set aside on the ground that after being promoted for Group A post on 1.2.97, the procedure meant for Group A officer in the Disciplinary proceedings should have been followed by the respondents which was not done inasmuch as the dismissal order has been passed without consulting the UPSC, which

is not in accordance with the procedure laid down under the relevant rules.

5. Pursuant to the decision of CAT Bench, New Delhi, the applicant was reinstated vide order dated 18.9.01 (Annexure A/8) and was posted as Scientific Officer/C at Regional Officer, Western Region, Jaipur and the above Departmental Inquiry was referred to by the respondents to the UPSC for advise vide letter dated 3.4.02. The UPSC considered the matter in detail and after perusal of all the documents it observed that the submissions of bills without actually procuring the bricks was not done with any bad intention, the special advance was not utilized for the purpose for which it was drawn and false bills were submitted by Shri Srivastava during the absence of applicant and the person primarily responsible for fake transaction was Shri Srivastava who was the then officer in charge of the dealing Unit and after making a detailed discussion it was found that no advance was received by the applicant and even bills for payment were prepared by Shri Srivastava and Cash Book entries relating to Rs.2880/- which were issued to Shri Srivastava and not to the applicant and the fake certificates for receipt of bricks from the supplier were also signed by Shri Srivastava and not by the applicant and accounts certificate for the bricks dated 27.3.90 was also prepared by Shri Srivastava and was not even countersigned by the applicant though mentioned by the Inquiry Officer, that the Misc. Expenditure Register showing payment of Rs.2525/- to Shri Gopi Nath Behara for mud Bricks does not bear the signature of the applicant nor signatures in Receipt Control Register and for the

amount of Rs.2000/- received by the applicant on 22.3.91, it was observed that it was refunded by him on 27.3.91 and UPSC also observed that almost all the documents were prepared by Shri Srivastava but it still gave a finding that though he was aware of not purchasing the mud bricks for which advance was drawn but he suppressed this fact, therefore, the allegation of suppressing the facts was proved against him and resultantly the UPSC recommended for this withdrawal of the punishment order dated 5.11.99 by which punishment of dismissal was awarded and recommended for reduction of the pay scale of the applicant for a period of 5 years and it was also held that even after 5 years if he is found fit for being promoted to the higher post of Scientific Officer/C even on such re promotion he will not regain his original seniority which has been assigned to him prior to the imposition of the penalty. A copy of UPSC's advise has been annexed as Annexure A/9.

6. Thereafter order dated 2.6.03 (Annexure A/1) has been passed by Respondent No.1 by which the punishment of reduction to lower grade of Scientific Officer/SB has been imposed upon the applicant until he was found fit after a period of 5 years to be restored to the higher post of Scientific Officer/C and on such re promotion he was to regain his original seniority. But in the punishment one new thing has been added by the Disciplinary Authority which was not advised by the UPSC that the period of reduction shall operate to postpone future increments.

7. It is stated that no show cause notice was given to the applicant while awarding above punishment. Also that the UPSC while tendering above advice has adopted different yardsticks inasmuch as in the case of Shri S. K. Sharma who was working as Senior Clerk in North Western Region at Atomic Minerals Division, Jaipur, the UPSC had taken note of the fact that if there is any delay in completion of the disciplinary proceedings then it is fatal. In that advise, it was also stated that the over all responsibility of maintenance of cash books and the subdiary and registers is that of the Head of Office and not the subordinate gazetted officers and therefore, Sh. S. K. sharma was exonerated. A copy of this advise is annexed as Annexure A/10. However, in spite of, delay of 12 years in completion of the disciplinary proceedings against the applicant and although he was not gazetted officer at the relevant time and it was not his responsibility to maintain cash books and other registers, yet the UPSC has suggested heavy punishment, which shows that it is adopting different yardsticks in similar cases. Aggrieved by these facts, this OA has been filed.

