



Andhra Pradesh Vigilance Commission Government of Andhra Pradesh

VIGILANCE MANUAL VOLUME - III

(Updated 2022)

DIGEST OF CASE LAW

**Printed and Published by
Director General, A.P. H.R.D. Institute**

For official use only



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Y.S. JAGAN MOHAN REDDY



AMARAVATI

CHIEF MINISTER
ANDHRA PRADESH

MESSAGE

Shouldering responsibility to steer the State of Andhra Pradesh towards a clean and corruption free State, steady efforts have been made by my Government to ensure that all the stakeholders act with integrity, accountability and transparency to fulfill the aspirations of the people. A comprehensive anti corruption strategy including robust legal frameworks, effective enforcement mechanisms and public awareness has been built up to "Leave no one Behind" for reaping the benefits of development and welfare schemes in fair and transparent manner. Continuous steps have been taken towards institutional strengthening, leveraging technology and innovation to promote transparency and accountability in Government processes. Setting up of Village and Ward Secretariats towards effective service delivery to the public, identification of beneficiaries through surveys conducted by Village & Ward volunteers with display of lists for social audit and unprecedented volume of Direct Benefit Transfer (DBT) have instilled confidence in people about the fair and transparent working of the Government. To encourage and facilitate public participation, feedback systems and citizen led monitoring, mechanisms such as dedicated toll-free number, Mobile application for reporting corrupt practices in Government Offices and జగన్నాకు చెబుదాం (JKC), a dedicated public grievance redressal system, have been developed to ensure citizen centric administration.

Government seeks the commitment and action of all the stakeholders including the Government institutions, development partners, civil society and citizens with special emphasis on ethics and integrity to join hands to fight against corruption and keep up the spirit of clean and corruption free governance in the State.

I am happy to note that Vigilance Commission has made in-house efforts in presenting the second edition of the comprehensive Vigilance Manual incorporating the provisions of various Acts, Rules, regulations and executive instructions issued during last two decades. Their commitment is greatly valued and appreciated. I am sure this will improve the capacity of the functionaries to deal with vigilance matters in fair and efficient manner.

I assure my continued support to all the stakeholders in their future endeavors to fight against corruption.

(Y.S. JAGAN MOHAN REDDY)

FOREWORD

I am happy to note that Andhra Pradesh Vigilance Commission is presenting the second edition of the Comprehensive Vigilance Manual (Volumes I to IV). The first edition of the Manual was published in the year 2003. Since then, there have been several amendments made to the Acts and Rules pertaining to Vigilance matters. Many new Regulations, Circulars, Instructions & Memoranda have been issued from time to time and many landmark judgments have been given by various Courts. Hence, it was essential to have an updated edition of the Vigilance Manual as a comprehensive reference book on Acts and Rules pertaining to prevention of corruption, criminal misconduct, disciplinary proceedings and other such vigilance matters as a ready reference for the Vigilance functionaries.

The comprehensive volumes have been systematically presented with indices to enable the reader to locate the legal provisions, judicial pronouncements and executive instructions on almost all the relevant aspects of vigilance administration. The updated Manual is the result of thorough consultation with the Anti-Corruption Bureau and the departments of General Administration, Finance and Law. The four volumes of Draft Manual were published by General Administration Department on its website to invite suggestions & comments from the departments.

It is essential for vigilance functionaries including investigating agencies, disciplinary authorities, inquiry officers and others dealing with disciplinary proceedings and criminal prosecution of public servants to have a thorough knowledge of the relevant statutes, rules, procedures and the latest instructions on the subject. This updated Manual will act as a guide to build their capacity to deal with the disciplinary proceedings in professional and accurate manner.

I am confident that the vigilance functionaries will find the updated version of the Comprehensive Vigilance Manual very useful in discharging their responsibilities more effectively and efficiently.

While I place on record my appreciation for the inhouse efforts of AP Vigilance Commission in bringing out the latest version of Vigilance Manual (updated till December, 2022), I compliment all other stakeholders for their contribution.

Dr. K.S.JAWAHAR REDDY

Chief Secetary to Government
Andhra Pradesh

PREFACE

Andhra Pradesh Vigilance Commission published its first edition of Vigilance Manual in the year 2003 (Volume-I to IV) comprising of various Acts, Rules, Regulations, instructions and guidelines pertaining to vigilance administration.

During the last two decades, many new developments have taken place. Number of instructions, guidelines and memoranda have been issued by the Government from time to time. Some amendments have also been introduced in A.I.S. (D&A) Rules, 1969; A.I.S. (Conduct) Rules, 1968; A.P.C.S. (CC&A) Rules, 1991 and A.P.C.S. (Conduct) Rules, 1964. The Prevention of Corruption Act, 1988 has been amended. The A.P. Special Courts Act, 2016 and the A.P. Special Courts Rules, 2017 have also been introduced. The A.P.C.S. (DPT) Act, 1960 has been repealed by the Act 29 of 2022. Number of judgements have also been pronounced by various courts on the various issues related to Vigilance Administration.

Therefore, it was felt essential to publish an updated edition of the Vigilance Manual as a knowledge resource on vigilance matters for the use of vigilance functionaries. The updated Manual in four volumes serves as a comprehensive reference book with ready access to the relevant literature on prevention of corruption, criminal misconduct, disciplinary proceedings and related matters of vigilance as on 31.12.2022. Both physical and electronic forms of Manual are made available to Investigating Officers, Vigilance and Administrative Functionaries and Disciplinary & Inquiring Authorities etc for their ready reference.

Volume-I of the Manual deals comprehensively with all aspects of vigilance particularly relating to investigation and prosecution of cases of bribery and corruption and disciplinary proceedings in relation to misconduct by public servants. Volume-II has two parts. Part-I contains G.Os., Memoranda, U.O. Notes etc., issued by the Government from time to time on vigilance and related matters. Part II contains 'Forms'

prescribed for use while dealing with disciplinary proceedings and for various other purposes. Volume-III 'Digest of Case Law' incorporates important cases decided by the Supreme Court of India, the High Courts and the Central Administrative Tribunals on vigilance matters. Volume-IV contains text of various Acts and Rules pertaining to vigilance matters.

Commission wishes that the vigilance functionaries find this as a valuable knowledge resource to deal with the vigilance matters.

Looking forward to the feedback and suggestions for improvement of the Manual in its future edition.

VEENA ISH

Vigilance Commissioner

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The Andhra Pradesh Vigilance Commission would like to express its sincere gratitude to Dr. Sameer Sharma, I.A.S., former Chief Secretary to Government of A.P. and Dr. K. S. Jawahar Reddy, I.A.S., Chief Secretary to Govt. of A.P. for their generous support through APHRDI to assist the Vigilance Commission in taking up this work.

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Commission would like to thank Sri H. Arun Kumar, I.A.S., Sri Mutyala Raju Revu, I.A.S., Dr. Pola Bhaskar, I.A.S., Secretaries to Government, General Administration Department for their cooperation towards the completion of process of updating A.P. Vigilance Manual.

Commission also acknowledges the support and cooperation extended by Sri P.S.R. Anjaneyulu, I.P.S., Sri K.V.Rajendranath Reddy, I.P.S., Director Generals of A.C.B. Commission appreciates the efforts of Sri G.V.G. Ashok Kumar, I.P.S., Additional Director of A.C.B., and Sri Ch. Ramachandra Murthy, Chief Legal Advisor of A.C.B., for providing legal citations for Volume - III of Manual.

Commission acknowledges the valuable assistance rendered by Sri V. Sridhar, Chief Technical Officer, A.P.V.C. in coordinating with all agencies and bringing these volumes to the final shape.

Commission would place on record its appreciation for detailed study, hard-work and the time spent by Sri S.Subrahmanyam, Assistant Secretary to V.C. towards this project right from initiation till its successful completion.

Commission also recognises the efforts and services of Assistant Secretaries to the Vigilance Commissioner, Smt V. Padmavathi,

Sri G. Srinivasa Rao, Sri C. Vinaya Srinivas, and appreciates their dedication in ensuring the successful completion of this project.

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Finally, the Commission wishes to extend its special appreciation to Sri B. Ramachandra Rao, Deputy Secretary to Government, (Political) for his exceptional services in compilation of this Manual.

DISCLAIMER

1. Vigilance Manual in four volumes (updated 2022) is intended only to be a reference book and it cannot be a substitute for Acts, Rules, Orders, Instructions etc. of various authorities.
2. Commission has taken great care to provide accurate and updated information in the Vigilance Manual. However, Commission will not be responsible for any loss or damage caused to any person on account of any errors or omissions which might have crept in.
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4. Commission welcomes suggestions on content or form and inadvertent errors or omissions in this Manual for further improvement.

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III. DECISIONS

(1)

(A) P.C. Act, 1988 — Sec. 7

(B) Evidence — of accomplice

Corroboration in all material particulars, not necessary for accepting evidence of accomplice.

(C) Trap — motive or reward

No favour need be shown to the bribe-giver. It would be sufficient if he was led to believe that the matter would go against him if he did not give the present.

Bhimrao Narasimha Hublikar vs. Emperor, AIR 1925 Bom 261

The accused, Joint Subordinate Judge at Sholapur, was charged before the Additional Sessions Judge, Sholapur with having accepted from one Shri Kisan Sarda, cloth to the value of Rs.95-7- 6 (in the denomination of rupees, annas, pies) as a motive for showing favour to the said Sarda in a suit on his file, and thus having committed an offence under sec. 161 IPC (corresponding to sec. 7 of P.C. Act, 1988). The Judge disagreeing with the assessors found him guilty and sentenced him to one year simple imprisonment and a fine of Rs.1000. The matter came up before the High Court of Bombay, in appeal.

The High Court held that in dealing with the evidence of an accomplice the Judge is not bound to rely on such statements only as are corroborated by other reliable evidence. Once a foundation is established for a belief that such a witness is speaking the truth because he is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsehood of other statements not corroborated. Adopting this test, the High Court observed that there are good reasons for thinking that Sarda's evidence regarding the two conversations with the accused are substantially correct.

The High Court further held that no favour need be shown to the bribe-giver, Sarda in his suit. It would be sufficient if the bribe-giver was led to believe that the case would go against him if he did not give the Judge, accused, a present and the evidence tends to show that this is what happened.

(2)

- (A) P.C. Act, 1988 — Sec. 7**
- (B) Trap — motive or reward**

It is an offence even when the act done for the bribe giver, is a just and proper one.

Anant Wasudeo Chandekar vs. Emperor, AIR 1925 NAG 313

The appellant, an ex-Tahsildar and 2nd Class Magistrate, Jalgaon, in the Buldana District, has been convicted of an offence under sec. 161 IPC (corresponding to sec. 7 of P.C. Act, 1988) and sentenced to 2 years rigorous imprisonment and a fine of Rs.6000, on a charge of accepting Rs.1000 as illegal gratification as a motive for forbearing to do an official act viz. in order to show favour in the discharge of his judicial functions in a criminal case pending on his file.

The Judicial Commissioner's Court, Nagpur held that when a bribe has been proved to have been given, it is not necessary to ask what, if any, effect the bribe had on the mind of the receiver and it is an offence even when the act, done for the bribe giver, is a just and proper one. The gist of the offence is a public servant taking gratification other than legal remuneration in respect of an official act.

(3)

- (A) P.C. Act, 1988 — Sec. 7**
- (B) Trap — motive or reward**

Erroneous representation by the public servant that the act is within official duty, still the act comes within ambit of sec. 161 IPC (corresponding to sec.7 of P.C. Act, 1988).

Ajudhia Prasad vs. Emperor, AIR 1928 ALL 752

This is an appeal by the applicant, Ajudhia Prasad against his conviction under sec. 161 IPC (corresponding to sec. 7 of P.C. Act, 1988) read with sec. 116 IPC.

The High Court of Allahabad held that even where an act is not within the exercise of the official duty of a public servant, (such as the exercise of influence to obtain a title), if a public servant erroneously represents that the particular act is within the exercise of his official duty he would be liable to

conviction under sec. 161, if he obtained a gratification by inducing such an erroneous belief in another person.

(4)

- (A) **Criminal Law Amendment Ordinance, 1944**
- (B) **Disproportionate assets — attachment of property**

Money procured by means of offence described in the Schedule of the Criminal Law Amendment Ordinance, 1944 deposited in Bank, can be attached even if such money is mixed up with other money of Bank.

**K. Satwant Singh vs. Provincial Government of the Punjab, AIR (33) 1946
Lahore 406**

The petitioners contended that the District Judge had no jurisdiction to issue an ad interim injunction in the case of monies which had been deposited by either of them in a Bank either in their own names jointly or separately or in the names of some other person or persons. This submission was attempted to be supported by the concluding words of sec. 3(1) of the Criminal Law Amendment Ordinance, 1944 where property alone and not money is stated to be attachable. The money, it was urged, which the Provincial Government believes the petitioners to have procured by means of the offences ceases to be attachable as such when it cannot be earmarked and has lost its identity by becoming mixed up with the other monies of the Bank with which it was deposited. The other property of the petitioners might be attachable, but money in the hands of their bankers is not so.

The Lahore High Court held that there is no force in that contention. It cannot be disputed that the bankers with whom the money was deposited were the debtors and agents of the petitioners and the money in their hands did not cease to be attachable even if its identity was lost by getting mixed up with the other money as long as it was not converted into anything else and remained liable to be paid back in cash to the petitioners or to their order. The petitioners cannot be in that case regarded to cease to be the owners of the money deposited by them although it may not have remained in their physical possession and may have come into their debtor's or agent's possession on their behalf. If, after converting say a Government Currency Note of the value of Rs.100 into 20 Government Currency Notes of Rs.5 each, the petitioners can still be regarded to have procured Rs.100 by means of an offence—assuming for the purposes of

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this argument that the original note of Rs.100 had been procured by means of an offence—there can be no doubt that the twenty notes of Rs.5 each would have to be, even after their conversion, regarded as having been procured by means of an offence although no offence may have been committed for the purpose of converting the former into the latter. The currency of the country is interchangeable and the stigma attaching to the first acquisition would continue to attach under sec. 3 of the Ordinance to any other monies in the hands of the petitioners or of their debtors and agents and could not be held to have been removed by its conversion into money of some other denomination. The last words of sec. 3(1) of the Ordinance “where property other than what was procured by means of an offence has been declared to be liable to attachment” can only refer to cases either when the money or property originally procured by the alleged offender by means of an offence has been spent in acquiring the property which is declared to be attachable or when the money or property originally procured cannot be traced and other property of like value—which would also cover the offender’s private money—which he may have even legitimately acquired have been declared to be attachable instead. The obvious intention of this section of the Ordinance was to prevent the mischief from allowing the alleged offender to run away with or to benefit by the money or property procured by him by means of an offence and to prevent the courts from undoing the harm if he is eventually found guilty and thus depriving him of his illegitimate gains. This intention can best be achieved by construing sec. 3 of the Ordinance in the above manner.

(5)

Termination — of contractual service

Termination of contractual service by notice does not attract provisions of Art. 311(2) of Constitution as there is neither a dismissal nor a removal from service, nor is it a reduction in rank.

Satish Chandra Anand vs. Union of India, AIR 1953 SC 250

The petitioner was employed by Government of India on a five year contract in the Director General of Resettlement and Employment of Ministry of Labour, in October, 1945. Shortly before its expiration, an offer was made to continue him in service on the termination of the contract temporarily, by letter dated 30-6-50. A notice was given on 25-11-50 informing him that his services would terminate on the expiry of one month from 1-12-50. It was contended by the petitioner that he has either been dismissed or removed from service without the safeguards which Art. 311 of Constitution conferred.

The Supreme Court held that Art. 311 has no application because it is neither a dismissal nor a removal from service, nor is it a reduction in rank. It is an ordinary case of a contract being terminated by notice under one of the clauses. The Supreme Court referred to the provisions in the Civil Services (CCA) Rules and the explanation under rule 49 that the discharge of a person engaged under contract in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of the rule. These terms are used in the same sense in Art. 311. It follows that the Article has no application here and so no question of discrimination arises, for the 'law', whose protection the petitioner seeks, has no application to him.

(6)

- (A) **P.C. Act, 1988 — Sec. 19**
- (B) **Sanction of prosecution — under P.C. Act**

Not necessary for sanction under P.C. Act to be in any particular form, and facts found wanting can be proved in some other way.

Biswabhusan Naik vs. State of Orissa, 1954 Cri.L.J. SC 1002

The Supreme Court held that it is not necessary for the sanction under the Prevention of Corruption Act to be in any particular form or in writing or for it to set out the facts in respect of which it is given. The desirability of such a course is obvious because when the facts are not set out in the sanction, proof has to be given aliunde that sanction was given in respect of the facts constituting the offence charged, but an omission to do so is not fatal so long as the facts can be, and are, proved in some other way.

(7)

- (A) **P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) **Trap — statement of accused**

Every statement made by accused to a person assisting the police during investigation is not a statement made to the police and is not hit by sec. 162 or sec. 164 Cr.P.C.

- (C) **Trap — police supplying bribe money**

No justification for the police to supply bribe money to bribe-giver.

(D) Trap — magistrate as witness

Magistrates should not be employed as witnesses of police traps.

(E) Trap — evidence of panch witness

(F) Trap — appreciation of evidence

Appreciation of evidence of panch witnesses in a trap case.

Rao Shiv Bahadur Singh vs. State of Vindhya Pradesh, AIR 1954 SC 322

The Appellant No.1 was the Minister of Industries and the Appellant No.2 was the Secretary to the Government in the Commerce and Industries Department. Appellant No.1 was charged with having committed offences under secs. 120-B, 161, 465 and 466 I.P.C. and Appellant No.2 under secs. 120-B and 161 I.P.C. (corresponding to sec. 7 of P.C.Act, 1988).

The Supreme Court held that every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the Magistrate and as such excluded by sec. 162 or sec. 164 Cr.P.C. The question is one of fact and has got to be determined having regard to the circumstances of each case. On a scrutiny of the evidence of the witnesses and the circumstances under which the statements came to be made by the accused to them the accused was asked by the District Magistrate to make the statements to these witnesses not with a view to avoid the bar of sec. 164 or by way of colourable pretence but by way of greater caution particularly having regard to the fact that the accused occupied the position of a Minister of Industries in the State of Vindhya Pradesh.

The Supreme Court observed that it may be that the detection of corruption may sometimes call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the bribe-giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence.

The Supreme Court held that the Magistrates should not be employed by the police as witnesses of police traps. The independence of the judiciary is a priceless treasure to be cherished and safeguarded at all costs against predatory activities of this character and it is of the essence that public confidence in the independence of the judiciary should not be undermined by any such tactics adopted by the executive authorities.

The Supreme Court held that the witnesses are not a willing party to giving of bribe to accused but were only actuated with the motive of trapping the accused. Their evidence cannot be treated as the evidence of accomplices. Their evidence is nevertheless the evidence of partisan witnesses who were out to entrap the accused. The evidence can not be relied upon without independent corroboration.

The Supreme Court observed that where the witnesses came on the scene after the whole affair was practically over and the stage had been reached when it was necessary to compare the numbers of the notes which had been recovered from the bedroom of the accused with the numbers of the notes which had been handed over to the person who gave the bribe when the raid was being organised and it was at that stage that they figured in the transaction their evidence could certainly not be impeached as that of partisan witnesses.

The Supreme Court held that the circumstances that on the numbers of the notes being tallied and his explanation in that behalf being asked for by the police authorities the accused was confused and could furnish no explanation in regard thereto supported the conclusion that the accused was guilty of the offence under sec. 161 I.P.C.

(8)

Compulsory retirement (non-penal)

Compulsory retirement under Civil Service Regulations does not amount to dismissal or removal.

Shyam Lal vs. State of Uttar Pradesh, AIR 1954 SC 369

The Supreme Court held that a compulsory retirement under the Civil Service Regulations does not amount to dismissal or removal within the meaning of Art. 311 of the Constitution and therefore does not fall within the provisions of the said Article.

The Supreme Court observed that the word "removal" used synonymously with the term "dismissal" generally implies that the Officer is regarded as in some manner blameworthy or deficient. The action of removal is founded on some ground personal to the officer and there is a levelling of some imputation or charge against him. But there is no such element of charge or imputation in the case of compulsory retirement. In other words a compulsory retirement does not involve any stigma or implication of misbehaviour or incapacity. Dismissal

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or removal is a punishment and involves loss of benefit already earned. The Officer, dismissed or removed, does not get pension which he has earned. On compulsory retirement the officer will be entitled to the pension that he has actually earned and there is no diminution of the accrued benefit.

(9)

(A) Departmental action and prosecution

Departmental inquiry resulting in penalty, not a bar for launching prosecution on same facts.

(B) Public Servants (Inquiries) Act, 1850

(C) Inquiry — mode of

- (i) Action under Public Servants (Inquiries) Act is an inquiry and does not amount to prosecution.*
- (ii) It is open to Government to decide the method of inquiry, as found convenient.*

S.A. Venkataraman vs. Union of India, AIR 1954 SC 375

The petitioner, a member of the Indian Civil Service, was Secretary in the Ministry of Commerce and Industry in Government of India. Certain allegations of misbehaviour, while holding offices under Government of India, came to the notice of the Central Government and being satisfied that there were prime facie grounds for making an inquiry, Government of India directed a formal and public inquiry to be made as to the truth or falsity of the allegations made against the petitioner in accordance with the provisions of the Public Servants (Inquiries) Act of 1850. On the basis of the Commissioner's report, opportunity was given to the petitioner under Art. 311(2) of Constitution to show cause against the action proposed to be taken against him and on consideration of his representation a penalty of dismissal was imposed on him. Subsequently, the petitioner was prosecuted for an offence under sections 161 and 165 Indian Penal Code and section 5(2) Prevention of Corruption Act, 1947 (corresponding to secs. 7, 11, 13(2) of P.C. Act, 1988). The petitioner challenged the legality of the action taken on the ground that it violated Art. 20(2) of Constitution.

The Supreme Court held that an enquiry made and concluded under the Public Servants (Inquiries) Act, 1850, does not amount to prosecution and punishment for an offence as contemplated by Art. 20(2). The only purpose for which an enquiry under the Public Servants (Inquiries) Act, 1850 is held is to

help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under Art. 311(2). An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else.

(10)

- (A) P.C. Act, 1988 — Sec.7
- (B) Trap — capacity to show favour
- (C) Trap — not necessary to name the officer sought to be influenced

It is not necessary to consider whether or not the Public Servant was capable of doing or intended to do the act charged. If the charge is that Public Servant accepted bribe for influencing a superior officer, it is not necessary to specify the superior officer sought to be influenced.

- (D) P.C. Act, 1988 — Sec. 19
- (E) Sanction of prosecution — under P.C. Act

Sanction of prosecution under the P.C. Act can be accorded by an authority equal in rank to the appointing authority or higher in rank. It need not be by the very same authority who made the appointment or by his direct superior.

Mahesh Prasad vs. State of Uttar Pradesh, AIR 1955 SC 70

The appellant, a railway employee, accepted illegal gratification of Rs.150/- from an ex-employee as a motive for getting him reemployed by arranging with some superior officer. The Special Police Establishment laid a trap and caught him red-handed. He was tried and convicted under section 161 Indian Penal Code (corresponding to sec. 7 of P.C. Act, 1988). The conviction was maintained by the higher courts.

The Supreme Court held (a) that if a public servant is charged under Section 161 I.P.C. and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the Court to consider whether or not the accused as public servant was capable of doing or intended to do such an act; (b) that where bribe is alleged to have been received by the

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accused as a public servant for influencing some superior officer to do an act, the charge framed against such accused under section 161 I.P.C. need not specify the particular superior officer sought to be influenced; and (c) that in view of Art. 311 (1) of Constitution, a sanction under section 6(c) of the Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) need not be given either by the very authority who appointed the public servant or by an authority who is superior to such appointing authority in the same department. Sanction is legal if given by an authority who is equal in rank or grade with the appointing authority. Sanction is invalid if given by one who is subordinate to or lower than the appointing authority.

(11)

(A) Investigation — steps in

Steps in investigation demarcated by Supreme Court.

(B) P.C. Act, 1988 — Sec. 17

(C) Investigation — illegality, effect of

Effect of illegality / irregularity in investigation, on trial considered.

H.N. Rishbud vs. State of Delhi, AIR 1955 SC 196

The Supreme Court recognised the following as steps in investigation: (1) proceeding to the spot, (2) ascertainment of the facts and circumstances of the case, (3) discovery and arrest of the suspected offender, (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge sheet under sec. 173 Cr.P.C. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in sec. 168 Cr.P.C., 1898 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz., the formation of the opinion as to whether or not there is a

case to place the accused on trial is to be that of the officer in charge of the police station.

The Supreme Court further held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in sec. 190 Cr.P.C., 1898 as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled. Hence, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation does not vitiate the result, unless miscarriage of justice has been caused thereby. When a breach of the mandatory provisions of sec. 5A P.C. Act, 1947 (corresponding to sec. 17 of the P.C. Act, 1988) is brought to the notice of the court at an early stage of the trial the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of sec. 5A P.C. Act, 1947.

(12)

Suspension — continuance of

An order of suspension made against a Government servant pending an inquiry lapses when the order of dismissal imposed as a result of the inquiry is declared illegal.

Om Prakash Gupta vs. State of Uttar Pradesh, AIR 1955 SC 600

The appellant was serving in the United Provinces Civil (Executive) Service at the relevant time. The Government dismissed him from service after holding an inquiry. He filed a suit for declaration that the order of dismissal was illegal and that he continued to be in service.

The Supreme Court observed that the order of suspension was one made pending an inquiry and not a penalty and at the end of the inquiry an order

DECISIONS (13)

of dismissal by way of penalty had been passed. The Supreme Court held that with the order of dismissal, the order of suspension lapsed and the order of dismissal replaced the order of suspension, which then ceased to exist. That clearly was the position between the Government and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist.

(13)

(A) P.C. Act, 1988 — Secs. 7, 13(1) (d)

Ingredients of the offences under sec. 161 I.P.C. and sec. 5(1)(d) P.C. Act, 1947 (corresponding to secs. 7, 13(1)(d) P.C. Act, 1988) analysed, with specific reference to the word 'obtain'.

(B) Trap — justification of laying

It is necessary to lay traps to detect offences of corruption.

(C) Trap — police supplying bribe money

Police authorities supplying bribe money, to be condemned.

Ram Krishan vs. State of Delhi, AIR 1956 SC 476

The Supreme Court observed that the word 'obtains' in sec. 5(1)(d) of P.C. Act, 1947 (corresponding to sec. 13(1)(d) of the P.C. Act, 1988) does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant.

If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under sub-cl. (d) of sec. 5(1). Secs. 161, 162 and 163 Penal Code (corresponding to secs. 7, 8 and 9 of P.C. Act, 1988), refer to a motive or reward for doing or forbearing to do something, showing favour or disfavour to any person, or for inducing such conduct by the exercise of personal influence. It is not necessary for an offence under cl. (d) to prove all this.

It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage entirely irrespective of motive or reward for showing favour or disfavour. No doubt, to a certain extent the ingredients of the

two offences are common. But to go further and contend that the offence as defined in cl. (d) does not come within the meaning of bribery is to place too narrow a construction on the sub-clause.

It cannot be laid down as an absolute rule that the laying of traps must be prohibited on the ground that by so doing we hold out an invitation for the commission of offences. The detection of crime may become difficult if intending offenders, especially in cases of corruption, are not furnished opportunities for the display of their inclinations and activities.

Where matters go further and the police authorities themselves supply the money to be given as a bribe, severe condemnation of the method is merited. But whatever the ethics of the question might be, there is no warrant for the view that the offences committed in the course of traps are less grave and call only for lenient or nominal sentences.

(14)

- (A) P.C. Act, 1988 — Sec. 19
- (B) Sanction of prosecution — under P.C. Act

Sanction of prosecution under P.C. Act issued by a higher authority, is valid.

State vs. Yashpal, P.S.I., AIR 1957 PUN 91

The accused, a prosecuting Sub-Inspector, was tried for an offence under the Prevention of Corruption Act, 1947. While the Assistant Inspector General, who ranked with a Superintendent of Police, was the authority who appointed him, the sanction for the prosecution was given by the Deputy Inspector General, an authority higher in rank than a Superintendent, under sec. 6 of the Act (corresponding to sec. 19 of P.C. Act, 1988). The High Court held that the sanction issued by a higher authority did not contravene the provisions of Cl. (1) (c) of the section.

(15)

- (A) Constitution of India — Art. 20(2)
- (B) Cr.P.C. — Sec. 300 (1)
- (C) Sanction of prosecution — where invalid, subsequent trial with proper sanction, not barred

Whole basis of sec. 403 (1) Cr.P.C., 1898 (corresponding to sec. 300(1) Cr.P.C., 1973) is that the first trial should

have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court is not so competent, as where the required sanction under sec. 6 of P.C. Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) for the prosecution was not obtained, the whole trial is null and void and it cannot be said that there was any conviction or acquittal in force within the meaning of sec. 403(1) Cr.P.C., 1898. Such a trial does not bar a subsequent trial of the accused under P.C. Act read with sec. 161 I.P.C. after obtaining the proper sanction.

The earlier proceeding being null and void, the accused cannot be said to have been prosecuted and punished for the same offence more than once and Art. 20(2) of the Constitution has no application.

Baij Nath Prasad Tripathi vs. State of Bhopal, AIR 1957 SC 494

The petitioner was a Sub-Inspector of Police in the then State of Bhopal. He was convicted of offences under sec. 161 I.P.C. and sec. 5 of the P.C. Act, 1947 (corresponding to secs. 7 and 13 of P.C. Act, 1988) and sentenced to nine months R.I. on each count. He preferred an appeal to the Judicial Commissioner, who held that no sanction according to law had been given for the prosecution of the petitioner and the Special Judge had no jurisdiction to take cognizance of the case; the trial was accordingly ab initio invalid and liable to be quashed. He accordingly set aside the conviction and quashed the entire proceedings before the Special Judge, and observed "the parties would thus be relegated to the position as if no legal charge sheet had been submitted against the appellant". Thereafter, the Chief Commissioner of Bhopal passed an order that the petitioner shall be tried for offences under the P.C. Act and sec. 161 I.P.C. The petitioner contended that he cannot be prosecuted and tried again for the same offences.

On behalf of the above-said petitioner and another placed in a similar situation, it was contended that by reason of cl. (2) of Art. 20 of the Constitution and sec. 403 Cr.P.C., 1898 (corresponding to sec. 300 Cr.P.C., 1973) they cannot now be tried for the offences in question. The Supreme Court held that the point is really concluded by the Privy Council decision in Yusofalli Mulla vs. The King, AIR 1949 P.C. 264, the Federal Court decision in Basdeo Agarwalla vs. King Emperor, AIR 1945 F.C. 16 and the decision of the Supreme Court in Budha Mal vs. State of Delhi (not yet reported by then). The Privy Council decision is directly

in point, and it was there held that the whole basis of sec. 403(1) Cr.P.C., 1898 was that the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained. The Supreme Court observed that it is clear beyond any doubt that cl. (2) of Art. 20 of the Constitution has application in these two cases. The petitioners are not being prosecuted and punished for the same offence more than once, the earlier proceedings having been held to be null and void. With regard to sec. 403 Cr.P.C., 1898 it is enough to state that the petitioners were not tried, in the earlier proceedings, by a court of competent jurisdiction, nor is there any conviction or acquittal in force within the meaning of sec. 403(1) of the Code, to stand as a bar against their trial for the same offences. The Supreme Court held that the petitions are devoid of all merit and dismissed them.

(16)

- (A) P.C. Act, 1988 — Sec. 13(1) (c)
- (B) I.P.C. — Sec. 409
- (C) Misappropriation (penal)
- (D) Misappropriation — criminal misconduct under P.C. Act
- (E) Constitution of India — Art. 20(2)
- (F) Cr.P.C. — Sec. 300(1)
- (G) Double jeopardy
 - (i) Offences under sec. 5(2) read with 5(1)(c) of P.C. Act, 1947 (corresponding to sec. 13(2) read with 13(1)(c) of P.C. Act, 1988) and sec. 409 IPC are not identical.
 - (ii) No objection to a trial and conviction under sec. 409 I.P.C. even if accused acquitted for offence under sec. 5(2) read with 5(1)(c) of P.C. Act, 1947.
 - (iii) Art. 20 of Constitution of India and sec. 403(1) Cr.P.C., 1898 (corresponding to sec. 300(1) Cr.P.C., 1973), have no application.

State of Madhya Pradesh vs. Veereshwar Rao Agnihotri, AIR 1957 SC 592

The State of Madhya Bharat, which after 1st November 1956 has become merged in the State of Madhya Pradesh, had obtained special leave to appeal against the judgment and order of acquittal passed in favour of the respondent, Tax Collector in the Municipal Committee of Lashkar, by the High Court of Madhya Bharat in two appeals. The question for decision in the two appeals is how far the High Court is justified in ordering the acquittal.

The Supreme Court held that the offence of criminal misconduct punishable under sec. 5(2) of P.C. Act, 1947 (corresponding to sec. 13(2) of P.C. Act, 1988) is not identical in essence, import and content with an offence under sec. 409 I.P.C. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate sec. 409 I.P.C. There can be no objection to a trial and conviction under sec. 409 I.P.C. even if the accused has been acquitted of an offence under sec. 5(2) of P.C. Act, 1947.

The Supreme Court further held that where there are two alternate charges in the same trial, (Penal Code sec. 409 and P.C. Act sec. 5(2) the fact that the accused is acquitted of one of them, (Sec. 5(2) P.C. Act), will not prevent the conviction of the other.

The Supreme Court further held that sec. 403(1) Cr.P.C., 1898 (corresponding to sec. 300(1) Cr.P.C., 1973) has no application to the facts of the present case, where there was only one trial for several offences, of some of which the accused person was acquitted while being convicted of one. Thus where the accused was tried under sec. 5(2) of P.C. Act and sec. 409 I.P.C. but was acquitted of the offence under P.C. Act, there is no bar to his conviction under sec. 409 I.P.C.

The Supreme Court further held that Art. 20 of the Constitution of India cannot apply because the accused was not prosecuted after he had already been tried and acquitted for the same offence in an earlier trial and, therefore, the well-known maxim "Nemo debet bis vexari, si constat curice quod sit pro una et eadem causa" (No man shall be twice punished, if it appears to the court that it is for one and the same cause)" embodied in Art. 20 cannot apply.

(17)

(A) Principles of natural justice — guidelines

Principles of Natural Justice in departmental inquiries summarised.

(B) Evidence Act — applicability of

Evidence Act not applicable in Departmental Inquiries. If rules of natural justice are observed, decisions are not liable to be impeached for not following provisions of Evidence Act.

(C) Witnesses — examination of

Inquiry Officer putting questions to witnesses, not violative.

Union of India vs. T. R. Varma, AIR 1957 SC 882

The respondent, an Assistant Controller in the Commerce Ministry, was charged with aiding and abetting the attempt of a private person to bribe another Government servant. Shri Bhan had offered bribe to Sri Tawakley, an Assistant in the Commerce Ministry. This bribe was to be paid after the order in his favour had been issued and the respondent was to stand surety for him. On Sri Tawakley's complaint, a trap was laid during which the respondent assured Sri Tawakley that the amount would be paid by Sri Bhan. Following a departmental inquiry, the respondent was dismissed from service. The respondent moved the High Court and his petition was allowed on the grounds that he was not allowed to cross-examine the witnesses and was not allowed to examine himself and the witnesses and that he and his witnesses were cross-examined by the Enquiry Officer. The High Court held that these amounted to denial of reasonable opportunity and constituted violation of Art. 311 of Constitution.

The Supreme Court observed that the respondent had not filed any complaint during the hearing or immediately thereafter that he was denied the opportunity to cross-examine the witnesses against him. Thus, strictly speaking, it was a question of his word against the Inquiry Officer's and the Supreme Court preferred to believe the Inquiry Officer, for a reading of the depositions showed that he had put searching questions and elicited all relevant facts. It was true that the versions of the respondent and his witnesses were not recorded by way of examination-in-chief but he was asked to reply to the Inquiry Officer's questions, and questions to the defence witnesses were put by the Inquiry Officer and not by the respondent. The Supreme Court pointed out that while this was not in accordance with the procedure prescribed in the Evidence Act, the Evidence Act has no application to departmental inquiries conducted by tribunals. They observed that "the law requires that such tribunals should observe rules of natural justice in the conduct of the inquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of Law."

The Supreme Court observed that stating it broadly and without intending it to be exhaustive, rules of natural justice require that party should have the

opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should have been taken in his presence, and he should be given the opportunity of cross-examining the witnesses of that party and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

(18)

(A) Termination — of contractual service

No distinction between termination of service under terms of a contract and termination in accordance with conditions of service and such termination does not amount to dismissal or removal attracting Art.311 of Constitution.

(B) Reversion — from temporary post

Reversion from temporary post per se does not amount to reduction in rank.

Hartwell Prescott Singh vs. State of Uttar Pradesh, AIR 1957 SC 886

The appellant was appointed from time to time in a temporary capacity to the Subordinate Agricultural Service of the Uttar Pradesh Government by the Director of Agriculture. While he was still in the Subordinate Agricultural Service, he was appointed to officiate in the Uttar Pradesh Agricultural Service Class II as a Divisional Superintendent of Agriculture with effect from 25.4.44 and he served as such in a temporary capacity for about ten years, when he was reverted to his original appointment in the Subordinate Agricultural Service by an order of the Uttar Pradesh Government dated 3.5.54. The appellant protested and handed over charge and went on leave. In the meanwhile, a notice dated 13.9.54 terminating his service in the Subordinate Agricultural Service was issued by the Director of Agriculture on expiry of one month from date of receipt of the notice.

The Supreme Court observed that the appellant was not confirmed at any time and the further contention of the appellant that he had been absorbed in the permanent cadre of the Uttar Pradesh Agricultural Service has not been substantiated. The Supreme Court held that termination of the services of a person employed by the Government does not amount in all cases to dismissal or removal from service.

The Supreme Court held that in the case of a person employed in a temporary capacity on probation and whose services could, according to the conditions of service contained in the service rules, be terminated by a month's notice if he failed to make sufficient use of his opportunities or to give satisfaction, the termination of the services according to the rules does not amount to dismissal or removal from service within the meaning of Art. 311 of Constitution. In principle, there can be no distinction between the termination of his services in accordance with the conditions of his service and the termination of the services of a person under the terms of contract governing him.

The Supreme Court further held that reversion from a temporary post held by a person does not per se amount to reduction in rank because the temporary post held by him is not his substantive rank. It would be unnecessary to decide in his case in what circumstances a reversion would be regarded as reduction in rank when he has not established as a fact that the order of reversion passed against him was by way of a penalty. The Supreme Court dismissed the appeal.

(19)

Public Service Commission

Art. 320(3)(c) of Constitution regarding consultation with Public Service Commission is not mandatory and non-compliance does not afford a cause of action in a Court of Law.

State of Uttar Pradesh vs. Manbodhanlal Srivastava, AIR 1957 SC 912

The respondent was an employee of the Education Department in the State of Uttar Pradesh and was working as a member of the Book Selection Committee. He was given a charge as he was found to have allowed his private interests to come into conflict with his public duties and an enquiry was held by the Director of Education, who recommended that the respondent be demoted and compulsorily retired. A show cause notice was given by the Government on 7.11.52 and he gave his explanation on 25.11.52. On 2.2.53, he filed a writ in the High Court challenging the order of suspension, the show cause notice and the legality of the proceedings. The Government gave him a fresh show cause notice furnishing a copy of the report of the Enquiry Officer (which was not supplied earlier) on 16.6.53 and he replied on 3.7.53. The Government consulted the Public Service Commission but failed to send the explanation of the respondent dated 3.7.53. The Government after considering the opinion of the Commission passed order on 12.9.53 reducing him in rank with effect from 2.8.52 and compulsorily retiring him.

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The respondent filed a second writ on 23.9.53. The High Court held that the impugned orders were invalid as the petitioner's explanation of 3.7.53 was not placed before the Commission and hence there was no full compliance with Art. 320(3)(c) of Constitution. The order about reduction in rank was declared invalid. No order was passed about retirement as in the High Court's view it took place in the normal course. Both the parties appealed from the High Court judgement.

In the Supreme Court, Government wanted to give additional evidence to the effect that the respondent's explanation of 3.7.53 was also placed before the Commission. While rejecting the request, the Supreme Court observed that it was not suggested that all the matter which was proposed to be placed before the Court was not available to the State Government during the time that the High Court considered the writ petitions on two occasions. It is well settled that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting the case at the proper stage. Ofcourse the position is different where the appellate Court itself requires certain evidence to be adduced in order to enable it to do justice between the parties.

The Supreme Court further observed that there was compliance with the requirement of Art.311 and that the respondent was given the reasonable opportunity and that there was only an irregularity in consultation with the Commission and that because of the use of the word 'shall' in several parts of Art. 320, the High Court was led to assume that the provisions of Art. 320(3)(c) are mandatory, but there are several cogent reasons for holding to the contrary. In the first place, the proviso to Art. 320 itself contemplates that the President or the Governor 'may make regulations specifying the matters in certain cases, in which the Commission need not be consulted'. That does not amount to saying that it is open to the Executive Government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once relevant regulations have been made they are meant to be followed in letter and in spirit. Secondly, it is clear that the requirement of consultation with the Commission does not extend to making the advice of the Commission on those matters binding on the Government. Thirdly, Art. 320 does not, in terms, confer any rights or privileges on an individual public servant nor any constitutional guarantee of the nature of Art. 311. The absence of consultation or any irregularity in consultation should not afford him a cause of action in a Court of Law or entitle him to relief under the special powers of a High Court under Art. 226 of Constitution or of the Supreme Court under Art. 32. The provisions of Art. 320(3)(c) are not mandatory and noncompliance with these provisions does not afford a cause to the respondent in a Court of Law. They are not in the nature of rider or proviso to Art. 311.

(20)

P.C. Act, 1988 — Sec.7

Mere demand or solicitation of gratification amounts to offence under sec. 161 I.P.C. (corresponding to sec. 7 of P.C. Act, 1988).

Mubarak Ali vs. State, AIR 1958 MP 157

The High Court of Madhya Pradesh rejected the contention of the Deputy Government Advocate appearing for the State that the report lodged by the complainant was only about the attempt to obtain illegal gratification, which is different from an offence under sec. 161 I.P.C. (corresponding to sec. 7 of the P.C. Act, 1988) and that the offence is not completed till the bribe is accepted. The High Court held that mere demand or solicitation by a public servant amounts to the commission of an offence under sec. 161 I.P.C. The High Court observed that according to the report lodged with the Police, the accused, Assistant Station Master, is alleged to have asked for a bribe of annas 8 per box from the complainant and that if this fact is true, the accused has committed an offence under sec. 161 I.P.C.

(21)

(A) Departmental action and prosecution

Departmental Inquiry resulting in exoneration is no bar for launching prosecution on same facts.

(B) Fresh inquiry / De novo inquiry

Second Departmental Inquiry on same facts on which Public servant was earlier exonerated, possible only if there is specific provision to that effect in the Service Rules or Law.

(C) Misconduct — of disciplinary authority

Disciplinary Authority can even be dismissed for holding inquiry in slipshod manner or dishonestly.

Dwarkachand vs. State of Rajasthan, AIR 1958 RAJ 38

The applicant was a clerk, when a complaint was received that he had accepted illegal gratification. He was arrested by the Anti-Corruption Branch and released on bail and the Collector placed him under suspension. The Anti-Corruption Branch asked for sanction of the Collector to prosecute the applicant,

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but the Collector held a departmental enquiry in accordance with the Government circular that departmental enquiry should be held first and only such cases were to be put up in Court in which there was reasonable chance of conviction. The Collector came to the conclusion that no case was made out against the applicant and reinstated him and refused to sanction prosecution. The Anti-Corruption Branch took up with the Government and the Collector was asked to hold a fresh departmental enquiry. The successor Collector framed a charge and asked the applicant to give his explanation, cross-examine witnesses and produce defence. The applicant filed a petition before the Rajasthan High Court contending that a fresh departmental enquiry could not be held against him when a similar enquiry resulted in his exoneration.

The High Court observed that in the absence of any specific rule in the Service Rules giving powers to a higher authority to set aside an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant. The High Court held that the 'pleasure' mentioned in Art. 310 has to be exercised according to law or rules framed under Art.309.

It was urged by the State that if this view is taken, it might result in great prejudice to the State in as much as the person holding the first enquiry might have held it in a very slipshod manner or even dishonestly and the State would be helpless. The Court did not accept these arguments for two reasons. In the first place if a superior officer holds a departmental enquiry in a very slipshod manner or dishonestly, the State can certainly take action against the superior officer and in an extreme case even dismiss him for his dishonesty. In the second place, if the case is one like the present, it would be open to the State to prosecute a person in a Court of Law irrespective of what a departmental officer might have decided in the departmental enquiry, for a Court of Law is not bound by the results of a departmental enquiry one way or the other. The danger to the State is really not so great as has been submitted. On the other hand, if it is held that a second departmental enquiry could be ordered after the previous one has resulted in the exoneration of a public servant, the danger of harassment to the public servant would be immense. If it were to ignore the result of an earlier departmental enquiry then there will be nothing to prevent a superior officer if he were so minded to order a second or a third or a fourth or even a fifth departmental enquiry if the earlier ones had resulted in the exoneration of a public servant.

(22)

Safeguarding of National Security Rules

Railway Services (Safeguarding of National Security) Rules, 1949, held valid.

P. Balakotaiah vs. Union of India, (1958) SCR 1052

The services of the appellants, who were Railway servants, were terminated for reasons of national security under sec. 3 of the Railway Services (Safeguarding of National Security) Rules, 1949.

The Supreme Court held that the words 'subversive activities' occurring in Rule 3 of the above-said rules in the context of the objective of national security which they have in view, are sufficiently precise in import to sustain a valid classification and the Rules are not, therefore, invalid as being repugnant to Art. 14 of the Constitution.

The Supreme Court further held that the charge shows that action was taken against the appellants not because they were Communists or trade unionists but because they were engaged in subversive activities. The orders terminating their services could not, therefore, contravene Art. 19(1) (c) of the Constitution since they did not infringe any of the rights of the appellants guaranteed by that Article which remained precisely what they were before.

The Supreme Court further held that Art. 311 of the Constitution can apply only when there is an order of dismissal or removal by way of punishment. As the terms of employment of the appellants provided that their services could be terminated on a proper notice and Rule 7 of the Security Rules preserved such rights as benefits of pension, gratuities and the like to which an employee might be entitled under the service rules, there was neither premature termination nor forfeiture of benefits already acquired so as to amount to punishment. The order terminating the services under Rule 3 of the Security Rules stood on the same footing as an order of discharge under Rule 148 of the Railway Establishment Code and was neither one of dismissal nor removal within the meaning of Art. 311 of the Constitution. Art. 311 had, therefore, no application.

The Supreme Court further held that although the Rules are clearly prospective in character, materials for taking action against an employee thereunder may be drawn from his conduct prior to the enactment of the Rules.

(23)

- (A) Constitution of India — Art. 311
- (B) Penalty — dismissal
- (C) Penalty — removal
- (D) Penalty — reduction in rank

- (i) *Art. 311 of Constitution operates as proviso to Art. 310(1). Art. 311 gives a two-fold protection, (i) against dismissal or removal by an authority subordinate to that by which appointed and (ii) against dismissal, removal or reduction in rank without giving a reasonable opportunity of showing cause against proposed action.*
- (ii) *Protection under Art. 311 available to permanent as well as temporary employees.*
- (iii) *To invoke Art. 311, Court has to apply two tests, viz. (i) whether the Government servant has right to the post or the rank or (ii) whether he has been visited with evil consequences.*
- (iv) *If a right exists under the Contract or the Rules to terminate the service, the motive operating on the mind of Government is wholly irrelevant.*

- (E) Termination — of permanent post

Permanent post gives the servant right to hold the post until he attains the age of superannuation or is compulsorily retired after having put in prescribed service or post is abolished. His services cannot be terminated except by way of punishment on proper inquiry after due notice.

*When a servant has right to a post, the termination or his reduction to a lower post is by itself a punishment, for it operates as a forfeiture of his right to hold that post. But if servant has no right to the post and Government has by contract, express or implied or under the Rules the right to terminate the employment at any time, then such termination is *prima facie* and *per se* not a punishment and does not attract Art. 311 of Constitution.*

(F) Termination — of temporary service

Appointment to temporary post for a certain specified period also gives the holder right to hold for the entire period and his tenure cannot be put an end to during that period unless by way of punishment.

Purushotham Lal Dhingra vs. Union of India, AIR, 1958 SC 36

The appellant was working as Chief Controller (Class III Post) in 1950. In 1951, he was selected for the post of Assistant Superintendent, Railway Telegraphs, a gazetted Class II post. He was accordingly permitted to officiate. There were certain adverse remarks in his confidential report about his work which was placed before the General Manager, who remarked thereon as follows: "I am disappointed to read these reports. He should revert as a subordinate till he makes good the shortcomings noticed in this chance of his as an Officer" He was accordingly reverted. The question before the Supreme Court was whether the order of General Manager reverting him from post of Assistant Superintendent, Railway Telegraphs to Chief Controller was a 'reduction in rank' within the meaning of Art. 311 (2) of Constitution.

The Supreme Court observed that the Constitution, in Art. 310(1) has adopted the English Common Law Rule that public servants hold office during the pleasure of the President but Art. 311 has imposed two qualifications. According to Rule 9(22) of the Fundamental Rules, a permanent post means a post carrying a definite rate of pay sanctioned without limit of time. A temporary post is defined in rule 9(30) to mean a post carrying a definite rate of pay sanctioned for a limited time. The appointment of a Government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post confers normally on the servant so appointed a substantive right to hold the post and he becomes entitled to hold a 'lien' on the post. The Government cannot terminate his service unless it is entitled to do so (i) by virtue of a special term of the contract of employment e.g. by giving the requisite notice provided by the contract or (ii) by the Rules governing the conditions of his service e.g. on attaining the age of superannuation prescribed by the rules or on the fulfillment of the conditions for compulsory retirement or subject to certain safeguards, on the abolition of post or on being found guilty after a proper enquiry on notice to him for misconduct, negligence, inefficiency or any other disqualification. An appointment to a post in Government service on probation means, as in the case of a person appointed by a private employer that the servant so appointed is taken on trial, the period of probation

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may in some cases be for a fixed period or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation under the ordinary law of master and servant comes to an end if during or at the end of probation, servant so appointed on trial, is found unsuitable and his service is terminated by a notice. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an arrangement comes to an end on the return of the incumbent substantively holding the post or a substantive appointment being made to that permanent post. It is, therefore, quite clear that appointment to a permanent post in a Government service either on probation or on officiating basis is from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of service, the implied term of such appointment under the ordinary law of master and servant is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, if his service is terminated at any time. Likewise an appointment to a temporary post in a Government service may be substantive or on probation or on officiating basis. Here also in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, viz. when the appointment of a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for the period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is on enquiry, held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence or inefficiency or any other disqualification and is by way of punishment dismissed or removed from service or reduced in rank.

To sum up, in the absence of any special contract, the substantive appointment to a permanent post gives the servant so appointed a right to hold the post. Similarly a person appointed to a temporary post for a specified period also gets a right to hold the post for the entire period of his tenure and his tenure can be put to an end during that period only by way of punishment. If his services are terminated, an enquiry has to be held. Except in these two cases, appointment to a post, permanent or temporary or on probation or on officiating basis or a substantive appointment to a temporary post, gives the servant so appointed no right to the post and his services can be terminated unless he has been declared quasi-permanent.

The protection of Art. 311 is not restricted to permanent employees. This protection also extends to temporary servants. The result is that when Government intends to inflict the punishment of dismissal, removal or reduction in rank, a reasonable opportunity has to be given to the Government servant. But if the person has no right to hold the post and the termination is not by way of punishment, Art. 311 is not attracted and no enquiry need be held. One test for determining whether the termination is by way of punishment is to ascertain whether the servant, but for such termination had the right to hold the post. If he had a right to the post, the termination of his service will, by itself be a punishment and will entitle him to the protection of Art. 311. In other words and broadly, Art. 311 (2) will apply to these cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it another way, if the Government by contract express or implied or under the Rules the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rule is *prima facie* and *per se* not a punishment and does not attract the provisions of Art. 311.

The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal. Likewise the termination of service by compulsory retirement in terms of specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2).

Misconduct, negligence, inefficiency or other disqualification may be the motive or inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule. Nevertheless, if a right exists, under the contract or the rules to terminate the service, the motive operating in the mind of the Government is wholly irrelevant. If the termination of service is founded on the right flowing from the contract or the service Rules then *prima facie* the termination is not a punishment and carries with it no evil consequences. Even when Government has the right to terminate the service in this manner, Government may still choose to punish the servant and if the termination is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirement of Art. 311 must be complied with.

Applying the principles of law discussed above, the Supreme Court in the instant case held that the petitioner was appointed to the higher post on officiating basis, that is to say, he was appointed to officiate in that post which means he was appointed only to perform the duties of that post. He had no right

to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment.

(24)

Principles of natural justice — bias

In disciplinary proceedings, presiding officer himself giving evidence violates principle of natural justice.

State of Uttar Pradesh vs. Mohammad Nooh, AIR 1958 SC 86

The respondent was a Constable in the Uttar Pradesh Police Force and was officiating as Head Constable at the material time. He was placed under suspension on 15-3-48 as he was suspected to be responsible for creation of a forged letter purporting to have been issued selecting him for training in the Police Training College. Under section 7 of the Police Act, read with the Uttar Pradesh Police Regulations, a departmental enquiry, called 'trial' in the Regulations, was started against the respondent, and Sri B.N. Bhalla, District Superintendent of Police held the trial and found him guilty and passed an order of dismissal against him. Departmental appeal and revision were dismissed.

The main contention before the Supreme Court was that Sri B.N. Bhalla, who presided over the trial, also gave his own evidence in the proceedings at two stages and had thus become disqualified from continuing as the judge, as he was bound to be biased against the respondent. The examination of Sri Bhalla became necessary to contradict a witness who denied at the inquiry a statement he had made earlier in the presence of Sri Bhalla. Accordingly, Sri Bhalla had his testimony recorded by a Deputy Superintendent of Police. It hardly matters whether this is done in good faith or whether the truth lay that way because the spectacle of a judge hopping on and off the Bench to act first as judge, then as witness, then as judge again to determine whether he should believe himself in preference to another witness is startling to say the least. It would doubtless delight the heart of a Gilbert and Sullivan comic opera audience but will hardly inspire public confidence in the fairness and impartiality of departmental trials and certainly not in the mind of the employee.

The Supreme Court held that the act of Sri Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. It is shocking to the notions of judicial propriety and fair play. The Supreme Court held that the

rules of natural justice were completely discarded and all canons of fair play were grievously violated by Sri Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot be regarded as valid or binding.

(25)

Principles of natural justice — reasonable opportunity

Art. 311 of Constitution to be read as proviso to Art. 310.

Meaning of reasonable opportunity envisaged in Art. 311 of Constitution explained.

Khem Chand vs. Union of India, AIR 1958 SC 300

The appellant was a Sub-Inspector of the Rehabilitation Department of Co-operative Societies of Delhi State. He was suspended by the Deputy Commissioner, Delhi and Departmental enquiry was ordered against him. The order, after formulating several charges against him, concluded as follows: "You are, therefore, called upon to show-cause why you should not be dismissed from the service. You should also state in your reply whether you wish to be heard in person or whether you will produce defence. The reply should reach the Assistant Registrar, Co-operative Societies, Delhi within ten days from the receipt of the charge-sheet."

The appellant attended two sittings before the Inquiry Officer and then applied to the Deputy Commissioner to entrust the enquiry to some Gazetted Officer under him. The request was rejected. The appellant did not attend any further sitting before the Inquiry Officer. At this stage, the delinquent was involved in a criminal case under section 307 of Penal Code, but was eventually discharged from the criminal charge. After some time the delinquent official was served with a notice that he should appear before the A.D.M. in connection with the departmental inquiry pending against him. Pursuant to the notice, he appeared before the A.D.M. While submitting his report, the A.D.M. suggested that he should be dismissed from service. The Deputy Commissioner, who was the disciplinary authority, agreed with the suggestion and a formal order was issued accordingly. The appellant appealed to the Chief Commissioner but his appeal was dismissed. The appellant thereafter filed a suit complaining that Art. 311(2) of Constitution had not been complied with. The suit was decreed by the Subordinate Judge, declaring that the dismissal was void and inoperative. The Union of India preferred an appeal against the above judgment but the appeal was dismissed by the Senior Subordinate Judge. A second appeal was filed by

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the State and the single Judge of the Punjab High Court held that there had been a substantial compliance with the provisions of Art. 311 and accordingly accepted the appeal and set aside the decree of the Court below. The officer appealed to the Supreme Court.

The Supreme Court held that the language of Art. 311 is prohibitory in form and is inconsistent with its being merely permissive and as such this article is proviso to Art. 310 which provides that every person falling within it holds office during the pleasure of the President. Reasonable opportunity envisaged in Art. 311 includes: (a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him and the allegations on which such charges are based; (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence and finally, (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

After the enquiry is held and the competent authority has taken a decision about the punishment to be inflicted, it is at this stage that the person concerned under Art. 311(2) was entitled to have a further opportunity to show cause why that particular punishment should not be inflicted on him. In this case this was not done and as such provisions of Art. 311(2) have not been fully complied with and as such the dismissal cannot be supported.

(26)

- (A) P.C. Act, 1988 — Secs. 7, 13(1) (d)**

- (B) Trap — evidence of raid party**

*Appreciation of evidence of raid party in a trap case,
dealt with.*

- (C) Trap — accomplice and partisan witness**

*Distinction between accomplice evidence and partisan
evidence, clarified.*

- (D) Trap — police supplying bribe money**

*Not part of duty of police authorities to provide
instruments of the offence.*

(E) Trap — magistrate as witness

Magistrate should not be relegated to the position of partisan witness.

(F) Trap — legitimate and illegitimate

Distinction between legitimate and illegitimate traps, clarified.

State of Bihar vs. Basawan Singh, AIR 1958 SC 500

The Supreme Court observed that the uncorroborated evidence of an accomplice is admissible in law; but it has long been a rule of practice, which has virtually become equivalent to a rule of law, that the Judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice. Where the offence is tried by a Judge without the aid of a jury, it is necessary that the Judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration of the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case.

It is the duty of the police authorities to prevent crimes being committed; but it is no part of their business to provide the instruments of the offence.

The independence and impartiality of the judiciary requires that Magistrates whose normal function is judicial should not be relegated to the position of partisan witnesses and required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever.

In some of the decided cases a distinction has been drawn between two kinds of “traps” — legitimate and illegitimate and in some other cases a distinction has been made between tainted evidence of an accomplice and interested testimony of a partisan witness and it has been said that the degree of corroboration necessary is higher in respect of tainted evidence than for partisan evidence, but in deciding the question of admissibility of the evidence of a raiding party such distinctions are somewhat artificial, and in the matter of assessment of the value of evidence and the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down.

The decision of the Supreme Court in the case of *Shiv Bahadur Singh vs. State of Vindhya Pradesh, AIR 1954 SC 322* did not lay down any inflexible

rule that the evidence of the witnesses of a raiding party must be discarded in the absence of any independent corroboration. The correct rule is this: if any of the witnesses are accomplices who are ‘particeps criminis’ in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness he cannot claim any higher status and must be treated as any other interested witness.

Independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses. Even in respect of the evidence of an accomplice, all that is required is that there must be some additional evidence, rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. Corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime.

(27)

Misconduct — moral turpitude

Scope of term “moral turpitude” explained.

Baleshwar Singh vs. District Magistrate, Benaras, AIR 1959 ALL 71

The expression “moral turpitude” is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowman or to the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

Judging the position in the back ground of the foregoing discussion, sec. 182(a) IPC in declaring that giving of false information to a public servant

with the intention that the public servant may do or omit to do anything which he ought not to do or omit, if the true state of facts respecting such information were given to him or known to him, has enjoined a duty on persons to abstain from giving such information etc. to a public servant. A duty has been cast on individuals not to act in a certain manner and detract public servants from their normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant every public servant obviously is. An individual's conduct in giving false information to a public servant in the circumstances stated in sec. 182(a) too is therefore contrary to justice, honesty and good morals and shows depravity of character and wickedness.

The High Court held that therefore an offence under sec. 182 IPC, whether falling under clause (a) or clause (b), is an offence involving moral turpitude.

(28)

- (A) P.C. Act, 1988 — Sec. 12
- (B) Bribe-giver — prosecution of

Offence under section 165A of Indian Penal Code (corresponding to sec. 12 of P.C. Act, 1988) is committed as soon as there is instigation to a public servant to commit offence under section 161 of Penal Code (corresponding to sec. 7 of P.C. Act, 1988), irrespective of the fact that the public servant did not accept or even consent to accept, money.

Padam Sen vs. State of Uttar Pradesh, AIR 1959 ALL 707

The appellants were convicted by the Special Judge of Meerat and sentenced to one year rigorous imprisonment and a fine of Rs.500 under section 165A of Penal Code (corresponding to sec. 12 of P.C. Act, 1988).

The High Court of Allahabad held that as soon as there is an instigation to a person to commit an offence under section 161 I.P.C. (corresponding to sec. 7 of P.C. Act, 1988), the offence of abetment of the offence under section 161 I.P.C. is complete within the intendment of section 165A I.P.C. quite irrespective of the fact that that person did not accept, or even consent to accept, the money.

In a case under section 165A I.P.C. since it is the mens rea of the bribe-giver that has to be considered. It should be sufficient to render him liable if his object in giving or attempting to bribe the public servant was to induce the public

servant to do an official act or show or forbear to show, in the discharge of his official functions, favour or disfavour to him, it being quite immaterial whether the public servant was not in fact in a position to do or not to do the act or show or forbear to show the favour or disfavour in question.

(29)

Further inquiry

Reinstatement by Government on ground that dismissal was not by authority competent to do so, has no effect of quashing entire previous proceedings. Fresh proceedings can be taken up at the stage where the inquiry report was accepted by earlier authority.

Lekh Ram Sharma vs. State of Madhya Pradesh, AIR 1959 MP 404

The petitioner was Sub-Inspector of Excise. He was dismissed from service by order of the Commissioner of Excise. The High Court set aside the order of dismissal and he was thereupon reinstated and simultaneously suspended, served with a fresh punishment notice and dismissed by the Government itself. The petitioner thereupon approached the Madhya Pradesh High Court.

The High Court held that where the reinstatement by the Government was made as a consequence of the setting aside of the order of dismissal alone, and not because the inquiry had been irregular or the findings were not accepted, but because the dismissal was thought to be by an authority that was really not competent to order it, it could not be said that the setting aside of the order of dismissal and the reinstatement had the effect of quashing of the entire proceedings and the cancellation of the old charge-sheet and exonerating of all those charges. The officer can in such a case show cause against a particular punishment, can assail in argument the facts found against him and can further ask for a supplementary inquiry only if sufficient grounds are shown such as a material omission on the part of the Inquiring Authority or a condoned omission on the part of the officer himself. Subject to this, there is nothing wrong in the original charge-sheet and the original inquiry report being acted upon by the new punishing authority. Where the case was taken up again at the stage where the Government had accepted the inquiry report and it was ripe to issue a punishment notice upon and after the issue of the punishment notice by the previous authority had been set aside for want of jurisdiction as the Government conceived it, there was nothing wrong in it.

(30)**Disciplinary proceedings — show cause against penalty**

The mere fact that show-cause notice mentioned all the three punishments referred to in Art. 311(2) of Constitution will not make the notice bad.

Hukum Chand Malhotra vs. Union of India, AIR 1959 SC 536

The Supreme Court held that the proposition that Art. 311(2) of Constitution requires in every case that the punishment to be inflicted on the Government servant concerned must be mentioned in the show cause notice issued at the second stage cannot be accepted as correct. It is obvious and Art. 311(2) expressly says so that the purpose of the issue of a show cause notice at the second stage is to give the Government servant concerned a reasonable opportunity of showing cause why the proposed punishment should not be inflicted on him; for example, if the proposed punishment is dismissal, it is open to the Government servant concerned to say in his representation even though the charges have been proved against him, that he does not merit the extreme penalty of dismissal, but merits a lesser punishment, such as removal or reduction in rank. If it is obligatory on the punishing authority to state in the show cause notice at the second stage the punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the Government servant concerned. This will be against the very purpose for which the second show cause notice was issued.

There is nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment proposed to be taken in the alternative in regard to him. To specify more than one punishment in the alternative does not necessarily make the proposed action any the less definite; on the contrary, it gives the Government servant better opportunity to show cause against each of those punishments being inflicted on him, which he would not have had if only the severest punishment had been mentioned and a lesser punishment not mentioned in the notice had been inflicted on him.

(31)

- (A) P.C. Act, 1988 — Sec. 17**
- (B) Trap — authorisation to investigate**

Requirements of permission by Magistrate, laid down.

State of Madhya Pradesh vs. Mubarak Ali, AIR 1959 SC 707

The Supreme Court observed that in a case where an officer, other than the designated officer, seeks to make an investigation he should get the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission. For one reason or other, if the said salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied, that the Magistrate in fact has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case. Thus where it appears that the Magistrate in granting the permission under sec. 5A of the P.C. Act, 1947 (corresponding to sec. 17 of the P.C. Act, 1988) did not realise the significance of his order giving permission, but only mechanically issued the order on the basis of the application which did not disclose any reason, presumably because he thought that what was required was only a formal compliance with the provisions of the section, the provisions of sec. 5A are not complied with.

The Supreme Court further observed that under the Criminal Procedure Code, an investigation starts after the police officer receives information in regard to an offence and consists generally of the steps as enumerated in the case of H.N. Rishbud vs. State of Delhi, AIR 1955 SC 196. The Supreme Court held that on facts that the police officer had started investigation before he obtained permission of the Magistrate under sec. 5A and had thus contravened its provisions.

(32)

- (A) Misconduct — what constitutes, what doesn't**
- (B) Misconduct — in private life**

Government has the right to expect Government servants to observe certain standards of decency and morality in their private lives.

Laxmi Narain Pande vs. District Magistrate, AIR 1960 All 55

The High Court observed that Government has the right to expect that every Government servant will observe certain standards of decency and morality in his private life. For example, the State has the power to demand that no Government servant shall remarry during the life time of his first wife. It may

require its officials not to drink alcoholic liquors at social functions. It may require the Government servant to manage his private affairs as to avoid habitual indebtedness or insolvency. If Government were to sit back and permit its officials to commit any outrage in their private lives provided it falls short of a criminal offence, the result may very well be a catastrophic fall in the moral prestige of the administration.

(33)

- (A) **P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) **Disproportionate assets — known sources of income**
- (C) **Disproportionate assets — burden of proof on accused**
 - (i) *Expression “known sources of income” explained; refers to sources known to the prosecution.*
 - (ii) *Burden is on the accused to prove the contrary. Accused required not only to offer a plausible explanation but also to satisfy that the explanation is worthy of acceptance.*

C.S.D. Swami vs. State, AIR 1960 SC 7

The Supreme Court observed that the Legislature has advisedly used the expression “satisfactorily account”. The emphasis must be on the word “satisfactorily”, and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

The Supreme Court held that the expression “known sources of income” must have reference to sources known to the prosecution on a thorough investigation of the case. It cannot be contended that “known sources of income” means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters “specially within the knowledge” of the accused, within the meaning of sec. 106 Evidence Act. The prosecution can only lead evidence to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is

ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a Government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund.

The Supreme Court held that the requirement of sec. 5(3) of the P.C. Act, 1947 (corresponding to sec. 13(1) (e) of the P.C. Act, 1988) is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge of his official duties "unless the contrary is proved". The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary. After the conditions laid down in the earlier part of subsection (3) of sec. 5 have been fulfilled by evidence to the satisfaction of the court, the court has got to raise the presumption that the accused person is guilty of criminal misconduct in the discharge of his official duties, and this presumption continues to hold the field unless the contrary is proved, that is to say, unless the court is satisfied that the statutory presumption has been rebutted by cogent evidence. Not only that, the section goes further and lays down in forceful words that "his conviction therefor shall not be invalid by reason only that it is based solely on such presumption".

(34)

Termination — of probationer

Discharge of probationer from service as being unsuitable to the post on grounds of notoriety for corruption and unsatisfactory work, attracts Art. 311(2) of Constitution.

State of Bihar vs. Gopi Kishore Prasad, AIR 1960 SC 689

The question was whether the provisions of Art. 311(2) of Constitution are attracted to the case of a public servant who was still a probationer and had not been confirmed in a substantive post. The Supreme Court held that the provisions of Art. 311 are applicable to the probationer who had been discharged from service on enquiry, as being unsuitable to the post on grounds of notoriety for corruption and unsatisfactory work in the discharge of his public duties.

Though the respondent was only a probationer, he was discharged from service really because the Government had, on enquiry, come to the conclusion,

rightly or wrongly, that he was unsuitable for the post held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection under Art. 311(2) of Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true that if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersions on his honesty or competence, the discharge would not, in law, have the effect of a removal from service by way of punishment and be would, therefore, have no grievance to ventilate in any court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of Art. 311(2) of Constitution. That protection not having been given to him, he had the right to seek his redress in court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Art. 311(2) of Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution.

(35)

Departmental action and prosecution

No failure of natural justice if disciplinary proceedings are taken without waiting for decision of criminal court, where case is not of a grave nature and does not involve questions of fact or law which are not simple.

Delhi Cloth & General Mills Ltd. vs. Kushal Bhan, AIR 1960 SC 806

The respondent was in the employ of the appellant company as a peon. He was alleged to have committed theft of the cycle of a Head Clerk of the company and on a complaint, the police recovered the cycle on the confession of the respondent when picked up by him from among 50/60 cycles at the railway station cycle stand. While criminal proceedings were on, disciplinary proceedings were also initiated. The charged officer informed the Inquiry Committee that as the (original) case was pending against him, he did not want to produce any defence till the matter was decided by the court. When questions were put to him at the inquiry, he refused to answer them and eventually left the place. The inquiry proceedings were completed ex-parte. On the basis of the

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inquiry, where the charges of misconduct were proved, the company ordered the dismissal of the respondent. The Tribunal, however, did not confirm the imposition of the penalty of dismissal, because meanwhile the person concerned had been acquitted in the criminal case. The employer took the case to the Supreme Court.

The Supreme Court observed: "It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair, but we cannot say that principles of natural justice require that an employer must wait for the decision atleast of the criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee vs. Messrs. Newsman's Printing Works*, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case and if the respondent did not choose to take part in the enquiry, no fault can be found with that enquiry. We are of opinion that this was a case in which the tribunal patently erred in not granting approval under Section 33(2) of the Industrial Disputes Act. Besides, it is apparent that in making the order under appeal, the tribunal has completely lost sight of the limits of its jurisdiction under section 33(2). We, therefore, allow the appeal and setting aside the order of the tribunal, grant approval to the order of the appellant dismissing the respondent."

(36)

Compulsory retirement (non-penal)

Retirement under the service rules which provide for compulsory retirement does not amount to dismissal or removal from service within the meaning of Art. 311 of Constitution.

Dalip Singh vs. State of Punjab, AIR 1960 SC 1305

The appellant was Inspector General of Police of PEPSU State. He was retired from service by an order of the Rajpramukh for administrative reasons from 18-8-50. It was contended by the appellant that the order of retirement amounted to his removal from service within the meaning of Art. 311 of Constitution.

The Supreme Court held that two tests had to be applied for ascertaining whether a termination of service by compulsory retirement amounted to removal

or dismissal so as to attract Art. 311 of Constitution. The first is whether the action is by way of punishment and to find that out, it was necessary that a charge or imputation against the officer is made the condition of the exercise of the power, the second is whether by compulsory retirement the officer is losing the benefit he has already earned as he does by dismissal or removal.

While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference, that while in the case of retirement they merely furnish the background and the enquiry if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal and must satisfy the rules of natural justice and the requirements of Art. 311(2).

Where all that an order for compulsory retirement of the appellant under rule 278 of the Patiala State Regulations (which does not fix the age for compulsory retirement) stated was that the compulsory retirement was for "administrative reasons" and it was only after the appellant's own insistence to be supplied with the grounds which led to the decision that certain charges were communicated to him, there is no basis for saying that the order of retirement contained any imputation or charge against the officer (appellant). The fact that consideration of misconduct or inefficiency weighed with the Government in coming to the conclusion whether any action should be taken under rule 278 does not amount to any imputation or charge against the officer.

Where in such a case the officer concerned has been allowed full pension there is no question of his having lost a benefit earned and the order of retirement is clearly not by way of punishment and does not amount to removal from service so as to attract the provisions of Art. 311.

Retirement under a service rule which provides for compulsory retirement at any age whatsoever, irrespective of the length of service put in, cannot necessarily be regarded as dismissal or removal within the meaning of Art. 311.

(37)

(A) Evidence — of previous statements

Evidence of witnesses examined at the fact-finding stage cannot be relied upon without producing witnesses during formal inquiry and letting the charged official cross-examine them.

(B) Departmental action — commencement of

Formal departmental inquiry is different from fact-finding preliminary enquiry. Formal departmental inquiry starts with charge sheet.

(C) Preliminary enquiry

Fact-finding enquiry can be ex-parte as it is only to determine whether suspect officer should be proceeded against.

(D) Charge — should contain necessary particulars

Charges must be specific and give necessary particulars. Presumption that the delinquent official knew the charges does not arise.

A.R. Mukherjee vs. Dy. Chief Mechanical Engineer, AIR 1961 CAL 40

The petitioner was a clerk in the Eastern Railway. A report was received from the Vigilance Officer and a fact-finding enquiry was conducted on the allegation that some blank pass application forms were filled with bogus names and a false rubber stamp was affixed thereon together with a forged signature of a clerk in the D.C.O.S. Office and were passed on to Mukherjee who was a clerk in the Pass section. The fact-finding enquiry was exhaustive at which witnesses were examined. On 26-6-58, a charge-sheet was issued which read as follows: "(1) For fraudulent issue of 367 nos. of foreign line passes (two II class and three hundred and sixty five III class) for 1085 ½ adults during the years 1956 and 1957 on false pass applications alleged to have been forwarded from office of the District Controller of Stores, Eastern Railway, Lillooah, involving a cost of Rs.17,415.18 P thereof which were neither received nor date stamped in the Receiving Clerk of Pass Section. (2) For fraudulent disposal of all the above passes by entering them in a separate peon-book instead of sending them in the particular peon book in which all passes issued on genuine pass applications are sent to office of the District Controller of Stores, Lillooah and delivering to unauthorised persons against some fictitious acknowledgement other than those employed in the Pass Section of DCOS's office with view for illicit gain."

The petitioner in his explanation submitted that the charge- sheet was couched in vague generalisations although the disciplinary action Rules clearly prescribed that the charge should be free from ambiguities and should be clear. He requested that the charges be made clear and all relevant records and cognate

documents made available for inspection. During the inquiry, Counsel for defence submitted that although the enquiry was in progress for a week the prosecution had not produced any witness or documentary evidence to establish the charges and on the other hand the onus was being shifted to the petitioner. He submitted the names of 11 persons to be called as witnesses and asked for production of documents for inspection. The documents were not made available on the ground that they had been destroyed. The enquiry officer concluded that the petitioner was responsible for fraudulent issue of foreign line passes on faked pass applications. After a show cause notice, the petitioner was dismissed.

It is stated in the petition to the Calcutta High Court that during the inquiry, the prosecution did not produce any witnesses on its behalf or witnesses asked for by him and threw the onus on the petitioner to establish his innocence. The affidavit-in-opposition maintained that prior to the service of charge-sheet, there was preliminary enquiry, also called fact-finding enquiry, where documents were shown to the petitioner and witnesses were examined and as such it was not necessary to call witnesses at the inquiry or provide inspection of documents or give further particulars.

The High Court held that the authorities are entitled to have a preliminary investigation. This is not a formal inquiry and no rules are observed. There can be an ex parte examination or investigation and an ex parte report. All this is to enable the authorities to apprise themselves of the real facts and to decide whether an employee should be charge-sheeted. But the departmental inquiry starts with the charge-sheet. The charge-sheet must be specific and must set out all the necessary particulars. It is no excuse to say that regard being had to the previous proceedings the delinquent should be taken to have known about the charges. Whether he knew them or not, he must again be told of all the charges to which he is called upon to show cause and the charges must be specific and all particulars must be stated without which he cannot defend himself. The evidence given by the witnesses during the fact-finding enquiry has been liberally relied upon without producing the witnesses at the formal inquiry so that the petitioner would get an opportunity to cross-examine them. The disciplinary authority is not entitled to rely on evidence given at the fact-finding stage. The present inquiry has been conducted in a manner contrary to law.

(38)

Termination — of probationer

An order discharging a probationer following upon an enquiry to ascertain whether he was fit to be confirmed is not one by way of punishment and would not attract Art. 311(2) of Constitution.

State of Orissa vs. Ram Narayan Das, AIR 1961 SC 177

The Supreme Court held that a probationer can be discharged in the manner provided in the rules governing him. Mere termination of employment does not carry with it any evil consequences such as forfeiture of pay and allowances, loss of seniority, stoppage or postponement of future chances of promotion etc. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification may appropriately be regarded as one by way of punishment but an order discharging a probationer, following upon an enquiry to ascertain whether he was fit to be confirmed is not of that nature.

The respondent had no right to the post held by him. Under the terms of his employment, he could be discharged in the matter provided by the Rules. A mere termination of employment does not carry with it any evil consequences. The use of the expression "discharged" in the order terminating employment of a public servant is not decisive; it may in certain cases amount to dismissal. If a confirmed public servant holding a substantive post is discharged the order would amount to dismissal or removal from service. Whether it amounts to dismissal, depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry.

Where under the rules governing a public servant holding a post on probation, an order terminating the probation is to be preceded by a notice to show cause why his services should not be terminated and a notice is issued asking the public servant to show cause whether probation should be continued or the officer should be discharged from service, the order discharging him cannot be said to amount to dismissal involving punishment. Undoubtedly, the Government may hold a formal enquiry against the probationer on charges of misconduct, with a view to dismiss him from service and if an order terminating his employment is made in such an enquiry without giving him reasonable opportunity to show cause against the action proposed to be taken against him within the meaning of Art. 311(2) of Constitution the order would undoubtedly be invalid.

(39)

- (A) Court jurisdiction**
- (B) Service Rules — justiciable**

Breach of Rules governing provisions of disciplinary proceedings is justiciable.

State of Uttar Pradesh vs. Babu Ram Upadhyay, AIR 1961 SC 751

The respondent joined the Uttar Pradesh Police as Sub-Inspector in 1948. On 6-9-53, he was returning from an investigation of theft, accompanied by one Lalji. They saw one Tikaram moving suspiciously. The respondent searched him and found him carrying a bundle of currency notes. He counted them and handed over to Lalji for returning to Tikaram. Tikaram on reaching home found that the notes were short by Rs.250. He complained to the Superintendent of Police on 9-9-53, who made enquiries and issued notice to the respondent. The latter filed his reply on 3-10-53. The Deputy Inspector General of Police ordered the Superintendent of Police to hold an enquiry under section 7 of the Police Act. The respondent was charged with misappropriation of Rs.250 of Tikaram and after departmental enquiry found guilty. The Superintendent of Police issued notice asking to show cause why he should not be reduced to the lowest stage of the Sub-Inspector and after considering the respondent's reply inflicted the proposed penalty on 16-1-54. When the order came to the notice of the Deputy Inspector General of Police, he felt that the respondent deserved dismissal and on 19-10-54 ordered his dismissal from service. This order was confirmed by the Inspector General of Police on 28-2-55. The State Government dismissed his revision in Aug. 1955. The respondent then moved the High Court under Art. 226 and the High Court set aside the order on the ground that the provisions of para 486 of the Police Regulations had not been complied with. The State appealed to the Supreme Court and the main question was whether breach of service rules is justiciable or not.

The appellant's plea was that the pleasure power of the President and the Governor was supreme and that the same could not be abrogated or modified by an Act of the Parliament or the Legislatures and any law made would contain only administrative directions to the authorities to enable them to exercise the pleasure in a reasonable manner. The Supreme Court discussed the provisions of Art. 309 to Art. 311 of Constitution and stated that a law can be made by the Parliament and the Legislatures defining the content of the 'reasonable opportunity' and prescribing the procedure for giving the said opportunity. The Supreme Court held: "In our view subject to the overriding power of the President or the Governor under Art. 310 as qualified by the provisions of Art. 311, the rules governing the provisions of disciplinary proceedings cannot be treated as administrative directions, but shall have the same effect as the provisions of the statute whereunder they are made, in so far as these are not inconsistent with the provisions thereof. The Supreme Court in conclusion held para 486 of the Police Regulations as mandatory and dismissed the appeal of the State.

(40)

Inquiry — mode of

If there are two procedures, Tribunal Rules and Departmental Regulations, Government can choose any one of them.

Jagannath Prasad Sharma vs. State of Uttar Pradesh, AIR 1961 SC 1245

The appellant joined the Uttar Pradesh Police in 1931 as a Sub-Inspector and in 1946 became an Inspector, and in 1947 he was appointed to officiate as Deputy Supdt. of Police. Shortly thereafter there were complaints against him of immorality, corruption and gross dereliction of duty. After an enquiry, the Governor referred his case under section 4 of the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 to a Tribunal. The Tribunal recommended the appellant's dismissal from service. The Governor served a notice on the appellant asking him to show cause why he should not be dismissed from service. After considering his explanation, the Governor dismissed him from service with effect from 5-12-50. The appellant moved the High Court under Art. 26 but was unsuccessful.

The appellant challenged his dismissal before the Supreme Court on the ground (i) that the Governor had no power under section 7 of the Police Act and the Uttar Pradesh Police Regulations to dismiss the appellant, (ii) that the enquiry held by the Tribunal violated Art.14 of the Constitution as, of the two parallel procedures available under the Tribunal Rules and under the Police Regulations, the one more prejudicial to the appellant under the Tribunal Rules was adopted and (iii) that the proceedings of the Tribunal were vitiated because of patent irregularities which resulted in an erroneous decision as to the guilt of the appellant.

The Supreme Court held that under para 479(a) of the Regulations, the Governor had the power to dismiss a Police Officer. Under the Tribunal Rules also which were duly framed, the Governor was authorised to dismiss a Police officer. By virtue of the provisions of Art. 313 of the Constitution, these provisions continued to remain in operation. The authority vested in the Inspector General of Police and his subordinates under section 7 of the Act was not exclusive. It was controlled by the Government of India Act, 1935 and the Constitution which made the tenure of Civil servants in a State during the pleasure of the Governor.

The Supreme Court further held that the method adopted did not violate Art. 14. The procedures prescribed by the Police Regulations and the Tribunal Rules are substantively the same and by conducting the enquiry under the

Tribunal Rules, a more onerous procedure prejudicial to the appellant was not adopted. The fact that the order under the Regulations is appealable while the one under the Tribunal Rules is not appealable does not amount to discrimination within the meaning of Art. 14. The Tribunal Rules provide for giving of reasonable opportunity to a Government servant in all its aspects viz. to deny guilt, to defend himself and to represent against the punishment proposed.

(41)

(A) Court jurisdiction

It is open to the High Court acting under Art. 226 of Constitution to consider whether constitutional requirements of Art. 311 are satisfied.

(B) Documents — inspection of

(C) Inquiry — previous statements, supply of copies

Failure to allow inspection of documents and furnish copies of prior statements of witnesses recorded in preliminary enquiry for the purpose of cross-examination vitiates the inquiry. Right of cross- examination is the most valuable right of the charged official.

State of Madhya Pradesh vs. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623

The respondent, a Sub-Inspector of Police, while on deputation to Hyderabad State and working at Adilabad was suspended and charge-sheeted for accepting illegal gratification of Rs.5000 each, from Nooruddin for releasing Gulam Ali, from Noor Mohd. for releasing his brother Ali Bhai and from Noor Bhai for releasing his father Kasim Bhai. During the enquiry, the respondent requested for certain documents to make his defence but he was not allowed inspection of some of the documents. Among the documents which he wanted to inspect but was not allowed, were the file of Razakars in which there were recommendations of the District Superintendent of Police to the Civil Administrator, Adilabad for the release of some razakar detenues and for the orders of the Civil Administrator for the release of those detenues, copy of the application on the strength of which a preliminary enquiry was started, statements of Rajah Ali and Noor Bhai recorded in the preliminary enquiry. The Inquiry Officer in his report held the respondent guilty of all the three charges and recommended that he should be dismissed from service. After a show cause notice, the respondent was dismissed.

The Supreme Court observed that in appreciating the significance of the documents refused, it is necessary to recall the broad features of the evidence. Evidence was given by the person who paid the money to Rajah Ali and Noor Bhai or one of them on order that it should be paid in turn to the respondent. Nooruddin, Noor Mohd. and Kasim Bhai are the three witnesses who gave evidence in support of the charges. The first witness said that he had given in all Rs.12000 to Rajah Ali and Noor Bhai. Similarly the second witness said that he had paid Rs.11000 and the third witness stated that he was arrested after the police action and was told if he paid the respondent Rs.5000, he would be released and the money was paid. It is obvious that Rajah Ali and Noor Bhai, who are the principal witnesses collected more money than they are alleged to have paid to the respondent. Thus it was of very great importance for the respondent to cross-examine these two witnesses and for that purpose the respondent wanted copies of their prior statements recorded in preliminary enquiry. They were refused on the ground that they were secret papers.

The Supreme Court held that failure to supply the said copies to the respondent made it almost impossible for him to submit the said two witnesses to an effective cross-examination and that in substance deprived him of a reasonable opportunity to meet the charge.

As regards the file of the Razakars, it was reported to have been lost. The respondent's case was that the Razakars in question for whose release he is alleged to have accepted the bribe were released on the recommendation of the District Superintendent of Police and under the orders of the Civil Administrator. The file was, therefore, relevant and according to the respondent, the suggestion that the file had been lost was untrue. The High Court has correctly held that the inquiry has not been done satisfactorily and that in substance the respondent has been denied a reasonable opportunity to meet the charge framed against him.

Whenever an order of dismissal is challenged by a writ petition under Art. 226 of Constitution, it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. The Inquiry Officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the Public Officer has been deprived of a reasonable opportunity, it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied, or not.

(42)

- (A) P.C. Act, 1988 — Sec. 17
- (B) Trap — investigation by unauthorised person

Investigation by person not authorised under sec. 5A proviso of P.C. Act, 1947 (corresponding to sec. 17 P.C. Act, 1988) is illegal but illegality does not affect result of trial.

- (C) P.C. Act, 1988 — Secs. 7, 13(1) (d)
- (D) Trap — corroboration of trap witness

Degree of corroboration of trap witness, clarified.

Major E.G. Barsay vs. State of Bombay, AIR 1961 SC 1762

The Supreme Court observed that where the two conditions laid down in the proviso to sec. 5A of the P.C. Act, 1947 (corresponding to sec. 17 of the P.C. Act, 1988) have not been complied with by the Inspector of Police conducting the investigation, the investigation is illegal; but the illegality committed in the course of the investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

The Supreme Court observed that though a trap witness is not an accomplice, he is certainly an interested witness in the sense that he is interested to see that the trap laid by him succeeded. He could at least be equated with a partisan witness and it would not be admissible to rely upon his evidence without corroboration. His evidence is not a tainted one; it would only make a difference in the degree of corroboration required rather than the necessity for it. Though the court rejects the evidence of the witness in regard to some events either because that part of the evidence is not consistent with the other parts of his evidence or with the evidence of some disinterested witnesses, the court can accept the evidence given by the witness in regard to other events when that version is corroborated in all material particulars with the evidence of other disinterested witnesses. The Supreme Court held that the corroboration must be by independent testimony confirming in some material particulars not only that the crime was committed but also that the accused committed it. It is not necessary to have corroboration of all the circumstances of the case or every detail of the crime. It would be sufficient if there was corroboration as to the material circumstances of the crime and the identity of the accused in relation to the crime.

(43)

Further inquiry

Disciplinary Authority can refuse to accept inquiry report and send back matter for a further inquiry.

Keshab Chandra Sarma vs. State of Assam, AIR 1962 Assam 17

The petitioner, an Inspector of Taxes of the Assam Government, was dealt with on a charge of possession of disproportionate assets. The Inquiry Officer submitted his report with a finding that he was not guilty of the charge, on 25.3.1957. On 21.7.58, Government returned the papers to the Inquiry Officer for further inquiry on certain specified points. The Inquiry Officer thereupon called upon the petitioner to produce documentary evidence if any and conducted the further inquiry and submitted his report holding him guilty of the charge, on 20.8.58. Government accepted the report and after issuing show cause notice dismissed him from service on 30.3.61.

The High Court held that it is open to Government to refuse to accept the enquiry report and send back the matter for a further enquiry. Unless it is shown that a fair opportunity to show cause against the proposed charges was not given when the matter was sent for further enquiry again, the mere fact that the matter was sent back by the dismissing authority for further enquiry will not vitiate the proceedings and the consequent order of dismissal.