8. In the grounds, it is stated that the Inquiry report and the punishment order are misconceived as both the Inquiry Officer and the Disciplinary Authority failed to notice that the applicant had not drawn or spent the money drawn as advance and that the entire action was taken by Shri A. K. Srivastava, yet applicant has been held responsible. The UPSC ~~is~~ has considered these facts but still it has held applicant guilty of suppression of facts, though, there was no suppression of facts on his part and the Disciplinary Authority

inflicted more punishment than the punishment advised by the UPSC. Further that there was no suppression of facts on the part of applicant and that his Superior Officers Shri A. K. Srivastava was fully aware of all the facts. In fact it is he who prepared all the records and the applicant only put his counter signature on the cash book after checking signature receipt voucher, accountant certificate and adjustment bills etc. At that time all the documents were already installed by Shri A. K. Srivastava. Shri Srivastava was also the senior colleague of the applicant and due to these reasons he cannot be considered as suppressing facts when he in good faith without any ill will or motive countersigned the document. In this connection, the decision in the case of Kamleshwar Prasad Srivastava vs. Union of India and others (1991) 15 ATC (Lucknow) dated 5.7.90 is cited to state that disciplinary action cannot be taken against government servant for official act done in good faith as it does not constitute dishonesty. Further that the applicant is a technical hand and is not well conversant with accounts procedures. As per general practice advance was drawn by him as imprest for meeting out day to day expenses connected with drilling work and adjustment bills were submitted later. The applicant was a non gazetted employee at that time and it is neither the case of the respondents that he withdrew the amount for which he did not even have the powers. It is to be noted that so far as the amount of Rs.2525/- is concerned, it was neither drawn by the applicant nor did he submit any false adjustment bills and the amount of Rs.2000/- was taken by the applicant on 21.3.91 as an imprest for meeting out day to day expenses for Drilling Unit and the same was

returned also on 27.3.91 after 5-6 days. But the Inquiry Officer and Disciplinary Authority have failed to notice these true facts objectively.

9. It is also stated that the preliminary inquiry was done in a very shallow manner, report of which was never given to the applicant. The applicant has gone at length in reappraising the evidences recorded by the Inquiry Officer, the details of which are stated in Paras 5.10 to Para 5.15 and it is concluded that in essence it is a case of no evidence against the applicant.

10. Further ground taken by the applicant is that in violation of Rule 15(4) (ii) (b) of Rules of 1965 no show cause notice against the proposed penalty was given due to which reason the punishment order dated 2.6.03 is liable to be quashed. That even for the sake of argument if the applicant is held guilty, the heavy punishment awarded to him for disproportionate to the trivial charge of suppressing true facts, and the punishment order deserves to be quashed on this ground alone. The applicant has also highlighted that preliminary inquiry was held on 25.3.91, charge sheet was issued on 30.9.92, approximately 18 months later without explaining the reasons for delay and punishment order has been issued on 2.6.2003 that is more than ten years later which is arbitrary action of the respondents. Allegation of discriminatory advise by UPSC on similar matters is also repeated in the grounds.

11. Respondents have given elaborate parawise reply in which the facts of preliminary inquiry based on complaint received by the department have been stated. When the department was convinced about the mis appropriation and manipulation of records in the matter of purchase of mud bricks a common proceeding against the applicant, Shri A. K. Srivastava, Scientific Officer/SB and Shri M. S. Hansda, Senior Clerk (Cashier) and K. R. Khatri, Tradesman 'A' was started, in which the charge against the applicant was to the effect that he colluded with the other officials in this misappropriation and suppressed the true facts of it from the superior authorities. Accordingly, Respondent No.2, Additional Secretary, Department of Atomic Energy, was appointed as the Disciplinary Authority in exercise of powers conferred under Sub Rule (1) and (2) of Rule 18 of CCS (CCA) Rules 1965 who appointed the Inquiry Officer. The Inquiry Officer submitted his report holding the charges against the applicant as proved among others. The copy of Inquiry Report was forwarded to the applicant with a view to afford him a reasonable opportunity to submit a representation which he submitted against the said report. The Disciplinary Authority after considering the entire material on record and the representation received from the applicant held that the charges against the applicant were proved beyond doubt. He, therefore, imposed major penalty of dismissal from service vide order dated 5.11.99 (Annexure R/1).