(44)

- (A) P.C.Act, 1988 — Sec. 17
- (B) Trap — investigation illegal, effect of
- (C) P.C. Act, 1988 — Sec. 19
- (D) Sanction of prosecution — under P.C. Act

- (i) *Sanction of prosecution under P.C. Act granted by competent authority on basis of invalid investigation does not lapse by reason that a fresh investigation has been conducted, and it remains valid.*
- (ii) *Cognizance of offence by Special Judge under sec. 6 of Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) is not void where based on illegal investigation, and reinvestigation does not affect the cognizance already taken.*

Parasnath Pande vs. State of Bombay, AIR 1962 BOM 205

The accused-applicants, Head Master and an Assistant Teacher of a Municipal School were trapped and prosecuted for offences under sections 161 and 165 of Penal Code (corresponding to secs. 7,11 of P.C. Act, 1988) before the Special Judge, Greater Bombay after obtaining sanction of prosecution of the competent authority. Before the Special Judge it was contended that the sanction accorded to the Sub-Inspector by the Presidency Magistrate to investigate the case was not valid. The Special Judge summoned the Presidency Magistrate to examine him and the latter appeared but claimed privilege. The High Court ordered reinvestigation of the case by a competent officer as a way out of the stalemate. The case was accordingly reinvestigated and the Special Judge was intimated by the Investigating Agency that reinvestigation revealed the same evidence as before. The Special Judge thereupon framed charges. At this stage, it was contended (i) that the reinvestigation is incomplete and requisite charge sheet or report has not been submitted and (ii) no fresh sanction under section 6 of Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) has been obtained after placing the papers of reinvestigation before the competent authority. The applicants approached the High Court to quash the proceedings before the Special Judge, on the Special Judge rejecting these contentions.

The Bombay High Court held that the power of a Special Judge to take cognizance of offences specified in section 6 is wide and unlimited and no limitation has been placed as to how he should do it. He may act on a report submitted by a Police Officer or on a private complaint or on the basis of information derived from any source and also on his personal knowledge and suspicion.

Where the Special Judge takes cognizance of an offence specified in section 6, issues processes and frames charges against the accused, even though the material on which he acted was collected in an investigation carried out by a Police Officer, who was not authorised to do so and was done in violation of the mandatory provisions of section 5A of Prevention of Corruption Act, 1947 (corresponding to sec. 17 of P.C. Act, 1988), the action taken by the Special Judge cannot be considered to be illegal or void. Even if the Police Officer had no authority to carry out the investigation and to submit a charge sheet and even if the charge sheet is regarded as bearing the stamp of illegality, the Special Judge was not prevented from treating it as a complaint and acting on the same. Cognizance is not vitiated merely because there was illegality in the process of investigation. The Special Judge can act on any material placed before him and he need not stop to consider whether the material placed before

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him has been collected in a legal way and through the proper medium of an authorised person.

Where the Special Judge has taken cognizance and the trial has not progressed very far, it is open to the Special Judge to redirect reinvestigation in a proper case. Reinvestigation should not be directed as a matter of course or routine. The court should examine the facts of each case and then pass an appropriate order, bearing in mind that the object is not to cure any illegality but to afford an opportunity to the superior Police Officer to review the facts of the case. It will always be open to the accused to plead that miscarriage of justice has been caused by reason of the violation of the mandatory provision on account of the first investigation having been undertaken by an officer below the designated rank.

The act of taking cognizance is a judicial act and so long as it has not been set aside by a proper judicial order, the cognizance continues and the order of reinvestigation would, in no way, affect the cognizance. The material collected, whether in the course of the first investigation or the second investigation is not evidence unless, the same has been proved in a formal way in the course of the trial. Reinvestigation has not the effect of effacing the first investigation and superceding the cognizance that has already been taken on the basis of the first investigation.

A sanction granted under section 6 of Prevention of Corruption Act, 1947 on the basis of invalid investigation is not illegal. Section 6 does not enjoin the sanctioning authority to look into any particular papers. It does not lay down that the officer authorised to grant the sanction must peruse the investigation papers. The sanctioning authority can proceed on any material, which, according to him, is sufficient or trustworthy. He is not concerned to find out the truth or otherwise of the facts disclosed to him. All that is necessary for the sanctioning authority to do is to apply his mind to the facts as disclosed to him and to accord sanction to the offence that would be disclosed on the facts placed before him. The grant of sanction is not a judicial act. It is purely an executive act.

A sanction already accorded under section 6 does not lapse by reason of the fact that a fresh investigation has taken place, although the sanction was granted on the basis of material illegally collected. The sanction that was already granted remains valid and there is no need of any fresh sanction after reinvestigation. Even if fresh material is assumed to have been collected in the course of fresh investigation, it would not affect the sanction accorded earlier. The question of a misappreciation of the material by the sanctioning authority by reason of the fact that the medium is distorted does not arise.

(45)

Misconduct — in judicial functions

Charging a Judicial Officer with abuse of authority consisting in bias in favour of a litigant does not amount to executive interference with his judicial functions.

N.G. Nerli vs. State of Mysore, 1962 Mys.L.J.(Supp) 480

A disciplinary enquiry was instituted against the petitioner Tahsildar. The main charge related to his conduct while functioning as the original Tenancy Court under the Bombay Tenancy and Agricultural Lands Act with reference to certain suits. The Enquiry Officer found that the charges could not be held proved. The State Government, however, issued a show cause notice holding the charges as proved and called upon him to explain why the penalty of reduction should not be imposed. On receipt of his reply, the Public Service Commission was consulted and a penalty of reduction to the minimum of Tahsildar's grade for a period of 3 years was imposed.

The High Court held that where a judicial officer (Mamalatdar) is charged with actual misconduct amounting to abuse of his authority consisting in bias in favour of one of the litigants, disciplinary enquiry does not amount to executive interference with the judicial functions of the officer. The Judicial Officers Protection Act and the provisions contained in the penal law of the country providing for prosecution of Judicial Officers for certain offences in connection with the administration of justice have no bearing on the question whether such officers are or are not amenable to disciplinary control by their administrative superior.

(46)

Termination — of temporary service

When the services of a temporary servant are terminated by giving a simple notice under Temporary Service Rules, placing a ban on his future employment is bad in law.

***Krishan Chander Nayar vs. Chairman, Central Tractor Organisation,
AIR 1962 SC 602***

The petitioner was a machineman. His services were terminated on 16-9-54 under rule 5 of the Temporary Service Rules by giving him a month's pay in lieu of notice. When the petitioner applied for various jobs he learnt that the respondent had placed a ban on his joining a Government service. He made a

representation against it and the same was rejected. He filed a petition but it was dismissed by the High Court in lumine.

The Supreme Court observed that inspite of the denial on behalf of the respondent that there was no ban, the fact of the matter is that the petitioner is under a ban in the matter of employment under the Government and that so long as the ban continues he cannot be considered by any Government Department for any post. It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matter of employment contained in Art. 16(1) of Constitution. So long as the ban subsists, any application made by the petitioner for employment under the State is bound to be treated as waste paper. The fundamental right guaranteed by the Constitution is not only to make an application for a post under the Government, but the further right to be considered on merits for the post for which an application has been made. The ban complained of apparently is against his being considered on merits. The application is therefore allowed.

(47)

Reversion — of officiating employee

Reversion of a person officiating in a higher post to the original post on being found unsuitable is not punishment and does not attract Art. 311(2) of Constitution.

State of Bombay vs. F.A. Abraham, AIR 1962 SC 794

This is a case where an enquiry was conducted to ascertain the suitability of the respondent working in an officiating post.

The Supreme Court held that a person officiating in a post has no right to hold it for all time. He may have been given the officiating post because the present incumbent was not available, having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank, for, it is the very term on which he had been given the officiating post. Again, sometimes, a person is given an officiating post to test his ability to be made permanent in it later. Here again, it is an implied term of the officiating appointment that if he is found unsuitable, he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank and then revert him back to his original lower rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank and does not attract Art. 311(2) of Constitution.

(48)**(A) Disciplinary proceedings — show cause against penalty**

A penalty lesser than the one proposed in the show cause notice can be imposed.

(B) Public Service Commission

Opinion of Public Service Commission is only advisory and the President is not bound by it. Calling for evidence of Post Master General by itself does not vitiate proceedings.

A.N. D'Silva vs. Union of India, AIR 1962 SC 1130

The appellant was Divisional Engineer, Telegraphs at Agra. In June 1948, he was transferred to New Delhi and on 18-9-48, he was suspended and charged that he had committed at Agra serious irregularities in allotting Telephones with a view to accept himself and for others bribes and also facilitate the same for his subordinates. The Enquiry Officer held that illegal favouritism was proved. The President sent the record to the Union Public Service Commission and the later communicated with the Post Master General, Lucknow Division with a view to verify the correctness of a certain statement of the appellant. The Service Commission recommended compulsory retirement of the appellant while the Enquiry Officer had suggested dismissal. A show cause notice was issued proposing dismissal of the appellant. The President after considering the entire record ordered removal of the appellant with immediate effect from 25-1-51. The Appellant moved the Punjab High Court and his petition was dismissed and the order was maintained. In the Supreme Court, the appellant attacked the impugned order on three grounds, namely that he had been removed for negligence and disobedience of orders with which he was never charged, that the punishment meted out to him is different from the punishment proposed and that the Postmaster General had been examined by the Service Commission at his back.

The Supreme Court held that although the charge-sheet did not in so many words talk of negligence and disobedience of orders yet the charges considered as a whole leave no doubt that these were also substantially the subject of enquiry. Regarding infliction of penalty it was observed that employee can always be given a lesser penalty than the proposed higher penalty. On the question of evidence called for by the Service Commission, it was held that the

opinion of the Union Public Service Commission was only advisory and the President was not bound to follow the same and that the order did not show that the President had relied upon the evidence of the Postmaster General in passing the order of removal.

The Supreme Court also held that in imposing the punishment of removal the Government did not violate the guarantee of reasonable opportunity to show cause against the action proposed to be taken and the Government servant was afforded an opportunity to make his defence.

(49)

(A) Fresh inquiry / De novo inquiry

(B) Suspension — issue of fresh order

Where departmental proceedings are quashed by civil court on technical ground of irregularity in procedure and where merits of the charge were never investigated, fresh departmental inquiry can be held on same facts and a fresh order of suspension passed.

***Devendra Pratap Narain Rai Sharma vs. State of Uttar Pradesh, AIR 1962
SC 1334***

The appellant, was Inspector Qanungo in the Revenue Department of the State of Uttar Pradesh and was selected for the post of Tahsildar on probation. The Collector of Jhansi suspended him by order dated 21-4-52 and instituted a departmental inquiry. The State Government dismissed him from service by order dated 16-9-53. The High Court declared the order as void on the ground that the appellant was not afforded a reasonable opportunity. He was reinstated as Tahsildar by order dated 30-3-59. The appellant was again suspended by order dated 11-7-59 of the Revenue Board and departmental inquiry was instituted against him on the same charges. The High Court held that the second inquiry was not barred by virtue of the previous decision and directed the State Government to reconsider the matter regarding the pay and allowances for the period 24-11-54 to 28-4-59. Against this order of the High Court, an appeal was filed before the Supreme Court.

The Supreme Court held that after an order passed in an inquiry against a public servant imposing a penalty is quashed by a civil court, a further proceeding can be commenced against him if in the proceeding in which the order quashing the inquiry was passed, the merits of the charge against the public servant concerned were never investigated. Where the High Court decreed the suit of

the public servant on the ground that the procedure for imposing the penalty was irregular, such a decision cannot prevent the State from commencing another inquiry in respect of the same subject matter. If the State Government is competent to order a fresh inquiry, it would be competent to direct suspension of the public servant during the pendency of the inquiry.

(50)

(A) Evidence Act — applicability of

Inquiry Officer not bound by strict rules of law or evidence.

(B) Inquiry — ex parte

Where delinquent servant declines to take part in the proceedings and remains absent, it is open to inquiry officer to proceed on the materials placed before him.

(C) Public Service Commission

Art. 320(3) (c) of Constitution is not mandatory. Absence of consultation or any irregularity in consultation does not afford a cause of action.

U.R. Bhatt vs. Union of India, AIR 1962 SC 1344

The appellant was appointed a Senior Inspector in the Central Agricultural Marketing Department. He was charge-sheeted and called upon to show cause why he should not be dismissed or removed from service or otherwise punished. He submitted his statement, but took objection to the procedure followed viz, use of marginal notes on the appellant's representation, by the Enquiry Officer, and refused to take further part in the proceedings. The Enquiry Officer proceeded with the enquiry and reported that the charges were proved. A notice to show cause against dismissal was issued and the appellant furnished his explanation. Ultimately, the appellant was discharged from service. The appellant questioned this order by way of suit on the ground that the enquiry and fresh charges framed against him were illegal and that he was not given adequate opportunity to show cause or to put in his defence at the enquiry, and that the Public Service Commission not having been consulted the order of dismissal was invalid.

The Supreme Court held that the Enquiry Officer is not bound by the strict rules of the law of evidence, and when the appellant declined to take part in the proceedings and remained absent, it was open to the Enquiry Officer to proceed on the materials which were placed before him. When the Enquiry Officer had afforded to the public servant an opportunity to remain present and to make his defence, but because of the conduct of the appellant in declining to

participate in the inquiry, all the witnesses of the State who could have been examined in support of their case were not examined viva voce, the Enquiry Officer was justified in proceeding to act upon the materials placed before him.

The Supreme Court further held that Art. 320(3)(c) of Constitution is not mandatory and the absence of consultation with the Public Service Commission or any irregularity in consultation does not afford a public servant a cause of action in a court of law. Art. 311 of Constitution is not controlled by Art. 320.

(51)

Penalty — reduction in rank

The expression ‘rank’ in Art. 311(2) of Constitution refers to a person’s classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs; losing places in the same cadre does not amount to reduction in rank within the meaning of Art. 311 (2).

High Court of Calcutta vs. Amal Kumar Roy, AIR 1962 SC 1704

The respondent was a Munsiff in the West Bengal Civil Service (Judicial). When the cases of several Munsiffs came up for consideration before the High Court for inclusion in the panel of officers to officiate as Subordinate Judges, the respondent’s name was excluded. As a result of such exclusion, the respondent, who was then the seniormost in the list of Munsiffs, lost eight places in the cadre of Subordinate Judges before he was actually appointed to act as Addl. Subordinate Judge. His case mainly was that this exclusion by the High Court amounted in law to the penalty of withholding promotion without giving him an opportunity to show cause.

The Supreme Court held that there is no substance in this contention because losing places in the same cadre, namely, of Subordinate Judges does not amount to reduction in rank, within the meaning of Art. 311 (2). The expression ‘rank’ in Art. 311 (2) has reference to a person’s classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence, in the context of the judicial service of West Bengal, “reduction in rank” would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsiff. But Subordinate Judges in the same cadre held the same rank though they have to be listed in order of seniority in the civil list. Therefore losing some places is not tantamount to reduction in rank and provisions of Art. 311(2) of Constitution are not attracted.

(52)

- (A) Termination — of probationer
- (B) Termination — of temporary service
- (C) Termination — of officiating post

Reversion of probationer to the original post by way of punishment for misconduct without compliance with Art. 311(2) of Constitution is illegal.

Protection under Art. 311(2) of Constitution extends to Government servant holding permanent or temporary post or officiating in any one of them.

S. Sukhbans Singh vs. State of Punjab, AIR 1962 SC 1711

This case concerned a Tahsildar who was recruited in the year 1936 and appointed as an extra Assistant Commissioner on probation in 1943. In 1952 he was reverted to the post of Tahsildar by an order duly served on him; this order was followed by a warning served on him. In this warning it was clearly stated that the officer was guilty of misconduct in several respects.

The Supreme Court held that the reversion of the officer was mala fide and that having regard to the sequence of events which led to the reversion followed by the warning administered to the officer in the light of his outstanding record, the reversion could also be held to be a punishment.

A probationer cannot, after the expiry of probationary period, automatically acquire the status of a permanent member of the service, unless the Rules under which he is appointed expressly provide for such a result. In the absence of any such Rules, where a probationer is not reverted by the Government before the termination of his period of probation, he continues to be a probationer, but acquires the qualification for substantive permanent appointment. But, if reversion to original post is effected by way of punishment for misconduct, it would become necessary to comply with Art. 311 (2) of Constitution. Art. 311 makes no distinction between permanent and temporary posts and extends its protection equally to all Government servants holding permanent or temporary post or officiating in any of them. But the protection of Art. 311 can be available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. One of the tests for determining whether the termination of service is by way of punishment or otherwise is, whether under the service Rules, but for such termination, the servant has a right to hold the post. A probationer officiating in a higher post,

who continues to be such without being reverted after expiry of the period of probation has no legal right to the higher post in which he is officiating. He still continues to be a probationer and can be reverted to his original post under the service Rules even without assigning any reason if his work is found to be unsatisfactory. In such a case, the provisions of Art. 311(2) do not apply; but, if he is reverted to his original post by way of punishment for misconduct, the provisions of Art. 311(2) become applicable and the reversion made without complying with the provisions of Art. 311(2) would be illegal.

(53)

(A) Inquiry Officer — conducting preliminary enquiry

Officer holding preliminary enquiry, not debarred from conducting regular inquiry.

(B) Preliminary enquiry report

Charged Officer not entitled to copies of preliminary enquiry report nor his correspondence.

Govind Shankar vs. State of Madhya Pradesh, AIR 1963 MP 115

The High Court held that the fact that a particular officer held a preliminary enquiry before it was decided to hold a departmental inquiry against the delinquent officer does not debar him from conducting the departmental inquiry; nor can it be regarded as in any way indicative of bias against the delinquent officer. There can also be no valid reason to suppose that as some of the witnesses appearing in the departmental inquiry were his subordinates, he was not in a position to give a fair hearing to the delinquent officer.

The High Court further held that a civil servant against whom a departmental inquiry is started is not entitled to copies of reports of the officer who made the preliminary enquiry and of the letters addressed by him to the superior officers in connection with the question whether a departmental inquiry should not be started. If the civil servant is not entitled to copies of his correspondence then the question of tendering in evidence of the officer holding the preliminary enquiry to prove that correspondence cannot arise.

(54)

(A) Evidence — recording of

(B) Evidence — previous statements, as examination- in-chief

Previous statement can be marked on its admission by the witness during departmental inquiry, provided the person charged is given a copy thereof and an opportunity to cross-examine him.

State of Mysore vs. Shivabasappa Shivappa Makapur, AIR 1963 SC 375

The respondent entered service in the Police Department as a constable in the District of Dharwar in 1940 and was at the material time a Sub-Inspector of Police. On a complaint received against him, preliminary investigation was made and disciplinary proceedings were conducted. During the departmental inquiry, in accordance with the provision of clause (8) of section 545 of the Bombay Police Manual, the Deputy Superintendent of Police, the disciplinary authority, who conducted the inquiry, recalled the witnesses who had been examined during the preliminary investigation, brought on record the previous statements given by them and after putting a few questions to them tendered them for cross-examination by the respondent and they were cross-examined by the respondent in great detail. The respondent was ultimately dismissed from service.

The High Court of Mysore held on a writ petition filed by the respondent that principles of natural justice required that the evidence of witnesses in support of the charges should be recorded in the presence of the enquiring officer and of the person against whom it is sought to be used. The High Court also held that section 545 (8) of the Bombay Police Manual was bad as it contravened principles of natural justice. They accordingly held that the enquiry was vitiated by the admission in evidence of the statements made by the witnesses in the preliminary investigation, without an independent examination of them before the Deputy Superintendent of Police conducting the enquiry. In the result the High Court set aside the order of dismissal.

On an appeal filed against the High Court order, the Supreme Court held that domestic tribunals exercising quasi-judicial functions are not courts and therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources and through all channels, without being fettered by rules of procedure, which govern proceedings in court. The only obligation the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fit opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are

not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

In respect of taking the evidence in an inquiry before such Tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when the witness is called, the statement given previously by him behind the back of the party is put to him and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them. The Supreme Court held that clause (8) of section 545 of the Bombay Police Manual which laid down the procedure cannot be held to be bad as contravening the rules of natural justice.

(55)

Order — when, it becomes final

Before something amounts to an order, it must be expressed in the name of the appropriate authority and formally communicated to the person concerned. The authority concerned may reconsider the matter before the order is formally communicated and till then it is only of a provisional character. Chief Minister competent to call for any file pertaining to portfolio of any Minister.

Bachittar Singh vs. State of Punjab, AIR 1963 SC 396

The appellant was Assistant Consolidation Officer in the State of PEPSU. On receipt of certain complaints regarding tampering with official record he was suspended and an inquiry was held against him. As a result of the enquiry, he was dismissed on the ground that he was not above board and was not fit to be retained in service. The order was duly communicated to him and he submitted an appeal before the State Government. The Revenue Minister of PEPSU recorded on the relevant file that the charges were serious and that they were proved. He also observed that it was necessary to stop the evil with a strong hand. He, however, added that as the appellant was a refugee and had a large family to

support, his dismissal would be too hard and that instead of dismissing him outright he should be reverted to his original post of Qanungo and warned that if he does not behave properly in future, he will be dealt with severely. On the next day, the State of PEPSU merged in the State of Punjab. This order was, however, not communicated officially and after the merger, the file was submitted to the Revenue Minister of Punjab, who remarked on the file "serious charges have been proved by the Revenue Secretary and Shri Bachittar Singh was dismissed. I would like the Secretary in-charge to discuss the case personally on 5th December 1956". Subsequent note by the Minister on the file was "Chief Minister may kindly advise". The Chief Minister's note reads thus: "Having regard to the gravity of the charges proved against this official, I am definitely of the opinion that his dismissal from service is a correct punishment and no leniency should be shown to him merely on the ground of his being a displaced person or having a large family to support. In the circumstances, the order of dismissal should stand." This order was communicated to the appellant.

The first contention of the appellant before the Supreme Court was that the order of the Revenue Minister of PEPSU was the order of the Government and it was not open to review. The second contention was that it was not within the competence of the Chief Minister of Punjab to deal with the matter as it pertained to the portfolio of the Revenue Minister.

The Supreme Court held that departmental proceedings are not divisible. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant. Both the stages are judicial in nature. Consequently any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied by the State Government.

The Revenue Minister could make an order on behalf of the State Government but the question is whether he did in fact make such an order. Merely writing something on a file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of the Governor as required by Art. 166 of Constitution, and then it has to be communicated. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to reconsider the matter over and over again, and therefore, till its communication the order cannot be regarded as anything more than provisional in character.

As regards the decision by the Chief Minister of Punjab, unquestionably the matter pertained to the portfolio of the Revenue Minister, but it was the Revenue Minister himself who submitted the file for Chief Minister's advice. Under the rules of Business, the Chief Minister was empowered to see such cases or class of cases as Chief Minister may consider necessary before the issue of orders. The Chief Minister was, therefore, competent to call for any file and deal with it himself. The order passed by the Chief Minister even though on a matter pertaining to the portfolio of the Revenue Minister, will be deemed to be an order of Council of Ministers.

(56)

(A) Court jurisdiction

High Court acting under Art. 226 of Constitution cannot sit in appeal over findings of Tribunal in departmental inquiries but if findings are not supported by any evidence, would be justified in setting aside findings.

(B) Evidence Act — applicability of

Technical rules of Evidence Act not applicable to departmental inquiries.

State of Orissa vs. Muralidhar Jena, AIR 1963 SC 404

The respondent was a Senior Superintendent of Excise in Ganjam District. An enquiry was held in which three charges were framed against him. The Tribunal found that the first two charges were proved. In regard to the third charge the Tribunal held that the evidence adduced was not concrete and satisfactory enough though there was a grave suspicion against the officer. The Tribunal recommended dismissal of Jena from service. After consultation with the Public Service Commission, the Government dismissed him. The respondent filed a writ petition in the Orissa High Court, under Arts. 226 and 227 of Constitution challenging the validity of the order of dismissal. The High Court in substance held that the findings of the Administrative Tribunal, which were accepted by the Government are based on no evidence at all and so purporting to exercise its jurisdiction under Arts. 226 and 227, the High Court set aside those findings and the order of dismissal based on them.

Before the Supreme Court, it was argued on behalf of the State that the view taken by the High Court that the findings of the Tribunal were not supported

by any evidence was obviously incorrect and that the High Court had in fact purported to reappreciate the evidence which it had no jurisdiction to do. It is common ground that in proceedings under Arts. 226 and 227, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal in a departmental enquiry so that if in the present case the High Court has purported to reappreciate the evidence for itself that would be outside its jurisdiction. It is also common ground that if it is shown that the impugned findings recorded by the Tribunal are not supported by any evidence, the High Court would be justified in setting aside the said findings.

The Supreme Court held that technically and strictly in accordance with the provisions of the Evidence Act, it may be true to say that Sahwney having gone back upon his earlier statement, there is no evidence to prove who wrote Exh. 7 but in dealing with this point it is necessary to determine that the enquiry held by Tribunal is not governed by the strict and technical rules of the Evidence Act. Rule 7(2) of the relevant rules provided that in conducting the enquiry, the Tribunal shall be guided by rules of enquiry and natural justice and shall not be bound by formal rules relating to procedure and evidence.

The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the identity of the individual indicated by the expression Chhatarpur Saheb. Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion, would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself and that is not reasonable or legitimate. It is difficult to accept the view that there is no evidence in support of the conclusions recorded by the Tribunal against the respondent.

(57)

Termination — of temporary service

Where employment of a temporary Government servant liable to be terminated by notice of one month without assigning any reasons is not so terminated, but instead an inquiry is held, termination of service is by way of punishment attracting Art. 311(2) of Constitution.

Madan Gopal vs. State of Punjab, AIR 1963 SC 531

The appellant was appointed as Inspector Consolidation by order dated 5-10-53 of Settlement Commissioner of the Patiala and East Punjab States Union “on temporary basis and terminable with one month’s notice”. On 5-2-55, the appellant was served with a charge sheet by the Settlement Officer, Bhatinda that he received illegal gratification from one person and demanded illegal gratification from another. The appellant submitted his explanation and the Settlement Officer submitted his report to the Deputy Commissioner, Bhatinda that the charge of receiving illegal gratification was proved. The Deputy Commissioner by order dated 17-3-55 ordered that his services be terminated forthwith and that in lieu of notice he will get one month’s pay as required by the Rules.

The Supreme Court observed that the appellant was a temporary employee and his employment was liable to be terminated by notice of one month without assigning any reasons. The Deputy Commissioner, however, did not act in exercise of this authority. The appellant was served with a charge-sheet setting out his misdemeanour, an inquiry was held and his employment was terminated because in the view of the Officer the misdemeanour was proved. Such a termination amounted to casting “a stigma effecting his future career”. Since the appellant was not given reasonable opportunity against the action proposed to be taken in regard to him as required by Art. 311 of Constitution, the order of termination would not be sustainable. It cannot be said that the enquiry was made by the officer for the purpose of ascertaining whether the servant who is a temporary employee should be continued in service or should be discharged under the terms of the employment by giving one month’s notice. In this case, an inquiry was made into alleged misconduct with the object of ascertaining whether disciplinary action should be taken against him for alleged misdemeanour. It is clearly an enquiry for the purpose of taking punitive action including dismissal or removal from service, if the appellant is found to have committed the misdemeanour charged against him.

(58)

P.C. Act, 1988 — Sec. 11

A Government servant under administrative subordination of the officer before whom an appeal is pending, accepting illegal gratification in respect of that matter commits an offence under section 165 I.P.C. (corresponding to sec. 11 of P.C. Act, 1988) even though he has no function to discharge in connection with the appeal.

R.G. Jocab vs. Republic of India, AIR 1963 SC 550

The appellant, who was the Assistant Controller of Imports in the office of the Joint Chief Controller of Imports and Exports, Madras was tried by the Special Judge, Madras on three charges, under section 161 I.P.C., 5(1) (d) read with section 5(2) of the Prevention of Corruption Act, 1947 and section 165 I.P.C. (corresponding to secs. 7, 13(1) (d) read with 13(2), 11 of P.C. Act, 1988 respectively). He was acquitted of the first two charges but was convicted of an offence under section 165 I.P.C. and sentenced to R.I. for one year. The High Court dismissed the appeal and affirmed the order of conviction but reduced the sentence to that of fine of Rs.400.

The prosecution case is that the appellant demanded and accepted two cement bags and Rs.50 from a merchant promising to use his influence and help him to get him an export permit. The Special Judge as also the High Court accepted the prosecution evidence as true and rejected the defence version and the appellant has not challenged before the Supreme Court the findings of facts. The contention is based mainly on the fact that the appellant was Assistant Controller of Imports and had no connection with the issue of export permits and that he was not subordinate to the Joint Chief Controller of Imports and Exports to whom the appeal petition had been filed and consequently his acceptance of the cement bags and the money did not amount to an offence under section 165 I.P.C.

The Supreme Court held that administrative subordination is sufficient, that section 165 I.P.C. has been so worded as to cover cases of corruption which do not come within section 161 or section 162 or section 163 I.P.C. and that by using the word "subordinate" without any qualifying words, the legislature has expressed intention of making punishable such subordinates also who have no connection with the functions with which the business or transaction is concerned and that in the present case, an offence under section 165 I.P.C. is committed even though the accused had no functions to discharge in connection with the appeal before the Joint Chief Controller of Imports and Exports. The Supreme Court accordingly dismissed the appeal.

(59)

(A) Suspension — effect of

*Government servant placed under suspension continues
to be member of the service.*

(B) Suspension — deemed suspension

Deemed suspension under provisions of Classification, Control and Appeal Rules, on court setting aside order of dismissal does not contravene provisions of Constitution.

Khem Chand vs. Union of India, AIR 1963 SC 687

The appellant was a permanent Sub-Inspector of Co-operative Societies, Delhi. He was suspended and was dismissed from service after holding an inquiry. On a suit filed by the appellant, the Supreme Court held that the provisions of Art. 311(2) of Constitution had not been fully complied with and that the order of dismissal was inoperative, and that he was a member of the service at the date of the suit and also gave a direction that the appellant was entitled to his costs throughout in all Courts. Thereupon, the disciplinary authority decided under rule 12(4) of Central Civil Services (CCA) Rules, 1957 to hold further enquiry against him on the allegation on which he had been originally dismissed, the effect of which was that the appellant was to be deemed to have been placed under suspension. The appellant challenged the validity of rule 12(4) on the ground that the rule contravened the provisions of Arts. 142, 144, 19(1) (f), 31 and also 14 of the Constitution.

The Supreme Court held that the rule did not contravene any of these Articles of Constitution and was not invalid on that ground and the order under rule 12 could not be challenged. The provision in rule 12(4) that in certain circumstances the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal and shall continue to remain in suspension until further orders, does not in any way go against the declaration of the Supreme Court contained in the decree. Hence, the contention that the impugned rule contravened Art. 142 or 144 was untenable. The provision in the rule that the Government servant was to be deemed to have been placed under suspension from the date of the original order of dismissal did not seek to affect the position that the order of dismissal previously passed was inoperative and that the appellant was a member of the Service on the date the suit was instituted by the appellant.

An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of suspension is that though he continues to be a member of the Government service he is not permitted to work, and further during the period of his suspension he is paid only some allowance generally called “subsistence allowance” which is normally

less than his salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects the Government servant injuriously. There is no basis for thinking, however, that because of the order of suspension, he ceases to be a member of the service.

(60)

(A) Inquiry — mode of

Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 are not discriminatory when compared to the Civil Services (C.C.A.) Rules, and do not contravene Art. 14 of the Constitution.

(B) Court jurisdiction

(C) Penalty — quantum of

*Appropriateness of penalty imposed by disciplinary authority not open to judicial review, nor are reasons which induce disciplinary authority to impose the penalty justiciable. Even if there be violation of rules of natural justice in respect of some of the findings, court cannot direct reconsideration if the findings *prima facie* make out a case of *misdemeanour*. If penalty of dismissal imposed can be supported on any finding as to substantial *misdemeanour* court not to consider whether that ground alone would have weighed with the authority in imposing the penalty.*

State of Orissa vs. Bidyabhushan Mahapatra, AIR 1963 SC 779

The respondent was a permanent non-gazetted employee of the State of Orissa in the Registration Department and was Sub-Registrar at Sambalpur at the material time. On information received in respect of the respondent, the case was referred by order of the Governor to the Administrative Tribunal under rule 4(1) of the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951, framed under Art. 309 of the Constitution. The Tribunal held an enquiry and recommended dismissal and after issue of a show cause notice, the Government directed that the respondent be dismissed from service.

The respondent questioned the order on the ground that the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 were discriminatory when compared to the Civil Services (CCA) Rules. The Supreme Court rejected the

contention and held that the Tribunal Rules cannot be held to be ultra vires on the ground of their resulting in discrimination contrary to Art. 14 of Constitution.

On the question of reasonable opportunity and violation of rules of natural justice, the Supreme Court held that the opportunity contemplated by Art. 311(2) of Constitution has manifestly to be in accordance with the rules framed under Art. 309 of Constitution. But, the Court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the court. The court has no jurisdiction if the findings of the enquiry officer of the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice. If the order of dismissal may be supported on any finding as to substantial misdemeanour, for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant.

(61)

(A) Compulsory retirement (non-penal)

Order of compulsory retirement passed in accordance with Rules is not one of penalty and does not attract the provisions of Art. 311 of Constitution.

(B) Order — defect of form

Defect of form in the order issued by the Government would not render it illegal.

State of Rajasthan vs. Sripal Jain, AIR 1963 SC 1323

The respondent was circle Inspector of Police in the State of Rajasthan. He was compulsorily retired under rule 244(2) of the Rajasthan Service Rules. The respondent challenged the order and contended that the Inspector General of Police had no authority to order his compulsory retirement and that the order amounted to punishment and was therefore violative of Art. 311 of Constitution.

The Supreme Court held that rule 31(vii)(a) of the Rajasthan Rules of Business speaks of compulsory retirement as a penalty and not compulsory

retirement on reaching the age of superannuation under rule 244(2) of the Rajasthan Service Rules; the impugned order not being a penalty was not invalid on the ground that the matter was not submitted to the Governor.

Any defect of form in the order by the Government would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Art. 166 of Constitution is that the burden is thrown on the Government to show that the order was in fact passed by them. Where an order of compulsory retirement under rule 244(2) was passed by the Government but was communicated to him by the Inspector General of Police, the form of the order was defective and therefore the burden was thrown on the Government to show that the order was in fact passed by them. In the instant case, the order of retirement, having been passed by the proper authority, cannot be said to be invalid in law.

(62)

(A) Court jurisdiction

- (i) *High Court is not constituted in a proceeding under Art. 226 of Constitution as a Court of Appeal over the decision of the departmental authorities.*
- (ii) *The sole judges of facts are the departmental authorities and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be canvassed before the High Court.*

(B) Charge — to be read with statement of imputations

Charges and the statement of facts accompanying the charge form part of a single document and inquiry is not vitiated if what is contained in the statement is not contained in the charge.

(C) Evidence — standard of proof

The rule followed in a criminal trial that an offence is not established unless proved beyond reasonable doubt does not apply to departmental inquiries.

State of Andhra Pradesh vs. S. Sree Ramarao, AIR 1963 SC 1723

The respondent was appointed as Sub-Inspector of Police on probation. A departmental enquiry was held and after issue of show cause notice, the

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respondent was dismissed from service by Deputy Inspector General of Police. In appeal, the penalty was reduced to one of removal by Inspector General of Police. The respondent questioned the order on the ground that the Enquiry Officer failed to appreciate the rules of evidence in the enquiry. In the departmental enquiry, a simple question of fact arose whether 'X' an accused in a criminal case, was handed over to the respondent in the Police Station.

The Supreme Court held that in considering whether a public officer is guilty of the misconduct charged, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court does not apply, and even if that rule is not applied, the High Court in a petition under Art. 226 of Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not constituted as a court of appeal over the decision of the authorities holding a departmental enquiry. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of Constitution.

The Enquiry Officer in stating that the judgment of the Magistrate in a criminal trial against the public servant could not always be regarded as binding in a departmental enquiry against that public servant does not commit any error.

The charge and the statement of facts accompanying the charge-sheet form part of a single document on the basis of which proceedings are started against the delinquent and it would be hypercritical to proceed on the view that though the delinquent was expressly told in the statement of facts which formed part of the charge-sheet about the ground of reprehensible conduct charged against the delinquent, that ground of reprehensible conduct was not included in the charge and on that account the enquiry was vitiated.

(63)

Evidence — of accomplice

In a departmental inquiry, if the inquiring authority chooses to rely on the testimony of an accomplice, that will not vitiate the departmental inquiry.

B.V.N. Iyengar vs. State of Mysore, 1964 (2) MYS L.J. 153

The petitioner, who was a Deputy Superintendent of Police, was charged with objectionable and unbecoming conduct. The Government dismissed him after conducting an inquiry. It was contended on behalf of the petitioner that the Inquiry Officer as well as the punishing authority erred in relying on the evidence adduced on behalf of the prosecution; that the case against the petitioner rested entirely on the evidence of witnesses who were accomplices and therefore, that evidence should not have been made the basis of the impugned order.

The High Court of Mysore held that there could be no objection to rely on an accomplice's evidence in a departmental enquiry. The rule of prudence that the evidence of an accomplice should not be made the basis of conviction in criminal cases without material corroboration, has no application even in civil cases. The rules contained in the Evidence Act have no application to a departmental enquiry. If the concerned authorities choose to rely on the testimony of accomplices in a departmental enquiry, it will not be a vitiating circumstance.

(64)

- (A) Common proceedings
- (B) Inquiry — mode of
- (C) Appeal — right of appeal
 - (i) *The mere fact that a common inquiry was conducted cannot by itself lead to prejudice.*

- (ii) *Delinquent's right of appeal arises only if an order is passed by an authority and not otherwise. Delinquent has no indefensible right to have misconduct of his inquired into only by a particular authority Delinquent cannot contend that the inquiry should have been held by an inferior authority so that he may have a right of appeal.*

Vijayacharya Hosur vs. State of Mysore, 1964 MYS L.J. (Supp.) 507

On receipt of a petition containing allegations of illegal activities, misappropriation and defalcation of Government monies, preliminary investigations were conducted and thereupon departmental proceedings were instituted by Government against 12 officials including the petitioners. Common proceedings were conducted as per rules and the petitioners dismissed from service.

It was contended by the petitioners that they were prejudiced by a common enquiry. The High Court of Mysore rejected this contention and held that the mere fact that a common inquiry was conducted cannot by itself lead to any prejudice.

The High Court further held that a delinquent's right of appeal arises only if an order is passed by the authority and not otherwise. The delinquent has no indefeasible right to have misconduct of his inquired into only by a particular authority. If by proper exercise of the power under the Rules, the Government declares itself to be the disciplinary authority, the delinquent cannot successfully contend that the inquiry should have been held by an inferior authority so that he may have a right of appeal.

(65)

(A) Principles of natural justice — bias

An illustrative case of bias or malafides in departmental inquiries.

(B) Departmental action and prosecution

Where charges constitute criminal offences, institution of departmental inquiry does not violate Art. 14 of Constitution.

(C) Evidence — tape-recorded

Tape-recorded talks are admissible as evidence.

- (D) **Suspension — for continuance in service**
- (E) **Retirement — power to compel continuance in service**

Government cannot compel an officer to continue in service against his will after age of superannuation was reached or after term of appointment was over, by placing him under suspension.

S. Partap Singh vs. State of Punjab, AIR 1964 SC 72

The appellant, a Civil Surgeon under the Punjab Government, was granted leave preparatory to retirement in Dec. 1960. On 3-6-61, appellant's leave was revoked and simultaneous orders recalling him to duty and suspending him from service were issued as it was decided to hold departmental enquiry against him. He challenged these orders in the High Court by a writ petition but it was dismissed and he filed an appeal in the Supreme Court. His main contentions were that the orders were contrary to Service Rules and even if they were not so, they were void on the ground of malafide, having been passed by or at the instance of the Chief Minister who was hostile to him.

The Supreme Court held that the service rules which are statutory vest the power to pass the impugned orders on the Government. In the instant case, the functionary who took action and on whose instructions the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by malafides in taking that action it is clear that such action would be vitiated. In the circumstances, the Supreme Court is satisfied that the dominant motive which induced the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which it bonafide believed he had committed, but to wreak vengeance on him for incurring wrath. The Supreme Court held that the impugned orders were vitiated by malafides, in that they were motivated by an improper purpose which was outside that for which the power or discretion was conferred on Government and the said orders should therefore be set aside.

Tape-recorded talks have been produced as part of supporting evidence by the appellant. The High Court practically put them out of consideration for the reason that tape-recordings were capable of being tampered with. The Supreme Court did not agree with the view and observed that there are few documents and possibly no piece of evidence which could not be tampered

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with, but that would certainly not be a ground on which courts could reject evidence as inadmissible or refuse to consider it. In the ultimate analysis the factor mentioned would have a bearing on the weight to be attached to the evidence and not in its admissibility. The Supreme Court observed that in the instant case, there was no denial of the genuineness of the tape-record, nor assertion that the voices of the persons which were recorded in the tape-records were not those which they purported to be or that any portion of the conversation which would have given a different colour to it had been cut off. The Supreme Court held that it was in the light of these circumstances and the history of the proceedings that the evidence afforded by the tape-recorded talk had to be considered in appreciating the genuineness of the talks recorded.

The Supreme Court also referred to the contention that as the charges framed against the Government servant would constitute offences, criminal prosecution should have been launched against the appellant instead of departmental proceedings and held that it was for the Government to decide what action should be taken against the Government servant for certain misconduct. Such a discretion in the Government does not mean that the provision for departmental enquiry on such charges of misconduct is in violation of the provisions of Art. 14 of Constitution. There was therefore nothing illegal in the Government instituting the departmental enquiry against the Government servant.

The Supreme Court also held that the authority granting leave has the discretion to revoke it. Though there is no restriction to the power of revocation with respect to the time when it is to be exercised, the provision in Art. 310(1) of Constitution that members of the Civil Service of State hold office during the pleasure of the Governor does not confer a power on the State Government to compel an officer to continue in service of the State against his will, apart from service rules which might govern the matter, even after the age of superannuation was reached or where he was employed for a defined term, even after the term of his appointment was over.

(66)

Departmental action and investigation

Proper and reasonable generally to await result of police investigation / court trial and not to take action where no prima facie case is made out in investigation. However, there is no legal bar to take departmental action where investigation is pending.

R.P. Kapoor vs. Pratap Singh Kairon, AIR 1964 SC 295

The appellant, appointed to Indian Civil Service 25 years ago and since 1948 serving the Government of Punjab, was placed under suspension on 18.7.1959 while functioning as Commissioner, Ambala Division. Two criminal cases were registered against him on complaints of private persons as per orders of Chief Minister and investigated. Further action was dropped in the cases and disciplinary proceedings were instituted. The appellant contended, in an appeal against the orders of the High Court, that no disciplinary proceedings can be conducted against a Government servant for any act in respect of which an FIR has been recorded under sec. 154 Cr.P.C.

The Supreme Court observed that where a first information report under sec. 154 Criminal Procedure Code has been recorded against a Government servant that he has committed a cognizable offence, the truth of the same should be ascertained only in an enquiry or trial by the criminal court when a prima facie case is found by the investigation and a charge-sheet is submitted. If the police on investigation find that no case is made out for submission of a charge sheet the allegations should be held to be untrue or doubtful and in such a case there is no need for any inquiry in the same matter. In most cases it would be proper and reasonable for Government to await the result of the police investigation and where the investigation is followed by inquiry or trial the result of such inquiry or trial, before deciding to take any disciplinary action against any of its servants. It would be proper and reasonable also generally, for Government not to take action against a Government servant when on investigation by the police it is found that no prima facie case has been made out. Even though this appears to be a reasonable course which is and will ordinarily be followed by Government, there is no legal bar to Government ordering a departmental enquiry even in a case where a first information report under sec. 154 having been lodged an investigation will follow.

The Supreme Court held that the High Court rightly refused to quash the Government's order for inquiry against him.

(67)

(A) Court jurisdiction

- (i) *Courts of law can interfere when it is established that the finding is based on no evidence.*

- (ii) Courts cannot consider the question about sufficiency or adequacy of evidence.
- (B) Evidence — standard of proof**
- (C) Evidence — of suspicion**
- Mere suspicion cannot take the place of proof even in domestic inquiries.*
- (D) Inquiry Officer — powers and functions**
- (E) Disciplinary authority — disagreeing with Inquiry Officer**
- (F) Inquiry report — disciplinary authority disagreeing with findings**
- (i) *Inquiring Authority need not make any recommendation about penalty unless statutory rule or the order so requires but even where it does so it is only an advice which is not binding on the Disciplinary Authority.*
- (ii) *Disciplinary authority is free to disagree wholly or partly with the findings of Inquiring Authority since the latter works as a delegate of the former.*

Union of India vs. H.C. Goel, AIR 1964 SC 364

The respondent was Surveyor of Works in C.P.W.D. at Calcutta, a Class I post. He felt that his seniority had not been properly fixed and made a representation to the Union Public Service Commission. He called on Sri R. Rajagopalan, Deputy Director (Administration) at his residence in Delhi with a view to acquaint him with the merits of the case. In the course of his conversation, it is alleged that he apologised for not having brought 'Rasagullas' for the children whereupon Sri Rajagopalan frowned and expressed his displeasure at the implied suggestion. A little later, it is alleged that the respondent took out from his pocket a wallet and from it produced what appeared to Sri Rajagopalan a folded hundred rupee note. Sri Rajagopalan, showed his stern disapproval of this conduct and reported the matter to the Director of Administration and at his instance sent a written complaint. Sri Goel was charge-sheeted on the following grounds: (i) Meeting the Deputy Director, Administration, C.P.W.D. at his residence without permission, (ii) Voluntarily expressing regret at his not having brought sweets from Calcutta for the Deputy Director's children and (iii) Offering a currency note which from size and colour appeared to be a hundred rupee note as bribe with the intention of persuading the Deputy Director to support his representation

regarding his seniority to the U.P.S.C. thereby violating rule 3 of the Central Civil Services (Conduct) Rules.

A formal enquiry was held and the Inquiry Officer came to the conclusion that the charges framed had not been satisfactorily proved. The Government differed with the findings of the Inquiry Officer and came to the conclusion that Goel should be dismissed from service and accordingly issued a show cause notice. On receipt of his reply, the matter was referred to the Union Public Service Commission, who felt that the charges had not been proved. The Government, however, differed with the advice of the Service Commission and dismissed the respondent.

The points at issue before the Supreme Court are whether Government is free to differ from the findings of facts recorded by Inquiry Officer and whether the High Court in dealing with writ petitions is entitled to hold that the conclusion reached by the Government in regard to Government servant's misconduct is not supported by any evidence at all.

The Supreme Court observed: (1) It has never been suggested that the findings recorded by the Inquiry Officer conclude the matter and that the Government which appoints the Inquiry Officer and directs the Inquiry is bound by the said findings and must act on the basis that the said findings are final and cannot be reopened. (2) The Inquiry Officer conducts the enquiry as a delegate of the Disciplinary Authority. The charges are framed by the Government which is empowered to impose punishment on the delinquent public servant. The very purpose of the second show cause notice is that the Government should make up its mind about the penalty taking into consideration the findings of the Inquiry Officer. If the contention that the Government is bound to accept the findings of the Inquiry Officer is valid, the opportunity provided in the second show cause notice would be defeated because the Government cannot alter the findings of the Inquiry Officer. (3) Unless the statutory rule or the specific order under which an officer is appointed to hold an inquiry so requires, the Inquiry Officer need not make any recommendation about the punishment which may be imposed. If, however, he makes any recommendations, they are intended merely to supply appropriate material for the consideration of the Government. Neither the findings nor the recommendations are binding on the Government, vide A.N.D' Silva vs. Union of India, AIR 1962 SC 1130. The Supreme Court held that the High Court was in error in coming to the conclusion that the appellant was not justified in differing from the findings recorded by the Inquiry Officer.

As regards the second issue, the Supreme Court held that the High Court under Art. 226 cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. This is a matter within the competence of the authority which deals with the case. But the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. The Supreme Court held that mere suspicion should not be allowed to take the place of proof even in domestic inquiries.

It is true that the order of dismissal which may be passed against a public servant found guilty of misconduct can be described as an administrative order, nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence.

(68)

Penalty — reversion

Where a Government servant is reverted from a higher officiating post to the substantive junior post for unsatisfactory conduct without giving any opportunity of showing cause, the reversion is by way of punishment and provisions of Art. 311 of Constitution are attracted.

P.C. Wadhwa vs. Union of India, AIR 1964 SC 423

The appellant was a member of the I.P.S. holding the substantive rank of Assistant Superintendent of Police and was promoted to officiate as Superintendent of Police. He was served with a charge-sheet but before the inquiry which had been ordered had started, he was reverted to his substantive rank of Asst. Supdt. of Police.

The Supreme Court observed that the appellant has not merely suffered a loss of pay but he has also suffered loss of seniority as also postponement of future chances of promotion to the senior scale. A matter of this kind has to be looked at from the point of view of substance rather than of form. It is indeed true that the motive operating on the mind of the Government may be irrelevant; but, it must also be remembered that in a case where Government has by contract

or under the rules the right to reduce an officer in rank, Government may nevertheless choose to punish the officer by such reduction. Therefore what is to be considered in a case of this nature is the effect of all the relevant factors present therein. If on a consideration of those factors, the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though Government has a right to pass the order of reduction, the provisions of Art. 311 of Constitution would be attracted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken.

(69)

Termination — of temporary service

Order of termination of service stating that the temporary public servant is undesirable for retention in service casts stigma and is not discharge simpliciter but one of dismissal attracting provisions of Art. 311 of Constitution.

Jagdish Mitter vs. Union of India, AIR 1964 SC 449

The Appellant was a temporary clerk in Postal Service posted at Ambala in 1947. The services of the appellant were terminated on 20-10-1949 in accordance with the terms of his contract by giving him a month's notice. The order passed was: "Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from 1st November 1949". The matter was agitated by either party before the District Judge and the High Court and finally taken to the Supreme Court.

The Supreme Court held that the appellant's contention that the order of discharge passed against him on the face of it shows that it is not discharge but dismissal, cannot be rejected. No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But when the order refers to the fact that the appellant was found undesirable to be retained in Government service it expressly casts a stigma on the Government servant and must be held to be an order of dismissal and not a mere order of discharge. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable and that must necessarily import an element of punishment. The test must be: Does the order cast aspersion or attach stigma to the officer when the order purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the

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termination of service must be held, in substance, to amount to dismissal. As the impugned order was construed as one of dismissal, the servant had been denied the protection guaranteed to temporary servants under Art. 311(2) of Constitution and so the order could not be sustained.

A subtle distinction has to be made between cases in which the service of a temporary servant is terminated directly as a result of the formal departmental enquiry and cases in which such termination may not be the direct result of the enquiry. The motive operating in the mind of the authority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character. Where the authority initiates a formal departmental enquiry against the temporary servant, but whilst the enquiry is pending it takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing the order of dismissal against him, to avoid imposing any stigma which an order of dismissal necessarily implies, the enquiry is stopped and an order of discharge simpliciter is served on the servant, the termination of service of the temporary servant which in form and in substance is no more than his discharge effected under the terms of the contract or the relevant rule, the order cannot in law, be regarded as his dismissal because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. In dealing with temporary servants against whom formal departmental enquiries have been commenced, but are not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, requires to be borne in mind.

Again, the form in which the order terminating the services of a temporary government servant is expressed will not be decisive. If a formal departmental enquiry has been held in which findings have been recorded against the temporary servant and as a result of the said findings his services are terminated, the fact that the order by which his services are terminated ostensibly purports to be a mere order of discharge would not disguise the fact that in substance and in law the discharge in question amounts to the dismissal of the temporary servant. It is the substance of the matter which determines the character of the termination of services. The real character of the termination of services must be determined by reference to the material facts that existed prior to the order.

(70)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — known sources of income**

(C) Disproportionate assets — margin to be allowed

- (i) *Known sources of income refers to sources known to the prosecution.*
- (ii) *Appreciation of extent of disproportion of assets over savings.*

Sajjan Singh vs. State of Punjab, AIR 1964 SC 464

The Supreme Court held that the expression 'known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case and it could not be contended that 'known sources of income' meant sources known to the accused.

The Supreme Court observed that there is some force in the contention of the appellant that the legislature had not chosen to indicate what proportion would be considered disproportionate and on that basis the court should take a liberal view of the excess of the assets over the receipts from the known sources of income. The Supreme Court held that taking the most liberal view, they did not think it possible for any reasonable man to say that assets to the extent of Rs.1,20,000/- is anything but disproportionate to a net income of Rs.1,03,000/- out of which at least Rs.36,000/- must have been spent in living expenses.

(71)

Misconduct — past misconduct

It is incumbent upon the competent authority to give reasonable opportunity to the Government servant to make representation if previous punishments or previous bad record is proposed to be taken into account in determining the quantum of punishment.

State of Mysore vs. K. Manche Gowda, AIR 1964 SC 506

The respondent was holding the post of an Assistant to the Additional Development Commissioner, Bangalore. There were complaints against him that he had made false claims for allowances and fabricated vouchers to support them. An enquiry was held and it was recommended by the Enquiry Officer that the respondent should be reduced in rank. The Government, however, proposed to dismiss him and issued a show cause notice accordingly. The appellant after considering his representation dismissed him from service. In the order it was mentioned that in arriving at the quantum of punishment the Government had considered the previous record of the respondent. It concluded that the officer

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was incorrigible and no improvement could be expected of him. The respondent moved the High Court by writ petition which was granted on the ground that the circumstances on which the Government relied for the proposed infliction of punishment of dismissal were not put to the petitioner for being explained by him in the show cause notice which was issued to the petitioner.

The Supreme Court observed that if the proposed punishment is mainly based upon the previous record of the Government servant and that is not disclosed in the notice, it would mean that the main reason for the proposed punishment is withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. What the Government servant is entitled to is not the knowledge of certain facts, but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. The court cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". Nothing in law prevents the punishing authority from taking the previous record of the Government servant into consideration during the second stage of the enquiry even though such previous record was not the subject-matter of the charge at the first stage, for essentially it relates more to the domain of punishment rather than to that of guilt.

The Supreme Court held that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

The Supreme Court observed that its order did not preclude the Government from holding the second stage of the enquiry afresh and in accordance with law.

(72)

Order — by authority lacking power

- (i) Where Government servant has no right to a post or to a particular status, though an authority acting beyond its competence gave a status which it was*

not entitled to give, ‘deconfirming’ him does not amount to reduction in rank, so as to attract Art. 311(2) of Constitution.

- (ii) *An order rendered void on ground that the authority making it lacked power, cannot give rise to any legal right.*

State of Punjab vs. Jagdip Singh, AIR 1964 SC 521

The respondents were officiating Tahsildars in the erstwhile State of PEPSU. By a notification of the Financial Commissioner, they were confirmed as Tahsildars with immediate effect though no posts were available. The successor State of Punjab reconsidered the order and made a notification ‘deconfirming’ them. They challenged the action on the ground that the action amounted to reduction in rank violating Art. 311(2) of Constitution.

The Supreme Court observed that in the absence of any rule which empowered the Financial Commissioner to create the post of Tahsildars, his order had no legal foundation, there being no vacancies in which the confirmation could take place and the order was wholly void.

When an order is void on the ground that the authority which made it had no power to make it, it cannot give rise to any legal rights. Where a Government servant has no right to a post or to a particular status though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post which gives that particular status. The use of the expression ‘deconfirming’ by the Government in its notification may be susceptible of the meaning that it purported to undo an act. Interpreted in the light of actual facts which led up to the notification the order of confirmation of the Financial Commissioner was no confirmation at all and thus invalid. Since the respondents could not in law be regarded as holding that status and their status was legally only that of officiating Tahsildars the notification ‘deconfirming’ them cannot be said to have the effect of reducing them in rank by reason merely of correcting an earlier error. Article 311(2) does not therefore come into the picture at all.

(73)

Compulsory retirement (non-penal)

Where Rules prescribe a proper age of superannuation and a rule is added giving power to compulsorily retire at the end of 10 years of service, termination of service under such a rule amounts to removal from service attracting Art. 311(2) of Constitution.

Gurudev Singh Sidhu vs. State of Punjab, AIR 1964 SC 1585

The petitioner was appointed as Asst. Superintendent of Police in the erstwhile Patiala State on 4-2-42 and was later integrated in PEPSU Police Service and was appointed as Superintendent of Police in due course in Feb. 1950. He was served with a notice to compulsorily retire him and the petitioner filed this petition before the Supreme Court.

The Supreme Court observed that every permanent public servant enjoys a sense of security of tenure. The safeguard which Art. 311(2) of Constitution affords to permanent public servants is no more than this, that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. A claim for security of tenure does not mean security of tenure for dishonest, corrupt or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be removed. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Art. 311 (2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Art. 311 (2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualifying service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Art. 311 (2). But where, while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of service, that cannot be treated as falling outside Art. 311 (2). The termination of a permanent public servant under such a rule, though called compulsory retirement, is in substance, removal under Art. 311 (2).

(74)

(A) Termination — of temporary service

(B) Preliminary Enquiry

- (i) *Preliminary enquiry is only for the satisfaction of Disciplinary Authority to decide if disciplinary proceedings should be held, and Art. 311 (2) of Constitution is not attracted.*
- (ii) *Termination of service of temporary employee for unsatisfactory conduct, not void merely because preliminary enquiry was held, and not violative of Art. 16.*

Champaklal Chimanlal Shah vs. Union of India, AIR 1964 SC 1854

The appellant, Assistant Director, Office of the Textile Commissioner, was served with a memorandum asking him to explain certain irregularities and to state why disciplinary action should not be taken, but without proceeding further his services were terminated. He contended that the termination is violative of Arts. 16 and 311 of Constitution.

The Supreme Court held that a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held *ex parte*, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard, for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the Government servant gets the protection of Art. 311 and all the rights that protection implies.

The Supreme Court observed that it may be conceded that the way in which the memorandum was drafted and the fact that in the last sentence he was asked to state why disciplinary action should not be taken against him might give the impression that the intention was to hold the formal departmental enquiry against him with a view to punishing him. But though this may appear to be so what is important to see is what actually happened after this memorandum, for the Courts are not to go by the particular name given by a party to a certain

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proceedings but are concerned with the spirit and substance of it in the light of what preceded and succeeded it. The Supreme Court held that the appellant cannot be deemed to be quasi permanent and upheld the order terminating his services. The mere fact juniors were retained does not amount to discrimination attracting Art. 16.

(75)

(A) Trap — Evidence — what is not hit by Sec.162 Cr.P.C.

(B) Cr.P.C. — Sec. 162

What is hit and what is not hit by the provisions of sec. 162 Cr.P.C. in a trap case, clarified.

Kishan Jhingan vs. State, 1965 (2) Cri.L.J. PUN 846

The High Court observed that where the evidence of the prosecution witnesses, in a bribery case deposed about the statements made by the complainant before the police officer which led to his laying a trap, the marking of the currency notes, the offer and acceptance of the bribe and the actual apprehension of the accused in the act of acceptance is not hit by sec. 162 Cr.P.C. as it related only to the events which led up to the arrest of the accused which were the subject matter of the charges against him and hence it could not be rejected on the ground of inadmissibility under the section.

It is only a statement made by a person to a police officer in the course of an investigation which is hit by the provisions of sec. 162 Cr.P.C. and not the statements recorded before the commission of an offence.

(76)

Inquiry — ex parte

Ex parte proceedings, where employee did not take part and avail of opportunity given to him, do not mean that finding should be recorded without examining any evidence. Order of dismissal based on finding in such ex parte inquiry recorded without examining evidence liable to be quashed, invoking Art. 311(2) of Constitution.

Shyamnarain Sharma vs. Union of India, AIR 1965 RAJ 87

The petitioner was Ticket Collector in Western Railway. It was alleged that he had illegal relations with one Smt. Savitri Devi and that he abducted her.

Secondly, it was alleged that he left headquarters and absented himself without prior permission of the competent authority. Thirdly, it was alleged that he travelled without ticket by train on three dates. An ex parte inquiry was held and holding the first two charges as proved, he was dismissed from service. Only one witness was examined at the inquiry.

The petitioner contended that the findings of the Inquiry Officer were based on no evidence. It was represented by the respondent that the petitioner was given 5 opportunities by the Inquiry Officer but he did not care to be present before him and that the statement of the petitioner was recorded by the Vigilance Sub-Inspector on 3-6-61 and that he had admitted all the charges leveled against him and that this was available before the Inquiry Officer and the Inquiry Officer examined one witness and submitted his report.

The High Court of Rajasthan held that when a public servant refuses to take part in the inquiry proceedings against him, though his conduct may be deplorable and the Inquiry Officer could proceed ex parte if the petitioner did not care to appear before him on the date or dates fixed by him, still the finding against the absentee employee could be recorded only after examining evidence, oral or documentary, against him. Ex parte proceedings do not mean that the finding should be recorded without any kind of inquiry, that is, without examining any evidence against the employee. In this view, the High Court held that the findings against the petitioner were based on no evidence and quashed the order of dismissal.

(77)

(A) Departmental action and acquittal

Acquittal by appellate court not on merits of case but on ground that trial was vitiated, no bar for institution of departmental inquiry.

(B) Witnesses — cross-examination by Charged Officer

Charged official, declining to cross-examine witnesses and foregoing his right to cross-examine, cannot subsequently make grievance about it.

***Shyam Singh vs. Deputy Inspector General of Police, CRPF, Ajmer,
AIR 1965 RAJ 140***

The petitioner was a Constable in the CRPF. He overstayed leave sanctioned to him and submitted his resignation which was not accepted. He was proclaimed as a deserter and prosecuted under section 10(m) of the CRPF

DECISIONS (78)

Act, 1949 before the Assistant Commandant, who was also Magistrate of second class, and he found him guilty and sentenced him to 3 months R.I. on 30-5-59. The Appellate Court, the Additional Sessions Judge, Ajmer found that the trial court had committed irregularities in following the procedure and held that the whole trial was vitiated and acquitted him of the charge. The Commandant instituted departmental proceedings and dismissed him from service on 16.1.62. His departmental appeal was rejected.

The Rajasthan High Court held that the petitioner was not acquitted on the merits of the case but because the criminal trial was vitiated on account of serious irregularities committed by the trial court and there was therefore no bar against the departmental inquiry which was instituted under the Act.

The High Court also observed that the petitioner was given an opportunity to cross-examine the only witness examined at the inquiry but the petitioner declined to do so. Having foregone the right to cross-examine the witness, it is no longer open to him to make any grievance about it.

(78)

(A) Misconduct — outside premises

Riotous behaviour outside premises should have rational connection with employment of assailant and the victim, to constitute misconduct.

(B) Departmental action and prosecution

Departmental action taken when criminal prosecution is pending before court, is not vitiated, though it is desirable to stay it, particularly where charge is of a grave character.

(C) Witnesses — securing of

Inquiry Officer can take no valid or effective steps to compel attendance of witnesses; parties themselves should take steps to produce their witnesses.

Tata Oil Mills Company Ltd. vs. Workman, AIR 1965 SC 155

A workman was dealt with on a charge that he way-laid a Chargeman of the Factory while he was returning home after his duty and assaulted him as he (chargeman) was in favour of introduction of the incentive bonus scheme and he was a blackleg. The workman was dismissed from service but the Industrial Tribunal ordered his reinstatement.

The Supreme Court observed that Standing Order No.22 (viii) of the Certified Standing Orders of the Tata Oil Mills Company Ltd. provided that without

prejudice to the general meaning of the term "Misconduct", it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behavior within or without the factory and held that it would be unreasonable to include within the Standing Order any riotous behaviour without the factory which was the result of purely private and individual dispute and in course of which tempers of both the contestants become hot. In order that the Standing Order may be attracted, it must be shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim. If the chargesheeted workman assaulted another workman solely for the reason that the latter was supporting the plea for more production, that could not be said to be outside the purview of standing order 22 (viii).

It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course when the charge against the workman is of a grave character because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal Court. But to say that domestic enquiry may be stayed pending criminal trial is very different from saying that if an employer proceeded with the domestic enquiry inspite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide. The Supreme Court held that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as mala fide because the enquiry was not stayed pending the criminal proceedings against the workman.

In a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness. The parties themselves should take steps to produce their witnesses. It would be unreasonable to suggest that in a domestic enquiry, it is the right of the charge-sheeted employee to ask for as many adjournments as he likes. It is true that if it appears that by refusing to adjourn the inquiry at the instance of the charged-sheeted workman, the Inquiry Officer failed to give the said workman a reasonable opportunity to lead evidence that may, in a proper case, be considered to introduce an element of infirmity in the enquiry but the Inquiry Officer goes out of his way to assist the workman in writing to the witnesses to appear before him and if the witnesses do not turn up to give evidence in time it is not his fault. The Supreme Court allowed the appeal and upheld the dismissal order.

(79)

Evidence — onus of proof

Where the burden of proof lies upon the accused, he can discharge it by proving his case by preponderance of probability.

Harbhajan Singh vs. State of Punjab, AIR 1966 SC 97

The Supreme Court observed that there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused. It is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where he is called upon to prove that his case falls under an Exception, law treats the onus as discharged if he succeeds in proving a preponderance of probability. As soon as the preponderance of probability is established the burden shifts to the prosecution which still has to discharge its original onus. Basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt.

Where an accused person pleads an Exception he must justify his plea, but the degree and character of proof which he is expected to furnish in support of the plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case. The onus on the accused may well be compared to the onus on a party in civil proceedings; just as in civil proceedings the Court which tries an issue makes its decision by adopting the test of probabilities, so must a criminal court hold the plea made by the accused proved, if a preponderance of probability is established by the evidence led by him.

(80)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

Sanction of prosecution under section 197 Cr.P.C. not required for every offence committed by a public servant, nor even every act done by him while he is engaged in the

performance of his official duties but only where the act complained of is directly concerned with his official duties.

Baijnath vs. State of Madhya Pradesh, AIR 1966 SC 220

The appellant Baijnath was Chief Accountant-cum-Office Superintendent of Madhya Bharat Electric Supply, an enterprise run by the Government of Madhya Bharat and is a public servant not movable from his office save by the sanction of the Government. He was charged and convicted under section 477A read with section 109, and under section 409 of the Penal Code. Sanction of the Government to prosecute him under section 197 Cr.P.C. was obtained after the Court had taken cognizance of the case but it was treated as of no use as section 197 requires that sanction should be issued before cognizance of the offence has been taken.

The Supreme Court observed that it is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) Cr.P.C.; nor even every act done by him while he is actually engaged in the performance of his official duties, but where the act complained of is directly concerned with his official duties so that if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. What is important is the quality of the act, and the protection contemplated by section 197 Cr.P.C. will be attracted where the act falls within the scope and range of his official duties. An offence may be entirely unconnected with the official duties as such or it may be committed within the scope of the official duty. If it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

The Supreme Court referred to the following observations, in earlier cases: "to take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government.". "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The

test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

The Supreme Court held that sanction of the State Government was not necessary for the prosecution of the appellant under section 409 IPC because the act of criminal misappropriation was not committed by him while he was acting or purporting to act in the discharge of his official duties and that the offence has no direct connection with his duties as a public servant and the official status of his only furnished him with an occasion or an opportunity of committing the offence.

(81)

- (A) Inquiry Officer — powers and functions**
- (B) Witnesses — cross-examination by Charged Officer**
- (C) Evidence — defence evidence**

Inquiring authority can refuse permission to charged officer to examine defence witnesses who are thoroughly irrelevant and control cross-examination of prosecution witnesses.

State of Bombay vs. Nurul Latif Khan, AIR 1966 SC 269

The respondent was Treasury Officer at Nagpur in the State Service of Madhya Pradesh Government. The question for consideration was whether the appellant has given reasonable opportunity to the respondent to defend himself before it passed the final order on 6-6-52 compulsorily retiring him from service under Art. 353 Civil Service Regulations. The respondent in reply to the charges stated that he wanted to give evidence of his own doctors who would report on his ailing condition and wanted an oral inquiry. The inquiry officer took the view that no oral evidence was necessary and proceeded to examine the documentary evidence showing the failure of the respondent to comply with the order issued by the Government.

The Supreme Court held that the oral inquiry can be regulated by the Inquiry Officer in his discretion. If the charge-sheeted officer cross-examines the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If he desires to examine witnesses whose evidence may appear to the inquiry officer to be thoroughly irrelevant, the inquiry officer may refuse to examine them; in doing so, however, he will have to record his

special and sufficient reasons. "The right given to the charge-sheeted officer to cross-examine the departmental witnesses or examine his own witnesses can be legitimately examined and controlled by the enquiry officer; he would be justified in conducting the enquiry in such a manner that its proceedings are not allowed to be unduly or deliberately prolonged".

(82)

- (A) Suspension — for continuance in service**
- (B) Retirement — power to compel continuance in service**

Where Government ordered retention in service of District and Sessions Judge for two months after his reaching superannuation and simultaneously placed him under suspension, held retaining services of a Government servant for purposes of conducting departmental inquiry against him beyond date of retirement is improper and illegal.

- (C) Judicial Service — disciplinary control**

Control vested in High Court includes disciplinary jurisdiction and it is a complete control except in matter of appointment, posting, promotion and dismissal and removal of District Judges. High Court alone can hold an inquiry against a District Judge.

State of West Bengal vs. Nripendra Nath Bagchi, AIR 1966 SC 447

The respondent was acting as a District and Sessions Judge and was due to superannuate and retire on 31-7-53. The Government ordered that he be retained in service for a period of two months commencing from 1-8-53. By another order, the respondent was placed under suspension and an enquiry into certain charges followed. The enquiry continued for a long time and the respondent was retained in service. A show cause notice was issued, the Public Service Commission consulted and he was dismissed from service.

The Supreme Court held that rule 75(a) of the West Bengal Civil Service Regulations is intended to be used to keep in employment persons with a meritorious record of service, who although superannuated, can render some more service and whose retention in service is considered necessary on public

grounds. This meaning is all the more clear when the rule states that a Government servant is not to be retained after he attains the age of sixty years, except in very special circumstances. This language hardly suits retention for purposes of departmental enquiries. The retention of the respondent in service under rule 75(a) for the purpose of holding a departmental enquiry was not proper and the extension of service was illegal.

The Supreme Court also held that the control vested in the High Court under Art. 235 of Constitution includes disciplinary jurisdiction and is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. The High Court can in the exercise of the control vested in it, hold enquiries, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal if granted thereby and to the giving of an opportunity of showing cause as required by clause (2) of Art. 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone can hold enquiry against a District Judge.

(83)

(A) Defence Assistant — in common proceedings

Counsel representing co-delinquents in a common proceedings also represented the appellant. No inability to conduct defence was proved and no prejudice caused; Held appellant had reasonable opportunity.

(B) Penalty — dismissal with retrospective effect

Where an order of dismissal is passed with retrospective effect, the court has power to give effect to the valid and severable part of the order.

R. Jeevaratnam vs. State of Madras, AIR 1966 SC 951

The appellant was a Deputy Tahsildar in the Revenue Department. Disciplinary Proceedings were started against him and three of his subordinates for accepting illegal gratification. A common hearing was directed. The appellant prayed for engaging counsel of his choice at the enquiry; the same was rejected. The counsel representing the other civil servants also represented the appellant and no inability to conduct the defence properly was proved. The Supreme Court observed that no prejudice was caused to the appellant and there was no conflict of

interest between the appellant and the other three civil servants. The appellant thus had reasonable opportunity to defend himself and he had been lawfully dismissed from service.

The Supreme Court further held that an order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with the super added direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order stating that the appellant is dismissed, should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid part of the order.

(84)

Penalty — dismissal, date of coming into force

An order of dismissal is not effective unless it is communicated to the officer concerned. It does not take effect as from the date on which the order is written out by the authority.

State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313

The respondent, an Assistant Director of Civil Supplies, was dismissed from service by an order purported to have been passed on 3-6-49. The facts of the case are the enquiry committee furnished a questionnaire only and did not furnish a copy of the report of the Committee, the allegations on which the report was passed and a copy of the charge-sheet to show cause as to why the respondent should not suffer the punishment as proposed. He was informed on 28-5-51 that the records of the office showed that he had been dismissed from service with effect from date of his suspension and it was on this day that the respondent came to know about his dismissal for the first time and he challenged the order by way of a suit.

The Supreme Court held that the mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it, does not take effect after issue by the said authority. Such an order can only be effective after it is communicated to the officer concerned or otherwise published. The order of dismissal passed against the officer on 3-6-49 could not be said to have taken effect until he came to know about it on 28-5-51.

(85)

- (A) P.C. Act, 1988 — Sec. 20**

- (B) Presumption**

Mere receipt of money is sufficient to raise presumption under section 4(1) of Prevention of Corruption Act, 1947 (corresponding to sec. 20 of P.C. Act, 1988). Accused can discharge the burden by establishing his case by preponderance of probability.

V.D. Jhingan vs. State of Uttar Pradesh, AIR 1966 SC 1762

The appellant, Assistant Director, Enforcement, Government of India, Ministry of Commerce at Kanpur, was tried for offences under sections 161 I.P.C., 5(2) read with 5(1)(d) of Prevention of Corruption Act, 1947 (corresponding to secs. 7, 13(2) r/w. 13(1)(d) of P.C. Act, 1988).

The Supreme Court held that in order to raise the presumption under section 4(1) of Prevention of Corruption Act, 1947 (corresponding to sec. 20(1) of P.C. Act, 1988), what the prosecution has to prove is that the accused person has received “gratification other than legal remuneration” and when it is shown that he has received a certain sum of money which is not a legal remuneration, then the presumption must be raised. Mere receipt of money is sufficient to raise a presumption.

The Supreme Court also held that the burden of proof lying upon the accused will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt.

(86)

- (A) Disciplinary authority — disagreeing with Inquiry Officer**

- (B) Inquiry report — disciplinary authority disagreeing with findings**

Disciplinary authority is free to disagree wholly or partly with the Inquiring Officer since the latter acts as his delegate. When the disciplinary authority agrees with the findings of the Inquiring Authority, it is not obligatory on the part of disciplinary authority to give reasons in support of the order. Where it does not agree with the findings of

the Inquiring authority it is necessary to indicate reasons for disagreement.

(C) Evidence — of suspicion

Mere suspicion can never take the place of proof and evidence in disciplinary proceedings.

State of Madras vs. A.R. Srinivasan, AIR 1966 SC 1827

An Executive Engineer in the Public Works Department of Madras State was charged with corruption and an inquiry was instituted. Tribunal for Disciplinary Proceedings framed five charges and held three of them to have been proved and the remaining two to be only at the stage of suspicion and recommended compulsory retirement as punishment. Public Service Commission agreed with the findings of the Tribunal and added that the prosecution evidence as a whole left a strong suspicion of corrupt practice on the part of the officer, although some of the individual instances could not stand the test of strict legal proof as in a criminal case and recommended the imposition of compulsory retirement. The Government issued a show cause notice and retired him compulsorily with effect from the date from which he was suspended. He appealed to the Governor and it was rejected. A writ petition to the High Court was allowed, the High Court holding that the impugned order was passed on mere suspicion and as such was invalid. The State appealed to the Supreme Court.

Before the Supreme Court, it was contended on behalf of the respondent that disciplinary proceedings are in the nature of quasi-judicial proceedings and when the Government passed the impugned order against the respondent, it was acting in a quasi-judicial character and should have indicated some reasons as to why it accepted the findings of the Tribunal. The Supreme Court did not accept the contention. It observed that disciplinary proceedings begin with an inquiry conducted by an officer appointed in that behalf. The inquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and to the delinquent officer also, it seemed somewhat unreasonable to suggest that State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate.

On behalf of the State, it was contended that the High Court erred in holding that the retirement order was passed merely on suspicion. On

construction of relevant orders, the Supreme Court held, that although the Commission had given its recommendation in somewhat ambiguous words, in the first part of their communication they had expressed a general agreement with the findings of the Tribunal. Read in this context it only meant that the Commission had agreed with the charges to have been proved. The second portion of their reference to G.O. No.902 Public (Services) which indicated that even though guilt was not established against public servant by proof as in a criminal case, the fact that the officer's reputation was notoriously bad, afforded a just ground for the Government to refuse to continue to be served by such an officer in any department. As such, the order of compulsory retirement could not be held to be illegal or passed merely on suspicion, though the view expressed in G.O.No. 902 Public (Services) was open to serious objection in as much as even in disciplinary proceedings, notwithstanding the fact the technicalities of criminal law could not be invoked, the charges framed against a public servant ought to be held to be proved before any punishment could be imposed on him.

(87)

(A) Charge — mention of penalty

Mentioning the proposed penalty in the charge-sheet and asking the delinquent officer to show cause against it, is not tainted with bad faith.

(B) Inquiry — venue of

Selection of venue of inquiry by Inquiring Officer suo motu does not violate principles of natural justice.

(C) Disciplinary authority — consulting others

Disciplinary authority making his own decision in consultation with another officer, cannot be faulted.

Bibhuti Bhusan Pal vs. State of West Bengal, AIR 1967 CAL 29

The petitioner was an employee of the Agricultural Department of West Bengal Government. He was asked in the charge-sheet itself to show cause why he should not be removed from service or otherwise suitably punished. The petitioner contended before the Calcutta High Court that the inclusion of the proposed penalty in the charge-sheet itself would show that the disciplinary authority, Director of Agriculture, was determined either to remove him from service or to punish him otherwise and that the proceedings were initiated not with a view

to ascertaining whether he was really guilty of the charges but with a view to award him a penalty including removal from service. The High Court observed that mention of the proposed penalty in the charge-sheet itself would not render the inquiry an idle ceremony. That the sole object of the inquiry was to afford the petitioner an opportunity to defend himself and to prove that he was innocent is clear from the last sentence of the charge- sheet which is set out below: "You are also directed to state to the above-mentioned Inquiring Officer within aforesaid time whether you desire to be heard in person in your defence and to produce witnesses, if any."

Another grievance of the petitioner was that the Inquiring Officer played the part of prosecutor by collecting evidence against the petitioner on behalf of the Department, as the Inquiring Officer suo motu decided to hold the proceedings at Darjeeling for examination of documents and the petitioner was never informed as to what documents would be inspected at Darjeeling. The High Court observed that a copy of the Memo sent by the Inquiring Officer to Sri D.N. Das to Darjeeling requesting him to keep all relevant documents ready for inspection was endorsed to the petitioner who was given advance traveling allowance for his journey to and from Darjeeling. The petitioner was therefore given timely intimation as to the venue of the inquiry. The witnesses were examined at Darjeeling in his presence and no books or papers were inspected behind the back of the petitioner. The Inquiring Officer was therefore within his jurisdiction in deciding suo motu to hold the inquiry at Darjeeling. When the charge is related to stock books of a farm at Darjeeling, there cannot be any hard and fast rules as to where the inquiry is to be held. The only thing to be seen is whether the petitioner was in any way denied the opportunity of defending himself by reason of the selection of such a venue. Since the petitioner was not prejudiced in any way by reason of the inquiry being held at Darjeeling, there was no violation of the principles of natural justice.

Another contention of the petitioner was that the Joint Director of Agriculture, who had no locus standi in the case, considered the report of the Inquiring Officer and suggested the punishment to be inflicted and that the Director of Agriculture, who was the disciplinary authority, did not apply his own mind but merely endorsed the opinion of the Joint Director. The High Court observed that if the punishing authority makes his decision in consultation with any officer, the decision remains the decision of the disciplinary authority as he adopts the opinion of the officer whom he consults.

(88)

(A) Departmental action and prosecution

A public servant who commits misconduct which amounts to an offence can be prosecuted, but the disciplinary authority is not precluded from proceeding against him in departmental proceedings.

(B) Departmental action and acquittal

Where accused officer is acquitted on a technical ground relating to a procedural flaw or by giving benefit of doubt, disciplinary proceeding on the same charges can be initiated.

S. Krishnamurthy vs. Chief Engineer, S. Ry., AIR 1967 MAD 315

The appellant, Senior Clerk in the Southern Railway, was prosecuted for an offence of bribery and was convicted by trial Court but acquitted on appeal on a technical ground that there was defect in the charge. Disciplinary proceedings were thereafter instituted upon the same broad facts.

The Madras High Court considered the following points: (i) Where a person has been prosecuted in a court of law and ultimately acquitted, whether it is open to the department to institute departmental proceedings on the same charge which was the subject matter of trial in the court. In other words, whether an acquittal by a criminal court for whatever reasons, operates as virtual exemption from all other liabilities ensuing from the administrative action. (ii) Whether departmental authorities can pursue disciplinary enquiry which has relatively less safeguards and protection for the employee, when it was open to them to have successfully prosecuted the employee in a criminal court but failed.

The High Court held that the acquittal in the present case was not based upon any finding that the appellant did not receive illegal gratification. The acquittal was on a technical ground relating to a procedural flaw. The appellant cannot claim any exemption from subsequent disciplinary proceedings. In Karuppa Udayar vs. State of Madras, AIR 1956 Mad 460, the High Court held that a departmental enquiry was not precluded merely because there was an offence cognizable under the penal code which would be tried or might have been tried. The Orissa High Court in State of Orissa vs. Seilabehari, AIR 1963 Orissa 73 also held that where the criminal court did not record an honorable acquittal but gave the accused the benefit of doubt and observed that there was strong suspicion, it did not preclude further departmental enquiry in respect of the same subject

matter. Under these circumstances it is very clear that the appellant could be proceeded against in disciplinary action notwithstanding his acquittal on the criminal charge.

(89)

Inquiry — previous statements, supply of copies

Charged Government servant entitled to copy of earlier statement only if that witness is examined at departmental inquiry and only if he asks for such copy.

***Prabhakar Narayan Menjoge vs. State of Madhya Pradesh,
AIR 1967 MP 215***

The petitioner is a Forester and a departmental inquiry was held and he was dismissed from service. The petitioner urged that the departmental inquiry was vitiated as he was not supplied with copies of statements of witnesses given by them during the preliminary enquiry.

A full bench of the High Court of Madhya Pradesh, to which the case was referred by a division bench held that if the witnesses examined at a departmental enquiry in support of a charge or charges against a Government servant had made statements during the course of a preliminary enquiry preceding the departmental inquiry, then, if the Government servant asks for copies of the statements made at the preliminary enquiry in order to enable him to exercise effectively the right of cross-examining the witnesses, the copies of their statements must be furnished to the Government servant. It is not for the department to decide whether the statements would lead to an effective cross-examination but for the delinquent to use them for cross-examination in his own way. It is only if the Government servant makes a request or demand for the copies of the statements made by the witness at the preliminary enquiry that he is entitled to get those copies if the witnesses are examined at the departmental inquiry.

(90)

(A) Termination — of temporary service

Administrative authority which started formal departmental inquiry against a temporary Government servant can drop the proceedings and make an order of discharge simpliciter.

(B) Preliminary enquiry and formal inquiry

Preliminary enquiry is for the purpose of deciding whether formal departmental action is to be started. Art. 311 of Constitution will not apply to preliminary enquiry. Scope of and difference between preliminary enquiry and formal inquiry explained.

A.G. Benjamin vs. Union of India, 1967 SLR SC 185

The appellant was a temporary employee in the Central Tractor Organisation and was facing departmental action in respect of certain complaints against him when he was employed as Stores Officer. In a note, the Chairman observed that "departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities we will be able to deal with the accused in the way he deserves". He, therefore, suggested that action should be taken against him under rule 5 of the Temporary Service Rules. His services were accordingly terminated and the order of termination did not indicate the reasons which led to the termination.

On his appeal, a single Judge of the Punjab High Court held that the order of the Union Government terminating the services of the appellant was ultra vires and illegal. The decision of the single Judge was set aside by the Letters Patent Bench of the Punjab High Court. The question to be considered in the appeal was whether the order of the Union Government was an order by which punishment had been inflicted upon the appellant and whether Art. 311 of Constitution was attracted.

The Supreme Court observed that it is now well established that temporary Government servants are also entitled to the protection of Art. 311(2) in the same manner as permanent Government servants, if the Government takes action against them by meting out one of the three punishments i.e. dismissal, removal or reduction in rank. But this protection is only available where the discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. The Court has to apply the two tests mentioned in the case of Purushotham Lal Dhingra vs. Union of India, AIR 1958 SC 36, namely, (i) whether the temporary Government servant had a right to the post or the rank or (ii) he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that there was punishment of the temporary Government servant. It is also necessary to state that even though misconduct, negligence, inefficiency

or other disqualification may be motive or the compelling factor which influenced the government to take action against the temporary Government servant under the terms of the contract of employment or the specific service rule, nevertheless, if the Government had the right under the contract or the rules, to terminate the service, the motive operating on the mind of the Government is wholly irrelevant.

The appropriate authority possesses two powers to terminate the services of a temporary public servant. It can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case the provisions of Art. 311 will not be applicable. The second alternative is to dismiss a temporary servant and make an order of dismissal in which case provisions of Art. 311 will be applicable. In this case a formal enquiry as laid down in Art. 311(2) has to be held before the order of dismissal is passed.

In cases where the temporary Government servant is guilty of unsatisfactory work or misconduct, a preliminary enquiry is held to satisfy Government that there is reason to dispense with the services of the temporary employee. When a preliminary enquiry of this nature is held in the case of a temporary Government servant, it must not be mistaken for the regular departmental inquiry made by the Government in order to inflict a formal punishment. So far as the preliminary enquiry is concerned, there is no question of its being governed by Art. 311(2), for the preliminary enquiry is really for the satisfaction of the Government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of temporary Government servants. There is no element of punitive proceedings in such a preliminary enquiry. If, as a result of such an enquiry, the authority comes to the conclusion that the temporary Government servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant statutory rules. In such cases it would not be open to the temporary Government servant to invoke the protection of Art. 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and whether the temporary Government servant should be discharged. Even in a case where formal departmental enquiry is initiated against the temporary Government servant, it is open to the authority to drop further proceedings in the departmental enquiry and to make an order of discharge simpliciter against the temporary Government servant.

(91)

Compulsory retirement (non-penal)

- (i) *The test to determine whether an order of compulsory retirement amounts to removal within the meaning of Art. 311(2) of Constitution, is to consider whether the order casts an aspersion or attaches a stigma to the officer.*
- (ii) *Compulsory retirement on the ground that the employee outlived his utility amounts to removal within the meaning of Art. 311(2) of Constitution.*

State of Uttar Pradesh vs. Madan Mohan Nagar, AIR 1967 SC 1260

The respondent, who was Director of State Museum, was compulsorily retired from service as he had “outlived his utility”.

It was urged before the Supreme Court on behalf of the State that the fact that the impugned order of compulsory retirement states the reason for compulsory retirement, viz. that the respondent “had outlived his utility” does not lead to the conclusion that the order amounts to dismissal or removal, because in every case of compulsory retirement, it is implied that the person who was compulsorily retired had outlived usefulness. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action, but what is important to note is that the direction in the last sentence in Note I to Art. 465A of Civil Service Regulations makes it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity. In the present case, there is not only no question of implication, but a clear statement appears on the face of the order that the respondent had outlived his utility. The order clearly attaches a stigma to him and any person who reads the order would immediately consider that there is something wrong with him or his capacity to work. The Supreme Court held that the compulsory retirement is by way of punishment and that the order amounts to removal within the meaning of Art. 311(2) of Constitution.

(92)

Misconduct — in quasi-judicial functions

Government competent to take action even in respect of misconduct which falls outside the discharge of duties as

Government servant, if it reflects on his reputation for good faith, integrity or devotion to duty. What was challenged is not the correctness or legality of the decision but the conduct behind it.

S. Govinda Menon vs. Union of India, AIR 1967 SC 1274

The appellant, an I.A.S. Officer, was First Member of the Board of Revenue, Kerala and was holding the post of Commissioner of Hindu Religious and Charitable Endowments. As Commissioner, he was charged with acting in disregard of the provisions of section 29 of Madras Hindu Religious and Charitable Endowments Act by sanctioning lease of immovable property without any auction. Disciplinary proceedings were initiated against him by the State Government under All India Services (Discipline & Appeal) Rules, 1957. The Inquiry Officer, after conducting the inquiry, found him guilty of certain charges. The Union of India after consideration of the Report issued a show-cause notice. The appellant challenged the enquiry on the ground that as the Commissioner was made corporation sole under section 80 of the Hindu Religious and Charitable Endowments Act as a separate and independent personality, he was not subject to the control of the Government and no disciplinary proceedings could be initiated against him, for acts and omissions with regard to his work as Commissioner under the said Act and that the orders made by him as Commissioner being of quasi-judicial character, could be impugned only in appropriate proceedings under the Act.

The Supreme Court held that Government was entitled to institute disciplinary proceedings if there was prima-facie material for showing recklessness or misconduct on his part in the discharge of official duties. What was sought to be challenged was not the correctness or legality of the decision of the Commissioner, but the conduct of the appellant in the discharge of his duties as Commissioner. It is not necessary that the alleged act or omission which forms the basis of disciplinary proceedings should have been committed in the discharge of his duties as a servant of the Government. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. The test is whether the act or omission has reasonable connection with the nature and conditions of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant.

(93)

Post — change of

Transfer of a Government servant from the post of Head of a Department to post carrying the same scale of pay and rank but not the same status of being a Head of Department does not amount to reduction in rank attracting Art. 311 of Constitution.

K. Gopaul vs. Union of India, AIR 1967 SC 1864

The appellant, a confirmed Inspector General of Registration and Head of the Department in Madras State, was transferred to the post of “Accommodation Controller”, a post carrying the same scale of pay. The appellant challenged the legality of the transfer on the ground that it resulted in reduction in rank, firstly because the latter post was not the post of a Head of Department and secondly, because the post of Inspector General was superior in rank to that of a Deputy Secretary and the latter was not.

The Supreme Court held that the plea taken by the appellant was without force. The fact that the latter post was not designated as that of a Head of Department was of no consequence, as rank in Government service did not depend upon the mere circumstances that the Government servant in the discharge of his duties is given certain powers. In Government service, there may be senior posts, the holders of which are not declared Heads of Departments, while persons holding junior posts may be declared as such. Further, the post of Inspector General could be filled up by transfer of a Deputy Collector or an Assistant Secretary. The Accommodation Controller's post was not lower than that of Deputy Collector or an Assistant Secretary. Therefore, the placing of the appellant as Accommodation Controller when he was holding the post of Inspector General of Registration does not amount to reduction in rank, attracting Art. 31 of Constitution.

(94)

Witnesses — examination of

When a witness is giving evidence, the other witnesses should not be present at the enquiry.

Sharada Prasad Viswakarma vs. State of U.P., 1968 (1) LLJ ALL 45

The grievance of the petitioner, a permanent employee in the workshop of Shahu Chemicals and Fertilisers, was that at the domestic enquiry, evidence

of witnesses was recorded in the presence of other witnesses and therefore principles of natural justice were violated.

The records showed that the material witnesses were, each of them examined in the presence of the others. The High Court observed that this sort of procedure vitiates the entire proceedings of the enquiry. The purpose of cross-examination is set at naught if all the witnesses are present at the spot of the enquiry during the entire period the enquiry takes place. The fact of examining and cross-examining the witnesses in the presence of each other strikes at the very root of the procedure if it is to be governed by fairplay and natural justice. The High Court held that the Tribunal in ignoring this aspect, apparent on the face of record of the domestic enquiry, fell into error and the award of the Industrial Tribunal based as it was upon the material collected at the domestic enquiry, could not be upheld.

(95)

Evidence — tape-recorded

Appreciation of tape recorded evidence.

Yusufalli Esmail Nagree vs. State of Maharashtra, AIR 1968 SC 147

In this appeal, the appellant challenged the legality of his conviction under sec.165-A Indian Penal Code (corresponding to sec. 12 P.C.Act, 1988).

The Supreme Court observed that the conversation between the accused and the complainant was tape-recorded. The voices of the complainant and the accused were identified. The contemporaneous dialogue between them formed part of res gestae and was relevant under sec. 8 Evidence Act. Further like a photograph of a relevant incident, a contemporaneous tape-record of a relevant conversation was admissible under sec. 7 Evidence Act.

The mike was kept concealed in the outer room and the tape- recorder was kept in the inner room and the police officer was also in the inner room. The accused was not aware of the police officer or that his conversation was being tape recorded. The Supreme Court held that the conversation was not hit by sec. 162 Cr.P.C. and was admissible. The accused cannot claim the protection under Art. 20(3) of the Constitution of India. The fact that tape recording is done without his knowledge of the accused is not of itself an objection to its admissibility in evidence.

If a statement is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording

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must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with.

(96)

Evidence — defence evidence

Necessary for the Inquiry Officer to give reasonable time for the charged officer to produce and examine defence witnesses.

State of Uttar Pradesh vs. C.S. Sharma, AIR 1968 SC 158

The respondent was a Sales Tax Officer and an inquiry was instituted against him on certain charges. On 31-10-53, the respondent submitted a list of three defence witnesses. On 2-2-54, he asked for 20 days time to furnish his list of defence witnesses, a day before regular hearing started. No date till then had been fixed for examination of defence witnesses. The Inquiry Officer rejected the request on 6-2-54 without fixing a date for the examination of the defence witnesses. The charged officer after a week submitted a list of four witnesses on 10-2-54 and stated that he requires some time as he did not know the whereabouts of all of them. A few days later, on 24-2-54, he again informed the Inquiry Officer that he wanted to examine those witnesses and also wanted to examine himself. No order was passed on these intimations and on 8-5-54, the Inquiry Officer submitted his report holding the charges as proved.

The Supreme Court held that no action was taken between 6-2-54 and 8-4-54 to enable the officer to lead his defence, if any, in support of his part of the case and the respondent was not given opportunity to defend himself and before furnishing the report, the Inquiry Officer should have fixed a date when his witnesses could be examined.

(97)

Suspension — treatment of period

Where in a departmental inquiry, charges were not proved beyond reasonable doubt but it was held that suspension and departmental inquiry “were not wholly unjustified” and Government servant was reinstated in service and simultaneously retired, he having attained superannuation age but not allowed any pay beyond what had already been paid

under F.R. 54, it was held Government servant was entitled to an opportunity to show cause against the action proposed.

M. Gopalakrishna Naidu vs. State of Madhya Pradesh, AIR 1968 SC 240

The appellant was serving as an Overseer. He was suspended from service and prosecuted under section 161 I.P.C. The trial resulted in his conviction, but it was set aside in appeal for want of proper sanction. He was again prosecuted but this time investigation was held to be not carried out by competent authority. A departmental inquiry was held and the Inquiry Officer found the appellant not guilty but the Government disagreed with the finding and issued a show cause notice why he should not be dismissed. Later, the Government held that the charges were not proved beyond reasonable doubt and issued an order directing the appellant to be reinstated, but simultaneously retired him denying him pay and allowances under rule 54(3) and (4) of F.Rs. holding that the suspension and the departmental inquiry "were not wholly unjustified". The appellant challenged this order claiming full pay and allowances under clause (2) of rule 54 of F.Rs.

The Supreme Court held that the order denying him pay and allowances was not a consequential order after reinstatement, nor was such an order a continuation of the departmental proceedings taken against the employee. The very nature of the function implies the duty to act judicially. In such a case, if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice attracting Art. 311 of Constitution. It was further held that F.R. 54 contemplates a duty to act in accordance with the basic concept of justice and fair play.

(98)

(A) Misconduct — in previous employment

Action can be taken for misconduct in previous employment.

(B) Termination — power of appointing authority

Power to appoint implies power to terminate.

**Dr. Bool Chand vs. Chancellor, Kurukshetra University,
AIR 1968 SC 292: 1968 SLR SC 119**

The appellant, a member of the I.A.S. was compulsorily retired on charge of gross misconduct and indiscipline. He was later employed as Professor

and Head of the Department of Political Science in the Punjab University and on 18-6-65 appointed as Vice-Chancellor of the Kurukshetra University by an order of the Governor of Punjab as Chancellor of the University. He was suspended and issued a notice requiring him to show cause why his services be not terminated in relation to his past misconduct which resulted in his compulsory retirement from the Indian Administrative Service. He submitted his representation, after considering which, the Chancellor, on 8-5-66, terminated his services with immediate effect.

The appellant contended that the Chancellor was bound to hold an inquiry before determining his tenure and the inquiry must be held in consonance with the rules of natural justice. The Supreme Court quoted the case of Ridge vs. Baldwin decided by the House of Lords, where Chief Constable was dismissed by a Borough and referred to the observation therein that cases of dismissal fall into three classes: dismissal of a servant by his master, dismissal from office held during pleasure and dismissal from an office where there must be something against a man to warrant his dismissal. The Supreme Court pointed out that in the third class there is an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation. The Supreme Court held that the case of Dr. Bool Chand fell within the third class and the tenure of his office could not be interrupted without first informing him of what was alleged against him and obtaining his defence or explanation. In this case, a show cause notice was duly issued by the Chancellor. Dr. Bool Chand did make a representation which was considered and his tenure was determined because in the view of the Chancellor it was not in the public interest to retain him as Vice-Chancellor. He was informed of the grounds of the proposed termination of the tenure of his office and an order declaring the reasons was passed. The appellant had the fullest opportunity of making his representation and the inquiry held by the Chancellor was not vitiated because of violation of the rules of natural justice.

The appellant contended before the Supreme Court that the Chancellor had no power to terminate the tenure of office of Vice-Chancellor which the Statutes prescribed shall ordinarily be for a period of three years. The Supreme Court held that absence of a provision setting up procedure for determining the employment of the Vice-Chancellor in the Act or Statutes or Ordinances does not lead to the inference that the tenure of office of a Vice-Chancellor is not liable to be determined. A power to appoint ordinarily implies a power to determine the employment.

(99)

- (A) Suspension — continuance of
- (B) Suspension — effect of acquittal

Order suspending an official pending further orders is not automatically terminated on the criminal prosecution ending in acquittal, until terminated by another order.

Balvantrai Ratilal Patel vs. State of Maharashtra, AIR 1968 SC 800

The appellant was a member of the Bombay Medical Service Class II and as such was an employee of the State of Maharashtra. He was trapped when he received Rs. 50 as illegal gratification for issuing a certificate on 20-1-50. The Civil Surgeon issued the following order dated 18.2.50: "Under orders from the Surgeon General with the Government of Bombay, conveyed in his Memorandum No. S.97/ 189/A, dated 16-2-1950, you are informed that you are suspended pending further orders with effect from the afternoon of 18th instant."

The appellant was convicted by the First Class Magistrate on 26.2.51 under section 161 I.P.C. and sentenced to one day's imprisonment and fine of Rs.1000. The Sessions Court dismissed his appeal. The High Court allowed his revision petition. Thereupon the appellant reported to the Government for reinstatement. The High Court refused leave to appeal and the Supreme Court rejected the S.L.P. On 20.2.53, Government decided that a departmental inquiry should be held against the appellant and an inquiry was held and an order of dismissal was passed on 11-2-60.

The appellant filed a suit on 11-4-58, when the inquiry was pending on the ground that the suspension was illegal and inoperative in law and the appellant continued in service as though no order of suspension had been passed. The Bombay High Court gave a declaration that the order of suspension was illegal and inoperative in law and the appellant continued to be on duty till 11-2-1960 as though no order of suspension had been made. The Government of Maharashtra appealed and a Bench of the High Court held on 10-8- 61 that the order of suspension made by the respondent was legally valid as it was in exercise of the inherent power as regards prohibition of work and in exercise of its powers conferred by the rules as far as the withholding of pay during enquiry against his conduct was concerned. The appellant appealed to the Supreme Court.

The Supreme Court held that "the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct

or pending a criminal proceeding which may eventually result in a departmental enquiry against him". The Supreme Court examined the question whether the order of suspension came to an end on 15-2-52, when the appellant was acquitted by the High Court in revision and whether in consequence the appellant is entitled to full pay for the period from 15-2-52 to 11-2-60 when he was ultimately dismissed. "It was contended on behalf of the appellant that he was suspended pending an inquiry into the charges for the criminal offence alleged to have been committed by him and as the proceedings in connection with the charge ended with the acquittal of the appellant by the High Court on 15-2-52, the order of suspension must be deemed to have automatically come to an end on that date. We see no justification for accepting this argument. The order of suspension dated Feb. 18, 1950 recites that the appellant should be suspended with immediate effect 'pending further orders'. It is clear therefore that the order of suspension could not be automatically terminated but it could have only been terminated by another order of the Government. Until therefore a further order of the State Government was made terminating the suspension the appellant had no right to be reinstated to service." The Supreme Court held that the judgment of the Bombay High Court dated 10-8- 61 is correct and dismissed the appeal.

(100)

- (A) Termination — of temporary service**
- (B) Termination — of probationer**
- (C) Termination — application of Art. 311(2) of Constitution**
 - (i) Services of a temporary servant or a probationer can be terminated under the Rules of his employment and such termination without anything more would not attract operation of Art. 311 of Constitution.*
 - (ii) Various propositions of application and non-application of Art. 311(2) of Constitution in case of termination, made clear.*

State of Punjab vs. Sukh Raj Bahadur, AIR 1968 SC 1089

The petitioner was a permanent official in the office of the Chief Commissioner, Delhi. On 9.12.52, he was accepted as a candidate for the post of Extra Assistant Commissioner of the Punjab Government and he was to remain on probation for a period of 18 months subject to his completing the training and

further extension of the period of probation. The period of probation expired in July 1954, and it was not extended. A charge-sheet was issued to him, and the petitioner furnished his reply. Subsequently, the petitioner was reverted to his substantive post.

The Supreme Court held that the order of reversion did not amount to punishment. The departmental enquiry did not proceed beyond the stage of submission of a charge-sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with; there were no sittings of any Enquiry Officer, no evidence recorded and no conclusion arrived at on the enquiry. The case is in line with the decision in State of Orissa vs. Ram Narayan Das (AIR 1961 SC 177).

The following propositions are made clear: (i) the services of a temporary servant or a probationer can be terminated under the rules of employment and such termination without anything more would not attract the operation of Art. 311 of Constitution; (ii) the circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial; (iii) if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it may be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant; (iv) an order of termination of service in unexceptionable form preceded by an enquiry, launched by a superior authority, only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311; (v) if there be a full scale departmental enquiry envisaged by Art. 311, i.e. enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the provisions of the said Article.

(101)

Termination — of probationer

An employee allowed to continue after completion of the maximum period of probation fixed under Rules cannot be deemed to be a probationer, and his removal attracts Art. 311 of Constitution.

State of Punjab vs. Dharam Singh, AIR 1968 SC 1210

The respondent was officiating in a permanent post as probationer and continued to hold the post even after the expiry of the maximum period of probation of three years fixed by the Rules, without an express order of confirmation.

The Supreme Court held that in such an event the respondent cannot be deemed to continue in the post as a probationer by implication. Such an implication is negated by the Service Rules forbidding extension of the probationary period beyond the maximum period fixed by the Rules. The inference is that the employee allowed to continue in the post on completion of the maximum period of probation, has been confirmed in the post by implication. The respondent was subsequently removed by the appointing authority from service by giving him one month's notice without holding any enquiry. It was held that the respondent must be deemed to have been confirmed in that post after the expiry of the maximum period of probation and after such confirmation, the appointing authority had no power to dispense with his services under the Rules on the ground that his work or conduct during the period of probation was unsatisfactory. On the date of the impugned order the respondent had the right to hold his post; the impugned order deprived him of his right and amounted to removal from service and could not be made without following the constitutional requirements of Art. 311 of Constitution. The impugned order was therefore invalid.

(102)

- (A) Evidence — statement under sec. 164 Cr.P.C. can be acted upon**
- (B) Cr.P.C. — Sec. 164**

Statement under sec. 164 Cr.P.C. can be acted upon, where circumstances lend support to the truth of the evidence.

Ram Charan vs. State of U.P., AIR 1968 SC 1270

The Supreme Court expressed itself in agreement with the following observations of the Andhra Pradesh High Court in *In re Gopisetty Chinna Venkata Subbiah*, AIR 1955 Andhra 161 on the evidentiary value of statements recorded under sec. 164 Cr.P.C. : “We are of the opinion that if a statement of a witness is previously recorded under sec. 164 Criminal Procedure Code, it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under sec. 164 will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon.”

(103)

- (A) P.C. Act, 1988 — Sec. 17
- (B) Trap — authorisation to investigate
- (C) Trap — investigation illegal, effect of
- (i) *Permission to investigate the case under section 5A of Prevention of Corruption Act, 1947 (corresponding to sec. 17 of P.C. Act, 1988) includes laying a trap.*
 - (ii) *Illegality of investigation by an officer not competent does not vitiate the jurisdiction of court for trial.*

(D) P.C. Act, 1988 — Sec. 20

(E) Trap — burden of proof

Burden of proof resting on accused public servant under section 4 of Prevention of Corruption Act, 1947 (corresponding to sec. 20 of P.C. Act, 1988) is satisfied if he establishes his case by preponderance of probability.

(F) P.C. Act, 1988 — Sec. 19

(G) Sanction of prosecution — under P.C. Act

Sanction of prosecution granted by the Head of Department not competent to remove the public servant from service, is not valid.

Sailendra Bose vs. State of Bihar, AIR 1968 SC 1292

The appellant was Assistant Medical Officer in Railway Hospital. Doman Ram, a Khalasi, who was suffering from dysentery and stomach pain was, sent to the appellant for treatment. The prosecution case was that before giving him fitness certificate, appellant demanded Rs. 5 as bribe. The matter was reported to the Special Police Establishment and a trap was laid. The appellant admitted that Doman Ram had paid him Rs. 5 but claimed that it was a return of the loan given to him.

It was contended by the appellant before the Supreme Court that investigation was without the authority of law as investigations were carried out by an Inspector of Police without the prior permission of a Magistrate of First Class, that the Inspector of Police, S.P.E., had on 12-3-64 merely applied for and obtained from the First Class Magistrate permission to lay trap and that the

permission to investigate the case was obtained by him only on 21-3-64 but by that time the entire investigation was over, and that before granting the permission, the Magistrate did not apply his mind to the question whether there was any need for granting the same.

The Supreme Court held that the permission given was under section 5A of Prevention of Corruption Act, 1947 (corresponding to sec. 17 of P.C. Act, 1988). A permission under that provision is a permission to investigate the case, laying the trap being a part of the investigation. An investigation is one and indivisible. Section 5A does not contemplate two sanctions one for laying the trap and another for further investigation. Once an order under that provision is made, that order covers the entire investigation. The Supreme Court further held that an illegality committed in the course of an investigation does not affect the competence and jurisdiction of the Court for trial, and where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

The appellant also contended that presumption under section 4 of Prevention of Corruption Act, 1947 (corresponding to sec. 20 of P.C. Act, 1988) does not arise unless the prosecution proved that the amount in question was paid as a bribe and that the word 'gratification' can only mean something that is given as a corrupt reward. The Supreme Court did not agree and further held that the burden of proof on the accused under section 4 cannot be held to be discharged merely by reason of the fact that the explanation offered by him is reasonable and probable and it must be shown that the explanation is a true one. The burden resting on the accused will be satisfied if the accused establishes his case by a preponderance of probability and it is not necessary for him to establish his case by the test of proof beyond reasonable doubt.

The appellant further contended that sanction to prosecute granted by Chief Medical Officer under section 6(1) of the Prevention of Corruption Act, 1947 (corresponding to sec. 19(1) of P.C. Act, 1988) is invalid as he was not the authority competent to remove him from his office. No material was placed before the Court to prove that C.M.O. is the appointing authority in respect of the appellant. On this ground, the Supreme Court set aside the conviction of the appellant.

(104)

- (A) P.C. Act, 1988 — Sec. 17**
- (B) Investigation — where illegal, use of statements of witnesses**

Illegal investigation does not render the statements recorded therein illegal and such witnesses can be cross-examined if they resile from such previous statements.

- (C) **Evidence — of accomplice**
- (D) **Evidence — of partisan witness**

Evidence of accomplice needs corroboration for conviction while no corroboration is necessary in respect of evidence of a partisan witness.

Bhanuprasad Hariprasad Dave vs. State of Gujarat, AIR 1968 SC 1323

The case was investigated by a Deputy Superintendent of Police, whereas under the Bombay State Commissioner of Police Act, 1959, the investigation should have been made by the Superintendent of Police. During the trial, the Special Judge directed a fresh investigation to the extent possible by a Superintendent of Police. In the course of the trial several prosecution witnesses had gone back on the statements given by them during investigation and with the permission of the Court, some of them were cross-examined with reference to their statements recorded during the first investigation by the Deputy Superintendent of Police.

The appellants contended before the Supreme Court that in view of the re-investigation the record of investigation made by the Deputy Superintendent of Police stood wiped out and therefore Madhukanta should not have been cross-examined with reference to the statement alleged to have been made by her during the first investigation. It was also contended that they were convicted solely on the basis of the testimony of Raman Lal, Deputy Superintendent of Police and Erulkar and Santramji, who were all interested witnesses and their evidence not having been corroborated by any independent evidence, the same was insufficient to base the conviction.

The Supreme Court held that it is true that the first investigation was not in accordance with law, but yet it is in no sense ‘non est’. Both the trial court and the High Court have accepted the evidence of Raman Lal and Dayabhai (Panch witness) in preference to that of Madhukanta that the first appellant was in possession of the post card on 18-2-63. This is essentially a finding of fact and the courts did not ignore any legal principle in coming to that conclusion.

The Supreme Court further held that it is now well settled by a series of decisions of the Supreme Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated

in material particulars, as regards the evidence of a partisan witness it is open to a court to convict an accused solely on the basis of that evidence, if it is satisfied that that evidence is reliable. In the instant case, the trial court and the High Court have fully accepted the evidence of Raman Lal, Deputy Superintendent of Police and Santramji and it was open to them to convict the appellant solely on the basis of their evidence.

(105)

(A) P.C. Act, 1988 — Sec. 7

(B) Trap — capacity to show favour

Capacity or intention to do the alleged act need not be considered for offence under sec. 161 I.P.C. (corresponding to sec. 7 of P.C. Act, 1988).

(C) P.C. Act, 1988 — Sec. 19

(D) Sanction of prosecution — under P.C. Act

Order sanctioning prosecution which shows that all material in regard to the alleged offence was considered fulfils the requirements of section 6 of Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988).

Shiv Raj Singh vs. Delhi Administration, AIR 1968 SC 1419

The appellant, a Police Officer, went to the residence of one Russel Nathaniel in Police uniform and accused him and his wife of disposing of the illegitimate child of Miss Eylene to one Roshan Lal. He also warned Nathaniels that if they wanted to save themselves they should pay him a bribe of Rs.1000. Nathaniel paid him Rs.90 and the appellant compelled Nathaniels to execute a document in writing that they would pay him Rs.700 later or go to prison. A trap was laid and seven currency notes of Rs.100 denomination given by Nathaniel were found in possession of the appellant. He was prosecuted and convicted under sections 161 I.P.C. and 5(2) of Prevention of Corruption Act, 1947 (corresponding to secs. 7, 13(2) of P.C. Act, 1988). The High Court maintained the conviction under both sections of law.

The appellant contended before the Supreme Court that the order of sanction for prosecution was bad in law as all the relevant papers and materials were not placed before the Deputy Inspector General of Police, the sanctioning authority, and that concealing of birth of an illegitimate child was not an offence

under any statute and if he had accepted money, it cannot be said that he obtained gratification for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person.

The Supreme Court held that the order of sanction recites that the Deputy Inspector General of Police "after fully and carefully examining the material before him in regard to the aforesaid allegation" considers that *prima facie* case is made against the appellant and that the order of sanction fulfils the requirements of section 6 of Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988).

The Supreme Court also held that when a public servant is charged under section 161 I.P.C. and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the court to consider whether or not the accused public servant was capable of doing or intended to do such an act. Upon facts which have been found by the High Court to be proved, there can be no doubt that the appellant was guilty of grossly abusing his position as a public servant within the meaning of section 5(1)(d) of Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(d) of P.C. Act, 1988) and thereby obtained for himself valuable thing or pecuniary advantage and the charge under that section is established.

(106)

- (A) **P.C. Act, 1988 — Sec. 19**
- (B) **Constitution of India — Art. 311(1)**
- (C) **Sanction of prosecution — under P.C. Act**

Where power of appointment or confirmation is conferred and vested in a lower authority subsequently, the authority which originally appointed the Government servant or a higher authority in rank alone will have the power to dismiss him from service for the purpose of Art. 311(1) of the Constitution.

Nawab Hussain vs. State of Uttar Pradesh, AIR 1969 ALL 466

The petitioner, a Sub-Inspector of Police, filed a writ petition before the Allahabad High Court for quashing the disciplinary proceedings on the ground that he was not afforded any reasonable opportunity to meet the case against him and that action taken against him was malicious, mala fide and for ulterior purposes.

The writ petition was dismissed. He then filed a suit for declaration that the order of dismissal passed by the Deputy Inspector General of Police was ultra vires of Art. 311(1) of Constitution as he was appointed as Sub-Inspector of Police by the Inspector General of Police and after successful probation he was confirmed by the Inspector General of Police as Sub-Inspector of Police but dismissed by a lower authority, the Deputy Inspector General of Police.

The State pleaded that the petitioner was no doubt appointed by the Inspector General of Police on probation but he was confirmed by the Deputy Inspector General of Police and as such he was the real appointing authority and the dismissal by the Deputy Inspector General of Police did not violate Art. 311 of Constitution. The State could not produce any satisfactory evidence to prove that the petitioner was confirmed by the Deputy Inspector General of Police as his record had been lost. The High Court observed that even if it be assumed for a moment that later on the power of appointment or confirmation was conferred and vested in the Deputy Inspector General of Police, it would not make any difference. In so far as the petitioner is concerned the fact is that he was appointed by the Inspector General of Police as a member of the Police Force and for the purpose of Art. 311(1), it would always be the Inspector General of Police or an authority higher in rank than him who will have the power to dismiss him from service. As such the order of dismissal by the Deputy Inspector General of Police violated Art. 311(1) and was void and ultra vires.

(107)

- (A) Departmental action and conviction**
- (B) Probation of Offenders Act**

Person released on probation under Probation of Offenders Act can be proceeded against on the basis of conduct leading to conviction but not for his conviction. Sec. 12 of the Probation of Offenders Act does not obliterate the misconduct of the official concerned and disciplinary authority is not precluded from proceeding under the Staff Regulations.

***Akella Satyanarayana Murthy vs. Zonal Manager, LIC of India, Madras,
AIR 1969 AP 371***

The petitioner was convicted under sec. 409 IPC but instead of being sentenced, he was directed to be released on probation of good conduct for a period of two years under sec. 4(1) of the Probation of Offenders Act, 1958. After the

conviction and release, the petitioner was dismissed from the service of the Life Insurance Corporation of India. The main challenge to the order before the High Court is that by reason of sec. 12 of the Probation of Offenders Act, 1958, the petitioner cannot be dismissed as that section specifically enacts that a person found guilty of an offence and dealt with under sec. 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

The High Court held that what sec. 12 of the Probation of Offenders Act has in view is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the official concerned. The disciplinary authority is not precluded from proceeding under Regulation 39(4) of the LIC Staff Regulations. There is a clear distinction between dismissing an official for his conduct and dismissing an official for his conviction. The order impugned shows as if it is a dismissal flowing from a conviction. The disciplinary authority did not deal with the official under Regulation 39(4)(i) but dismissed him because he was convicted of an offence under sec. 409 IPC. This, the disciplinary authority is precluded from doing under sec. 12 of the Probation of Offenders Act, 1958. The High Court held that the impugned order suffers from the said infirmity and set aside the order. The disciplinary authority is not however precluded from taking action under Regulation 39(4) of the Staff Regulations.

(108)

Witnesses — turning hostile

- (i) *Power of court to declare witness hostile, not limited to cases where there is any previous statement.*
- (ii) *Permission to cross-examine by itself, not enough to discredit the witness.*

Sahdeo Tanti vs. Bipti Pasin, AIR 1969 PAT 415

The application in revision is directed against an order of the Assistant Sessions Judge, permitting the prosecution to cross-examine a witness.

The High Court held that though the witness was only tendered before but not examined, still the court can declare him hostile and allow the party to cross-examine him. The power of court to declare witness hostile is not limited by sec. 154 Evidence Act to cases where there is any previous statement of the witness and from which he is alleged to have departed. Permission to cross-examine witness by itself is not enough to discredit the witness. A party can cross-examine even a witness tendered by it.

(109)

Termination — of officiating post

Reversion from officiating post on ground of unsuitability does not attach any stigma and does not attract provisions of Art. 311 of Constitution.

Union of India vs. R.S. Dhaha, 1969 SLR SC 442

The respondent who was a Upper Division Clerk in the Incometax Department was promoted as Inspector in an officiating capacity. Subsequently, he was reverted as his work was not considered satisfactory.

The Supreme Court held that a Government servant who is officiating in a post has no right to hold it for all time and holds it on the implied term that he will have to be reverted if his work was found unsuitable. A reversion on the ground of unsuitability is an action in accordance with the terms of which the officiating post is held and not a reduction in rank by way of punishment to which Art. 311 of Constitution could be attracted. In the instant cases, the order of reversion did not contain any express word of stigma attributed to the conduct of the respondent and, therefore, it cannot be held that it was made by way of punishment attracting Art. 311 of Constitution.

(110)

Termination — of temporary service

Termination simpliciter of a Temporary Government servant after threatening with disciplinary action does not attach stigma and does not attract the provisions of Art. 311 of Constitution.

Union of India vs. Prem Parkash Midha, 1969 SLR SC 655

The respondent was recruited as a temporary Junior Clerk. While officiating as Upper Division Clerk, he overstayed leave and did not report for duty. A notice was served requiring him to show cause why disciplinary action should not be taken for absenting himself from duty. The respondent submitted his explanation but no disciplinary action was taken. In exercise of the power under the Central Civil Services (Temporary Service) Rules, 1949, his services were terminated. The order was challenged by the respondent as ultra vires, illegal and ineffective.

The Supreme Court observed that the order did not purport to cast any stigma upon the respondent. Though a threat that disciplinary action would be taken against him was made, no disciplinary action as such was commenced. Any order which does not contain any express word of stigma attaching to the conduct of the employee could not be treated as an order of punishment under Art. 311 of Constitution.

(111)

- (A) Departmental action and prosecution**
- (B) Contempt of Court**

Pendency of Court proceedings does not bar disciplinary action or constitute contempt of court in the absence of order of court restraining continuance of the disciplinary proceedings.

Jang Bahadur Singh vs. Baij Nath Tiwari, AIR 1969 SC 30

The respondent was the Principal of Hirral Memorial Intermediate College, Bhaurauli and the appellant is the Manager of the College. The Managing Committee of the college resolved to take disciplinary action against the Principal and an order suspending him pending inquiry was passed by the Manager of the College. The Principal filed a writ petition in the High Court for quashing the suspension and obtained an ex parte order staying the operation of suspension which was, however, vacated three months later. Subsequently, he was served with a charge-sheet by the Manager and one of the charges was for misappropriation of scholarship amounts. Instead of submitting his explanation in respect of the charge, the Principal moved the High Court for committal of the Manager for contempt of Court. His contention was that the said charge was the subject matter of the pending writ petition and as such by launching a parallel disciplinary inquiry, contempt of court had been committed. The High Court accepted the contention and held the Manager guilty of contempt of Court.

The Manager filed an appeal in the Supreme Court. The Supreme Court allowed the appeal, set aside the judgment and order of the High Court and dismissed the petition filed under the Contempt of the Courts Act. It held that the pendency of the Court proceedings does not bar disciplinary action. The power of taking such action vested in the disciplinary authority. The initiation and continuation of disciplinary proceeding in good faith is not calculated to obstruct or interfere with the cause of justice in the pending court proceedings. The employee is free to move the court for an order restraining the continuance of the disciplinary

DECISIONS (112) & (113)

proceedings. If he obtains a stay order, a willful violation of the order would of course amount to contempt of Court. In the absence of a stay order, the disciplinary authority is free to exercise the lawful powers.

(112)

- (A) Reversion (non-penal)**
- (B) Rules — retrospective operation**

Where Government servants were reverted consequent on Rules being made with retrospective effect, the Rules made retrospectively and the reversion of the Government servants thereon were valid.

B.S. Vadera vs. Union of India, AIR 1969 SC 118

The petitioner joined service in the Railways as Lower Division Clerk and was promoted as Upper Division Clerk and further promoted as Assistant. His grievance was that while he was holding the post of Assistant, he was illegally and without any justification reverted as Upper Division Clerk. According to the Railway Board, the promotion made of the petitioner either as Upper Division Clerk in the first instance or later as Assistant was purely on temporary and ad hoc basis, pending the framing of the Railway Board's Secretariat Clerical Service (Re-organisation) Scheme, which was in contemplation, at the material time. The scheme was actually framed later and amended subsequently.

The Supreme Court held that there was no promotion on a permanent basis in the first instance as Upper Division Clerk and later as Assistant and the reversion consequent on the regular promotions and appointments made under the scheme was valid.

Further, the Supreme Court held that the rules made by the Railway Board with retrospective effect were valid.

(113)

Reversion — to parent State

Reversion of a Government servant by the Central Government to his parent State may amount to reduction in rank in certain circumstances attracting Art. 311 of Constitution.

Debesh Chandra Das vs. Union of India, 1969(2) SCC 158

The appellant was a member of the Indian Civil Service and was allotted to the State of Assam. In 1940, he came on deputation to the Government of India and became in turn Under Secretary and Deputy Secretary. In 1947, he went back to Assam where he held the post of Development Commissioner and Chief Secretary. In 1951, he again came to Government of India on deputation as Secretary, Public Service Commission. From 1955 till 1961, he was Joint Secretary to the Government of India and from 1961 to 1964, he was Managing Director, Central Warehousing Corporation. On 29-7-64, he was appointed Secretary to Government of India until further orders and this was approved by the Appointments Committee of the Cabinet. On 20-7-66, the Cabinet Secretary wrote to him that as a result of the examination of the names of those occupying top-level administrative posts with a view to ascertaining their capability to meet new challenges, the Government have decided that he should revert to his parent State or proceed on leave preparatory to retirement or accept some post lower than that of Secretary to Government. He represented his case to the Cabinet Secretary and the Prime Minister. On 7-9-66, he was informed that after considering his oral and written representation, the Government had decided that his services should be placed at the disposal of his parent State, Assam or in case he decided to proceed on leave preparatory to retirement, he was asked to inform. At the time of filing of writ petition he was appointed as Special Secretary under one of his juniors although he was next to the Cabinet Secretary in seniority.

The appellant treated these orders as reduction in his rank for the reasons that (i) the pay of an I.C.S. Secretary to Government of India is Rs.4000 p.m. and the highest pay in Assam for an I.C.S. is Rs.3500 p.m. and there being no equal post in Assam, his reversion to Assam meant a reduction in his emoluments and in rank, (ii) he held a 5-years' tenure post expiring on 29-7-69 but was wrongly terminated before the expiry of 5 years; there was a stigma attached to his reversion as was clear from the three alternatives which the letter of the Cabinet Secretary gave him; and (iii) this being the case, the order was not sustainable as the procedure under Art. 311(2) of Constitution was not followed. His appeal was dismissed by the Calcutta High Court.

In his appeal to the Supreme Court, he put forth the same contentions. The Government of India contended that the appellant was on deputation and the deputation could be terminated at any time; that the appointment, as is clear from the appointment order, was 'until further orders' and that he had no right to continue in the Government of India if his services were not required; and that his reversion to parent State did not amount either to any reduction in rank or a penalty. In the affidavit the Government stated that the performance of the petitioner did not

come to the standard expected of a Secretary to the Government of India and his representation was rejected by the Prime Minister in view of his standard of performance.

The Supreme Court held that the cadres for the Indian Administrative Service are to be found in the States only and there is no cadre in the Government of India. A few of these persons are intended to serve at the Centre and when they do so they enjoy better emoluments and status. In the States, they cannot get the same salary in any post as Secretaries are entitled to in the Centre. The appointments to the Centre are not in a sense of deputation. They mean promotion to a higher post. The only safeguard is that many of the posts at the Centre are tenure posts, those of Secretaries for five years and of lower posts for four years.

The Supreme Court pointed out that they had held again and again that reduction in rank accompanied by a stigma must follow the procedure of Art. 311(2). It is manifest that if this was a reduction in rank, it was accompanied by stigma. The Supreme Court was satisfied that there was a stigma attaching to the reversion and that it was not a pure accident of service, as seen from the letter of the Cabinet Secretary and the affidavit. The appellant was holding a tenure post and the words 'until further orders' in the notification appointing him as Secretary do not indicate that this was a deputation which could be terminated at any time. The fact that it was found to break into his tenure period close to its end must be read in conjunction with the three alternatives and they clearly demonstrate that the intention was to reduce him in rank by sheer pressure of denying him a Secretaryship. His retention in Government of India on a lower post thus was a reduction in rank. His reversion to Assam State was also reduction in rank. To give him choice of choosing between reversion to a post carrying a lower salary or staying in the Centre on a lower salaried post, was to indirectly reduce him in rank. He was being sent to Assam not because of exigency of service but definitely because he was not required for reasons connected with his work and conduct. The order was quashed as it was made without following the procedure laid down in Art. 311(2) of Constitution.

(114)

Inquiry — ex parte

Ex parte proceedings are justified where Government servant declines to take part in the proceedings.

Jagdish Sekhri vs. Union of India, 1970 SLR DEL 571

The petitioner was a clerk in the Headquarters Office of Northern Railway. He was placed under suspension on 21-7-65 and a memorandum of charges

consisting of 5 charges was issued on 17-9-65. The Inquiry Officer conducted the inquiry ex parte, as the petitioner did not attend the inquiry, and submitted his report. The Disciplinary Authority, after giving show cause notice, ordered his removal from service. Departmental appeal has been rejected. He filed a writ petition before the Delhi High Court.

The High Court observed that the charge sheet was sent to the petitioner through registered letters twice. The registered covers were received back as refused. Then a telegram was sent to the petitioner and on receipt of the telegram he appeared before the Inquiry Officer for inquiry. Again, he did not appear before the Inquiry Officer even though he was informed of the date of conducting the inquiry. Thereupon, ex parte proceedings were taken against him and he was removed from service. The High Court held that the petitioner deliberately refrained from participating in the inquiry and adopted an obstructionist attitude to the conduct of the proceedings. Though the petitioner did not in terms refuse to participate, his conduct was tantamount to his declining to take part in the proceedings. It is noteworthy that he did not even file a written reply to the charge sheet. Notice was given at every stage of the inquiry but the conduct of the petitioner was to stultify the inquiry by adopting an attitude which was far from commendable. All that was required in departmental inquiry was that a reasonable opportunity should be given and trying to serve the petitioner by registered post acknowledgment due was more than reasonable. If the petitioner chose to refuse service he must pay for the consequences.

(115)

- (A) Misconduct — gravity of
- (B) Penalty — quantum of
- (C) Court jurisdiction

There can be no precise scale of graduation in order to arithmetically compare the gravity of one misconduct from the other. Reasons which induce punishing authority are not justiciable; nor is the penalty open to review by Court.

Bhagwat Parshad vs. Inspector General of Police, AIR 1970 P&H 81

The petitioner, a Police Constable, was found drunk when he was off duty and was dismissed from service as a result of disciplinary proceedings. The punishment was challenged as being too severe and disproportionate to the misconduct on the ground that it was a solitary instance of the petitioner having taken intoxicating drinks.

The Punjab & Haryana High Court dismissed the petition with the following observations: "Misconduct is a generic term and means to conduct amiss, to mismanage; wrong or improper conduct; bad behaviour; unlawful behaviour or conduct. It includes malfeasance, misdemeanour, delinquency and offence. The term misconduct does not necessarily imply corruption or criminal intent..... human conduct or behaviour cannot be graded and there can be no precise scale of graduation in order to arithmetically compare the gravity of one from the other." The High Court added: "As observed by the Supreme Court in State of Orissa vs. Vidya Bhushan, AIR 1963 SC 779 (786), the court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induced the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court."

(116)

Inquiring authority — reconstitution of Board

Reconstitution of Board of Enquiry by replacing one of the members does not vitiate the enquiry.

General Manager, Eastern Rly. vs. Jawala Prosad Singh, 1970 SLR SC 25

The respondent was Treasure Guard in the Eastern Railway. A charge-sheet was issued to the respondent and an Enquiry Committee consisting of three persons was constituted to enquire into the charges. After some of the witnesses had been examined by the Committee, one of the members was transferred and another was appointed in his place. On the basis of the Committee's findings holding him guilty of the charges, he was dismissed. The High Court took the view that the proceedings are vitiated by violation of principles of natural justice as the persons who gave the findings were not the identical persons who had heard the witnesses in respect of a part of the evidence.

The Supreme Court reversed the above ruling and held that a change of personnel in the Enquiry Committee after the proceedings were begun and some evidence was recorded cannot make any difference to the case of the railway servant as the record will speak for itself and it is the record consisting of the documents and oral evidence as recorded which would form the basis of the report of the Enquiry Committee. When the disciplinary authority does not hear the evidence and is guided by the record of the case, the demeanour of a particular witness when giving evidence cannot influence the mind of the disciplinary authority in awarding the punishment.

(117)**Disciplinary proceedings — initiation of**

Disciplinary proceedings need not be initiated and conducted by the appointing authority. The protection guaranteed in Art. 311(1) of Constitution is only that final order of removal or dismissal cannot be passed by an authority lower in rank to the appointing authority.

State of Madhya Pradesh vs. Sardul Singh, 1970 SLR SC 101

The respondent was a Sub-Inspector of Police, whose appointing authority was the Inspector General. A departmental inquiry was initiated against him by the Superintendent of Police, who conducted the inquiry in the prescribed manner, came to the conclusion that he was guilty of the charges and recommended his dismissal and sent the records to the Inspector General of Police. The Inspector General of Police asked the respondent to show cause and after considering it ordered his dismissal.

The respondent's contention that the Superintendent of Police was not competent to initiate or conduct the inquiry as he had been appointed by the Inspector General of Police was accepted by the High Court which quashed the order on the ground that the inquiry was without authority and against the mandate of Art. 311(1) of Constitution.

This view was over-ruled by the Supreme Court which held that Art. 311(1) does not require that the authority empowered to dismiss or remove an official should itself initiate or conduct the inquiry preceding his dismissal or removal or even that the inquiry should be at his instance. The only right guaranteed to a civil servant under this provision is that he should not be removed or dismissed by an authority lower in rank to the appointing authority.

(118)**(A) Evidence — defence evidence**

When opportunity of tendering evidence is given by Inquiring Officer but not availed of by charged officer, inquiry is not vitiated.

(B) Court jurisdiction

When order of dismissal is passed by competent authority after inquiry, court is not concerned to decide whether the evidence before that authority justified the order.

Kshirode Behari Chakravarthy vs. Union of India, 1970 SLR SC 321

The appellant was proceeded against on certain charges and at the beginning of the enquiry he wanted to tender some documents and examine some witnesses in his defence but later on he informed the Inquiring Officer by a written communication that he would not tender any evidence in his defence. The charges were held as proved and he was dismissed, by an order passed by the Collector of Customs, Shillong. Before the Court, he urged that he was not given any opportunity of tendering his evidence and examining witnesses in his defence.

The Supreme Court ruled that when the opportunity of tendering evidence was given but was not availed of by the delinquent officer, the enquiry is not vitiated and when the enquiry itself is not vitiated, the Court is not concerned whether the evidence before the disciplinary authority justified the order.

(119)

Termination — of temporary service

When temporary employee has given proper notice under the relevant rules terminating his contract of service with Government, it is not open to Government to suspend him and proceed against him.

V.P. Gindroniya vs. State of Madhya Pradesh, 1970 SLR SC 329

The appellant was a probationary Naib Tahsildar who had been appointed temporarily. The Commissioner of Raipur Division ordered an enquiry against him and placed him under suspension in 1961. This order was revoked by the State Government later on. The State Government also ordered a departmental enquiry against him and placed him under suspension and issued a show cause notice on 1-8-64. But before this date, i.e., on 6-6-64 he had given a notice to the Government terminating his services and this notice was in accordance with the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules. He challenged the action of the State Government in proceeding against him and placing him under suspension on the ground that he had ceased to be their employee.

The Supreme Court ruled that the notice given by him terminating his services satisfied all the requirements of the Rules and hence he ceased to be in Government service with effect from the date of the notice and it was not open to the Government to take disciplinary action against him. The Supreme Court observed that the appellant had intimated that any amount payable by him to the Government under the proviso to rule 12(a) may be forfeited from the amounts due to him from the Government and considerable amount must have been due to him towards his salary during the period of suspension and held that the High Court was wrong in holding that the notice in question did not comply with the requirements of the said rules.

(120)

- (A) Departmental action and adverse remarks**
- (B) Witnesses — of prosecution, non-examination of**

Where a departmental inquiry was based on adverse confidential reports and the authors of the confidential reports were not examined during the inquiry, it was held that it amounts to denial of reasonable opportunity.

State of Punjab vs. Dewan Chuni Lal, 1970 SLR SC 375

The respondent was Sub-Inspector of Police in the State of Punjab. A departmental inquiry was started against him on the basis of adverse confidential reports. The respondent was dismissed from service as a result of this inquiry. The authors of confidential reports were not examined during the inquiry.

The Supreme Court held that it is impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the inquiry officer. It is clear that if the inquiry officer had summoned atleast those witnesses who were available and who could have thrown some light on the reports made against the respondent, the report might well have been different. Charges based on the reports for the years 1941 and 1942 should not have been leveled against the respondent.

The Supreme Court further held that refusal of the right to examine witnesses who had made general remarks against respondent and were available for examination at the inquiry amounted to denial of reasonable opportunity of showing cause against the action.

(121)

- (A) **Compulsory retirement (non-penal)**
- (B) **Public interest**
- (C) **Principles of natural justice — area of operation**
 - (i) *Compulsory retirement does not have evil consequences and rules of natural justice cannot be invoked.*
 - (ii) *Operation of public interest in passing orders of compulsory retirement, explained.*
 - (iii) *Rules of natural justice operate only in areas not covered by law validly made. They cannot be used to import an opportunity excluded by legislation.*

Union of India vs. Col. J.N. Sinha, 1970 SLR SC 748

The first respondent joined the post of Extra Assistant Superintendent in the Survey of India Service in 1938. Later he was taken into Class I Service of the Survey of India and he rose to the post of Deputy Director. He also officiated as Director. On 13-8-69, the President of India issued an order compulsorily retiring him. No reasons were given in the order. The appellant challenged the order in the High Court. The failure on the part of the authority to give opportunity to show cause was held by the High Court to have amounted to a contravention of the principles of natural justice.

The Supreme Court held that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. They can operate only in areas not covered by any law validly made. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read with the concerned provision the principles of natural justice.

F.R. 56(i) does not in terms require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. It says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. If that authority bonafide forms that opinion the correctness of that opinion

cannot be challenged before courts, though it is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

Compulsory retirement does not involve any evil consequence. A person retired under F.R. 56(i) does not lose any of the rights acquired by him before retirement. The rule is not intended for taking any penal action against Government servants. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organizations, there is good deal of dead wood. It is in public interest to chop off the same.

(122)

Judicial Service — disciplinary control

- (i) *Inquiry held under the authority of High Court alone can form foundation for any punishment that may be imposed on a judicial officer. Governor has no power to order such inquiry or to empower any person to hold such inquiry.*
- (ii) *Punishment of compulsory retirement is included in penalty of removal from service and could be imposed on a Judicial officer only by the appointing authority, the Governor, consistent with Art. 311(1) of Constitution.*

G.S. Nagamoti vs. State of Mysore, 1970 SLR SC 911

The appellant was working as the Principal Subordinate Judge in Bangalore. A preliminary enquiry was held by a High Court Judge and on the basis of the report, the Chief Justice directed that the Governor may be moved

to appoint a named Judge as the Specially Empowered Authority to hold departmental enquiry against the judicial officer, and in pursuance of that direction, the Registrar addressed the Government, and the Governor purporting to act under rule 11 of the Mysore Civil Services (CCA) Rules, 1957 specially empowered the Judge named in the Registrar's letter to hold a disciplinary proceedings against the judicial officer. The Enquiry Authority recommended as punishment, reduction in rank and withholding of promotion. The Governor after considering the report, directed compulsory retirement of the officer.

The Supreme Court held that the Enquiry Judge cannot be held to be appointed by the High Court and the enquiry held cannot be regarded as a recommendation of the High Court. Under those proceedings, disciplinary action against a judicial officer and the appointment of the Specially Empowered Authority to hold an enquiry against a judicial officer are matters to be dealt with by the Full Court itself and the Chief Justice is not empowered to make such appointment. The power conferred on the Chief Justice under rule 6 of Chapter III of the Rules of the High Court of Mysore, 1959 is only in regard to judicial work and not administrative matters.

The Supreme Court further held that the report of the enquiry was not considered by the High Court. The High Court itself is competent to impose penalties other than dismissal or removal from service; it is only when the High Court considers that the appropriate penalty against the judicial officer is dismissal or removal from service that the High Court need recommend to the Governor to impose such penalty. Under the Mysore Civil Services (CCA) Rules, compulsory retirement is not one of those punishments which the High Court can impose. But, the Governor can impose it under rule 9(1) of the Rules. The conferment of this power on the Governor does not impair the control which is vested in the High Court under Art. 235 of Constitution.

(123)

(A) Principles of natural justice — area of operation

Rules of Natural Justice operate only in areas not covered by statutory rules and they do not supplant the law but only supplement it.

(B) Principles of natural justice — bias

There must be a reasonable likelihood of bias. Mere suspicion of bias is not sufficient. Association of the official with the selection for which he was also a candidate

was violative of the principle that a person should not be a judge in his own cause.

A.K. Kraipak vs. Union of India, AIR 1970 SC 150

The petitioners were senior officers of the Forest Department of the Government of Jammu and Kashmir. They were aggrieved on the ground that they had been superseded in the matter of selection for All India Forest Service and that a candidate seeking selection to the Service, Sri Naqishbund, was a member of the Selection Board and his name was placed at the top of the list of officers finally selected. The respondents contended that when his own case was considered by the Selection Board, Sri Naqishbund dissociated himself from the proceedings of the Board, but admitted that he participated in the proceedings when the cases of other officers, who were his rivals in the matter of selection were being considered and he was a party to the preparation of list of selected candidates in order of merit. It was against this background that the question whether the selection was violative of natural justice and was vitiated on account of bias against the petitioners was considered.

The Supreme Court observed that “the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it” and “what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.” On the question of bias, they felt that “a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.”

After cautioning themselves as above, the Supreme Court felt that in this case the association of Sri Naqishbund with the selection for which he was also a candidate was not proper. At every stage of his participation in the deliberations of the Selection Board, there was a conflict between his interest and duty. It was in his interest to keep out his rivals in order to secure his position and he was also interested in safeguarding his position while preparing the select list. Under such circumstances it is difficult to believe that he could have been impartial. The well-established principle of natural justice that a person should not be a judge in his own cause was violated in this case.

(124)

Suspension — coming into force

Order of suspension when once sent out takes effect from the date of communication / despatch irrespective of date of actual receipt.

State of Punjab vs. Khemi Ram, AIR 1970 SC 214

The respondent was an Inspector of Co-operative Societies, Punjab and was on deputation as Assistant Registrar in Himachal Pradesh. While so serving there, he was charge-sheeted by the Registrar, Co-operative Societies, Punjab in certain matters which occurred while he was working under the Punjab Government. On 16-7-58, he was granted 19 days' leave preparatory to retirement by the Himachal Pradesh Government. The Punjab Government by its telegram dated 25-7-58 informed the Government of Himachal Pradesh to cancel the leave and direct the respondent to revert to Punjab Government immediately.

The Punjab Government sent a telegram to the respondent at his own address on 31-7-58 stating that he had been suspended from service with effect from 2-8-58 and also issued a charge sheet on the same date. The respondent sent a representation to the Registrar, Co-operative Societies, Punjab on 25-8-58 that he had retired from service on 4-8-58 and that the order of suspension, which he received after that date, and the order to hold an inquiry were both invalid.

A departmental inquiry was held against the respondent and he was dismissed from service by order dated 28-5-60. The respondent challenged the order on the ground that the said inquiry was illegal as by the time it was started, he had already retired from service and the order of suspension sought to be served on him by telegram dated 31-7-58 was received by him after his retirement on 4.8.58 and, therefore, it could not have the effect of refusal to permit him to retire.

The Supreme Court held that where a Government servant, being on leave preparatory to retirement, an order suspending him is communicated to him by the authority by sending a telegram to his home address before the date of his retirement, the order is effective from the date of communication and it is immaterial when he actually receives the order. The ordinary meaning of the word 'communicate' is to impart, confer or transmit information. It is the communication of the order which is essential and not its actual receipt by the officer concerned and such communication is necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such authority and,

therefore, there would be no chance whatsoever of its changing its mind or modifying it. The word 'communicate' cannot be interpreted to mean that the order would become effective only on its receipt by the concerned servant unless the provision in question expressly so provides. Actually knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of certain consequences. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.

(125)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — appreciation of evidence

Appreciation of evidence and rejection of defence plea in a trap case.

Jotiram Laxman Surange vs. State of Maharashtra, AIR 1970 SC 356

The accused, a secretary of a Gram Panchayat and also Talati was alleged to have taken a certain sum as bribe from the complainant for substituting the name of the complainant as the owner of certain plot of land, in the revenue records. The accused raised the plea that the money, he took from the complainant was not by way of bribery but for purchasing the small savings certificates for the complainant and that he was authorised to collect the money for the purpose.

The Supreme Court held that the accused could be rightly convicted under sec. 161 IPC and sec. 5(1) (d) of P.C.Act, 1947 (corresponding to secs. 7, 13(1)(d) of P.C. Act, 1988) as the circumstances found against the accused were (i) that he informed complainant that his name was entered in the records although he kept the entries open and his plea that he did so for demanding money for Small Savings Certificates was wrong, (ii) no receipt was given by the accused to the complainant for the amount received, (iii) along with the amount he did not ask for an application signed by the complainant for purchase of certificates which was an essential thing, (iv) on the very first occasion when the accused was asked by his superior authorities he did not put forward the explanation that the alleged sum was received by him for purchase of certificates, (v) the sum was accepted not in the office or in the house of accused but at the house of a third person, (vi) there was nothing on the record to show that there was any enmity between the accused and the complainant. The Supreme Court held that the High Court was quite right in holding that the trial court went wrong in accepting the plea of the defence and in rejecting the prosecution case. There is no reason for interference with the judgment of the High Court.

(126)

Evidence — of previous statements

Use of earlier statements does not vitiate inquiry or constitute violation of rules of natural justice, if copies are made available to charged official and opportunity given to cross-examine witnesses.

State of Uttar Pradesh vs. Omprakash Gupta, AIR 1970 SC 679

The respondent was Sub-Division Officer of Uttar Pradesh State Government. He was placed under suspension, and after holding an inquiry, dismissed from service.

The Supreme Court held that all that courts have to see is whether the non-observance of any of the principles of natural justice is likely to have resulted in deflecting the course of justice. The fact that the statements of witnesses taken at the preliminary stage of enquiry were used at the time of formal inquiry does not vitiate the inquiry if those statements were made available to the delinquent officer and he was given an opportunity to cross-examine the witnesses in respect of those statements. It is clear from the records of the case that the respondent has been permitted to go through the statements recorded by the Deputy Commissioner and he prepared his own notes. He was supplied with the English translations of those statements and was permitted to cross-examine those witnesses in respect of those statements. It may be that there were some mistakes in the translations but those mistakes could not have vitiated the inquiry. The inquiry officer had given reasonable time to the respondent to prepare his case.

(127)

Consultation — with Anti-Corruption Bureau

Inquiry is not vitiated if consultations held with Anti- Corruption Branch and material collected behind the back of charged officer, not taken into account and inquiry officer is not influenced.

State of Assam vs. Mahendra Kumar Das, AIR 1970 SC 1255

The first respondent was a Sub-Inspector of Police in the State of Assam. A departmental inquiry was held and he was dismissed from service. His appeal before the Deputy Inspector General of Police and his revisions before the

Inspector General of Police and the State Government failed. The High Court allowed his writ petition on the ground that the enquiry officer had during the course of the inquiry consulted the Superintendent of Police, Anti-Corruption Branch and had taken into consideration the materials gathered from the records of the Anti-Corruption Branch without making the report of that Branch and the said material available to the respondent. The State appealed to the Supreme Court.

The Supreme Court held that it is highly improper for an inquiry officer during the conduct of an inquiry to attempt to collect any materials from outside sources and not make that information so collected available to the delinquent officer and further make use of the same in the inquiry proceedings. There may also be cases where a very clever and astute inquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer. If it is established that any material had been collected during the inquiry behind the back of the delinquent officer and such material had been relied on by the inquiry officer, without being disclosed to the delinquent officer, it can be stated that the inquiry proceedings are vitiated.

The Supreme Court held that in the present case however there was no warrant for the High Court's view that the inquiry officer took into consideration the materials found by the Anti-Corruption Branch. On the other hand, a perusal of the report showed that each and every item of charge had been discussed with reference to the evidence bearing on the same and findings recorded on the basis of such evidence. Therefore it could not be stated that the inquiry officer had taken into account the materials if any that he may have collected from the Anti-Corruption Branch. Nor was there anything to show, in the discussion contained in his report that the inquiry officer was in any way influenced by the consultations that he had with the Anti-Corruption Branch. If so, it could not be held that the inquiry proceedings were violative of the principles of natural justice.

(128)

Order — imposing penalty

Order, quasi-judicial in nature, must be a speaking order and record reasons.

Mahabir Prasad Santosh Kumar vs. State of Uttar Pradesh,
AIR 1970 SC 1302

The appellant held a license under the Uttar Pradesh Sugar Dealer's Licensing Order, 1962 to deal in sugar as whole sale distributors. The District Magistrate cancelled the order.

The Supreme Court, while disposing of an appeal against the order of the District Magistrate, held that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if order is subject to appeal.

(129)

- (A) Departmental action and conviction**
- (B) Departmental action — afresh, on conviction**
- (C) Double jeopardy**

Government have no power to hold departmental inquiry again on the basis of the conviction by criminal court, when a departmental inquiry was held earlier and Government servant was found guilty.

K. Srinivasarao vs. Director, Agriculture, A.P., 1971(2) SLR HYD 24

The petitioner was Agricultural Demonstrator in the State of Andhra Pradesh. He was placed under suspension and departmental inquiry was conducted against him and the penalty of censure awarded besides ordering recovery of the amount of loss incurred by the Government on account of nonobservance of certain rules by him. He was prosecuted in a criminal court and once again suspended pending disposal of the court case. He was convicted under section 409 I.P.C. and sentenced to imprisonment till the rising of the court and to pay a fine of Rs. 200. His appeal was dismissed by the Sessions Court.

The petitioner filed a writ petition before the High Court to direct the respondent to forbear from taking any action against him departmentally on the ground that no second inquiry was possible in law. The respondent contended that the department is entitled to proceed against the petitioner on the basis of the judgment of the criminal court.

The High Court observed that it is the conduct of the employee in the course of the discharge of his duties that gives rise to a cause of action either to make the departmental inquiry or to proceed against him in a competent criminal court for an offence under the Penal Code, but not the conviction per se that can be made the basis or cause of action for institution of an inquiry against the employee by the department. In other words the conviction of an employee in a criminal court would not give rise to a fresh cause of action for making a departmental inquiry. Where an employee has been convicted or acquitted by a criminal court of an offence under the Penal Code, there is no legal or constitutional bar on the same set of facts to the departmental inquiry being conducted against him after affording him reasonable opportunity as the departmental action is not a prosecution within the meaning of section 403 of Criminal Procedure Code and such an action would not amount to double jeopardy within the meaning of Art. 20(2) of Constitution.

Where there is a departmental inquiry against a public servant resulting either in exoneration of or infliction of penalty for any of the charges levelled against him, there can be no second departmental inquiry on the same set of facts unless there is any specific rule or law governing the service conditions of such an employee empowering the appointing authority or any one authorised by him to revise or order fresh inquiry. The petitioner is not liable to be proceeded against for the third time on the basis of the conviction by the criminal court for the same offence of misappropriation.

(130)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

A dismissed public servant does not need sanction of prosecution under P.C. Act for the reason that he is treated as a member of Central Civil Service for purpose of appeal or that appeal is pending against the order.

C.R. Bansi vs. State of Maharashtra, 1971 Cri.L.J. SC 662

The Supreme Court held that the expression in the explanation in Rule 23 of the Central Civil Services (CCA) Rules, 1957 that a 'member of a Central Civil Service' includes a person who has ceased to be a member of the service was restricted to that particular rule for giving the dismissed servant a right to prefer an appeal. In that view of the matter the Supreme Court agreed with the conclusion of the Special Judge that the appellant cannot invoke the aid of

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explanation for being treated as a public servant requiring sanction for his prosecution under sec. 6 of the Prevention of Corruption Act, 1947 (corresponding to sec. 19 of the P.C. Act, 1988).

The Supreme Court also held that the fact that the appeal against dismissal order is pending cannot make him a public servant.

(131)

Fresh inquiry / De novo inquiry

Rules do not provide for holding fresh inquiry for the reason that the inquiry report does not appeal to the disciplinary authority.

K.R.Deb vs. Collector of Central Excise, Shillong, 1971 (1) SLR SC 29

Enquiry was conducted thrice by different Inquiry Officers, all of whom exonerated the charged officer of the charges. Their inquiry reports, however, did not appeal to the disciplinary authority who ordered a fresh inquiry for the fourth time and punished him on the finding of guilty recorded by the Inquiry Officer.

The Supreme Court held that rule 15 Central Civil Services (CCS) Rules 1957 on the face of it provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some reason, the Disciplinary authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 for completely setting aside previous inquiries on the ground that the report of the Inquiry Officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. It seemed that punishing authority was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant. On the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant.

(132)

Plea of guilty

Admission of the charge by the charged employee in his statement of defense obviates the holding of an inquiry. The admission must be unconditional, unqualified and unambiguous. It must be born in mind that it is one thing to

politely deny the charge and beg pardon and quite another to unreservedly own once fault and throw himself at the mercy of the concerned authority.

Delinquent official admitting facts and bringing no evidence or cross-examining witnesses in a departmental inquiry amounts to a plea of guilty.

Chennabasappa Basappa Happali vs. State of Mysore, 1971(2) SLR SC 9

The appellant was a Police Constable in the Dharwar District. Departmental Inquiry was conducted on charges that he remained absent from duty without leave or permission, that he sent letters to superior officers intimating that he would go on fast for the upliftment of the country and that he did go on a fast. He was dismissed from service.

The appellant filed an appeal against the judgment of the High Court by which the appeal of the State Government was allowed and the order of dismissal of the appellant was confirmed. During the inquiry, in reply to questions put to him, he accepted the charges. The appellant contended before the Supreme Court that he admitted the facts but not his guilt.

The Supreme Court observed that they found no distinction between admission of the facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer, the indiscipline is fully established. The Supreme Court observed that the High Court was right when it laid down that the plea amounted to a plea of guilty on the facts on which the appellant was charged and expressed full agreement with the observation of the High Court. The Supreme Court also observed that this is a clear case of a person who admitted the facts and did not wish to cross-examine any witness or lead evidence on his own behalf. Accordingly the Supreme Court dismissed the appeal.

(133)

Charge — should be definite

Where charge is vague, indefinite and bare and statement of allegations containing material facts and particulars is not supplied to delinquent official, it amounts to denial of reasonable opportunity.

**Sarath Chandra Chakravarty vs. State of West Bengal,
1971(2) SLR SC 103**

The appellant was Acting Assistant Director of Fire Services and Regional Officer, Calcutta. A departmental inquiry was held and he was dismissed from service on 16-6-50. This is an appeal from a judgment of a Division Bench of the High Court reversing the judgment and decree of a single Judge.

The Supreme Court observed that each charge served on the delinquent official was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. The object is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The Supreme Court held that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charge being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him.

(134)

(A) Preliminary enquiry

*Preliminary enquiry is necessary before lodging of F.I.R.
and is in order.*

**(B) Subordinates having complicity — taking as
witnesses**

Public servant, a Head of Department, found actively responsible for directing commission of offences by his subordinates in a particular manner cannot take the plea that subordinates must also be prosecuted as co-accused with him.

(C) Amnesty — granting of

Granting of amnesty to persons who were to be examined as prosecution witnesses, not within the discretion of the Police.

P. Sirajuddin vs. State of Madras, AIR 1971 SC 520

The appellant was Chief Engineer, Highways & Rural Works, Madras. He attained the age of 55 years on 14-3-64 on which date he was asked to hand over charge of his office. A case was registered by the Vigilance and Anti-Corruption Department, Madras and a charge sheet was filed against him in the court of

Special Judge, Madras on 5-10-64 after obtaining sanction to prosecute under section 5(2) of Prevention of Corruption Act, 1947 and 165 I.P.C.(corresponding to secs. 13(2) and 11 of P.C. Act, 1988).

Before the Supreme Court, the appellant urged that there had been a violent departure from the provisions of the Criminal Procedure Code in the matter of investigation and cognizance of offences as to amount to denial of justice, that the investigation and prosecution were wholly mala fide and had been set afoot by his immediate junior officer, who was related to the Chief Minister and that the appellants' case was being discriminated from those of others, who though equally guilty according to the prosecution case were not only not being proceeded against but were promised absolution from all evil consequences of their misdeeds because of their aid to the prosecution.

The Supreme Court observed that before a public servant, whatever be his status, is publicly charged to serious misdemeanour or misconduct and a First Information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report even if baseless would do incalculable harm not only to the officer but to the department. If the Government had set up a Vigilance and Anti-Corruption Department and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry but such enquiry must proceed in a fair and reasonable manner. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone to take down statements of persons involved in the matter and to examine documents. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to, the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter, further inquiry should be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.

The Supreme Court also observed that the appellant was not singled out from a number of persons who had aided the appellant in the commission of various acts of misconduct and that they were really in the position of accomplices. The prosecution might have felt that if the subordinate officers were joined along with the appellant as accused, the whole case may fail for lack of evidence. If it be a fact that it was the appellant, who was the Head of the Department, actively responsible for directing the commission of offences by his subordinates in a particular manner, he cannot be allowed to take the plea that unless the subordinates

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were also joined as co-accused with him the case should not be allowed to proceed.

The Supreme Court further held that the giving of amnesty to two persons who were sure to be examined as witnesses for the prosecution was highly irregular and unfortunate. Neither the Cr.P.C. nor the Prevention of Corruption Act recognises the immunity from prosecution given under the assurances and the grant of pardon was not in the discretion of police authorities.

(135)

Evidence — tape-recorded

Tape-recorded conversation is primary and direct evidence admissible as to what is said.

N. Sri Rama Reddy vs. V.V. Giri, AIR 1971 SC 1162

This is an Election petition in which the petitioners alleged that offences of undue influence at the election had been committed by the returned candidate and by his supporters with the connivance of the returned candidate. The petitioners sought permission from the court to play the tape recording of the talk that took place between him and the witness for being put to the witness when he denied certain suggestions made to him.

The Supreme Court held that the tape itself is primary and direct evidence admissible as to what has been said and picked up by the recorder. A previous statement, made by a witness and recorded on tape, can be used not only to corroborate the evidence given by the witness in court but also to contradict the evidence given before the court as well as to test the veracity of the witness and also to impeach his impartiality. Thus, apart from being used for corroboration, the evidence is admissible in respect of other three matters under section 146(1), exception 2 to section 153 and section 155(3). The weight to be given to such evidence is, however, distinct and separate from the question of admissibility.

(136)

Compulsory retirement (non-penal)

When order of compulsory retirement contains no words throwing any stigma on Government servant, court is not to discover stigma from files.

State of Uttar Pradesh vs. Shyam Lal Sharma, 1972 SLR SC 53

The respondent, a Head Constable of Mathura District Police, was compulsorily retired after completing 25 years of service. The High Court decided the case in his favour coming to the conclusion that the order of compulsory retirement amounted to punishment.

The Supreme Court held that an order of compulsory retirement on completion of 25 years of service in public interest does not amount to an order of dismissal or removal and is not in the nature of a punishment. It further held that when the order of compulsory retirement itself did not contain any word which threw a stigma on the Government servant, there should not be any enquiry by the courts into the Government files with a view to discover whether any remark amounting to stigma could be found in the files.

(137)

(A) Departmental action and acquittal

A typical instance of departmental action, taken after acquittal in court prosecution. Government servant found guilty for misconduct of obtaining loan in contravention of Conduct Rules, where prosecution for receiving illegal gratification ended in acquittal.

(B) Evidence — of previous statements

Earlier statements recorded in court proceedings cannot be relied upon in departmental inquiry, when those witnesses are not produced for cross-examination.

(C) Evidence — standard of proof

Departmental inquiry is not a criminal trial and standard of proof is only preponderance of probability and not proof beyond all reasonable doubt.

(D) Court jurisdiction

(E) Penalty — quantum of

Court not concerned to decide whether the punishment imposed on the charges held proved by the department, provided it is justified by the Rules, is appropriate having regard to the misdemeanour ultimately established.

Union of India vs. Sardar Bahadur, 1972 SLR SC 355

The respondent was employed as a Section Officer in the Ministry of Commerce and Industry. On 23-6-56, Sri Nand Kumar, who had applied to the

Ministry on 14-6-56 for licences to set up some steel re-rolling mills handed over a cheque to him for Rs.2500 in favour of Sri Sundaram, Deputy Secretary in the Ministry. On the reverse of the cheque, there was an endorsement in the handwriting of the respondent, "Please pay to Shri Sardar Bahadur" and beneath it there was a signature purporting to be that of Sri Sundaram. There was another endorsement on the cheque in the hand-writing of the respondent, "Please collect and credit the amount to my account" and the amount of the cheque was credited to the account of the respondent.

He was prosecuted by the Special Police Establishment under the Prevention of Corruption Act and was acquitted. He was then proceeded against on the charges (a) that he failed to inform Sri Sundaram that a cheque in his name had been issued by Sri Nand Kumar; (b) that he failed to inform Sri Sundaram that a cheque bearing Sri Sundaram's signature had been handed over to him by Sri Nand Kumar and (c) that he borrowed the amount of Rs.2500 representing the amount of the cheque from Sri Nand Kumar without the previous sanction of Government and thus contravened rule 13(5) of the Central Civil Services (Conduct) Rules, 1955 which prohibits a Government servant from borrowing money from a person with whom he is likely to have official dealings. The Inquiring Officer exonerated him of the first two charges but held that the third charge was proved.

The disciplinary authority, however, held that all the charges were proved and compulsorily retired him from service. On a writ petition filed by the respondent, the Delhi High Court quashed the order. An appeal on behalf of the Government was preferred before the Supreme Court.

The Supreme Court upheld the findings of the High Court in respect of the first two charges. The appellant urged that the Inquiring Officer while exonerating the respondent of the first two charges had erred in rejecting copies of the statement of witnesses which had been recorded by the Court in the criminal case and if these statements had been taken into account, the guilt of the respondent with regard to those charges also would have been proved. The Supreme Court did not agree with this view and held that these statements recorded in the Court should not have been admitted in evidence when those witnesses were not produced for cross-examination by the respondent in the departmental inquiry.

As regards the third charge, the view taken by the High Court was that at the time when he accepted the amount of the cheque, Nand Kumar's applications for licences were pending not in his Section but in some other Section and hence it could not be said that he was likely to have official dealings with him.

The Supreme Court took the view that the words "likely to have official dealings" take within their ambit the possibility of future dealings also". A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt." It had come out in evidence that after the applications had been processed in that Section, they would be sent to the Section under the respondent's charge and Nand Kumar knew that the respondent would be dealing with those applications. The respondent was atleast expected to know that in due course he would be dealing with those applications. These circumstances reasonably support the conclusion that he is guilty of the charge of placing himself under pecuniary obligation to a person with whom he was likely to have official dealings and when this is the case it is not the function of the High Court acting under Art. 226 to review the evidence and arrive at an independent finding.

The Supreme Court observed that the punishment of compulsory retirement was imposed upon the respondent on the basis that all the three charges had been proved but now it is found that only the third charge has been proved, and considered the question whether the punishment of compulsory retirement be sustained even though the first two charges have not been proved. The Supreme Court held that if the order of punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established. The Supreme Court reversed the judgment under appeal and held that the order imposing the penalty of compulsory retirement was not liable to be quashed.

(138)

Principles of natural justice — bias

When Government servant alleges mala fides, he should go to civil court for damages and not on writ to High Court.

***Kamini Kumar Das Chowdhury vs. State of West Bengal,
1972 SLR SC 746***

The appellant, who was a Sub Inspector of Police, was charged with disobedience of orders to remain at the post of duty, failure to carry out a search properly and giving away information of the proposed searches to the offending members of the public so that the purpose of the search was defeated. After a

departmental inquiry, he was dismissed from service. His writ petition before the High Court was also dismissed.

Before the Supreme Court he asserted that the entire proceeding against him was the result of bias and ill-will against him on the part of the Deputy Commissioner who was offended with him for taking action against some anti-social elements who were friendly with the Deputy Commissioner. The Supreme Court held that the question whether there was any bias, ill-will or mala fides on the part of the Deputy Commissioner was largely a question of fact and it is not the practice of the courts to decide such disputed questions of fact in proceedings under Art. 226 of Constitution and other proceedings are more appropriate for decision of such questions. If the appellant wanted to prove that there was any substance in his allegation of mala fides, he should go to an ordinary Civil Court for relief by way of declaration of damages.

(139)

Suspension — power of borrowing authority

Borrowing authorities like the Food Corporation of India have full powers of appointing authority for suspension of Central Government servants lent to them.

R.P. Varma vs. Food Corporation of India, 1972 SLR SC 751

The services of the appellant, who was Central Government employee, were lent to the Food Corporation of India and during his employment in the Corporation he was suspended by the Corporation authorities. It was contended that he continued to be in the service of the Government of India and could not be placed under suspension by the authorities of the Corporation.

According to rule 20(1) of the Central Civil Services (CCA) Rules, 1965, where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or a local or other authority, the borrowing authority shall have the power of the appointing authority for the purpose of placing such Government servant under suspension. The Supreme Court ruled that the Corporation can take recourse to this provision in the rules if it can be held to come within the definition of "other authority". They felt that this expression "other authority" in rule 20 has the same sense as the expression has in Art. 12 of Constitution. The Food Corporation carrying out commercial activities would come under other authorities as contemplated by Art. 12. In other words, the expression "other authority" appearing in rule 20 of the Central Civil Services (C.C.A.) Rules would extend to a body corporate like the Food Corporation of India.

(140)

Evidence — of conjectures

Charge cannot be sustained on mere conjectures in the absence of evidence.

State of Assam vs. Mohan Chandra Kalita, AIR 1972 SC 2535

The respondent was a Sub-Deputy Collector who was distributing compensation to the agriculturists for which he had to travel a long distance from his headquarters and he found it difficult to obtain conveyance. On a particular day, he arrived at the village in a school bus and distributed compensation to some of the villagers. He told the rest that he would come there the next day if he was able to get some conveyance; otherwise they should go to his headquarters to receive the amount. The villagers felt that it would be inconvenient for them to go to his headquarters and suggested that he should come in a taxi for which they would pay the hire charges. The next day the respondent went to the village in a taxi and started distributing the amount. It was alleged that some collection was being made from the villagers who had received compensation, towards hire carriage and the A.D.M., who had gone there on a surprise visit on receipt of a complaint, recovered some amount from one Taimudin along with a list of persons from whom he had collected the amount. Taimudin told the A.D.M. that he had collected the amount to pay for the hire carriage of the Sub-Deputy Collector and following this an inquiry was held against him.

During the inquiry, though it was stated that some amount had been collected for this purpose, yet none of the witnesses stated that the respondent himself had authorised them to collect this amount. On the other hand, the Inquiring Officer recorded evidence on allegations extraneous to the charge and which had not been included in the statement of imputations, namely, that certain amounts were being collected as fee to be paid to the respondent and that he had distributed amounts less than what each person was to receive.

The Supreme Court ruled that there was no conclusive evidence that the respondent himself had authorised collections on his behalf while on the other hand, recording evidence on extraneous matters prejudiced the Inquiring Officer as a result of which his finding became vitiated.

(141)

Evidence — defence evidence

Failure of Inquiry Officer to examine witnesses produced by Government servant merely on the ground that they were not present when the alleged mis-conduct was committed amounts to denial of reasonable opportunity and attracts Art. 311(2) of Constitution.

Mohd. Yusuf Ali vs. State of Andhra Pradesh, 1973(1) SLR AP 650

The appellant was posted as Special Levy Inspector at a check-post which was set up for regulating the movement of rice. It was alleged that on 31-1-66 at 2 A.M. two lorries loaded with rice passed the check-post and the appellant who was present at the check-post allowed the lorries to pass after accepting a bribe of Rs.200 from one Kishan Rao, who was following the lorries. On receipt of a complaint, the Tahsildar concerned visited the check-post and found that the appellant had not entered the movement of the lorries in the register. Proceedings were initiated against him and the Inquiry Officer held the charges as proved and the appellant was removed from service. Having lost his case before the appellate authority as well as the civil court, the appellant approached the Andhra Pradesh High Court.

Before the High Court, it was urged on his behalf that he had furnished a list of nine witnesses whom he wished to examine in his defence but the Inquiry Officer did not allow him to produce them on the ground that they were not present on the spot when the alleged incident took place. One of the nine witnesses cited by him was Kishan Rao from whom he had allegedly accepted the bribe. The High Court held that the Inquiry Officer's refusal to examine the witnesses cited by him merely because he thought that they were not present on the spot when the incident took place was not in order. It was not clear from the record of enquiry on what material the Inquiry Officer came to the conclusion that they were not present at the spot. The appeal was therefore allowed quashing the order passed in the proceeding.

(142)

Suspension — administrative in nature

Subordinate passing order of suspension at the instance of superior authority, not bad, where both the subordinate and the superior authority are competent. Order of suspension is an administrative order and not a quasi-judicial order.

M. Nagalakshmiah vs. State of Andhra Pradesh, 1973(2) SLR AP 105

The petitioners, officials of Department of Agriculture, filed the petitions to quash the proceedings placing them under suspension.

The Andhra Pradesh High Court held that when superior authority also has the same power as his subordinate has in any case, in administrative matters, the superior authority instead of acting itself can direct such inferior authority to act. Even if it is considered that the subordinate authority acted at the instance of the superior authority, it would not be bad because the superior authority itself had such power and it cannot be said that the direction was given by an authority which was "not entrusted with the power to decide". This would be so in administrative matters. It is not a case of quasi-judicial exercise of discretion. In administrative matters, the decision cannot be said to be bad in law.

The order of suspension cannot but be an administrative order. It may be that from such an order of suspension some evil effects follow and the officer suspended thereby is affected, but that would not make an order a quasi-judicial order. There is ample authority to hold that such an order is an administrative order. Both the authorities superior as well as subordinate, if they have concurrent power to exercise administrative discretion, then even if the inferior authority purports to exercise the discretion at the behest of the superior authority, such an exercise of discretion would not be bad in law.

(143)**(A) Written brief**

Failure to furnish copy of written brief of Presenting Officer to charged Government servant constitutes denial of reasonable opportunity and renders proceedings invalid.

(B) Inquiry report — enclosures

Entire copy of Inquiry Report should be furnished to the charged officer, together with its enclosures.

Collector of Customs vs. Mohd. Habibul Haque, 1973 (1) SLR CAL 321

The respondent was a Preventive Officer Gr.II in Calcutta Customs. A departmental inquiry was held. After the evidence was closed in the inquiry proceeding, on the direction of the Inquiry Officer, written brief containing the arguments was filed by the respondent with copy to the other side. The Presenting Officer also filed a written brief containing the arguments of the prosecution but

without any copy to the respondent. The Inquiry Officer submitted his report with a finding holding the charges as proved and the Disciplinary Authority agreeing with the finding of the Inquiry Officer and giving the show cause notice, imposed the penalty of dismissal from service.

The Calcutta High Court held that the requirements of rules and principles of natural justice demand that the respondent should have been served with a copy of the written brief filed by the Presenting Officer even though service of a copy is not expressly laid out in rule 14(19) of the Central Civil Services (CCA) Rules, 1965. Failure to supply such a copy has resulted in denial of reasonable opportunity to the respondent to defend himself and thus rendered the entire proceeding invalid.

Further, the High Court observed that the written brief was made part of the inquiry report and marked therein as Annexure C, but a copy of the written brief was not supplied to the respondent with the inquiry report even with show cause notice. Reference was made to the Supreme Court decision in the State of Gujarat vs. Tere desai: AIR 1969 SC 1294, where it was held that if the entire copy of the inquiry report is not supplied to the delinquent servant, the requirement of reasonable opportunity would not be satisfied. The High Court observed that on the authority of the proposition indicated in the Supreme Court decision, it must be held that non-supply of the copy of the written brief has also rendered from this stage the entire proceeding invalid.

(144)

(A) Suspension — effect of

An employee under suspension continues to be a member of the Service.

(B) Compulsory retirement (non-penal)

Order of compulsory retirement (non-penal) passed during the suspension of an officer is not a punishment and does not attract Art. 311 of Constitution.

D.D. Suri vs. Government of India, 1973(1) SLR DEL 668

The Vigilance Department started investigation against the appellant, an IAS Officer, on the allegation that he committed offences under the Prevention of Corruption Act and the State Government of Orissa placed him under suspension. After completion of the investigation, the Orissa Government requested the Government of India in 1968 to accord sanction for his prosecution. The Central Government did not issue sanction but on 18-12-71 passed an order

prematurely retiring him under rule 16(3) of the All India Services (D.C.R.B.) Rules in public interest.

The appellant challenged this order through a writ petition before the Delhi High Court. The points raised by him were that the order of premature retirement without revoking the order of suspension was null and void and the manner in which the Government of India had dealt with the case clearly indicates mala fides. It was urged that during the period of suspension the contract of service between the officer and the Government is also suspended and hence the Government had no right to terminate his services through retirement.

The High Court held that the appellant had been suspended merely with a view to prohibiting him from doing any work for Government and the suspension order therefore did not have the effect of suspending the contract of service. Besides, all that is required for the purpose of rule 16(3) of the All India Services (DCRB) Rules is that the employee should be a member of the All India Services, that he should have attained the age of 50 years or completed 30 years of service and the retirement should be in public interest. Thus, for the application of this rule, it is immaterial whether the employee is in active service or is on leave or is on deputation or is under suspension, as under all these contingencies he continues to be a member of the Service. In fact, rules 12(i), 12(iii) and 6(2) expressly contemplate the retirement of a member of the Service while under suspension. Considering all this, retirement of a member of the Service under rule 16(3) while he is under suspension is legally competent. Since the retirement was ordered in public interest, it did not amount to a punishment.

(145)

Penalty — minor penalty, in major penalty proceedings

Minor penalty can be imposed without holding inquiry where major penalty proceedings are initiated.

I.D. Gupta vs. Delhi Administration, 1973(2) SLR DEL 1

The petitioner was an Assistant Gram Ekai Organiser in the Directorate of Industries of Delhi Administration. Major penalty proceedings were initiated against the public servant under rule 14 of the Central Civil Services (CCA) Rules, 1965. On receipt of a detailed statement of defence in reply to the charge-sheet for major penalty proceedings, the disciplinary authority was of the opinion that imposition of major penalty on the public servant, was not justified and that imposition of a minor penalty would meet the ends of justice. The disciplinary authority, therefore, imposed a minor penalty of censure on the public servant without holding a detailed oral inquiry as prescribed for major penalty action.

The public servant contended before the Delhi High Court that because a memorandum had been issued to him under rule 14 for major penalty proceedings, it was incumbent on the disciplinary authority to have proceeded with the detailed oral inquiry even if on perusal of the charged officer's reply, the disciplinary authority concluded that only minor penalty was called for. This contention was not accepted by the High Court. The High Court pointed out that all that was to be ensured in such disciplinary proceedings was that the Government servant is given reasonable opportunity of fully representing his case against the penal action proposed to be taken. Since in the particular case there was no reason to doubt that such reasonable opportunity was actually given to the charged officer, the High Court dismissed the writ petition.

(146)

Criminal Law Amendment Ordinance, 1944

- (i) *District Judge passing interim attachment order under sec. 4 of the Criminal Law Amendment Ordinance, 1944 is a Criminal Court and as such High Court has powers to stay the proceedings.*
- (ii) *Respondent not entitled to plead and prove that the property attached is not ill-gotten and he has not committed any scheduled offence, in the attachment proceedings.*

State of Hyderabad vs. K. Venkateswara Rao, 1973 Cri.L.J. A.P. 1351

The Andhra Pradesh High Court observed that the District Judge, empowered to pass interim attachment order under sec. 4 Criminal law Amendment ordinance 1944 is a Criminal Court and as such a court subordinate to the High Court under the Code of Cr.P.C. 1898. Sec. 561-A Cr.P.C. therefore, is attracted to attachment proceedings under the said Ordinance and the High Court has powers to stay the said proceedings to secure ends of justice. The High Court further observed that while it is true that under sec. 4(2) of the Criminal Law Amendment Ordinance 1944, the respondent is entitled to show cause why the ad interim attachment levied should not be made absolute, that does not entitle him to plead and prove that the property attached is not ill-gotten property and he has not committed any Scheduled offence, in the attachment proceedings. The investigation of the offence charged to the respondent has been entrusted to the Court of Special Judge constituted under the Criminal Law Amendment Act 1952 who has also been empowered to decide objections to the ad interim attachment. Therefore staying of further inquiry into the attachment proceeding under the Ordinance does not amount to short circuiting of the procedure prescribed by law.

(147)**Principles of natural justice — not to stretch too far**

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

R vs. Secretary of State for Home Department, (1973) 3 All ER 796

The Court of Appeal, Civil Division (England), in a case of immigration, observed that on the evidence in the case, it thought the immigration officer acted with scrupulous fairness and thoroughness. When his suspicions were aroused, he made them known to the applicant. He gave him every opportunity of dispelling them. If the applicant had been lawfully settled in England, the enquiries which the immigration officer made would go to help him—to corroborate his story—rather than hinder him. There was no need at all for the immigration officer to put them to him when they proved adverse. Lord Denning observed: "The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences." (See H.C. Sarin vs. Union of India, AIR 1976 SC 1686).

(148)**Compulsory retirement (non-penal)**

Art. 311 of Constitution is not attracted in cases of (premature) compulsory retirement and it is not necessary to provide opportunity to the Government servant to show cause.

E. Venkateswararao Naidu vs. Union of India, AIR 1973 SC 698

The appellant, an Assistant Inspecting Commissioner, Incometax, Cuttack, who would have continued in service till he attained the age of 58 years in the normal course was compulsorily retired under F.R. 56(i) when he attained the age of 55.

One of the grounds urged by him against the order of compulsory retirement was that he should have been heard before the order compulsorily retiring him from service was passed. The Supreme Court held that compulsory retirement does not involve evil consequences and it is not necessary to afford the Government servant an opportunity to show cause against his retirement.

(149)

- (A) Inquiry — ex parte
- (B) Suspension — subsistence allowance, non-payment of

Inquiry conducted ex parte, when charged official under suspension was unable to attend inquiry due to non-payment of subsistence allowance, is invalid.

Ghanshyam Das Shrivastava vs. State of Madhya Pradesh,
AIR 1973 SC 1183

The appellant, Ghanshyam Das Shrivastava, was employed as a Forest Ranger by the State of Madhya Pradesh. By order dated 21-10-64, he was placed under suspension and departmental inquiry was instituted against him. The inquiry was held ex parte and the Government passed an order on 8.6.66 dismissing him from service. The writ petition filed by him was dismissed by the High Court.

The appellant contended before the Supreme Court that he got no opportunity to defend himself, that the place of inquiry was 500 km away from where he was residing and that no subsistence allowance was paid and he had no money to go to the place of inquiry. The Supreme Court remanded the case to the High Court to hear the parties on the question relating to the non-payment of subsistence allowance and dispose of the writ petition in the light of its findings. The High Court answered the question against the appellant.

The Supreme Court did not agree with the view expressed by the High Court and held that where the delinquent had specifically communicated his inability to attend the inquiry due to paucity of funds resulting from non-payment of subsistence allowance, the inquiry was vitiated for his non-participation. Accordingly, the Supreme Court allowed the appeal and quashed the order of dismissal.

(150)

Principles of Natural Justice — non-application in special circumstances

Examination of witnesses behind the back of delinquent male medical students in respect of misconduct of molestation of girl students residing in College Hostel, at odd hours of the night, and non-furnishing copy of inquiry report, held not violative

of principles of natural justice in the special circumstances of the case.

Hira Nath Mishra vs. Principal, Rajendra Medical College, Ranchi,
AIR 1973 SC 1260

Second year students of Rajendra Medical College, Ranchi living in the College hostel were found sitting on the compound wall of the girls hostel. Later, they entered into the compound and were found walking without clothes on them. They went near the windows of the rooms of some girls and tried to pull the hand of one of the girls. Some five of them climbed up along the drain pipes to the terrace of the girls hostel where a few girls were doing their studies. On seeing them the girls raised an alarm following which the students ran away and the girls recognised the three appellants and another. On receipt of a complaint from 36 girl students, a Committee of three members of the staff appointed by the Principal conducted an inquiry. They recorded the statements of ten girl students of the hostel behind the back of the delinquents, which disclosed that though there were many more students the girls could identify only four of them by name. The Committee thereafter called the four students and explained the contents of the complaint without disclosing the names of the girls and obtained their explanation in which they denied the charge. Agreeing with the findings of the Committee, the principal expelled the four students from the college for two academic sessions.

It was contended before the Supreme Court (as earlier unsuccessfully before the Patna High Court) that rules of natural justice were not followed, that the enquiry, if any, had been held behind their back, that witnesses were not examined in their presence and they were not given opportunity to cross-examine them and the report of the Committee was not furnished to them.

The Supreme Court observed that principles of natural justice are not inflexible and may differ in different circumstances and that they cannot be imprisoned within the straight jacket of rigid formula and the application depends upon several factors. The complaint related to an extremely serious matter involving not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. A normal inquiry is not feasible as the girls would not have ventured to make their statements in the presence of the miscreants thereby exposing themselves to retaliation and harassment and the authorities had to devise a just and reasonable plan of enquiry which would not expose the girls to harassment and at the same time secured reasonable opportunity to the delinquents to state their case. There was no question about the incident, the only question being about the identity of the

delinquents. The names were mentioned in the complaint and the girls identified their photographs when mixed with 20 other photographs. The delinquents merely denied the incident and they did not adduce any evidence that they were in their Hostel at the time of the incident. It would have been unwise to have furnished them with a copy of the inquiry report. The Supreme Court drew analogy with a similar procedure followed under the Goonda Act and observed that however unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. There was nothing to impeach the integrity of the Committee. The delinquents were informed about the complaint against them and the charge and given an opportunity to state their case and nothing more was required to be done.

(151)

Principles of natural justice — bias

Bias likely where Inquiry Officer is shown to have threatened the charged official with disciplinary action, harassed him by overburdening with work and tried to obtain a certificate that he was mentally unsound.

S. Parthasarathi vs. State of Andhra Pradesh, AIR 1973 SC 2701

The appellant, Parthasarathi, was posted as Office Superintendent in the Information and Public Relations Department and the inquiry against him was conducted by the Deputy Director, Sri Manvi, under whose immediate control he was working. The charges were held as proved and finally the appellant was compulsorily retired. Against this order he filed a suit and the trial court held the order as null and void and awarded him damages. The High Court, however, quashed this order on appeal by the State Government and the appellant then approached the Supreme Court for setting aside the order of the High Court.