12. In view of filing of OA No.2243/2000 by the applicant and decision of the Principal Bench of CAT, New Delhi, in it, by which the order of dismissal was set aside because mandatory procedure of

seeking UPSCs advise has not been followed, the department issued an order reinstating the applicant in service in grade of Scientific Officer/C with immediate effect and the disciplinary proceedings were started again from the stage of passing a final order in accordance with law. Accordingly, Respondent No.1 after careful perusal of the entire matter and while proposing the punishment of compulsory retirement with full retirement benefits forwarded the record of the Disciplinary Inquiry to the UPSC for their advise. After examining the entire case the advise was received and after careful consideration of all the facts, Disciplinary Authority decided to impose penalty of reduction to the lower grade of Scientific Officer/SB in the scale of pay of Rs.6500-10500/- (revised scale Rs.7450-11500) for a period of 5 years to be restored to the higher post of Scientific Officer/C after that period and that on such re promotion would not regain his original seniority which had been assigned to him prior to the imposition of the penalty and that the period of reduction would operate to postponed the future increments (Annexure A/1). It is averred that the entire action of the respondents is perfectly legal and cannot be assailed as arbitrary.

13. In the reply, it is stated that the applicant was erroneously promoted to Group 'A' post of Scientific Officer (SC) w.e.f. 1.2.97 during the pendency of the disciplinary proceedings without following the sealed cover procedure. For this lapse, the officers responsible for the mistake are being dealt with separately. That there is no illegality in not supplying copy of the preliminary inquiry

report to the delinquent officer because as per guidelines appearing in Para 6 of Government of India's instructions 23 under Rule 14 of CCS (CCA) Rules, 1965 it is not required to be done. Further that charges against the applicant were based on documentary evidence, copies of which documents were provided to the applicant. Shri D. B. Gupta, who investigate the matter was cited as prosecution witness and thus the applicant was afforded an opportunity to cross examine him. Further that during preliminary hearing held on 14.6.93, the applicant had not totally denied the charge and had stated that the only lapse on his part was that he failed to inform the authorities concerned in writing to the effect that the mud bricks for which advance was drawn was not actually purchased, although this fact had been brought to the notice of the Project Manager verbally. Further that although applicant had not physically drawn advance yet he had applied for it and the same was sanctioned. In his absence on tour/leave the cash was physically drawn by his superiors. However, the fact that his superior has drawn the cash does not absolve the applicant of the responsibility of pursuing the matter further to see what had been done after drawing the advance and whether the mud bricks had been purchased or not. He would have certainly noticed that the wall was not constructed although the money was drawn as advance for it. On the contrary, he counter signed the entries in the cash book on 15.3.90 (Sl. No.7 of Annexure A/III of the charge sheet which has been incorporated as Exhibit A/2 to the OA). The applicant has also stated that he had countersigned the certificate/receipts prepared by Shri A. K. Srivastava. Witness Shri Gopi Nath has stated that though he did

not supply any mud bricks his signatures were obtained by Shri Hansda on the pre written stamp receipt. Also that S/s A. K. Srivastava and Hansda had given assurance to him that nothing will happen to him. These facts were also known to the applicant. The Disciplinary Authority had also taken into consideration the contents of letter from Shri A. K. Srivastava addressed to D. B. Gupta dated 27.3.91 (which has been cited as Item 12 in the list of documents relied upon) that although submission of bills without actually procuring the bricks was not done with any bad intention but nevertheless the whole episode amounted to something very wrong which shout not have been done. In such circumstances countersigning the cash book was done by the applicant with ~~the~~ intention of suppressing the true facts. Regarding advance of ~~the~~ Rs.2000 drawn by the applicant, it was noticed, although applicant has stated that this was done for carrying out local purchase as per day to day requirement, this statement of the applicant is not corroborated by documentary evidence. Besides, having countersigning the cash book and thus having completed the transaction of purchase of mud bricks March 1990 which is borne out by documentary evidence, the amount of Rs.2000 given to him from the bricks related advance is merely on after thought to cover the illegal transaction. Due to these reasons, the allegation of collusion of the applicant with other charged officers stands proved. The respondents, therefore, are fully justified in concluding that charge of mis conduct framed against the applicant was fully proved. In fact it is proved beyond doubt on documentary evidence alone.