While challenging the order of compulsory retirement, the appellant alleged that the Inquiry Officer was biased against him. A number of circumstances came to light regarding the alleged bias of Sri Manvi against him. It was found that on a number of occasions Sri Manvi had threatened him with disciplinary action and tried to harass him by ordering him to take charge of a large number of files in the Weeding Section without providing him with any clerical assistance for checking the files with the registers. Besides, he also tried to get a certificate from the Superintendent of Hospital for Mental Diseases, Hyderabad to the effect that Sri Parthasarathi was mentally unsound and the correspondence between him and the Superintendent indicated that he wanted

to obtain the certificate so that he could dispense with his services on the ground of mental imbalance without having to hold an inquiry. The Supreme Court ruled that the cumulative effect of all these circumstances “creates in the mind of a reasonable man the impression that there was a real likelihood of bias on the part of the Inquiring Officer”. Hence the inquiry and the order passed basing on the inquiry were bad.

(152)

Reversion (non-penal)

Reversion of official from officiating post, on controlling authority deciding that the official should not be allowed to officiate in the higher post pending inquiry into charges of corruption against him, is not an order of punishment.

R.S. Sial vs. State of Uttar Pradesh, 1974(1) SLR SC 827

The appellant was a permanent Assistant General Manager in the Transport Organisation of the Government of Uttar Pradesh and was appointed as General Manager in an officiating capacity. After some time he was reverted to the post of Assistant General Manager. He challenged the order of reversion by means of a writ petition in the Allahabad High Court which was summarily rejected and then he came up on appeal before the Supreme Court.

The appellant urged that the order of reversion amounted to a punishment and in support of his contention drew attention to a letter written by the Vigilance Department to the Secretary, Transport Department suggesting that he may be reverted from the post of General Manager as they are taking up enquiry into allegations of corruption against him. The Supreme Court found that a perusal of the papers only showed that the controlling authority decided that he should not be allowed to officiate in the higher post pending an open enquiry into charges of corruption against him. This did not vitiate the order of reversion or make it an order of punishment as claimed by the appellant.

(153)

Penalty — reversion

Reversion of one out of several officers from officiating to substantive post, on the basis of adverse entries in character roll amounts to reduction in rank and attracts Art. 311 of Constitution.

State of Uttar pradesh vs. Sughar Singh, AIR 1974 SC 423

The respondent was a permanent Head Constable in the Uttar Pradesh Police and was deputed for training as a cadet Sub-Inspector of the Armed Police and on completion of the training, appointed as an officiating Platoon Commander. After he had worked in that capacity for some time, a notice was issued asking him to show cause why an adverse entry should not be entered in his character roll. Two years after this he was reverted from the post of Platoon Commander to his substantive post of Head Constable. The respondent filed a suit petition in the High Court challenging the order and obtained a favourable decision upon which the appeal was filed before the Supreme Court by the State.

The Supreme Court took the view that when an order of reversion from an officiating post to a substantive post amounts to reduction in rank, then the provisions of Art. 311 of Constitution are attracted. Referring to the guiding principles laid down in the case of Purushotham Lal Dhingra vs. Union of India, AIR 1958 SC 36, the Supreme Court pointed out that where an order of reversion is attended with a stigma or involves evil consequences such as forfeiture of pay and allowances, loss of seniority in the Government servant's substantive rank, stoppage or postponement of future chances of promotion, then it would virtually amount to reduction in rank. In this particular case, the order of reversion did not cast any stigma on the respondent nor did it involve loss of his seniority in his substantive rank as Head Constable. But at the same time, 200 Sub-Inspectors junior to him were still officiating as Sub-Inspectors when he was reverted. He alone had been singled out for reversion which amounts to discrimination. There was no indication that he had been reverted for administrative reasons, like abolition of post etc. The appellants tried to explain this by saying that he was reverted because of the adverse entry in his character roll and hence there was no discrimination in reverting him. The Supreme Court pointed out that if it is accepted that he was reverted as a result of the adverse entry, then it did amount to a punishment and was liable to be quashed for not complying with the requirements of Art. 311 of Constitution.

(154)

Contempt of Court

Pendency of suit in a court is no bar against termination of services of employee in terms of contract of service, in the absence of any interim injunction or undertaking.

A.K. Chandy vs. Mansa Ram Zade, AIR 1974 SC 642

The respondent was employed in the Hindustan Steel Ltd. on a contract service. The contract provided for termination of his service with 3 months' notice or three months' pay without assigning any cause. By a notice, the Company informed him that his performance and conduct in their Plant had not been good and advised him to try for alternative employment elsewhere. The employee instituted a suit in the Munsif Court requesting inter alia for a permanent injunction restraining the company from giving effect to the said notice. Subsequently, the Company issued orders terminating the employee's services by paying three months' pay.

The Calcutta High Court held that the act of the Company's Chairman in terminating the services of the employee did amount to obstruction or interference with due course of justice in the employee's suit before the Munsif and so it amounted to contempt of that Court.

The Supreme Court, on appeal, set aside the order of the High Court. The Supreme Court relying on certain earlier judgments, held that the Chairman had terminated the services of the employee in the honest exercise of the rights vested in the Company by the contract of service and also in the absence of any interim injunction or undertaking, and so had not committed contempt of the Munsif's Court.

(155)

- (A) P.C. Act, 1988 — Secs.7, 13(1)(d)
- (B) Trap — appreciation of evidence
- (C) Trap — evidence of Investigating Officer
 - (i) *Appreciation of evidence in a trap case.*
 - (ii) *Trust begets trust and higher officers of the Indian Police, especially in the Special Police Establishment, deserve better credence.*

Som Parkash vs. State of Delhi, AIR 1974 SC 989

The charge against the appellant, an Inspector of Central Excise, is one of corruption under sec.161 IPC and sec. 5(1)(d) read with sec. 5(2) of the P.C.Act, 1947 (corresponding to secs.7, 13(1)(d) read with 13(2) of P.C. Act, 1988 respectively). The proof of guilt is built on a trap laid by the Special Police

DECISIONS (156)

Establishment, and the uphill task of the accused is to challenge before the Supreme Court under Article 136 of the Constitution, the concurrent findings upholding his culpability.

The Supreme Court observed that the appellant's general denunciation of investigating officers as a suspect species, ill merits acceptance. The demanding degree of proof traditionally required in a criminal case and the devaluation suffered by a witness who is naturally involved in the fruits of his investigative efforts, suggest the legitimate search for corroboration from an independent or unfaltering source - human or circumstantial - to make judicial certitude doubly sure. Not that this approach casts any pejorative reflection on the police officer's integrity, but that the hazard of holding a man guilty on interested, even if honest, evidence may impair confidence in the system of justice.

The Supreme Court observed that in the instant case oral evidence of the bribe giver coupled with that of other trap witness, a gazetted officer in another department itself proved the passing of money to the accused, and its production by him when challenged by the police official. No moral attack on the integrity or probability of the testimony of trap witnesses - none that will warrant the subversion of the conclusion reached by the courts below - has been successfully made. Trust begets trust and the higher officers of the Indian Police, especially in the Special Police Establishment, deserve better credence.

(156)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) Trap — evidence of Investigating Officer**
- (C) Trap — evidence, of stock witnesses**

Police officials cannot be discredited in a trap case merely because they are police officials; nor can other witnesses be rejected because on some other occasion they have been witnesses for the prosecution in the past.

Gian Singh vs. State of Punjab, AIR 1974 SC 1024

The accused, an Assistant Sub-Inspector of Police attached to Police Station, Raman, was prosecuted for an offence under section 5(2) read with section 5(1)(d) of Prevention of Corruption Act, 1947 (corresponding to sec.13(2) read with

sec. 13(1)(d) of P.C. Act, 1988) as a result of a trap. The Special Judge convicted the accused and sentenced him to two years R.I. and a fine of Rs.500. The High Court confirmed the conviction and affirmed the sentence.

The Supreme Court referred to the defence contention that police witnesses in trap cases are suspect and that persons who have been prosecution witnesses more than once are stock witnesses and drew attention to their decision in Som Parkash vs. State of Delhi: AIR 1974 SC 989 where they held that Police Officials cannot be discredited in a trap case merely because they are police officials, nor can other witnesses be rejected because on some other occasion they have been witnesses for the prosecution in the past. The Supreme Court observed that there is no reason to disbelieve the evidence of the two constables and that if their testimony is true, the defence version has been disproved. Basically, the Court has to view the evidence in the light of the probabilities and the intrinsic credibility of those who testify.

(157)

(A) Preliminary enquiry report

Charged official not entitled to supply of Preliminary Enquiry Report, which is of the nature of inter-departmental communication, unless it is relied upon by disciplinary authority.

(B) Evidence — documentary

(C) Evidence — oral

Charges can be proved or disproved on the basis of documents, without adducing oral evidence.

(D) Evidence — recorded behind the back

Conclusions arrived at by Inquiry Officer on the basis of enquiries conducted by him behind the back of the charged officer are not in order.

(E) Defence Assistant / Legal Practitioner

Refusal to let the Government servant engage a lawyer does not amount to denial of reasonable opportunity.

Krishna Chandra Tandon vs. Union of India, AIR 1974 SC 1589

The appellant was an Income tax Officer and on receipt of complaints, the Commissioner of Incometax got a preliminary enquiry conducted by the

Inspecting Assistant Commissioner. On receipt of the preliminary enquiry report, a charge-sheet was served on the appellant and inquiry was conducted by the Deputy Director of Inspection (Investigation). The Commissioner of Incometax forwarded the report of the Inquiry Officer to the appellant and obtained his comments and issued a show-cause notice stating that he concurred in the findings of the Inquiry Officer and had come to the provisional conclusion that the appellant should be dismissed from service. After considering his reply, orders were issued dismissing him from service. The appellant filed a suit which was decreed in his favour but it was set aside by the High Court on an appeal from the Government.

Before the Supreme Court, it was urged by the appellant that a copy of the preliminary investigation report had not been supplied to him; that there was no formal inquiry in as much as no oral evidence was taken and that he was deprived of reasonable opportunity to defend himself on account of the Inquiry Officer's refusal to permit him to engage a lawyer.

The Supreme Court found that neither the Inquiry Officer nor the Disciplinary authority had relied on the preliminary investigation report for the findings and hence it was not necessary to furnish a copy of the same to the appellant. The Supreme Court observed that, "It is very necessary for the authority which orders an inquiry to be satisfied that there are *prima facie* grounds for holding a disciplinary inquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinate to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of inquiry have really no importance unless the Inquiry Officer wants to rely on them for his conclusions".

As regards the conduct of the inquiry, it was ruled that there is no set form for disciplinary inquiries and while in some cases it may be necessary to adduce oral evidence, there may be other cases where the charge can be proved or disproved on the basis of documents. The charges against the appellant were based on the assessment orders he had passed. He was given sufficient opportunity to explain the various flaws noticed in the assessment orders and the inquiry was not vitiated simply because it was not conducted like a court trial.

In respect of one charge, however, the Inquiry Officer had caused some enquiries regarding immovable properties of the appellant without associating him with those enquiries. The Supreme Court pointed out that the conclusion arrived at by the Inquiry Officer about this charge on the basis of private enquiries conducted by him behind the back of the appellant, was not in order.

Regarding his contention that he should have been allowed to engage a lawyer, the Supreme Court held that since no oral evidence was taken, there was no question of cross-examining the witnesses and there was no material to show that he was handicapped in his defence without engaging a lawyer. The Inquiry Officer's refusal to let him engage a lawyer did not amount to denial of reasonable opportunity.

(158)

Judicial Service — disciplinary control

- (i) *Governor acts on aid and advice of Council of Ministers in respect of appointment and removal of members of subordinate Judicial Service.*
- (ii) *High Court asking Government to enquire into charges of misconduct against member of Subordinate Judicial Service through Director of Vigilance is in total disregard of Art. 235 of Constitution.*

Samsher Singh vs. State of Punjab, AIR 1974 SC 2192

The appellants were Probationary Judicial Officers, whose services were terminated by an order of the Governor. One of the contentions of the appellants was that the Governor as the constitutional or the formal Head of the State can exercise powers and functions of appointment and removal of members of the Subordinate Judicial Service only personally. The Supreme Court held that the President as well as the Governor act on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. (*Sardari Lal vs. Union of India & ors: AIR 1971 SC 1547 overruled*).

The High Court requested the Government to depute the Director of Vigilance to hold an enquiry against the appellants. The Supreme Court observed that the members of the Subordinate Judiciary are not only under the control of the High Court but are also under the care and custody of the High Court and that the High Court failed to discharge the duty of preserving its control and

termed the request by the High Court to have the enquiry through the Director of Vigilance as an act of self-abnegation. The Governor acts on the recommendation of the High Court and the High Court should have conducted the enquiry preferably through District Judges. The members of the Subordinate Judiciary look up to the High Court not only for discipline but also for dignity and the High Court acted in total disregard of Art. 235 of Constitution by asking the Government to enquire through the Director of Vigilance.

(159)

Inquiry — previous statements, supply of copies

Omission to supply copies of statements recorded during investigation amounts to denial of reasonable opportunity and violates Art. 311 of Constitution.

State of Punjab vs. Bhagat Ram, 1975(1) SLR SC 2

The respondent was a Sub-Divisional Officer. He was dismissed as a result of a disciplinary proceeding. He filed a suit for a declaration that the order of dismissal was illegal as copies of the statements of witnesses examined during the inquiry, recorded during investigation by the police had not been supplied to him. The trial court declared the suit in his favour and their decision was upheld by the High Court. Thereafter, an appeal was filed by the State Government before the Supreme Court.

The Supreme Court held that the omission to supply copies of the statements recorded during preliminary investigation of persons who are examined during the inquiry put the delinquent officer at a disadvantage while cross-examining those witnesses and it amounted to denial of reasonable opportunity and that furnishing a synopsis of the statements is not sufficient.

(160)

(A) Inquiry Officer — powers and functions

(B) Witnesses — turning hostile

Inquiry Officer can treat witnesses as hostile and put clarificatory questions to witnesses

Machandani Electrical and Radio Industries Ltd. vs. Workmen, 1975 (1) LLJ (SC) 391

Asoke Bhambani, an operator, was dealt with on charge of assault of certain employees and was dismissed from service after an inquiry.

Bana was one of the employees who had signed a memorandum addressed to the management asking for disciplinary action against the delinquent immediately after the assault incident, but before the Inquiry Officer he denied that he had signed any memorandum. The Inquiry Officer treated him as hostile and proceeded to put questions in order to resolve the apparent conflict between the statement at the Inquiry and what the memorandum purported to show. Bana admitted that he had signed the memorandum, that the words "I was present at the time of the incident" therein were in his own hand and that he presented the memorandum, along with others. In respect of another management witness, Mohan Sahani also, the Inquiry Officer adopted the same procedure of treating him as hostile and eliciting answers to questions put by him to the same effect. The Labour Court held that the Inquiry Officer had no business to treat the company's witnesses as hostile witnesses on his own and to ask questions for proving the misconduct.

The Supreme Court observed that the contents in the memorandum submitted by the employees to the Management apparently conflicted with what was deposed by the two witnesses, and that it was reasonable and necessary to look for some explanation for the contradictory statements. The Supreme Court held that if the Inquiry Officer put certain questions to those two witnesses by way of clarification, it could not be said that he had done something that was not fair or proper. The Supreme Court pointed out that after the Inquiry Officer had questioned the witnesses, they were subjected to cross-examination on behalf of the delinquent. The Supreme Court held that the inquiry was not vitiated.

(161)

Supreme Court — declaration of law, extending benefit to others

Benefit of declaration of law by Supreme Court on grievance of a citizen, be given to others similarly placed.

***Amrit Lal Berry vs. Collector of Central Excise, Central Revenue,
AIR 1975 SC 538***

The petitioners applied to the Supreme Court under Art. 32 of the Constitution complaining of violation of Art. 16 thereof on the ground that they were illegally discriminated against by the respondents inasmuch as they were confirmed and then not promoted when they ought to have been.

The Supreme Court observed, in passing, that when a citizen aggrieved by the action of a Government Department has approached the court and obtained a

declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

(162)

Appeal — disposal by President

Disposal of appeal by President acting on the advice of the Minister is neither improper nor illegal.

Union of India vs. Sripati Ranjan Biswas, AIR 1975 SC 1755

The respondent was a confirmed Appriser with about 11 years service in the Customs Department in Class II of G.Os. He was suspended and proceeded against on charges of acceptance of illegal gratification and possession of disproportionate assets and was found guilty in the departmental inquiry. The disciplinary authority passed orders dismissing him from service after which he preferred an appeal to the President. The Minister incharge of the Department gave him a personal hearing. After considering the appeal petition, orders rejecting his appeal were communicated to him. To the memo communicating the decision that his appeal had been rejected was enclosed a copy of the order passed by the Minister on behalf of the President. The respondent challenged the order in the High Court and it was held by the High Court that the powers and duties which the President is required to exercise as the appellate authority under the Central Civil Services (CCS) Rules are not constitutional duties imposed on him under the Constitution and therefore they are not part of the business of the Government of India and that the Minister had no right to deal with the appeal which had been preferred to the President.

The Supreme Court, on appeal by the State, however, took the view that the question which was raised in the appeal related to the domain of appointment or dismissal of a Government servant and falls within the ambit of a purely administrative function of the President in the case of the Union Government and of the Governor in the case of a State.

It was also pointed out by the Supreme Court that any reference to the President in any rule made under the Constitution must be to the President as the Constitutional head of the Nation acting with the aid and advice of the Council of Ministers. The disposal of the appeal by the Minister was therefore legal and proper.

(163)

Evidence — tape-recorded

Tape record cassette evidence is admissible.

**Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra, AIR
1975 SC 1788**

In an appeal under the Representation of the People Act, the Supreme Court observed that the tape records of speeches are 'documents' as defined in sec. 3 of the Evidence Act which stand on no different footing than photographs and they are admissible in evidence on satisfying the following conditions: (a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it. (b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. (c) The subject- matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.

In the instant case the tape record had been prepared and preserved safely by an independent authority, the police, and not by a party to the case; the transcripts from the tape records, shown to have been duly prepared under independent supervision and control, very soon afterwards, made subsequent tampering with the cassettes easy to detect; and, the police had made the tape records as parts of its routine duties in relation to election speeches and not for the purpose of laying any trap to procure evidence. It was clear from the deposition of the appellant, the returned candidate, that although he was identified by police officers as the person who was speaking when the relevant tape records were made, he did not, at any stage, dispute that the tape recorded voice was his. He only denied having made some of the statements found recorded after the tape records had been played in Court in his presence. In fact, he admitted that he knew that "the cassettes were recorded by police officers who gave evidence" in court. No suggestion was put to the police officers concerned indicating that there had been any interpolation in the records the making of which was proved beyond all reasonable doubt by evidence which had not been shaken.

The Supreme Court held that the tape records were the primary evidence of what was recorded. The transcripts could be used to show what the transcriber had found recorded there at the time of the transcription. This operated as a check against tampering. They could be used as corroborative evidence.

(164)

(A) Court jurisdiction

Nature and extent of jurisdiction of High Court while dealing with departmental inquiries explained. Not a court of appeal. Not its function to review the evidence and reasons.

(B) Disciplinary Proceedings Tribunal

Domestic inquiry before Tribunal for Disciplinary Proceedings not the same as prosecution in a criminal case.

(C) Preliminary enquiry report

Charged official not entitled to supply of copy of B Report and Investigation Report of Anti-Corruption Bureau, when they are not relied upon by the Tribunal for Disciplinary Proceedings.

State of Andhra Pradesh vs. Chitra Venkata Rao, AIR 1975 SC 2151

The Tribunal for Disciplinary Proceedings (Andhra Pradesh) conducted an inquiry. Three charges were framed that he claimed false travelling allowance in the months of Jan., April and Sept. 1964. On 9-12-68, the Tribunal recommended dismissal of the respondent from service. The Government gave notice on 22-2-69 to show cause why the penalty of dismissal from service should not be imposed on him. On 20-3-69, the respondent submitted his written explanation and Government by an order dated 24-5-69 dismissed him from service.

The respondent challenged the order of dismissal in the High Court, and by judgment dated 27.7.70, the High Court set aside the order of dismissal on the ground that the recommendations of the Tribunal were not communicated to the respondent along with the notice regarding the proposed punishment of dismissal and observed that it was open to the authority to issue a fresh show cause notice after communicating the inquiry report and the recommendations of the Tribunal. The Government cancelled the order of dismissal dated 24.5.69 and issued fresh notices dated 16-9-70 and 25-9-70 to the respondent and communicated the report and the recommendations of the Tribunal and the Vigilance Commission, regarding the proposed penalty. The respondent submitted his explanation on 6/23-10-70. The Government considered the same and by an order dated 5-5-72 dismissed the respondent from service.

The respondent challenged the order of dismissal in the High Court. The High Court set aside the order of dismissal by order dated 13-6-74 on the grounds that the prosecution did not adduce every material and essential evidence to make out the charges and that the conclusion reached by the Tribunal was not based on evidence. The High Court held that Ex.P.45, signed statement dated 8.1.67 of the respondent explaining how he performed the journeys was not admissible in evidence according to the Evidence Act and it was not safe to rely on such a statement as a matter of prudence. The High Court observed that corruption or misconduct under rule 2(b) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules has the same meaning as criminal misconduct in the discharge of official duties in section 5(1)(d) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(d) of P.C. Act, 1988) and in that background discussed the evidence and findings of the Tribunal as to whether the prosecution placed evidence in respect of the ingredients of the charge under section 5(1)(d) of the P.C. Act. In regard to the findings of the Tribunal, High Court observed that four years elapsed between the journeys and the framing of the charge and that the prosecution utterly failed to adduce any evidence to exclude the possibilities raised by the respondent in his defence. The State Government filed an appeal by Special Leave before the Supreme Court.

The Supreme Court observed that the High Court was not correct in holding that the domestic inquiry before the Tribunal was the same as prosecution in a criminal case and drew attention to the propositions laid by them in State of Andhra Pradesh vs. S.Sree Ramarao, AIR 1963 SC 1723 and Railway Board, New Delhi vs. Niranjan Singh, AIR 1969 SC 966.

The Supreme Court held that the jurisdiction to issue a writ of certiorari under Art. 226 of Constitution is a supervisory jurisdiction and not that of Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

The Supreme Court observed that the High Court in the present case assessed the entire evidence and came to its own conclusion, and it was not justified to do so. The Tribunal gave reasons for its conclusions and it is not possible for the High Court to say that no reasonable person could have arrived at these conclusions.

The Supreme Court examined the contention raised by the respondent that he was not given the 'B' report and Investigation Report of the Anti-Corruption Bureau, which were relied upon to support the charges, and observed that on examination they found that there is a reference to 'B' Report by the Tribunal only because the respondent challenged the genuineness and authenticity of Ex.P.45 and that the Tribunal has not relied on 'B' Report or Investigation Report and that it does not appear that the Tribunal based its finding only on Ex.P.45, and that the Tribunal found that Ex.P.45 was genuine and a statement made and signed by the respondent.

The Supreme Court held that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence and set aside the judgment of the High Court and accepted the appeal.

(165)

(A) Departmental action and conviction

Penalty of removal from service imposed by disciplinary authority simply because the officer had been convicted, without applying his mind to facts of the case cannot be upheld.

(B) Probation of Offenders Act

Release under Probation of Offenders Act does not obliterate the misconduct and stigma of conviction.

***Divisional Personnel Officer, Southern Rly. vs. T.R. Challappan,
AIR 1975 SC 2216***

The respondent was a railway Pointsman. He was arrested at the Railway Station, for disorderly, drunken and indecent behaviour and was convicted by the Magistrate but released on probation under the Probation of Offenders Act. Thereafter, the Disciplinary Authority dismissed him from service on the ground of conduct which led to his conviction. The order of removal showed that the disciplinary authority proceeded on the basis of conviction and there was nothing to indicate that the respondent had been given a hearing. This order was quashed by the

High Court on the ground that as the respondent was released by the criminal court and no penalty was imposed on him, rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, under which he was removed from service, did not in terms apply. An appeal was preferred by the Government before the Supreme Court.

The Supreme Court observed that rule 14(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 only incorporates the principles enshrined in proviso (a) to Art. 311(2) of the Constitution. The words "Where any penalty is imposed" in rule 14(i) should actually be read as "where any penalty is imposable", because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent court. It is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word "penalty" used in rule 14(i) is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal court. The Supreme Court held that the word "penalty" has been used in juxtaposition to the other connected provisions in the Discipline and Appeal Rules and not as an equivalent for "sentence", and that the view of the Kerala High Court that as the Magistrate released the employee on probation no penalty was imposed as contemplated by rule 14(i), is not legally correct and must be overruled.

The Supreme Court further observed that conviction is sufficient proof of the misconduct and the stigma of conviction is not obliterated by the fact that he is released on probation. The Supreme Court proceeded to examine the propriety of the further action taken by the disciplinary authority. Under the proviso to Art. 311(2), where a Government servant has been convicted of a criminal offence by a competent court, the disciplinary authority may impose any of the penalties of dismissal, removal or reduction in rank without holding a detailed enquiry. But this does not imply that immediately on conviction of a Government servant, the disciplinary authority has to impose any of these penalties as a matter of course. In other words, this is a discretionary power given to the disciplinary authority. This provision in Art. 311(2) is also reproduced in the Discipline & Appeal Rules and these rules do not stipulate that a Government servant has to be dismissed, removed or reduced in rank as soon as he is convicted of an offence. Under rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, the disciplinary authority may consider the circumstances in the case and make such orders thereon as it deems fit. The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after taking into account the entire circumstances of the case in order to decide the nature and extent of

the penalty to be imposed on the delinquent employee. This matter can be objectively examined only if he is heard and given a chance to satisfy the disciplinary authority about the final orders to be passed. The Supreme Court pointed out that there may be cases where the employee was convicted for very trivial offences like violation of the Motor Vehicles Act where no major penalty would be justified.

(166)

Fresh inquiry / De novo inquiry

When officer is exonerated after inquiry and reinstated, though no conclusive order was passed, it was not open to disciplinary authority to proceed against him afresh.

State of Assam vs. J.N. Roy Biswas, AIR 1975 SC 2277

The respondent was Veterinary Assistant in the Animal Husbandry and Veterinary Department. The respondent had been placed under suspension and proceeded against in a departmental inquiry. The Inquiry Officer held the charges proved and a notice was served asking him to show cause why he should not be dismissed from service. After considering his reply, orders were passed reinstating him and directing him to rejoin duty. But no conclusive order was passed on the report of the Inquiry Officer either exonerating him or imposing some punishment. Later, the proceedings were reopened and a de novo enquiry was started. The respondent moved the High Court for a writ of prohibition which was granted.

The Supreme Court held that though the principle of double jeopardy is not attracted in this case, in as much as no previous punishment had been awarded to him, yet having exculpated him after inquiry, it was not open to the disciplinary authority to proceed against him afresh. If he was actually guilty of some misconduct he should have been punished at the conclusion of earlier inquiry itself.

(167)

(A) Misconduct — unbecoming conduct

Disciplinary authority is competent to decide which are the actions which amount to conduct unbecoming of a Government servant by looking to circumstances, as it is not possible to lay down an exhaustive list in Rules.

Rule 3(1) (iii) of Central Civil Services (Conduct) Rules does not violate Art. 14 and Art. 19 of Constitution.

(B) Evidence — defence evidence

Where the object of delinquent official in summoning a witness is only to create harassment and embarrassment, Inquiry Officer's decision not to summon him does not violate natural justice.

Inspecting Asst. Commissioner of Incometax vs. Somendra Kumar Gupta, 1976(1) SLR CAL 143

The respondent, a Lower Division Clerk in the Incometax Department at Calcutta, was charged with conduct unbecoming of a Government servant as it was alleged that he entered the room of the petitioner leading some members of the staff and used derogatory, abusive and filthy language and disturbed him in the discharge of his duties by continuously thumping on his table, that he held a demonstration outside the office of the petitioner on another occasion and on the third occasion he exhibited violent and unruly conduct to the petitioner. During the inquiry he wanted to summon the Commissioner of Incometax as a witness. This was not agreed to by the Inquiry Officer as he felt that the evidence which the respondent wanted to adduce through him was not relevant to the charges. Before the Calcutta High Court, it was contended by the respondent that the Inquiry Officer's refusal to summon this witness amounted to violation of natural justice and that rule 3(1)(iii) of the Central Civil Services (Conduct) Rules was ultra vires Arts. 14 and 19 of Constitution.

The High Court found that the Commissioner of Incometax, Sri Johnson, was in no way connected with the incident which formed the basis of the charges against the respondent and held that the Inquiry Officer had the discretion to decide whether a witness cited by the charged officer is to be summoned or not and where he was convinced that it is not necessary to examine him to find out the truth about the charges and request for summoning him was made only with a view to cause harassment or embarrassment he was fully competent to refuse to summon him.

With regard to rule 3(1)(iii) of Central Civil Services (Conduct) Rules, the High Court pointed out that though rule 4 to rule 22 of the Conduct Rules expressly forbid a Government servant to indulge in certain acts, it is not possible to have an exhaustive list of actions which would be unbecoming of a Government servant. There are well-understood and well-recognised norms of conduct of morality, decency, decorum and propriety becoming of Government servants. The contention of the respondent that the rule is unconstitutional was not wellfounded. The rule does not suffer from any vagueness or indefiniteness.

(168)

(A) Misconduct — in private life

Action can be taken for misconduct committed in private life.

(B) Court jurisdiction

Severity of punishment does not warrant interference by court if the punishment imposed is within jurisdiction and not illegal.

Natarajan vs. Divisional Supdt., Southern Rly., 1976(1) SLR KER 669

The petitioner was an Assistant Station Master in the Southern Railway. He was proceeded against on charges of conduct unbecoming of a railway servant as he had obtained loans from private parties on three occasions by falsely representing to them that the amounts were required for the Southern Railway Employees Consumers Co-operative Stores and issuing cheques as Secretary-cum-Treasurer of the said Stores as security for the loans. He contended that since the impugned acts were committed in his private capacity, the provision in the Conduct Rules was not attracted.

The Kerala High Court held that it may not be correct to state that a Government servant is not answerable to Government for misconduct committed in his private life for so long as he continues as a Government servant. If it is accepted that he is not at all answerable for acts of misconduct committed by him in his private capacity, then it would mean that Government will be powerless to dispense with his services, however reprehensible or abominable his conduct in private life may be until and unless he commits a criminal offence or an act which is specifically prohibited by the Conduct Rules. The result would be to place Government in a position worse than that of an ordinary employer. While it is true that a Government servant substantively appointed to a post under Government normally acquires the right to hold the post till he attains the age of superannuation and the safeguards provided in the Constitution are to be made available to him whenever it is proposed to punish him, it does not follow that Government cannot have any right to control his conduct to a certain extent even in private life.

The High Court further observed that in exercising jurisdiction under Art. 226 of Constitution, ordinarily the severity of punishment would not warrant interference if the punishment imposed was within jurisdiction and not otherwise illegal. It may be that in cases where punishment is imposed out of all proportion

leading to an inference that the power has been exercised mala fide the court might step in. If in a case for a minor irregularity, a Government servant is dismissed, which punishment might shock the conscience of a reasonable man, it cannot be said that the High Court will be overstepping its jurisdiction to interfere with the punishment. However, in cases where for substantial misdemeanours, an officer is dismissed or removed from service the fact that the High Court might view the punishment as harsh will not justify interference.

(169)

(A) Witnesses — turning hostile

- (i) *Discretion conferred by sec. 154 Evidence Act on the court to treat a witness as ‘hostile’ is unqualified and untrammelled and is apart from any question of hostility.*
- (ii) *Appreciation of evidence of hostile witness.*

(B) Statement of witness under sec. 162 Cr.P.C. — use of

(C) Cr.P.C. — Sec. 162

Statement of witness recorded by police during investigation cannot be used for seeking assurance for prosecution story.

Sat Paul vs. Delhi Administration, AIR 1976 SC 294

The Supreme Court held that the discretion conferred by sec. 154 Evidence Act on the court is unqualified and untrammelled and is apart from any question of hostility. It is to be liberally exercised whenever the court, from the witness's demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expression, such as “declared hostile”, “declared unfavourable”, the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts.

The Supreme Court further held that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court by the

party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credibility of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

The Supreme Court observed that the High Court was not competent to use the statements of the witnesses recorded by the police during investigation, for seeking assurance for the prosecution story. Such use of the police statements is not permissible. Under the proviso to sec. 162 Cr.P.C. such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in sec. 145 Evidence Act, and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in court.

(170)

(A) Court jurisdiction

In writ proceedings arising out of departmental proceedings, High Court or Supreme Court does not reassess the evidence or examine whether there is sufficient evidence.

(B) Evidence Act — applicability of

Rules of Evidence Act are not applicable to departmental inquiries.

(C) Principles of natural justice — reasonable opportunity

Whether there was reasonable opportunity for defending oneself is a question of fact.

(D) Suspension — restrictions, imposition of

Refusal to allow official under suspension to stay at a place of his choice and restriction not to leave headquarters without permission, are reasonable.

K.L. Shinde vs. State of Mysore, AIR 1976 SC 1080

The appellant, a Police Constable at Belgaum, was proceeded against on charges of complicity in smuggling activities and was placed under suspension. He asked for permission to stay in Belgaum during the period of suspension but this request was not accepted. After the inquiry into the charges, the Superintendent of Police, who was his disciplinary authority, dismissed him from service. His appeal to the Deputy Inspector General of Police and Revision petition to the State Government were rejected. He also lost his case in the Munsif Court, but the Civil Judge, Belgaum decreed the suit in his favour. The State Government appealed against the order to the High Court which was allowed.

Before the Supreme Court, it was contended by the appellant that the restrictions placed on his movements by the Superintendent of Police and his refusal to permit him to remain in Belgaum hampered him in his defence and amounted to denial of reasonable opportunity to him. It was also argued that there was no legal evidence to support the order of the High Court.

The Supreme Court observed that the question whether there was denial of reasonable opportunity for his defence was one of fact and no hard and fast rule can be laid down in that behalf. It was found that the refusal to let him stay in Belgaum and the restrictions imposed on him not to leave his headquarters without the permission of the Superintendent of Police did not prevent him from appearing before the Inquiry Officer on any date. He was given the assistance of another Police Officer for his defence and there was nothing to indicate that he was not allowed to cross-examine the witnesses from the Government side or was handicapped in producing his defence witnesses. As such, there was no denial of opportunity.

The Supreme Court also held that "neither the High Court nor this Court can re-examine and re-assess the evidence in Writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark". "Departmental proceedings do not stand on the same footing as criminal prosecution in which high degree of proof is required".

(171)

(A) Defence Assistant / Legal Practitioner

Government servant, not entitled to the services of a lawyer and cannot insist upon the services of a particular officer selected by him for assisting him.

(B) Principles of natural justice — not to stretch too far

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

H.C. Sarin vs. Union of India, AIR 1976 SC 1686

The appellant, Sarin was posted as Senior Railway Inspector in the office of the India Stores Department in London. The Government of India had placed orders on certain firms in U.K. and other European countries for supply of materials for the Railways. Sarin was deputed to West Germany for inspecting the goods at the premises of a firm. Allegations were levelled against him that he accepted bribes from the supplier firm and caused delay in the inspection as a result of which no damages could be recovered from the firm for the delay in supply. After a preliminary enquiry, proceedings were initiated against him and the inquiry was entrusted to a Board consisting of the Deputy High Commissioner and two officers of the India Stores Department in London. The Board held its sittings in West Germany and London and submitted its report holding the charges as proved. After observing the formalities, orders were passed dismissing him from service. He filed a writ petition before the Delhi High Court which was rejected after which he preferred the appeal before the Supreme Court.

Before the Supreme Court, it was contended by the appellant that he was not allowed to engage a professional lawyer for cross-examining the proprietor of the German firm who had brought the allegation against him and that a railway officer of his choice was not made available to him for conducting his defence. The Supreme Court rejected the contention and held that the provisions under which the inquiry was conducted did not provide that he had to be permitted to engage a professional lawyer and the question on which he was to cross-examine the German supplier being a simple factual one, viz. whether he had actually paid bribe to him as alleged, did not require any special legal expertise for that purpose. He had asked for a railway officer stationed in India as his Defence Assistant and it was not possible to spare him as the inquiry was being conducted in London and West Germany. He was given a wide range of choice and asked to select any officer posted in the London High Commission and the Missions in other European countries. As such, there was no violation of natural justice in not making the services of a particular railway servant available to him. The Supreme Court quoted the following from the judgment of Lord Denning, Master of the Rolls in the case of R. vs. Secretary of State for Home Department, (1973) 3 All ER 796: "The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences".

(172)

Evidence — extraneous material

Extraneous material which the Charged Officer had not opportunity of meeting, cannot be taken into consideration in proof of the charge.

***State of A.P. vs. S.N. Nizamuddin Ali Khan, AIR 1976 SC 1964 :
1976 (2) SLR SC 532***

The Supreme Court observed that on going through the enquiry proceedings and the report of the Chief Justice (of the Andhra Pradesh High Court), it found that the enquiring judge had held that charges relating to the communal bias of the respondent Munsiff Magistrate and charges relating to unbecoming conduct of the respondent in relation to engagements of counsel in pending cases, were proved. The Chief Justice in his report had stated that he was flooded with complaints from lawyers, litigants and from all sides which emanated not only from the members of the bar but also from responsible officers. The Chief Justice had stated in his report that on consideration of all the facts he did not have the slightest doubt that in this case leniency would be misplaced and in the interest of purity of service such practices when proved, as they have been proved, must be dealt with firmly. The Supreme Court observed that the Chief Justice took into consideration extraneous matter and he was not authorised to do so under the Rules of the High Court Act. The report of the Chief Justice was based to a large extent on secret information which the respondent had no opportunity of meeting.

The Apex Court held that “extraneous material which the charged officer had not opportunity of meeting, cannot be taken into consideration in proof of the charge”. Supreme Court observed in this case that the Chief Justice took into consideration extraneous matter and he was not authorized to do so under the Rules of the High Court Act. The report of the Chief Justice was based to a large extent on secret information which the respondent had not opportunity of meeting.

The respondent had no reasonable opportunity of making any representation against the report of the Chief Justice of the proposed punishment of compulsory retirement. The High Court rightly held that the report of the Chief Justice took into consideration extraneous matters, and he was not authorized to do so under the Rules of the High Court Act. The report submitted by the Chief Justice is not the report of the Administrative Bench. The High Court rightly

held that the Government accepted the Chief Justice's report and took action on it. The High Court was right in holding that the report of the Chief Justice was based to a large extent on secret information which the respondent had no opportunity of meeting. The respondent was denied the opportunity of being heard at that stage of enquiry. The respondent was denied a reasonable opportunity of making a representation against the penalty proposed by the Government. For these reasons the appeal is dismissed.

(173)

(A) Preliminary enquiry

Preliminary enquiry is no bar to regular departmental inquiry on same allegations at a later stage.

(B) Witnesses — defence witnesses

Disallowing examination of witnesses in defence about work, efficiency and integrity does not cause prejudice.

R.C. Sharma vs. Union of India, AIR 1976 SC 2037

The appellant was an Income Tax Officer and after a preliminary investigation into certain allegations by a departmental officer, he was proceeded against on charges of violating the Conduct Rules, possessing disproportionate assets and handling a number of assessments in a corrupt, negligent and inefficient manner. He contended before the Supreme Court that some of the allegations covered by the charges in the departmental inquiry had already been investigated into earlier and hence no fresh inquiry on those allegations was permissible. It was also urged by him that nine witnesses cited by him in his defence were not allowed to be examined which prejudiced his defence.

The Supreme Court found that the previous enquiries referred to by the appellant were only preliminary checks into the allegations and no regular charges have been framed and enquired into. It was true that after those preliminary checks no action was taken against him but by this very fact he might have been emboldened to commit graver lapses and when things reached such a stage it was felt necessary to have a regular departmental proceeding against him. The preliminary checks into some of the allegations would not act as a bar to this departmental inquiry.

As regards the nine defence witnesses referred to by him, they were expected to depose about the opinion they had formed about his work, efficiency and integrity. They were not expected to give any evidence on any of the imputations on which the charges were based. As such, their evidence was not relevant to the charges and no prejudice has been caused to him by the refusal to examine them during the inquiry.

(174)

Evidence — of previous statements

Previous statements cannot be taken as substantive evidence unless affirmed by the witness in chief examination.

***W.B. Correya vs. Deputy Managing Director (Tech), Indian Airlines,
New Delhi, 1977(2) SLR MAD 186***

9 witnesses were called to give evidence before the inquiry officer but they were not examined in chief but straight away offered for cross-examination and the charged employee was asked to cross-examine the witnesses on the basis that the statements given by them behind his back at the stage of investigation constituted substantive evidence against him. The witnesses were allowed to have the ex parte statements in their hands and they gave their replies to the questions put in cross-examination after perusing them. It was contended by the charged officer that the statements obtained from witnesses at the stage of the preliminary enquiry cannot constitute substantive evidence at the inquiry unless those statements are affirmed by the witnesses in chief examination and that it is only then the ex parte statements given by the witnesses at the stage of preliminary enquiry become substantive evidence. High Court held that the entire proceedings were vitiated for violation of the basic principles of natural justice as the statements taken behind the back of the charged officer at the time of the preliminary enquiry have been taken to be substantive evidence.

(175)

(A) Compulsory retirement (non-penal)**(B) Order — defect of form**

Absence of words 'in public interest' in the order of compulsory retirement, where power is exercised in public interest, does not render order invalid.

***Mayenghoam Rajamohan Singh vs. Chief Commissioner (Admn.)
Manipur, 1977(1) SLR SC 234***

The appellant was a Subordinate Judge in Manipur State and was compulsorily retired from service.

While rejecting the contentions of the appellant, the Supreme Court held that if power can be traced to a valid power the fact that the power is purported

to have been exercised under non-existing power does not invalidate the exercise of the power. The affidavit evidence is that the order of compulsory retirement was made in public interest. The absence of recital in the order of compulsory retirement that it is made in public interest is not fatal as long as power to make compulsory retirement in public interest is there and the power in fact is shown in the facts and circumstances of the case to have been exercised in public interest and further that whether the order is correct or not is not to be gone into by the court.

(176)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — appreciation of evidence**

Appreciation of evidence in a case of disproportionate assets.

- (C) Disproportionate assets — unexplained withdrawal — is undisclosed expenditure**

Supreme Court treated sum of Rs. 900 withdrawn by accused from his bank account as undisclosed expenditure, rejecting his contention that it represented monthly household expenses.

- (D) Disproportionate assets — margin to be allowed**

Supreme Court allowed margin upto 10 % of total income for drawing presumption of disproportion.

Krishnand Agnihotri vs. State of M.P., AIR 1977 SC 796

The Supreme Court undertook a detailed analysis and assessment of the evidence available in respect of income, expenditure and assets, item by item.

Supreme Court examined the contention of the prosecution that an aggregate sum of Rs.6,688 was expended by the appellant under the heading "Miscellaneous payments through Cheques" and held as follows in respect of two of the items: "Lastly, there were two items of Rs.900 and Rs.200 representing monies withdrawn by the appellant by self-bearer cheques from his bank account. The argument of the appellant was that these two amounts were utilized by him

for household expenses and since household expenses were treated as a separate item of expenditure, they could not be deducted twice over again as part of his expenditure. This argument of the appellant may be quite valid with regard to the sum of Rs.200, because according to the estimate made by Shri Roberts, monthly expenditure of the appellant might be taken to be Rs.163 and, therefore, it is quite possible that Rs.200 might have been withdrawn by the appellant from his bank account for meeting the household expenses. But this argument does not appear to be valid so far as the sum of Rs.900 is concerned, because it is difficult to believe that the appellant should have withdrawn a sum of Rs.900 from his bank account for household expenses when the household expenses did not exceed Rs.163 per month. We would, therefore, reject the contention of the appellant with regard to the sum of Rs.900 and add that as part of his expenditure.” In this view of the matter, Supreme Court held the sum of Rs.900 as an unexplained item of withdrawal from the bank account of the appellant and treated it as undisclosed item of expenditure.

Supreme Court found that as against an aggregate surplus income of Rs.44,383.59 which was available to the appellant during the period in question, the appellant possessed total assets worth Rs.55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him, but since the excess is comparatively small—it is less than ten percent of the total income of Rs.1,27,715.43—The Supreme Court did not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under sub-sec. (3) of sec. 5 of the P.C. Act, 1947 (corresponding to sec. 13(1)(e) of P.C. Act, 1988).

Supreme Court was of the view that, on the facts of the case, the High Court as well as the Special Judge were in error in raising the presumption contained in sub-sec. (3) of sec. 5 and convicting the appellant on the basis of such presumption. Supreme Court allowed the appeal and set aside the conviction.

(177)

(A) Compulsory retirement (non-penal)

(B) Court jurisdiction

Courts will not go into disputed questions such as age in cases of compulsory retirement in public interest.

(C) Order — defect of form

Order not invalidated where three different rules are

*mentioned and rules not applicable are not scored out.
Wrong reference to power will not vitiate action.*

**P. Radhakrishna Naidu vs. Government of Andhra Pradesh,
AIR 1977 SC 854**

The petitioners had been retired in public interest after they completed 25 years of service, under order dated 28-9-75. In the writ petition, one of the petitioners had urged that he had been appointed on 10-9-1952 and had not completed 25 years of service on 23-9-1975 which was the date of the order retiring him. The State Government, on the other hand, contended that the actual date of his appointment was 25-7-1950.

The Supreme Court held that in writ petitions the courts are not expected to go into disputed questions of fact like age as in the present case. The Supreme Court also observed that “the mere fact that three different rules were mentioned in the impugned orders without scoring out the rules which are not applicable to a petitioner in one case cannot be any grievance for the reason that in each case the relevant rule is identically worded. The omission on the part of the officers competent to retire the petitioners in not scoring out the rules which are inapplicable to a particular individual does not render the order bad. The reason is that one of the rules is applicable to him and the omission to strike out the rules which are not applicable will not in any manner affect the applicability of the rule mentioned”. Further, the Supreme Court has taken the view that a wrong reference to power will not vitiate any action if it can be justified under some other powers under which the Government can lawfully do the act. In the present case the valid rule is mentioned in each case.

(178)

(A) Court jurisdiction

Sufficiency of evidence in support of findings in domestic Tribunal is beyond the purview of courts, but the absence of any evidence is available for courts to look into.

(B) Evidence — hearsay

There is no allergy to hear-say evidence in departmental inquiries, provided it has reasonable nexus and credibility.

(C) Administrative Instructions — not binding

Departmental instructions are instructions of prudence, not rules that bind or vitiate in violation.

State of Haryana vs. Rattan Singh, AIR 1977 SC 1512

The respondent was a bus conductor under the Haryana Roadways which is a State Government Undertaking. During a check by the flying squad it was found that four passengers had alighted without tickets and eleven others travelling in the bus did not have tickets though they claimed to have paid the fare. A proceeding was initiated against him for violating the departmental instructions that tickets should be issued to all passengers who are allowed to travel in the buses after realising fares from them, and his services were terminated. The respondent got a declaration in his favour from the civil court and the appellate court affirmed it. The High Court dismissed the second appeal in lumine and the State Government preferred the appeal before the Supreme Court by special leave.

The High Court and the courts below quashed the proceedings on the ground that none of the passengers who had stated that they paid the fare and were travelling in the bus had been examined during the inquiry and hence the evidence was not sufficient for holding him guilty of the charge, that there is a departmental instruction that checking Inspectors should record the statements of passengers and the co-conductor had supported the respondent.

The Supreme Court observed that the courts below misdirected themselves in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. They also pointed out "in a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act."

The Supreme Court went on to observe that the Inspector incharge of the flying squad had deposed before the tribunal that the passengers who informed him that they had paid the fare, refused to give written statements. The Supreme Court felt that this was some evidence relevant to the charge and when this was the case, it was not for the courts to go into the question whether the evidence was adequate. The Supreme Court took the view that the sufficiency of evidence in support of a finding by a domestic Tribunal is beyond the scrutiny of the courts but the absence of any evidence in support of a finding is available for the court to look into for it amounts to an error of law apparent on the record. Viewed

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from this angle, it can be said that the evidence of the Inspector of the flying squad provided some evidence which was relevant to the charge against the respondent.

The instructions that the flying squad should record the statements of passengers were instructions of prudence, not rules that bind or vitiate in violation. In this case, the Inspector had tried to get the statements but they declined and their psychology in such circumstances was understandable.

The Supreme Court also held that the re-valuation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. The Supreme Court finally held that the Courts below were not right in overturning the finding of the domestic Tribunal.

(179)

- (A) Documents — admission, without examining maker**
- (B) Principles of natural justice — not to stretch too far**

Documents can be admitted as evidence in departmental inquiry without examining maker of the document. To hold it otherwise would be stretching principles of natural justice to a breaking point.

***Zonal Manager, L.I.C. of India vs. Mohan Lal Saraf,
1978 (2) SLR J&K 868***

The respondent was serving as a despatch and records Clerk. He was dismissed from service by the appellants by order dated 14-4-72 on charges of misappropriation and dereliction of duty, after holding an inquiry. One of the contentions of the respondent which was also upheld by the single judge of the High Court was that a document was admitted without examining the maker.

A Division Bench of the Jammu and Kashmir High Court expressed the view "that the rule that unless the maker of a document is available for cross-examination, the document should not be admitted into evidence, is a rule from the Evidence Act and has no application to domestic inquiries" and that "it would be stretching the principles of natural justice to a breaking limit if it were to be held that evidence, though credible, is inadmissible because the maker of the document sought to be admitted in evidence has not appeared at the inquiry".

(180)

Misconduct — in judicial functions

Issuing search warrant for production of a girl on a fixed day, taking up hearing on a holiday before the date already fixed, thereby depriving parents an opportunity of hearing and setting the girl free in a reckless and arbitrary manner without exercising due care amounts to misconduct on the part of the Magistrate.

Bhagwat Swaroop vs. State of Rajasthan, 1978(1) SLR RAJ 835

The petitioner was a Magistrate First Class. He had issued search warrants on the basis of a complaint that the complainant's wife had been taken away by her father and was being kept in illegal confinement. While issuing the search warrant, the petitioner had directed the police to recover and produce the lady in his court on 13-7-67. The police, however, produced her on 8-7-67 which was a holiday. The petitioner took up the case for final hearing on that very day, a holiday, before the date already fixed and deprived the parents of the girl an opportunity of hearing in the matter and passed orders setting her free. He was charged with having acted in undue haste without exercising due care and caution and a penalty of stoppage of increment was imposed.

The order was challenged before the Rajasthan High Court on the ground, inter alia, that the petitioner had only exercised his judicial discretion under the law and should not be penalised even if the exercise of this discretion was found to be defective in some respects. The High Court dismissed the petition holding that the misconduct of the petitioner was glaring and apparent even on the admitted facts.

(181)

(A) Departmental action and acquittal

(B) Evidence — standard of proof

In departmental proceedings proof based on preponderance of probability is sufficient. Illustrative case where departmental action was taken following acquittal in the court and same evidence which was insufficient to secure conviction in criminal case was found sufficient to warrant a finding of guilty in the departmental proceedings.

Nand Kishore Prasad vs. State of Bihar, 1978(2) SLR SC 46

The appellant, Nand Kishore, was a Bench Clerk in the court of Judicial Magistrate. He and another clerk were prosecuted in a court of law for misappropriation of a sum of Rs.1068 representing fines received by M.O. Both of them were discharged by the trial court, which held that there was nothing direct against Nand Kishore Prasad to show that he had sent a false or wrong extract to the Fines Clerk, “except the statements of a co-accused exculpating himself which is of little worth”, and that “this accused cannot be connected with the receipt of the money”.

Following this, he was placed under suspension on 31-7-56 and a departmental inquiry was instituted. The District Magistrate, the disciplinary authority, by his order dated 19-3-60, held: “the conduct of Sri Nand Kishore Prasad is highly suspicious but, for insufficient evidence proceeding against him has to be dropped”. The Commissioner of Patna Division issued a show cause notice to the appellant and reversed the order of the District Magistrate and directed removal of the appellant from service by order dated 8.10.60. The appellant went in Revision to the Board of Revenue against the Commissioner’s Order and the Board of Revenue by order dated 31-8-63 dismissed the Revision and affirmed the order passed by the Commissioner.

The appellant moved the High Court at Patna by a writ petition challenging his removal from service. The High Court noted that the Commissioner had drawn his conclusion about the guilt of the petitioner “from the fact that the petitioner was in actual charge of the fine record and it was his duty to take necessary action for realisation of the fine until due payment thereof”, and concluded that since there was some evidence, albeit not sufficient for conviction in a criminal court in support of the impugned order, it could not be quashed in proceedings under Art. 226 of the Constitution and dismissed the writ petition.

The Supreme Court recalled the principle that “disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him”, and considered the issue whether the impugned orders do not rest on any evidence whatever but merely on suspicions, conjectures and surmises.

The Supreme Court observed that the appellant disputed that the initials on the money order coupons purporting to be his, were not executed by him. The handwriting expert who was examined at the original trial stated that no definite opinion could be given as to whether these initials were executed by Nand Kishore Prasad, and the Magistrate therefore gave the appellant benefit of doubt

on this point. The Supreme Court further observed that the Commissioner and the Member, Board of Revenue have presumably on examining the disputed initials on the M.O. coupon coupled with the circumstance that the appellant was the Bench Clerk when the fine was imposed and the money orders were received and the fine records were with him, and it was he who used to issue distress warrants for realisation of outstanding fine but he did not take further action for recovery of the fine or for ensuring that the convicts suffered imprisonment in default of payment of fine, reached the finding that the amount of the aforesaid M.O. was received by Nand Kishore Prasad. From the appellant's conduct in not taking any action for realisation of the fine, they concluded that he did not do so because the fine had been realised and the amount had been embezzled by him.

(182)

Evidence — of Investigating Officer

Evidence of Investigating Officers be assessed on its intrinsic worth and not discarded merely on the ground that they are interested.

State of Kerala vs. M.M. Mathew, AIR 1978 SC 1571

The Supreme Court held that the courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities. The evidence of the investigating officers cannot be branded as highly interested on ground that they want that the accused are convicted. Such a presumption runs counter to the well recognised principle that *prima facie* public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case.

(183)

Evidence — of accomplice

Evidence of accomplice can be relied upon in departmental inquiries.

C.J. John vs. State of Kerala, 1979(1) SLR KER 479

The petitioner was a Regional Drugs Inspector at Calicut in 1966. A departmental inquiry was held and he was reverted to the lower post of a Drugs Inspector. The petitioner contended before the Kerala High Court that apart from the evidence of accomplices, there was no evidence at all to support the findings.

The High Court examined the question of admissibility of the evidence of an accomplice and held that “the evidence of an accomplice is legal evidence; but the rule of caution requires that the Tribunal should not act on that evidence unless it is corroborated or the Tribunal has, after cautioning itself as to the danger of acting solely on accomplice evidence, decided after due deliberation to accept it”.

(184)

Defence Assistant

Stopping further assistance of defence assistant at intermediate stage on technical grounds, not proper.

Commissioner of Income tax vs. R.N. Chatterjee, 1979(1) SLR SC 133

The Defence Assistant engaged by the charged officer, a Peon in the Incometax Department, resigned from Government service when the inquiry was in progress and took up legal practice. He was therefore not allowed to conduct the defence any further inspite of requests from the charged officer. The charged officer stopped participating in the inquiry and was ultimately removed from service.

The Supreme Court held that since the Defence Assistant had already started handling the case and had heard the depositions of certain witnesses and seen their demeanour, continuance of his assistance should have been permitted. The Supreme Court accordingly directed the Department to remit the case and continue the inquiry from the stage from which it had become ex parte and permit the Defence Assistant to conduct the case.

(185)

Termination — of temporary service

Order of termination simpliciter of service of temporary Government servant after preliminary enquiry in respect of conduct concerning women without instituting departmental inquiry, does not attract Art. 311 of Constitution.

State of Uttar Pradesh vs. Bhoop Singh Verma, 1979(2) SLR SC 28

The respondent was a Sub-Inspector of Police in a temporary post and he was discharged from service on 13-7-57 on the ground that he had behaved in a reprehensible manner, was not likely to make a useful police officer and was unfit for further retention in a disciplined force. A writ petition filed by him in the

Allahabad High Court was allowed on 4-8-59 and accordingly on 15-12-59, he was reinstated. The Deputy Inspector General of Police made an order subsequently terminating his services on the ground that they were no longer required, on payment of one month's salary.

The Supreme Court observed that the Deputy Inspector General of Police, who was examined as a witness in the suit maintained that he terminated the respondent's services because they were not required any more and that in making the order he did not intend to punish the respondent, that no personal motive had influenced the order and held that it was open to the superior authority to terminate the respondent's services on the ground on which it did so. The Supreme Court added that assuming that the impugned order was made in the background of the allegations against the respondent concerning his behaviour with Smt. Phoolmati, there was no reason in law why a departmental enquiry should be necessary before the respondent's services could be terminated. It was merely a preliminary enquiry which was made by the Superintendent of Police and no charge was framed and formal procedure characterising a disciplinary proceeding was never adopted.

(186)

(A) Compulsory retirement (non-penal)

(B) Adverse remarks

(C) Court jurisdiction

- (i) *Government has absolute right to order compulsory retirement of a member of All India Service in public interest. No element of stigma or punishment involved.*
- (ii) *Government not bound by the decision of Review Committee.*
- (iii) *Government competent to take into consideration uncommunicated adverse reports in passing order of compulsory retirement.*
- (iv) *Court not competent to delve deep into confidential or secret records of Government to fish out materials to prove that order of compulsory retirement is arbitrary or mala fide.*

Union of India vs. M.E. Reddy, 1979(2) SLR SC 792

The respondent was Deputy Inspector General of Police in Andhra Pradesh. By order dated 11-9-75, the Central Government passed an order of compulsory retirement of the respondent in public interest. A single Judge of the High Court of Andhra Pradesh quashed the order and the Division Bench of the High Court confirmed the decision of the Single Judge.

The Supreme Court held that the impugned order fully conforms to all the conditions of rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Art. 311(2) of Constitution. The object of the rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services.

The Supreme Court held that Courts cannot delve deep into the confidential and secret records of the Government to fish out materials to prove that the order is arbitrary or mala fide. The Court has, however, the undoubted power, subject to any privileges or claim that may be made by the State, to send for the relevant confidential personal file of the Government servant and peruse it for its own satisfaction without using it as evidence.

The Supreme Court observed that it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer in close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys. The Supreme Court held that the confidential reports can certainly be considered by the appointing authority in passing the order of retirement even if they are not communicated to the officer concerned.

The Supreme Court also held that all that is necessary is that the Government should before passing an order of compulsory retirement consider the report of the Review Committee which is based on full and complete analysis of the history of the service of the employee concerned and that the decision of the Review Committee is not binding on the Government.

The Supreme Court set aside the order of the High Court and restored the impugned order retiring the respondent from service.

(187)

Judicial Service — disciplinary control

The word ‘control’ accompanied by the word ‘vest’ shows that High Court alone is the sole custodian of control over judiciary, including suspension from service.

Chief Justice of Andhra Pradesh vs. L.V.A. Dikshitulu, AIR 1979 SC 193

The Supreme Court considered the scope of Art. 235 of Constitution and observed that the control over the subordinate judiciary vested in High Court under Art. 235 is exclusive in nature, comprehensive in extent and effective in operation, and that the word ‘control’ accompanied by the word ‘vest’ shows that the High Court alone is made the sole custodian of the control over the judiciary and this control being exclusive and not dual, an enquiry into the conduct of a member of judiciary can be held by the High Court alone and no other authority and that the power of the High Court extends to suspension from service of a member of the judiciary with a view to hold a disciplinary enquiry.

(188)

- (A) **P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) **Trap — corroboration of trap witness**

Court can act on uncorroborated testimony of a trap witness.

- (C) **Trap — hostile witness**
- (D) **Evidence — of hostile witness**

Rejection of evidence of hostile witness, permissible.

- (E) **Trap — conduct of accused**

Conduct of accused admissible under sec. 8 Evidence Act.

Prakash Chand vs. State, AIR 1979 SC 400

The Supreme Court disagreed with the submission of the appellant that no conviction can ever be based on the uncorroborated testimony of a trap witness. That a trap witness may perhaps be considered as a person interested in the success of the trap may entitle a court to view his evidence as that of an interested

witness. Where the circumstances justify it, a court may refuse to act upon the uncorroborated testimony of a trap witness. On the other hand a court may well be justified in acting upon the uncorroborated testimony of a trap witness, if the court is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

The Supreme Court observed that the witnesses who were treated as hostile by the prosecution were confronted with their earlier statements to the police and their evidence was rejected as it was contradicted by their earlier statements. Such use of the statements is permissible under sec. 155 Evidence Act and the proviso to sec. 162(1) Cr.P.C. read with sec. 145 Evidence Act.

The Supreme Court held that there is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under sec. 8 Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by sec. 162 Cr.P.C. What is excluded by sec. 162 Cr.P.C. is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under sec. 8 Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of sec. 27 Evidence Act. The Supreme Court saw no reason to rule out the evidence relating to the conduct of the accused which lends circumstantial assurance of the testimony of the trap witness.

(189)

Witnesses — turning hostile

Witness be treated as hostile where he states something which is destructive of the prosecution case.

G.S. Bakshi vs. State, AIR 1979 SC 569

The Supreme Court held that when a prosecution witness turns hostile by stating something which is destructive of the prosecution case, the prosecution is entitled to pray that the witness be treated as hostile. In such a case, the trial court must allow the public prosecutor to treat the witness as hostile.

(190)

(A) P.C. Act, 1988 — Sec. 19

(B) Sanction of prosecution — under P.C. Act

Sanction can be proved by producing original sanction containing facts constituting the offence and grounds of satisfaction or by adducing evidence to that effect.

Mohd. Iqbal Ahmed vs. State of Andhra Pradesh, AIR 1979 SC 677

The Supreme Court held that it is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or (2) by adducing evidence aliunde to show that the facts placed before the sanctioning authority and the satisfaction arrived at by it.

(191)

Public Servant

Chief Minister or Minister is a public servant within the meaning of section 21 Indian Penal Code.

M. Karunanidhi vs. Union of India, AIR 1979 SC 898

The appellant was a former Chief Minister of Tamilnadu. A criminal case was registered against him and investigated by the Central Bureau of Investigation and a charge sheet was laid before the Special Judge for Special Police Establishment Cases under sec. 161 IPC (corresponding to sec.7 of P.C.Act, 1988), secs. 468 and 471 I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947 (corresponding to sec.13(2) read with sec. 13(1)(d) of P.C.Act, 1988) after obtaining sanction of the Governor of Tamilnadu under section 197 Cr.P.C. The appellant filed an application before the Special Judge for discharging him on the ground that the prosecution suffered from various legal and constitutional infirmities. On the Special Judge rejecting the application, the appellant filed two applications in the High Court for quashing the proceedings and setting aside the order of the Special Judge, and the High Court rejected the applications. He then approached the Supreme Court.

One of the contentions raised by the appellant before the Special Judge, the High Court and before the Supreme Court was that the appellant being the

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Chief Minister was not a public servant, that there was no relationship of master and servant between him and the Government and he was acting as a constitutional functionary and therefore could not be described as a public servant as contemplated by section 21(12) of the Penal Code.

The Supreme Court held that a Chief Minister or a Minister is in the pay of the Government and is therefore, public servant within the meaning of section 21(12) of the Penal Code. The first part of clause (12) (a) namely 'in the service of the Government' undoubtedly signifies a relationship of master and servant where the employer employs the employee on the basis of a salary or remuneration. But the second limb, namely 'in the pay of the Government' is of a much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master. In other words, even a Minister or a Chief Minister is covered by the expression 'person in the pay of the Government'. The expression 'in the pay of' connotes that a person is getting salary, compensation, wages or any amount of money. This by itself however does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary.

The Supreme Court further held that the provision of Arts. 164 and 167 of Constitution reveals: (i) that a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions, (ii) that a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him and (iii) that the said salary is paid to the Chief Minister or the Minister from the Government funds. It is thus incontrovertible that the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government treasury so long as he holds his office on account of the public service that he discharges.

The Supreme Court further held that the use of the words 'other public servants' following a Minister of the Union or of a State in section 199(2) Cr.P.C. also clearly shows that a Minister would also be a public servant as other public servants contemplated by the section, as Criminal Procedure Code is a statute complementary and allied to the Penal Code.

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- (A) Misconduct — what constitutes, what doesn't**
- (B) Misconduct — lack of efficiency**
- (C) Misconduct — negligence in discharge of duty**

(D) Misconduct — mens rea

- (i) *Lack of efficiency and failure to attain the highest standard of administrative ability while holding high post would not by themselves constitute misconduct. There have to be specific acts of omission / commission.*
- (ii) *Negligence in discharge of duty where consequences are irreparable or resultant damage is heavy, like a sentry sleeping at his post and allowing the enemy to slip through, constitutes misconduct.*
- (iii) *Gross habitual negligence in performance of duty may not involve mens rea but still constitutes misconduct.*

Union of India vs. J. Ahmed, AIR 1979 SC 1022

The respondent was a Deputy Commissioner and District Magistrate, Nowgong District, Assam and there were riots in his District. He was charged with inefficiency, lacking the quality of leadership, ineptitude, lack of foresight, lack of firmness and indecisiveness. An enquiry was held and he was imposed the penalty of removal from service. A memorial submitted by the respondent to the President against the imposition of the penalty was rejected. He filed a petition in the High Court of Assam and Nagaland, raising an issue (besides another) whether Rule 16(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 is attracted so as to retain the respondent in service beyond the period of his normal retirement for the purpose of completing disciplinary proceedings against him. The High Court was of the opinion that disciplinary proceedings can be held and punishment can be imposed for misconduct and the charges ex facie did not disclose any misconduct because negligence in performance of duty or inefficiency in discharge of duty would not constitute misconduct. The Union of India and the State of Assam preferred appeal before the Supreme Court by Special leave.

The Supreme Court observed that the five charges would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. To wit, charge No.2 refers to the quality of lack of leadership and charge No.5 enumerates inaptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly

expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not, or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the All India Services (Discipline and Appeal) Rules, 1955 so as to incur penalty under rule 3. Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. The words 'acts and omission' contemplated by rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954. The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty.

The Supreme Court further observed that the expression 'devotion to duty' in rule 3 of the All India Services (Conduct) Rules, 1954 appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If rule 3 were the only rule in the Conduct Rules, it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive, it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to conduct rules save the general rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and

indecisiveness as serious lapses on the part of the respondent. The Supreme Court held that these deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

The Supreme Court further observed that it is difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar examples of which are a railway cabinman signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life. Misplaced sympathy can be a great evil. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. The Supreme Court found it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

A look at the charges framed against the respondent would affirmatively show that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is another failure to perform the duty in a certain manner. Charges Nos. 2 and 5 clearly indicate the shortcomings in the personal capacity or degree of efficiency of the respondent. It is alleged that the respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding

a post of Deputy Commissioner would be expected to possess. They may be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceedings. The Supreme Court held that there are no acts and omissions which would render the respondent liable for any of the punishments set out in rule 3. It appears crystal clear that there was no case stricto sensu for a disciplinary proceeding against the respondent.

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(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

Sanction not necessary under sec. 197(1) Cr.P.C. for the prosecution for offence under secs. 409/120- B IPC.

S.B. Saha vs. M.S. Kochhar, AIR 1979 SC 1841

The Supreme Court held that the sine qua non for the applicability of sec. 197 Cr.P.C. is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

The words “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” employed in sec. 197(1) are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, “it is no part of an official duty to commit an offence, and never can be”. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of sec. 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. It is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by sec. 197 will be attracted.

The question whether an offence was committed in the course of official duty or under colour of office depends on the facts of each case. One broad test for the purpose is whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.

In a case under sec. 409 IPC the official capacity is material only in connection with the 'entrustment' and does not necessarily enter into the later act of misappropriation or conversion which is the act complained of. Where the act complained of is dishonest misappropriation or conversion of the goods by the accused persons, which they had seized and, as such, were holding in trust to be dealt with in accordance with law, sanction of the appropriate Government was not necessary for the prosecution of the accused for an offence under secs. 409/120-B IPC because the alleged act of criminal misappropriation complained of was not committed by them while they were acting or purporting to act in the discharge of their official duty, the commission of the offence having no direct connection or inseparable link with their duties as public servants. At the most, the official status of the accused furnished them with an opportunity or occasion to commit the alleged criminal act.

There can be no dispute that the seizure of the goods by the accused and their being thus entrusted with the goods or dominion over them, was an act committed by them while acting in the discharge of their official duty. But the subsequent act of dishonest misappropriation or conversion complained of could not bear such an integral relation to the duty of the accused persons that they would genuinely claim that they committed it in the course of the performance of their official duty. There is nothing in the nature or quality of the act complained of which attaches to or partakes of the official character of the accused who allegedly did it. Nor could the alleged act of misappropriation or conversion, be reasonably said to be imbued with the colour of the office held by the accused persons.

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Retirement and prosecution

Judicial proceedings against retired Government servant in respect of a cause of action or event which took place more than four years before such institution, is proper. Limitation of four years operates only in regard to power exercised under Art. 351A of Civil Service Regulations and is no bar against criminal prosecution.

***M. Venkata Krishnarao vs. Divisional Panchayat Officer,
1980(3) SLR AP 756***

The petitioner worked as Executive Officer of Gram Panchayat. Disciplinary proceedings were instituted against him on allegations involving

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forgery and misappropriation, which took place on 2-12-74 and 29-1-75. While departmental proceedings were pending, he was permitted to retire from service on superannuation on 31-3-78. On 13-2-80, the Divisional Panchayat Officer launched criminal prosecution against the petitioner for offences punishable under sections 409, 471 I.P.C. and the Court took the complaint on file. The petitioner approached the Andhra Pradesh High Court for quashing the proceedings.

It was contended by the petitioner that if no criminal prosecution is initiated against him during the tenure of his office or re-employment, no criminal prosecution can be launched against him after his retirement in regard to misconduct of more than four years old by the date of the prosecution, as per proviso (c) to Art. 351A of Andhra Pradesh Pension Code (corresponding to rule 9 of A.P.Revised Pension Rules, 1980).

The High Court held that the prohibition against the institution of a judicial proceeding in respect of a cause of action which arose or an event which took place more than four years before such institution, as contained in the proviso (c) is only for the purpose of exercising the power reserved under Art. 351A and not for any other purpose. The prohibitory words in the proviso (c) cannot be construed as bar against criminal prosecution in general for the purpose of punishment under that law. The High Court dismissed the petition.

(195)

Penalty — dismissal of already-dismissed employee

There is no bar for two separate pending inquiries against a public servant, to conclude one after the other, and for recording two separate orders of dismissal, but at one point of time only one order can operate. An order of dismissal can be passed on the conclusion of the second enquiry as well in the absence of a specific legal bar.

Union of India vs. Burma Nand, 1980 LAB I.C. P&H 958

The High Court held that there is no bar for two separate pending enquiries against a public servant, to conclude one after the other. There is no specific bar for recording two separate orders of dismissal as a result of culmination of two separate enquiries, but at one point of time only one order can operate and not both orders. An employee cannot be dismissed twice from service. There can be no dismissal of an already dismissed servant. An order of dismissal can be

passed on the conclusion of the second enquiry as well, in the absence of a specific legal bar. The bar is only operative vis-a-vis the operation.

When the operated order of dismissal arising from an enquiry remains unchallenged or after challenge has been upheld and continues to operate, a Civil Court while granting a declaration that an order of dismissal passed in another enquiry was bad and inoperative in law, cannot as a consequence declare the public servant to be continuing in service, simply for the reason that the subsequent order of dismissal had been set aside by it. In one breath, the Court cannot blow hot and cold. Taking note of the first operated order of dismissal, the Court cannot declare that the second order of dismissal could not be passed in the presence of the first, and yet at the same time cannot set at naught the operation of the first order by declaring the public servant to be in continuity of service as a sequel to the setting aside of the subsequent order of dismissal. The course of two separate enquiries and the respective orders run in two parallel lines and seldom do they meet. Of course they cast shadow on one another, but they operate in their respective spheres, if put into operation; otherwise they remain just declarative.

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Sanction of prosecution under P.C. Act — where dismissed employee is reinstated later

The point of time when sanction is required under the P.C. Act is the time when the court takes cognizance of the offence and not before or after; and it makes no difference if he is reinstated later.

K.S. Dharmadatan vs. Central Government, 1980 MLJ SC 33

The Supreme Court observed that a perusal of sec. 6 of the Prevention of Corruption Act, 1947 (corresponding to sec. 19 of P.C. Act. 1988) would clearly disclose that the section applies only where at the time when the offence was committed the offender was acting as a public servant. If the offender had ceased to be a public servant, then sec. 6 would have no application at all. It is also manifest that the point of time when the sanction has to be taken must be the time when the court takes cognizance of an offence and not before or after. If at the relevant time, the offender was not a public servant, no sanction under sec. 6 was necessary at all.

In the present case, at the time when actual cognizance by the court was taken, the appellant had ceased to be a public servant having been removed from service. If some years later he had been reinstated, that would not make the cognizance which was validly taken by the court, a nullity or render it nugatory so as to necessitate the taking of a fresh sanction.

(197)

(A) Inquiry Officer — framing draft charges

Inquiry Officer earlier expressing opinion on preliminary report and preparing draft charges does not amount to a case of Inquiry Officer himself being both prosecutor and judge.

(B) Defence Assistant / Legal Practitioner

Refusal of Inquiry Officer to allow charged officer to be represented through lawyer causes no prejudice.

(C) Vigilance Commission — consultation with

Disciplinary authority consulting Vigilance Commission, not illegal. Not necessary to furnish copy of report of Vigilance Commissioner to delinquent when reference to it is not made in disciplinary authority's findings.

Sunil Kumar Banerjee vs. State of West Bengal, 1980(2) SLR SC 147

The appellant, a member of the Indian Administrative Service, was working as Divisional Commissioner, North Bengal. Departmental action was instituted and a penalty of reduction in time scale of pay was imposed on him. His appeals to the single Judge and the Division Bench of the High Court were dismissed.

The Supreme Court held that the disciplinary authority committed no serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently on the basis of the charges, the relevant material placed before the inquiry officer in support of the charges and the defence of the delinquent officer. In fact, the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner.

The Supreme Court rejected the contention of the appellant that a copy of the report of the Vigilance Commissioner should have been made available to him. There was no reference to the views of the Vigilance Commissioner in the preliminary findings of the disciplinary authority communicated to him, and it was unnecessary for the disciplinary authority to furnish the appellant with a

copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commission.

The Supreme Court also rejected the further contention of the appellant that the Inquiry Officer combined in himself the role of the prosecutor and the judge. When the preliminary report of investigation was considered by the Vigilance Commissioner with a view to recommend to the disciplinary authority whether a disciplinary proceedings should be instituted or not, the report of investigation was referred by the Vigilance Commissioner to Sri A.N. Mukherji for his views and for the preparation of draft charges and Sri Mukherji expressed his opinion that there was material for framing five charges and he also prepared five draft charges and Sri Mukherjee was appointed as Inquiry Officer. From the circumstances that Sri Mukherji considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot be said that Sri Mukherji, when he was later appointed as Inquiry Officer, constituted himself both as prosecutor and judge. Any body who is familiar with the working of criminal courts will realise that there is nothing strange in the same Magistrate who finds a prima facie case and frames the charges, trying the case also. It cannot be argued that the Magistrate having found a prima facie case at an earlier stage and framed charges is incompetent to try the case after framing charges.

Regarding the contention of the appellant that he was not allowed to engage a lawyer, the Supreme Court observed that the rules give a discretion to the Inquiry Officer to permit or not to permit a delinquent officer to be represented by a lawyer. The appellant cross-examined the prosecution witnesses and also examined defence witnesses. When the matter was posted for arguments, the appellant came forward with an application seeking permission to engage a lawyer and the Inquiry Officer rejected the application noticing that it was made at a very belated stage, and he was right in doing so. The Supreme Court dismissed the appeal

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- (A) Termination — of probationer**
- (B) Termination — of temporary service**

Termination of services of probationer or a temporary employee after assessment of nature of performance for the limited purpose of determining suitability, does not attract Art. 311 of Constitution.

***Oil and Natural Gas Commission vs. Dr. Md. S. Iskander Ali,
1980(2) SLR SC 792***

The respondent was appointed on a purely temporary basis to the post of a medical officer in the Oil and Natural Gas Commission, to remain on probation for one year, which can be extended at the discretion of the appointing authority. After he completed the period of one year on 15-10-66, his probation was extended for six months and there was no express order either confirming him or extending the period of probation. Ultimately, by an order dated 28-7-67, his services were terminated with immediate effect.

The Supreme Court observed that the confidential roll reflecting the assessment of the work during the period 31-12-65 to 30-12-66 clearly shows that he was careless and lacking in sense of responsibility. The temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks, in the assessment roll, merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended and were not intended to cast any stigma. The work of the respondent had never been satisfactory and he was not found suitable for being retained in service and that is why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him. As the respondent was merely a probationer, the appointing authority did not consider it necessary to continue the enquiry but decided to terminate the services. It is well settled by a long course of decisions of the Supreme Court that in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his service is valid and does not attract the provisions of Art. 311 of Constitution, and applying those principles to the facts of the present case, the position is that the order impugned is *prima facie* an order of termination *simpliciter* without involving any stigma. The order does not in any way involve any evil consequences and is an order of discharge *simpliciter* of the respondent who was a probationer and had no right to the service.

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Compulsory retirement (non-penal)

- (i) *Appropriate authority as defined in the Rules competent to pass orders of compulsory retirement even though subordinate in rank to the authority by which official was originally appointed. Compulsory retirement cannot be equated with dismissal and order does not violate Art. 311 of Constitution.*

- (ii) *Onus is on Administration to prove public interest and not on employee to prove contrary. State must disclose to court the material relating to public interest and court competent to examine material to the limited extent of seeing as to whether a rational mind may conceivably be satisfied.*
- (iii) *Recommendations of Review Committee only persuasive and not decisive and decision to retire is of the appropriate authority.*
- (iv) *Officer in continuous service for 14 years crossing efficiency bar and reaching maximum salary in the scale with no adverse entries atleast for five years immediately before the compulsory retirement cannot be cashiered on the score that long years ago his performance had been poor.*

Baldev Raj Chadha vs. Union of India, 1980(3) SLR SC 1

The appellant was an Accounts Officer having been so promoted and appointed by the Comptroller and Auditor General of India on 30-12-61. He was compulsorily retired on 27-8-75 under F.R. 56(j)(i) by the Accountant General. The appellant challenged his premature retirement in the High Court and having failed, approached the Supreme Court by special leave.

The Supreme Court explained the basic components of the provision of compulsory retirement. The order to retire must be passed only by 'the appropriate authority'. The authority must form the requisite opinion not subjective satisfaction but objective and bonafide and based on relevant material. The requisite opinion is that the retirement is 'in public interest', not personal, political or other interest but solely governed by the interest of public service. The right to retire is not absolute, though so worded. Absolute power is anathema under the Constitutional order. 'Absolute' merely means wide, not more. Naked and arbitrary exercise of power is bad in law.

The Supreme Court also observed that the Accountant General has been clothed with the power to appoint substantively Accounts Officers and he has thus become the appropriate authority for compulsory retirement even though, the appellant had been appointed by the Comptroller and Auditor General prior to 29-11-72. Ordinarily the appointing authority is also the dismissing authority but the position may be different where retirement alone is ordered.

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The Supreme Court observed that there is no demonstrable ground to infer mala fides and the only infirmity which deserves serious notice is as to whether the order has been made in public interest. The State must disclose the material so that Court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable mind, a man reasonably instructed in law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations.

The Supreme Court rejected the contention of the appellant that the Reviewing Committee is an illegal body and taking its recommendations into consideration vitiates the Accountant General's order. On the other hand, it is clear that the decision to retire is surely that of the Accountant General and the Reviewing Committee's presence is persuasive and not decisive, prevents the opinionatedness of one by the collective recommendations of a few.

The Supreme Court observed that the appellant had continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale with no adverse entries atleast for five years immediately before the compulsory retirement. But he is cashiered on the score that long years ago his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. The order of compulsory retirement fails because vital material relevant to the decision has been ignored and obsolete material less relevant to the decision has influenced the decision. Legality depends on regard for the totality of material facts viewed in an holistic perspective. The Supreme Court allowed the appeal and quashed the order of compulsory retirement.

(200)

Suspension — circumstances

Circumstances in which a Government servant may be placed under suspension explained.

Niranjan Singh vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785

The petitioner is the complainant in a criminal case where the accused are 2 Sub-Inspectors and 8 Constables attached to the City Police Station, Ahmadnagar. The charges against them, as per the private complaint, are of murder and allied offences under sections 302, 341, 395, 404 read with sections

34 and 120B I.P.C. The Magistrate ordered an enquiry under section 202 Cr.P.C., took oral evidence of witnesses at some length and held: "Thus taking an overall survey of evidence produced before me, I am of the opinion that there are sufficient grounds to proceed against all the accused for the offences under sections 302, 323, 342 read with section 34 I.P.C. Non-bailable warrants were issued for production of the accused. The Sessions Court granted bail and the High Court which was moved by the complainant, declined to interfere.

The Supreme Court observed that, "we may frankly state that had we been left to ourselves we might not have granted bail but, sitting under Art. 136, do not feel that we should interfere with a discretion exercised by the two courts below." The Supreme Court further observed: "We conclude this order on a note of anguish. The complainant has been protesting against the State's bias and police threats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team of ten policemen against whom a Magistrate, after due enquiry, found a case to be proceeded with and grave charges including for murder were framed, continue on duty without so much as being suspended from service up till disposal of the pending Sessions trial? On whose side is the State? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government, responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal court, under suspension unless exceptional circumstances suggesting a contrary course exist. After all, a gesture of justice to courts of justice is the least that Government does to the governed. The observations that we have made in the concluding portion of the order are of our comment not merely to the State of Maharashtra but also the other States in the country and to the Union of India, that we deem it necessary to direct that a copy of this judgment be sent to the Home Ministry in the Government of India for suitable sensitised measures to preempt recurrence of the error we have highlighted."

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- (A) P.C. Act, 1988 — Secs. 7, 13(1) (d)**
- (B) Trap — evidence of Investigating Officer**

No need to seek any corroboration where the evidence of police officer who laid the trap is found entirely trustworthy.

- (C) Trap — evidence of panch witness**

Veracity of a witness not necessarily dependent upon status in life. Not correct to say that clerks are less truthful and more amenable than superior officers.

(D) Trap — proof of passing of money

Not necessary that the passing of money should be proved by direct evidence. It can be proved by circumstantial evidence.

(E) Trap — proof of receipt of gratification

Recovery of money coupled with other circumstances can lead to the conclusion that accused received gratification.

(F) Statement of witness under Sec. 162 Cr.P.C. — use of

(G) Cr.P.C. — Sec. 162

Use of statements of witnesses under sec. 162 Cr.P.C., clarified.

Hazari Lal vs. State, AIR 1980 SC 873

This is a trap case where the appellant was convicted by the Special Judge, Delhi under sec. 5(2) read with sec. 5(1)(d) of P.C.Act, 1947 and sec. 161 IPC (corresponding to sec. 13(2) r/w sec.13(1)(d) and sec.7 of the P.C.Act, 1988). The conviction and sentence were confirmed by the High Court of Delhi and the matter came up before the Supreme Court in appeal.

The Supreme Court held that the statements made by witnesses in the course of investigation cannot be used as substantive evidence. Sec. 162 Criminal Procedure Code imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by sec. 145 Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of sec. 32(1) Evidence Act or permitted to be proved under sec. 27 Evidence Act. The definition of "proved" in sec. 3 Evidence Act does not enable court to take into consideration matters, including statements, whose use is statutorily barred.

The Supreme Court further held that where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance.

The Supreme Court referred to the argument of the appellant based on the observations in Kharaiti Lal vs. The State (1965(1) DEL LT 362) that persons holding clerical posts and the like should not be called as panch witnesses, as such witnesses could not really be called independent witnesses as they would always be under fear of disciplinary action if they did not support the prosecution case and observed that the respectability and the veracity of a witness is not necessarily dependant upon his status in life and that it cannot be said that clerks are less truthful and more amenable than their superior officers.

The Supreme Court further held that it is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in a given case may lead to the only inference that the money was obtained as bribe by the accused from the complainant. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption.

The Supreme Court held that the circumstances established by the prosecution entitled the court to hold that the accused received the gratification from the complainant. As held in the case of Suraj Mal vs. The State, AIR 1979 SC 1408, mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the court would certainly be entitled to draw the presumption under sec. 4(1) of the Prevention of Corruption Act, 1947 (corresponding to sec. 20 of the P.C. Act, 1988).

(202)

(A) Departmental action and conviction

Order of dismissal dispensing with inquiry passed on the basis of conduct which led to conviction on a criminal charge is proper.

(B) Penalty — dismissal, date of coming into force

Order of dismissal deemed to have been communicated on the date of despatch by post for service through proper channel.

Karumullah Khan vs. State of Andhra Pradesh, 1981(3) SLR AP 707

The petitioner joined the State Excise Department in the erstwhile State of Hyderabad on 22.5.43. It came to the notice of the Government through a petition on 10-2-72 that the petitioner was convicted by the High Court of Andhra Pradesh for breach of trust punishable under section 406 I.P.C. and sentenced to pay a fine of Rs. 250 by judgment dated 2-1-70 and therefore the Board of Revenue passed the impugned order of dismissal from service under exception in clause (a) of proviso to Art. 311(2) of Constitution, on 20-12-72. The order of dismissal was despatched on 21-12-72 but it could not be served, as the petitioner was not available. The petitioner filed an application to the department on 31-1-73 that he had completed 25 years of service and that he had reached the age of superannuation of 55 years and that he was exercising his option to retire under the provisions of the Hyderabad Civil Service Regulations and that he must be deemed to have retired from Government service and that he was no longer in Government service. It was contended on his behalf before the Andhra Pradesh High Court that he must as such be deemed to have retired from service on 31-1-73 as the order of dismissal was not served on him by then and the order of dismissal could not be enforced against him.

The High Court observed that the order of dismissal was passed on 20-12-72 and it was despatched through post to be served on the petitioner through proper channel. In *State of Punjab vs. Amar Singh* (AIR 1966 SC 1313), it was held that the mere passing of an order of dismissal was not effective unless it was published and communicated to the officer concerned. What is 'communication' is explained in a later decision of the Supreme Court in *State of Punjab vs. Khemi Ram* (AIR 1970 SC 214), where it was held that an order of suspension was effective from the date of communication by sending a telegram to his home address and it was immaterial when he actually received the order. The High Court

held that the petitioner must have deliberately evaded the service of the order of dismissal and therefore he cannot contend that it was not personally served on him, and that the petitioner must be deemed to have had knowledge of the order of dismissal prior to the submission of his letter of voluntary retirement on 31-1-73, and therefore the order of dismissal was valid and became effective.

The High Court held that by reason of proviso (a) to Art. 311(2) of Constitution and rule 9(3) of the Andhra Pradesh Civil Services (CCA) Rules, 1963 it is not necessary to give an opportunity or hold an enquiry and that in the instant case, the order of dismissal is based on the petitioner's conduct which led to his conviction on a criminal charge of breach of trust. The High Court rejected the contention that the order of dismissal was merely based on the conviction and not on the conduct leading to the conviction on a criminal charge and held that the order shows that the disciplinary authority took into consideration the fact that the charge of criminal breach of trust was established and his conduct which led to his conviction was made the basis for imposing the penalty of dismissal. The High Court held that the impugned order of dismissal was validly made.

(203)

(A) Exoneration

Order of exoneration after completion of regular departmental inquiry to be considered as an order under the Rules.

(B) Revision / Review

No power conferred on authorities to review own orders, by (unamended) rule 29 Central Civil Services (CCA) Rules, 1965.

R.K. Gupta vs. Union of India, 1981(1) SLR DEL 752

The petitioner was a Class I Senior Scale Officer of the Central Government. The President by order dated 4-9-73 directed that the charges framed against the petitioner be dropped. Later, memorandum dated 15-2-75 was served on him informing that the President had undertaken a review of his earlier order and proposed the imposing of penalty of dismissal. The President passed order of dismissal but it was not communicated in view of writ petition filed by the petitioner before the Delhi High Court and orders of the High Court.

The Delhi High Court considered the question of competence of the President to review his earlier order of exoneration. The High Court observed

that the facts are not in dispute. The charges were dropped by the President as per memo dated 4-9-73. The President, however, reviewed his earlier order on the initiative by the Central Bureau of Investigation and issued the memo of 15-2-75, proposing the penalty of dismissal. The Public Service Commission suggested the imposition of penalty of dismissal.

The High Court turned down the contention of the respondent that the order of exoneration is not an order under the Classification, Control and Appeal Rules and that it is an order under the plenary power which the appointing authority has over a Government servant and that it is only an order holding charges to be proved that can be called to be an order under the Rules. The High Court held that if a disciplinary proceeding is commenced with respect to an accusation and that disciplinary proceeding has reached the stage when an inquiry has been completed that disciplinary proceedings must end either in the imposition of a punishment or in exoneration. The High Court held that any order including that of exoneration is an order passed under the C.C.A. Rules. The High Court also held that a higher authority is competent to review and set aside an order of exoneration just as an order holding guilty.

The High Court observed that the only ground put forth for reviewing the earlier order was that if the President was to apply a different test for evaluating the evidence, he would arrive at a conclusion opposite to that which he had taken earlier. Rule 29 of the Central Civil Services (CCA) Rules, 1965 (before its amendment on 6-8-1981) uses the word 'review' but it is well understood that this word is used in the sense of revision or a reconsideration, but not necessarily by the very authority which passed the said order. In the absence of a provision in rule 29, it is not permissible to accept the contention that the power to review its own order is either specifically provided for or should be impliedly read into rule 29. Rule 29 excludes the power to review its own order by the authorities concerned and this power of review is really in the nature of a revision power to revise by an authority higher than the authority whose order is sought to be reviewed. It does not cover the case of authority reviewing its own earlier order. The High Court accordingly held that rule 29 of the Central Civil Services (CCA) Rules, 1965 did not permit the President to review his earlier order.

(204)

Departmental action and acquittal

Dismissal of Government servant in departmental inquiry held simultaneously with acquittal by criminal court on similar charge, not illegal.

Narayana Rao vs. State of Karnataka, 1981(1) SLJ KAR 18

The petitioner was a Police Constable in the State Armed Reserve in the Police Department in Karnataka. He was charge-sheeted before the Metropolitan Magistrate, IV Court, Bangalore City, for black-marketing cinema tickets in a theatre and simultaneously a departmental inquiry was also initiated against him. The Court acquitted the petitioner but he was found guilty of the charge in the departmental inquiry and was dismissed from service. Departmental appeal to higher authority and revision to Government did not meet with success. The petitioner approached the High Court contending that the departmental inquiry was vitiated in as much as the evidence disbelieved by the Magistrate has been relied upon by the Inquiry Officer and the petitioner found guilty.

The High Court of Karnataka held that law is settled that an acquittal in a criminal trial is not a bar for a departmental inquiry being held and in such an inquiry the Inquiry Officer can come to a different conclusion than the one arrived at by a criminal court. When this aspect of the law is settled, it is immaterial whether the charges were identical, whether the witnesses were common in the departmental inquiry and the criminal trial and they were also simultaneous as long as the power exercised by the criminal court and the Inquiry Officer under the relevant law and Service Rules are distinct and separate powers conferred on them.

(205)**Misconduct — of false date of birth**

Furnishing false date of birth at the time of entry into service constitutes misconduct, irrespective of his entitlement otherwise.

Musadilal vs. Union of India, 1981(2) SLR P&H 555

A Store Issuer was recruited by the Railways in 1955. At the time of entry into service, he gave his date of birth as 16 May 1929. It was later discovered by the Railway authorities that his actual date of birth was 5 Sept. 1918. He was charge-sheeted and an inquiry was held. The Inquiry Officer held the charge as established and the disciplinary authority imposed the penalty of withholding of two increments with cumulative effect. The Departmental Reviewing Authority suo moto reviewed the case and removed him from service.

The petitioner contended before the Punjab and Haryana High Court that the interpolation in his certificate of birth was a wrong entry made probably

by the Medical Officer. The High Court did not find it acceptable and held that the petitioner had made a mis-statement of an important fact like his date of birth and that the responsibility for the mis-statement rested solely on him.

It was further contended by the petitioner that even if a wrong statement had been made by him, he could not be removed unless it was shown that had he not made the false statement he would not have been inducted into Railway Service and that irrespective of the wrong statement made by him, he was still entitled as an ordinary applicant, to enter Railway Service. The High Court did not find this contention acceptable.

(206)

Reversion — of probationer

Order simpliciter of termination/reversion of service of Probationer/Temporary employee, where misconduct, negligence, inefficiency may be motive or the inducing factor in passing the order, does not attract Art. 311 of Constitution.

Union of India vs. P.S. Bhatt, 1981(1) SLR SC 370

The respondent was originally recruited as a Compere (later redesignated as Announcer) on 29-5-72 in the All India Radio, Vijayawada. He was selected by direct appointment to the post of a Producer on probation on 7-7-75. He was reverted to the post of Announcer on 28-1-77, by an order of the Station Director. The respondent contended that the order of reversion was by way of punishment and a single Judge of the High Court allowed his writ petition and the Division Bench agreed with the findings of the single Judge.

The Supreme Court observed that the law in relation to termination of service of an employee on probation is well-settled. If any order terminating the service of a probationer be an order of termination simpliciter without attaching any stigma to the employee and if the said order is not an order by way of punishment, there will be no question of the provisions of Art. 311 of Constitution being attracted. The order in the present appeal is an order of termination of the employment on probation simpliciter and reversion to the old post without attaching any kind of stigma. The Supreme Court observed that loose talk and filthy and abusive language which had been used against the Station Director and the other officers may legitimately lead to the formation of a reasonable belief in the minds of the authorities that the person behaving in such fashion is not suitable

to be employed as a Producer. This undesirable conduct on the part of the appellant might have been the motive for terminating the employment on probation and for reverting him to his old post of Announcer. Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influence the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment.

(207)

Public Servant

Office bearer of a Co-operative Society or a member of the All India Services on deputation with the Co-operative Society is not a public servant within the meaning of section 21 IPC.

S.S. Dhanoa vs. Municipal Corporation of Delhi, 1981(2) SLR SC 217

A Food Inspector of the Municipal Corporation of Delhi seized a sealed bottle of honey from the Super Bazar, New Delhi, which is run by a Co-operative Society. On analysis, the honey was found to be adulterated. The Municipal Corporation launched a prosecution against the Super Bazar represented by its General Manager, who is an All India Service Officer deputed for a fixed period.

The Super Bazar authorities challenged the prosecution on the ground that prior permission of the Government had not been obtained for the prosecution of the General Manager, who is a public servant as contemplated under section 197 Cr.P.C. The Supreme Court held that, within the meaning of section 21, clause (12) I.P.C., only such officials are public servants who are in the service or pay of the Government or a Corporation established by the Central or the State Government or a Government company. Employees or office bearers of a Co-operative Society are not public servants, as a Co-operative Society is neither a local authority nor a Corporation. A co-operative Society is not a Corporation established by the Government. It is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals (though) in accordance with the provisions of a statute. A Super Bazar is owned and managed by a Co-operative Society and not by the Government. Legally speaking, the Super Bazars are owned and managed by the Society and not by the Central Government and therefore the appellant was not employed in connection with the affairs of the Union within the meaning of section 197 Cr.P.C.

(208)

Departmental action and acquittal

Power of the authority to continue departmental inquiry is not taken away nor its discretion in any way fettered merely because the accused is acquitted.

***Corporation of Nagpur vs. Ramachandra G. Modak,
1981(2) SLR SC 274 : AIR 1984 SC 626***

A charge-sheet was served on the respondents in relation to two accidents which occurred during the construction of a stadium which was being looked after by them and they were suspended. They were also prosecuted in a court of law under section 304A I.P.C. The delinquents filed an unsuccessful appeal to the departmental appellate authority against the order of suspension and thereafter moved a writ petition in the High Court which was allowed and the order of suspension was quashed on the ground that the authority which passed the order was not competent. The appellants thereafter filed an appeal before the Supreme Court.

One of the questions considered by the Supreme Court is if the respondents are acquitted in the criminal case, whether or not the departmental inquiry pending against them would have to continue. The Supreme Court held that this is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered. The Supreme Court observed that the authority may take into consideration the fact that quite some time has elapsed since the departmental inquiry had started. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry it can certainly do so.

(209)

Termination — of temporary service

Termination of service of temporary employee on ground of unsuitability in relation to the post held by the employee does not attract Art. 311 of Constitution, carries no stigma and is not by way of punishment.

**Commodore Commanding, Southern Naval Area, Cochin vs. V.N. Rajan,
1981(1) SLR SC 656**

The respondent was appointed as Labourer on casual basis on 18-12-61 and in the regular cadre in an existing vacancy from 15-11-62. He was promoted and appointed as Ammunition Repair Labourer, Grade II in the Naval Armament Depot, Alwaye from 2-3-64. His services were terminated by Order dated 17-1-67, on payment of a month's pay and allowances in lieu of notice.

The Supreme Court, while agreeing with the Division Bench of the Kerala High Court that the respondent even as a temporary Government servant is entitled to the protection of Art. 311(2) of Constitution where termination involves a stigma or amounts to punishment, observed that they were satisfied after looking into relevant record that the decision to terminate the services of the respondent had been taken at the highest level on the ground of unsuitability in relation to the post held by him and it is not by way of any punishment and no stigma is attached to the respondent by reason of the termination of his service. The Supreme Court confirmed the appellant's order of termination of the respondent.

(210)

- (A) **P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) **Disproportionate assets — known sources of income**

In a case of disproportionate assets, prosecution need not disprove all possible sources of his income.

- (C) **Disproportionate assets — burden of proof on accused**

Accused need not prove his innocence beyond all reasonable doubt; preponderance of probability as to possession set out by accused is sufficient.

**State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar,
AIR 1981 SC 1186**

The Supreme Court observed that the provision contained in section 5(1)(e) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(e) of P.C. Act, 1988) is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When section 5(1)(e) used the words "for which the public servant is unable to satisfactorily

account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. Thus it cannot be said that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under section 5(2) read with section 5(1)(e) unless the prosecution disproves all possible sources of income.

To substantiate the charge, the prosecution must prove the following facts before it can bring a case under section 5(1)(e), namely (i) it must establish that the accused is a public servant, (ii) the nature and extent of the pecuniary resources or property which were found in his possession, (iii) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (iv) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under section 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for the possession of disproportionate assets. The accused is not bound to prove his innocence beyond all reasonable doubt. All that he need do is to bring out a preponderance of probability.

(211)

Registered letter — refusal to receive

Refusal of registered envelop tendered by postman constitutes due service, and imputes addressee with knowledge of the contents thereof.

Har Charan Singh vs. Shiv Ram, AIR 1981 SC 1284

This is an appeal by a tenant against the judgment and decree passed by the Allahabad High Court whereby the High Court decreed the respondent's (land lord's) suit for ejectment against the appellant (tenant). The only question of substance raised in the appeal is whether when the landlord's notice demanding arrears and seeking eviction sent by registered post and is refused by the tenant, the latter could be imputed with the knowledge of the contents thereof so that upon his failure to comply with the notice the tenant could be said to have committed willful default in payment of rent.

The Supreme Court held that when a registered envelop is tendered by a postman to the addressee but he refused to accept it, there is due service

effected upon the addressee by refusal; the addressee must therefore be imputed with the knowledge of the contents thereof and this follows upon the presumptions that are raised under section 27 of General Clauses Act, 1897 and section 114 of the Evidence Act.

The presumptions under these provisions are rebuttable but in the absence of proof to the contrary, the presumption of proper service or effective service on the addressee would arise, which must mean service of everything that is contained in the notice. It cannot be said that before knowledge of the contents of the notice could be imputed, the sealed envelop must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelop.

(212)

(A) Cr.P.C. — Sec. 197

(B) *Sanction of prosecution — under Sec. 197 Cr.P.C.*

Medical Officer issuing a post-mortem certificate alleged to be false. Offence deemed to have been committed while purporting to act in the discharge of official duty as a public servant. Sanction of Government before prosecution essential under section 197 Cr.P.C.

Dr. P. Surya Rao vs. Hanumanthu Annapurnamma, 1982(1) SLR AP 202

The petitioner is a Medical Officer who conducted a post-mortem examination and issued a certificate. A private complaint was filed against him and 3 others under sections 302, 447, 197 and 201 I.P.C. alleging that he colluded with the others who committed the offence of trespass and murder, by issuing a false certificate of post-mortem. The petitioner contended before the Andhra Pradesh High Court that sanction from Government is required for his prosecution, under section 197 Cr.P.C.

The High Court held that the petitioner is indisputably a public servant not removable from his office save by or with the sanction of the Government. Regarding the second requirement of section 197 Cr.P.C., the High Court observed that the accusation against the petitioner is that he gave a false and dishonest post-mortem certificate and there is no doubt that he committed the offence while discharging his duties as a public servant. May be his action in giving post-

marinem certificate, which is not true, is not strictly in accordance with his duties and may, therefore, not amount to an offence committed by him, while acting in the discharge of his official duty, but it would be an offence committed by him, while purporting to act in the discharge of his official duty. The petitioner is entitled to the protection under section 197(1) Cr.P.C.

(213)

Suspension — restrictions, imposition of

Employee under suspension cannot be compelled to attend office and to mark attendance at the office daily during working hours.

***Zonal Manager, Food Corporation of India
vs. Khaleel Ahmed Siddiqui, 1982(2) SLR AP 779***

The respondents are employees of the Food Corporation of India. They were placed under suspension pending disciplinary proceedings. It was ordered that during the period the order is in force, the headquarters should be Sanathnagar and that they should not leave the headquarters without obtaining the previous permission of the Senior Regional Manager in charge and they should mark attendance in the Register maintained for this purpose at Divisional Office, Sanathnagar on all working days at any time during the working hours.

The Andhra Pradesh High Court observed that the expression 'suspension' means debarring an employee from service temporarily and as such he cannot be compelled to attend office and mark his attendance. It is not open by way of administrative instructions to amend or modify the statutory rules, though it is open to the executive to supplement or fill up the gaps by administrative instructions. The High Court rejected the contention of the Food Corporation that the power to suspend on the part of the management will include power to suspend an employee partially. In other words, it is open to them to direct the employee to come to the office and mark his attendance but at the same time not to render service. The rules clearly provide for suspension only. The consequences of suspension are also laid down and the rules do not provide for a peculiar order of this nature. This method adopted is clearly contrary to the power vested in them under the Regulations and cannot be sustained. The High Court dismissed the writ appeals and refused leave to appeal to the Supreme Court.

(214)**Inquiry — ex parte**

Taking new evidence, oral or documentary, on record by inquiring authority without giving fresh opportunity and notice to delinquent officer in ex parte proceedings constitutes violation of rules of natural justice.

H.L. Sethi vs. Municipal Corporation, Simla, 1982(3) SLR HP 755

The petitioner was a Sanitary Inspector in the Municipal Corporation, Simla. He was placed under suspension and a departmental inquiry was held and a penalty of dismissal from service imposed on him by order dated 10-8-73. His departmental appeal was rejected. The petitioner contended in a writ petition filed in the Himachal Pradesh High Court that he was not given ample opportunity to present himself before the Inquiry Officer and that ex parte proceedings were ordered against him.

The High Court held that no new evidence (oral or documentary) can be taken on record by the Inquiring Authority without giving sufficient opportunity to the delinquent officer to meet that evidence. In the present case although the proceedings were ordered to be ex parte, still if the Inquiry Officer wanted to take additional evidence, then he had to give a fresh notice to the petitioner about this new evidence. It is just possible that the documents and witnesses which are named in the list are not considered of any weight by the delinquent officer and he may ignore the evidence of these witnesses and the documents under a genuine belief that this evidence is insufficient to prove the charges levelled against him. But if new evidence is sought to be adduced, then the delinquent officer although he might have been proceeded ex parte should be given a fresh notice of the proposed new evidence so that he may get an opportunity of meeting this new evidence against him. Not giving such an opportunity to the petitioner even in ex parte proceedings is a clear violation of the principles of natural justice as also rule 14(15) of the Central Civil Services (CCA) Rules, 1965.

(215)**Suspension — issue of fresh order**

Open to the authorities to suspend the official on the basis of new facts coming into existence subsequent to staying an earlier order of suspension, by High Court.

G.D. Naik vs. State of Karnataka, 1982(2) SLR KAR 438

The Principal of a Government College under Karnataka Government was suspended in 1979 in view of a criminal case pending against him. The operation of this suspension order was stayed by the Karnataka High Court soon thereafter. Subsequently, on receipt of complaints against him, preliminary investigations were made and *prima facie* allegations were found sustainable against him and thereupon a fresh suspension order ‘pending inquiry’ was issued by the State Government in February 1982. The fresh suspension order was challenged on the contention that it was intended to overcome the effect of earlier stay granted by the High Court in 1979.

The contention of the Principal was rejected by the Karnataka High Court pointing out that what was material to decide the case was the source of power under which the fresh suspension order was passed. There was enough material on record, not related to the 1979 criminal case resulting in earlier stay of suspension, pertaining to the conduct of the Principal subsequent thereto, for the Government of Karnataka to exercise its powers to place a Government servant under suspension. The fresh suspension order was accordingly held valid by the High Court.

(216)

Departmental action and investigation

No bar to hold disciplinary proceedings in respect of a charge just because criminal investigation is pending.

**B. Balaiah vs. DTO, Karnataka State Road Transport Corporation, 1982
(3) SLR KAR 675**

The petitioner who was a driver in the service of the Karnataka State Road Transport Corporation questioned the legality of the commencement of the disciplinary proceedings against him, when in respect of the same allegation, investigation under the provisions of the Criminal Procedure Code was under progress. The substance of the charge framed against him was that he was a party for smuggling sandalwood billets through the bus belonging to the Corporation of which he was a driver.

It was held that there is no bar for the Corporation to hold disciplinary proceedings against the petitioner in respect of the charge just because the criminal investigation is under progress in respect of the same charge.

(217)**Public Service Commission**

Non-supply of Public Service Commission's advice to the charged officer does not constitute denial of reasonable opportunity.

Chief Engineer, Madras vs. A. Changalvarayan, 1982(2) SLR MAD 662

An employee of Government of Tamilnadu was proceeded against on charges of corruption. According to the procedure prescribed in the relevant disciplinary rules, the Inquiry Officer's report was submitted to the Head of the Department (Chief Engineer). The Chief Engineer did not agree with the finding of guilty against the charged officer in respect of one charge and therefore, as per the prescribed procedure, recorded his disagreement and sent the papers to the Government for final orders. The Government did not accept the view taken by the Chief Engineer in respect of the Inquiry Officer's finding on one charge. The case was forwarded to the Public Service Commission, who found that some of the corruption charges were established and accordingly advised dismissal of the employee from service. Accepting the Commission's advice, the Government passed the dismissal order.

The employee filed a writ petition before the Madras High Court and a single Judge allowed the petition holding that the Public Service Commission's recommendation and the Chief Engineer's report to the Government constituted material used against the charged employee and their non-disclosure to the employee was against the principles of natural justice, and quashed the dismissal order. The case came in appeal to the Division Bench of the High Court.

As regards the report of the Chief Engineer to the Government, the Division Bench found that it was in favour of the delinquent officer and that no material in the report against the delinquent officer was relied upon by the Government and non-supply of the Chief Engineer's report to the delinquent officer did not vitiate the disciplinary proceedings.

As regards supplying of the Public Service Commission's advice to the charged officer, the High Court noted the Supreme Court's ruling holding that Art. 311 of Constitution is not controlled by Art. 320 requiring consultation with the Public Service Commission and that, therefore, the reasonable opportunity contemplated under Art. 311 does not cover the furnishing of the advice of the Public Service Commission to the delinquent officer.

(218)

(A) Charge — should contain necessary particulars

(B) Inquiry — previous statements, supply of copies

Non-mention of the date and time of misconduct and location of the incident in the charge-sheet and non-furnishing of statements of witnesses recorded during preliminary enquiry amounts to denial of reasonable opportunity.

***State of Uttar Pradesh vs. Mohd. Sherif, 1982(2) SLR SC 265 :
AIR 1982 SC 937***

A Head Constable of the Uttar Pradesh Police was proceeded against for alleged misconduct of hunting a bull in Government forest by taking advantage of his office and rank. He was held guilty by the Inquiry Officer and dismissed from service. His appeal and revision petition to higher authorities failed. The Head Constable filed a suit against his dismissal on the ground that the order of dismissal was illegal as no proper inquiry was held against him and no reasonable opportunity was given to him to defend himself. The trial court dismissed the suit. The appeal Court reversed the trial court's findings and decreed the suit holding that the charge-sheet framed against him was vague, that the official was prejudiced in his defence and was not given a reasonable opportunity to defend himself during the inquiry. The State preferred a second appeal and the High Court confirmed the decree passed by the appeal court. The State went in appeal to the Supreme Court.

The Supreme Court confirmed the decision of the High Court and held that the Head Constable had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matter of his defence and that (i) in the charge- sheet served on the public servant, no particulars with regard to the date and time of his having entered the Government Forest and hunting a bull there and thereby having injured the feelings of community, were mentioned and even the location of the incident in the vast forest was not indicated with sufficient particularity and (ii) copies of statements of witnesses recorded during the preliminary enquiry were not furnished to the charged official at the time of the disciplinary inquiry. The Supreme Court held that the respondent was denied reasonable opportunity to defend himself in the disciplinary inquiry.

(219)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) Trap — held proved, where complainant died before trial
- (C) Trap — appreciation of evidence

Appreciation of evidence in a trap case, where complainant died before commencement of trial. Conviction by Special Judge upheld by High Court and Supreme Court.

Kishan Chand Mangal vs. State of Rajasthan, AIR 1982 SC 1511

Appellant, Factory Inspector, was convicted by Special Judge, Jaipur for offences under sec. 161 IPC and sec. 5 (1) (d) read with sec. 5 (2) of the P.C. Act, 1947 (corresponding to secs. 7 and 13(1)(d) read with 13(2) of P.C. Act, 1988) for demanding and accepting an illegal gratification of Rs.150 from the complainant in a trap laid by the Anti-Corruption Department on 22-11-1974. By the time the case came up for trial, the complainant was dead and his evidence was not available. Prosecution examined the two mediators to the trap proceedings and the Deputy Superintendent of Police who laid the trap. After an unsuccessful appeal to the High Court, the appellant preferred an appeal by special leave.

The Supreme Court observed that the Special Judge noted the fact that the complainant was not available but held that the evidence of the two mediator witnesses was reliable and was amply corroborated by the recovery of the currency notes as well as the positive result of the phenolphthalein test on the hands of the accused. The Special Judge rejected the defence version that the currency notes were planted when the appellant had gone into the bath room.

The Supreme Court held that the absence of the name of the appellant in the complaint was hardly of any significance. On the question whether there is any evidence of demand of bribe on 20.11.1974, the Supreme Court observed that a fact may be proved either by direct testimony or by circumstantial evidence. On the contention of appellant that once the complainant was not available to give evidence there is no evidence not only of the first demand but also the payment of bribe pursuant to the demand, the Supreme Court observed that the evidence of the two mediators assumes considerable importance. On the further contention that both the mediators are some petty clerks and it would be both unwise and dangerous to place implicit reliance on their testimony, the Supreme Court observed that factually it is not correct to say so, and that truth is neither the monopoly nor the preserve of the affluent or of highly placed persons and

expressed that it is disinclined to reject their testimony on sole ground that they are petty clerks as if that by itself is sufficient to reject their testimony. The Supreme Court found no justification in the submission that the two mediators were persons not likely to be independent of police influence. On the contention that the appellant did not disclose any guilty syndrome when the raiding party entered his room and at the first question he denied having accepted any bribe from the complainant, the Supreme Court observed that a person with a strong will would not be upset and may remain cool and collected. The Supreme Court dismissed the appeal.

(220)

Vigilance Officer — report, supply of

Failure to supply report of Vigilance Officer, neither exhibited nor made use of in the inquiry, does not violate principles of natural justice.

K. Abdul Sattar vs. Union of India, 1983(2) SLR KER 327

The petitioner was an Assistant Sub-Inspector, Railway Protection Force, Southern Railway at Madras. After a departmental inquiry, he was dismissed from service. His departmental appeal was dismissed.

One of the contentions raised by the petitioner before the Kerala High Court is that he was not furnished with a copy of the report submitted by the Vigilance Inspector, Railway Board thus denying him adequate opportunity to cross-examine the witnesses. The High Court held that so long as that document has not been exhibited, and so long as the contents of that document have not been made use of at the inquiry, the petitioner cannot feel aggrieved by the failure on the part of the Inquiry Officer to furnish him with a copy of the report of the Vigilance Officer.

(221)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — corroboration of complainant

Independent corroboration of complainant in regard to demand of bribe before the trap was laid, not necessary.

(C) Trap — phenolphthalein test

Phenolphthalein test evidence is admissible and can be relied upon.

Rajinder Kumar Sood vs. State of Punjab, 1983 Cri.L.J. P&H 1338

The Punjab & Haryana High Court held that there is no question of the Court insisting upon any independent corroboration of the complainant in regard to the demanding of bribe before the trap was laid. When a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe.

The High Court further held that phenolphthalein test evidence is admissible in law and can certainly be relied upon against the accused.

(222)**Departmental action and conviction**

Dismissal of employee from service merely on the basis of his conviction, illegal. It is only his misconduct which led to the conviction that has to be taken notice of.

Gurbachan Dass vs. Chairman, Posts & Telegraphs Board, 1983(1) SLR P&H 729

The petitioner was employed as Head Clerk in the Head Post Office, Amritsar. He was dismissed from service on account of his conviction in a case under sections 420, 471 I.P.C.

The Punjab and Haryana High Court held that an employee in Government service cannot be dismissed merely on the basis of his conviction and it is only his misconduct which might have led to the conviction that has to be taken notice of. This aspect of the matter apparently was not present to the mind of the authority passing the impugned order. Thus the order is unsustainable and is set aside.

(223)**Disproportionate Assets — confiscation of property**

Special Judge trying an offence under the P.C. Act has the power to pass an order of confiscation under sec. 452 Cr.P.C.

Mirza Iqbal Hussain vs. State of U.P., 1983 Cri.L.J. SC 154

By a judgment dated 16-2-1976, the Special Judge, Deoria, convicted the appellant under sec. 5(1)(e) read with sec. 5(2) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(e) read with sec. 13(2) of P.C. Act, 1988) on the charge that during the period of his office as a police constable, he was found in possession of property disproportionate to his known sources of income, for which he could not satisfactorily account. The Special Judge directed that the two fixed deposit receipts in the sum of rupees five thousand each and the cash amount of Rs. 5280 which were seized from the house of the appellant and which formed the subject matter of the charge under sec. 5(1)(e) shall stand confiscated to the State. The appellant raised the contention before the Supreme Court that the Special Judge had no jurisdiction to pass an order of confiscation.

The Supreme Court observed that sec. 4(2) Cr.P.C. provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and "otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences". It is clear from this provision that in so far as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried. Therefore, it will have to be ascertained whether the Code of Criminal Procedure confers the power of confiscation, and secondly, whether there is anything in the Prevention of Corruption Act which militates against the use of that power, either by reason of the fact that the latter Act contains a specific provision for confiscation or contains any provision inconsistent with the power of confiscation conferred by the Code of Criminal Procedure. On the first of these questions, Sec. 452 of the Code provides by sub-section (1), in so far as material, that if the trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal of property by confiscation. This power would, therefore, be available to a court trying an offence under the Prevention of Corruption Act unless that Act contains any specific or contrary provision on the subject matter of confiscation. None of the provisions of the Prevention of Corruption Act provides for confiscation or prescribes the mode by which an order of confiscation may be passed. The Prevention of Corruption Act being totally silent on the question of confiscation, the provisions of the Code of Criminal Procedure would apply in their full force, with the result that the court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of the provisions contained in sec. 452 of the Code of Criminal Procedure. The order of confiscation cannot, therefore, be held to be without jurisdiction.

(224)**Defence Assistant / Legal Practitioner**

Charged officer entitled to assistance of legal practitioner when prosecution is represented by legally trained person.

Board of Trustees of Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni, 1983 (1) SLR SC 464

The charged officer requested permission to engage a legal practitioner for his defence and it was rejected. A Legal Adviser and a Junior Assistant Legal Adviser were appointed as Presenting Officers to present the prosecution case before the Inquiry Officer. The charged officer was defended by a non-legal practitioner, and he was dismissed. The High Court quashed the dismissal order observing that refusal to permit engagement of a legal practitioner amounted to violation of principles of natural justice. The Port Trust Authorities went in appeal to the Supreme Court.

When the inquiry commenced, the relevant rules did not provide for permitting the charged employees to be represented by an Advocate nor was any embargo placed on such appearance of an advocate. However, soon after the inquiry started, a provision was made in the relevant regulations that a legal practitioner should be allowed for the defence of the charged officer when the Presenting Officer is a legal practitioner or when the disciplinary authority having regard to the circumstances of the cases gives special permission.

The Supreme Court observed that immediately after the introduction of the above provision, the disciplinary authority should have suo motu reopened the charged officer's request for assistance of a legal practitioner and should have granted the permission in view of the fact that the prosecution was represented by legally trained persons and held that the failure of the disciplinary authority to do so vitiated the inquiry proceedings.

The Supreme Court observed that the time-honoured and traditional approach was that a domestic inquiry was purely a managerial function and it was best left to the management without the intervention of the legal profession and that intervention of legal profession in the domestic inquiry would vitiate the informal atmosphere of a domestic tribunal. In the past, such informal atmosphere perhaps prevailed in domestic inquiries and the strict rules of evidence and pitfalls of procedural law did not hamstrung the inquiry but the situation had moved far away from such a stage. The present employer has on his pay rolls

Labour Officers, Legal Advisers and lawyers in the garb of employees and they are frequently appointed Presenting/Prosecuting Officers while the charged officers are left to fend for themselves. According to the Supreme Court, such weighted scales and tilted balance in favour of the employer can only be partly restored if the delinquent officer is given the same legal assistance as the employer enjoys. If the necessary legal assistance was not made available to the charged officer, it would amount to not affording reasonable opportunity to the charged officer to defend himself, and the inquiry proceedings would be contrary to the principles of natural justice.

The Supreme Court also referred to the possible plea that might be taken by the employer that since the Presenting Officers were not legal practitioners in the strict sense of the term as used in disciplinary rules, assistance of a legal practitioner to the charged officer would not be justified. In this context, the Supreme Court drew attention to its own observation in an earlier case that no one should be enabled to take shelter behind such an 'excuse'. The Supreme Court finally ruled that whenever a delinquent officer is pitted against a legally trained mind, refusal to grant permission to the delinquent officer for being represented through legal practitioner tantamounts to denial of reasonable opportunity and natural justice. The appeal of the Port Trust was accordingly dismissed.

(225)

Defence Assistant

Incumbent upon Disciplinary authority to inform charged official of his right to take a Defence Assistant even if he did not seek permission. Charged Official, a class IV employee, not in a position to know the intricate rules governing disciplinary proceedings.

Bhagat Ram vs. State of Himachal Pradesh, 1983(1) SLR SC 626

The appellant joined service as a Forest Guard in the erstwhile State of Punjab and his services stood transferred to the State of Himachal Pradesh from 1-11-66 on its formation. A joint disciplinary inquiry was instituted against the appellant and a Block Officer. The charges related to (i) illicit felling, (ii) negligence in the performance of duty and (iii) doubtful honesty. Towards the close, the inquiry against the appellant was separated and the co-delinquent was examined as a witness against the appellant. The Inquiry Officer held the charges relating to illicit felling and negligence proved against both of them and submitted a

joint report and the disciplinary authority imposed the penalty of removal from service on the appellant. The appeal preferred by the appellant was rejected by the Chief Conservator of Forests. Thereafter, the appellant filed a revision petition to the Forest Minister but before orders were received, he moved a petition in the High Court and a Division Bench dismissed the petition in lumine. Hence the appellant filed an appeal before the Supreme Court by special leave.

The Supreme Court observed that the appellant, a Forest Guard belongs to the lower echelons of Class IV service. The Disciplinary authority was represented by a Presenting Officer and the co-delinquent, a Block Officer, had a defence assistant. But the appellant did not have a defence assistant. The Supreme Court held that the contention that he did not apply in time for permission to seek help of another Government servant to defend him is a highly technical approach not conducive to a just and fair adjudication of the charges levelled against the appellant and that the Inquiry Officer should have enquired from the appellant, a class IV semi-literate Forest Guard, whether he would like to engage someone to defend him. Rules permit such permission being asked for and granted in such circumstances and the question is whether the provision has been substantially complied with. The principle deducible from the provision contained in sub-rule (5) of rule 15 of Central Civil Services (CCS) Rules upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the Disciplinary Authority, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, to inform the delinquent officer that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presidenting Officer and a superior officer, co-delinquent is also represented by an officer in his choice to defend him, absence of anyone to assist such a Government servant belonging to the lower echelons of service unless it is shown that he had not suffered any prejudice, vitiates the inquiry.

(226)

Evidence — circumstantial

Conclusion of inquiry officer can be based on circumstantial evidence.

Jiwan Mal Kochar vs. Union of India, 1983(2) SLR SC 456

The appellant was an officer of the Madhya Pradesh cadre of the I.A.S. The President of India by his order dated 25-1-64 compulsorily retired him from service as a result of disciplinary proceedings instituted against him under the All India Services (Discipline and Appeal) Rules, 1955, in which he was found guilty of charge No.7 and part of charge No.9. The appellant contended that the evidence relied upon against him was purely circumstantial and it should be such as to exclude the possibility of his innocence, that the finding of the Inquiry Officer was vitiated as based on mere suspicion and no evidence and on inadmissible material and that the guilt of the appellant has not been established such as to stand scrutiny and reasonableness consistent with human conduct and probabilities.

The Supreme Court held that the conclusion of the Inquiry Officer regarding the appellant's guilt in respect of the entire charge No.7 and part of charge No.9 is based on circumstantial evidence which has been accepted by the Inquiry Officer and found to be acceptable even by the High Court in the light of three sets of documents and other circumstances considered by them and no interference is called for.

(227)

Misconduct — political activity, past

Termination cannot be ordered on the basis of past political activities. Order though innocuous still penal in character and attracts Art. 311 of Constitution and amounts to violation of Arts. 14, 16.

***State of Madhya Pradesh vs. Ramashankar Raghuvanshi,
AIR 1983 SC 374***

The respondent was a teacher employed in a municipal school. The school was taken over by the Government in June 1971 and the respondent was absorbed in Government service by an order dated 28-2-72 subject to verification of antecedents and medical fitness. His services were terminated on 5-11-74. Though the order did not stigmatise him in any manner, it is not disputed that the order was founded on a report made by the Superintendent of Police, Raigarh on 31-10-74 to the effect that the respondent was not a fit person to be entertained in Government service as he had taken part in R.S.S. and Jan Sangh activities. The High Court held that the order was of a punitive character and quashed it on the ground that the provisions of Art. 311 of Constitution had not been complied

with. The State of Madhya Pradesh has sought leave to appeal to the Supreme Court.

The Supreme Court observed that India is not a Police State. India is a democratic republic. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government contrary to some service Conduct rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds or that he exhorted any one to commit violent deeds.

All that is said is that before he was absorbed to Government service, he had taken part in some R.S.S., Jana Sangh activities. The Supreme Court observed that they do not have the slightest doubt that the whole business of seeking police report about the political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble of the Constitution and that it offends the Fundamental Rights guaranteed by Arts. 14 and 16 of Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. The Supreme Court added that they were not for a moment suggesting that even after entry into Government service, a person may engage himself in political activities, and what all they wanted to say was that he cannot be turned back at the very threshold on the ground of his past political activities and that once he becomes a Government servant, he becomes subject to the various rules regulating the conduct and his activities must naturally be subject to all rules made in conformity with the Constitution. The Supreme Court dismissed the application.

(228)

(A) Misconduct — in private life

Misconduct or moral turpitude need not necessarily relate to an activity in the course of employment. Officer enticing the wife of another constitutes misconduct.

(B) Misconduct — moral turpitude

Scope of term "moral turpitude" explained.

(C) Suspension — court jurisdiction

Necessity or desirability to place under suspension is the objective satisfaction of Government. Court cannot look

into sufficiency of material, but only factum of satisfaction if the satisfaction is no satisfaction at all or it was formed on extraneous consideration or there was total lack of application of mind. Fact that the Court can form a different opinion is no ground for quashing the order of suspension.

State of Tamilnadu vs. P.M. Balliappa, 1984(3) SLR MAD 534

The respondent belongs to the Tamilnadu cadre of I.A.S., and was functioning as the Director, Anna Institute of Management. A petition was presented by an I.P.S. Officer of Tamilnadu cadre on deputation to Government of India on 24-8-83 that the respondent had enticed his wife, developed clandestine relationship with her and was misusing his official position to visit Delhi as she was at Delhi, and followed it up with another petition on 15-9-83 giving further details about the alleged clandestine and immoral relationship between his wife and the respondent. The Government of Tamilnadu examined the matter and was fully satisfied that a *prima facie* case involving moral turpitude and criminal misconduct existed warranting initiation of disciplinary proceedings against the respondent and placed him under suspension under rule 3(1)(a) of the All India Services (Discipline and Appeal) Rules, 1969.

A single Judge of the Madras High Court set aside the order of suspension and in the appeal filed by the State Government, the Division Bench of the High Court observed that the matter of suspension is left to the objective satisfaction of the Government and the Court cannot look into the question as to whether the materials are adequate or inadequate from its point of view. But the factum of satisfaction can always be questioned before the Court and the party challenging the order of suspension can always show that the professed satisfaction is no satisfaction at all, either because it was formed on extraneous or irrelevant circumstances or that there was a total lack of application of mind to the question as to whether it is necessary or desirable to suspend the officer. The High Court observed that while it can examine as to whether the opinion or satisfaction was formed at all, the High Court cannot substitute its own satisfaction for that of the authority and that the fact that different formation of opinion or satisfaction is possible for the court on the very same facts and circumstances is not a ground to quash the order.

The High Court found that there was application of mind and an opinion has been formed by the Government that the respondent failed to maintain absolute integrity and devotion to duty, entangled himself in actions involving moral turpitude and there was a *prima facie* case of misconduct in that he had acted in

a manner unbecoming of a member of the Service, attracting rule 3(1) of the All India Services (Conduct) Rules 1968. The expressions "moral turpitude or delinquency" are not to receive a narrow construction and it would include a conduct contrary to and opposed to good morals and which is unethical. The said expressions have not found a categorical definition anywhere, but it would include anything done contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general. It would imply depravity and wickedness of character or disposition of the person charged with the particular conduct. It may also include an act which shocks the moral conscience of society in general. It is by now well settled that the misconduct of unbecoming conduct or conduct of moral turpitude need not necessarily relate to an activity in the course of the employment and it could relate to an activity outside the scope of the employment. Considering the high nature of the office the incumbent is placed in and the reputation of integrity that is required for the discharge of the duties annexed to that office, if the act of the Government servant brings down the reputation of not only himself but also the office which he occupies, the employer, the Government, can definitely set the rule in motion for disciplinary action, if the Government servant is found indulging in a conduct which is unworthy or unbecoming of an official of the State. The discretion is that of the State and unless the discretion exercised and the decision taken could come within the mischief of any of the well settled principles, the Court should not superimpose its ideas and scuttle down the discretion to an illusion. The High Court allowed the writ appeal filed by the Government of Tamilnadu and refused leave of appeal to the Supreme Court.

(229)

Compulsory retirement (non-penal)

- (i) *Power to retire Government servant in public interest is absolute, provided bona fide opinion is formed by the concerned authority. Court competent to interfere if decision is based on collateral grounds or is arbitrary.*
- (ii) *Stale adverse entries not to be relied upon for retiring a person compulsorily particularly when the officer has been promoted subsequent to such entries.*

J.D. Shrivastava vs. State of Madhya Pradesh, 1984(1) SLR SC 342

The appellant is a judicial officer of Madhya Pradesh who would have ordinarily retired on 31.1.84 on attaining 58 years of age. He was appointed as a Munsiff-Magistrate in the erstwhile State of Bhopal in 1953 and he was promoted

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as an Additional District and Sessions Judge in the State of Madhya Pradesh on 8.1.74 and was confirmed in that post from 25.11.74. The High Court decided on 27-2-81 to retire the appellant compulsorily on his attaining the age of 55 years under rule 56(3) of the F.Rs. On 1-3-81, it decided not to recommend him for promotion to the cadre of District and Sessions Judge. He was served with an order of compulsory retirement dated 28-8-81. His Writ petition was dismissed by the High Court. It was contended by the appellant before the Supreme Court that the High Court had made the recommendation to retire him compulsorily without applying its mind, that it was based on collateral considerations and that it was arbitrary.

The Supreme Court observed that it is now firmly settled that the power to retire a Government servant compulsorily in public interest in terms of a service rule is absolute provided the authority concerned forms an opinion bona fide that it is necessary to pass such an order in public interest. It is equally well settled if such decision is based on collateral grounds or if the decision is arbitrary, it is liable to be interfered with by courts. The Supreme Court observed that in the early part of his career, the entries do not appear to be quite satisfactory. They are of varied kinds. Some are good, some are not good and some are of a mixed kind. But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer. The Supreme Court confined scrutiny to the reports made for about ten years prior to the date on which action was taken and found that all of them except for 1972-73 and 1973-74 are good and quite satisfactory. Even in 1972-73 and 1973-74, there was nothing to doubt his integrity and he was punctual in attending to his work. The Supreme Court noted that the appellant was promoted as an Additional District and Sessions Judge on 8-1-74 and was also confirmed with effect from 25-11-74 by an order passed in 1976. Any adverse report in respect of an earlier period unless it had some connection with any event which took place subsequently cannot, therefore, reasonably form a basis for forming an opinion about the work of the appellant. The Supreme Court held that the relevant confidential remarks showed that the action of the High Court was not called for and was arbitrary.

(230)

Termination — of probationer

Termination of probation on basis of adverse report regarding indiscipline is illegal where misconduct is the basis or foundation, though order is simple in form carrying no stigma, and attracts Art. 311 of Constitution.

Anoop Jaiswal vs. Government of India, 1984(1) SLR SC 426

The appellant was an I.P.S. Probationer at the National Police Academy, Hyderabad. Explanation was called for from him for turning up late for P.T. and instigating others to turn up late. Without holding an inquiry, the Government of India passed an order of discharge. His representation to the Government of India was rejected. The petition filed before the High Court of Delhi was dismissed.

The Supreme Court observed that where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court to go behind the form and ascertain the true character of the order. In the instant case, the impugned order of discharge was passed in the middle of the probationary period. Explanations were called for from him and other probationers and the cases of others who are also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal it cannot stand alone and the cause for the order cannot be ignored. The recommendation of the Director which is the basis for foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed, then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art. 311(2) of Constitution.

(231)

(A) I.P.C. — Sec. 21

(B) Public Servant

M.L.A. is not a public servant within the meaning of the expression in sec. 21 I.P.C.

(C) P.C. Act, 1988 — Sec. 19

(D) Sanction of prosecution — under P.C. Act

(i) Trial without valid sanction of competent authority where the same is necessary is without jurisdiction and ab initio void.

(ii) Sanction not required for prosecution of a public servant for offences enumerated in section 5 of Prevention of Corruption Act, 1947 if he has ceased to be a public servant by the time the Court is called upon to take cognizance of the offence alleged to have been committed by him as public servant.

- (iii) *Where accused holds plurality of offices occupying each of which makes him a public servant, sanction of the authority competent to remove the public servant from the office which has been misused or abused by him would alone be necessary. Sanction from other authorities of different offices not necessary.*

R.S. Nayak vs. A.R. Antulay, 1984(1) SLR SC 619

The accused, Sri A.R. Antulay, was Chief Minister of Maharashtra from 1980 till 20-1-82 and continued to be a Member of the Maharashtra Legislative Assembly. Sri Nayak, the complainant, moved the Government of Maharashtra by his application dated 1-9-81 requesting him to grant sanction to prosecute the accused, as required under section 6 of Prevention of Corruption Act, 1947 (Corresponding to sec. 19 of P.C. Act, 1988) for various offences. On 11-9-81, the complainant filed a complaint in the court of Chief Matropolitan Magistrate, Bombay against Sri Antulay and certain others alleging that the accused in his capacity as Chief Minister and thereby a public servant within the meaning of section 21 I.P.C. had committed offences under sections 161, 165 I.P.C. and section 5 of Prevention of Corruption Act, 1947 (corresponding to secs. 7, 11, 13 of P.C. Act, 1988) section 384 and 420 I.P.C. read with section 109 and 120B I.P.C. The Chief Metropolitan Magistrate held that the complaint alleging offences under sections 161, 165 I.P.C. and section 5 of Prevention of Corruption Act was not maintainable in the absence of a valid sanction of the Governor and the complainant then moved the High Court against the order of the Chief Matropolitan Magistrate. Meanwhile in another case filed against Sri Antulay by Sri P.B. Samanth, a single Judge of the High Court issued a rule nisi and another Judge made it absolute by judgment dated 12-1-82 and probably as a sequel to this judgment, Sri Antulay tendered his resignation and ceased to be Chief Minister with effect from 20.1.82. Sri Nayak's appeal against the judgment of the Chief Matropolitan Magistrate was dismissed by a Division Bench of the Bombay High Court on 12-4-82 and the Supreme Court rejected the application of the State of Maharashtra on 28-7-82 for special leave to appeal against the judgment of the Division Bench of the High Court. The Governor of Maharashtra granted sanction under section 6 of the Prevention of Corruption Act to prosecute Sri Antulay and Sri Nayak, the complainant, filed a fresh complaint in the Court of the Special Judge, Bombay against Sri Antulay and others. When the case came up for hearing before the Special Judge on 18-10-82, an application was moved on behalf of the accused contending that no cognizance can be taken of offences punishable under sections 161, 165 I.P.C. and section 5 of Prevention of Corruption Act on a private complaint.

A Division Bench of the High Court held on 20-10-82 that the private complaint was maintainable. In July 1983, two applications were moved before the Special Judge on behalf of the accused stating that even though Sri Antulay ceased to be the Chief Minister on the date of taking cognizance of the offence, he was a sitting member of the Maharashtra Legislative Assembly and as such a public servant and in that capacity a sanction to prosecute him would have to be accorded by the Maharashtra Legislative Assembly and that the sanction granted by the Governor would not be valid in this behalf. The Special Judge by his order dated 25-7-83 upheld the contention of the accused that M.L.A. was a public servant within the meaning of the expression in section 21(12)(a) I.P.C. and that unless a sanction to prosecute him by the authority competent to remove him from office as M.L.A. (Maharashtra Legislative Assembly) was obtained, the accused was entitled to be discharged. The complainant thereupon moved the High Court against the order of the Special Judge. A special leave to appeal was granted by the Supreme Court and the matter pending before the High Court was transferred by the Supreme Court itself.

The Supreme Court held that if it is contemplated to prosecute a public servant who has committed offences under sections 165, 161, 164 I.P.C. and section 5(2) of Prevention of Corruption Act, 1947 when the Court is called upon to take cognizance of the offence, a sanction ought to be available. Otherwise, the court would have no jurisdiction to take cognizance of the offence. A trial without a valid sanction where one is necessary under section 6 has been held to be a trial without jurisdiction by the court and the proceedings are ab initio void. On the issue as to what is the relevant date with reference to which a valid sanction is a prerequisite for the prosecution of a public servant for offences enumerated in section 6 of Prevention of Corruption Act, the Supreme Court held that the accused must be a public servant when he is alleged to have committed the enumerated offences and that if by the time the court is called upon to take cognizance of the offence committed by a person as a public servant he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him.

On the issue, whether in case the accused holds plurality of offices occupying each of which makes him a public servant, sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him is necessary and whether if any one of the competent authorities fails or declines to grant sanction the Court is precluded from taking cognizance of the offence with which the public servant is charged, the Supreme Court held that only sanction of the authority competent to remove a public servant from the office which has been misused by him would be necessary for prosecuting him

and not the sanction by all the competent authorities concerned with all the offices held by a public servant at the same time.

On the issue whether M.L.A. is a public servant within the meaning of the expression in section 21(12)(a), section 21(3) and section 21(7) I.P.C., the Supreme Court held that M.L.A. had not been included in the definition of a public servant within the meaning of any of the clauses of section 21 I.P.C. ‘In the service or pay of Government’ in clause (12)(a) of section 21 I.P.C. meant the executive Government whereas an M.L.A. is not in the service of the executive Government and he is not paid by the executive Government. Also, an M.L.A. does not perform any public duty either directed by the Government or for the Government. He performs public duties cast on him by the Constitution and his electorate. Thus he only discharges constitutional functions for which he is remunerated by fees under the Constitution and not by the executive.

On the issue whether sanction as contemplated by section 6 of Prevention of Corruption Act is necessary for prosecution of an M.L.A., the Supreme Court held that since an M.L.A., is not a public servant within the meaning of the expression in section 21 I.P.C., no sanction is necessary to prosecute him.

(232)

- (A) P.C. Act, 1988 — Sec. 17**
- (B) Investigation — by designated police officer**
- (C) P.C. Act offences — cognizance on private complaint**

- (i) Investigation by a police officer of the specified status as laid down in section 5A of Prevention of Corruption Act, 1947 (corresponding to sec. 17 of P.C. Act, 1988), not a condition precedent to initiation of proceedings before the Special Judge.*
- (ii) Court can take cognizance of offences punishable under sections 161, 165 I.P.C. and 5 of P.C. Act, 1947 (corresponding to secs. 7, 11, 13 of P.C. Act, 1988) on a private complaint.*

A.R. Antulay vs. R.S. Nayak, 1984(1) SLR SC 666

This is an appeal by special leave against the decision of the Division Bench of the Bombay High Court preferred by Sri Antulay against the rejection of his application by the Special Judge as per his order dated 20-12-82.

In his judgment, which was affirmed by the Division Bench of the High Court, the Special Judge held that cognizance can be taken of offences punishable under sections 161, 165 IPC and section 5 of Prevention of Corruption Act (corresponding to secs. 7, 11, 13 of P.C. Act, 1988) on a private complaint. The Supreme Court concurred with the judgments of the lower courts on this point and held that the law does not bar a private complainant bringing in a complaint of criminal misconduct. It is immaterial as to who brings an act or omission made punishable by law to the notice of the authority competent to deal with it unless the statute indicates to the contrary, and the statute does not specifically provide that cognizance cannot be taken of offences falling under the above mentioned sections on the basis of a private complaint.

The Supreme Court rejected the contention that as section 5A of the Prevention of Corruption Act, 1947 (corresponding to sec.17 of P.C. Act, 1988) provided that cases under the Prevention of Corruption Act were to be investigated by police officers of certain status, the court cannot take cognizance of a private complaint as there could not have been investigation by a police officer of the specified status on the ground that section 5A is a safeguard against investigation of offences committed by a public servant by petty or lower rank police officers and it has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the Court of Special Judge and that provision of section 5A is not a condition precedent to initiation of proceedings before the special judge.

(233)

Principles of natural justice — bias

Where charges against Government servant relate to his misconduct against Disciplinary Authority, such Disciplinary Authority passing order of dismissal amounts to his being a judge in his own cause and violates rules of natural justice.

Arjun Chowbey vs. Union of India, 1984(2) SLR SC 16

The appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. On 22-5-82, the Senior Commercial Officer wrote a letter calling upon him to offer his explanation in regard to 12 charges of gross indiscipline. The appellant submitted his explanation on 9-6-82. On the very next day, the Deputy Chief Commercial Superintendent served a second notice saying that the explanation was not convincing and that he should explain why deterrent disciplinary action should not be taken against him. The appellant offered his explanation on 14-6-82 and the very next day, the

Deputy Chief Commercial Superintendent passed an order dismissing him from service on the ground that he was not fit to be retained in service. The appellant filed a writ petition in the High Court of Allahabad and it was dismissed upon which the appellant filed this appeal before the Supreme Court by special leave.

The Supreme Court observed that the order dismissing the appellant from service was passed dispensing with the holding of an inquiry on the ground that it was not reasonably practicable to do so. The Supreme Court did not enter into the merits of the issue as the appellant is entitled to succeed on another ground. The Supreme Court observed that 7 of the 12 charges refer to the appellant's misconduct in relation to the Deputy Chief Commercial Superintendent. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and the Deputy Chief Commercial Superintendent, was speaking the truth was decided by the Deputy Chief Commercial Superintendent himself.

The counsel appearing on behalf of the respondent contended that though this may be the true legal position, the appellant does not deserve the assistance of the court since, he was habitually guilty of acts subversive of discipline. The Supreme Court observed that the illegality from which the order of dismissal passed suffers is of a character so grave and fundamental that the alleged habitual misbehaviour on the part of the appellant cannot cure or condone it.

(234)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — appreciation of evidence

- (i) *Appreciation of hostile evidence in a trap case, where Supreme Court allowed appeal against acquittal.*
- (ii) *Safe to accept oral evidence of complainant and police officers even if trap witnesses turn hostile.*

State of U.P. vs. Dr. G.K. Ghosh, AIR 1984 SC 1453

A doctor in a Government Hospital was found guilty of demanding and accepting illegal gratification from the father of a patient under his treatment at the Hospital and was convicted for an offence under sec. 5(1)(d) of P.C. Act, 1947, and sec. 161 IPC (corresponding to sec.13(1)(d) and 7 of P.C. Act, 1988) by

the Special Judge, Kanpur. The appeal preferred by the convict was allowed by the High Court.

The High Court allowed the appeal on forming the opinion that the respondent might have demanded and accepted the amount as and by way of his professional fees inasmuch as a Government doctor was permitted to have private practice of his own as per the relevant rules, though such was not his defence at any stage.

The Supreme Court observed that having regard to the facts and circumstances of the case, even the counsel for the respondent is unable to support the reasoning which found favour with the High Court. The respondent accused had not offered any such explanation in his statement recorded under sec. 313 Cr.P.C. In fact the defence of the respondent before the Sessions Court was that he had never accepted any such amount from the complainant. It was his case that the story regarding passing of the currency notes was concocted and that he had not accepted any currency notes from the complainant, as alleged by the prosecution. According to him he had been 'framed'. What is more, it is obvious that if the respondent had accepted monetary consideration in respect of a patient being treated at the Government hospital, it could scarcely have been contended that it was a part of permissible private practice and not illegal gratification. The High Court resorted to surmises and conjectures for which there was not the slightest basis, apart from the fact that no such defence was taken and no such plea was ever advanced by the respondent accused. Under the circumstances the decision of the High Court cannot be sustained on the basis of the reasoning which found favour with it. The finding of guilt, recorded by the Sessions Court, will therefore have to be examined afresh on merits, since the High Court has altogether failed to undertake the exercise of scrutinizing, and making assessment of the evidence. If only the High Court had performed this function, as usual, and had recorded its finding in regard to the question of reliability and credibility of witnesses, and, after weighing the probabilities, and taking into account the circumstantial evidence, had recorded a finding of fact, as it was expected to do, the Supreme Court would not have been obliged to undertake this function which properly falls within the sphere of the High Court in its capacity as the appellate court. As it is, in the peculiar facts and circumstances of the case, the Supreme Court have no option but to do so here.

The Supreme Court dealt with the prosecution case and observed that the High Court set aside the finding under serious misconception on an altogether untenable reasoning, which even the counsel for the respondent has not been able to support.

The Supreme Court held that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case.

The Supreme Court allowed the appeal.

(235)

- (A) Misconduct — in non-official functions**
- (B) Misconduct — good and sufficient reasons**

Misconduct covers acts committed not only in the discharge of duties but also acts done outside the employment. Disciplinary proceedings can be started for mismanagement or misappropriation of funds of Railway Cooperative Societies, Institutions, Clubs etc. Penalties may be imposed for good and sufficient reasons.

Samar Nandy Chaudhary vs. Union of India, 1985(2) SLR CAL 751

The appellant was Fireman under the North Eastern Frontier Railway Administration (NEFR). In 1973, he was elected as the Secretary of the NEFR Cooperative Stores. A charge-sheet was issued in respect of certain alleged acts of misconduct committed by the appellant as Secretary of the said Stores.

Rule 3 of the Railway Service (Conduct) Rules, 1966 inter alia required that every railway servant shall at all times maintain absolute integrity. He was also forbidden from doing anything which was unbecoming of a railway or government servant. These provisions are wide enough to include not only acts done by a railway servant in discharge of his official duties but also acts done outside his employment.

In terms of the Railway Servants (Discipline and Appeal) Rules, 1968, penalties may be imposed on a railway servant for good and sufficient reasons. Whether there were good and sufficient reasons and whether there was *prima facie* evidence are matters which would have to be considered appropriately by the disciplinary authority before any action was initiated under the Disciplinary Rules.

The Calcutta High Court held that if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employment, the servant may be dismissed by his master and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him.

(236)

(A) Departmental action and acquittal

Acquittal in criminal case no bar to holding departmental inquiry on the charge of unbecoming conduct on a different footing from that of the criminal case.

(B) Equality — not taking action against others

Departmental authorities cannot be compelled to repeat a wrong on the pain of their action being voided on the touch-stone of Arts. 14 and 16 of Constitution.

Thakore Chandrasinh Taktsinh vs. State of Gujarat, 1985(2) SLR GUJ 566

The petitioner joined as unarmed Police Constable. He was prosecuted on a charge of kidnapping a minor girl under section 363 I.P.C. but acquitted by the Sessions court. Thereafter a charge-sheet was served on him and departmental proceedings were instituted and he was dismissed from service.

The Gujarat High Court held that it is now well settled that if a criminal court acquits a delinquent of any charge on evidence led before it, the departmental authorities cannot hold a departmental inquiry for the very same charge and cannot sit in appeal over the decision of the competent criminal court. But the facts of the present case are entirely different. The Sessions Judge took the view that the petitioner had not kidnapped the minor girl who had practically reached the age of majority and she herself voluntarily walked out and went with the petitioner presumably on a joy ride. So far as the departmental proceedings are concerned, the charge proceeds on entirely a different footing, that even though he was married he had kidnapped and had run away with a minor girl and he had committed a misconduct that was unbecoming of a police personnel.

It is obvious that apart from the charge of kidnapping, rest of the charges are all independent charges on which the criminal court had no occasion to pronounce. The criminal court was not at all concerned with the misconduct of the police constable who was a married person and who ran away with a minor girl and had a holiday with her. The High Court observed that the word 'kidnapped or enticed away' appears to be loosely mentioned. The conduct of the petitioner

would be most unbecoming for a police personnel. The criminal court had no occasion to pronounce upon such conduct and to decide whether such a person can be permitted to continue in the police department. That was the function entirely of the departmental authorities which they have performed and they would have failed in their duty if they had ignored such conduct and had refused to look into the matter departmentally.

Referring to the contention of the petitioner that another constable who was also acquitted in a similar case was not proceeded against departmentally, the High Court observed that it is not known under what circumstances he was acquitted and what the nature of evidence was and it was not possible to decide on what basis departmental proceedings were not taken against him. Even otherwise nontaking of action against a constable who was similarly situated as the delinquent would constitute a wrong on the part of the department, but that does not mean that if the department does not repeat that wrong in the case of the petitioner, he can be said to have been hostilely discriminated against. It is now wellsettled that if departmental authorities commit one wrong, they cannot be compelled to commit another wrong on the pain of their action being voided on the touch-stone of Arts. 14 and 16 of Constitution.

(237)

Principles of natural justice — bias

Interested party not to act as Judge. Order of dismissal of Assistant Sub-Inspector of Police on a charge of agitating against the disciplinary authority quashed.

Krishnanarayan Shivpyare Dixit vs. State of Madhya Pradesh,
1985(2) SLR MP 241

There was an agitation by some police officials in District Indore against certain disciplinary measures taken by their superior officer, the Superintendent of Police sometime in Dec. 1980. One of the agitators was an Assistant Sub-Inspector. The Superintendent of Police initiated the departmental inquiry against the Assistant Sub-Inspector and after getting an inquiry report from a Deputy Superintendent of Police, passed an order dismissing him from service.

After he was charge-sheeted, the Assistant Sub-Inspector submitted an application to higher authorities pleading that he had no hope of getting justice from the Superintendent of Police and his subordinate Deputy Superintendent of Police and that the inquiry initiated against him was in violation of the principles of natural justice. After the orders of dismissal were passed, the Assistant Sub-Inspector submitted an appeal and a revision petition. Both of them were rejected. He then approached the Madhya Pradesh High Court for relief.

The High Court observed that by acting as disciplinary authority, the Superintendent of Police violated an important principle of natural justice, that the role of the accuser or the witness and of the judge cannot be played by one and the same person, and it is futile to expect when those roles are combined that the judge can hold the scales of justice even. The High Court referred to the Supreme Court's observations in Arjun Chowbey vs. Union of India, 1984(2) SLR SC 16 : "No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry." The High Court struck down the order of dismissal and ordered reinstatement of the petitioner.

(238)

Suspension — effect of

Suspension is not removal or dismissal and Art. 311(1) of Constitution is not attracted.

State of Orissa vs. Shiva Prashad Dass & Ram Parshed, 1985(2) SIR SC 1

These are two appeals filed by special leave before the Supreme Court against two judgments of the Orissa High Court. The facts of the two appeals and the question raised are identical. A forester in the service of the Government of Orissa, Ram Parshad, one of the appellants, was placed under suspension in February 1969, pending inquiry into charges of negligence of duty against him. The Forester challenged the suspension order in the High Court of Orissa on the ground that the suspension order contravened the provisions of Art. 311(1) of Constitution.

The High Court held that Art. 311(1) stood violated because the Forester was appointed in 1952 by the Conservator of Forests and therefore the District Forest Officer (subordinate to the Conservator) could not have validly suspended the Forester, and quashed the order of suspension.

The Supreme Court, to whom the Government of Orissa appealed, found the High Court to be manifestly in error and set aside the High Court's judgment, pointing out that clause (1) of Art. 311 was attracted only when a Government servant is 'dismissed' or 'removed' from service and that the provisions of that clause had no application whatsoever to a situation where a Government servant had been merely placed under suspension, since suspension does not constitute either dismissal or removal from service.

(239)

- (A) **Constitution of India — Arts. 14, 16, 311**
- (B) **Public Sector Undertakings — protection of employees**

Employees of Government-owned Corporation are not members of Civil Service and are entitled to protection of Arts. 14 and 16 and not Art. 311 of Constitution.

- (C) **Termination — of regular employee**

Termination simpliciter of services of regular employee by giving one month's notice considered by way of punishment and is illegal.

K.C. Joshi vs. Union of India, 1985(2) SLR SC 204

The appellant was appointed as Assistant Store Keeper in the Oil and Natural Gas Commission at Dehradun in April 1962. He was later selected in open competition and appointed as Store Keeper on 7-12-63. He was to remain on probation for 6 months and his services can be terminated by one month's notice. On 13-1-65, the O.N.G.C. declared successful completion of probation and continued his appointment on regular basis and until further orders. On 29-12-67, his services were terminated with immediate effect by payment of one month's salary in lieu of notice. The High Court of Allahabad upheld the O.N.G.C.'s order terminating his services on an appeal filed by the appellant.

The Supreme Court observed that although several communications of O.N.G.C. were on record eulogising the work, conduct and attitude of the appellant, he came in the bad books of the O.N.G.C. Management owing to his leading participation in trade union activities. Certain secret exchanges of notes within the management surfaced showing that the appellant was considered by the Management as the trouble-maker in the context of the then prevailing unrest and agitation among a section of the O.N.G.C. employees. Apparently, this assessment of Joshi's role in the trade union activities was the basis for his termination from service ordered on 29-12-67, although the termination was shown on record as termination simpliciter.

The Supreme Court made the following observations/orders:

- (a) Even if the employees of the O.N.G.C., which is an instrumentality of the State, cannot be said to be the members of a civil service of the Union or an All India Service or hold any civil post under the Union, for the purpose of Arts.

310 and 311 of Constitution and, therefore, not entitled to the protection of Art. 311, they would nonetheless be entitled to the protection of the fundamental rights enshrined in Arts. 14 and 16. In other words, they would be entitled to the protection of equality in the matter of employment in public service and they cannot be dealt with in an arbitrary manner. (b) There is nothing to show in the record that on completion of the probation period, the appellant was appointed as a temporary Store Keeper. The words used are: 'He is continued in service on regular basis until further orders.' The expression 'until further orders' suggest an indefinite period. It is difficult to construe it as clothing him with the status of a temporary employee. (c) If the appellant was appointed on regular basis, the services cannot be terminated by one month's notice. If it is by way of punishment, it will be violative of the principles of natural justice in that no opportunity was given to the appellant to clear himself of the alleged misconduct. If it is discharge simpliciter, it would be violative of Art. 16 because, a number of Store Keepers junior to the appellant are shown to have been retained in service and the appellant cannot be picked arbitrarily. He had the protection of Art. 16 which confers on him the fundamental right of equality and equal treatment in the matter of public employment. (d) The charge of unsuitability was either cooked up or conjured up for a collateral purpose of doing away with the services of an active trade union worker. The Supreme Court found the termination order as illegal, void and unjustified.

(240)

- (A) Constitution of India — Art. 311 (2) second proviso
cls. (a), (b), (c)**
- (B) Departmental action and conviction**
- (C) Inquiry — in case of conviction**
- (D) Inquiry — not practicable**
- (E) Inquiry — not expedient**

Scope of clauses (a), (b), (c) of second proviso to clause (2) of Art. 311 of Constitution and corresponding special provisions in rules where normal procedure for imposing penalty need not be followed, dealt with.

Union of India vs. Tulsiram Patel,

1985(2) SLR SC 576 : 1985 (2) SLJ 145 : AIR 1985 SC 1416

Satyavir Singh vs. Union of India,

1986(1) SLR SC 255 : 1986 (1) SLJ 1 : AIR 1986 SC 555

(Decision No. 254)

In these two judgments the Supreme Court made a detailed examination of the provisions of special procedure under clauses (a), (b) and (c) of the second proviso to Art. 311 (2) of the Constitution which correspond to the Special provisions of the Rules and laid down as follows:

Clause (a) of the Second Proviso :

In a case where clause (a) of the second proviso to Article 311 (2) applies, the disciplinary authority is to take conviction of the concerned civil servant as sufficient proof of misconduct on his part. It has thereafter to decide (a) whether the conduct which had led to the civil servant's conviction on a criminal charge was such as to warrant the imposition of a penalty and (b) if so, what that penalty should be.

For this purpose it must peruse the judgment of the criminal court and take into consideration all the facts and circumstances of the case and the various factors set out in Challapan case such as, (a) the entire conduct of the civil servant, (b) the gravity of the offence committed by him, (c) the impact which his misconduct is likely to have on the administration, (d) whether the offence for which he was convicted was of a technical or trivial nature and (e) the extenuating circumstances, if any, present in the case. This, however, has to be done by the disciplinary authority ex parte and without hearing the concerned civil servant. The penalty imposed upon the civil servant should not be arbitrary or grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

Where a civil servant (Tulsiram Patel, permanent auditor, Regional Audit office, Military Engineering Service, Jabalpore) goes to the office of his superior officer whom he believes to be responsible for stopping his increment and hits him on the head with an iron rod, so that the superior officer falls down with a bleeding head, and the delinquent civil servant is tried and convicted under section 332 of the Indian Penal code but the Magistrate, instead of sentencing him to imprisonment, applies to him the provisions of section 4 of the Probation of Offenders Act, 1958, after such conviction the disciplinary authority, taking the above acts into consideration, by way of punishment compulsorily retired the

delinquent civil servant under clause (i) of rule 19 of the Central Civil Services (CCA) Rules, 1965, it cannot be said that the punishment inflicted upon the Civil Servant was excessive or arbitrary.

Clause (b) of the Second Proviso:

There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Art. 311(2) can be applied. These conditions are: (i) there must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable and (ii) the Disciplinary Authority should record in writing its reasons for its satisfaction that it is not reasonably practicable to hold such inquiry. Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry.

Illustrative cases would be: (a) Where a civil servant, particularly through or together with his associates, so terrorises, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or (b) where the civil servant by himself or together with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or (c) where an atmosphere of violence or of general indiscipline and insubordination prevails it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry because the department's case against the civil servant is weak and must fail. The word "inquiry" in clause (b) of the second Proviso includes a part of an inquiry. It is, therefore, not necessary that the situation

which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance after the service of a charge-sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part. It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is however not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso. It is also not necessary to communicate the reason for dispensing with inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.

The submission that where a delinquent Government servant so terrorises the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold an inquiry cannot be accepted. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that administrative work carried out by senior officers should be paralysed just because a delinquent civil servant either by himself or along with or through others makes the holding of an inquiry by the designated disciplinary authority or inquiry officer not reasonably practicable. In a case falling under clause (b) of the second proviso it is not necessary that the civil servant should be placed under suspension until such time as the situation improves and it becomes possible to hold the inquiry because in such cases neither public interest nor public good requires that a salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned civil servant. It would also be difficult to foresee how long the situation would last and when

normalcy would return or be restored. In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending a civil servant would not serve the purpose and sometimes not taking prompt action might result in trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

Members of Central Industrial Security Force, Railway Employees and members of Research and Analysis Wing (RAW) are involved. A large group of members of the CISF unit of Bokero Steel indulged in acts of insubordination, indiscipline, dereliction of duty, abstention from physical training and parade, taking out processions, shouting inflammatory slogans, participating in Gherao of superior officers, going on hunger strike and darna, indulging in threats of violence, bodily harm and other acts of intimidation to supervisory officers and thus created a situation whereby the normal functioning was made difficult and impossible.

Railway employees went on an illegal all-India strike and thereby committed an offence punishable with imprisonment and fine under section 26(1) of the Industrial Disputes Act, 1947 and the situation became such that the railway services were paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom and the economy of the country and public interest and public good prejudicially affected and prompt and immediate action was called for in order to bring the situation to normal.

On 27.11.80, a number of staff members of RAW (Satyavir Singh and others) protested against the security regulation which required that the employees when going from one floor to the other had to show their identity cards, several persons forced their entry into the room of the Director, Counter Intelligence Section and forced him, the Assistant Director and the Security Field Officer to stand in a corner, the employees shouted slogans which are obscene, abusive, threatening and personal in nature, the local police entered the premises and rescued the three officers and arrested 31 agitators found inside the room. The agitation continued on the next two days and pen-down strike continued and spread to other offices of RAW in New Delhi and in different parts of India and there was complete insubordination and total breakdown of discipline and atmosphere was charged with tension.

Supreme Court upheld the application of clause (b) of the second proviso to Art. 311(2) of Constitution in the 3 groups of cases.

Clause (c) of the Second Proviso:

The expression “security of the State” in clause (c) of the second proviso of Art. 311(2) does not mean security of the entire country or a whole State but includes security of a part of a State. Security of the State cannot be confined to an armed rebellion or revolt for there are various ways in which the security of the State can be affected such as by state secrets or information relating to defence production or similar matters being passed on to other countries whether inimical or not to India, or by secret links with terrorists. The way in which the security of the State is affected may be either open or clandestine. Disaffection in any armed force or paramilitary force or police force is likely to spread because dissatisfied and disaffected members of such a Force spread dissatisfaction among other members of the force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination or disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter vitally affecting the security of the State. The interest of the security of the State can be affected by actual or even by the likelihood of such acts taking place. In an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a civil servant in such acts, would be disclosed and thus in such cases an inquiry into acts prejudicial to the interest of the security of the State would as much prejudice the interest of the security of the State as those acts themselves would. The condition for the application of clause (c) of the second proviso to Art. 311(2) is the satisfaction of the President or the Governor, as the case may be, that it is not expedient in the interest of the security of the State to hold a disciplinary inquiry. Such satisfaction is not required to be that of the President or the Governor personally but of the President or the Governor as the case may be, acting in the constitutional sense.

Members of Madhya Pradesh District Police Force and Madhya Pradesh Special Armed Force are involved. Members of these two forces, in order to obtain the release on bail of two of their colleagues involved in an incident in the annual mela at Gwalior in which one man was burnt alive, indulged in violent demonstrations at the mela ground, attacked the police station, ransacked it and forced the wireless operator to close down the wireless set and the situation became so dangerous that the Judicial magistrate had to be approached at night to get the two arrested constables released on bail, and after discussion at a cabinet meeting, a decision was taken and the advice of the Council of Ministers was tendered to the Governor who accepted it and issued orders of dismissal of these

persons. Some other members of these Forces began carrying on an active propaganda against the Government visiting various places in the State, holding secret meetings, distributing leaflets and inciting the constabulary in these places to rise against the administration as a body in protest against the action taken by the Government and they were also dismissed. The Supreme Court upheld the application of clause (c) of the second proviso Art. 311(2) of the Constitution to these cases.

Appeal, Revision, Review:

In an appeal, revision or review by a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (a) of the second proviso or an analogous service rule, it is not open to the civil servant to contend that he was wrongly convicted by the criminal court. He can, however, contend that the penalty imposed upon him is too severe or excessive or was one not warranted by facts and circumstances of the case. If he is in fact not the civil servant who was actually convicted on a criminal charge, he can contend in appeal, it was a case of mistaken identity. A civil servant who has been dismissed or removed from service or reduced in rank applying to his case clause (b) of the second proviso to Art. 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal. In a case where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (c) of the second proviso or an analogous service rule to him, no appeal or revision will lie if the order of penalty was passed by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by the disciplinary authority (a position envisaged by clause (iii) of Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, and clause (iii) of Rule 19 of the Central Civil Service (CCA) Rules, 1965), a departmental appeal or revision will lie. In such an appeal or revision the civil servant can ask for the inquiry to be held into his alleged conduct unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Art. 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. The civil servant however, cannot contend in such appeal or revision that the inquiry was wrongly dispensed with by the President or the Governor.

(241)

Inquiry report — should be reasoned one

Report of Inquiry Officer must be reasoned one and discuss evidence; failure renders termination illegal.

Anil Kumar vs. Presiding Officer, 1985(3) SLR SC 26

The appellant was Turner in a Cooperative Sugar Mills. After holding an inquiry, his services were terminated. The Inquiry Report merely sets out the charges in the first para and then the date on which the inquiry was held, the names of witnesses produced on behalf of the Management followed by a statement that evidence of the appellant and his witnesses was recorded. The report concludes as under: "His non-obeying of the instructions of his seniors and leaving the place of work without proper permission is a serious case of misconduct, negligence of duty and indiscipline."

The Supreme Court observed that where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, it is not an inquiry report at all. The Supreme Court held that there is no application of mind by the Inquiring Authority and that the order of termination is unsustainable. Accordingly, the Supreme Court allowed the appeal and quashed the order of termination of the services of the appellant.

(242)

(A) Appeal — consideration of

(B) Application of mind

Appellate authority under obligation to consider all the three requirements: (i) whether procedure is complied with, (ii) whether finding is based on evidence, and (iii) whether penalty is adequate. Order not disclosing consideration of all the three elements illegal. Order must indicate due application of mind.

R.P. Bhatt vs. Union of India, 1985 (3) SLR SC 745

The appellant, a Supervisor (Barracks and Stores), Grade I in the General Reserve Engineering Force, was proceeded against departmentally on the charge that he was deserter since he absconded from his duty in order to evade service of the order of his termination during the period of his probation. After inquiry, the penalty of removal from service was imposed on him by the disciplinary authority

with effect from 10-6-80. The appellant filed a departmental appeal and the appellate authority, Director General, Border Roads, by order dated 14-10-80 dismissed the appeal observing: "After thorough examination of the facts brought out in the appeal, the DGBR is of the opinion that the punishment imposed by the CE(P) DANTAK. . . was just and in accordance to the Rules applicable. He has accordingly rejected the appeal."

The Supreme Court observed that in disposing of the appeal, the Director General has not applied his mind to the requirements of rule 27(2) of the Central Civil Services (CCA) Rules, 1965. The word 'consider' therein implies 'due application of mind'. The appellate authority is required to consider: (i) whether the procedure laid down in the rules has been complied with; and if not whether such noncompliance has resulted in violation of any provision of the Constitution or in failure of justice; (ii) whether the findings of the disciplinary authority are warranted by the evidence on record and (iii) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty or may remit back the case to the authority which imposed the same. The rule casts a duty on the appellate authority to consider these three factors. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in the failure of justice. The Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. He only applied his mind to the requirement whether the penalty imposed was adequate or justified in the facts and circumstances of the case. There being non—compliance with the requirements of the rule, the impugned order is liable to be set aside.

The Supreme Court incidentally clarified that while, as indicated above, there ought to be in the order of the appellate authority a clear mention of the application of mind by the appellate authority to all issues required to be considered under the departmental rules, it is not essential for the appellate authority to record reasons when such authority agrees with the disciplinary authority. The Supreme Court directed the Director General, Appellate Authority, to dispose of the appellant's appeal afresh, after applying his mind to the requirements of rule 27(2) of the Central Civil Services (CCA) Rules, 1965.

(243)

(A) Inquiry Officer — conducting preliminary enquiry

Appointment of same officer who held preliminary enquiry to conduct departmental inquiry is not irregular; no prohibition in rules.

(B) Evidence — standard of proof

Where in a case of rape, lady doctor and witnesses were examined but not the victim of rape and confessional statement made on day of incident taken into account, proof held sufficient. In departmental inquiries, standard of proof required is only preponderance of probability.

Manerandan Das vs. Union of India, 1986(3) SLJ CAT CAL 139

The applicant was a peon in the airport Health Organisation, Dum Dum. He was departmentally proceeded against on the charge of committing rape of a mentally retarded daughter of an officer of the Airport, on 30-11-73 and he was compulsorily retired from service. His appeal to the Director General of Health Services was rejected.

The Central Administrative Tribunal, Calcutta held that there is nothing in the rules prohibiting the appointment of the officer responsible for the preliminary enquiry as the Inquiry Authority of the departmental proceedings and there was no failure of justice.

The applicant contended that there was hardly any evidence to prove the charge of rape. The Tribunal observed that the standard of proof required in the departmental proceedings is that of preponderance of probability and not proof beyond reasonable doubt.

Where there is some material which the authority has accepted and which material may reasonably support the conclusion that the employee concerned was guilty, it was not the function of the Tribunal to review the material and arrive at an independent finding. In the instant case, the Inquiry Officer and the Disciplinary Authority relied on the confessional statement of the applicant made on the day of the incident, the evidence of the lady doctor who examined the victim girl immediately after the incident and the evidence of two other witnesses to come to the conclusion that the applicant was guilty of the charge framed against him. The circumstances of the case did not support the contention that the confession was obtained under duress. It was admittedly written by the applicant in his own hand in the presence of four witnesses, wherein he admitted that he had committed rape and begged apology. He repeated his confession at the time of the preliminary enquiry. The fact that it was not formally proved did not vitiate the proceedings because the rigorous procedure of a criminal case need not be followed in departmental proceedings. The lady doctor who examined the

victim girl immediately after the incident was convinced that the victim was telling the truth. It is quite understandable that the father of the victim girl did not want to subject her to further stress and humiliation and therefore did not produce her for examination in the departmental proceedings. The Tribunal held that the materials proved against the applicant reasonably support the conclusion of the authority that he was guilty of the charge framed against him.

(244)

(A) Evidence — additional

Examination of additional witnesses for the prosecution without giving required time as per rules amounts to denial of reasonable opportunity.

(B) Inquiry — previous statements, supply of copies

Non-supply of copies of statements of witnesses recorded earlier amounts to denial of reasonable opportunity.

Kumari Ratna Nandy vs. Union of India, 1986 (2) SLR CAT CAL 273

The appellant, Dresser in a Dispensary at the Rifle Factory, Ishapore, was reduced in rank as Peon / Orderly with cumulative effect for gross misconduct.

The Tribunal observed that both the disciplinary authority and Inquiry Officer remained satisfied and contented by saying that copies of the documents asked for would be available to the applicant for inspection. They did not notice all the relevant mandatory rules enjoined upon them to supply or cause to be supplied copies of the documents. The Tribunal held that there is considerable force in the contention of the applicant that a reasonable opportunity has been denied to effectively cross-examine the witnesses and adequately defend herself and that the authorities concerned have committed a clear and gross violation of the principles of natural justice. The Tribunal also held that examination of three additional witnesses for the prosecution on 13.4.1978 on an application filed by the Presenting Officer on 11.4.1978 is in clear violation of the mandatory rule 14 of the Central Civil Services (CCA) Rules as per which the Inquiry Officer is bound to take up the inquiry not earlier than the fifth day from the date on which the application for examination of the new witnesses had been allowed and the delinquent officer should be given an opportunity to file a written statement pleading her defence in respect of these three witnesses.

(245)

Order — refusal to receive

Order refused, deemed as served from the date of refusal.

***B. Ankuliah vs. Director General, Post & Telegraphs,
1986(3) SLJ CAT MAD 406***

A Junior Engineer in the Madras Telephones was dealt with in disciplinary proceedings on charges regarding dereliction in the performance of his duties. The inquiry had to be held ex parte due to almost complete non-cooperation on his part. On the basis of the report of the Inquiry Officer, the Disciplinary Authority passed an order imposing the penalty of compulsory retirement. His departmental appeal was rejected.

On the question of date of service of the order, the Central Administrative Tribunal, Madras observed that the order imposing the penalty dated 28-7-1977 was sent by registered post to the applicant but it was refused to be accepted. The Tribunal observed that this would not mean that the order was not delivered and hence the applicant gets indefinite time limit for preferring an appeal. The Tribunal held that the time limit of 45 days for filing would start from the date of refusal, which was 29.7.1977 according to the post office endorsement.

(246)

Incumbent in leave vacancy — competence to exercise power

Officer appointed in leave vacancy of competent authority without any restriction can exercise power of such authority to dismiss an employee.

Ch. Yugandhar vs. Director General of Posts, 1986(3) SLR AP 346

The petitioner, a Postal Official, was dismissed from service by an order passed by Sri G.Narasimhamurthy, who was only acting in the post of the Superintendent of Post Offices, Peddapalli. It was contended by the petitioner that as such he was not competent to exercise the disciplinary powers.

The High Court of Andhra Pradesh referred to the order appointing Sri Narasimhamurthy to act as Superintendent of Post Offices. The operative portion reads that "Sri G. Narasimhamurthy, Officiating HSG I Post Master, Rajahmundry H.O. (from I.P.O's Line) will act as Superintendent of Post Offices, Peddapally in

the above leave vacancy". The High Court held that the powers of an acting authority cannot be restricted unless such powers are specifically curtailed and that Sri G.Narasimhamurthy is not disabled to pass the impugned order and he cannot be equated to a person who was directed to merely discharge the current duties of a particular office.

(247)

Inquiry — ex parte

Ex parte orders of dismissal without holding departmental inquiry, where delinquent officer failed to reply to charge-sheet, illegal. It is necessary to hold an inquiry ex parte.

Sri Ram Varma vs. District Asst. Registrar, 1986 (1) SLR ALL 23

The petitioner was a Sachiv of Sadhan Sahkari Samiti. He was suspended and charge-sheeted. In reply, he asked for an opportunity to look into the relevant documents by his letter dated

21.9.83 and reminded on 13.10.83. The disciplinary authority sent a letter dated 14/24.10.83 asking the Branch Manager to allow the petitioner to inspect documents and endorsed a copy to the petitioner by registered post, but the petitioner managed to avoid service thereof. A notice was published in a local weekly calling upon the petitioner to reply to the charge-sheet, failing which the charges could be deemed to be correct and he could be dismissed from service. The petitioner still failed to send a reply. The District Administrative Committee passed a resolution on 16.11.83 to the effect that the petitioner had failed to reply to the charge-sheet and because he failed to avail the opportunity granted to him to rebut the charges, it had been decided to dismiss him from service.

The High Court of Allahabad observed that even if the petitioner was avoiding service of communications from the opposite parties, an order of dismissal could only be passed on the basis of an ex parte inquiry and on ex parte proof of charges. The resolution does not show that any inquiry was held ex parte. It does not even show what the charges were or that the committee was satisfied on the basis of perusal of the relevant documents that they stood proved. The Committee proceeded on the presumption that in view of the petitioner's failure to reply, it was not required to establish the charges. The High Court held that the order of dismissal cannot, therefore, be sustained. The High Court also stated that it shall be open to the disciplinary authority to proceed further in respect of disciplinary action from the stage where the case was before the said resolution was passed.

(248)

- (A) Constitution of India — Art. 20(2)
- (B) Cr.P.C. — Sec. 300(1)
- (C) Sanction of prosecution — where invalid, subsequent trial with proper sanction, not barred

Where accused is acquitted on the ground that the prosecution was without proper sanction, subsequent trial after obtaining proper sanction, not barred.

Bishambhar Nath Kanaujia vs. State of U.P., 1986 Cri.L.J. ALL 1818

The applicant was convicted and sentenced to one year R.I. each under sec. 161 IPC and sec. 5 (2) of P.C. Act, 1947 (corresponding to secs. 7 and 13(2) of P.C. Act, 1988). He preferred an appeal and the High Court allowed it solely on the ground that the prosecution was without proper sanction and the defect vitiated the trial. The conviction and sentence were therefore set aside. The prosecution obtained fresh sanction and filed charge sheet before the Special Judge, who took cognizance of the same. The applicant moved an application before the trial judge praying that he should not be tried for the second time but it was rejected and the matter ultimately came up before the High Court.

The High Court held that the order setting aside the conviction washes out the effect of the previous conviction. A conviction on re-trial is a conviction in the same prosecution. It is neither the second prosecution nor second punishment. Re-trial is the continuance of the same prosecution. It is not a fresh trial. Acquittal in certain circumstances, as in the instant case, takes place on account of technical reasons, and it may be very desirable in the circumstances of a particular case that the person be prosecuted after removing those technical defects in procedure.

The High Court observed that in Baijnath Prasad Tripathi vs. State of Bhopal, AIR 1957 SC 494, the Supreme Court held that the whole basis of sec. 403(1) Cr.P.C., 1898 (corresponding to sec. 300(1) Cr.P.C. 1973) is that the first trial should have been before the court competent to hear and determine the case and to record a verdict of conviction or acquittal. If the court is not so competent, as where the required sanction under sec. 6 of P.C. Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) for the prosecution was not obtained, the whole trial is null and void, it cannot be said that there was any conviction or

acquittal in force within the meaning of sec. 300 of the Cr.P.C. Such a trial does not bar a subsequent trial of the accused under the P.C. Act read with sec. 161 of the Penal Code after obtaining proper sanction. The earlier proceedings being null and void, the accused cannot be said to have been prosecuted and punished for the same offence more than once. Art. 20(2) of the Constitution has no application.

(249)

(A) Court jurisdiction

Court not to substitute its finding on reappraisal of evidence recorded in departmental proceedings.

(B) Evidence — retracted statement

Inquiry Officer as well as Disciplinary Authority can rely on retracted statement or statement resiled.

(C) Penalty — stipulation of minimum penalty

Provision that, in the absence of special and adequate reasons to the contrary, penalty of compulsory retirement, removal or dismissal shall be imposed for a charge of corruption, in rule 8 of Karnataka Civil Services (CCA) Rules, 1957, not ultra vires.

Rudragowda vs. State of Karnataka, 1986(1) SLR KAR 73

The Government provisionally accepting finding of guilt recorded by the Commissioner of Enquiries issued show-cause notices dated 4-3-85 and 6-3-85. On a consideration of the representation made pursuant to the show cause notices, the Government ordered compulsory retirement by order dated 24-4-85. The petitioner challenged the vires of proviso to rule 8 of the Karnataka Civil Services (CCA) Rules, 1957 on the ground that it violates Art. 14 of Constitution. It was contended that the disciplinary authority has no choice or discretion to impose any one of the penalties enumerated in rule 8 if charge of corruption is established.

The Karnataka High court observed that the proviso to rule 8 states that in the absence of special or adequate reasons to the contrary mentioned in the order, punishment to be imposed if charge of corruption is proved, is one of those specified in clauses (vi) to (viii). Thus, by assigning special or adequate reasons, a lesser penalty can also be imposed. It is only in case no reasons are assigned, second part which stipulates imposition of penalty specified in clause to (viii) viz compulsory retirement, removal or dismissal operates. Thus, disciplinary

authority has got choice to impose any one of punishments provided in rule 8. The High Court held that there is no merit in the plea that the provision is ultra vires.

It was contended by the petitioner that acceptance of illegal gratification is not proved to the hilt. The High Court observed that the court is not acting as an appellate Court and it is impermissible for the High Court to substitute its finding on reappraisal of entire evidence. The affidavit alleged to have been given by T.M. Subramanyam has not been confronted to him when he was in the witness box. Even otherwise nothing prevented Inquiry Officer as well as the Disciplinary Authority to rely on retracted statement or statement resiled, for the purpose of recording a finding coupled with other materials available on record. The High Court rejected the writ petition.

(250)

Inquiry Officer — witness to the incident

Appointment of a person who is a witness to the incident as Inquiring Officer violates rules of natural justice.

Mohan Chandran vs. Union of India, 1986(1) SLR MP 84

The petitioners were serving as Head Constables in the Signal Battalion of the Central Reserve Police Force with headquarter at Neemuch. During the period 24-6-79 to 25-6-79, there was an agitation amongst the members of the Force and the petitioners were arrested in that connection. A charge sheet was issued against them and an Assistant Commandant was appointed as Inquiring Officer. On the basis of the report submitted by the Inquiring Officer, a show-cause notice was issued proposing dismissal from service and the petitioners were dismissed from service by order dated 18.1.80. The appeals preferred by the petitioners were rejected as also the revision petitions and mercy petitions.

One of the contentions of the petitioners before the Madhya Pradesh High Court is that the appointment of Sri Savariappa, Assistant Commandant, who was a witness, as Inquiry Officer, is grossly violative of the principles of natural justice. A perusal of the complaint filed in the Court (which was later withdrawn) shows that the name of Sri Savariappa appears at serial No. 9 as one of the witnesses to substantiate the charge. If a person who is a witness to the agitation and who is called upon to substantiate a charge were to be entrusted with the task of holding a departmental inquiry, whose final report has been accepted word to word by the disciplinary authority for imposing penalty, it is nothing short of a travesty of principles of natural justice. Natural justice, as propounded by the Supreme Court is nothing but fair play in action. It is an off-shoot of the principle that justice should not merely be done but must also be

seen to be done. Naturally, when witness to an occurrence assumes the role of an Inquiry Officer, fair play in action is lacking in such a case. Principles of natural justice dictate that a disciplinary inquiry must always be fair and the fairness should appear from the record. In the instant case, in view of the fact that an Assistant Commandant who was to substantiate the criminal charge against the petitioners was entrusted with the task of holding an inquiry, it is not safe to presume that he is unbiased.