14. During the enquiry, proceedings were written in English but on applicant's request everything was explained to him in Hindi, due to which reason he did not raise any objection regarding it in course of the inquiry or in his representations thereafter. The contention of incompetence of the Disciplinary Authority has already been denied and it is stated that Annexure A/5 on the basis of which applicant claims that the President of India is the appointing authority is wrong because nowhere in this order, copy of which has been annexed as Annexure A/5, such a fact is annotated. In the capacity of Disciplinary Authority imposition of major punishment is well within the powers of Additional Secretary. That following the advise of the UPSC on all aspects is not mandatory and that more than the advised punishment has been imposed consciously because of the gravity of the charge and the Disciplinary Authority was fully convinced about the mis conduct of the applicant. Further that applicant cannot take plea of good faith in toeing the line of superior officer as has been claimed by citing the case of Kamleshwar Prasad Srivastava vs. Union of India and others (1991) 15 ATC (Lucknow) dated 5.7.90 because good faith can be justified only when act is done with due care and caution but in this case the applicant has deliberately suppressed the true facts of misconduct of his colleagues from his superior officer and has this become party to manipulation with them.

15. Respondents have also denied that they were required to issue second show cause notice in this case because the need of the

same stands dispensed with in terms of 42<sup>nd</sup> Amendment to the Constitution. Regarding contention of punishment order not being elaborate and self speaking, it is stated that elaboration is not required when Disciplinary Authority agrees with and adopts the inquiry report. The contention of delay is deflected by stating that it was due to the fact that it was a common proceeding against applicant and 3 other officers for involvement in financial irregularities, enquiries in which are always long and painstaking. That the Respondent No.2 was appointed as Disciplinary Authority in exercise of power conferred under Sub Rule (1) (2) of Rule 18 of CCS (CCA) Rules 1965 by proceedings dated 30.12.92 and since the Disciplinary Authority is in Mumbai, the Directorates Head quarter is at Hyderabad and the documents pertaining to the said irregularities are available at Calcutta where the applicant was working, certain delay was invariably. Further, the delay had occurred in the process of compliance of procedure prescribed for the completion of such enquiries.

16. The reply to the OA also dwells upon the requirement of lesser degree of proof in matters of departmental inquiry which are only quasi judicial in nature, unlike ~~to~~ criminals trial in which much higher degree of proof is required to consider the charges proved. And on the basis of all the facts and evidence recorded by the Inquiry Officer, the Disciplinary Authority rightly considered the charges in this departmental action as proved and fit for awarding deterrent punishment.

17. The applicant has filed detailed rejoinder. In its main contention is with regards to advise of UPSC, on the basis of which charge against the applicant was only proved to the extent of suppression of facts and the charge of colluding was not proved. In such circumstances the awarded punishment which is more severe than the one advised by the UPSC should not have been imposed. In the rejoinder, other averments are same as those raised in the OA and by annexing a copy of the representation dated 9.12.94 as Annexure A/12 it is pleaded that the Disciplinary Authority had not considered all points raised in it in his defence while awarding punishment, which renders it violative of rules and makes it arbitrary in nature.