(251)

Principles of natural justice — bias

Accuser or witness cannot himself be a judge. Order of dismissal of a Police Constable on charge relating to shouting of slogans against Disciplinary authority violates principles of natural justice.

Shyamkant Tiwari vs. State of Madhya Pradesh, 1986(1) SLR MP 558

The petitioner was holding the post of Police Constable at Indore. Charges framed by the Superintendent of Police, Indore were in respect of the activities of the petitioner and others. The City Superintendent of Police, Indore (East) working under the Superintendent of Police, Indore was the Inquiring Authority. The petitioner had moved an application before the Inquiry Officer that he apprehends retaliatory action by the Superintendent of Police, Indore, Sri Ashok Patel. At the conclusion of the inquiry, Sri Ashok Patel passed the impugned order of dismissal.

The Madhya Pradesh High Court observed that it is clear from the record that in the agitation giving rise to the departmental inquiry, slogans were shouted against Sri Ashok Patel, Superintendent of Police, Indore. He himself initiated the departmental inquiry. The role of the accuser or the witness and of the Judge cannot be played by one and the same person and it is futile to expect when these roles are combined that the judge can hold the scales of justice even. It is clear that the impugned order is in utter disregard of the principles of natural justice.

(252)

(A) Departmental action and acquittal

Order of dismissal in a departmental inquiry for the same charges of theft, on which he was acquitted by criminal court on the ground that offence is not proved beyond any reasonable doubt, is in order.

(B) Court jurisdiction

Where the delinquent officer admitted guilt in his written statement, it cannot be said there was no evidence nor acceptable evidence before the Inquiry Officer, for the High Court to interfere with the findings.

N. Marimuthu vs. Transport Department, Madras, 1986(2) SLR MAD 560

The petitioner was employed as a foundry worker in the Government Press. For the theft of mono-metal weighing 540 grams worth Rs.20, he was found guilty in the departmental inquiry and dismissed from service on 14-7-80. For the same offence, he was prosecuted before the Metropolitan Magistrate, Egmore, Madras and he was acquitted on 5-8-80, the Magistrate holding that the guilt was not proved beyond reasonable doubt. The Government allowed the petitioner's dismissal to stand, by its order dated 24-12-82. These orders were sought to be quashed.

One of the arguments advanced by the petitioner before the Madras High Court was that the Department ought to have awaited the result of the court prosecution and that if that proceeding ended in an acquittal, the Department ought to have accepted such acquittal and dropped the departmental proceeding.

The High Court observed that in the domestic inquiry, the petitioner did not submit any explanation. The Assistant Works Manager, Government Press, held an inquiry. He relied on the written statement of the petitioner admitting the guilt, though he retracted later. Nonetheless, it cannot be said that there was no evidence nor acceptable evidence before the Assistant Works Manager for the court to interfere with such finding in the domestic inquiry.

The High Court, however, observed that the extreme punishment of dismissal was highly excessive considering the theft was of material of a value of Rs.20 and set aside the order of dismissal with a condition that the petitioner be reinstated as a new employee with no right to claim benefit of any kind on the basis of past service.

(253)

Fresh inquiry / De novo inquiry

Initiation of a second inquiry on same charge not barred where first inquiry was set aside by court on technical ground that it was in violation of rules of natural justice, and Government servant was reinstated in pursuance thereof.

Balvinder Singh vs. State of Punjab, 1986(1) SLR P&H 489

The petitioner is a Police Constable. A regular departmental inquiry was held on the charge of remaining absent from duty without leave. The Inquiry Officer held the charge as proved and the Superintendent of Police dismissed him from service on 5-5-73. The order was set aside by a Civil Court on the ground that no proper inquiry had been held and full opportunity was not granted to the petitioner to defend himself. Pursuance of the court decree, the petitioner was reinstated by order dated 22-9-76 and two years thereafter, a second inquiry on the same charge was initiated on 11-4-79 and a replica of the previous charge-sheet was served. In the Writ petition before the High Court, it was contended that the matter cannot be reopened as the previous dismissal order in pursuance of a similar charge-sheet had been set aside by the Civil Court.

The Punjab and Haryana High Court observed that the judgment of the Civil Court clearly shows that the petitioner's dismissal from service in pursuance of the earlier inquiry was set aside because the inquiry officer did not afford a reasonable opportunity to him to defend himself and as such the inquiry was improper and violative of the principles of natural justice. The State therefore cannot be considered barred to institute a fresh inquiry on the same charge.

(254)

Satyavir Singh vs. Union of India, 1986(1) SLR SC 255:

1986 (1) SLJ 1 : AIR 1986 SC 555

(See decision No. 240)

(255)

**(A) Constitution of India — Art. 311(2) second proviso
cl.(b)**

(B) Inquiry — not practicable

Not necessary that disciplinary authority should wait until incidents take place in which physical injury is caused before taking action for dispensing with inquiry under clause (b) of second proviso to Art. 311(2) of Constitution.

(C) Order — in cyclostyled form

Cyclostyled orders prima facie show non-application of mind but not a universal rule. It would depend upon the facts and circumstances of each case.

Shivaji Atmaji Sawant vs. State of Maharashtra, 1986(1) SLR SC 495

The appellant, Shivaji Atmaji Sawant, was a Police Constable in the Bombay City Police Force attached to the Bandra Police Station in Bombay. By an order dated 22-8-82 passed by the Commissioner of Police, Greater Bombay, he was dismissed from service, without a charge-sheet having been issued to him and without any inquiry being held with respect to the misconduct alleged against him. The writ petition filed by the appellant was dismissed by the Bombay High Court. Namdeo Jairam Velankar, a Head Constable is appellant in another Appeal, who was also dismissed from service in the same way as Sawant and his writ petition was dismissed by the Bombay High Court.

Before the Supreme Court, it was contended by the appellants that the order of dismissal passed against them was without any application of mind. The first contention was that Sawant was arrested in the early hours of 18-8-82 and, therefore, did not and could not have taken part in the incidents of violence, arson, looting and mutiny which took place on and from that date. The Supreme Court observed that assuming it is so, Sawant is alleged to have been one of the active instigators and leaders who were responsible for the creation of such a serious situation which rendered all normal functioning of the Police Force and normal life in the city of Bombay impossible. As pointed out by the Supreme Court in Satyavir Singh & ors. vs. Union of India & ors.: (1986(1) SLR SC 255) it is not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before taking action under clause (b) of the second proviso to Art. 311 (2). A person who incites others to commit violence is as guilty, if not more so, than the one who indulges in violence, for the one who indulges in violence may not have done so without the instigation of the other.

The second contention was that identical orders were passed against forty three other members of the constabulary and that all these orders, including the one served upon Sawant, were cyclostyled. Where several cyclostyled orders are passed, it would prima facie show non-application of mind but this is not a universal rule and would depend upon the facts and circumstances of each case. The Supreme Court referred to Tulsiram Patel's case (1985(2) SLR SC 576), where the Supreme Court rejected a similar contention.

The third contention was that the reasons for dispensing with the inquiry did not accompany the order. The Supreme Court observed that a perusal of the reasons shows that they were recorded later and that they would have struck down the order of dismissal in view of the decisions in Tulsiram Patel's case, but the impugned order of dismissal itself sets out the reasons why it was not reasonably practicable to hold the inquiry and the "reasons" served separately merely amplified and elaborated what had been stated in the impugned order. There is thus no substance in any of the contentions advanced in the case of Sawant.

(256)

- (A) **Constitution of India — Art. 311(2) second proviso cl.(b)**
- (B) **Inquiry — not practicable**

Dispensing with inquiry proper and passing order of dismissal, where witnesses threatened and intimidated, proper.

A.K. Sen vs. Union of India, 1986(2) SLR SC 215

The petitioners were six security guards belonging to the Central Industrial Security Force. They were dismissed from service by dispensing with the disciplinary inquiry under clause (b) of rule 37 of the Central Industrial Security Force Rules, 1969 read with clause (b) of the second proviso to Art. 311(2) of Constitution. The dismissed security guards filed writ petitions in the Kerala High Court and they are transferred to the Supreme Court, as a number of other matters involving the interpretation of the second proviso to Art. 311(2) were pending in the Supreme Court. These other matters were disposed of by a Constitution Bench by a common judgment, viz. Union of India & Anr. vs. Tulsiram Patel: 1985(2) SLR SC 576. In these cases, orders of dismissal were upheld. The question which falls for determination in these transferred cases is whether it was not reasonably practicable to hold a disciplinary inquiry against the petitioners.

The Supreme Court observed that the situation in the southern zone was very similar and four security guards belonging to the Unit of the Force posted at Thumba and two security guards belonging to the Unit posted at Ellor, Alwaye, being the petitioners, were dismissed in the same manner. The materials on the record show that the acts of misconduct charged were the same as were in Tulsiram Patel's case and the situation which prevailed was very similar. In

order to prevent the possible recurrence of a near mutiny by the units posted in the southern zone, a swift and deterrent action was necessary and required. All the impugned orders of dismissal expressly state that the witnesses were being threatened and intimidated from coming forward to give evidence and that attempts were made to serve the charge-sheets but that the charge-sheets could not be served. In these circumstances, the Supreme Court could only repeat what was said by the Constitution Bench in Tulsiram Patel's case that no person with any reason or sense of responsibility can say that in such a situation the holding of an inquiry was reasonably practicable. Several of the petitioners went in departmental appeals and those appeals were also rejected, rightly. In the result, the Supreme Court dismissed the transferred cases.

(257)

Appeal — consideration of

Appellate authority under obligation to record reasons for its decision in an appeal against order of dismissal. Fair play and justice also require personal hearing before passing the order. Mechanical reproduction of phraseology, not sufficient.

Ram Chander vs. Union of India, 1986(2) SLR SC 608

The appellant, Shunter Grade B at Loco Shed, Ghaziabad was inflicted the penalty of removal from service under rule 6(viii) of the Railway Servants (Discipline and Appeal) Rules, 1968 by order of the General Manager, Northern Railway dated 24-8-71. The gravamen of the charge was that he assaulted his immediate superior Benarsi Das, Assistant Loco Foreman while he was returning after performing his duties, nursing a grouse that he had deprived him of the benefit of one day's additional wages for 2-10-69, which was a national holiday. Banarsi Das lodged a report with the police but no action was taken thereon. More than a month later, Banarsi Das made a complaint against the appellant to his superior officers and this gave rise to a departmental proceeding. The Inquiry Officer fixed the date of inquiry on 11-5-70 at Ghaziabad. The inquiry could not be held on that date due to some administrative reasons and was then fixed for 11-7-70. The appellant was duly informed of the date but he did not appear at the inquiry. The Inquiry Officer proceeded ex parte and examined witnesses, and by his report dated 26-5-71 found the charge proved. The General Manager, Northern Railway agreed with the report of the Inquiry Officer and came to the provisional conclusion that the penalty of removal from service should be inflicted and issued a show cause notice dated 26-5-71. The appellant offered his explanation and the General Manager by his order dated 24-8-71 imposed the penalty of removal from service. The Railway Board by the impugned order dated 11-3-72 dismissed

his appeal. The appellant moved the High Court by a petition and the single Judge by his order dated 16-8-83 dismissed the writ petition holding that since the Railway Board agreed with the findings of the General Manager, there was no duty cast on the Railway Board to record reasons for its decision. A Division Bench by its order dated 15-2-84 dismissed his letters patent appeal in lumine.

The Supreme Court referred to the procedure laid down for dealing with appeals under rule 22(2) of Railway Servants (Discipline and Appeal) Rules. It held that the word 'consider' implied 'due application of mind' and emphasised that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. The impugned order of the Railway Board is a mechanical reproduction of the phraseology of rule 22(2) without any attempt on the part of the Railway Board to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service may not deserve such a harsh punishment. The Supreme Court held that there being non-compliance with the requirement of rule 22(2), the impugned order passed by the Railway Board is liable to be set aside.

It was not the requirement of Art. 311(2) of Constitution prior to the Constitution (42nd Amendment) Act, 1976 or of the rules of natural justice that in every case the appellate authority should in its order state its reasons except where the appellate authority disagreed with the findings of the Disciplinary Authority. The Supreme Court referred to the judgment of the Constitution Bench of the Supreme Court in State of Madras vs. A.R.Srinivasan: (AIR 1966 SC 1827) and observed that these authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, rule 22(2) in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under rule 27(2) of the Central Civil Services (CCS) Rules, 1965. Rule 22(2) uses the word 'consider', which means an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

After the amendment of clause (2) of Art. 311 of Constitution by the Constitution (42nd Amendment) Act, 1976 and the consequential change brought

about in rule 10(5), it is no longer necessary to afford a second opportunity to the delinquent servant to show cause against the punishment and the requirement will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. The Supreme Court referred to the judgment of a five-judge Bench of the Supreme Court in Union of India & anr. vs. Tulsiram Patel (1985(2) SLR SC 576) and another judgment in the Secretary, Central Board of Excise and Customs vs. K.S. Mahalingam (1986(3) SLR SC 144) and observed that a fair hearing or the observance of natural justice implies 'the duty to act judicially', and natural justice does not require that there should be a right of appeal from any decision and there is no right of appeal against a statutory authority unless the statute so provided.

The Supreme Court directed the Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirement of rule 22(2) of Railway Servants (Discipline and Appeal) Rules.

(258)

- (A) Inquiry — previous statements, supply of copies**
- (B) Documents — supply of copies/inspection**

Refusal to supply copies of statements of witnesses recorded during preliminary enquiry and documents mentioned in the charge-sheet and merely allowing to inspect the documents and take notes and rejecting request for engaging steno where 38 witnesses were examined and 112 documents running into hundreds of pages produced, amounts to denial of reasonable opportunity.

Kashinath Dikshila vs Union of India, 1986(2) SLR SC 620

The issue involved is whether the principles of natural justice were violated by the respondents by refusing to supply to the appellant copies of the statements of the witnesses examined at the stage of preliminary enquiry and copies of the documents relied upon by the disciplinary authority. As many as 8 serious charges were levelled against the appellant, who was a Superintendent of Police. In all, 38 witnesses were examined in the departmental proceeding and 112 documents running into hundreds of pages produced. The request for supply of copies made by the appellant was turned down and the disciplinary authority merely granted permission to inspect copies of statements and documents without

the assistance of a stenographer. He was told to himself make such notes as he could.

The Supreme Court observed that whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee depends on the facts of each case. The appellant was entitled to have access to the documents and statements throughout the course of the inquiry in order to cross-examine the witnesses examined at the inquiry and at the time of arguments. The Supreme Court held that the appellant has been denied a reasonable opportunity of exonerating himself.

(259)

- (A) **Judicial Service — disciplinary control**
- (B) **Compulsory retirement (non-penal) — of judicial officers**
 - (i) *High Court has exclusive jurisdiction over District Courts and courts subordinate thereto in respect of administrative and disciplinary matters excluding dismissal, removal or reduction in rank.*
 - (ii) *Premature retirement is made in the exercise of administrative and disciplinary control. State Government not competent to order premature retirement of a District Judge without first obtaining recommendations of High Court. Deviation not a mere irregularity but an illegality.*

Tej Pal Singh vs. State of Uttar Pradesh, 1986(2) SLR SC 730

The appellant was working as an Additional District and Sessions Judge in the State of Uttar Pradesh in the year 1968. His date of birth was 1-4-1913 and he would have retired from service on 31-3-71 on completing 58 years of age. But on 3-9-68, he was served with an order dated 24-8-68 issued by the Secretary to the Government of Uttar Pradesh (Home Department) stating that the Governor was pleased to order that he should retire from service on the expiry of 3 months from the date of service of the notice.

The Supreme Court observed that the undisputed facts are that the State Government moved the High Court in 1967 for the premature retirement of the appellant. On 8-7-68, the Administrative Judge agreed with the proposal of the State Government to retire the appellant prematurely and the Governor passed the order on 24-8-68. Three days thereafter, on 27-8-68, the Administrative Committee of the High Court gave its approval to the recommendation of the

Administrative Judge earlier communicated to the State Government. On 30-8-68, the Additional Registrar transmitted the order of retirement to the appellant and it was served on 3-9-68. The question for consideration is whether the order of compulsory retirement satisfied the requirements of the Constitution.

'Control' includes both disciplinary and administrative jurisdiction. Disciplinary control means not merely jurisdiction to award punishment for misconduct but also the power to determine whether the record of a member of the Service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. The control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal or reduction in rank and the initial posting or an initial promotion to the rank of District Judge. The vesting of complete control over the subordinate judiciary in the High Court leads to this that if the High Court is of opinion that a particular officer is not fit to be retained in service, the High Court will communicate that opinion to the Governor, because the Governor is the authority to dismiss, remove or reduce in rank or terminate the appointment. In such cases, the Governor, as the head of the State, will act in harmony with the recommendation of the High Court as otherwise the consequences will be unfortunate. But, compulsory retirement simpliciter does not amount to dismissal or removal or reduction in rank under Art. 311 of Constitution or under service rules. When a case is not of removal or dismissal or reduction in rank, any order in respect of exercise of control over the judicial officers is by the High Court and by no other authority; otherwise, it will affect the independence of the judiciary. It is in order to effectuate that high purpose that Art. 235 of the Constitution, as construed by the Supreme Court in various decisions, requires that all matters relating to the subordinate judiciary including premature retirement and disciplinary proceedings but excluding the imposition of punishment falling within the scope of Art. 311 and the first appointment or promotion, should be dealt with and decided upon by the High Courts in exercise of the control vested in them.

In the instant case, the Government had sought the opinion of the High Court regarding the question whether the appellant could be prematurely retired and that question was certainly a very important matter from the point of view of the subordinate judicial service. The Administrative Judge before giving his opinion in support of the view expressed by the Government should have either circulated the letter amongst the members of the Administrative Committee or placed it

before them at a meeting. He did not adopt either of the two courses. But he, on his own, forwarded his opinion to the Government. Ordinarily it is for the High Court, on the basis of assessment of performance and all other aspects germane to the matter to come to the conclusion whether any particular judicial officer under its control is to be prematurely retired and once the High Court comes to the conclusion, the High Court recommends to the Governor. The conclusion is to be of the High Court since the control vests therein. Under the Rules obtaining in the Allahabad High Court, the Administrative Committee could act for and on behalf of the Court but the Administrative Judge could not have. Therefore, his agreeing with the Government proposal was of no consequence and did not amount to satisfaction of the requirement of Art. 235 of Constitution. It was only after the Governor passed the order, the matter was placed before the Administrative Committee before the order of retirement was actually served on the appellant. The Administrative Committee may not have dissented from the order of the Governor or the opinion expressed by the Administrative Judge earlier. But it is not known what it would have done if the matter had come up before it before the Governor had passed the order. In any event the deviation is not a mere irregularity which can be cured by the ex post facto approval given by the Administrative Committee to the action of the Governor after the order had been passed. The error committed amounts to an incurable defect amounting to an illegality. The Supreme Court held that the appellant shall be treated as having been in service until the expiry of 31-3-1971, when he would have retired from service on attaining 58 years of age.

(260)

Compulsory retirement (non-penal)

Formation of opinion by competent authority regarding public interest necessary for an order of compulsory retirement.

H.C. Gargi vs. State of Haryana, 1986(3) SLR SC 57

The appellant, who was an Assistant Excise and Taxation Officer, Haryana, after 35 years of service, has been compulsorily retired by the State Government of Haryana, by order dated 1-2-85, on the basis of two adverse entries made by the then Excise and Taxation Commissioner. He was continued in service after he attained the age of 50 years and age of 55 years on the basis of his record of service which was uniformly good right from 1964-65 to 1981-82. It was contended by the State Government that the adverse entries made by the Commissioner showed that he was of doubtful integrity. This however is not borne out by the two adverse entries, which only showed that his performance was

'average' in 1982-83 and 'below average' in 1983-84 and they did not pertain to his integrity.

The Supreme Court held that for exercising the power of compulsory retirement, the authority must be of the opinion that it is in public interest to do so. The test in such cases is public interest as laid down by the Supreme Court in Union of India vs. Col. J.N. Sinha and anr. (1970 SLR SC 748). There was no material on the basis of which the State Government could have formed an opinion that it was in public interest to compulsorily retire the appellant at the age of 57 years. There was really no justification for his retirement in public interest.

(261)

- (A) Constitution of India — Art. 311(2)**
- (B) Disciplinary proceedings — show cause against penalty**

After amendment of Art. 311(2) of Constitution from 3-1-1977, second opportunity to show-cause against punishment not necessary.

Secretary, Central Board of Excise & Customs vs. K.S. Mahalingam, 1986(3) SLR SC 144

The respondent was an Examiner of Madras Customs House. A charge-sheet was served on him alleging misconduct involving lack of integrity and lack of devotion to duty and conduct unbecoming of a Government Servant. The respondent denied the charges. The Inquiry Officer held both the articles of charge established. The disciplinary authority, the Collector of Customs, Madras, by order dated 15-5-80 held both the charges proved and dismissed the respondent. The respondent preferred an appeal to the Chief Vigilance Officer, Central Board of Excise and Customs, who by order dated 8-7-81 upheld the finding of the disciplinary authority but altered the penalty of dismissal to one of compulsory retirement.

The respondent filed a writ petition before the Madras High Court. A single Judge of the High Court came to the conclusion that there was no evidence of lack of devotion to duty or conduct unbecoming of a Government servant and took the view that as no opportunity was given to the respondent to show cause against the punishment before it was imposed by the disciplinary authority and as no copy of the Inquiry Officer's report was supplied to him, the order of dismissal was vitiated, and by his order dated 7-9-85 quashed the order of dismissal and directed reinstatement of the respondent in service.

The Secretary, Central Board of Excise and Customs preferred an appeal before a Division Bench of the High Court. The Division Bench by its judgment dated 13-9-85 agreed with the single judge that the respondent was deprived of an opportunity to show cause against the punishment imposed on him by the Disciplinary Authority and in that view of the matter did not consider the findings on merits. The Division Bench modified the order of the single judge by setting aside the direction for reinstatement of the respondent in service and permitting the disciplinary authority to proceed further with the disciplinary proceedings from the stage of giving a fresh notice to show cause against the punishment to be proposed by him. The appellants appealed against the order of the Division Bench of the High Court before the Supreme Court.

The Supreme Court observed that both the Division Bench and the single Judge of the High Court had completely overlooked the fact that the Constitution (42nd amendment) Act, 1976 has deleted from clause (2) of Art. 311 of Constitution the requirement of a reasonable opportunity of making representation on the proposed penalty and further it has been expressly provided in the first proviso to clause (2) that "it shall not be necessary to give such person any opportunity of making representation on the penalty proposed". After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. The Supreme Court also pointed out that in view of the amendment of Art. 311(2) of Constitution, rule 15(4) of the Central Civil Services (CCS) Rules, 1965 was amended. The Supreme Court also drew attention to the decision of a five-Judge Bench of the Supreme Court in the case of Union of India vs. Tulsi Ram Patel (1985(2) SLR SC 576).

The Supreme Court set aside the judgment of the Division Bench of the High Court and remanded the case back to the Division Bench for disposal of the appeal on merits after giving the parties an opportunity of being heard.

(262)

(A) P.C. Act, 1988 — Secs. 7, 11

- (i) *Sec. 165 IPC (corresponding to sec. 11 of P.C. Act, 1988), wider in ambit than sec. 161 IPC (corresponding to sec. 7 of P.C. Act, 1988).*
- (ii) *Element of motive or reward is relevant under sec. 161 IPC but wholly immaterial under sec. 165 IPC.*
- (iii) *Scope of the two sections dealt with.*

(B) P.C. Act, 1988 — Sec. 20

(C) Trap — presumption

Presumption under sec. 4 P.C. Act, 1947 (corresponding to sec. 20 of P.C. Act, 1988) can be raised at the stage of framing of charge.

R.S. Nayak vs. A.R. Antulay, AIR 1986 SC 2045

The Supreme Court held that on its plain terms sec. 165 IPC is wider than sec. 161 IPC (corresponding to secs. 11 and 7 of P.C. Act, 1988). An act of corruption not falling within sec. 161 may yet come within the wide terms of sec. 165. What sec. 161 envisages is that any gratification other than legal remuneration should have been accepted or obtained or agreed to be accepted or attempted to be obtained by the accused for himself or for any other person as a motive or reward for doing or forbearing to do any official act or for showing of forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, while sec. 165 does not require taking of gratification as a motive or reward for any specific official action, favour or service but strikes at obtaining by a public servant of any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be or likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from any person whom he knows to be interested in or related to the person so concerned. Whereas under sec. 161 it is necessary to establish that the taking of gratification must be connected with any specific official action, favour or service by way of motive or reward, no such connection is necessary to be proved in order to bring home an offence under sec. 165 and all that is necessary to establish is that a valuable thing is accepted or obtained or agreed to be accepted or attempted to be obtained by a public servant from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official function of such public servant and such valuable thing has been accepted or obtained or agreed to be accepted or attempted to be obtained without consideration or for a consideration which such public servant knows to be inadequate. The reach of sec. 165 is definitely wider than that of sec. 161. Moreover, it is clear from illustration (c) to sec. 165 that money or currency is regarded by the Legislature as a valuable thing and if it is accepted or obtained by a public servant without consideration or for inadequate consideration in the circumstances set out in sec. 165, such public servant would be guilty of an offence under that Section.

Supreme Court further held that sec. 165 is so worded as to cover cases of corruption which do not come within sec. 161, 162 or 163 (corresponding to secs. 7, 8, 9 of P.C. Act, 1988). Indisputably the field under sec. 165 is wider. If public servants are allowed to accept presents when they are prohibited under a penalty from accepting bribes, they would easily circumvent the prohibition by accepting the bribe in the shape of a present. The difference between the acceptance of a bribe made punishable under secs. 161 and 165 IPC, is this: under the former section the present is taken as a motive or reward for abuse of office; under the latter section the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing. The provisions of secs. 161 and 165 IPC as also sec. 5 of the P.C. Act, 1947 (corresponding to sec. 13 of P.C. Act, 1988) are intended to keep the public servant free from corruption and thus ultimately ensure purity in public life.

Supreme Court also held that it cannot be said that the presumption under sec. 4 of the P.C. Act, 1947 (corresponding to sec. 20 of P.C. Act, 1988) applies only after a charge is framed against an accused. The presumption is applicable also at the stage when the court is considering the question whether a charge should be framed or not. When the Court is considering under sec. 245(1) Cr.P.C. whether any case has been made out against the accused, which if unrebutted would warrant his conviction, it cannot brush aside the presumption under sec. 4 of the Prevention of Corruption Act, 1947.

(263)

(A) Charge — typographical error

Communication of corrigendum to charge-sheet correcting a typographical error, by a deputy of competent authority does not constitute any irregularity or illegality.

(B) Disciplinary authority — conducting preliminary enquiry

Officer conducting preliminary enquiry not debarred from functioning as disciplinary authority provided he has not openly given out findings about the guilt of the official.

Paresh Nath vs. Senior Supdt., R.M.S., 1987(1) SLR CAT ALL 531

A Head Sorting Assistant in the Railway Mail Service had allegedly allowed four persons to travel in an unauthorised manner in the Post Van. This misconduct was discovered by the Senior Superintendent Railway Mail Service during a surprise check. After a departmental inquiry, the Senior Superintendent imposed the punishment of stoppage of increment for three years. The applicant's departmental appeal was rejected and he agitated before the Central Administrative Tribunal, Allahabad.

The applicant contended that the Senior Superintendent was not fully competent to function as the Disciplinary Authority as he was also acting as the Prosecutor and a witness in the case. The Tribunal did not find any such irregularity in the disciplinary proceedings, particularly having regard to the provision of rule 50 of the Posts and Telegraph Manual, Volume III which says: "The authority who conducts the preliminary enquiry into a case of misconduct etc. of a Government servant will not be debarred from functioning as a disciplinary authority in the same case provided it has not openly given out its findings about the guilt of the accused officials."

It was also contended by the applicant that the corrigendum dated 14-2-85 correcting the place of inspection of the Postal van from Bhatni to Mau was issued after hearing the defence of the applicant and was signed by the Deputy of the competent authority. The respondents contended that the place of inspection of the Postal van was a typographical error and the correction was made as soon as the error came to their notice and that the applicant was given another opportunity to submit his defence and the correction of the typographical error was with the approval of the respondent in writing. The Tribunal held that the correction of such typographical error is a routine matter and its communication by his deputy does not constitute any irregularity or illegality.

(264)

- (A) Fresh inquiry / De novo inquiry**
- (B) Charge — withdrawn and re-issued**
 - (i) Issue of fresh charge sheet on charges withdrawn earlier but not adjudicated, proper.**
 - (ii) Subsequent charge sheets would not be tenable only if the initial charges were adjudicated upon.**

Harbajan Singh Sethi vs. Union of India, 1987(2) SLR CAT CHD 545

A Divisional Accountant in the Mechanical Division, P.W.D., Sirsa (Ambala) was charge-sheeted on 16-6-82 on certain allegations. Some of the charges were withdrawn by an order dated 18-10-82 on the ground that they involved falsification of records and cheating and it was necessary to consider the desirability of referring the case to the Police/C.B.I. for investigation. In respect of the charges not withdrawn, the inquiry was conducted and he was dismissed from service by order dated 6-11-82. On appeal, the Appellate Authority set aside the order of dismissal and imposed the penalty of reduction in pay.

The applicant was given a fresh charge-sheet on 22-6-84 incorporating one charge which was withdrawn earlier, and on 11-12-85 another charge-sheet incorporating yet another charge which was withdrawn earlier, was issued. The applicant challenged the issue of the fresh charge-sheets before the Central Administrative Tribunal, Chandigarh Bench on the ground of violation of Art. 20(2) of Constitution.

The Tribunal rejected the contention pointing out that the charges initially levelled against him were not dropped but were only withdrawn. The meaning of the word 'drop' is 'to come to an end, cease, lapse or disappear', whereas the word 'withdrawal' means 'take back, to recall' etc. It thus meant that the case against the applicant was not closed but was kept alive. The Tribunal also pointed out that subsequent charge-sheets would not be tenable only if the initial charges were adjudicated upon. The Tribunal did not find any infirmity in the fresh charge-sheets issued to the applicant.

(265)**Plea of guilty**

In a plea of guilty, admission must be clear and unequivocal.

Udaivir Singh vs. Union of India, 1987(1) SLR CAT DEL 213

The plaintiff was a Binder in Government of India Press at Faridabad and the charge against him was that he appeared in the Binding section and in the Assistant Manager (Tech)'s room in a state of full intoxication and created indiscipline by shouting loudly. In reply to the charges, he explained that he was unwell and that his condition did not improve when he took some tablets and that he took a few drops of brandy given by a known villager on his advice. He added that if anything happened, it was out of inadvertence and not deliberate and expressed regret and begged to be excused. The statement was construed by the disciplinary

authority as an admission of the guilt and without further inquiry the charges were held as proved and the penalty of compulsory retirement was imposed. His appeal was dismissed by the appellate authority.

The Central Administrative Tribunal, Delhi held that admission regarding taking a few drops of brandy as a medicine and denying the fact of having come to the office in a state of intoxication does not amount to admission of guilt. It is not open to the disciplinary authority to rely upon the medical report. Disciplinary proceedings imposing a penalty of compulsory retirement without conducting an inquiry are vitiated.

(266)

Evidence — tape-recorded

Tape record cassette evidence is admissible.

Giasuddin Ahmed vs. Union of India, 1987(1) SLR CAT GUWAHATI 524

The applicant, a Telephone Operator posted at Guwahati was charge-sheeted for passing of free telephone calls. After holding a departmental inquiry, he was removed from service on 7-4-83 and his appeal to the Department was rejected. The Chairman, P & T Board reduced the penalty to one of compulsory retirement, on a petition filed by the applicant.

The applicant contended before the Central Administrative Tribunal, Guwahati that the tape record evidence was not admissible. The Tribunal observed that tape records of speeches were 'documents' as defined in section 3 of the Evidence Act and they stand on no different footing than photographs and are admissible in evidence. The Tribunal also observed that it was nowhere the plea of the applicant that the conversation played in the tape record was denied by him or that the Inquiry Officer had relied upon anything different from what was recorded in the tape. The tape record cassette in this particular case is also no different from any other tape recorded speech or conversation made for any specific purpose. The cassette in question was like a part of a document regularly maintained in the ordinary course of business. The Tribunal referred to the case reported in Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra, AIR 1975 SC 1788 that the tape records of speeches are 'documents' as defined in section 3 of the Evidence Act. Regarding the contention of the applicant that whatever was recorded in the tape should have been brought into the enquiry report verbatim by the Inquiry Officer, the Tribunal observed that the tape record is a part of the record of the disciplinary proceedings and it is not necessary that the entire conversation was to be reproduced verbatim in the enquiry report.

(267)

Sealed cover procedure

Withholding of promotion of a Government servant pending disciplinary or criminal proceedings as per sealed cover procedure is valid. Issue discussed in all its aspects.

K.Ch. Venkata Reddy vs. Union of India, 1987(4) SLR CAT HYD 46

These cases have been posted before the full bench of the Central Administrative Tribunal, Hyderabad Bench for resolving the conflict of opinion among the various High Courts on the question whether the pendency of disciplinary or criminal proceedings would justify withholding of promotion, refusing of higher pay scales, crossing of efficiency bar and the like. The Tribunal considered the decisions of the various courts including the Supreme Court and the instructions of the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms issued on 30-1-82. The cases relate to Government servants governed by the Central Civil Services (CCS) Rules, 1965 and the All India Services (Discipline and Appeal) Rules, 1969.

The Tribunal observed that though promotion is not a matter of right, the Government servant is entitled to be considered for promotion as per the rules which govern his service and non-consideration for promotion on the sole ground of pendency of the disciplinary or criminal proceedings has been held uniformly by courts to offend Arts. 14 and 16 of Constitution. Therefore, notwithstanding the pendency of the departmental or criminal proceedings against a Government servant, he is to be considered for promotion along with other eligible persons is by now well established. The instructions issued by the Government of India already recognise the right of an employee to be considered for promotion as per rules along with others, if he is duly qualified for the higher post. It is only on that basis, the sealed cover procedure has been suggested.

The question for consideration is as to whether the Government employee who is considered fit for promotion and selected can be denied promotion merely on the ground that the departmental proceedings are pending against him. As per the sealed cover procedure an employee is to be considered by the Departmental Promotion Committee along with others for promotion, notwithstanding the pendency of the disciplinary proceedings and if he gets selected, his result will be kept in a sealed cover until the conclusion of those proceedings.

The Tribunal considered the contention of the applicants that the sealed cover procedure contemplated by the instructions is void and inoperative as it runs counter to rule 11(ii) of the Central Civil Services (CCA) Rules, 1965. It is urged on behalf of the applicants that withholding of promotion having been treated as penalty under rule 11(ii), the executive instructions cannot authorise withholding of promotion pending departmental inquiry and to the extent the instructions authorise the same on certain conditions, they are invalid as being contrary to the statutory rules. The Tribunal observed that it is by now well established that the executive instructions issued by the Government can fill up the gaps in the statutory rules framed under Art. 309 of Constitution, though any such instructions can only supplement and cannot run counter to the same. The statutory rules only provide that withholding of promotion can be resorted to by way of punishment. The rules do not say that the withholding of promotion cannot be resorted to for other valid reasons and they are silent. It is to provide for such a contingency, the sealed cover procedure has been thought of and executive instructions had been issued in that regard. On a due consideration of the matter, the Tribunal took the view that it is open to the Government to adopt the sealed cover procedure provided the interest of the official concerned is sufficiently and fully safeguarded in the event of his being ultimately exonerated in the departmental proceedings. In issuing the instructions embodying the sealed cover procedure, the provisions of the Central Civil Services (CCA) Rules, 1965 are not violated in any sense. There is no conflict between rule 11(ii) and the instructions. As pointed out by the Supreme Court in High Court of Calcutta vs. Amal Kumar Roy (AIR 1962 SC 1704) withholding of promotion for any other reason except by way of punishment cannot be taken to be a penalty as contemplated by rule 11(ii). Almost all the decisions of the Andhra Pradesh High Court proceeded on the basis that withholding of promotion is a penalty under rule 11(ii), that such a penalty can be imposed only after the conclusion of the departmental proceedings and not when the enquiry is pending and that therefore withholding of promotion while disciplinary proceedings are pending cannot legally be justified. The Tribunal held that this view cannot be accepted in view of the observations of the Supreme Court referred to above and in the context of the sealed cover procedure.

The Tribunal observed that the Explanation (iii) to rule 11 makes it clear that non-promotion after consideration of the official's claim for promotion for other reasons cannot be treated as a penalty. Considering the views expressed on both sides, the Tribunal held that explanation (iii) carves out from the main provision, non-promotion after consideration for special reasons. It is no doubt true, explanation (iii) does not say in what circumstances non-promotion after

consideration will fall thereunder. It is only for the purpose of filling in the gap or to give full scope to explanation (iii), the instructions have been issued by the Ministry providing for the sealed cover procedure. So long as the instructions providing for a sealed cover procedure do not conflict with the statutory rules, the procedure can be fully operative. The Supreme Court has in the case of Shiv Singh vs. Union of India (AIR 1973 SC 962) upheld the departmental instructions for withholding of promotion in respect of a person who took part in an illegal strike without initiating any disciplinary action. On a similar reasoning in the matter of promotion if a person is under a cloud i.e. person against whom disciplinary proceedings are pending, promotion can be deferred by following the sealed cover procedure.

The Tribunal observed that there are two conflicting concepts, one, a right to be considered for promotion is a right flowing from the conditions of service and once an employee is found fit for promotion, his promotion cannot arbitrarily be withheld and a junior promoted instead in the face of Arts. 14 and 16 of Constitution. On the other hand, the purity of public service requires that a person under a cloud i.e. person against whom disciplinary or criminal proceedings had been initiated and are pending, should get himself absolved of the charges before he is actually promoted. It will be against public interest if any employee who is being proceeded against say on a charge of corruption were to be promoted while facing the corruption charges. It is only to keep a proper balance between these two concepts, instructions have been issued from time to time to adopt the sealed cover procedure which is intended to protect the interest of the employee in the matter of promotion and also to advance the public interest and to sustain purity of public service.

The Tribunal held that the sealed cover procedure is to be followed only when proceedings are initiated i.e. when a charge-sheet is filed in a criminal court or charge memo under the C.C.A. Rules is served on the official.

The Tribunal held that not giving arrears of salary i.e. the salary for the period during which promotion was withheld which he would have drawn if the promotion had not been withheld, is a clear violation of Arts. 14 and 16 when compared with other employees against whom disciplinary proceedings had not been initiated. They struck down the portion of para 2 of the instructions dated 30-1-82 which says, "but no arrears are allowed in respect of the period prior to the date of actual promotion", and directed that on exoneration, the salary, which the person concerned would have received on promotion if he had not been subjected to disciplinary proceedings, should be paid along with the other benefits.

The Tribunal held, that similarly, the provision that in the event of the official being given a penalty at the conclusion of the disciplinary proceedings the results of the sealed cover should not be given effect to or acted upon is open to attack on the ground that the official having already been punished with a penalty, not giving effect to the findings in the sealed cover will amount to a double penalty and this will not only violate Arts. 14 and 16 when compared with other employees who are not at the verge of promotion when the disciplinary proceedings were initiated against them but also offend the rule against double jeopardy contained in Art. 20(2) of Constitution. The Tribunal struck down that portion of paragraph 3(iii) second sub-para which says, "if penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the finding in the sealed cover shall not be acted upon", and directed that if the proceedings end in a penalty, the person concerned should be considered for promotion in a review Departmental Promotion Committee as on the original date in the light of the results of the sealed cover as also the imposition of penalty and his claim for promotion cannot be deferred for the subsequent Departmental Promotion Committees as provided in the instructions.

(268)

- (A) Double jeopardy**
- (B) Fresh inquiry / De novo inquiry**

Fresh inquiry cannot be instituted against a Government servant on same charge as in the earlier inquiry, and a higher penalty imposed.

P. Maruthamuthu vs. General Manager, Ordnance Factory, Tiruchirapally, 1987(1) SLR CAT MAD 15

The applicant was a Machinist in the Defence Services. A memorandum of charges dated 9.8.80 was issued against him and after an inquiry conducted under rule 14 of the Central Civil Services (CCA) Rules, 1955, a penalty of compulsory retirement was imposed on him by order dated 30-7-81.

The Central Administrative Tribunal, Madras observed that on an earlier occasion, an inquiry was conducted and charges were held as proved and an order dated 12-4-80 was passed imposing the penalty of reduction of pay from Rs. 230 to Rs.210 with cumulative effect for three years. The issue of the charge-sheet a second time is sought to be justified on the ground that the applicant was unauthorisedly absenting himself from duty continuously and did not pay any heed to instructions or advice and that the respondent had no option but to

charge-sheet the applicant again. The Tribunal observed that the charges in both the memoranda of charges are the same, in respect of unauthorised absence from duty from 10-4- 79 and non-compliance with instructions. There is nothing in the subsequent memorandum of charges to indicate that it relates to something not covered by the earlier charge-sheet.

The Tribunal observed that an employee against whom disciplinary proceedings have been instituted on a particular charge, as a result of which a punishment has also been awarded to him, cannot subsequently be charge-sheeted for the same offence and imposed a higher punishment.

(269)

Inquiry — abrupt closure

Abrupt closure of inquiry without holding the hearing fixed already, vitiates proceedings.

**P. Thulasisingaraj vs. Central Provident Fund Commissioner,
1987(3) SLJ CAT MAD 10**

The inquiry was first posted to 18-7-79 and adjourned to 9- 8-79 as the petitioner was not available to receive the intimation in time. On 9-8-79, the official appeared before the Inquiry Officer and raised a number of preliminary objections which were considered and over-ruled by the Inquiry Officer. Examination of witnesses by the Inquiry Officer commenced thereafter but the charged official left the venue of inquiry stating that going into the charges without meeting his objections would not safeguard his interest and render justice to him. However, recording of evidence continued on that day and on 8-11-79. The official had been informed about the inquiry being continued on 8-11-79 but on that day he did not attend the inquiry. A written brief on behalf of the disciplinary authority was then filed and a copy thereof was forwarded to the charged official and he was given another opportunity to file his defence within 15 days. The latter then wanted an opportunity to lead his own evidence and it was given to him by adjourning the inquiry to 26-12-79. On that day, the charged official moved an application, requesting for an adjournment of the inquiry on the ground of his son's illness. This request was granted and the inquiry was adjourned to 23-1-80.

On 9-1-80, the Inquiry Officer received a letter from the charged official levelling allegations against him and stating that he cannot practically conduct a just and fair inquiry and do justice and expressing his readiness to face a rule-based inquiry by a fresh Inquiry Officer. On receipt of this letter, the Inquiry Officer considered that there was no point in his going to Madras, as he presumed that

the charged official had no intention of participating in the inquiry and decided the matter on the basis of material and evidence already available on record.

From the above, it was clear that the Inquiry Officer having announced the date for the next inquiry as 23-1-80 did not take up the inquiry on that day. It was held that whatever may have been the contents of the letter which the charged official wrote to the Inquiry Officer in the first week of Jan '80, the inquiry as per schedule should have been continued. One cannot rule out the possibility of the charged official changing his mind and being present on that day or his being present in the inquiry, under protest. Instead of doing it, he had decided to come to conclusions on the material available on record. It indicates that he had closed his mind to any evidence which might have been let in if the inquiry had been conducted on 23-1-80, as per the schedule already announced by him. It may be that the Inquiry Officer thought that the applicant was not co-operating with the inquiry at any stage and that he was not going to turn up for the inquiry on the adjourned date. But such an impression on his part does not entitle him to close the inquiry abruptly and to pass his findings on material already collected.

The Central Administrative Tribunal, Madras held that this omission on the part of the Inquiry Officer has vitiated the inquiry proceedings and quashed the order of the Disciplinary Authority reverting the Government servant from the post of Head Clerk to that of Upper Division Clerk.

(270)

Criminal Law Amendment Ordinance, 1944

There is nothing in the Criminal Law Amendment Ordinance or in Government of India Act limiting the operation and duration of the ordinance upto a particular point of time.

Md. Inkeshaf Ali vs. State of A.P., 1987(2) APLJ AP 194

The Andhra Pradesh High Court held that the Criminal Law Amendment Ordinance of 1944, which authorised the State Government to apply for the attachment of the property with respect to which an offence under sec. 409 IPC had been committed was no doubt made in exercise of his powers by the Governor General under sec. 72 of the Ninth Schedule of the Government of India Act, 1935. On the day when the Indian Independence Act has come into force i.e., on 15th August, 1947, the powers of the Governor General under the Ninth Schedule are still available. Sec. 18(3) and sec. 8(2) of the Indian Independence Act, refer to the continuance of the Government of India Act, 1935. It is no doubt true that the

creation of Federation as envisaged by the British Parliament and enacted in sec. 5 of the 1935 Act had become incapable of being established under the Indian Independence Act, 1947. But that would not have the effect of terminating the powers of the Governor General under the Ninth Schedule. Those powers will be available so long as the 1935 Act continues to be in power and the Federation is not established. This is the legal and constitutional result of the continuance of the 1935 Act. The fact that the 1935 Act is continuing has been attested not only by the provisions of the Indian Independence Act of 1947 but also by Art. 395 of the Constitution of India. It is only by reason of the present Constitution, 1935 Act was repealed.

Even on the assumption that the 1935 Act has ceased to be in existence after the inauguration of the Constitution of India in 1947 it cannot be held that the provisions of the Ordinance had ceased to be operative in 1944. The Ordinance was validly enacted in 1944. There is nothing contained in the Criminal Law Amendment Ordinance or in the 1935 Act limiting the operation and duration of the Ordinance upto a particular point of time. The fact that the 1935 Act has been repealed would not have the effect of erasing the law of the Ordinance made under that Act from the statute book.

(271)

Charge — amendment of

Where charge is amended by issue of corrigendum during the course of inquiry, failure to permit charged official to file reply to amended charge and give opportunity to defend himself vitiates inquiry proceedings, and order of termination liable to be quashed.

M.G. Aggarwal vs. Municipal Corporation of Delhi, 1987(4) SLR DEL 545

The petitioner was Junior Engineer in the Municipal Corporation of Delhi. A charge sheet was served on him on 31-1-85 alleging that he failed to detect unauthorised construction of some internal structural alterations made in a property which fell within his jurisdiction. The charge sheet mentioned that he joined duties in the City Zone on 15-6-80 and that the construction had been completed much before 14-1-84. The petitioner in his reply asserted that he could not be held guilty as the unauthorised construction as per the charge sheet was made before 14-1-84 but he joined duty only on 12-3-84. The inquiry nevertheless proceeded and the Vigilance Inspector, examined as a witness at the inquiry, categorically stated that the petitioner was working in the City Zone

from 15-6-80 and that the construction had been carried out prior to 14-1-84 and further that on 31-1-85 when he and the petitioner visited the site no construction was going on and there was no building material seen at the site. The Municipal Corporation apparently realising its mistake sent a corrigendum altering the date of the petitioner's employment in the original charge-sheet to 15-6-84 and the date of completion of construction to 14-1-85. The inquiry ultimately resulted in the order of dismissal dated 24-7-86, which was confirmed by an order dated 18-11-86. The petitioner filed a writ petition before the Delhi High Court.

The High Court observed that the effect of the corrigendum would be to make out a new charge. However, the earlier inquiry was not terminated and no new inquiry was commenced. Merely the witness was recalled in the continued inquiry on 3-4-86 and he gave evidence supporting the corrigendum. The High Court held that when the charge sheet had been substantially altered, it has to be tried de novo and by failing to do so, the petitioner was denied the opportunity to meet the amended charge and he has not been allowed to file reply to the amended charge. The inquiry proceedings are bad in law and the order of termination as well as the appellate order have been quashed.

(272)

Suspension — besides transfer

Transfer and suspension of Government servant justified if there are allegations that he may indulge in similar acts of misconduct (abuse of office and power) again wherever he may be on duty.

J.V. Puwar vs. State of Gujarat, 1987(5) SLR GUJ 598

The petitioners were Deputy Superintendent of Police and Police Inspector and Police Sub-Inspector. It is alleged that some Police Constables committed a rape on a tribal woman. Under the orders of the Supreme Court, investigation had to be entrusted to Central Bureau of Investigation. The report of the Commission appointed by the Supreme Court shows that the three police officers had not properly investigated and performed their duties and tried to cover up and protect the police constables.

The petitioners were transferred and thereafter suspended and these suspension orders are challenged. It was contended by the petitioners that transfer and suspension both can be resorted to only in rarest of rare cases and in the present case, there were no facts justifying suspension. The Gujarat High Court observed that the petitioners had to be transferred immediately because their continuing in the same place was likely to result in prejudice to the future

course of investigation. However, that does not prevent the competent authority from taking a subsequent decision about suspension if the facts of the case so require. One of the considerations for suspension is that if the misconduct is proved, it would result in a major punishment and another consideration is continuing them on duty would be against public interest and would afford an opportunity to indulge in similar acts again. A Government servant who is alleged to be corrupt cannot be trusted in service and must be suspended. A police officer who has abused his position and office cannot be trusted and hence he must be suspended and he cannot be trusted to discharge his duties anywhere.

(273)

(A) Departmental action and acquittal

No jurisdictional bar for holding departmental inquiry in respect of misconduct on the basis of acts of omission or commission after acquittal by a criminal court on criminal charges arising therefrom.

(B) Departmental action — resumption after break

No bar to continue disciplinary proceedings left uncompleted due to pendency of criminal proceedings.

***Haribasappa vs. Karnataka State Warehousing Corpn.,
1987(4) SLR KAR 262***

The petitioner was working as a Warehouse Superintendent at State Warehouse, Haveri. He was prosecuted on a charge of misappropriation and the case ended in acquittal on 20-10-75. Thereafter another six criminal cases were filed and he was found guilty and convicted and sentenced to one year S.I. The petitioner preferred appeals before the District and Sessions Judge and during the pendency of the appeals, on the basis of the conduct which led to his conviction, he was dismissed from service on 26-3-80. His appeals against conviction were dismissed. In revision petition, the High Court set aside the orders of the courts below. The Special Leave Petition preferred by the State before the Supreme Court was dismissed on 10-8-84. The petitioner was thereafter reinstated by an order dated 24-7-85 and simultaneously placed under suspension and charges were served on 4.11.85. The petitioner gave his reply on 15/16-12-85. At this stage, the petitioner presented this petition before the Karnataka High Court questioning the legality of the commencement of the disciplinary proceedings.

The High Court observed that the law regarding the competence of the Master to hold a departmental enquiry in respect of misconduct alleged against his servant on the basis of his acts of omission or commission, even after he has been acquitted by a Criminal Court in respect of criminal charges arising therefrom and levelled against him is well settled by the Full Bench decision of the High Court in T.V. Gowda vs. The Director of Government Printing Press (ILR 1975 MYS 895 (FB)) and the said view also stands confirmed by the decision of the Supreme Court in Corporation of Nagpur vs. R.G. Modak (AIR 1984 SC 626).

The petitioner, however, contended that there has been an earlier inquiry in the year 1973 itself in respect of the very charges and the inquiry officer had come to the conclusion that he was not guilty and therefore the second inquiry in respect of the same charges is not correct. The High Court found that except framing the charges, no inquiry was held against the petitioner on the earlier occasion and so far as the second inquiry was concerned no article of charges were framed. Having regard to the facts and circumstances of the case, the High Court observed that the contention of the petitioner that this is a second inquiry instituted against him after the matter had been concluded in an earlier inquiry and consequently, the present inquiry was without jurisdiction, is not tenable.

The High Court held that whether in the light of the acquittal of the petitioner in the order made in the revision petition by the High Court and confirmed by the Supreme Court by dismissing the Special Leave Petition filed by the Corporation against the said order, the departmental inquiry should be held or not is a matter for administrative decision of the Corporation. But there is no jurisdictional bar for holding the inquiry.

(274)

(A) Compulsory retirement (non-penal)

(B) Adverse remarks

- (i) Adverse entries awarded to an employee lose their significance on his promotion to a higher post and cannot be taken into consideration for forming opinion for prematurely retiring him.*
- (ii) Uncommunicated remarks or remarks pending disposal of representation cannot be the basis for premature retirement.*
- (iii) While considering the overall assessment for prematurely retiring an employee more value should*

- be attached to the confidential reports pertaining to the years immediately preceding such consideration.*
- (iv) *Executive instructions for guidance of appropriate authority to exercise the power of premature retirement have binding character.*

Brij Mohan Singh Chopra vs. State of Punjab, 1987(2) SLR SC 54

The appellant was appointed as Superintendent, Quality Marking Centre (Scientific Instruments) of the Government of Punjab. In 1963, he was promoted to the post of Deputy Director (Technical) and in 1964 as Joint Director (Industries), which post he continued to hold till he was prematurely retired by order dated 19-3-80. His representation was rejected by the Government and writ petition was dismissed by the High Court, whereupon he filed the present appeal before the Supreme Court.

It was contended on behalf of the State Government that the appellant, during his service with the Industries Department, earned adverse remarks in the Annual confidential reports on his work and conduct for the years 1960-61, 1963-64, 1964-65, 1969-70, 1970-71, 1971-72, 1972-73 and 1975-76 which indicate that the overall service record of the appellant was bad and his integrity was frequently challenged and that these entries were taken into consideration in retiring him. No other material was considered against him.

The Supreme Court observed that "the purpose and object of premature or compulsory retirement of Government employees is to weed out the inefficient, corrupt, dishonest or dead wood from the Government service." Referring to rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975, the Supreme Court observed that the rule invests absolute right to the appropriate authority to retire an employee prematurely on his completion of 25 years of qualifying service or 50 years of age. "The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest." As the rule does not contain any further guidelines apart from public interest, the State Government issued Government Orders laying down guidelines and the procedure necessary to be followed in exercising the powers. According to these instructions, the service record of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and if there was a single entry casting doubt on the integrity of an employee, the premature retirement of such an employee would be in public interest. In the absence of any details by which the question of public interest can be determined in the rules it was open

to the State Government to issue the executive instructions for the guidance of the appropriate authority to exercise the power of premature retirement and the instructions so issued and contained in the Government orders have binding character.

The Supreme Court further observed that some of the adverse entries related to remote past prior to the promotion of the appellant to the post of Joint Director (Industries). It is now settled that adverse entries awarded to an employee lose their significance on or after his promotion to a higher post. Therefore, the adverse entries for the years 1960-61, 1963-64 and 1964-65 could not legally be taken into consideration in forming the requisite opinion. It is also well-settled that while considering the question of premature retirement it may be desirable to make an overall assessment of the Government servant's record, but while doing that more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a new entrant to a service may have committed mistakes and for that reason he may have earned adverse entries and if those entries of early years of service are taken into consideration then perhaps no employee would be safe even though he may have brilliant record of service in later years. The Supreme Court observed that if entries for a period of more than 10 years past are taken into account, it would be an act of digging out past to get some material to make an order against the employee. During the period of 10 years past, the appellant had adverse entries for 1971-72 and 1972-73 but representations submitted by him admittedly remained undisposed of. They cannot as such be taken into consideration. Unless the representation is considered and disposed of, it is not just and fair to act upon those adverse entries. The Supreme Court held that the order of the State Government is not sustainable in law.

(275)

Pension Rules — withholding / withdrawing pension

Open to State Government to direct deduction in pension on the proof of allegations where order of dismissal is quashed by High Court on technical grounds and not on merit and Government servant retires from service on attaining age of superannuation before the completion of proceedings.

State of Uttar Pradesh vs. Brahm Datt Sharma, 1987(3) SLR SC 51

The respondent was employed as an Executive Engineer in the Irrigation Department of the State of Uttar Pradesh. A number of charges were framed

against him and on their being proved in a departmental inquiry, he was dismissed from service by the State Government's order dated 10.11.72. The Uttar Pradesh Public Service Tribunal rejected his appeal. But a single Judge of the High Court by his order dated 10-8-84 quashed the order of dismissal, on the ground that he had not been afforded reasonable opportunity of defence in as much as the recommendation made by the Inquiry Officer relating to the quantum of punishment had not been communicated to him. The respondent had already retired from service during the pendency of the petition before the High Court. The State Government issued a notice dated 29-1-86 to show cause as to why orders for forfeiture of his pension and gratuity be not issued in accordance with Art. 470(b) Civil Service Regulations as his services have not been wholly satisfactory. He submitted his reply but before a decision could be taken, he filed an application before the High Court in the writ petition of 1980 which had already been finally disposed of on 10-8-84. By order dated 11-7-86, a single Judge of the High Court held that since the departmental proceedings taken against him had already been quashed, it was not open to the State Government to issue show cause notice on the very allegations which formed charges in the disciplinary proceedings and quashed the show cause notice.

The Supreme Court observed that the single Judge of the High Court quashed the notice on the sole ground that the allegations specified in the show cause notice were the same which had been the subject matter of departmental inquiry resulting in the respondent's dismissal from service and since dismissal order had been quashed, it was not open to the State Government to take proceedings for imposing any cut in the pension on the same set of charges. The High Court did not quash the proceedings or the charges but only the dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment as the recommendation with regard to the quantum of punishment made by the Inquiry Officer had not been communicated to him. In fact, while allowing the writ petition, the High Court observed in the order dated 10-8-84 that it would be open to the State Government to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the charges or the findings recorded against the respondent during the inquiry held against him and as such it was open to the State Government to have taken up proceedings from the stage at which it was found to be vitiated and they would have done so had the respondent not retired from service on attaining the age of superannuation. They were serious allegations of misconduct which had been proceeded against him during inquiry and they remained alive even after quashing of the dismissal order. The regulation vests power in the appointing authority to take action for imposing reduction in the

pension. The notice specified various acts of omissions and commissions with a view to afford respondent opportunity to show that he had rendered throughout satisfactory service and that the allegations made against him did not justify any reduction in the amount of pension.

If disciplinary proceedings against an employee are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation before the completion of the proceedings, it is open to the State Government to direct deduction in the pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed, it is not permissible to the State Government to direct deduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the Government to take proceedings against the Government servant in accordance with rules for the deduction of pension and gratuity.

(276)

- (A) Inquiry report — disciplinary authority in agreement with findings**
- (B) Disciplinary authority — in agreement with Inquiry Officer**

Punishing authority under no obligation to pass a speaking order where it agrees with the findings of the Inquiry Officer and accepts the reasons given by him.

Ram Kumar vs. State of Haryana, 1987(5) SLR SC 265

The appellant was a Bus Conductor of the Haryana Roadways. A charge was levelled against him that he did not issue tickets to nine passengers although he had taken the fare from them. A disciplinary proceedings was started and the Inquiry Officer held that the charge was proved. The punishing authority agreed with the findings of the Inquiry Officer and terminated his services.

The appellant filed a suit challenging the legality of the order of termination contending that as no reason was given it was illegal and invalid being opposed to the principles of natural justice and the trial court dismissed the suit. On appeal, the Additional District Judge held that the order was a non-speaking order not containing any reason and as such it was invalid and allowed the appeal.

The State of Haryana took the matter to the High Court which held that the impugned order was quite legal and valid. The High Court observed that the punishing authority has passed a lengthy order running into seven pages mentioning therein the contents of the charge-sheet, the detailed deposition of the witnesses, the explanation submitted by the appellant and the findings of the Inquiry Officer and concluding that no reason is available to him on the basis of which reliance may not be placed on the report of the Inquiry Officer.

The Supreme Court observed that in view of the contents of the order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Inquiry Officer which means that he has not only agreed with the findings of the Inquiry Officer but also has accepted the reasons given by him for the findings. When the punishing authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for it to again discuss evidence and come to the same findings as that of the Inquiry Officer and give the same reasons for the findings. The Supreme Court observed that it is incorrect to say that the order is not a speaking order.

(277)

(A) Termination — of probationer

Discharge of Police Officer on probation on ground of "unsatisfactory work and conduct" does not amount to stigma.

(B) Probationer — automatic confirmation

A Probationary Indian Police Service Officer, after expiry of period of four years, stands automatically confirmed.

State of Gujarat vs. Akhilesh C Bhargav, 1987(5) SLR SC 270

This appeal by special leave is against the appellate order of the Division Bench of the Gujarat High Court. Respondent No.1 was appointed to the Indian Police Service on 4-7-69 and has been discharged by the impugned order dated 9-4-74. The order of discharge was assailed by filing a writ petition. The single Judge annulled the order. Appeals were preferred by the State Government of Gujarat and the Union of India and the Division Bench came to the same conclusion.

The Supreme Court referred to the case of State of Orissa and anr. vs. Ram Narayan Das (1961(1) SCR 606) where the Constitution Bench of the

Supreme Court held that in the case of a probationer, observation like ‘unsatisfactory work and conduct’ would not amount to stigma.

The other aspect is as to whether the respondent should have been treated as a confirmed officer of the cadre at the time the order of discharge was made. Admittedly, the order of discharge was made about five years after the appointment. Rule 3(1) of the Indian Police Service (Probation) Rules, 1954 provides a period of two years. Sub-rule (3) provides that the Central Government may extend the period of probation but there was no order of extention. It has been contended that no order of extension is necessary to be made as the process of confirmation is not automatic and even if the two years period has expired, confirmation would not ipso facto follow and special order has to be made. While the Probation Rules prescribed an initial period of two years of probation, they did not provide any optimum period of probation. Administrative instructions were, however, issued by the Ministry of Home Affairs, Government of India on 16-3-73 that no member of the Service should be kept on probation for more than four years and that a probationer who does not complete the probationer's final examination within a period of four years should ordinarily be discharged from the service. It is well settled that within the limits of executive powers under the Constitutional scheme, it is open to the appropriate Government to issue instructions to cover the gap where there be any vacuum or lacuna. Since instructions do not run counter to the rules in existence, the validity of the instructions cannot be disputed. The Supreme Court held that the respondent stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the Probation Rules did not apply and therefore proceedings in accordance with law were necessary to terminate service.

(278)

- (A) Constitution of India — Art. 311(2) second proviso
cl.(c)**

- (B) Inquiry — not expedient**

- (i) *Order of President in dispensing with the holding of inquiry on the basis of aid and advice of council of Ministers, proper. Personal satisfaction not necessary.*
- (ii) *Where court quashed order of dismissal passed dispensing with inquiry, on account of non-compliance of requirements of law, employer can issue fresh order in exercise of disciplinary*

jurisdiction after removing defects, without any need to leave of the court.

Bakshi Sardari Lal vs. Union of India, 1987(5) SLR SC 283

18 Policemen, three of them Sub-Inspectors and the remaining either Head Constables or Constables, of the Delhi Armed Police Force were dismissed from service by separate but similar orders dated 14-4-67 by way of punishment. They challenged those orders before the Delhi High Court contending that exercise of power under clause (c) of the second proviso to Art. 311(2) of Constitution was not upon President's personal satisfaction and the dismissals were bad. The High Court rejected the writ petitions. The dismissed policemen carried appeals to the Supreme Court and by judgment dated 21-1-71 in Sardari Lal vs. Union of India and ors. 1971(3) SCR 461, a Constitution Bench quashed the orders of dismissal as being illegal, ultra vires and void on the ground of non-compliance with the requirements of law. Following this judgment, the dismissed policemen were reinstated in service with effect from 16-4-71. On 5-6-71, fresh orders of dismissal were served on the policemen again invoking the power under clause (c) of the second proviso to Art. 311(2) for dispensing with the inquiry. Writ applications were again filed before the High Court contending that the order of dismissal without an inquiry vitiated as the order under sub-clause (c) of the second proviso to Art. 311(2) had not been made upon personal satisfaction of the President. The High Court rejected the contention that the President himself did not pass the impugned orders and held that no court has jurisdiction to examine the facts and circumstances that lead to the satisfaction of the President and dismissed the petitions. The appellants thereupon filed these appeals before the Supreme Court.

The Supreme Court observed that the order of the President was not on the basis of his personal satisfaction as required by the rule in Sri Sardari Lal's case but was upon aid and advice of the Council of Ministers, as required in the case of Shamsir Singh & anr. vs. State of Punjab (AIR 1974 SC 2192) and held that it is in order.

The Supreme Court also held that there was no force in the second point that the appellants having been reinstated in service in terms of the judgment of the Supreme Court, without leave of the Court no second order of dismissal on the same material could have been passed. They quashed the orders of dismissal on account of non-compliance of the requirements of the law and when the police officers returned to service it was open to the employer to deal with them in accordance with law. No leave of the court was necessary for making a fresh order in exercise of the disciplinary jurisdiction after removing the defects.

The Supreme Court also rejected the third contention of the appellants that the High Court was wrong in holding that the sufficiency of satisfaction of the President was not justiciable, drawing attention to their decision in the case of Union of India and anr. vs. Tulsiram Patel & ors. (1985(2) SLR SC 576).

(279)

(A) Suspension — for unduly long period

Keeping departmental proceedings alive for 20 years and not to have revoked order of suspension for over 11 years, grossly unjust.

(B) Increments — stoppage at efficiency bar

Stoppage of increments at the efficiency bar on ground of unfitness or otherwise after retirement should be made only after observing rules of natural justice, after hearing the person.

O.P. Gupta vs. Union of India, 1987(5) SLR SC 288

This appeal by special leave was directed against the judgment and order of the High Court of Delhi dated 24-7-85. The appellant, an Assistant Engineer in the Central Public Works Department, was placed under suspension pending a departmental inquiry under rule 12(2) of the Central Civil Services (CCA) Rules, on 3-9-59. After a period of nearly five years, the departmental proceedings culminated in an order of dismissal from service dated 12-3-64 but on appeal it was set aside by the President of India by order dated 4-10-66 with a direction for the holding of a fresh departmental inquiry. On repeated representations of the appellant, the order of suspension was revoked on 25-5-70. There was little or no progress in the departmental inquiry. On 25-4-72, the Chief Engineer passed an order of compulsory retirement of the appellant under F.R. 56(j). The appellant made representation to various authorities, including the President of India, against his compulsory retirement but the same was rejected.

Eventually on 29-7-72, he filed a petition in the High Court challenging, among other things, the validity of the order of compulsory retirement. The High Court by judgment and order dated 5-1-81 quashed the order of compulsory retirement and ordered that he shall be deemed to have continued in service till 31-3-78, the date when he attained the normal age of superannuation and held that the suspension was not justified and the period of suspension must be regarded as period spent on duty and he was entitled to full pay and allowances

and the increments for that period and quashed the departmental proceedings. The Union of India went up in appeal but a Division Bench by its judgment dated 24-3-82 declined to interfere.

Thereafter, the Director General rejected the appellant's case for crossing of the efficiency bar at the stage of Rs. 590 w.e.f. 5-10-66. On 10-7-85, the appellant filed a petition for redressal of his grievance as regards the crossing of the efficiency bar. A Division Bench by its order dated 24-7-85 dismissed the writ petition.

The Supreme Court observed that there was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. Suspension in a case like the present where there was no question of inflicting any departmental punishment *prima facie* amounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fairplay in action.

The Supreme Court observed that there is no reason why the power of the Government to direct the stoppage of increments at the efficiency bar on the ground of unfitness or otherwise after the retirement which prejudicially affects him should not be subject to the same limitations as engrafted by the Supreme Court in the case of M.Gopalakrishna Naidu vs. State of M.P. (AIR 1968 SC 240), while dealing with the power of the Government in making prejudicial order under F.R. 54, namely the duty to hear the Government servant concerned after giving him full opportunity to make out his case. The Supreme Court held that when a prejudicial order is made in terms of F.R. 25 to deprive the Government servant like the appellant of his increments above the stage of efficiency bar retrospectively after his retirement, the Government has the duty to hear the Government servant before any order is made against him.

(280)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) Trap — by other than police officer

(C) Trap — appreciation of evidence

Appreciation of evidence in a trap case; it is a trap laid by other than a police officer.

Tarsem Lal vs. State of Haryana, AIR 1987 SC 806

The trap was laid by a Sub-Divisional Officer, on receipt of a complaint, that the Patwari was demanding money for supply of copies from the revenue record. The Sub-Divisional Officer made efforts to contact the Deputy Superintendent of Police and the Sub-Inspector of Police but when neither of them was available, he decided to lay a trap and laid it himself.

The appellant was prosecuted for demanding and accepting money from one Gian Singh for supply of copies from the revenue record which were required by him in connection with the execution of a sale deed, that the appellant demanded Rs. 200 out of which Rs. 50 was already paid and balance of Rs. 150 was to be paid on the date of the sale deed. The contention of the appellant was that this amount was received by him as deposit for the small savings scheme that the copies of the revenue record were already supplied to him and the sale deed was registered before the trap incident.

The Supreme Court held that it is significant that when the Sub-Divisional Officer, on getting the signal reached the canteen along with the witnesses and conducted the search it was not the stand of the appellant that he had received the money for small scale deposits. It was not the case of the appellant that he came out with this explanation on the spot at that time. It was also not his case even in the statement recorded at the trial nor such a suggestion was put to anyone of the prosecution witnesses in the course of cross-examination. In view of this it could not be disputed that this explanation has been given as an afterthought and this itself goes to show that this explanation is just an imagination.

The Supreme Court observed that it is also significant that neither he had made any note of this fact nor given any receipt to Gian Singh. Apart from this it is significant that the Sub-Divisional Officer who was a revenue officer and the appellant being a Patwari was his subordinate. The normal conduct of the appellant would have been to tell him as soon as he arrived for search that in fact he had received this amount to be deposited in the small savings scheme. It is impossible to believe that if the appellant had received this amount for being deposited in the small savings scheme he would have not opened his mouth and permitted the search and recovery of this amount from his pocket to be done by the Sub-Divisional Officer and allowed the matter to be handed over to the Police and still

would not have come out to say why he chose to say at the trial. This conduct of the appellant in not coming out with this explanation instantaneously goes a long way to make this explanation just an afterthought specially when Sub-Divisional Officer conducted the search and recovered this amount from his person. In this view of the matter, the Supreme Court held that the courts below were right in discarding this explanation of the appellant and upheld the conviction.

(281)

Misconduct — in private life

Using unfair means in LLM examination by copying from a manuscript constitutes unbecoming conduct. Judicial Officer cannot have two standards one in the Court and another outside.

Daya Shanker vs. High Court of Allahabad, AIR 1987 SC 1467: 1987 (2) SLR SC 717

The petitioner was a member of the U.P. State Judicial Service. While working as Munsiff at Aligarh, he appeared for the first semester examination of LLM, when he was found to have used unfair means by copying from a manuscript lying between the answer book and the question paper. He was placed under suspension and dealt with in Disciplinary Proceedings and removed from service by the Governor by order dated 17.06.1983.

The Supreme Court rejected the contention of the petitioner that the invigilator had planted the manuscript when he had gone to the toilet and caught him when he returned, as he did not oblige him in a case in which he was interested. The Supreme Court found verbatim reproduction of a portion from the manuscript, in the answer sheets and the last sentence incomplete, indicating that he started copying after he returned from the toilet. The Supreme Court further observed: "The conduct of the petitioner is undoubtedly unworthy of judicial officer. Judicial officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy".

(282)

Inquiry Officer — appointment of

No illegality where mistake of appointing Inquiry Officer before receiving the explanation on charge- sheet is rectified by competent authority by issue of fresh order.

Prafulla Kumar Talukdar vs. Union of India, 1988(5) SLR CAT CAL 203

The applicant, an Office Superintendent in the Office of the Divisional Personnel Officer, Eastern Railway, Malda was dealt with in departmental inquiry and compulsorily retired from service. An appeal to the Chief Personnel Officer and a Review Petition to the General Manager were rejected.

Before the Central Administrative Tribunal, Calcutta, the applicant challenged the order on the ground that before submission of his representation against the charge-sheet, the Inquiry Officer was appointed which is not prescribed by the rules. The charge sheet was issued on 4-7-85 and the petitioner submitted his explanation on 10-7-85 and the Inquiry Officer was appointed before that date, i.e. on 4-7-85. The Central Administrative Tribunal observed that it is indeed an irregularity but had been cured before the inquiry was started to be held. On a date subsequent to the filing of the reply by the applicant, a fresh order was passed by the competent authority appointing the inquiry officer. The Central Administrative Tribunal observed that they did not find that any irregularity remained thereafter.

(283)

Court jurisdiction

High Court competent to interfere in writ jurisdiction in disciplinary proceedings where finding of guilty is based on no evidence.

M. Janardhan vs. Asst. Works Manager, Reg. Workshop, APSRTC, 1988(3) SLR AP 269

The petitioners were employees of Andhra Pradesh State Road Transport Corporation. A departmental inquiry was held against them on two charges: (i) that they assaulted Sri A.K. Reddy, Mechanic in the staff bus and (ii) indulged in riotous and disorderly behaviour which caused subversion of discipline in the workshop on 19-7-85 and a penalty of removal from service was imposed on them. The petitioners filed writ petitions before the Andhra Pradesh High Court.

The High Court observed that they cannot sit in appeal over the findings of facts recorded by a competent Tribunal in a properly conducted departmental inquiry except when it be shown that the impugned findings were not supported by any evidence. The High Court observed that it is apparent from the record of inquiry that there is nothing to show that the petitioner Sri Janardhan slapped Sri A.K. Reddy, that it can safely be said that the finding of guilty is based on no evidence, that it is a perverse finding and is an error apparent not warranted by the material on record for coming to a conclusion that the petitioners were guilty

of assaulting Sri A.K. Reddy by slapping him once or twice and thereby guilty of misconduct.

As regards Charge No.2, the Inquiry Officer has clearly held that the charge cannot be held to be proved beyond reasonable doubt and it is not open to the punishing authority to hold the petitioner guilty on the basis of the very same inquiry report without recording any finding contrary to what has been held by the Inquiry Officer. Hence, the finding of the punishing authority regarding charge No.2 is perverse. The High Court ordered that the petitioner be reinstated into service.

(284)

- (A) **Constitution of India — Art. 311(2) second proviso
cl.(a)**
- (B) **Departmental action and conviction**
- (C) **Probation of Offenders Act**

Release on probation of accused after conviction by criminal court under Probation of Offenders Act does not wipe out the guilt of the offender.

Bharat Heavy Plate & Vessels Ltd, Visakhapatnam vs. Veluthurupalli Sreeramachandramurthy, 1988(4) SLR AP 34

The first respondent was a Mechanist in the Bharat Heavy Plate and Vessels, Visakhapatnam. He was charged for adultery with the wife of a fellow-workman and convicted by a criminal court under section 497 I.P.C. and sentenced to undergo one year R.I. On appeal, the Sessions Judge maintained the conviction but suspended the sentence and enlarged him under the provisions of the Probation of Offenders Act. The Bharat Heavy Plate and Vessels issued a show-cause notice and dismissed him from service under Standing Order 25(c) of the company. The workman filed a petition before the High Court of Andhra Pradesh and a single judge quashed the order of dismissal for the reason that the company could not have so dismissed the workman under the standing order without holding a regular inquiry. Against this order, a Writ appeal has been filed by the Bharat Heavy Plate and Vessels.

A division Bench of the High Court observed that a bare reading of the Probation of Offenders Act shows that its provisions have nothing to do with the setting aside of the criminal conviction of the accused. On the other hand, they accept the fact of criminal conviction and proceed to deal with a post-conviction

situation. They accept a person declared to be offender by a criminal court to have been guilty of the offence. Enlarging the accused to liberty is in substitution of imposing sentence of imprisonment on him and not in substitution of his criminal conviction and it does not wipe out the offender's guilt. The very concept of enlarging on probation would be inapplicable to a person found not guilty.

(285)

Compulsory retirement (non-penal)

Compulsory retirement on ground of Government's convenience not proper. Convenience of Government cannot be equated with public interest.

Ramji Tayappa Chavan vs. State of Maharashtra, 1988(7) SLR BOM 312

The petitioner was Head Constable in the State of Maharashtra. On 29-4-87, an order of compulsory retirement was passed against him for the purpose of convenience of Government on the ground that he completed 52 years of age and 31 years of service, under rule 10(4)(b) of Maharashtra Civil Services (Pension) Rules, 1982.

The High Court of Bombay held that the order is on the face of it bad in law. Rule 10(4)(b) empowers the authority to compulsorily retire Government servant if it is in the public interest to do so and also empowers Government to retire class II Government servants after they have attained the age of 55 years.

The petitioner would be completing 55 years in 1989 and had not completed it on 29-4-87 when the order was passed. Further, sub-rule (4) does not provide for compulsory retirement on the ground of Government's convenience as stated in the order, but in public interest. The High Court set aside the order on both these counts.

(286)

(A) Suspension — pending inquiry

Suspension pending inquiry means that inquiry has been initiated and does not cover a situation where inquiry is under contemplation.

(B) Suspension — ratification of

Ratification of order of suspension does not validate suspension ordered by authority not competent to do so.

***Dr. Dilip Dineshchand Vaidya vs. Board of Management, Seth V.S.
Hospital, Ahmedabad, 1988(2) SLR GUJ 75***

The petitioner was Honorary Professor in the K.M. School of Post Graduate Medicine and Research, Ahmadabad. He was suspended by an order dated 24-9-87 by the Superintendent of V.S. Hospital. The order mentioned that it was passed on the directions of the Chairman of the Board of Management of the Institute and that the suspension was pending departmental inquiry. The petitioner challenged the said order of suspension before the Gujarat High Court.

The High Court observed that when a legislature or rule-making authority intends to provide that suspension can be ordered even when an inquiry is contemplated, then the authority will express its intention by laying down that suspension can be ordered when inquiry is contemplated. The High Court referred to the case of P.R. Nayak vs. Union of India (AIR 1972 SC 554), where the Supreme Court held that if the Rules provide for suspension only after an inquiry is initiated, suspension cannot be ordered before the inquiry is initiated and that suspension cannot be ordered when an inquiry is contemplated unless the Rules provide to that effect. The High Court observed that the words 'pending inquiry' clearly show that the inquiry is, in fact, pending when the suspension is ordered. The dictionary meaning of the word 'pending' cannot be taken in its isolation to mean 'awaiting inquiry' and the whole phrase 'pending inquiry' must be read. Regulation 20(A) of the Ahmadabad Municipal Corporation Regulations prescribed that an officer may be suspended from service pending inquiry against him and hence the petitioner could not be placed under suspension unless inquiry was pending when the suspension was ordered.

The High Court observed that the Board did not independently consider the question whether the petitioner should be suspended pending inquiry but only considered whether the order of suspension passed by the Superintendent should be approved or not and as such the ratification of the order of suspension by the Board does not validate the suspension.

(287)

Further inquiry

Disciplinary Authority can remit Inquiry Report back to the Inquiry Officer for limited purpose, for removing some ambiguity in the evidence or to remove some procedural defects and not for recording additional evidence on behalf of disciplinary authority.

***Bansi Ram vs. Commandant V HP SSB Bn. Shamshi, Kulu District,
1988(4) SLR HP 55***

The petitioner was a Constable in the 5th HP SSB Battalion at Shamshi. A departmental inquiry was held under rule 14 of the Central Civil Services (CCA) Rules and as per the finding of the Inquiry Officer, a part of the charge was established. The disciplinary authority however held the complete charge as proved and issued a show cause notice and imposed the penalty of dismissal from service. The petitioner filed a writ petition before the High Court of Himachal Pradesh that the provisions of rules and principles of natural justice were violated.

The High Court, on a scrutiny of the record of the disciplinary proceedings, found that the Inquiry Officer was guided not by any rule of law or procedure but only the whim and fancy of the Disciplinary Authority or some of its advisors during the course of the inquiry. The Inquiry Officer submitted his report on 28-9-74 after examining 3 P.Ws. and without giving an opportunity to the petitioner to produce his defence evidence. The disciplinary authority sent back the report to the Inquiry Officer on 31-10-74 and the Inquiry Officer sent his report on 7-11-74 after making some changes in the inquiry report. These two inquiry reports are not found on the record. The inquiry report of 7-11-74 was also received back by the Inquiry Officer on 5-12-74 and the Inquiry Officer recorded the statement of Dr. Shukre, not mentioned in the list of witnesses, on 16-6-75 without affording an opportunity to the petitioner to rebut the evidence and submitted his report to the disciplinary authority on 19-6-75. This report too was received back by the Inquiry Officer on 6-7-75 and the Inquiry Officer examined witness S.I. Kishan Singh, who was not mentioned in the list of witnesses, and further examined 2 P.Ws. on 24-7-75 and asked the petitioner to produce his defence evidence. The Inquiry Officer submitted a report on 8-8-75 to the disciplinary authority and this report too was returned to the Inquiry Officer for rectification on 12-8-75 and it was received back by the disciplinary authority on 22-8-75.

The High Court held that the power to remit a case conferred on the disciplinary authority under rule 15(1) of the Central Civil Services (CCA) Rules is not to be exercised as a matter of course or at the fancy of the disciplinary authority. This power can be exercised only in exceptional cases where further inquiry is considered necessary in the interest of justice and that also for reasons to be recorded. Further inquiry within the contemplation of sub-rule (1) of rule 15 means an inquiry falling within the purview of rule 14.

In the instant case, the reasons which weighed with the disciplinary authority in remitting the case time and again to the Inquiry Officer are not traceable from the available record. The presumption, therefore, is that no such reasons

were recorded by the disciplinary authority. If it was so, the orders of the disciplinary authority remitting the case to the Inquiry Officer from time to time were void and further proceedings conducted by the Inquiry Officer after he submitted his first report on 28-9-74 are all vitiated.

Assuming that the Disciplinary Authority recorded such reasons in support of its various orders remitting the case to the Inquiry Officer and such orders cannot be called bad for want of reasons, the case could be remitted only for the limited purpose of conducting further inquiry by the Inquiry Officer in accordance with the provisions of rule 14. The purpose of this further inquiry could be to record statement of witnesses included in the list of witnesses attached with the memorandum of charge-sheet who for some reasons could not be examined earlier or to remove some ambiguity in the evidence of such witnesses or to remove some other procedural defect in the inquiry. In any case, further inquiry could not be in violation of the procedure laid down in rule 14. The High Court allowed the writ petition and quashed the order of dismissal from service.

(288)

(A) Witnesses — recording of combined statements

Recording of combined statement of two witnesses is gravely prejudicial to the defence of the delinquent official and such procedure vitiates the inquiry proceedings.

(B) Appeal — consideration of

Order passed by appellate authority must be a speaking order. Dismissal of appeal with one sentence, “there is no merit in the appeal” is illegal.

Chairman, Nimhans vs. G.N. Tumkur, 1988(6) SLR KAR 25

The High Court of Karnataka held that recording of combined statement of two witnesses by the Inquiry Officer is gravely prejudicial to the defence of the delinquent official and vitiates the inquiry proceedings and occasioned failure of justice.

The High Court further held that the appellate authority disposing of the appeal in one sentence holding that “there is no merit in the appeal” is illegal and that the order must be a speaking order.

(289)

(A) P.C. Act, 1988 — Sec. 8

It is not necessary for an offence under sec. 162 IPC (corresponding to sec. 8 of P.C. Act, 1988) that the person receiving gratification should have succeeded in inducing the public servant.

(B) Evidence — of accomplice

Insistence of corroboration for the evidence of accomplice is not on account of any rule of law but it is a caution of prudence.

Devan alias Vasudevan vs. State, 1988 Cri.L.J. KER 1005

The gravamen of the offence under sec. 162 IPC (corresponding to sec. 8 of P.C. Act, 1988) is acceptance of or the obtaining or even the attempt to obtain illegal gratification as a motive or reward for inducing a public servant by corrupt or illegal means. It is not necessary that the person who received the gratification should have succeeded in inducing the public servant. It is not even necessary that the recipient of the gratification should, in fact, have attempted to induce the public servant. The receipt of gratification as a motive or reward for the purpose of inducing the public servant by corrupt or illegal means will complete the offence. But it is necessary that the accused should have had the animus or intent, at the time when he receives gratification that it is received as a motive or reward for inducing a public servant by corrupt or illegal means. Such intention can be gathered or inferred from evidence in each case.

It is true that the person who pays the gratification is, in a way, an accomplice in the offence, when his role is viewed from a wide angle. But before his evidence is dubbed as unworthy of credit without corroboration, a pragmatic or realistic approach has to be made towards such evidence. If the bribe giver voluntarily goes to the offender and persuades him to accept the bribe, his position is that of an undiluted accomplice and it is a rule of prudence to insist on independent corroboration for such evidence. On the other hand, if the giver of gratification was persuaded to give it, he actually becomes a victim of persuasion by the offender. To name him an accomplice and to reject his testimony due to want of corroboration, would sometimes, be unrealistic and imprudent. The court must always bear in mind that insistence on corroboration for the evidence of accomplice is not on account of any rule of law, but it is a caution of prudence. The density of the stigma to be attached to a witness as an

accomplice depends upon the degree of his complicity in the offence. Suspicion towards his role as an accomplice should vary according to the extent and nature of his complicity. It must be considered in each case whether the bribe giving or payment of gratification was done in such a way that independent persons had no occasion to witness such acts.

(290)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) Trap — mediators reports
- (C) Cr.P.C. — Sec. 162

Previous statements contained in pre-trap or post- trap mahazar do not come within ambit of Statement made to Police Officer under sec. 162 Cr.P.C. attracting prohibition against signature. Mere fact that the record was made by the Police Officer on hearing from the witnesses, will not make any difference.

V.A. Abraham vs. Superintendent of Police, Cochin, 1988 Cri.L.J. KER 1144

The Kerala High Court held that previous statements contained in a pre-trap or post-trap mahazar in a corruption case do not come within the ambit of "Statement made to the Police Officer" contemplated in sec. 162 CR.P.C. attracting the prohibition against signature. They are only previous statements which could be legitimately used for corroboration under sec. 157 of the Evidence Act. The purpose of such statements is to record things which occur in the presence of the witnesses and which are seen and heard by them and is never intended to convey or impart knowledge to the police officer. The secondary purpose of the recording is to serve as aid memoir to the witnesses when they enter the box, as a contemporary record of what they saw and heard. The purpose is not to aid the investigating officer in detecting the offence and offender in order to place him for trial. Such mahazars cannot take the place of substantive evidence, but they merely corroborate the substantive evidence given before court as a previous statement under sec. 157 of the Evidence Act. A plan prepared during investigation and signed by the maker is not done to evade the provisions of sec. 162 Cr.P.C. and it can be used for corroborating his evidence in the box as a contemporaneous record from which he could refresh his memory. In order that a previous statement under sec. 157 of the Evidence Act should also fall under sec. 162 Cr.P.C., it must be a statement made to a police officer and must have been made in the

course of investigation. When the primary and essential purposes of mahazars are taken into account it is not possible to say that the mahazar witnesses intended an element of communication to the police officer. They are asked to witness certain things and what is done is only making a contemporaneous record of what they saw and heard. There is a distinction between narration made to a police officer with a view to communicate or impart knowledge and a mere record of what the witnesses saw and heard which is intended as a contemporaneous record. The mere fact that the record was made by the police officer on hearing from the witnesses will not make any difference. But if the mahazar contains statements intended as narration to the police officer during investigation it will be hit by sec. 162 Cr.P.C.

(291)

(A) Misconduct — absolute integrity

(B) Misconduct — devotion to duty

(C) Misconduct — unbecoming conduct

(i) *Not necessary, in order to establish charge of want of absolute integrity, that passing of illegal gratification must be established. It is enough if the conduct of the Government servant discloses that he had acted in a manner in which he would not have normally acted but for the intention to oblige somebody.*

(ii) *The three clauses under rule 3(1) of CCS (Conduct) Rules, 1964 would appear to be an integrated scheme that the public servant should maintain devotion to duty, and in the performance of his duties he must maintain absolute integrity, and his conduct must not be one which is unbecoming of a Government Servant.*

(D) Evidence — of previous statements

Not necessary for witness to repeat everything that he has said in his earlier statement. Enough if he admits that he had made the statement and such statement will have to be treated as statement made in examination-in-chief.

(E) Presenting Officer — not mandatory

Rule merely enables disciplinary authority to appoint a Presenting Officer. Appointment of a Presenting Officer is not at all obligatory.

(F) Inquiry Officer — questioning charged officer

No prejudice caused to delinquent by Inquiry Officer asking questions at different stages in the course of inquiry as and when material appeared against the delinquent.

Secretary, Central Board of Excise & Customs, New Delhi vs. K.S. Mahalingam, 1988(3) SLR MAD 665

The respondent was originally working as an Examiner in the Customs Department in the dutiable import shed and air unit from 1973 and was later on transferred to the Postal Appraising Department of the Customs House, Madras and was functioning in that capacity in the General Post Office and Foreign letter Mail Department of the Postal Appraising Department. Two charges were framed against him. The first charge was that he under-assessed the values of certain articles and identified a person not known to him before and who is not traceable, with a view to handing over the parcels under window delivery system. The second charge was that two letter mail articles containing compasses were delivered by window delivery by changing the description from compasses to letter pens in the way bills and he under-assessed their value enabling the recipient to receive them free of duty.

An inquiry was made and the Inquiry Officer held both the charges as proved. The Collector of Custom, the disciplinary authority, found both the charges proved and dismissed the respondent from service with effect from 1-7-80. In appeal, the Chief Vigilance Officer, Central Board of Excise and Customs, New Delhi, while agreeing with the findings of the disciplinary authority, modified the penalty of dismissal from service to that of compulsory retirement from service.