18. Parties were heard at length during arguments.

19. Learned Counsel for the applicant extensively read through the articles of charges (Annexure I) and imputation of charges (Annexure II) of the charge sheet (Annexure A/2 of the OA) to exemplify certain contradictions and pleaded that they should render the charge sheet void. He ~~also read through~~ specifically the contents of Para <sup>11</sup> of it while stating that according to the UPSC the real culprit in the episode was Shri A. K. Srivastava and that as stated in Para 11 of the advise the element of collusion of the applicant with him is not proved. He further tried to argue that as per UPSC's advise it is a case of no evidence against the applicant. He also asserted that in the face of such a finding, the UPSC was wrong in proposing severe punishment of reduction to

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to Panel*

lower grade of Scientific Officer/SB in scale of Rs.6500-10500 for a period of five years until he is found fit, after a period of five years to be restored to the higher post of SO/C and on such re promotion he will not regain his original seniority which has been assigned to him prior to the imposition of the penalty. He found fault with the UPSC also because it advised exoneration in the case of one Shri S. K. Sharma vide their letter dated 2.5.02 (Annexure A/10) ~~and above~~ <sup>but</sup> ~~it has been proposed~~ punishment to the applicant although the circumstances of applicant's case are similar to Sh. S. K. sharma's case.

20. Per contra, Learned Counsel for the respondents, exerted to show how the applicant had failed in his duty to ensure that the work for which money was drawn was completed. He in fact wrongly countersigned the cash book to hide the malpractice. By this act he clearly colluded with others. In order to suppress the facts of this conspiracy he in fact tried to show that amount of Rs.2000/- was drawn by him at a later date as imprest, to meet day to day expenses but he failed in it because as per record the money drawn for purchase of mud bricks stood spent in 1990 whereas the above advance as imprest was shown drawn in the month of March 1991. This manipulation was clearly proved by the Inquiry Officer. He also averred that the Courts and Tribunals have only limited powers in the matters of departmental inquiry, confined to examining whether procedure as per law has been correctly followed, there has been no malafide while awarding punishment and that it is not a case of no evidence. However, in this case there is no malafide on any ones part, nor has there been any violation of

procedure and there is overwhelming evidence to show that the applicant had erred in suppressing the facts of misappropriation of government funds by his colleagues. In such circumstances he requested to uphold the impugned order.

21. We have given very careful consideration to the facts and pleadings of this case including the advise of the UPSC which in fact is the stage from which the Disciplinary Authority was required to restart after the decision of the Principal Bench to quash the punishment order in the earlier OA No. 2243/2000. After very careful perusal of the UPSCs report we find that it is exhaustive and it makes up for the absence of the inquiry report on the file of this case. The UPSC has not only gone through each aspect of the charges against the applicant but also they have done thread back examination of each piece of oral and documentary evidence which was seen by them on the record of the case. For this reason, it is important for us to rely upon it for reaching final decision in the matter. The detailed churning of the evidence has been done in Para 7 to 9 of the advise. On the basis of this churning of evidence, in para 10 of the report Commission has observed as under :-

"10.....

(i) The amount of special advance though requisitioned by the CO was actually received by his Senior Shri Srivastava on 22.3.1990.

(ii) The adjustment bills indicating the payment of the above amount to one Shri Gopinath Behera for purchase of bricks were also prepared by Shri Srivastava. The details of return of the balance amount of Rs.5 out of the above advance also appear to have been prepared by Shri Srivastava.

(iii) The cash book entries dated 15.3.90 showing receipt and payment of special advance signed by the CO, relate to Rs.2,880 issued to Shri Srivastava (and not to the CO) and does not mention actual payment for the bricks (Ex.7). The fake certificates for receipt of bricks from the supplier have also been signed by Shri Srivastava and not by the CO.

(iv) The accountal certificate for the bricks dated 27.3.90 have also been prepared by Shri Srivastava but not countersigned by the CO, though mentioned by the IO. The Misc. Expenditure Register showing payment of Rs.2,520 to Shri Gopinath Beherea for mud bricks does not bear the signature of the CO though the original register is not available but the entries appear to have been made by the Sr. Clerk (Cashier). Similar entries are available in the receipt control register but not signed by the CO.