The respondent challenged the orders by writ petition before the High Court of Madras and a single Judge held that there was no credible evidence on the charges and allowed the writ petition and directed reinstatement of the respondent. The department filed an appeal. When the appeal came up for hearing earlier, the Division Bench of the High Court took the view that the finding of the single Judge that the respondent was deprived of an opportunity to show cause against the finding recorded by the Inquiring Authority before that finding was accepted by the disciplinary authority was unassailable and declined to go into the merits of the finding. The finding recorded on merits by the single Judge was therefore set aside and the matter was remitted to the disciplinary authority

to be proceeded with from the stage of giving a fresh notice to show cause against the punishment to be proposed by him with a direction that a copy of the findings of the Inquiry Officer should be made available to the respondent and he should be given an opportunity to be heard in person if he so desires or to make representation in writing if he desires to make any such representation.

The department filed an appeal against this order before the Supreme Court and the Supreme Court set aside the order of the Division Bench as well as the order of the single Judge. The Supreme Court held that after the deletion from clause (2) of Art. 311 of Constitution by the Constitution forty-second Amendment Act, 1976, the constitutional requirement is satisfied by holding an inquiry in which the Government servant was informed of the charges against him and given a reasonable opportunity of being heard and referred to rule 15(4) of the Central Civil Services (CCA) Rules, 1965 as amended, and remitted the writ appeal for disposal on merits. (Secretary, Central Board of Excise and Customs vs. K.S.Mahalingam: 1986(3) SLR SC 144).

In the present writ appeal, the High Court examined the question whether it is always necessary before a charge of failure to maintain absolute integrity or failure to maintain devotion to duty and doing something which is unbecoming of a Government servant is established, passing of money or illegal gratification must be established. The High Court observed that when the service rule regulating the conduct of public servant expressly provides that a Government servant should at all times maintain absolute integrity, it is obvious that the conduct expected of the Government servant is one which is upright and honest. In the case of assessment of duty like the instant one, even assuming for a moment that the assessing officer does not receive any illegal gratification, if undervaluation of the articles in respect of which a duty is levied is deliberately and wilfully done, it cannot be said that the said Government servant has acted honestly or that his conduct was upright. There may be several considerations which might induce a public servant to go out of the way and oblige another person in the matter of assessment to duty. Even acquaintance with the person who is to be obliged would be enough consideration for an undervaluation. This undervaluation would result not because of the anxiety to oblige an acquaintance. It would be a different matter if the undervaluation of the articles to be assessed to duty is not deliberate or wilful and is the result of inadvertence. In such a case, it may not be possible to say that the conduct is not honest or to put it positively, is dishonest or not upright. But where deliberately, an officer goes out of the way and circumstances indicate that the undervaluation is deliberate a necessary inference must follow in the absence of circumstances indicating an inadvertent error that the undervaluation is for reasons which are not justified and for obliging the recipient

of the article. The High Court pointed out that if in order that a charge of want of absolute integrity and devotion to duty is to be proved, it is necessary to prove receipt of illegal gratification, then even in cases where there is deliberate undervaluation for extraneous reasons, the public servant cannot be held guilty of lack of integrity or lack of devotion to duty, and it would defeat the very basis and purpose of framing the conduct rules which are intended to statutorily prescribe a rule of conduct, though even normally a public servant is always expected to be upright and honest in his conduct.

In a case where it is shown that a public servant is guilty of want of integrity, necessarily the rule of conduct that he must maintain devotion to duty and do nothing which is unbecoming of a Government servant will also be violated. Where an act of a public servant is clouded with a charge of not maintaining absolute integrity, the obvious ground for such a charge would be that the public servant has done something which he should not have done, if he had acted honestly and bona fide. In other words, a charge of want of integrity would necessarily involve a departure from devotion to duty and consequently a conduct resulting in want of integrity and not maintaining devotion to duty, would necessarily be something which is unbecoming of a Government servant. Indeed the three clauses of rule 3(1) would appear to be an integrated scheme in the nature of a mandate to the public servant that he must maintain devotion to duty and in the performance of his duties he must maintain absolute integrity and his conduct must not be one which is unbecoming of a Government servant. There may, however, be cases, covered by clause (iii) which provides that a Government servant shall do nothing which is unbecoming of a Government servant though such conduct may not fall in the first two clauses of rule 3(1) of the Rules.

The High Court held that there is sufficient material on record on the basis of which the two charges can be sustained and that the respondent is clearly guilty of want of integrity, devotion to duty and his conduct was clearly one which is unbecoming of a Government servant.

The High Court considered the contention of the respondent that the Inquiry Officer had taken resort to a novel procedure of putting questions to the delinquent as and when some material against him appeared in the examination of witnesses. The spirit of rule 14(18) of the Central Civil Services (CCA) Rules is that the Government servant must have opportunity to explain the material which appears against him in evidence. There is nothing on record to show that by asking questions at different stages in the course of the inquiry, the respondent has been in any way prejudiced. The High Court held that there was no breach of the principles of natural justice.

DECISIONS (292)

The High Court held that rule 14(5)(c) of Central Civil Services (CCA) Rules merely enables the disciplinary authority to appoint a presenting Officer. But such appointment of a Presenting Officer is not at all obligatory. There is therefore no question of there being any breach of the provision.

The High Court also dealt with the argument advanced by the respondent that the second statement of Idris cannot be used as substantive evidence and observed that it is well established that when a witness is examined in the course of domestic inquiry, it is not necessary for him to repeat everything that he has said in his earlier statements and it is enough if it is put to him that he had made such statements and if he admits those statements, those statements will have to be treated as statements made in examination-in-chief.

As a matter of fact, in the decision of State of Mysore vs. Sivabasappa: AIR 1963 SC 375 cited by the respondent himself, the Supreme Court has observed that to require that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence is to insist on bare technicalities and rules of natural justice are matters not of form but of substance and they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them. This is exactly what has been done in the instant case by the Inquiry Officer.

The High Court held that the findings recorded by the disciplinary authority are clearly supported by evidence, that the inquiry is not vitiated by any errors and that the respondent had been afforded the maximum opportunity of meeting the charges against him and there is no reason at all to interfere with the findings recorded. The High Court set aside the order of the single Judge and allowed the petition filed by the department.

(292)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — bank account, seizure of**
Money in a bank account is “property” within the meaning of sec. 102 Cr.P.C. which could be seized by prohibiting the holder of the account from operating it.

***Bharat Overseas Bank Ltd vs. Minu Publication,
(1988) 17 Reports (MAD) 53***

This is a case where the accused, an employee of the Bharat Overseas Bank had fraudulently collected large sums of money from the branches of the

bank in Madras through accounts opened in the name of fictitious persons by forging credit advices and other bank Investigation disclosed that the accused had played fraud on a large scale on the Bank and the amounts collected through the commission of the offence were deposited in different accounts standing in the name of the accused and his family members. It was urged on behalf of the Bank that since these amounts were really obtained through the commission of a crime, the Investigating Officer had to seize the same as they were required not only as evidence of the commission of the crime, but also for enabling the trial court to pass consequential orders regarding them at the conclusion of the trial. The Investigating Officer therefore wrote to the bank not to permit the holders of the above accounts to operate on them, since that was the only mode in which such bank balances could be seized and preserved for trial.

On the question whether money in a Bank account is 'property' which a police officer could seize during investigation under section 102 Cr.P.C., the High Court of Madras held that a bank balance which is a chose in action is nevertheless 'property' with reference to which 'offences against property' found in chapter XVII of the Penal Code could be committed and that it is property for the purpose of section 102 Cr.P.C.

On the next question whether such a bank balance is capable of being seized by the Investigating Officer, the High Court observed that the only act of ownership which the customer of the bank exercises over his bank balance, is operating the account, either by making deposits or by withdrawing the same, in any mode made available to him by the bank. When corporeal tangible property is seized, by taking physical possession and producing it in court, the seizure is intended to have the effect of preventing the person from whom it is seized from exercising any acts of ownership or possession over that property. The property, therefore, is physically removed from his possession and is produced before the Court. The court takes possession of the property and has thus prevented the person from exercising acts of ownership or possession over them. The only way, in which such an effect can be brought about regarding bank balance is to issue a prohibitory order restraining the customer from operating his account in the bank either by remittance or by withdrawal. This act of preventing the customer from exercising any right over the bank balance, constituted seizure of the bank balance, which in ordinary parlance is described as 'freezing'. The consequences that flow from freezing a bank balance, following a prohibitory order are the same as those that flow from the physical removal of any moveable property, following a seizure.

The High Court held that money in an account in a bank is 'property' within the meaning of section 102 Cr.P.C. which could be seized by prohibiting the holder of the account, from operating it.

(293)

- (A) **Charge sheet — issue of, by subordinate authority**
- (B) **Inquiry Officer — appointment by subordinate authority**

Issue of charge-sheet and appointment of Inquiry Officer by Joint Director is proper where the charge sheet and appointment of Inquiry Officer were upheld by the Director of Agriculture, the Disciplinary Authority.

- (C) **Departmental action and acquittal**

Committing sexual intercourse with a woman worker while on duty is an act subversive of discipline and conduct unbecoming of a Government servant.

- (D) **Judgment — taking into consideration**

Inquiry Officer competent to take into consideration judgment of the High Court placed on record on the Inquiry Proceedings and it cannot be said to be extraneous matter.

Prabhu Dayal vs. State of Madhya Pradesh, 1988(6) SLR MP 164

The petitioner, an Assistant Soil Conservation Officer in Madhya Pradesh, was convicted for an offence of rape under section 376 IPC committed while on duty and sentenced to 2 years R.I. and fine of Rs. 100 on 16-12-69. Consequently, the petitioner was dismissed by order dated 19-5-70. On appeal, the High Court expressed the view that the woman worker was subjected to sexual intercourse but it was not proved beyond doubt that the sexual intercourse was committed without her consent and held that the case was not proved beyond a reasonable doubt and acquitted him. As a result, the petitioner was reinstated in service on 22-3-73. The Disciplinary Authority issued a charge-sheet dated 17-1-74 and dismissed him from service after holding an inquiry.

The Madhya Pradesh High Court observed that a decision to hold the inquiry should be reached by the Disciplinary Authority so as to save the unnecessary harassment of the Government servant. This requirement remains fully satisfied as the respondent Director, who admittedly is the Disciplinary Authority, applied its mind to the facts and circumstances of the case and upheld the order of issuing the charge-sheet and appointing the Inquiry Officer. The legal effect is that the respondent Director adopted the charge sheet and the inquiry proceedings as the basis for taking further action against the petitioner

and hence legal defect, if any, remains fully removed. What is required is the substance or meat of the matter and not technicalities thereof. The High Court held that there was no defect in the charge sheet and the appointment of the Inquiry Officer.

The Inquiry Officer acted on the finding of the High Court that the petitioner had committed sexual intercourse with the woman worker during the course of employment and held the petitioner guilty of the misconduct. The High Court rejected the contention that the Inquiry Officer should not have looked into the judgment of the High Court and should have recorded his own independent finding. The judgment was produced before the Inquiry Officer and was a part of the record. The Inquiry Officer was under a legal obligation to decide the case on the basis of material on record and was entitled to take into consideration the judgment of the court.

(294)

**(A) Constitution of India — Art. 311(2) second proviso
cl.(b)**

(B) Inquiry — not practicable

- (i) *That delinquent officials get the inquiry delayed and therefore corrupt officers should not be allowed to manage their way to escape punishment is no ground to dispense with the inquiry.*
- (ii) *Disciplinary Authority's decision that it is not reasonably practicable to hold an enquiry is not binding upon the court.*

***Gurumukh Singh vs. Haryana State Electricity Board,
1988 (5) SLR P&H 112***

The petitioner, an Assistant Engineer in the Harayana State Electricity Board, was removed from service by order dated 24.02.85, without holding an inquiry proper.

The High Court of Punjab & Haryana observed that merely because the departmental enquiries ordered by it against delinquent officials get delayed and in the meanwhile such delinquent and corrupt officials manage their way to escape punishment would not be a ground to dispense with the procedure of affording reasonable opportunity. Every quasi-judicial order which visits evil consequences on a citizen has to comply with the rules of natural justice. Expediency cannot

override the rule of law. Apprehension that the inquiry may be long-drawn is no ground to dispense with the procedure provided by the Regulations for inquiry.

The finality given by clause (3) of Art. 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the enquiry is not binding upon the Court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reason, the Court will consider the situation, which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it and the impugned order of penalty would stand invalidated.

(295)

Penalty — discrimination in awarding

Discrimination in awarding penalty of dismissal to one employee and stoppage of two annual increments with cumulative effect to another, where both officials contributed equally in their misconduct is violative of Art. 14 of the Constitution.

***Swinder Singh vs. Director, State Transport, Punjab,
1988(7) SLR P&H 112***

The petitioner and Harminder Singh were working as Assistant Fitters in the Punjab Roadways workshop at Taran Taran. They were dealt with for unauthorisedly taking out a bus at midnight and they both admitted having committed a blunder. They were given a show cause notice of termination of services and the General Manager terminated their services. The appeal filed by the petitioner was dismissed, while that of Harminder Singh was partly accepted and his punishment reduced to stopping of two annual increments with cumulative effect.

The High Court of Punjab & Haryana held that it is a case of discrimination as the petitioner as well as Harminder Singh had equally contributed to their misconduct in taking out the bus of the State during the night. No special reasons were assigned for giving a severe punishment to the petitioner than the one awarded to Harminder Singh earlier. The order of the Appellate Authority is violative of Art. 14 of the Constitution.

(296)

- (A) Departmental action and conviction**
- (B) Departmental action — afresh, on conviction**
- (C) Double jeopardy**

Where penalty of stoppage of increments is imposed after conducting departmental inquiry, dismissal on the basis

of conduct which led to his conviction by criminal court later, on same charge, is illegal, and is against the principle of double jeopardy.

Kamruddin Pathan vs. Rajasthan State R.T.C., 1988(2) SLR RAJ 200

The appellant was a Conductor in Rajasthan State Road Transport Corporation. He was charge-sheeted on the allegation that he carried passengers who had no tickets despite charging from them. A departmental inquiry was held and he was removed from service. His appeal was partly allowed by the departmental authority and the penalty was reduced to stoppage of two grade increments. A criminal case was also instituted against him and he was convicted and sentenced to pay a fine of Rs. 60. The competent authority thereupon dismissed him from service as, in his opinion, the conduct of the appellant which led to his conviction disentitled him to remain in service.

The Rajasthan High Court observed that a criminal case when instituted will terminate in acquittal or conviction of an accused who is charged with the offence alleged against him and in the instant case, the court held him guilty and convicted and sentenced him. It is well settled that holding of a departmental inquiry subsequent to even a trial by a criminal court on the same facts is not barred. There is also no bar if both the proceedings are simultaneously drawn but the question is if one of the two proceedings has culminated into an exoneration or finding of guilty and an action is taken in consequence of that, whether it can again be revived after the proceedings in the different forum are terminated. The principle of double jeopardy is well recognised. The High Court held that no penalty could be imposed on the petitioner on the basis of his conviction by the court and the order dismissing the appellant is illegal.

(297)

- (A) Departmental action and conviction**
- (B) Probation of Offenders Act — dismissal, cannot be imposed**

Where convicted person is released on probation under section 12 Probation of Offenders Act, penalty of dismissal, which entails disqualification for future service, cannot be imposed.

Trikha Ram vs. V.K. Seth, 1988(1) SLR SC 2

The appellant was convicted for a criminal offence and thereafter he was dismissed from service. It was contended by the appellant that as he was released on probation by the Magistrate under section 12 of the Probation of Offenders Act, the penalty of dismissal from service which would disqualify him from future Government service should not have been imposed. The Supreme Court held that since it is statutorily provided that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of the offence for which he has been convicted notwithstanding anything contained in any other law, instead of dismissing him from service he should have been removed from service so that the order of punishment did not operate as a bar and disqualification for future employment with the Government. Accordingly the Supreme Court converted the impugned order of dismissal into an order of removal from service.

(298)

Reversion/reduction — of direct recruit

Direct recruit cannot be reverted to a lower post against which he was never appointed.

Hussain Sasansaheb Kaladgi vs. State of Maharashtra, 1988(1) SLR SC 72

The appellant was a direct recruit to the post of Assistant Deputy Educational Inspector. He was reverted to the lower post of a primary teacher. He challenged the order on the ground that there was no question of reverting him to the lower post. The trial court upheld his contention and held the impugned order as illegal. The State preferred an appeal and the High Court allowed the appeal and set aside the decree passed by the trial court.

The Supreme Court observed that it was conceded by the respondent before the High Court that the appellant was appointed to the post of Assistant Deputy Educational Inspector as a direct recruit and that he was not a departmental promotee who had been promoted from the post of primary teacher to the post of Assistant Deputy Educational Inspector and that the High Court should have straight away dismissed the appeal. A direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. The Supreme Court accordingly allowed the appeal.

(299)**(A) Adverse remarks**

Uncommunicated adverse remarks subsequently set aside cannot be taken into consideration in the process of selection.

(B) Court jurisdiction

Administrative Tribunal cannot substitute its own opinion and make selection. Can only direct reconsideration by the Selection Committee after ignoring the adverse remarks.

***Union Public Service Commission vs. Hiranyalal Dev,
1988(2) SLR SC 148***

The respondent was a member of the Assam Police Service. He was not selected by the Selection Committee for promotion to the I.P.S. Cadre even though two officers junior to him were included in the select list.

The Supreme Court held that the Selection Committee could not have taken into consideration the adverse remarks which had not been communicated to the respondent. In any case it could not have taken into consideration these remarks which were subsequently set aside by the State Government. The legal effect of the setting aside of the adverse remarks would be that the remarks must be treated as non-existent in the eye of law.

At the same time, the Supreme Court held that the Administrative Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee. The powers to make selection were vested in the Selection Committee and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal should have directed that the Selection Committee should reconsider the matter on the footing that there were no adverse remarks against the respondent and make a proper categorisation ignoring the adverse remarks.

(300)**Termination — of temporary service**

Termination of services of temporary employee by innocuous order while in fact termination on account of active part in

activities of unrecognised Parishad, is punitive in nature attracting Art. 311 of Constitution.

Shesh Narain Awasthy vs. State of Uttar Pradesh, 1988(3) SLR SC 4

The appellant was working as a temporary Police Constable. His services were terminated by order dated 25-5-73.

The Supreme Court observed that though the order of termination of the services of the appellant passed on 25-5-73 appears to be innocuous, they found that his services have been terminated on account of the alleged active part that he took in the activities of the unrecognised Police Karmachari Parishad. This is obvious from the entry made in the character roll of the appellant which reads thus: "Took active part in the activities of unrecognized Police Karmachari Parishad and created disaffection in the Police has since discharged." Since the order of discharge has been passed without following the procedure prescribed by Art. 311 of Constitution and the relevant rules applicable to the Uttar Pradesh Police Force, the Supreme Court set aside the judgment of the High Court, the judgment of Uttar Pradesh Service Tribunal and the order of termination of service passed against the appellant.

(301)

Compulsory retirement (non-penal)

No justification to retire a Government servant on the basis that he is good for routine work in mofussil charges, when several other officers with such record are not retired.

***B.D. Arora vs. Secretary, Central Board of Direct Taxes,
1988(3) SLR SC 343***

The appellant was an Income Tax Officer. He was retired in exercise of powers under F.R. 56(j), on the basis that his rating for the years 1980-81 and 1982-83 is average and that for 1981-82 is that he is good for routine work in mofussil charges, that he has lost his effectiveness as well as utility to the Government and he is not fit for further retention in Government service.

The Supreme Court was surprised that this should be the conclusion from the material catalogued in the order. The very assessment shows that the officer is effective if posted in rural areas. This follows that he has not lost his effectiveness. There would be several officers with such record who are not being retired, and there cannot be any justification as to why the appellant should have

been picked up. The Supreme Court allowed the appeal and quashed the order of compulsory retirement.

(302)

Termination — of probationer

There may not be any need for confirmation of an officer after completion of probationary period unless he is found unsuitable and his services are terminated.

Shiv Kumar Sharma vs. Haryana State Electricity Board, Chandigarh, 1988(3) SLR SC 524

The appellant was Assistant Engineer II in the Haryana State Electricity Board. As a result of a disciplinary proceeding, on 15-4-68, a minor penalty for stoppage of one increment without any future effect was imposed on the appellant by the Board. Although the probationary period of the appellant was completed on 10-6-65, he was not confirmed within a reasonable time thereafter, nor was the period of probation extended. By order dated 30-3-70 of the Secretary to the Board, the appellant and 18 others were confirmed as Assistant Engineers having satisfactorily completed the probationary period of two years. However, the appellant was confirmed with effect from 1-12-69 and the others from 1-4-69 and consequently the appellant was placed in the seniority list below his juniors. The writ petition and the letters patent appeal filed by the appellant were dismissed by the High Court.

The Supreme Court observed that the penalty imposed on 15-4-68 by way of stoppage of one increment for one year was without any future effect and will have no effect whatsoever on his seniority. The Supreme Court held that the Board acted illegally and most arbitrarily in placing the appellant below his juniors and that the question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, first by stoppage of one increment for one year and second by placing him below his juniors in the seniority list.

The Supreme Court held that the appellant should have been confirmed on 10-6-65 on which date he had completed two years of his probationary period. The probationary period was not extended. The Board has not laid down any guidelines for confirmation. There is no rule showing when an officer will be confirmed. While there is some necessity for appointing a person in Government

service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. If during the period of probation a Government servant is found to be unsuitable, his services may be terminated. On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation still in force, gives a scope to the executive authorities to act arbitrarily or mala fide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the Government servants of becoming victims of arbitrary actions. There is no explanation why the confirmation of the appellant was deferred till 1-12-69. The Supreme Court did not accept the contention of the Board that the confirmation of the appellant and the others was taken up after the substantive posts had fallen vacant on 1-4-69 and held that the vacancies had occurred before that day, but the Board did not care to take up the question of confirmation for reasons best known to it. The Supreme Court directed that a fresh seniority list shall be prepared refixing the seniority accordingly.

(303)

Reversion/reduction — of direct recruit

Reduction in rank of an employee initially recruited to a higher time-scale, grade or service or post to a lower time-scale, grade, service or post, not permissible. It tantamounts to removal from the post against which he was initially recruited and substitution of his recruitment to a lower post. Power to reduce in rank by way of penalty can only be exercised in respect of those employees who were appointed by promotion to a higher post, service, grade, time-scale.

Nyadar Singh vs. Union of India, N.J. Ninama vs. Post Master General, Gujarat, 1988(4) SLR SC 271

The judgment covers a special leave petition and an appeal by 2 Central Government servants. In the Special Leave Petition, Nyadar Singh was imposed a penalty of reduction in rank, reducing him from the post of Assistant Locust Warning Officer to which he was recruited directly on 31-10-60 and confirmed on 27-12-71 to that of Junior Technical Assistant pursuant to certain disciplinary proceedings held against him. In the Civil Appeal, M.J. Ninama, an Upper Division Clerk in the Post and Telegraph Circle Office, Ahmedabad, was imposed a penalty of reduction in rank to the post of Lower Division Clerk from the post of Upper Division Clerk, to which he was directly recruited in the office of the Post Master General, Gujarat Circle, Ahmedabad.

The point for consideration is whether a disciplinary authority can, under sub-rule (vi) of rule 11 of the Central Civil Services (CCS) Rules, 1965, impose the penalty of reduction on a Government servant recruited directly to a particular post to a post lower than to which he was so recruited and if such a reduction is permissible, whether the reduction could only be to a post from which under the relevant Recruitment Rules promotion to the one to which the Government servant was directly recruited is permissible. There is a divergence of judicial opinion amongst the High Courts on the point. The Division Benches of Orissa and Karnataka High Courts have held that such a reduction in rank is not possible while the Madras, Andhra Pradesh and Allahabad High Courts and the Central Administrative Tribunal, Madras have held that there is no limitation on the power to impose such a penalty. There is yet a third view held by Karnataka High Court in P.V. Srinivasa Sastry vs. Comptroller and Auditor General of India: 1979(3) SLR 509 and the Central Administrative Tribunal, Delhi that such a reduction in rank is permissible provided that promotion from the post to which the Government servant is reduced to the post from which he was so reduced is permissible, or as it has been put, the post to which the Government servant is reduced is in the line of promotion and is a feeder-service.

The Supreme Court observed that as to whether a person initially recruited to a higher time-scale, grade, service or post can be reduced by way of punishment, to a post in a lower time-scale, grade, service or post which he never held before, the statutory-language authorises the imposition of penalty does not, it is true, by itself impose any limitations. The question is whether the interpretative factors, relevant to the provision impart any such limitation and on a consideration of the relevant factors, the Supreme Court observed that they must hold that they do. Though the idea of reduction may not be fully equivalent with reversion, there are certain assumptions basic to service law which brings in the limitations of the latter on the former. The penalty of reduction in rank of a Government servant initially recruited to a higher time-scale, grade, service or post to a lower time-scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to the lower post, affecting the policy of recruitment itself. There are certain considerations of policy that might militate against a wide meaning to be given to the power. In conceivable cases, the Government servant may not have the qualifications requisite for the post which may require and involve different, though not necessarily higher, skills and attainments. Here enter considerations of the recruitment policy. The rule must be read in consonance with the general principle and so construed the expression 'reduction' in it would not admit of a wider connotation. The power should, of course, be available to reduce a civil servant to any lower time-scale, grade, service or post from which he had subsequently earned his promotion.

The argument that the rule enables a reduction in rank to a post lower than the one to which the civil servant was initially recruited for a specified period and also enables restoration of the Government servant to the original post, with the restoration of seniority as well, and that, therefore, there is nothing anomalous about the matter, does not wholly answer the problem. It is at best one of the criteria supporting a plausible view of the matter. The rule also enables an order without the stipulation of such restoration. The other implications of the effect of the reduction as a fresh induction into a lower grade, service or post not at any time earlier held by the Government servant remain unanswered. Then again, there is an inherent anomaly of a person recruited to the higher grade or class or post being asked to work in a lower grade which in certain conceivable cases might require different qualifications. It might be contended that these anomalies could well be avoided by a judicious choice of the penalty in a given fact- situation, and that these considerations are more matters to be taken into account in tailoring out the penalty than those limiting the scope of the punitive power itself. But, an over-all view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule making authority did not intend to clothe the disciplinary authority with the power which would produce such anomalous and unreasonable situations. The contrary view taken by the High Courts in the several decisions cannot be taken to have laid down the principle correctly.

The Supreme Court held that the penalties of reduction to posts lower than those to which the appellants were initially directly recruited cannot be sustained.

(304)

Suspension — continuance of

Order of suspension set aside by Andhra Pradesh Administrative Tribunal restored by Supreme Court and continued till completion of disciplinary proceedings.

State of Andhra Pradesh vs. S.M.A. Ghafoor, 1988(4) SLR SC 389

Respondent No.1 is an employee of the Government of Andhra Pradesh. The order of suspension passed against him was set aside by the Andhra Pradesh Administrative Tribunal and an appeal has been filed against the said order by the State Government before the Supreme Court. Respondent No.1 represented before the Supreme Court that he was served with a memo of charges for the purpose of holding disciplinary inquiry against him and that the State Government may be directed to complete the disciplinary inquiry within three months from the date on which he files his reply to the charges before the inquiry authority and

that the order of suspension which has now been set aside by the Administrative Tribunal may be revived and continued till the completion of the disciplinary proceedings. The appellant agreed that an order may be passed accordingly.

The Supreme Court set aside the order of the Tribunal against which this appeal is filed and restored the order of suspension which has been passed against Respondent No.1. The Supreme Court directed that respondent No.1 shall file his reply within the time granted to him to do so and the inquiry authority shall complete the disciplinary inquiry within 3 months from the date on which the reply is filed. Respondent No.1 is directed to co-operate with the inquiry authority to complete the proceedings. If the inquiry is not completed within three months, respondent No.1 is at liberty to move the Supreme Court for suitable directions.

(305)

(A) Compulsory retirement (non-penal)

(B) Adverse remarks

- (i) *Compulsory retirement of a Scientist holding responsible post on ground of poor performance in consonance with the guidelines laid down by Government, held proper.*
- (ii) *Ordinarily adverse entries relating to specific instances alone are communicated to the officer concerned with a view to providing an opportunity for improvement of performance, and not entries of general assessment of performance.*

Jayanti Kumar Sinha vs. Union of India, 1988(5) SLR SC 705

The appellant, Scientist, Defence Electronics Research Laboratory (DLRL), Hyderabad, was compulsorily retired from service under Art. 459(h) of the Civil Services Regulations, he having attained the age of 50 years on 27-3-81, by order dated 28-11-86 issued by the President of India. The Central Administrative Tribunal, Hyderabad Bench dismissed the claim of the appellant and the appellant filed an appeal before the Supreme Court.

It was contended by the appellant that there was no communication of adverse entries. The Supreme Court observed that ordinarily when the entries relate to specific instances leading to adverse entries, the communication thereof is sent to the officer concerned with a view to providing an opportunity for improvement of performance. The entries against the appellant are mostly based

upon general assessment of the performance. The appellant was communicated years back the general disapproval of his method of working. The Supreme Court expressed satisfaction that the review proceedings were in consonance with the guidelines framed by the Government. The post in which the appellant was working was a responsible one and poor performance could not be tolerated. Compulsory retirement did not involve any stigma or implication of misbehaviour or incapacity as laid down in *Shyam Lal vs. State of Uttar Pradesh and Union of India*, 1955(1) SCR 26; AIR 1954 SC 369 by a constitution Bench of the Supreme Court.

(306)

(A) Disciplinary proceedings — competent authority

Memo letter of Deputy Inspector General informing about selection cannot be considered to be letter of appointment, order of appointment being issued subsequently by Principal, Police Training College. Order of dismissal of Sub-Inspector of Police passed by Superintendent of Police, a coordinate authority, held proper.

(B) Constitution of India — Art. 311(2) second proviso cl. (b)

(C) Inquiry — not practicable

(D) Court jurisdiction

Dispensing with inquiry on ground of witnesses not coming forward out of fear held proper. Court cannot sit in judgment over the relevancy of the reasons given by disciplinary authority like a court of first appeal. When two views are possible, the Court will decline to interfere.

***Ikramuddin Ahmed Borah vs. Supdt. of Police, Darrang,
1988(6) SLR SC 104***

The appellant, a Sub-Inspector of Police in Assam State, was dismissed by the Superintendent of Police by order dated 29-1-73 without compliance with the requirements of Art. 311(2) of the Constitution, on the ground that it was a case to which the provisions of clause (b) of the second proviso to Art. 311(2) of the Constitution were attracted. A departmental appeal and a petition to the Gauhati High Court were dismissed.

The Supreme Court observed that the letter dated 7-7-67 of the Deputy Inspector General of Police merely informed the appellant that he had been

provisionally selected for appointment as temporary sub-Inspector of Police and the order of appointment was issued by the Principal, Police Training College on 17-7-67. The Supreme Court held that dismissal of the appellant by the Superintendent of Police, who is a coordinate authority, is in order. The Supreme Court referred to Union of India vs. Tulsi Ram Patel, 1985(2) SLR 576 SC and pointed out that one of the illustrations justifying cl (b) of the second proviso to Art. 311(2) being invoked therein is the non-availability of the witnesses on account of fear of the officer concerned. In the instant case this was the main ground and it cannot be said there was an abuse of power by the disciplinary authority in invoking clause (b). The Superintendent of Police, who passed the order of dismissal was the best authority on the spot to assess the situation in the circumstances prevailing at the relevant time and the Supreme Court does not find any good ground to interfere with the view taken by the Superintendent of Police in this behalf. The Supreme Court will not sit in judgment over the relevancy of the reasons given by the disciplinary authority for invoking cl (b) like a court of first appeal and even in those cases where two views are possible, the Court will decline to interfere.

(307)

S.P.E. Report — supply of copy

Failure to supply a copy of document in this case, SPE Report, having no relevancy or bearing on the charges and which is also not relied upon by the Inquiry Officer, does not cause prejudice to delinquent official or amount to denial of reasonable opportunity or violation of rules of natural justice.

Chandrama Tewari vs. Union of India, 1988 (7) SLR SC 699

The appellant, Fireman at Moghulsarai in Northern Railway, was proceeded against in a departmental inquiry and dismissed from service by order dated 27-6-69. The appellant filed a civil suit which was decreed by the trial court on the ground that the appellant was denied reasonable opportunity of defence and it was confirmed by the District Judge. The High Court set aside the judgment and decree holding that there was no violation of any principles of natural justice.

The Supreme Court observed that the copy of the document, if any, relied upon against the party charged, should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded placing reliance on a document which may

not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. It is not necessary that each and every document must be supplied to the delinquent Government servant facing the charges. Instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the Inquiry Officer or the punishing authority in holding the charges proved against the Government servant, no exception can be taken to the validity of the proceedings or the order. The obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent official.

If copies of relevant and material documents including statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent official facing the inquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent official that would amount to denial of opportunity of effective cross-examination. A delinquent official is entitled to have copies of material and relevant documents only, which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the inquiry officer to support the charges, or if such document or material was not necessary for cross-examination of witnesses during the inquiry, the officer cannot insist upon the supply of documents, as the absence of copy of such document will not prejudice the delinquent official. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

In the instant case, the report of the Special Police Establishment, one of the documents mentioned in the charge-sheet, was not supplied to the appellant. It was not considered or relied on by the inquiry officer in recording findings against the appellant. In this view, the report was not a material or relevant document and denial of copy of that document could not and did not prejudice the appellant and there was no violation of principle of natural justice. The appellant's grievance that in the absence of the report he could not effectively cross-examine the Dy. Supdt. of Police, S.P.E., the Investigating Officer, is not sustainable. The Supreme Court

found that his examination-in-chief is confined to one page and his cross-examination runs into six full scapse typed pages and held that the appellant was not handicapped in cross-examining the Dy. Supdt. of Police.

The Supreme Court held that the High Court was right in holding that the inquiry was fair and the principles of natural justice had not been violated.

(308)

(A) P.C. Act, 1988 — Sec. 13(1)(e)

(B) Disproportionate assets — period of check

Not necessary that period of check should cover entire period of service.

(C) Disproportionate assets — known sources of income

Prosecution need not disprove existence of possible sources of income of public servant.

(D) Disproportionate assets — joint deposits

Cannot assume that depositor whose name appears first is the beneficial owner

State of Maharashtra vs. Pollonji Darabshaw Daruwalla AIR 1988 SC 88

The Supreme Court held that in order to establish that a public servant is in possession of pecuniary resources and property, disproportionate to his known sources of income, it is not imperative that the period of reckoning be spread out for the entire stretch of anterior service of the public servant. There can be no general rule or criterion, valid for all cases, in regard to the choice of the period for which accounts are taken to establish criminal misconduct under sec. 5 (1) (e) of the P.C. Act, 1947 (corresponding to sec. 13(1)(e) of P.C. Act, 1988). The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of the public servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the facts and circumstances of a case, a ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling over from the anterior period, if their existence is probablised, would, of course, have to be given credit to on the income side and would go to reduce the extent and the quantum of the disproportion. It

is for the prosecution to choose what according to it is the period which having regard to the acquisitive activities of the public servant in amassing wealth, characterise and isolate that period of special scrutiny.

On the question of burden of proof, the Supreme Court held that once the prosecution establishes the essential ingredients of the offence of criminal misconduct by proving, by the standard of criminal evidence, that the public servant is or was at any time during the period of his office, in possession of pecuniary resources or property disproportionate to his sources of income known to the prosecution, the prosecution discharges its burden of proof and the burden of proof is lifted from the shoulders of the prosecution and descends upon the shoulders of the defence. It then becomes necessary for the public servant to satisfactorily account for the possession of such properties and pecuniary resources. It is erroneous to predicate that the prosecution should also disprove the existence of the possible sources of income of the public servant.

On the question of joint accounts in banks the Supreme Court observed that the assumption that in all joint deposits the depositor first named alone is the beneficial owner and the depositor named second has no such beneficial interest is erroneous. The matter is principally guided by the terms of the agreement, inter se between the joint depositors. If however the terms of the acceptance of the deposit by the donee stipulate that the name of the beneficial owner shall alone be entered first then the presumptive beneficial interest in favour of the first depositor might be assumed.

(309)

Departmental action and prosecution

No legal bar for simultaneous disciplinary proceedings and criminal prosecution. Yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case.

Kusheshwar Dubey vs. Bharat Coking Coal Ltd. AIR 1988 SC 2118

The Supreme Court held that while there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such

simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. It is neither possible nor advisable to evolve a hard and fast, straight jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. In the instant case, the criminal action and the disciplinary proceedings were grounded upon the same set of facts and therefore the disciplinary proceedings could be stayed, in the facts and circumstances.

(310)

Disciplinary authority — Inquiry Officer functioning on promotion

Officer who conducted the inquiry acting as Disciplinary authority consequent to his promotion in the meanwhile and imposing penalty held invalid.

Ram Kamal Das vs. Union of India, 1989(6) SLR CAT CAL 501

The applicant, an Engine Operator (Diesel) at Chittranjan Locomotive Works, was dealt with in a disciplinary proceeding and imposed a penalty of removal from service by an order of the Disciplinary authority.

It has been contended by the applicant that the person who held the inquiry and the person who imposed the penalty of removal from service was one and the same person. The Tribunal found sufficient strength in the argument that there had thus been a complete failure of natural justice. It is the admitted position that Shri R.K. Deb Roy, Assistant Engineer (Electrical), C.L.W. was appointed as the Inquiry Officer to hold inquiry and he held and completed the inquiry and he himself imposed the penalty of removal from service on the applicant. It may be that during the intervening period Shri Deb Roy had got promotion by which he became the disciplinary authority of the applicant. But when the inquiry was held by him, he should not have acted as the disciplinary authority of the applicant. It cannot be denied that while acting as the disciplinary authority he would be very much influenced by the finding of guilt made by him after holding the inquiry. The Tribunal held that acting as the Inquiry Officer, Shri Deb Roy was not expected to have dispassionate view of the matter and as such there was every chance that he would not act fairly and properly in imposing the penalty of removal from service against the applicant. The Tribunal held that the imposition of the penalty cannot be permitted to stand.

(311)

Further inquiry — by fresh Inquiry Officer

Disciplinary authority can remit the matter to the same inquiry officer for further inquiry for reasons to be recorded by him.

Appointment of a fresh inquiry officer and by an authority subordinate to the disciplinary authority is unauthorised.

Nazir Ahmed vs. Union of India, 1989(7) SLR CAT CAL 738

The applicant, a permanent Class IV employee, in the South Eastern Railway was posted as a Peon in the office of the Personnel Officer (Mechanical), Workshop at Kharagpur. He was placed under suspension and a charge sheet was issued by the P.A. to the Addl. Chief Mechanical Engineer (Workshops), S.E. Railway. It was alleged that he was caught red-handed on 11-9-75 while passing out of the workshop gate adjacent to the main time office with unlawful possession of railway material with some bad intention. By order dated 9-10-75, the Disciplinary Authority appointed Shri P. Fernandez, Chief Draftsman, Office of the Addl. Chief Mechanical Engineer (Workshop) as Inquiry Officer to inquire into the charge framed against the applicant.

The first sitting of the inquiry was held on 27-1-76 and on that day, the Inquiry Officer examined the applicant first in the presence of two witnesses, Shri A.T. Guha, Sub-Inspector, Railway Protection Force and Shri P.S.N. Murty. No other witnesses were examined although they were present at the time of the inquiry. The proceedings of this inquiry were forwarded to the applicant by the Inquiry Officer with his memo dated 17-2-76 directing him to make further representation within 7 days from the date of receipt thereof before the inquiry officer drew his finding. The applicant by his representation dt. 21-2-76 denied all the allegations against him and stated that he picked up the two articles with the intention to deposit the same to the Railway Protection Force staff at the gate but at the gate he was not given any opportunity to deposit the articles. The matter rested at that stage for 3 months.

The applicant was served with order dated 10-6-76 issued by the Superintendent, Mechanical (Workshops) in purported exercise of power under rule 10(2) of the Railway Servants (D&A) Rules appointing Shri C.J. Saha, Asst. Personnel Officer (Workshop) as Inquiry Officer to inquire into the charges framed against the applicant as the inquiry held by Shri P. Fernandez was not considered adequate. Along with this order, the applicant was served with notice dated 12-6-76 issued by the same authority intimating him that pursuant to the order dated 10-6-76, the inquiry would be held on 24-6-76.

The first sitting of the second inquiry was held on 24-6-76 and on that day, Shri S.C. Yadav, Head Rakshak was examined. The second sitting was held on 3-8-76 and on that day Shri T.K. Saha was examined. Extremely leading questions were put to him, like: "Did you find Nazir Ahmed in R.P.F. Police (Post?) with any railway material? If so what is that material in Mr. Nazir's possession at that time?" The third sitting was held on 20-8-76 and on that day, Shri P.S.N. Murty and the applicant were examined. After examining the prosecution witnesses the applicant was not asked to state his defence either orally or in writing as contemplated in the Rules. The applicant was not allowed to have a defence helper.

The second Inquiry Officer found the applicant guilty of the charge framed against him. By memo dt. 22-12-76, the General Manager informed the applicant that after consideration of the inquiry report the General Manager had provisionally come to the conclusion that he should be removed from service, and asked him to show cause against the proposed penalty and the applicant made his representation dated 13-1-77. By order dated 8-3-77, the General Manager removed the applicant from service with effect from 18-4-77. The appeal to the Railway Board was rejected by order dated 15.11.78.

The Tribunal observed that there is lot of force in the submissions made by the applicant and that it is clear that the appointment of the second inquiry officer purported to have been made under rule 10(2) of the rules is a wrong exercise of the jurisdiction for which the entire disciplinary proceeding has been vitiated. Furthermore, the applicant contended that from the questions and answers of the prosecution witnesses it was apparent that the charges framed were not proved by the prosecution witnesses and none of them stated that the applicant was caught red-handed with unlawful possession of railway materials with some bad intention and thus committed gross offence of mis-conduct, and even the alleged railway materials could not be identified by these witnesses.

The applicant also contended that the wordings of the charge- sheet that the delinquent officer was "caught red-handed while passing out of the workshop gate with unlawful possession of railway materials with some bad intention and thus committed a gross offence of serious nature" showed the disciplinary authority had a closed mind even at the stage of framing of charge.

The Tribunal held that the jurisdiction under rule 10(2) of Railway Servants (D&A) Rules has been violated by appointing the Asst. Personnel Officer (W/S) as the new inquiry officer. This power can be exercised by the disciplinary authority by remitting the matter to the same inquiry officer for further inquiry for reasons to be recorded by him. The Tribunal quashed the entire disciplinary proceedings leaving it open to the authorities to hold a fresh inquiry as per law.

(312)

(A) Charge — dropped and re-issued

Dropping charges initially framed on ground of a technical flaw, no bar against framing fresh charges.

(B) Administrative Instructions — not binding

Executive instructions are not mandatory, but only regulatory.

**P. Malliah vs. Sub-Divisional Officer, Telecom,
1989 (2) SLR CATHYD 282**

The appellant, a telecommunications official, was issued a charge sheet and after he gave his reply, the charge sheet was treated as canceled, and it was reissued later. It was contended that since the cancellation was without any reservation, the disciplinary proceedings cannot be started afresh.

The Tribunal held that if the disciplinary authority had dropped the charges initially framed on the ground of a technical flaw, it would be open to him to once again frame charges. Instructions issued by the Director - General, P & T require that reasons should be given for cancellation of original charge-sheet or for dropping the proceedings and it must be stated that the proceedings are being dropped without prejudice to further action. The executive instructions cannot be held to be mandatory but are only regulatory and breach of the instructions does not violate any statutory rule nor does the principle of double jeopardy arise as the applicant was never exonerated on merits. The original order directing the framing of the charges was initially passed by the appellate authority and not by the disciplinary authority and it was in these circumstances the first charge memo held to be rescinded and a subsequent charge memo issued by the disciplinary authority. No malafides or colourable exercise of power is attributed in seeking to reopen the case.

(313)

Misconduct — past misconduct

Past conduct cannot be taken into consideration in imposing penalty because the charge-sheet did not refer to the past conduct.

Jyothi Jhamnani vs. Union of India, 1989(6) SLR CAT JAB 369

The applicant, UDC working in Central Ordnance Depot, Jabalpur, was charge-sheeted for unauthorised absence from 9-7-86 to 31-7-86. The applicant

submitted a brief reply to the charge on 10-9-86 that she had written a postcard and apologised for not bringing a medical certificate on 31-7-86. The explanation was not considered satisfactory and the Disciplinary Authority by order dated 26-11-86 imposed the punishment of withholding her increment for one year without recurring effect.

The respondents contended that the applicant never asked for any clarification of the charge and there was nothing ambiguous about it and she cannot take the plea that no opportunity was given to her to rebut the charge. The applicant was clearly unauthorisedly absent upto 30-7-86 and she did not submit a medical certificate. It is even stated that the applicant was not actually sick. The punishment is also not excessive in view of her past conduct and her habit of remaining absent without leave.

The Central Administrative Tribunal, Jabalpur found on merits no reason to differ from the findings of the Disciplinary authority but that her past conduct should however not have been taken into consideration because the charge-sheet does not refer to her past conduct or her past behaviour of remaining unauthorisedly absent. The Tribunal expressed that the disciplinary authority may consider moderating the penalty from withholding of one increment to that of Censure.

(314)

Inquiry Officer — cross-examination of Charged Officer

Inquiring Officer cross-examining the delinquent at the very outset even before examination of witness for the disciplinary authority, vitiates the Inquiry.

V. Gurusekharan vs. Union of India, 1989(7) SLR CAT MAD 725

The applicant, a Goods Train Guard at Dindigal, Southern Railway, was dealt with on a charge of absenting himself unauthorisedly from duty from 21-11-85 to 30-11-86 and was removed from service with effect from 31-5-1988, after conducting an inquiry, by order dated 20-5-88 of the Divisional Operating Superintendent, Madurai. On appeal, the penalty was modified to one of reduction to a lower rank, viz. Trains Clerk at the lowest grade, by the Addl. Divl. Railway Manager.

The Central Administrative Tribunal, Madras observed that it is clear that the enquiry started with a detailed questioning of the applicant by the Inquiry Officer. The only witness on the side of the respondents was examined after such detailed questioning. There has been violation of the procedure prescribed

under the disciplinary rules. The Tribunal drew attention to the following observation of the Supreme Court in Associated Cement Cos. vs. Their Workmen, 1963(2) LLJ 396:

"It is further necessary to emphasise that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It is not fair in domestic enquiries against industrial employees, the employee should be at the very commencement of the enquiry, closely cross-examined even before any evidence is led against him."

The Tribunal set aside the orders of the disciplinary and appellate authorities giving liberty to the Disciplinary authority to conduct the enquiry in accordance with the procedure prescribed.

(315)

- (A) Principles of natural justice — disciplinary authority assuming other roles**
Disciplinary authority assuming the role of complainant, prosecutor, witness and judge vitiates the inquiry.
- (B) Disciplinary authority — assuming other roles**
Disciplinary authority assuming the role of complainant, prosecutor, witness and judge vitiates the inquiry.
- (C) Appeal — consideration of**
Appellate order liable to be quashed where appellate authority fails to pass a speaking order.

C.C.S. Dwivedi vs. Union of India, 1989(6) SLR CAT PAT 789

The applicant, a Booking Clerk of Railway Department, Arigada was proceeded against on a charge that on 11-4-82 he collected Rs. 28 from seven passengers towards the fare from Arigada to Jarangdin and issued a chit allowing them to travel by 132 Down passenger train and did not bring the proceeds in the relevant records. The Memorandum of charge was issued by the Senior Divisional Commercial Superintendent. It was stated in the statement of imputation that the Senior Divl. Commercial Supdt. himself found out this irregularity while he was moving with the squad of TTEs for checking. An inquiry was conducted as the applicant denied the charge and the Inquiry Officer found the applicant guilty of the charge. To arrive at this conclusion he placed reliance on the witnessing of the incident by the Senior Divisional Commercial Superintendent himself. Acting on

this report, the Sr. Divl. Comml. Supdt., in his capacity as Disciplinary authority, held that the applicant is fully responsible for issuing the chit after collecting money from the passengers instead of tickets and thereby he defrauded the Railway Administration, and imposed the penalty of reduction of his pay by three stages for a period of five years. His appeal was disposed of by the order, "I do not see reason to change the order."

The applicant assailed that the order of the disciplinary authority is vitiated since that authority has assumed the role of complainant, prosecutor, witness as well as judge. There is also the plea that a material document was not made available denying him reasonable opportunity of defending himself. The appellate order was assailed on the ground that it is a non-speaking order without adverting to any of the grounds urged in the appeal.

The respondents urged that though the Sr. Divl. Comml. Supdt. himself is the complainant, he had the right to issue the charge- sheet by virtue of his position as disciplinary authority. In respect of the non-supply of the document called for, the plea is that the chit on which the charge was based was returned to the passengers and hence it could not be made available. The order of the appellate authority is sought to be supported as having been passed in accordance with the rules.

The Central Administrative Tribunal, Patna held that the disciplinary proceedings, the order of the disciplinary authority imposing the penalty and that of the appellate authority rejecting the appeal are all vitiated and cannot be sustained.

The memorandum of charges was issued as a result of the check conducted by the Sr.Divl.Comml.Supdt. in his capacity as the Sr. Divl. Comml. Supdt. when it is stated that the alleged irregularity committed by the applicant was detected. Indeed, it is openly admitted that he was the complainant. Yet by virtue of his authority as disciplinary authority, he has issued the memorandum of charges fully knowing that the imputation relates to an incident within his personal knowledge, unearthed by him and as such he will have to play the material role in the inquiry. Actually it did happen like that, as it is seen from the report of the Inquiry Officer that the Inquiry Officer has placed considerable reliance on the witnessing of the incident by the Sr. Divl. Comml. Supdt. It is only as the nominee or as the agent of the disciplinary authority that the Inquiry Officer conducts the inquiry. The Sr. Divl. Comml. Supdt. himself has passed the order holding the applicant guilty and imposing the penalty on him, stating that "I am convinced that he (the applicant) is fully responsible for issuing the chit."

It is a settled principle of natural justice that one cannot be a judge in one's own cause. It may be that it was in his capacity as the authority empowered to check that the Sr. Divl. Comml. Supdt. detected the incident and made the complaint. But in such a matter when the Railway servant denies the charge, he can be found guilty and a penalty can be imposed upon him only after an inquiry is conducted in accordance with the principles of natural justice. The Tribunal held that in these circumstances, the Sr. Divl. Comml. Supdt. should not have issued the memorandum of charges, but should have appointed a disciplinary authority for the purpose, and the failure has vitally affected the entire proceedings.

The Tribunal observed that it was the definite case of the applicant that the chit was not issued by him. Yet on the ground that the chit has been returned to the passengers, it was not made available. No reason is stated as to why in a case of this nature, the chit, a primary document, on the basis of which the imputation is made was returned to the passengers. Nor is it explained as to why an attempt was not made to summon the passengers who are stated to have been travelling with that chit. What emerges is that, in the absence of the chit or of the statement of the passengers, the only material to arrive at the conclusion of guilt is the complaint of the Sr. Divl. Comml. Supdt. himself, that he detected the irregularity while doing the checking.

The Tribunal also observed that the appellate authority with scant regard to the provisions of the rules has passed an order "I do not see reason to change the order," without complying with the need to pass a speaking order. The Tribunal quashed the order of punishment, and the appellate order.

(316)

Misconduct — bigamy

No question of bigamy, when both the first and the second marriages are not proved.

**V.V. Guruvaiah vs. Asst. Works Manager, APSRTC, Tirupati,
1989 (2) ALT AP 189**

The petitioner, V.V. Guruvaiah, Mechanic, APSRTC was removed from service on the ground that he had been enjoying more than one living wife, viz. Jayamma and Munamma. The petitioner contended that he married one Nagaratnamma who died and thereafter he married one Dhanavathi, who divorced him and then he married another lady by name Laxmamma and had to divorce her for her infidelity. These facts indicate that the petitioner has no doubt taken

several wives one after the other but he did not have more than one wife at a time.

The case against the petitioner is that the APSRTC received a lawyer's notice dated 1.4.1985 from V. Munamma claiming that she is the second wife of the petitioner and a son by name V.G. Somasekhara was born to them. She further claimed a sum of Rs.400 per month from the salary of the petitioner on the ground that she has been deserted by the petitioner. A preliminary enquiry was conducted and a charge sheet was issued alleging, among other things, that the petitioner has committed bigamy by taking a second wife during the subsistence of his marriage with the first wife.

The petitioner denied that he had any connection with Munamma and Munamma herself filed a counter affidavit denying the factum of her marriage with the petitioner and that she made the allegation earlier at the instance of the RTC authorities. This was enough to allow the writ petition on the ground that there is no evidence to believe that the petitioner has taken a second wife during the life time of his first wife. But the High Court examined the other limb of the controversy as to who is the first living wife of the petitioner, or to be more specific whether Jayamma was his first wife. It is contended that the petitioner had in his explanation to the charge sheet admitted that he married Jayamma according to caste custom. It is further stated that admittedly Jayamma was already married to one Munuswamy and the petitioner has been living with her, and the marriage of the petitioner with Jayamma is bigamous and it is null and void. This statement is totally devoid of any legal substance. The first marriage of the petitioner with Jayamma cannot be a bigamous union for the simple reason that it is always the second marriage, which would be deemed to be bigamous. Jayamma was already married to one Munuswamy who is stated to be living and the marriage tie between Jayamma and Munuswamy still subsists and the question that arises is whether the marriage between Jayamma and the petitioner is a valid marriage in the eye of law. It is an accepted principle of law that in order to bring home the charge of bigamy or for that matter to prove the guilt of the accused person under sec. 494 of the Indian Penal Code, it must be proved that the first marriage is legally valid. The marriage during the subsistence of a former marriage and during the lifetime of the first husband of Jayamma i.e. Munuswamy is no marriage at all. At the most it may be a case of adultery involving moral turpitude. The association with the other countless women may reflect upon the character of the petitioner as one who is of a licentious nature, but there is no substance in a finding that he has been entertaining two wives at a time.

(317)

Misconduct — political activity

Senior Store Supervisor, State Road Transport Corporation contesting election to State Legislative Assembly, amounts to serious misconduct in terms of regulations 23(1) and 28 of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations and Regulation 9(1) Note (2) (xv) of A.P.S.R.T.C. (CCA) Regulations.

**C.M.N.V. Prasada Rao vs. Managing Director, APSRTC,
1989(5) SLR AP 558**

The petitioner, Senior Store Supervisor of Andhra Pradesh State Road Transport Corporation, at Vijayawada contested, on 1-12-82, as a candidate on behalf of the Communist Party of India at the General Elections as a Member of the Legislative Assembly. An inquiry was conducted on a charge that he thereby contravened Regulation 23(1) of the APSRTC Employees (Conduct) Regulations, 1963 and Note 2(xv) to Regulation 9(1) of the APSRTC Employees (CCA) Regulations, 1967 and the petitioner was removed from service by order dated 31-10-84 and it was confirmed in appeal.

Regulation 23(1) of the Conduct Rules prescribes that no employee shall be a member of any political party or take active part in politics or in political demonstrations. Regulation 28(xxxii) provides that violation of the Regulation or instructions of the Corporation is a misconduct. Note (2)(xv) to Regulation 9(1) of the CCA Regulations says that taking part in subversive or political activities or activities prohibited by law or made punishable by law or other activities prejudicial to the interests of the Corporation constitutes serious misconduct.

The High Court of Andhra Pradesh held that the Conduct Regulations prescribe prohibition in political activities or contest at an election while being a member of the Service, and it is a reasonable restriction and a valid classification of the entire class of employees of the Corporation, and is within the power of the Corporation and is valid. The High Court accordingly dismissed the writ petition.

(318)

- (A) Evidence — circumstantial**
- (B) Evidence — standard of proof**
- (C) Court jurisdiction**

Where an employee was removed from service on a charge of assembling, manufacturing and selling spurious EC TV Set clandestinely, based on the receipt issued by the employee in his own handwriting giving description of the T.V. Set and recovery of the T.V. set from residence of the purchaser, though the purchaser, who later retracted from his earlier sworn affidavit, was not examined at the inquiry, High Court held this is not a case of no evidence and High Court cannot interfere under Art. 226 of the Constitution.

***B. Karunakar vs. Managing Director, ECIL, Hyderabad,
1989(6) SLR AP 124***

The petitioner, an Engineering Graduate in Electronics having secured first rank in University Examination, serving as Technical Officer (Trainee) in the Electronics Corporation of India, Hyderabad from 1-3-1978 was proceeded against in disciplinary proceedings and was removed from service.

The charge against the petitioner was that he was assembling, manufacturing and selling spurious EC TV Sets clandestinely. The ball was set in motion on a complaint given by one B. Raj Kumar alleging that he had purchased an 'Ajanta' black and white T.V. set from the petitioner. The said Raj Kumar had not been examined despite a request made by the petitioner to that effect and the Inquiry Officer held that the prosecution case was already over and a written affidavit of Raj Kumar had already been submitted, certified by Notary on behalf of the complainant and that therefore it does not require any further examination of Raj Kumar. On the other hand, the petitioner was advised to examine Raj Kumar as his witness or to submit a set of questions which may be transmitted to the complainant for obtaining answers from him. The petitioner contended that the complaint filed by Raj Kumar constitutes the foundation stone of the inquiry initiated against the petitioner and that he was rather dismayed to see that the complainant has not been examined by the Corporation and the ball has been placed in the court of the petitioner saying that it is for him to examine Raj Kumar. The only witness examined was Shri Mukherjee, Manager of the Corporation, whose testimony is based upon information contained in the complaint filed by Raj Kumar. The said Raj Kumar has later retracted his earlier statement and the affidavit by submitting another affidavit stating that he had done so under pressure from one of his relatives. The petitioner contended that the statement of Shri Mukherjee that he visited the house of the petitioner to verify the veracity of the statement of the complainant is palpably false and untenable as he had never resided at the address given by Shri Mukherjee.

The High Court observed that the petitioner has not denied the execution of the receipt in which it is clearly stated that the petitioner has received an amount of Rs. 2400 from Raj Kumar. More over, it is also mentioned in the said receipt that one year warranty is guaranteed from that date to the buyer. Further more, the receipt also describes Tube No. 440738, Lot No. 28122 and Yoke No. 28122 of the T.V. Set. On the top of the receipt the telephone number of the petitioner is given as 852231 Ext. 331 which is the telephone number of his office and another Telephone No. 851857 is given. The entire receipt is in the handwriting of the petitioner himself. During the course of the inquiry, it has not been denied that the petitioner has passed this receipt in his own handwriting to Raj Kumar. The only explanation offered at the time of the arguments in the High Court is that this receipt does not mention any sale of a T.V. Set but that the petitioner has given the receipt on behalf of one of his friends who manufactures cabinets and it was for the sale of cabinets on behalf of his friend that the petitioner had passed the receipt to Raj Kumar. The High Court observed that it is difficult to accept this story of the petitioner. First of all, it is difficult to visualize how a cabinet can have the Tube number, Lot No. and the Yoke no. which have been mentioned in the receipt and are tallied with the T.V. set which has been recovered by Shri Mukherjee from the residence of Raj Kumar. Secondly, there is no question of giving any warranty for one year on the sale of the cabinets to Raj Kumar. Thirdly, the petitioner says that he has given this receipt on behalf of his friend who was not present at that time when Raj Kumar visited the premises of his friend. If that is so, there is no earthly reason why the petitioner should have given his official telephone number on the receipt. When the receipt itself is admitted with all its contents, it points unmistakably to the sale of one object and that is the T.V. Set in question with the description of the Tube no., Lot no. and the Yoke No. given in the receipt.

The question, therefore, to be considered is whether this is not evidence enough against the petitioner, to substantiate the charge of assembling and manufacturing a spurious T.V. set and selling it as an 'Ajantha' black and white T.V. The High Court held this cannot be termed as a case of no evidence at all. The receipt itself constitutes adequate evidence to show that the petitioner has indeed sold the T.V. set to Raj Kumar. The fact that Raj Kumar has later filed an affidavit retracting his earlier statement cannot be of any consequence in the presence of the receipt which has been passed over by the petitioner himself. It is obvious that the petitioner has prevailed over Raj Kumar to file the second affidavit to save his job. It is also true that this affidavit has not been considered by the authorities while passing the orders of removal against the petitioner having been received after the inquiry was ordered. Assuming that the second statement is

also taken into consideration, it will be still difficult to overlook the receipt, and to hold that the petitioner is not guilty of the charges.

The High Court referred to an earlier decision in Writ Appeal No. 909 of 1982 dated 18-12-1984 where it was held by a Division Bench that in a case where the delinquent officer was charged for submitting false hospitalisation claims it is not necessary to examine the doctor, even though he was a material witness, to substantiate the charge against the delinquent officer, when there was other evidence to prove that false medical bills have been filed on behalf of the said officer. It was held that may be the doctor's evidence was material, may be his evidence was important but that is a question touching upon the adequacy of the evidence which the High Court cannot go into under Article 226 of the Constitution. The Court can interfere only if there is no evidence in support of the charges or in a case where the finding of the conclusion is such that no reasonable person would have arrived at it, to wit, perverse; but the High Court cannot sit as an appellate court and weigh the evidence. The judgment of the Division Bench clearly applies to the facts of this case also. It may very well be said that the evidence of Raj Kumar is of a material value in this matter and that since he has not been examined the evidence against the petitioner is inadequate but that does not mean that this is a case of no evidence whatsoever.

The High Court accepted the further contention of the Corporation that if Raj Kumar was not examined by the Corporation, it was open for the petitioner to summon him as a witness, relying on the decision of the S.C. in *Tata Oil Mills vs. Workman AIR 1965 SC 155* wherein it has been held that in a domestic enquiry the officer holding inquiry can take no valid or effective steps to produce their own witnesses.

The High Court held that there is no infirmity or illegality in the manner in which the inquiry had been conducted against the petitioner, and dismissed the petition.

(319)

(A) Evidence — of previous statements

Pre-recorded statements can be treated as evidence-in-chief provided the maker of the statement is examined and opportunity given to the delinquent official to cross examine such witness.

(B) Inquiry — association of Investigating Agency

Allowing a member of the Investigation Agency at whose instance investigation was conducted to examine a witness

or be present in the departmental inquiry, vitiates the inquiry.

***B.C. Basak vs. Industrial Development Bank of India,
1989 (1) SLR CAL 271***

The appellant, Deputy Manager of Industrial Development Bank of India, Calcutta was imposed the penalty of stoppage of promotion, and the present is an appeal against the decision of a single judge rejecting his contentions.

The Division Bench of the High Court of Calcutta found that statements of witnesses recorded earlier during investigation were treated as their examination-in-chief after those statements were read over and admitted by them as correctly recorded, and thereafter they were allowed to be cross-examined and held that no exception can be taken to the procedure so adopted. But treating the statements of two of the witnesses, who were not examined at inquiry, was violative and these two witnesses should have been left out of consideration. The High Court did not consider the contention that the charge stood proved without taking the statements of the two witnesses, as the inquiry stood vitiated by another serious infirmity.

Throughout the inquiry, a Deputy Superintendent of Police of CBI was present and he was even permitted to re-examine one of the important witnesses, on a point which had a strong bearing on the merits of the case. The High Court held that when the inquiry was domestic one, outsider should not have been allowed to be present particularly a senior officer of CBI at whose instance an investigation was conducted in the case, and the participation of an outsider is violative of the principles of natural justice and clearly vitiated the proceedings of the inquiry.

(320)

- (A) Evidence — additional**
- (B) Witnesses — turning hostile**

Examination of a new witness for the purpose of testing the credibility of testimony of another witness regarding circumstances under which he came to sign the statement causes no prejudice to delinquent official and is not illegal.

- (C) Inquiry Officer — powers and functions**
- (D) Witnesses — examination of**
 - (i) Inquiry Officer competent to examine and cross examine a witness to find out the truth, the question*

of paramount importance for consideration being whether prejudice, if any, was caused.

- (ii) *Inquiry Officer under obligation to put questions to delinquent official with reference to circumstances appearing in the evidence against him in order to afford him an opportunity to explain the circumstances.*

(E) Court Jurisdiction

Civil court cannot act as a court of appeal from order passed in departmental proceedings or the punishment, the scope being limited to jurisdictional errors affecting the conduct of the inquiry.

Union of India (Integral Coach Factory) vs. Delhi, 1989 (1) SLR MAD 78

The respondent, an employee in the Integral Coach Factory, Madras was found guilty of insubordination and misbehaviour towards the Works Manager and was dismissed from service.

The Madras High Court rejected the contention of the respondent against examination of Srinivasan as an additional witness on behalf of the disciplinary authority. The Inquiry Officer examined him regarding the statement of Syed Abdullah, one of the departmental witnesses. He gave evidence that Syed Abdullah gave him the statement of his own accord and not out of compulsion, as contended by him in his examination at the inquiry. The High Court held that Srinivasan was examined only for the purpose of testing the credibility of the testimony of Syed Abdullah and not for the purpose of filling up any lacuna in evidence, as per rule 9 (11) of Railway Servants (D&A) Rules, 1968. Also the Inquiry Officer relied upon the evidence of Srinivasan only for the purpose of discrediting the evidence of Syed Abdullah and not to establish the charge against the employee.

It is contended by the respondent that the Inquiry Officer ought not to have examined Narayanan and Murugesan, witnesses of the employee, in chief and called upon the respondent to cross-examine them and that the respondent should have been allowed to examine them in chief. While admitting that though ordinarily witnesses should be examined in chief by the respective sides, the High Court pointed out that as per the Brochure on Railway Servants (D&A) Rules, the power of examination, cross-examination etc. of witnesses, is inherent in the Inquiry Officer and he can examine and cross-examine the witnesses in the absence of presenting officer, as the function of the Inquiry Officer is to

ascertain the truth, and ultimately the question of prejudice caused, if any, would be of paramount importance than trivial procedural irregularities. In this view, the High Court held that no exception can be taken to the examination of the two witnesses by the Inquiry Officer.

Regarding the alleged irregularity in the Inquiry Officer cross-examining the respondent without merely attempting to get an explanation with reference to the circumstances appearing in the evidence against him, the High Court noted that the employee did not examine himself and held that it cannot be considered to be a violation of rule 9 (15) and even on the assumption that there was some departure, the employee cannot be stated to have been in any manner prejudiced by the course adopted by the Inquiry Officer.

Jurisdictional errors vitiating the conduct and the result of the departmental inquiries alone would justify the civil court proceeding to grant the reliefs asked for but not otherwise and a suit is not to be equated to an appeal from the order passed in the departmental proceedings or the punishment inflicted even if they are erroneous. The High Court held there is no such error and set aside the decree of the courts below.

(321)

(A) Evidence — of previous statements

Previously recorded ex parte statements of witnesses can be used in the inquiry only if the witnesses affirm the truth of having made them and an opportunity is given to the delinquent official to cross-examine the witnesses.

(B) Evidence — standard of proof

Rule of establishing guilt beyond reasonable doubt as applicable to criminal trial, not applicable to departmental inquiry.

(C) Court jurisdiction

(D) Evidence — some evidence, enough

Not permissible for court to re-examine or reassess adequacy and sufficiency of evidence where there is some evidence. Not the function of High Court to review evidence and to arrive at an independent finding on that evidence.

Surjeet Singh vs. New India Assurance Co. Ltd., 1989 (4) SLR MP 385

The petitioner, Branch Manager, New India Assurance Company, was proceeded against in a departmental inquiry. During the inquiry, Shri P.R. Joshi,

who conducted the preliminary enquiry was examined as a witness and the preliminary enquiry report was taken on record and accepted as his oral statement in the enquiry. Similarly, H.C. Gupta was examined as a witness and the Vigilance Officer's report was taken on record and accepted as his oral statement in the enquiry. Copies of the two reports were furnished to the petitioner. The Inquiry Officer held the charges as proved and the General Manager, competent authority, accepting the findings of the Inquiry Officer awarded the penalty of dismissal by order dated 13.03.85. The departmental appeal was dismissed.

On the contention of non-examination of Agent C.S. Bindra as a witness at the inquiry, the High Court observed that the Management sought to examine him, but he did not turn up and the Inquiry Officer took into account his previously recorded statement recorded by H.C. Gupta during the course of the investigation. The Inquiry Officer treated the investigation report as oral deposition of Gupta and as the previously recorded statement of Bindra formed a part of that report, the Inquiry Officer took into account the statement of Bindra while recording his finding. The High Court held that it is well-settled that all witnesses on whose testimony the Management relies in support of the charges against the delinquent official should normally be examined in his presence in the regular inquiry itself unless there are compelling reasons to bring on record the previously recorded ex parte statements of the witnesses and in the event such previously recorded ex parte statements are taken into account for some reason, the delinquent official must be supplied with a copy of such statements and after the witness affirms the truth of having made the already recorded statement, an opportunity is afforded to the delinquent official to cross-examine the witness or witnesses as the case may be. Then and then alone such a previously recorded statement of witness can be relied on in the departmental inquiry. The High Court held that the Inquiry Officer was not justified at all in taking into account the said previously recorded statement of Bindra in coming to the conclusion that the agency of Bindra directly or indirectly was being operated as benami agency by the petitioner. The High Court, however, held that the ultimate opinion or decision of the Disciplinary Authority would not have affected or changed even if the finding on charge No. 2 is excluded as not proved.

On the contention of the petitioner that he could not have been held guilty for the other charges, the High Court observed that in departmental proceedings while considering the question whether or not a delinquent is guilty of any misconduct, it is neither necessary nor expedient to follow the criminal trial rules that an offence cannot be said to have been established unless proved beyond all reasonable doubt to the satisfaction of the Court. As a necessary

corollary, it follows that where there is some evidence which the Inquiry Officer has relied on and accepted which may reasonably support the conclusion that the delinquent official is guilty of the charge, then it is not the function of the High Court to review the evidence and to arrive at an independent finding on that evidence in exercise of its writ jurisdiction. The High Court also held that a High Court cannot sit in appeal over the findings of fact recorded by a competent tribunal in a properly conducted departmental inquiry except when it is shown that the findings were not supported by any evidence. The High Court cannot consider the adequacy and sufficiency of the evidence to sustain the charge.

(322)

Vigilance Department — report of

Failure to furnish copy of report of Vigilance Department relied upon by disciplinary authority, violates principles of natural justice.

H.K. Dogra vs. Chief General Manager, State Bank of India, 1989 (2) SLR P&H 122

The petitioner, Officer, Grade-II, State Bank of India, was dealt with in disciplinary proceedings and dismissed from service. It was contended by the petitioner that non-communication of the report of the Chief Vigilance Officer was violative.

The High Court held that the impugned order of dismissal from service of the petitioner cannot be upheld, as serious prejudice has been caused by non-supply of the material to him which has been relied upon by the disciplinary authority while imposing the punishment of dismissal from service. There is a complete violation of the principles of natural justice and denial of reasonable opportunity to the petitioner. The petitioner was not supplied the report of the Vigilance Department on the basis whereof the show cause notice was issued proposing the punishment of dismissal from service. Even if there has been a practice prevalent in the Bank that before imposing punishment on a delinquent officer the record of the Inquiry Officer is shown to the officer of the Vigilance Department by the Bank and its opinion is obtained still it was incumbent upon the disciplinary authority that before relying upon the opinion of the Vigilance Department, such an opinion must be brought to the notice of the delinquent officer. This course was not adopted in the present case. Since the petitioner was exonerated by the Inquiry Officer on various charges as reproduced in the inquiry report with which the disciplinary authority disagreed by taking into consideration the opinion recorded by the Vigilance Department, the petitioner was kept in the dark about

the opinion of the Vigilance Department and had no opportunity on any occasion to meet the same. It is not disputed that the opinion of the Vigilance Department of the Bank had been relied upon by the disciplinary authority while imposing the punishment of dismissal from service. Consequently, the impugned order of the disciplinary authority imposing the punishment of dismissal from service on the petitioner stands vitiated.

(323)

Compulsory retirement (non-penal)

In case of compulsory retirement, no entitlement to stay even if there is a prima facie case in favour, as granting of stay order will amount to virtually allowing the writ petition.

Shiv Narain vs. State of Haryana, 1989(6) SLR P&H 57

The petitioner was prematurely retired after attaining the age of 55 years. The High Court held that even if it be assumed that there is a prima facie case in favour of the petitioner, he is not entitled to any stay order as he will not suffer any irreparable loss because in case the writ petition is allowed he will be entitled to all the monetary benefits. The balance of convenience is also in favour of the State because granting the stay order will virtually be allowing the writ petition as when it will come for hearing after four/five years, by that time the petitioner will attain the age of superannuation of 58 years.

(324)

(A) Evidence — hearsay

- (i) *In a charge against Conductor that he did not issue tickets to passengers though they had paid fare to the conductor, basing the finding on the evidence of Inspectors checking the bus without examining the concerned passengers, cannot be said to be a case of no evidence.*
- (ii) *Various aspects of admissibility of hearsay evidence dealt with at length. Observation of Phipson in his "Law of Evidence" that "nine-tenth of the world's business is conducted on the basis of hearsay" quoted approvingly.*

(B) Court jurisdiction

Courts not competent to examine the adequacy or sufficiency of evidence.

(C) Principles of natural justice — bias

General Manager, supervising the checking of bus by Inspectors in his official capacity does not amount to bias, personal or legal, and is competent to function as disciplinary authority.

(D) Appeal — consideration of

Appellate authority dismissing the appeal after giving the background of the case and touching the grievances raised by the delinquent satisfies the provisions.

Sarup Singh, ex-Conductor vs. State of Punjab, 1989(7) SLR P&H 328

The appellant, conductor in Punjab Roadways, Batala Depot, was proceeded against in a disciplinary proceedings. On 15-1-84 he was on duty as Conductor in Bus No. 1762 which left Batala for Dera Baba Nanak. When the bus had covered about seven kilometres from Batala, it was checked near Dharamkot. The checking party comprised Inspector Raj Singh and Banarsi Lal. Out of 60 passengers travelling in the bus, 42 had not yet been issued tickets nor had they paid fare to the conductor. Five persons had paid fare and held valid tickets. The remaining thirteen passengers were such who had paid fare to the Conductor but had not been issued any ticket. There were five persons bound for Dera Baba Nanak who had paid fare at rate of Rs. 2.30 per ticket and equal number were going to village Shikar who had paid fare to the conductor at the rate of Rs. 1.60 p each. Three other persons were going to village kotli and had paid fare to the Conductor at the rate of Rs. 1.20 paise each. The Conductor was thus alleged to have received Rs. 23.10 p from the aforesaid 13 passengers but had issued them no tickets. On a report having been made by the checking staff, the General Manager ordered departmental inquiry on two charges, namely embezzlement of a sum of Rs. 23.10 p and intentional failure to issue tickets to 42 passengers. The inquiry was conducted by Shri R.S. Sharma from the office of the Divisional Manager, Transport Department, Jalandhar. The charges were held established. After show cause notice, the punishing authority, the General Manager, Punjab Roadways, Batala, removed the Conductor from service by order dated 30-3-1985. The appeal filed by him was dismissed by the Divisional Manager, Transport Department, Jalandhar on 13-12-1985.

In a suit filed by the delinquent, the trial court held that the orders of the disciplinary authority dated 30-3-85 and of the appellate authority dated 13-12-85 are not illegal, null and void. The appeal was dismissed by the Additional District Judge and thereupon, he filed a second appeal before the Punjab and Haryana High Court.

Before the High Court, one of the contentions was that there was no evidence in support of the charge and the finding of the Inquiry Officer thus stood vitiated. The High Court observed that at the inquiry, both the Inspectors who carried out the checking were examined. They gave a complete account of the checking carried out by them in the bus in which the plaintiff was on duty as a conductor. They deposed about 13 passengers having stated before them that they had paid the fare but had not been issued tickets by the Conductor. In cross-examination, there was no suggestion of any personal animosity between the plaintiff and the punishing authority i.e. the General Manager or between the plaintiff and the checking staff. It was submitted that the Inspectors who carried out the checking failed to record the statements of any of the passengers and especially those who claimed to have paid the fare to the plaintiff without obtaining the requisite ticket in lieu thereof. The statement of the Inspectors, it was argued, was thus hearsay and inadmissible in evidence. The collection of fare by the Conductor from 13 passengers had not taken place in the presence of the checking staff and therefore, the testimony of the two Inspectors was solely based on the ipsi dixit of those 13 passengers who have remained unnamed and unidentified till today. The plaintiff contended that there was therefore no legal evidence on which the Inquiry Officer based his report.

The High Court referred to State of Haryana vs. Shri Ram Chander, 1976(2) SLR 690, where a Full Bench held that there is no bar against the reception of hearsay evidence by domestic tribunals and that the extent to which such evidence may be received and used must depend on the facts and circumstances of each case and the principles of natural justice. O. Chinnappa Reddy, Acting Chief Justice (as his Lordship then was), speaking for the Bench referred to Phipson in his "Law of Evidence" in which the author had observed that nine-tenth of the world's business is conducted on the basis of hearsay. It was also pointed out that considerable inroad had been made by statute recently in England and first-hand hearsay was now admissible in evidence in Courts of law. Exception to the rule of hearsay already existed under the Evidence Act, in that dying declaration and retracted confession were admissible. What is more, the domestic tribunals were masters of their own procedure as long as they observed rules of natural justice. Apart from the rules of natural justice the other safeguard in connection with the reception of hearsay evidence is that it should be "logically

probative". In this connection, the Bench took two hypothetical examples to bring out the real legal position and stated: "If half a dozen persons go to the office of the Haryana Roadways and complain that the conductor of a certain bus collected fare from them but did not issue tickets to them and if later on the passengers are not examined as witnesses, a finding of guilt based solely upon the complaint given by the passengers would amount to a finding based on pure hearsay and would involve violation of principles of natural justice. On the other hand, where a bus is checked and if it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the inquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay."

The High Court did not accept the contention of the appellant that it was nowhere shown that the 13 passengers made the incriminating statements in the presence of the conductor in order to make it "logically probative", (relying on the decisions of the High Court in State of Haryana vs. Mohan Singh, 1985(2) SLR 116 and Punjab State vs. Harnam Singh, 1988(1) SLR 97), and observed that the ratio in the Full Bench decision is quite clear and categorical that there is no bar against the reception of hearsay evidence by domestic tribunals. What value is to be attached to such evidence depends upon the facts and circumstances of each case.

The High Court observed that it was not prepared to hold that the statements alleged to have been made by the 13 passengers who had paid the fare but had not been given the tickets were not made within the immediate presence of the conductor. The checking was carried out in the bus itself when it was on its journey. The presence of the conductor must, in the circumstances, be presumed so that if any allegations were made that the conductor had collected the fare but had not issued the ticket, he could be confronted there and then as to what he had to say. The High Court concluded that the checking was carried out in the presence of the conductor and the aforesaid statements must have been made in his presence. In the facts and circumstances, the statements ascribed to those passengers are at once logically probative. It deserves to be highlighted that there is no so much as even a suggestion that the checking staff had any personal animosity against the plaintiff. On the contrary, what the two checking Inspectors deposed before the Enquiry Officer corroborated each other besides being corroborated by their report in writing made to the General Manager as a result of the checking.

It was also pointed out that the Inspectors failed to check the cash being carried by the Conductor at that time to corroborate the alleged version of the passengers. The driver of the bus was supposed to have witnessed the checking and even he was not produced to corroborate the testimony of the checking Inspectors. The High Court held that there is no substance in this submission. It must be borne in mind that the High Court is not sitting in appeal against the order of removal. Adequacy or sufficiency of evidence is for the departmental authorities. The Civil Court would intervene if it were found to be a case of no evidence at all. Viewed in this context, it is for the department to decide the evidence to be led to prove the charge. It is idle to speculate what evidence could have been produced. This is in addition to the fact that nothing has been brought on record to show that cash amount being carried by the conductor is checked and recorded at the commencement of journey and he is forbidden to keep his own money in cash while performing his duty. In the absence of such material, it would be meaningless to carry out a physical check of the cash being carried by the conductor.

The appellant further contended that the General Manager, Punjab having supervised the checking was biased and he was, therefore, not competent to charge-sheet the Conductor. In this connection, reference was made to the report of the Inspectors with regard to the result of the checking in which it was stated that the checking was carried out under the supervision of the General Manager and reliance was placed on D.J. Warkari vs. K.V. Karanjkar, 1980(1) SLR 839. The High Court observed that this authority is distinguishable for two reasons. One, the Inquiry Officer had exonerated the delinquent of the charge of the theft of bearings, but the punishing authority reversed that finding and imposed major punishment on the delinquent. Two, on the facts of that case, the recovery of the bearings had, in fact, taken place in the presence of the Chief Engineer who was the punishing authority and in the course of the investigation of a criminal case for theft, the police had recorded statement under sec. 161 Cr.P.C. of the Chief Engineer in which he stated about the recovery of the stolen bearings from the delinquent in his presence. In view of these peculiar facts it was observed that the enquiry was vitiated by violation of the principles of natural justice as the Chief Engineer was both a witness as well as a Judge. In the present case, on the other hand, there is nothing to show that the General Manager was physically present at the time of the checking. The General Manager is the senior-most officer who heads a depot. He can supervise various checking parties without being physically present with any of these parties. However, the inquiry was held by an officer of the office of the Divisional Manager, Transport Department, Jalandhar. There is total absence of any personal bias of the General Manager against the appellant. This is, therefore, not a case of personal bias nor in the

facts of the case can it be held that there was bias in law. The supervision of the employees in regard to their duties is an important function of the General Manager and if he discharges that function it cannot be said that there is legal bias in his action.

The High Court considered the last contention that the appellate authority, the Divisional Manager, Transport Department, failed to observe rule 19 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The High Court observed that in the order passed by the appellate authority, the factual background was given, the material facts with regard to the inquiry leading to the order of removal were mentioned giving details of the progress of the inquiry on various dates and the conduct of the delinquent. The various grievances raised by the delinquent in the appeal were listed and an attempt was made to show that there was no merit in any of those grievances. The High Court held that the order cannot, therefore, be considered to have been passed in violation of the provisions of the said rule. In the result the High Court dismissed the appeal.

(325)

- (A) Court jurisdiction**
- (B) Penalty — quantum of**

Tribunals have no jurisdiction to interfere with the findings of Inquiry Officer or competent authority or penalty where they are not arbitrary or utterly perverse; no power to substitute their own discretion for that of the authority.

Union of India vs. Perma Nanda, 1989 (2) SLR SC 410

The respondent, Time Keeper in Beas Sultej Link Project, Sundernagar, was proceeded against on a charge of manipulation of pay roll resulting in fictitious drawal of pay and dismissed from service. The Central Administrative Tribunal at Chandigarh modified the penalty to one of withholding of increments.

The Supreme Court observed that the Tribunals seem to take it within their discretion to interfere with the penalty on the ground that it is not commensurate with the delinquency of the official. The law already declared by the Supreme Court, it may be reiterated, makes it clear that the Tribunals have no such discretion or power. The Supreme Court unequivocally stated that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty

on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

(326)

- (A) Termination — under Banking Regulation Act**
- (B) Probation of Offenders Act**
- (C) Misconduct — moral turpitude**

Bank employee convicted of an offence involving moral turpitude but released under sec. 4(1) of Probation of Offenders Act, not liable for termination of service under sec. 10 (1) (b) of Banking Regulation Act as it tantamounts to his suffering disqualification attaching to a conviction of an offence.

**Zonal Manager, Indian Bank vs. Parupureddy Satyanarayana,
1990 (1) ALT AP 260**

The respondent was an employee (member of Sub-staff) of the Indian Bank. He was prosecuted and convicted of the offence under Sec. 354 IPC (outraging the modesty of a woman) and sentenced to one year R.I. On appeal, the Sessions Judge by his judgment and order dated 22-3-88, while confirming the conviction, modified the sentence and ordered him to be released under Sec. 4 (1) of the Probation of Offenders Act. Even during the pendency of the appeal, the bank terminated the services of the respondent by order dated 15-4-87 with effect from 10-4-87. The termination is based solely upon the fact that the respondent has been convicted by a Criminal Court and since the offence for which he has been convicted involves moral turpitude, he cannot be continued in employment in view of the provisions of sec. 10 (1) (b) of the Banking Regulation Act, 1949 read with para 19.3 (b) of the Bipartite Settlement.

The Division Bench of the High Court observed that under sec. 10(1)(b) of the Banking Regulation Act, any and every conviction by a Criminal Court does not operate as a disqualification for continuing in service; only the conviction by a criminal Court of an offence involving moral turpitude operates as such disqualification. Once it is found that an employee has been convicted of an offence involving moral turpitude, the employer has no option but to terminate his service. According to sec. 12 of the probation of Offenders Act, a person convicted of an offence but dealt with under sec. 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Sec. 10 (1) (b) of the Banking Regulation Act does, indeed, provide for a disqualification. Though the word 'disqualification' is not used therein, it says expressly that a person convicted by a criminal court of an offence involving moral turpitude shall not be continued in the employment of a Banking Company. The Division Bench observed that it is not the heading of the section or the use of the word 'disqualification' that is conclusive; it is the substance of the provision that matters and a reading of sec. 10(1)(b) does lead to the conclusion that it does indeed create a disqualification for continuing in the employment, once a person is convicted of an offence involving moral turpitude. The Division Bench further observed that secondly and more importantly, it is necessary to notice the difference in the language employed in proviso (a) to cl. (2) in Art. 311 and the language employed in sec. 10(1)(b)(i) of the Banking Regulation Act. While the constitutional provision says that an enquiry contemplated by Cl. (2) need not be held where a person is dismissed or removed or reduced in rank 'on the ground of conduct which has led to his conviction on a criminal charge', the provision in the Banking Regulation Act speaks of discontinuance of the employment of a person who has been 'convicted by a criminal court of an offence involving moral turpitude'. There is a clear distinction between dismissing an official for the conduct which led to his conviction, and dismissing an official for his conviction as such. The Constitution does not create a disqualification like the one created by Sec. 10(1)(b)(i) of the Banking Regulation Act. The Constitution merely enables the State to dismiss, remove or reduce in rank an employee without holding an enquiry, having regard to the conduct which has led to his conviction on a criminal charge, whereas the Banking Regulation Act disqualifies the employee from continuing in service the moment he is convicted of an offence involving moral turpitude.

(327)

(A) Presenting Officer — not mandatory

Appointment of Presenting Officer, not mandatory.

(B) Inquiry Officer — powers and functions

(C) Witnesses — examination of

No illegality or impropriety in the Inquiry Officer examining witnesses or questioning the delinquent.

H. Rajendra Pai vs. Chairman, Canara Bank, 1990 (1) SLR KER 127

The petitioner, Manager in the Kallakkal Branch of the Canara Bank, was proceeded against in a departmental inquiry and was removed from service, and the Board of Directors rejected his appeal.

It was contended by the petitioner before the High Court that no presenting officer was appointed and the Inquiry Officer himself acted as the presenting officer and examined witnesses and cross- examined the delinquent and that therefore the entire proceedings were void and illegal. The High Court observed that the expression used in Regulations 6(6) of the Canara Bank officers Employees (D&A) Regulations is 'may' and though 'may' may not in all circumstances, be indicative of a discretion, having regard to the scheme of the Regulations and the provisions, there is no sufficient justification to hold that the appointment of the presenting officer is a mandatory provision, the non-compliance of which will render the inquiry invalid. Further at no stage, the petitioner objected to the examination of witnesses by the Inquiry Officer nor did he insist that a presenting officer should be appointed. It is also not shown that the delinquent official was prejudiced in any way as a result of failure to appoint a presenting officer or that the Inquiry Officer exposed a biased state of mind in putting questions to the witnesses. The High Court held that the inquiry is not vitiated by reasons of failure to appoint a presenting officer.

The High Court held no illegality or impropriety has been committed and no prejudice caused by the Inquiry Officer in questioning the delinquent, the examination being intended only to give him an opportunity to explain the circumstances appearing against him as required under Regulation 6 (17).

(328)

Sealed cover procedure

Promotion may be deferred where charge has been framed in disciplinary proceedings or charge-sheet has been filed in criminal case.

C.O. Armugam vs. State of Tamil Nadu, 1990(1) SLR SC 288

The Supreme Court held that it is necessary to state that every civil servant has a right to have his case considered for promotion according to his

turn and it is a guarantee flowing from Arts. 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles.

The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

(329)

- (A) Constitution of India — Art. 311 (2) second proviso
cl.(a)**
- (B) Departmental action and conviction**
- (C) Probation of Offenders Act**

Employees convicted but released on probation of good conduct under section 4 of Probation of Offenders Act, can be dismissed or removed from service on ground of misconduct which led to conviction on criminal charge.

Union of India vs. Bakshi Ram, 1990 (2) SLR SC 65: AIR 1990 SC 987

The respondent, Constable in the Central Reserve Police Force at Devli in Rajasthan, was convicted under section 10(1) of the CRPF Act, 1948 for forcing his entry (along with another Constable) into the room of another constable and catching hold of his wife and misbehaving with her, and released under the Probation of Offenders Act.

The Supreme Court held that in criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The court while invoking the provisions of Sec. 3 or 4 of the Probation of Offenders Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per

law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore arise. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently such a view has no support from the terms of section 12.

(330)

Misconduct — unbecoming conduct

Member, Public Service Commission giving Chairman a slap in office premises while discussing question involving their office, amounted to misbehaviour rendering him liable to be removed from office.