(v) The amount of Rs.2,000/- received by the CO is dated 22.3.91 which has been refunded by him on 27.3.91. As per cash book entry, this amount has remained with Shri Srivastava since March, 1990."

Thereafter in Para 11, it has noted that except entries in the cash books which account for receipt and payment of special advance to Officer-in-charge (OIC)-Shri Srivastava, which are necessary, none of the documents bear CO's signature and almost all of them have been prepared by Shri Srivastava. Therefore, the Commission is of the view that the above documentary evidence only establishes the fact that though CO was aware of not purchasing the mud bricks for which advance was drawn, he suppressed it. Therefore, the allegation of suppressing the facts is proved against him.

In Para 11.1 of its advise the Commission has exonerated the applicant of the charge of misappropriating the amount with other officers by stating that not only this amount was small but also it was retained by Shri Srivastava most of the time except for 5 to 6

days when it was with the applicant who also returned it on his own.

22. While agreeing with the above finding of the UPSC, we feel that on the basis of preponderance of probability the charge of suppression of true facts from superior authorities is proved against the applicant. However, nowhere in the reply to the OA during arguments, counsel for the respondents has disclosed in spite our pointed query, what punishment has been awarded to the main defaulter Shri A. K. Srivastava. Nor has the Disciplinary Authority recorded any reasons in the final order for enhancing the punishment proposed by the UPSC although on all other aspects he has acted as per their advise.

23. We are at the same time concerned about the delay involved in finalising this departmental action. We feel that the delay involved in finalising the inquiry can be fatal if legitimate reasons for the same are not explained. Learned Counsel for the respondents has put forth some reasons in his reply but we are not convinced that long period of 11 years should have been taken to conclude this departmental action during which period a lot of harassment and embarrassment is caused and rights and liberties of the applicant stand jeopardised, but for the mistake of granting him promotion which has been admitted by the respondents themselves in this case:

24. Due to the peculiar circumstances of this case, while arriving at the final decision in this matter, we are inclined to follow the law laid down by the Hon'ble Supreme Court in the case of Director General, RPF and others vs. CH. Sai Babu reported in 2003 SCC (L&S) 464, because we feel that the punishment ordered by the Disciplinary Authority in this case is disproportionate to the charge found proved against him. In the above case, their Lordships have observed that normally in cases where it is found that the punishment imposed is shockingly disproportionate, High Courts and Tribunals may remit the case to the Disciplinary Authority for re consideration on the quantum of punishment. They may also do so due to the reasons of delay in concluding the matter. In this case, it is held that if the matter has already been taken a very long time and in order to shorten litigation it would be appropriate to set aside the impugned order and remit the case to re consider the quantum of punishment.

25. In another judgment rendered by Hon'ble Supreme Court in the case of B. C. Chaturvedi vs. Union of India, reported in AIR 1996 SC 484, their Lordships have held as under :-

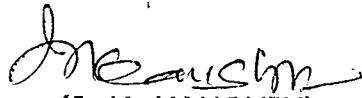
"if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

26. On the basis of above case law and in the peculiar circumstances of this case we feel that the punishment imposed by

the Disciplinary Authority appears to be disproportionate to the charges found proved during inquiry and in order to not prolong the litigation on the subject by remitting the case to respondents, we would be justified in exercising our discretion in this case as the rarest of the rare and reduce the punishment because the main culprit in the case is someone else and the applicant had only concealed his misconduct. In the prevalent hierarchical bureaucratic practices such behaviour by subordinates at the instance of seniors is not uncommon. We have no doubt that the respondents would have punished the main offender befittingly. We, therefore, decide that ends of justice will be met if the impugned order dated 2.6.03 (Annexure A/1) is quashed and the punishment to the applicant is reduced as per the UPSC's advise. Ordered accordingly.

27. With these remarks, the OA is disposed of with no order as to costs.

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(A. K. BHANDARI)  
ADMN. MEMBER

  
(J. K. KAUSHIK)  
JUDICIAL MEMBER

P.C./