***In re Gopal Krishna Saini, Member, Public Service Commission,
1990 (3) SLR SC 30***

On a reference under Article 317 (1) of the Constitution, by the President of India for inquiry and report on the complaint of Smt. Santosh Chowdhary, Chairman of the Punjab Public Service Commission alleging that Shri Gopal Krishna Saini, a Member of the Commission gave her a full-blooded hard slap across her face in the office premises of the Commission on 24-11-1982 at about 1.15 p.m. when she enquired him the reasons for his absence on the previous two days, the Supreme Court observed as follows:

"Persons occupying high public offices should maintain irreproachable behaviour. A certain minimum standard of code of conduct is expected of them. What may be excusable for an uneducated young man cannot be tolerated if a Member of a Public Service Commission is involved. Besides, it has to be remembered that the respondent and the Chairman were not thrashing out a personal matter or a private dispute. They were discussing a question involving their office and this in broad-day-light in the open corridor of the Commission's building. Whatever the provocation offered by the Chairman, the respondent

was not justified in losing his cool to the extent of indulging in physical violence. That the violence should have been directed against a lady makes his conduct all the more reprehensible. In our view, Shri Saini miserably failed in maintaining the standard of conduct expected of a Member of the Commission and thereby brought great disrepute to his office. Hence our answer to the question referred by the President is that Shri Saini's conduct amounted to misbehaviour within the meaning of Article 317 (1) of the Constitution and it rendered him liable to be removed from his office of the Member of the Public Service Commission".

(331)

Writ petition — interim orders

Supreme Court deprecated issue of interim orders by courts and tribunals.

Rana Randhir Singh vs. State of U.P., 1990(3) SLJ SC 42

While disposing of writ petitions under Art. 32 of the Constitution by a set of direct recruits to the U.P. Police Service Class II and by a set of promotees to the said service, where the dispute was mainly one relating to inter se seniority, the Supreme Court observed: "We also find that many of the officers in the cadre rush to the court or the tribunal too often and interim orders are made by the court to hold up the hands of the State Government in giving effect to the Rules. Interim orders in such matters should not ordinarily be made as the position can always be rectified when judgment is rendered".

(332)

Penalty — withholding increments with cumulative effect

Withholding increment with cumulative effect amounts to reduction to a lower stage in time scale of pay. It is a major penalty and imposition without inquiry, illegal.

Kulwant Singh Gill vs. State of Punjab, 1990(6) SLR SC 73

A 3-judge Bench of the Supreme Court considered the question whether stoppage of two increments with cumulative effect is a major penalty, in an appeal by an Inspector, Food and Supplies against the judgment of the Punjab and Haryana High Court and observed as follows: "Withholding of increments of pay simplicitor without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules (Punjab Civil Services (Punishment and Appeal) Rules). But when penalty was imposed withholding two increments i.e. for two years

with cumulative effect, it would indisputably mean that the two increments earned by the employee were cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock starts working from that stage afresh. The insidious effect of the impugned order by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if peeled off, its true colour or its resultant effects would become apparent. When we broach the problem from this perspective, the effect is as envisaged under Rule 5(v) of the Rules (i.e. reduction to a lower stage in the time-scale of pay). Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be *per se* void." Considering from this angle, the Supreme Court held, the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is *per se* illegal.

(333)

(A) Misconduct — unbecoming conduct

A senior officer and a young junior lady officer, while on official tour travelling together by ship in a cabin with two berths for 4 days and staying in a double- bed room for 12 days, does not constitute unbecoming conduct.

(B) Penalty — recorded warning, amounts to censure

Recordable warning amounts to censure and cannot be imposed without following prescribed procedure for imposition of a minor penalty.

**S.S. Ray and Ms. Bharati Mandal vs. Union of India,
1991 (7) SLR CAT DEL 256**

The applicants, a Deputy Director of Investigation and an Assistant Director of Investigation in the Income tax department at Calcutta, latter being a lady officer working under the former, went on an official tour to Port Blair. They traveled by ship in a deluxe cabin with only two berths, the journey lasting four days and stayed in a double-bed room in the Circuit House at Port Blair for 12 days, the Circuit House register showing them as husband and wife.

On receipt of allegations against them, the Central Board of Direct Taxes asked them for their version of the incident and after considering their explanations imposed a recordable warning holding that they exhibited a conduct unbecoming of a Government servant and involving moral aberration and warned to be more careful in future in such matters. Their representations to the President of India were rejected.

Before the Tribunal, the Department contended the act of traveling in a cabin with two berths only and staying in a double-bed room for more than 10 days with a young junior lady officer, who was not his wife, is by itself an act which is unbecoming of a Government servant. The Tribunal observed that the lady officer did not allege that he had assaulted her or misbehaved with her and indeed poured out her anguish against the department for having humiliated and defamed her by suspecting her character and conduct and giving adverse publicity. The Tribunal held that in the absence of any statutory provision or rule, the act does not per se amount to an unbecoming conduct.

The Tribunal also held that recordable warning amounts to a penalty of censure and it cannot be imposed without following the procedure prescribed for imposing of a minor penalty.

(334)

Misconduct — past misconduct

Past misconduct (of unauthorised absence on earlier occasions) cannot be taken into consideration without including in the charge.

N. Rajendran vs. Union of India, 1991 (7) SLR CAT MAD 304

The disciplinary authority has taken into consideration not only the charge of unauthorised absence for three spells of time but also previous similar lapses and come to the conclusion that the charged official was guilty not only of unauthorised absence for three spells which is the only charge, but also of general irregularity in attendance which is not to be found in the charge. So the order of removal is based not only on the charge but also on the previous conduct. If a Disciplinary Authority wants to take into consideration any previous conduct of an employee which would aggravate his case, it is an established principle of natural justice that such a conduct should be brought to the notice of the employee concerned, so that the employee gets an opportunity of putting forth his case in that respect also. As far as this case is concerned, the charged official has accepted the guilt only to the extent of the charge, viz. three spells of absence

and pleaded a lenient view on the ground of extraneous circumstances. Had the Disciplinary Authority included in the charge not only the three spells of absence but also the fact that these three spells of absence are in continuation of his previous similar lapses and that his conduct through a long period was being considered for the purpose of action, the charged official could have given a reply consequently. But such an opportunity was not given.

The Tribunal, therefore, held that the order of removal was vitiated by the fact of non-observance of the rule of natural justice which requires that disciplinary action be based only on the charge as framed.

(335)

Departmental action — delay in

Delay in initiation of disciplinary proceeding or in framing of charge may amount to denial of opportunity to the charged officer to defend himself, but not delay in arriving at finding and imposing penalty.

Jagan M. Seshadri vs. Union of India, 1991 (7) SLR CAT MAD 326

A Superintendent of Police was dealt with in minor penalty proceedings. The incident occurred in Nov. 1981 and the charge was issued in Aug. 1982. The charged official submitted his explanation in June 1984 and after a delay of 6 years, a minor penalty of withholding of increment for two years without cumulative effect was imposed on him. The State Government took nearly 3 years before it consulted the UPSC and the latter gave its advice on 21-9-1989.

The Tribunal observed that there are several decisions that the delay in initiation of disciplinary proceeding or in the framing of charge after a long delay may lead to the delinquent official not being able to remember the facts and satisfactorily to defend himself. However, in the present case, the letter of charge was framed without any delay. The mere fact of the delay in arriving at a finding and imposing the punishment cannot amount to a denial of opportunity to satisfactorily defend himself. There are no specific decisions wherein merely on the ground of delay in completing the inquiry, the charge has been quashed. In this view, the Tribunal held that they did not consider that the delay in the passing of the order of punishment vitiates the inquiry proceedings.

(336)

Misconduct — misappropriation

'Misappropriation' to be given dictionary meaning in disciplinary proceedings.

***M.A. Narayana Setty vs. Divisional Manager, LIC of India, Cuddapah,
1991(8) SLR AP 682***

The High Court observed that the definition of misappropriation given in the Indian Penal Code is for purposes of offences punishable under the Penal Code. That definition cannot be imported in disciplinary proceedings to urge that the case of misappropriation is not made out. Misappropriation has to be understood in its common dictionary meaning and thus understood it means utilising the amounts for purposes other than for what they are meant. The respondents have also used the word misappropriation in the same meaning so it cannot be contended that for establishing charge of misappropriation the ingredients of sec. 409 IPC have to be established.

(337)

Termination — for absence

Termination of lien for absence as provided in Regulation, not legal as, being an act of misconduct, should be dealt with as such.

***Narinder Pal vs. Pepsu Road Transport Corporation,
1991 (6) SLR P&H 633***

The appellant was employed as Helper on regular basis with Pepsu Road Transport Corporation, Patiala. He applied for leave from 21.5.82 to 17.6.82 but did not report for duty after the expiry of leave and reported only on 18.8.82 and his services were terminated as per regulation 42 of the Pepsu Road Transport Corporation (Conditions of Appointment and Service) Regulations, 1981. The trial court and Appellate Court upheld the order of termination holding that if any permanent or temporary employee remains absent beyond the period of leave originally granted or subsequently extended he shall lose his lien on appointment unless he returns to duty within ten days after the expiry of leave and explains to the satisfaction of the competent authority his inability to return to duty on the expiry of leave.

The High Court, however, accepted the contention of the appellant that in view of the fact that habitual late attendance or absence from duty without applying leave in accordance with rules or settlement or award or agreement or over-staying the leave period for consecutive ten days or more without sufficient justification is an act of misconduct as envisaged under clause (xiii) of Regulation 23, the termination of the services of the appellant could not be legal for the reason that no order imposing any of the penalties could be passed without going through the procedure prescribed under regulation 22, which necessarily entails a regular enquiry. The High Court held that the appellant is entitled to reinstatement.

(338)

**(A) Judges of High Courts and Supreme Court —
within purview of P.C. Act**

There is no law providing protection for Judges of High Courts and Supreme Court from criminal prosecution.

**(B) Disproportionate Assets — opportunity of hearing, to
the accused during investigation**

Investigating Officer is not required to give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not. Sec. 5(1)(e) of P.C. Act, 1947 (corresponding to sec. 13(1)(e) of P.C. Act, 1988) does not contemplate a notice to be served on the accused. If the prosecuting authority after making a suitable enquiry, by taking into account the relevant documents and questioning relevant persons, forms the opinion that the accused cannot satisfactorily account for the accumulation of disproportionate wealth in his possession the section is attracted.

K. Veeraswami vs. Union of India, 1991 SCC (Cri) 734

The appellant was Chief Justice of Madras High Court and he was prosecuted before the Special Judge, Madras for possession of disproportionate assets under sec. 5(1)(e) read with sec. 5(2) of P.C. Act, 1947 (corresponding to sec. 13(1)(e) read with sec. 13(2) of P.C. Act, 1988). He filed a petition before the Madras High Court for quashing the prosecution on the ground that the proceedings initiated against him were unconstitutional, wholly without jurisdiction,

illegal and void. The Full Bench of the High Court by a majority view dismissed his case. However, in view of the importance of the constitutional questions involved in the case, the High Court granted certificate for appeal to the Supreme Court. The appellant advanced only two contentions before the Supreme Court:

(1) The Judges of the High Courts and the Supreme Court are not within the purview of the P.C. Act, which is a special enactment applicable to public servants, in whose case prosecution can be launched after sanction granted under sec. 6 of the P.C. Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) which is alien to the scheme envisaged for constitutional functionaries like Judges of the High Courts and Supreme Court.

(2) The appellant was entitled to an opportunity before the Investigating Officer to explain the disproportionality between the assets and the known sources of income and the charge sheet must contain a statement to that effect, that is, to the unsatisfactory way of accounting by the public servant. Unless the charge sheet contains such an averment an offence under cl. (e) of sec. 5(1) of the Act is not made out.

The Supreme Court by a majority of 4:1 held that while there are various protections afforded to Judges to preserve the independence of the judiciary, there is no law providing protection for Judges from criminal prosecution. The society's demand for honesty in a judge is exacting and absolute. The standards of judicial behaviour, both on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint or irregularity or impropriety in the court is a cause for great anxiety and alarm.

The Supreme Court further held that the Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity

to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge sheet.

The charge sheet is nothing but a final report of police officer under sec. 173(2) of the Cr.P.C. The statutory requirement of the report under sec. 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under sec.173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by sec. 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

Sec. 5(1)(e) does not contemplate a notice to be served on the accused. If the prosecuting authority after making a suitable enquiry, by taking into account the relevant documents and questioning relevant persons, forms the opinion that the accused cannot satisfactorily account for the accumulation of disproportionate wealth in his possession the section is attracted. The records clearly indicate that after duly taking all the appropriate steps it was stated that the assets found in the possession of the appellant in his own name and in the name of his wife and two sons, were disproportionate by a sum of over Rs. 6 lakhs to his known sources of income during the relevant period and which he "cannot satisfactorily account" for.

The Supreme Court held that in the instant case the charge sheet contains all the requirements of sec. 173(2). No more is required to be stated in the charge sheet. It is fully in accordance with the terms of sec. 173(2) Cr.P.C. and cl. (e) of sec. 5(1) of the Act.

(339)

(A) Evidence — of woman of doubtful reputation

Not unsafe to rely on a witness merely because she is a women of easy virtue.

(B) Court jurisdiction

High Court has no jurisdiction under Art. 226 of Constitution to embark upon a re-appreciation of evidence as if it were sitting in appeal.

***State of Maharashtra vs. Madhukar Narayan Mardikar,
1991 (1) SLR SC 140: AIR 1991 SC 207***

Inspector, Bhiwandi Town Police Station (respondent) was charged with having visited the hutment of Banubi wife of Babu Sheikh in the night all alone in police uniform and tried to ravish her and when she resisted he falsely made out as if he carried out a prohibition raid. The respondent's version was that he raided her hutment on receipt of information that she was dealing in illicit liquor, although nothing incriminating was found in her house. In the course of the departmental inquiry held against him, it came out that Banubi was a woman of easy virtue and was having extra-marital relationship with the manager of Bhiwandi talkies. She admitted that she was his mistress and she was known as an 'awara' (vagrant) in the locality. The respondent was dismissed and on appeal it was reduced to removal from service. The High Court of Bombay quashed the order of removal, among others, on the ground that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person.

The Supreme Court did not agree with the High Court and restored the order of removal. Supreme Court observed that Banubi was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence. But in the present case her evidence is not only corroborated in material particulars by the evidence of her husband

but also of the PSI and other members of the police party, who rushed there on receipt of a phone call from the respondent. Banubi who was herself living in a glass house considering her antecedents could never have behaved in the manner she is alleged to have behaved if the respondent had merely raided her house and drawn up a nil panchanama. In that case she would not have approached the District Superintendent of Police at the earliest opportunity and would not have lodged a complaint of misbehaviour against the respondent. The Supreme Court did not agree that merely because Banubi is a woman of doubtful reputation it is unsafe to rely on her testimony and further that her evidence was corroborated in material particulars by independent evidence. The High Court was wrong in embarking upon a re-appreciation of the evidence as if it were sitting in appeal against the decision of the departmental authorities and its re-appreciation of the evidence is also unsustainable.

(340)

Inquiry report — furnishing copy

Necessary for the Disciplinary Authority to furnish copy of report of Inquiry Officer to Charged Officer and give him an opportunity to make a representation against it before taking a decision on the charges.

***Union of India vs. Mohd. Ramzan Khan, 1991(1) SLR SC 159 :
AIR 1991 SC 471***

A 3-judge Bench of the Supreme Court presided over by the Chief Justice examined the question whether with the alteration of the provisions of Article 311(2) under the Forty-second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the charged officer has lost his right to be entitled to a copy of the report of inquiry in the disciplinary proceedings and observed as follows: "When the disciplinary authority himself inquires into the charges there is no occasion for submission of an inquiry report. The entire evidence—oral and documentary—along with submissions, if any, are available to him to proceed to arrive at final conclusions in the inquiry.In cases where the Inquiry Officer merely transmits the records of inquiry proceedings to the disciplinary authority there is indeed no distinction to be drawn between the inquiry conducted by the disciplinary authority himself or the inquiry officer. This is so on account of the fact that there is no further material added to the record at the time of transmission to the disciplinary authority. Where, however, the Inquiry Officer furnished a report with or without proposal of punishment, the report of the Inquiry Officer does constitute an

additional material which would be taken into account by the disciplinary authority in dealing with the matter. In cases where punishment is proposed, there is an assessment of the material and a tentative conclusion is reached for consideration of the disciplinary authority and that action is one where the prejudicial material against the delinquent is all the more pronounced. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment as far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected."

The Supreme Court observed that inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups—one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer, and that would be a reasonable classification keeping away the application of Article 14 of the Constitution. Supreme Court held that judgments in the different High Courts and by the two-judge Bench of the Supreme Court taking the contrary view will no longer be taken to be laying down good law, "but this shall have prospective application and no punishment imposed shall be open to challenge on this ground". Supreme Court also clarified that "this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment".

The Supreme Court, in effect, held: "Wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

(341)

Termination — of temporary service

Termination of an ad hoc temporary employee, whose work and conduct were not satisfactory and who was unsuitable for the service, not illegal or unjustified on the ground of juniors being retained in service. Order not necessarily punitive where preliminary inquiry into allegations is held or where a departmental inquiry is held but dropped or abandoned before the issue of order of termination.

State of Uttar Pradesh vs. Kaushal Kishore Shukla, 1991 (1) SLR SC 606

The respondent was appointed as an Assistant Auditor under the Local Funds Audit Examiner of the State of Uttar Pradesh on ad hoc purely temporary basis. His services were terminated and the High Court set aside the order.

On an appeal filed by the State, the Supreme Court observed that the respondent was an ad hoc and temporary employee and the terms and conditions of employment were regulated by the U.P. Temporary Government Servants (Termination of Services) Rules, 1975. The contract of service stipulated that his services were liable to be terminated at any time without assigning any reason or compensation. The respondent's work and conduct were not satisfactory and he was unsuitable for the service. The principle of 'last come first go' is applicable in case of retrenchment and not where services of a temporary employee are terminated on assessment of his work and suitability. If out of several temporary employees, a senior is found unsuitable on account of his work and conduct, it is open to the competent authority to terminate his service, and it does not violate the principle of equality under Arts. 14 and 16 of the Constitution. If a junior employee is hard-working, efficient and honest his services could not be terminated with a view to accommodate the senior employee even though he is found unsuitable for the service. The Supreme Court held that the order of termination could not be rendered illegal or unjustified on the ground of juniors being retained in service.

The Supreme Court also held that it is erroneous to hold that where preliminary enquiry into the allegations of a temporary Government servant is held or where a departmental inquiry is held but dropped or abandoned before issue of order of termination, such order is necessarily punitive in nature.

(342)

Termination — with notice

Regulation conferring power of termination of service of permanent employee without giving opportunity of making representation, void.

***Delhi Transport Corporation vs. D.T.C. Mazdoor Congress,
1991 (1) SLJ SC 56: AIR 1991 SC 101***

Delhi Transport Corporation, a statutory body, terminated the services of three permanent employees, a driver, a conductor and an Assistant Traffic Incharge, for alleged inefficiency by exercising the power of Regulation 9(b) of Delhi Road Transport Authority (Conditions of Appointment and Services) Regulations, 1962.

A 5-Judge Bench of the Supreme Court considered the question of constitutional validity of the right of the employer to terminate the services of permanent employees without holding any inquiry in certain circumstances by reasonable notice or pay in lieu of notice and observed that the said regulation conferred wide power of termination of services of the employee without following the principle of *audi alterem partem* or even *modicum* of procedure of representation before terminating the services of permanent employee. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the anti thesis of a decision taken in accordance with the rule of law. The Supreme Court observed that the regulation contains the much hated and abused rule of hire and fire and unrestrained freedom of contract. The right of life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. The Supreme Court (by majority) held the said regulation as arbitrary, unjust, unfair and unreasonable, offending Articles 14, 16, 19(1)(g) and 21 of the Constitution and is void under section 23 of the Indian Contract Act.

(343)

Vigilance Commission — consultation with

Advice tendered by Central Vigilance Commission is not binding on the Bank and it is not obligatory upon the punishing authority to accept the advice.

***Nagraj Shivarao Karjagi vs. Syndicate Bank, 1991 (2) SLR SC 784 :
AIR 1991 SC 1507***

The petitioner, Manager of the Syndicate Bank, was dealt with on a charge of misconduct and imposed a penalty of compulsory retirement. The petitioner has contended that the punishing authorities did not apply their mind and did not exercise their power in considering the merits of his case. They have imposed the penalty in obedience to the advice of the Central Vigilance Commission which has been made binding on them by the direction dated 21.7.1984 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division).

The Supreme Court observed that the bank itself seems to have felt that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive and made two representations to the Commission for taking a lenient view of the matter and to advise lesser punishment and these representations were not accepted by the Commission. The disciplinary authority and the appellate authority, therefore, have no choice in the matter and they had to impose the punishment as advised by the Commission. The advice was binding on the authorities in view of the said directive of Ministry followed by two circulars issued by the successive Chief Executives of the Bank. They could not have ignored the advice of the Commission and imposed a lesser punishment without the concurrence of the Commission, except at their peril. The power of the disciplinary authority and the appellate authority is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry. The advice tendered by the Commission is not binding on the Bank. The Supreme Court also held that the Ministry of Finance has no jurisdiction to issue the impugned directive to the banking institutions. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved and the authorities have to exercise their judicial discretion and cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer.

The Supreme Court quashed the directive issued by the Finance Ministry Dt.21.7.1984 and directed the Bank to withdraw the two circular letters, and set aside the orders of the disciplinary authority and appellate authority with a direction to dispose of the case in the light of the observations.

(344)

Sealed cover procedure

- (i) *Sealed cover procedure is to be resorted to only after charge memo / charge sheet is issued to employee. Pendency of preliminary investigation prior to that stage is not sufficient to enable authorities to adopt said procedure.*
- (ii) *Employee cannot be deprived of benefits including salary of promotional post, where he is exonerated in the criminal / disciplinary proceedings against him.*
- (iii) *Employee found guilty of misconduct cannot be placed on par with other employees.*

Union of India vs. K.V. Jankiraman, AIR 1991 SC 2010

These are criminal appeals arising out of the judgment dated 2-3-1987 delivered by the Full Bench of the Central Administrative Tribunal, Hyderabad Bench in K.Ch. Venkata Reddy vs. Union of India, 1987(4) SLR CAT HYD 46 and some others.

The Supreme Court observed that the common questions involved in all the matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:- (1) What is the date from which it can be said that disciplinary / criminal proceedings are pending against an employee? What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary / criminal proceedings are pending against him at the relevant time and hence the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

The Union of India and the other appellant-authorities have by these appeals challenged the findings recorded by the different Benches of the Tribunal in reply to one or the other or all the aforesaid three questions, in the decisions impugned therein. While recording its findings, the Full Bench of the Tribunal has also struck down two provisions of the Central Government Memorandum of 30th January, 1982 on the subject. The Supreme Court first referred to the said memorandum.

The Government of India (Department of Personnel and Trainings) issued an Office Memorandum No. 22011/I/79, Estt.(A) dated January 30, 1982 on the subject of promotion of officers in whose cases "the sealed cover procedure" had been followed but against whom disciplinary / Court proceedings were pending for a long time. The Memorandum stated that according to the existing instructions, cases of officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings or, (c) against whom prosecution has been launched in a Court of law or sanction for prosecution has been issued, are considered for promotion by the Departmental Promotion Committee (DPC) at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary / Court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental / Court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary / Court proceedings. However, no arrears of salary are paid in respect of the period prior to the date of actual promotion. The Memorandum goes on to state further that it was noticed that sometimes the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. The Government, therefore, in consultation with the Union Public Service Commission examined how the hardship caused to the Government servant in such circumstances can be mitigated and has laid down the following procedure in such cases:-

"3.(i) (a) It may be ascertained whether there is any departmental disciplinary proceedings or any case in a Court of law pending against the individual under consideration, or (b) there is a *prima facie* case on the basis of which a decision has been taken to proceed against the official either departmentally or in a Court of law.

(ii) The facts may be brought to the notice of the Departmental Promotion Committee who may then assess the suitability of the official(s) for promotion to the next grade/post and for the purpose of this assessment, the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found "unfit for promotion" on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee subsequent D.P.C.s, if any, held after the first D.P.C. during the period the disciplinary / Court proceedings may be pending, will also consider the officer's case and record their findings which will again be kept in sealed cover in the above manner.

In the normal course, on the conclusion of the disciplinary / Court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary / Court proceedings against him may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the junior-most officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the Court proceedings against him, the findings in the sealed cover / covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary / Court proceedings. The existing instructions provide that in a case where departmental disciplinary proceedings have been held under the relevant disciplinary rules,

"warning" should not be issued as a result of such proceedings. If it is found as a result of the proceedings that some blame attaches to the officer, then the penalty of censure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or not an officer has been completely exonerated from disciplinary proceedings held against him."

Clause (iv) of para 3 of the Memorandum then lays down the procedure for ad hoc appointment of the concerned officer when the disciplinary / Court proceedings are not concluded even after the expiry of two years from the date of the DPC which first considered him for promotion and whose findings are kept in the sealed cover, provided however that the officer is not under suspension. It is not necessary to reproduce that clause in extenso here. Suffice it to say that the Memorandum urges that in making the ad hoc promotion in such cases, his case should be placed before the D.P.C. which is held after the expiry of the said period of two years, and the ad hoc promotion has to be made on the basis of the totality of the record of service etc.

Para 4 of the Memorandum states that if the officer concerned is acquitted in the Court proceedings on the merits of the case or exonerated in departmental disciplinary proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad hoc promotion with all attendant benefits. In such cases, the sealed cover may be opened and the official may be assigned his place in the seniority list as he would have got, in accordance with the recommendation of the D.P.C.

Paras 5, 6 and 7 of the Memorandum then read as follows:-

"5. Where the acquittal in a Court case is not on merits but purely on technical grounds, and the Government either proposes to take the matter to a higher Court or to proceed against the officer departmentally, the appointing authority may review whether the ad hoc promotion should be continued.

"6. Where the acquittal by Court is on technical grounds, if the Government does not propose to go in appeal to a higher Court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the Court on merits.

"7. If the officer concerned is not acquitted / exonerated in the Court proceedings or the departmental proceedings, the ad hoc promotion already granted should be brought to an end by the issue of the "further order" contemplated in the order of ad hoc promotion and the officer concerned reverted to the post from which he was promoted on ad hoc basis. After such reversion,

the officer may be considered for future promotion in the usual course by the next D.P.C."

To bring the record up to date, it may be pointed out that in view of the decision of the Supreme Court in Union of India vs. Tajinder Singh, (1986) 2 Scale 860, decided on September 26, 1986, the Government of India in the Department of Personnel and Training issued another Office Memorandum No. 22011/2/86 Estta.(A) dated January 12, 1988 in supersession of all the earlier instructions on the subject including the Office Memorandum dated 30th January, 1982 referred to above. There is no difference in the instructions contained in this and the earlier aforesaid Memorandum of January 30, 1982, except that this Memorandum provides in paragraph 4 for a six monthly review of the pending proceedings against the Government servant where the proceedings are still at the stage of investigation and if as a result of the review the appointing authority comes to the conclusion on the basis of material and evidence collected in the investigation till that time, that there is no *prima facie* case in initiating disciplinary action or sanctioning prosecution, the sealed cover is directed to be opened and the employee is directed to be given his due promotion with reference to the position assigned to him by the D.P.C. A further guideline contained in this Memorandum is that the same sealed cover procedure is to be applied where a Government servant is recommended for promotion by the D.P.C., but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken. These differences in the two Memoranda have no bearing on the questions to be answered.

On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary / criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. The Supreme Court is in agreement with the Tribunal on this point. The contention advanced by the appellant- authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo / charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment, etc. did not impress the

Supreme Court. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo / charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

“(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.”

The Supreme Court observed that there is no doubt that there is a seeming contradiction between the two conclusions but read harmoniously, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions. The Supreme Court repelled the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.

The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January, 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says “but no arrears are allowed in respect of the period prior to the date of the actual promotion” is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits is discriminatory when compared with other employees who are not at the verge of promotion when the disciplinary proceedings were

initiated against them. The Tribunal therefore directed that on exoneration, full salary should be paid to such employee which he would have received on promotion if he had not been subjected to disciplinary proceedings.

The Supreme Court held that the Tribunal's reference to paragraph 2 of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the last sentence of the first sub-paragraph after clause (iii) of paragraph 3 of the Memorandum which is reproduced above. The sentence reads as follows: "But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

This sentence is preceded by the observation that when the employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next sub-paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings.

There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which read as follows:

"F.R. 17(1). Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties: Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the

duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

The Supreme Court is not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

The Supreme Court is therefore broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary / criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary / criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. The Supreme Court is therefore unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While not approving the last sentence in the first sub-paragraph after clause (iii) of paragraph

3 of the said Memorandum, viz., “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion”, the Supreme Court directed that in place of the said sentence the following sentence be read in the Memorandum: “However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.” To this extent the Supreme Court set aside the conclusion of the Tribunal on the said point.

The Tribunal has also struck down the following portion in the second sub-paragraph after clause (iii) of paragraph 3 which reads as follows: “If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon” and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions. It may be pointed out that the said sub-paragraph directs that “the officer’s case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary / court proceedings”. The Tribunal has given the direction in question on the ground that such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. According to the Tribunal, “it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Art. 20(2) of the Constitution”. The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a review DPC as on the date when the sealed cover procedure was followed and the review DPC should consider the findings in the sealed cover as also the penalty imposed. The Supreme Court observed that it is not clear as to why the Tribunal wants the review DPC to consider the penalty imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover when a penalty is imposed amounts to double jeopardy. It appears that the Tribunal in no case wants the promotion of the officer to be deferred once the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.

The Supreme Court held that the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. The Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in *praesenti*. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, the Supreme Court is of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. The Supreme Court therefore set aside the said findings of the Tribunal.

In the circumstances, the conclusions arrived at by the Full Bench of the Tribunal stand modified as above. The Supreme Court observed that the modifications made above will equally apply to the Memorandum of January 12, 1988.

(345)

Fresh inquiry / De novo inquiry

Rejection of inquiry report in toto by the disciplinary authority and appointment of another Inquiry Officer to conduct a fresh inquiry, bad in law. The Disciplinary Authority may ask the Inquiry Officer to record further evidence.

V. Ramabharan vs. Union of India, 1992 (1) SLR CAT MAD 57

The appellant, Statistical Assistant, Census Operations sought the quashing of the proceedings questioning the appointment of the second Inquiry Officer after the conclusion of the inquiry by the original Inquiry Officer and submission of the inquiry report.

The Tribunal observed that although the first Inquiry Officer duly completed the inquiry and submitted his report, the disciplinary authority chose to reject it in toto and appointed another Inquiry Officer to conduct a fresh inquiry into the same charges. In K.R. Deb vs. Collector of Central Excise, Shillong, 1971 (1) SLR 29 (SC), the Supreme Court observed that there is no provision in rule 15 of the CCS(CCA) Rules for completely setting aside previous inquiry on the ground that the report of the Inquiry Officer does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. The Rule provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. The Tribunal observed that the Disciplinary Authority did not follow either of the above courses suggested by the Supreme Court but instead appointed another Inquiry Officer to conduct a fresh inquiry. The action of the Disciplinary Authority was clearly bad in law.

(346)

Inquiry Officer — appointment of

Appointment of Inquiry Officer before the receipt and consideration of statement of defence is not proper, but proceedings not liable to be quashed if no prejudice is caused.

***Karnataka Electricity Board vs. T.S. Venkatarangiah,
1992 (1) SLR KAR 769***

The respondent, a Store keeper of the Karnataka Electricity Board, was dealt with in disciplinary proceedings and reduced in rank and his promotion was withheld. The disciplinary authority, conferred upon the Engineer, Electrical, Master Plan Division, Bangalore the authority to be the Specially Empowered Authority to frame charges against the employee and to conduct the disciplinary enquiry. Thereafter, on 6.6.1980, the Specially Empowered Authority issued charge-sheet.

The High Court observed that after issuing the charge sheet, the disciplinary authority is required to await for the period specified, the written statement of defence of the delinquent to the charge sheet already served upon the delinquent. If a written statement is received within that period the disciplinary authority may enquire into such of the charges as are not admitted therein and thereafter may decide to hold the inquiry itself or through another agency. The High Court held that the disciplinary authority, proceeding to nominate an Inquiry Officer even prior to the framing of charges, violated the provision of rule 11 of the Karnataka Civil Services (CCA) Rules, as adopted by the Board. The High Court observed that this breach was sufficient to warrant quashing of proceedings, had prejudice been caused to the delinquent. A Division Bench of the High Court set aside the order of a single judge and upheld the order of penalty holding that considering the circumstances of the case, the breach of the rule is not more than a technicality and no prejudice has been caused.

(347)

Antecedents — verification of

Not entitled to appointment where on police verification, antecedents were not found upto the mark. By mere selection, no right vested to claim appointment.

Narindra Singh vs. State of Punjab, 1992 (5) SLR P&H 255

The petitioner was selected for the post of Assistant Sub-Inspector of Police in 1989 but no appointment letter was given, as on police verification his antecedents were not found upto the mark. He was not possessing good moral character, was 'dada' type student leader in his college days, reported to be of quarrelsome nature and two criminal cases were registered against him.

The High Court observed that under rule 12.4 of the Punjab Police Rules, 1934, it was necessary for the authorities to verify character and antecedents of the candidate before his appointment to the Police Force. The report of verification cannot be brushed aside. In the case registered against him in 1979 under secs. 307, 34 IPC, he was acquitted by way of abundant caution giving the benefit of doubt on account of discrepancies in the evidence produced. In another case registered in 1988 under secs. 452/353/332, 186/34 IPC, he was charged under sec. 323 IPC. The overall assessment made by the department on the basis of antecedents was that the petitioner should not be appointed. By mere selection, no right has vested in the petitioner to claim appointment. The High Court upheld the non-selection of the petitioner.

(348)

(A) Compulsory retirement (non-penal)

(B) Adverse remarks

- (i) *Order of compulsory retirement (non-penal) is passed on subjective satisfaction of competent authority. Should take entire record of service, more importantly of latter years, into consideration. Principles of natural justice have no place. High Court or Supreme Court can interfere only where order is mala fide, arbitrary or there is no evidence, but not because un-communicated adverse remarks are taken into consideration.*
- (ii) *Principles, for guidance in passing order of compulsory retirement (non-penal), laid down.*

Baikuntha Nath Das vs Chief District Medical Officer, 1992 (2) SLR SC 2

The appellants were compulsorily retired by the Government of Orissa (other than as a penalty) in exercise of the power conferred upon it by the first proviso to Rule 71 (a) of the Orissa Service Code.

The Supreme Court, while dismissing the appeals, laid down the following principles: (i) An order of compulsory retirement is not a punishment. It implies no stigma or any suggestion of misbehaviour. (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government. (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that

judicial scrutiny is excluded altogether. While the High Court or the Supreme Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order. (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter, ofcourse attaching more importance to record of and performance during the latter years. The record to be so considered would naturally include the entries in the confidential records / character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority. (v) While an order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it, un-communicated adverse remarks were also taken into consideration, that circumstance by itself cannot be a basis for interference. The Supreme Court held that interference is permissible only on the grounds mentioned in item (iii) above.

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Principles of natural justice — where not attracted

Action of public service Commission in not subjecting answer books to evaluation where roll numbers are written not only on the front page in the space provided but at other places in disregard of instructions, without affording opportunity of hearing, not arbitrary.

Karnataka Public Service Commission vs. B.M. Vijaya Shankar and others, 1992(5) SLR SC 110: AIR 1992 SC 952

Some candidates for the State Civil Service for categories 'A' and 'B' posts wrote their roll numbers not only on the front page of the answer books in the space provided for it but even at other places in disregard of instructions issued by the Public Service Commission, and these answer books were therefore not subjected to evaluation. The Karnataka Administrative Tribunal directed that their answer books be evaluated, on the ground that the Commission failed to afford any opportunity to the candidates to explain their bona fide and innocence.

The Supreme Court observed that even though the procedure of affording hearing is as important as decision on merits, yet urgency of the matter or public interest at times requires flexibility in application of the rules as the circumstances

of the case and the nature of the matter required to be dealt with may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. The Supreme Court held that it is a case where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment. The present case cannot be equated with those where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehaviour. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bonafide and honesty mistake did not arise. The Supreme Court thus upheld the action of the Commission.

(350)

(A) Departmental action and acquittal

Disciplinary proceedings could continue after acquittal in court prosecution.

(B) Suspension — deemed suspension

Deemed suspension on setting aside of order of dismissal etc. where Government servant was not under suspension at the time of dismissal, distinguished.

Nelson Motis vs. Union of India, 1992(5) SLR SC 394: AIR 1992 SC 1981

A disciplinary proceeding was initiated against the appellant on the basis of several charges and an inquiry was conducted. The Inquiry Officer submitted a report holding that the charges had been proved. The report was accepted by the disciplinary authority who passed an order of removal of the appellant from service on 4-2-1984. The order was confirmed in departmental appeal. The appellant, thereafter, challenged the order of punishment by an application before the Central Administrative Tribunal. It was contended that since a copy of the inquiry report had not been served on the appellant, the proceeding got vitiated in law. The plea was accepted and the application allowed setting aside the penalty and directing reinstatement of the appellant with the observations that it would be open to the authorities concerned to take up the proceedings afresh, unless they chose to drop the same.

The matter was considered and the authorities issued an order that the disciplinary proceeding shall be continued and that in view of sub-rule (4) of Rule

10 of C.C.S.(CCA) Rules, 1965 the appellant will be deemed to have been under suspension with effect from 4-2-1984, the date on which he was removed from service. This order was challenged by the appellant and the continuance of the inquiry was impugned on the ground of the appellant's acquittal in the criminal case. On the question of deemed suspension it is contended that sub-rule (4) of Rule 10 was ultra vires of the Constitution. The High Court rejected the contentions and the matter came up before the Supreme Court.

The Supreme Court held that there is no substance in the contention whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case and it does not merit any detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the Departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.

On the other question relating to the deemed suspension, the Supreme Court observed that a comparison of the language of rule 10(4) with that of sub-rule(3) of Rule 10 reinforces the conclusion that sub-rule(4) has to be understood in the natural sense. The departure made by the author in the language of sub-rule (4) from that of sub-rule (3) is conscious. As a result of sub-rule (4), a Government servant, though not earlier under suspension shall also be deemed to have been placed under suspension from the date of the original order of dismissal. Sub-rule(3) is attracted only to those cases of dismissal etc. where the penalty is set aside under the CCS (CCA) Rules and the case is remitted for further enquiry or action in accordance with the direction. On all such occasions (of appeal, revision and review), a reconsideration of the merit of the charge is involved. Sub-rule (3) of Rule 10 is applicable to these groups of cases, where the interference with the penalty is connected with the merits of the charge. On the setting aside of the order of punishment in such a case, the finding against the Government servant disappears and he is restored to the earlier position. Consequently only if he was under suspension earlier, he will be deemed to have continued so with effect from the date of the order of dismissal. On the other hand, the second category of cases attracting sub-rule (4) is entirely on a different footing, those where the penalty is set aside on technical grounds not touching the merits of the case. Since at one stage the disciplinary authority records a finding on the charge against the Government servant, which is not upset on merits, the situation is entirely different from that in the cases covered by sub-rule(3). The classification is thus founded on an intelligible differentia, having a rational relation to the object of the Rules and Rule 10(4) has to be held as constitutionally valid.

(351)

Vigilance Commission — consultation with

Non-supply of Central Vigilance Commission recommendation relied upon by Disciplinary Authority, on ground that it is confidential, violative of principles of natural justice.

**State Bank of India vs. D.C. Aggarwal, 1992 (5) SLR SC 598:
AIR 1993 SC 1197**

The respondent, a Senior Officer of the State Bank of India in top executive grade was dealt with in disciplinary proceedings on 13 charges. The Inquiry Officer held 2 of the charges as proved, in part observing that they were minor and procedural in nature. The Central Vigilance Commission thereupon recorded its findings that 8 of the 13 charges are proved and advised "imposition of a major penalty not less than removal from service" in its recommendation running into 25 pages. The Disciplinary Authority held all the 8 charges held proved by the C.V.C. as proved and imposed a lesser penalty differing with the C.V.C.

The High Court quashed the order as being violative of the principle of audi alteram partem for non-supply of copy of the C.V.C. report. In an appeal against the High Court order, the Supreme Court examined this question and held that the order of the Disciplinary authority is vitiated for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material, which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. While rejecting the contention of the State Bank of India that CVC recommendations are confidential, the Supreme Court observed that recommendations of Vigilance prior to initiation of proceedings are different from the CVC recommendation which was the basis of the order passed by the Disciplinary Authority.

(352)

Termination — of probationer

Service of probationer can be terminated taking into consideration the overall performance and any complaint against the employee can be looked into for assessment of his performance.

**Governing Council of Kidwai Memorial Institute of Oncology, Bangalore
vs. Dr. Pandurang Godwalkar, 1992 (5) SLR SC 661**

The respondent was appointed as a Lecturer in the Kidwai Memorial Institute of Oncology, Bangalore on 3-7-81 and he was to be on probation for one year which could be extended. His services were terminated by an order simpliciter with effect from 30-1-82.

On a writ application filed by him, the High Court found on a perusal of the confidential records that complaints had been made in respect of performance of the duties by the respondent, that he was unsympathetic towards patients, that on one occasion he had taken away a girl, who was an attendant to a patient in the hospital, on his scooter and brought her back late in the night, and held that the Institute should have initiated a departmental proceedings in respect of the alleged charges.

The Supreme Court held that when an appointment is made on probation, it presupposes that the conduct, performance, ability and the capacity of the employee have to be watched and examined during the period of probation and he is to be confirmed only when his service is found to be satisfactory and he is considered suitable for the post. The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so leveled and the action taken, but not if the decision is taken after taking into consideration the overall performance of some action or inaction. The appointing authority is entitled to look into any complaint for purpose of making assessment of the performance of such employee. The Supreme Court upheld the order of termination holding that the decision was taken by the Governing Council on the total and overall assessment of the performance of the respondent.

(353)

Termination — of probationer

No need to give hearing before termination of probation.

Unit Trust of India vs. T. Bijaya Kumar, 1992 (5) SLR SC 855

The service of the respondent, Manager (Finance), Unit Trust of India, probationer, was terminated by an order simpliciter. A single Judge of the High Court of Calcutta quashed the order holding that it was stigmatic in character and a Division Bench of the High Court confirmed in appeal. The Supreme Court observed that there is nothing on record to support the contention that the order

suffers from the vice of bias, prejudice or mala fides. There is nothing in the order to conclude that it is penal or that it stigmatises the respondent. The reason which weighed with the Management was his unsuitability for the job based on his unsatisfactory performance during the probation period. A probationer has no right to the post held by him. The very purpose of placing a person on probation is to try him during the probation period to assess his suitability for the job. An order of discharge is not an order of punishment and there was no question of giving a hearing before termination of service.

(354)

Order — provision of law, non-mention of

Non-mention of provision of law does not invalidate the order.

Union of India vs. Khazan Singh, 1992(6) SLR SC 750

It is settled proposition of law that when the exercise of power can be justified under any provision of law, then non-mention of the said provision in the order cannot invalidate the same. The Supreme Court held that the appellate authority validly exercised its powers under Rule 23(1)(f) of the Delhi Police (Punishment & Appeal) Rules, 1983, though the order did not mention as to under which sub-rule 25(1), the appeal was being disposed of.

(355)

(A) P.C. Act, 1988 — Sec. 20

(B) Trap — presumption

Once the trap amount is found in the possession of the accused, the burden shifts on him to explain the circumstances to prove his innocence.

B. Hanumantha Rao vs. State of Andhra Pradesh, 1992 Cri.L.J. SC 1552

This is a trap case in which the petitioner was alleged to have accepted an amount of Rs. 50,000 as illegal gratification on 5-7-1986 while working as Sub-Inspector of Excise at his office-cum-residence at Godavarikhani.

The Supreme Court observed that it is undisputed that an amount of Rs. 50,000 was recovered from the possession of the petitioner, lying on a tea-poy in a room of office-cum-residence. In view of the positive result of phenolphthalein test on the hands of the petitioner-accused, it leaves no manner of doubt that the amount was touched and handled by the petitioner. Under the

Excise Rules, the petitioner had no right or authority to accept any arrears of rentals of an excise contract. Even if the bank was closed as suggested by the petitioner, there was no question of accepting such amount by the petitioner as the rentals could have been deposited by the complainant in the bank when it opened. Once the amount of Rs.50,000 is found in the possession of the petitioner, the burden shifts on him to explain the circumstances to prove his innocence as contemplated under sec. 4 of the P.C. Act, 1947 (corresponding to sec.20 of P.C.Act, 1988). The conviction is based on concurrent findings of fact and appreciation of evidence. Both the trial court as well as the High Court have considered the facts and circumstances of the case in detail and have placed reliance on the prosecution witnesses and the Supreme Court found no ground or justification to take a different view.

(356)

(A) Cr.P.C. — Sec. 154

Obligation of officer-in-charge of a police station to register and investigate a cognizable offence under sec. 154 Cr.P.C. and power of High Court to interfere with the proceedings under Art. 226, clarified.

(B) P.C. Act, 1988 — Sec. 13(1) (e)

(C) P.C. Act, 1988 — Sec. 17

(D) Disproportionate assets — authorisation to investigate

Superintendent of Police to satisfy himself that there are good and sufficient reasons to entrust investigation of offence under sec. 5(1) (e) of P.C.Act, 1947 (corresponding to sec. 13(1) (e) of P.C. Act, 1988) to a non-designated police officer under second proviso to sec. 5A (1) (corresponding to second proviso to sec. 17 of P.C. Act, 1988).

(E) Court jurisdiction

Categories of cases in which High Court can interfere under Art. 226 of the Constitution or sec. 482 Cr.P.C., clarified.

State of Haryana vs. Ch. Bhajan Lal, AIR 1992 SC 604

This appeal by grant of special leave is directed by the appellants, the State of Haryana and two others assailing the judgement dated 8-9-1989 of a

Division Bench of the High Court of Punjab and Haryana quashing the entire criminal proceedings inclusive of the registration of the Information Report. Ch. Bhajan Lal was a Minister in 1977 when Ch. Devi Lal was the Chief Minister of Haryana State and he became the Chief Minister of the State of Haryana in 1982-87. During the initiation of this criminal proceeding in question, he was the Union Minister for Environment and Forests, Government of India.

The Supreme Court held that the condition which is sine qua non for recording a First Information Report is that there must be information and that information must disclose a cognizable offence. It is therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer-in-Charge of a police station satisfying the requirements of sec. 154(1) Cr.P.C., the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

The commencement of investigation in a cognizable offence by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by sec. 157(1) Cr.P.C. and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to sec. 157(1). Further, as clause(b) of the proviso permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the materials which were placed before him at that stage, namely, the first information together with the documents, if any, enclosed. In other words, the police officer has to satisfy himself only on the allegations mentioned in the first information before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation.

The investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how

that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of the Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.

Investigation cannot be quashed on the basis of denial statement of party against whom commission of offence is alleged.

In the following categories of cases, the High Court may in exercise of powers under Art. 226 of Constitution or under sec. 482 Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(ii) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under sec. 156(1) of the Code except under an order of a Magistrate within the purview of sec. 155(2) of the Code.

(iii) Where the uncontested allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

The Superintendent of Police or any police officer of above rank while granting permission to a non-designated police officer in exercise of his power under the second proviso to sec. 5A(1) of P.C. Act, 1947 (corresponding to second proviso to sec. 17 of P.C. Act, 1988), should satisfy himself that there are good and sufficient reasons to entrust the investigation with such police officer of a lower rank and record his reasons for doing so; because the very object of the legislature in enacting sec. 5A is to see that the investigation of offences punishable under secs. 161, 165 or 165A IPC as well as those under sec. 5 of P.C. Act, 1947 (corresponding to secs. 7, 11, 12, 13 of P.C. Act, 1988) should be done ordinarily by the officers designated in clauses (a) to (d) of sec. 5A(1). The exception should be for adequate reasons which should be disclosed on the face of the order. In this connection, it is worthy to note that the strict compliance with sec. 5A (1) becomes absolutely necessary, because sec. 5A (1) expressly prohibits police officers, below certain ranks, from investigating into offences under secs. 161, 165 and 165A IPC and under sec. 5 of P.C. Act without orders of Magistrates specified therein or without authorisation of the State Government in that behalf and from effecting arrests for those offences without a warrant.

Where the order directing an Inspector was one word order "investigate" in respect of offences under sec. 5(1)(e) of the Prevention of Corruption Act and secs. 161 and 165 of Penal Code, the Inspector was not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of sec. 5A (1) of the P.C. Act.

Where investigation was yet not proceeded with and the complaint contains serious allegations, even if laid on account of personal animosity, is not liable to be discarded when allegations are yet to be tested and weighed after evidence is collected.

(357)**Departmental action — delay in**

No outer time limit can be prescribed for conclusion of departmental proceedings; and quashing of the proceedings not the only consequence of delay.

S.S. Budan vs. Chief Secretary, 1993 (1) SLR CAT HYD 671

The applicant, a member of the Indian Administrative service, contended that an inquiry was initiated as early as 1983 and the same was not completed by 10.06.91 and in view of the inordinate delay the disciplinary proceedings are liable to be quashed.

The Tribunal observed that it is not possible in the very nature of things and present day circumstances to draw a time limit beyond which a disciplinary proceedings will not be allowed to go. In many cases, the Government servant may himself be responsible for the delay in conclusion of the disciplinary proceedings and the Government servant cannot be allowed to take advantage of his own wrong. In some cases, delays may occur for which, neither the Department nor the Government servant can be blamed but the system itself. Such delays too, cannot be treated as unjustifiable, broadly speaking. Each case must be left to be decided on its own facts and circumstances. It is neither advisable nor feasible to draw or prescribe outer time limit for conclusion of all departmental proceedings. It cannot also be said that the only consequence flowing from the delay in the conclusion of disciplinary proceedings is the quashing of the said disciplinary proceedings.

(358)**(A) Misconduct — non-quoting of Rule**

Where no specific rule covers the acts of misconduct, a mere reference to the “General” rule (Rule 3 of the Conduct Rules), which would cover most acts of misconduct, cannot be considered an indispensable condition.

(B) Charge — to begin with ‘that’

(i) *Where Charged Officer feels the charge is lacking in sufficient details, can raise the issue during inquiry and insist on furnishing of details and records.*

- (ii) *The word “that” occurring at the beginning of articles would mean that they are only allegations and not conclusions.*
- (iii) *Cannot be the case of the charged official that there should be no imputation or allegation at all.*

K. Ramachandran vs. Union of India, 1993 (4) SLR CAT MAD 324

Applicant, Head Light keeper, Muttum Pt. Light-house, prayed to quash the charge memo dated 19.06.92 initiating disciplinary proceedings against him. He contended that the charges do not reveal any violation of provisions of CCS (Conduct) Rules. The Tribunal observed that Rules 4 to 22 can by no means be considered to be exhaustive of all the acts of misconduct or mis-behaviour and that this much is clear from the numerous decisions of the Government of India in which specific acts of misconduct not covered under the above rules have been spelt out and wherein it has been expressly provided that violation of the instructions would render a Government servant liable for disciplinary action like practice of untouchability, courtesy and adopting dilatory tactics in dealing with the public, participation in proselytisation, failure to vacate accommodation, subletting of Government accommodation. Every act of misconduct or misbehaviour rendering a Government servant liable to disciplinary action need not be an enumerated misconduct falling under Rules 4 to 22 of the CCS (Conduct) Rules; it may well be covered by one of the numerous Government of India orders. Referring to the judgment of the Supreme Court in A.L. Kalra vs. Project & Equipment Corpn. of India Ltd., 1984 (2) SLR 446 SC, the Tribunal observed that it makes it clear that if where the rules are not exhaustive of all the acts of misconduct, then the question of referring to a rule of misconduct would not arise and in such a case “where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy”. The Tribunal observed that in the present case, the articles of charge read with the statement of imputations of misconduct do have sufficient precision and accuracy to meet the above dictum. Where no specific rule falling under Rules 4 to 22 covers the acts of misconduct in a case such as the present one, a mere reference to Rule 3, which would cover most acts of misconduct in a general way, cannot be considered a sine qua non; and the absence of such reference will not constitute an infirmity in the charge memo.

On the contention that the articles of charge and statement of imputations of misconduct are very vague, Tribunal observed that the statement of imputations

of misconduct mentions the dates of absence and that if, however, the applicant still feels that any charge is lacking in sufficient details, he can raise the issue before the Inquiry Officer and insist on further details and request for production of relevant records.

On the contention that the articles of charge amounted to a conclusion being reached by disciplinary authority and it amounted to prejudging the issue, Tribunal referred to the fact, as pointed out by the respondent, that the word "that" occurring at the beginning of each of the articles would mean that the applicant was being charged that he was guilty of misconduct and they were not conclusions but only charges or allegations, and observed that the charges should be precise and specific and the charges and the memo in support thereof amount only to imputations and not to conclusion and that it cannot be the case of the applicant that there should be no imputation or allegation at all in the charge memo, and if there are no imputations or allegations then there would be nothing which the applicant would be called upon to defend himself against.

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Fresh inquiry / De novo inquiry

Disciplinary Authority has no plenary power to order a fresh enquiry on the ground that the required evidence was not properly presented in the inquiry to facilitate arriving at a decision.

Bishnu Prasad Bohindar Gopinath Mohanda vs. Chief General Manager, State Bank of India, 1993 (4) SLR ORI 682

Two officers of State Bank of India were dealt with in separate disciplinary proceedings. Two witnesses were examined for the management and 3 for the officer in the former case and in the latter 2 witnesses were examined ex parte for the management. On receipt of the inquiry reports, disciplinary authority passed an order communicated to the petitioners that on perusal of the report of the Inquiry Officer he was of the view that the required evidence had not been properly presented in the enquiry to facilitate arriving at a decision in the matter and hence he was directing a fresh enquiry in terms of Rule 50(3) (i) of the SBI (Supervising staff) Service Rules. Disciplinary authority accordingly appointed a new Inquiry Officer and new Presenting Officer. The petitioners contended that the disciplinary authority had no authority to direct a second inquiry to be held. While the opposite party relied on Rule 50(3) (i) of above-said Rules as per which "the disciplinary authority .. for reasons to be recorded by it in writing, remit the case to the Inquiring authority, whether the Inquiring authority is the same or different for fresh or further inquiry and report." The High Court observed that there cannot be

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conceived of a plenary power in the disciplinary authority to set aside an inquiry merely for the wish of it and direct a de novo one. That way there can be really no end to the process of inquiry and theoretically it will be possible for the disciplinary authority to direct numerous inquiries. Holding of a second inquiry is discouraged and the power is denied on consideration of the fact that if evidence has been led in the inquiry and the disciplinary authority feels that the inquiring authority has not properly appreciated the evidence and has not reached the correct conclusion, it is always open to it to depart from the same and reach its own conclusion. In the instant cases, the order shows the disciplinary authority merely to have held that the required evidence has not been properly presented in the inquiry. This by itself can hardly be a reason for directing a fresh inquiry. There is absolutely no fact indicated as to how the conclusion was reached or in what way available evidence was not presented. The order is extremely vague on the face of it and in terms does not satisfy the requirements of Rule 50 (3) (i) as the statement made in the order can hardly be said as the reasons recorded, to justify direction for holding a fresh inquiry.

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Departmental action — delay in

Proceedings quashed where it took ten years to serve show cause notice and matter remained pending for ten years thereafter without final orders.

Jagir Singh vs. State of Punjab, 1993 (1) SLR P&H 1

The High Court observed that it is no doubt correct and reasonable also that departmental proceedings initiated against the employees should be finalised expeditiously. Expeditious disposal helps the employer as well as the employees and lessens the financial burden in most of the cases, where the employees are either placed under suspension or their promotions etc. are deferred during the pendency of the inquiry. But, for how many months a particular departmental inquiry can be allowed to continue and after the expiry of how many months the approval of the Head of the department / the Secretary to Government / the Chief Secretary / the Minister Incharge, or the Cabinet (Council of Ministers) has to be obtained or not, is purely for the employer to consider. In that process the delinquent employee cannot be associated nor does he have any say in the matter. If the State Government have issued certain guidelines for the guidance of the various departments or the disciplinary authorities to impress upon them the necessity of finalizing the departmental proceedings expeditiously or even within a fixed period, it does not mean that after the expiry of that period, a right in law accrues to the employee to approach the Court of law for the enforcement

of those guidelines. The employee may, in a fit case, approach the Court for the quashing of the proceedings, if the pendency of the inquiry has otherwise been protracted and delayed to an unreasonable extent by the employer himself.

A full Bench of the High Court expressed these views while overruling an earlier decision of a Division Bench. On the facts of the case, the Full Bench observed that a departmental inquiry was initiated against the petitioner, a Kanungo in the Punjab Revenue Department, more than twenty years back, and it took full ten years for the State Government to serve the show-cause notice and even though it is again 10 years since the petitioner has submitted his reply the matter has not been finalised so far, and quashed the proceedings.

(361)

Adverse remarks

Not necessary to mention instances of corruption while making a remark of “corrupt officer”.

Metadeen Gupta vs. State of Rajasthan, 1993 (4) SLR RAJ 258

The appellant, a Judicial officer, contended that the remarks in his ACR for the year 1984, “Corrupt Officer”, made by the Chief Justice are vague and without any factual foundation as no instances of corruption have been mentioned. The division Bench of the High Court while confirming the decision of a single Judge, held that it was not necessary to mention any specific instances of corruption, while the remark of “corrupt officer” was given by the Chief Justice.

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Defence Assistant / Legal Practitioner

Right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders.

Crescent Dyes & Chemicals Ltd. vs. Ram Naresh Tripathi, 1993(1) SLR SC 408

The right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders. A delinquent has no right to be represented through a counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.

The object and purpose of such provisions regulating the right to representation is to ensure that the domestic enquiry is completed with dispatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively.

(363)

(A) Misconduct — in judicial functions

(B) Misconduct — in quasi-judicial functions

- (i) *Disciplinary action can be taken against an Income Tax Officer for misconduct in the discharge of quasi-judicial functions in completing assessments. So also for misconduct in the discharge of indicial functions.*
- (ii) *Types of cases where disciplinary action can be taken, specified.*

(C) Bribe — quantum of

Though the bribe may be small, yet the fault is great.

Union of India vs. K.K. Dhawan, 1993(1) SLR SC 700

Disciplinary proceedings were instituted against an Assistant Commissioner of Income Tax, Bombay on a charge that while functioning as Income Tax Officer, he completed nine assessments in an irregular manner, in undue haste and apparently with a view to conferring undue favour upon the assessees concerned and thereby failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant.

On the contention that the action taken by the officer was quasi-judicial and should not form the basis of disciplinary action, the Supreme Court observed that the officer who exercises judicial or quasi-judicial powers and negligently or recklessly or in order to confer undue favour on a person is not acting as a judge. What is in question is not the correctness or legality of the decision of the officer but his conduct in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But the Government is not precluded from taking the

disciplinary action for violation of the Conduct Rules. The Supreme Court concluded that disciplinary action can be taken in the following cases : (i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty; (ii) if there is *prima facie* material to show recklessness or misconduct in the discharge of his duty; (iii) if he has acted in a manner which is unbecoming of a Government servant; (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; (v) if he had acted in order to unduly favour a party; (vi) if he had been actuated by corrupt motive however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great". The Supreme Court added that the list is not exhaustive and cautioned that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted.

(364)

Defence Assistant / Legal Practitioner

Dy. Supdt. of Police, who was Prosecuting Inspector for several years earlier but not at the material time, held not a legal practitioner and his being Presenting Officer does not entitle Charged Officer to engage a Legal Practitioner as Defence Assistant.

State of Rajasthan, Jaipur vs. S.K. Dutt Sharma, 1993(2) SLR SC 281

The respondent, a member of the Rajasthan Administrative Service, was dealt with on a charge relating to purchase of French leathers (condoms), after being placed under suspension and imposed a penalty of removal from service. The respondent contended that he was not permitted to engage a legal practitioner to represent him during the course of the inquiry, though the departmental nominee was a person in the rank of Deputy Superintendent of Police in the Anti-Corruption Department and had remained Prosecuting Inspector for a number of years earlier. The Single Judge of the High Court of Rajasthan, before whom the contention was originally raised, observed that the departmental nominee was a Dy. Supdt. Of Police, Anti Corruption Bureau and was not Prosecuting Inspector at the time when the inquiry was held and held that the respondent could not ask for the assistance of a legal practitioner because the departmental representative was neither a legal practitioner nor a Police Prosecutor or Prosecuting Inspector. The respondent was told that he should take the assistance of a Government servant but he pleaded his own case. The Single

Judge observed that from the application that was submitted by the respondent, he was found to be a person well versed in law as well as legal decisions, that the witnesses were cross-examined by the respondent at length and that the main question for consideration was as to whether M/s. M.R. & Company was a genuine firm or a bogus firm and the rates at which the French leathers were purchased were higher than the market rate or not, and that the respondent had suffered no prejudice on account of refusal to permit him to engage a legal practitioner to defend him. The Supreme Court agreed with the finding and conclusion arrived at by the Single Judge, reiterating that the departmental nominee was neither a legal practitioner nor a Prosecuting Inspector at the relevant time, and that the charges were not of such nature that he could not defend them himself or through the departmental representative whose assistance he declined.

(365)

(A) Sealed cover procedure

- (i) *To consider the case of the employee for promotion and to determine if he is otherwise suitable for promotion and keep the result in abeyance in sealed cover and in case he is exonerated in disciplinary proceedings, to promote him with all consequential benefits is the only fair and just course.*
- (ii) *Guide-lines of Central Government on application of sealed cover procedure to cases where competent authority has taken decision to initiate disciplinary proceedings and where serious allegations of grave misconduct are under investigation, dealt with.*

(B) Charge sheet — issue of

Charge sheet is “issued” when the charge sheet is framed and dispatched to the employee irrespective of its actual service on the employee.

Delhi Development Authority vs. H.C. Khurana, 1993 (2) SLR SC 509

The respondent, H.C. Khurana, an Executive Engineer in the Delhi Development Authority, was proceeded against in disciplinary proceedings for irregularities in construction works. The charge sheet was framed on 11.7.90 and it was dispatched for being served, on 13.7.90. The Respondent proceeded on 2 months medical leave and another Executive Engineer received it and intimated

that it would be handed over to the Respondent on his return from leave. The charge sheet could be served personally on the Respondent only on 25-01-91. In the meanwhile, the departmental promotion Committee met on 28-11-90, and in view of the earlier decision to initiate Disciplinary Proceedings against the Respondent, followed the sealed cover procedure. The Delhi High Court allowed Respondent's writ petition holding that "the framing of charge would carry with it the duty to issue and serve the same on the employee, there was no justification for the respondent to follow the sealed cover procedure in this case on 28-11-90, when the Departmental Promotion Committee met," since actual service of the charge sheet on the Respondent was made only after that date.

On an appeal by the Delhi Development Authority, the Supreme Court observed that as per O.M.No.22011/2/86 Estt.(A) dt.12.1.88 as it stood as on the material date (28-11-90), before its amendment by O.M.No.22011/4/91-Estt.(A) Dt.14.09.92, the sealed cover procedure was applicable in cases where the "disciplinary proceedings are pending" in respect of the Government servant or "a decision has been taken to initiate disciplinary proceedings". Where a decision has been taken to initiate disciplinary proceedings against a Government servant, his promotion, even if he is found otherwise suitable, would be incongruous because a Government servant under such a cloud should not be promoted till he is cleared of the allegations against him into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the Government servant and public administration the only fair and just course is to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the DPC. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings would be incongruous and against public policy and principles of good administration. Supreme Court observed that the decision to initiate disciplinary proceedings cannot be said to have been taken subsequent to the issuance of the charge sheet since the issue of the charge sheet is a consequence of the decision to initiate disciplinary proceedings, and the service of the charge sheet follows the decision to initiate disciplinary proceedings and it does not precede or coincide with that decision. The change made in clause (ii) of para 2 in O.M. dated 14-09-92 to the effect "government servant in respect

of whom a charge sheet has been issued and the disciplinary proceedings are pending" merely clarifies this position to indicate that service of charge sheet is not necessary and issue of the charge sheet by its dispatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken.

Supreme Court also held that 'issue' of the charge sheet in the context of a decision taken to initiate the disciplinary proceedings must mean the framing of the charge sheet and taking of the necessary action to dispatch the charge sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations.

(366)

Misconduct — prior to entry in service

Dismissal from service on ground of conviction for an offence involving moral turpitude prior to entry into service, even belatedly 15 years thereafter, held proper.

***Jamal Ahmed Qureshi vs. Municipal Council, Katangi,
1993 (3) SLR SC 15***

Appellant, an employee of Municipal Council, Katangi, was convicted for an offence under sec. 377 IPC (carnal intercourse against order of nature) and sentenced to one and a half years R.I., before he joined the service on 24.2.67. His conviction was brought to the notice of the employer on 15.9.71 and subsequently by the report of a police officer on 1.4.74 but no action was taken and he was dismissed from service later on receipt of a further complaint on 2.3.82. Supreme Court rejected the contention of the appellant that it must be construed that the employer elected to continue the appellant in service by waiving or condoning the appellant's misconduct and hence he cannot go back upon his election and claim a right to dismiss him in respect of the offence condoned.

Supreme Court observed that as pointed out by the High Court, the magnitude of the crime involving the moral turpitude of a very low order, does not warrant any interference with the judgment of the High Court. As per the Rules, no candidate should be employed as officer or servant of Municipal Committee if he

had been convicted for an offence, involving moral turpitude. Therefore, the appellant who had been convicted for an offence involving moral turpitude was ineligible for being appointed in the service of the Municipality. There is no record to show that the appellant while seeking appointment had apprised the authorities of his having been so convicted.

(367)

Compulsory retirement (non-penal)

Compulsory retirement (non-penal) should be based on material but a speaking order is not necessary.

Union of India vs. Dular Dutt, 1993 (4) SLR SC 387

Respondent, Controller of stores, Metro Railway, Calcutta was compulsorily retired by order dated 24.4.1990. Central Administrative Tribunal, Calcutta allowed the application of the respondent holding that the competent authority was certainly entitled to differ with the recommendation of the Review Committee for the retention of the respondent but in arriving at any contrary decision, he should have recorded a speaking order indicating the reasons of his own opinion, and that departmental file contains only a single sentence viz. 'he should be removed from service forthwith'.

Supreme Court observed that the Tribunal had erroneously distinguished the law on the subject laid down by the Supreme Court in Baikanth Nath Das vs. Chief District Medical Officer, 1992 (2) SLR 2 SC and that the Tribunal completely erred in assuming that there ought to have been a speaking order for compulsory retirement. Supreme Court held that an order of compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee. The order cannot be called either mala fide or arbitrary in law.

(368)

Suspension — issue of fresh order

- (i) *No restriction on the authority to pass a suspension order second time.*

- (ii) *Court cannot interfere with orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct.*

U.P. Rajya Krishi Utpadan Mandi Parishad vs. Sanjiv Rajan, and Director, Rajya Krishi Utpadan, Mandi Parishad vs. Narendra Kumar Malik, 1993(4)

SLR SC 543

Respondent, Sanjiv Rajan, Cashier of Agricultural Market Committee at Rampur, was placed under suspension on 22-3-91 on receipt of allegation of defalcation and the High Court quashed the order on the ground that some other suspended officers had been allowed to join service. In the second case, Narendra Kumar Malik, Secretary of the same Market Committee was placed under suspension under similar circumstances but the order was stayed on 9-5-91 by the Director considering his representation that it was at his instance the embezzlement was found out.

A fresh order of suspension was issued along with a charge-sheet against Sanjiv Rajan on 26-3-92. The High Court stayed the order on the ground that the appellants were not competent to pass the order of suspension second time in the same matter. Supreme Court held that the ground given by the High Court is patently wrong. There is no restriction on the authority to pass a suspension order second time. The first order might be withdrawn by the authority on the ground that at that stage, the evidence appearing against the delinquent employees is not sufficient or for some reason, which is not connected with the merits of the case. The charges are grave and the authorities have come to the conclusion that during the disciplinary proceedings, the officer should not continue in employment to enable them to conduct the proceedings unhindered.

In the case of Narendra Kumar Malik too, a fresh order was passed placing him under suspension along with a charge-sheet, on 10-3-92. This order was revoked by a Single Judge of the High Court and the order of the Single Judge was upheld by the Division Bench. Supreme Court observed that in matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily, the court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the

misconduct in question. Supreme Court observed that in the present case, before the preliminary report was received, the Director was impressed by the respondent-employee's representation (and stayed the order of suspension on the first occasion) but after the report, it was noticed that the employee could not be innocent (and hence issued the suspension order second time).

(369)

Inquiry report — furnishing copy

When Inquiry Officer is not the disciplinary authority, charged employee has a right to receive copy of Inquiry Officer's report before disciplinary authority arrives at a finding of guilt or otherwise; charged employee has this right even if statutory rules are against it or are silent on the subject; where service rules contemplate an inquiry before penalty is awarded, charged employee has this right even when the penalty imposed is other than a major penalty; charged employee has this right whether or not the charged employee asks for the report. The law laid down by Mohd. Ramzan Khan's case applies to employees of all establishments, Government, non-Government, Public or private. It applies only to orders of penalty passed by disciplinary authority after 20.11.90. Supreme Court also laid down the procedure to be followed in case of non-supply of Inquiry Officer's report.

Managing Director, ECIL, Hyderabad vs. B. Karunakar, 1993(5) SLR SC 532: AIR 1994 SC 1074

A five-judge bench of the Supreme Court considered a group of matters, at the instance of the Union of India, Public Sector Corporations, Public sector Banks, State Governments and two private parties, to resolve the conflict in the two decisions of three-judge Benches of the Supreme Court in Kailash Chander Asthana vs. State of Uttar Pradesh, (1988) 3 SCC 600, and Union of India vs. Mohd. Ramzan Khan, 1991(1) SLR 159 SC on the basic question of law whether the report of Inquiry Officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment if any to be awarded to him.

The Supreme Court observed that while the right to represent against the findings in the report is part of the reasonable opportunity available during the first

stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusions with regard to the guilt of the employee and proposes to award penalty on the basis of the conclusions. The first right is the right to prove innocence. It is the second right exercisable at the second stage which was taken away by the 42nd amendment of Article 311(2) of the Constitution.

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to the conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidences on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, report of the Inquiry Officer and the representation of the employee against it.

The Supreme Court held:

(i) That when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him and denial of this right amounts to a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

(ii) That the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and therefore invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(iii) That whenever, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority, the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment, even when the punishment imposed is other than the major penalty of dismissal, removal or reduction in rank.

(iv) That it will not be proper to construe the failure on the part of the delinquent employee to ask for the inquiry report as the waiver of his right and whether the employee asks for the report or not, the report has to be furnished to him.

(v) That the law laid down in Mohd. Ramzan Khan's case should apply to employees in all establishments whether Government or non-Government, public or private, whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.

(vi) That since the decision in Mohd. Ramzan Khan's case made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20-11-1990. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee, notwithstanding the view taken by different Benches of Central Administrative Tribunal or by the High Courts or the Supreme Court.

(vii) That in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to aggrieved employee if he has not already secured it before coming to the Court / Tribunal,

and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If, after hearing the parties, the Court / Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment and should not mechanically set aside the order of punishment on the ground that the report was not furnished. It is only if the Court / Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where the Court / tribunal thus sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority / management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extent of the benefits he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

The Supreme Court directed that all the appeals and Special Leave Petitions be placed before an appropriate Bench of the Supreme Court for decision according to the law laid down here.

(370)

Penalty — imposition of two penalties

No infirmity in imposing the penalties of recovery from pay and reduction to lower scale.

***Abdul Gani Khan vs. Secretary, Department of Posts,
1994(2) SLR CATHYD 505***

The applicant, a postal employee was proceeded against in disciplinary proceedings for wrong payment of Rs.18,900 to the depositor of an S.B. Account, and in modification of the order of disciplinary authority of removal, the appellate

authority ordered recovery of Rs.17,760 from the pay and reduction from L.S.G. Grade to lower grade as Postal Assistant. It was contended that two punishments cannot be imposed in regard to one and the same misconduct.

The Tribunal referred to earlier decisions and observed that the principle of double jeopardy is applicable only in regard to the proceedings before the courts or tribunals in which the decisions are arrived at on the basis of evidence taken on oath and Article 20(2) of the Constitution does not prohibit either explicitly or implicitly double punishment in regard to one and the same cause. There are a number of offences referred to in the Indian Penal Code for which both imprisonment and fine can be imposed by way of punishment. (Maqbool Hussain vs. State of Bombay, AIR 1953 SC 325). The Tribunal referred to the observation of Central Administrative Tribunal, New Delhi (Y.D. Parwana vs. Union of India, 1993 (2) SLR CAT DEL FB 79) that their attention was not drawn to any other provision from which an inference can be drawn that imposing of more than one penalty simultaneously in a disciplinary proceeding is not permissible, and that judicial notice can be taken of a large number of instances where more than one penalty is imposed, which aspect has been adverted to in the letter of D.G., P&T No.105/26181, Dated 30.03.81.

The Tribunal observed that the question of double jeopardy as envisaged under Article 20(2) of Constitution does not arise in regard to disciplinary proceedings where the oath cannot be administered to the witness. In fact there was only one disciplinary enquiry. There is no controversy in regard to the fact that the department sustained loss of Rs.18,900 due to the negligence of the applicant. Recovery can be ordered by way of punishment under cl. (iii) of Rule 11. Thus there is no infirmity in imposing the penalties of recovery and reduction to the lower scale, in the circumstances of the case.

(371)

Misconduct — prior to entry in service

Disciplinary authority has jurisdiction to punish for act done prior to entry in service.

T. Panduranga Rao vs. Union of India, 1994(1) SLJ CAT HYD 127

The applicant was appointed as Telecom Officer Assistant on 6-7-81 and was dismissed from service on the charge that he furnished false date of birth in the attestation form dated 17-3-81, as 15-6-1957. The issue raised is whether the disciplinary authority has no jurisdiction to punish the employee for an act done prior to his entering government service.

The Central Administrative Tribunal referred to the decision of the Allahabad High Court in Abdul Aziz Khan vs. Union of India, 1974(1) SLR 67 and of the Supreme Court in S.Govinda Menon vs. Union of India, AIR 1967 SC 1274 and held that in the face of the categorical assertion of the Supreme Court and observations of the High Court, the misconduct of the applicant would clearly reflect adversely on his integrity as a member of the service and that the disciplinary authority had the jurisdiction to proceed against the applicant.

(372)

Misconduct — bigamy

A married man and an unmarried woman residing under the same roof does not involve moral turpitude.

S.B. Ramesh vs. Ministry of Finance, 1994(3) SLJ CAT HYD 400

Applicant, Income Tax Officer, was proceeded against on a charge that he contracted a second marriage with Smt. K.R.Aruna while his first wife was alive and the first marriage has not been dissolved and thereby violated rule 21(2) of CCS (Conduct) Rules, and that he has been living with Smt. Aruna and has children by her and thereby exhibited conduct unbecoming of a Government servant and violated rule 3(1) (iii) of the CCS (Conduct) Rules. The disciplinary authority held the first part of the charge as not proved and the second part as proved and compulsorily retired him from service.

Tribunal held that the argument advanced by the applicant that for a conduct which has no relation to the discharge of his official duties, a Government servant cannot be proceeded against departmentally, in principle, has no merit. There is no case for the disciplinary authority that Smt. Aruna is a woman married to somebody else. Under these circumstances, even if it is established that the applicant had lived with her or even cohabited with her, it cannot be said that the relationship is adulterous. To make such a relationship adulterous, a man should have had sexual relationship with another woman, who is legally wedded wife of another person. Therefore there is no basis for the conclusion of the disciplinary authority that the applicant was guilty of adulterous conduct. If a man and a woman are residing under the same roof and if there is no law prohibiting such a residence, what transpires between them is not a concern of their employer and it does not involve moral turpitude. Even if factually, the allegation that the applicant who is already married to another woman is living with Smt. Aruna is proved to be true, that alone will not justify a finding that the applicant is guilty of misconduct.

(373)**(A) Fresh inquiry / De novo inquiry**

Initiation of a second disciplinary inquiry on fresh material, justified.

(B) Departmental action and retirement

Departmental proceedings, if instituted while the Government servant was in service, shall on his retirement be continued and concluded under Pension Rules.

**S. Moosa Ali Hashmi vs. Secretary, A.P. State Electricity Board,
Hyderabad, 1994 (2) SLR AP 284**

An Additional Assistant Engineer, Andhra Pradesh State Electricity Board, was dealt with in disciplinary proceedings for overstay of leave sanctioned for Haj pilgrimage. A charge memo was issued to him on 16.12.1982 and the Inquiry Officer held that he was not guilty of a grave charge and recommended stoppage of increment, in his report dated 7.2.1983. On 26.11.1988, the Disciplinary Authority set aside the inquiry report and appointed a fresh inquiry officer to conduct inquiry into the very charges. The petitioner contended that the respondent has no jurisdiction to order a fresh inquiry in the absence of any fatal defect in the first inquiry.

The High Court observed that the second inquiry is not initiated based upon the very same facts and that the disciplinary authority has secured fresh material against the delinquent that he obtained the passport concealing that he is the employee of the Board, which justifies the initiation of a second disciplinary inquiry. The High Court did not find any objection in the appointment of a second inquiry officer as the first Inquiry Officer has since retired. High Court also upheld that rule 9 (2) of the A.P. Revised Pension Rules, 1980 provides that the departmental proceedings, if instituted while the Government servant was in service, after his retirement shall be deemed to be proceedings under Rule 9 of the said rules, and shall be continued and concluded as if the Government servant had continued in service.

(374)**Departmental action and acquittal**

In a case of acquittal in a court of law on ground of witnesses turning hostile, disciplinary authority entitled to evaluate evidence adduced at the inquiry held by him and arrive at an independent decision.

G. Simhachalam vs. Depot Manager, APSRTC, 1994 (2) SLR AP 547

The petitioner, a driver of APSTRC, was acquitted in a case of prosecution under Sec. 304-A IPC for causing the death of a motor cyclist by rash and negligent driving. But, as the acquittal was only for technical reasons as the material witnesses turned hostile, departmental disciplinary proceedings were initiated in the same matter.

The High Court observed that it is true that when a competent criminal court holds a trial of a charge of rash and negligent driving and records a finding of acquittal after discussion of evidence and appreciation of the same, the departmental enquiry again reappreciating the said evidence in a manner contrary to that of a court of law is impermissible. But, where the criminal court records a finding of acquittal not on merits of the appreciation of the evidence of the material witnesses, but only on the ground of the said witnesses turning hostile, such a judgment will not bind the disciplinary authority, and the disciplinary authority in such cases is entitled to evaluate the evidence adduced in the enquiry held by him and can arrive at an independent decision.

The High Court was more than satisfied that there is ample record of evidence for sustaining the charge of misconduct and upheld the dismissal of the driver.

(375)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — appreciation of evidence

Appreciation of evidence in a trap case. High Court set aside acquittal by Special Judge and held Sub-Inspector of Police and Constable guilty of the offence, as circumstances rendered full corroboration to the version of the complainant even in the absence of direct evidence of panch witness, though the Sub-Inspector adopted a very skilful device in accepting the bribe by getting the notes exchanged.

(C) P.C. Act, 1988 — Sec. 19

(D) Sanction of prosecution — under P.C. Act

Appointing authority inherently possesses power of removal and as such competent to accord sanction of prosecution.

***State of Maharashtra vs. Rambhau Fakira Pannase,
1994 Cri.L.J. BOM 475***

This appeal by the State is directed against the finding of acquittal by the Special Judge for the offence punishable under secs. 7, 13(1) (d) read with sec. 13(2) of the P.C. Act, 1988. The facts leading to the prosecution are as follows:

Accused Nos. 1 and 2, Sub-Inspector and Constable, were attached to the Wadi Police Station of City of Nagpur. On a complaint of abuses and quarrel against P.W.1 Sangamlal and his wife, Accused No.1 called them to the Police Station and demanded Rs. 1500 from P.W.1 for dropping the proceedings, and with the intervention of Accused No.2, the demand was settled at Rs. 1300. P.W. 1 lodged a complaint with the Anti-Corruption Bureau on the same day (23-1-1989) and a trap was arranged, but it was unsuccessful.

Next day (24-1-89) at about 8.30 AM, P.W.1 complainant and panch P.W.3 went to Accused No.1 in Police Station and Accused No.1 directed P.W.1 to go with Accused No.2. Accused No.2 took the complainant to P.W.4 Suresh to exchange the notes. P.W.4 was unable to exchange. As such they approached P.W.5 Arun Hadke and ultimately the tainted currency notes in possession of the complainant reached P.W. 6 Raman Wadekar. The raiding party headed by P.W.9, Sub-Inspector Saraj reached the spot and seized the tainted currency notes from P.W. 6 in the petrol pump, which is at a distance of 2 kilometers away from the Police Station. P.W. 7 Tijare who is neighbour of P.W.1, was throughout in the company of P.W.1. The defence of the accused, A.1 and A.2 was one of denial and they attributed motive. The special judge acquitted both the accused.

On facts, the High Court (a Division Bench) found corroboration of the evidence of P.W.1 as to the demand of bribe by Accused No.1 at 9.30 a.m. on 23-1-89, by P.W.7 and other circumstances. High Court examined the evidence on the demand and acceptance on 24-1-89. As per the evidence of the complainant, Accused No.2 took him to a wine shop on a Luna and P.W.3, Panch and P.W.7, neighbour followed them and reached the wine shop. Accused No.2 called a person in the wine shop and asked the complainant, P.W.1 to hand over the notes to him, but P.W.1 handed the notes to Accused No.2 and the latter gave the notes to a person there and asked him to change the notes, but he said he did not have that much amount being morning time. Then the notes were handed to a different person and Accused No.2 told P.W.1 that his work is over and he could go. Then the signal was given and the tainted notes were recovered from a person in a petrol pump, P.W.6.

Before the High Court, it was urged that Accused No.2 was absent from duty on that day and he was not present there at all. This argument and plea is completely lame and defunct, as under sec. 313 Cr.P.C., he stated that he was standing in front of Shere Punjab Hotel and the complainant met him there, that the complainant came to him for change of notes and he asked him to go to a wine shop, that the complainant told him that he did not know any one and Accused No.2 took the notes and gave to a man in the wine shop. In view of the statement, the claim of the defence is completely baseless. There was also an admission in this regard in reply to another question. During the arguments or even otherwise in the cross-examination, it is not explained as to how P.W.1, complainant, approached Accused No.2 for getting the notes changed, nor even any suggestion made. There was not even formal inquiry as to why and what for P.W.1 needed the change of the notes. It was also not suggested that P.W.1 in any manner was in need of the notes of smaller denomination. It goes to suggest that Accused No.2 took the mission of getting the notes changed as decided earlier.

Accused No.1 simply denied the incident as occurred in his cabin and stated that P.W.1 did not meet him there. As per P.W.1, on 24-1-89 in the morning at about 9 a.m., Accused No.1 said to him that Pande (P.W.1) appears to be very intelligent, questioned him about bringing witness and then asked Accused No.2 to get the notes exchanged. The High Court observed that this aspect is very reflective. Referring to intelligence of the complainant and questioning him about the witness did suggest that at that time Accused No.1 might have sensed the possibility of a trap by the Anti-Corruption Bureau and thought it necessary, by way of abundant precaution, to get the notes brought by P.W.1 changed. P.W.1 therefore, going with Accused No.2 for changing the notes, was at the dictate of Accused No.1. It has established his nexus with the demand and it renders corroboration to the version of P.W.1. The subsequent events were the hectic effort made by Accused No.2 to get the notes changed. The argument that accused No.2 merely rendered service to the complainant is totally unbelievable and needs to be rejected. The amount of efforts undertaken by Accused No.2 in getting the notes changed definitely indicates that he was not on a charitable mission. The mission was with a definite design. The gesture of annoyance by Accused No.2 when P.W.1 hesitated to hand over the notes to P.W.4 in the wine shop when directed by him (Accused No.2) completely negatives the claim that he was on a charitable mission to help P.W.1 and it definitely suggests Accused No.2 was in league with Accused No.1 and he was carrying the mission very scrupulously under the instructions of Accused No.1.

The High Court observed that Accused No.1 adopted a very skilful device in accepting the bribe amount by getting the notes exchanged. Crystallly it is clear that the hectic efforts of Accused No.2 for getting the notes changed was a sequester to the transaction which occurred in the Police Station. The device as adopted for accepting the bribe is novel and also ingenious. As such there could not be direct evidence of panch witness to render the corroboration to the testimony. However, the circumstances as appeared and which are fully established render not only corroboration but substantiate the claim of P.W.1 that Accused No.1 reiterated his demand on 24-1- 89 and accepted the same by the device of directing Accused No.2 to get the notes changed. In pursuance of the acceptance, the notes after substitution would have reached to Accused No.1 but for the intervention of the Anti-Corruption Bureau. The High Court held that even in the absence of direct evidence of corroboration, the circumstances are more reflective and speak with entire certainty than the oral words of person in dock. They render full corroboration to the version of P.W.1 that demand was made on 24-1-89 and in pursuance thereof acceptance was deviced. The High Court averred that normal rule of corroboration has application in the normal circumstances of the case, and that looking to the pecularity of the case the circumstances followed thereafter would render complete corroboration.

The High Court held that Accused No.1 made a demand of Rs.1300 from P.W.1 as an illegal gratification and that Accused No.2 has played a very substantial role in negotiating on the figure of the bribe amount, also acting as a middle man and further taking P.W.1 for getting the notes changed at the dictates of Accused No.1 and he therefore substantially abetted the crime. The High Court allowed the appeal and set aside the order of acquittal and held both the accused guilty for the offence punishable under secs. 7, 13(1) (d) read with sec. 13(2) of the P.C.Act, 1988 and sentenced Accused No.1 to 2 years rigourous imprisonment and a fine of Rs.5000 and Accused No.2 to 1 year rigourous imprisonment and a fine of Rs.3000.

The Special Judge recorded a finding of acquittal on the ground that the sanction as accorded is bad in law as the Commissioner of Police, though the appointing authority is not competent to accord the sanction, as it is not brought on record that he was also disciplinary or removing authority. The High Court held that the reasoning is per se wrong and the Special Judge lost sight that the appointing authority inherently possess the power of removal and as such the Commissioner of Police, who is the appointing authority, was competent to accord the sanction. (See Rambhau vs. State of Maharashtra, 2001 Cri.L.J. SC 2343 for decision of the Supreme Court).

(376)

- (A) P.C. Act, 1988 — Sec. 13(1) (e)
- (B) Disproportionate assets — appreciation of evidence
 - (i) *Appreciation of evidence in a case of disproportionate assets.*
 - (ii) *Observations on enforcement of Conduct Rules and simplification of investigation.*

Republic of India vs. Raman Singh, 1994 Cri.L.J. ORI 1513

The accused, an Income Tax Officer, was a member of a joint family. His grand father was an agriculturist having only 32.51 acres of land in the year 1918. The grand father had four sons, of whom accused's father alone married and the three others remained unmarried. Accused's father died in the year 1935. Between 1918 and 1936, family added only 8 acres 51 decimals of land to the joint family assets. No property was acquired during the period 1936 and 1944, when accused became a graduate. He joined service as Lower Division Clerk in Income Tax Department on 3-8-1945 and from that year properties were acquired, development to ancestral building was made, deposits were made in Post Offices and Banks inspite of increase in family by birth of sons and daughter to accused who were educated and got married. Prosecution found that between 3-8-1945 and 26-6-1974 income of the family from all sources which included salary of the accused and his son, interest on deposits in Banks and Post Offices, dowry received by sons during their marriages, agricultural income and refund of income tax came to Rs.2,33,440. Expenditure of the family during the entire period was Rs.3,17,782. Value of the assets and investments was Rs.4,04,856. Taking the assets and expenditure together it was found that total asset of accused disproportionate to the income was Rs. 4,89,198 as on 26-6-1974. The Special Judge found the disproportionate assets at Rs.1,57,029 and convicted the accused under sec. 5(1)(e) read with sec. 5(2) of Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(e) read with sec.13(2) of P.C. Act, 1988) and imposed sentence of 2 years R.I. and fine of Rs.20,000. The accused appealed against his conviction, while State is aggrieved that sec. 5(3B) of the Act has not been kept in mind while imposing the fine.

It was held that there was no evidence of accused's wife receiving any thing from her parents at any time. There was no evidence of agricultural income which was found to be on lower side being divided and handed over to his wife or

children. The claim of the accused of receiving money and property from in-laws of sons is found to be exaggerated. The account as to pecuniary resources given by the accused is found unacceptable and unsatisfactory.

The High Court observed that there is no difficulty in respect of some properties and pecuniary resources which are found to be in the name of the accused. There is clear evidence that properties in the names of others are in possession of accused or in possession of those persons on his behalf. Prosecution, therefore, adduced evidence to prove that the source from which those pecuniary resources or property came into existence was at one time in possession of the accused. This cannot be said to be unjustified or unreasonable. If prosecution can prove that there could not have been any other source than the accused himself, offence can be brought home against him. Normal human conduct and presumptions can be utilised for this purpose. Taking the totality of circumstances, the High Court held that for acquiring the assets, source was of accused at different times though some of the assets are in the names of other persons. Prosecution has been able to satisfy on materials that the pecuniary resources and properties are in possession of accused or by others on his behalf and at the time of acquiring or developing the assets, property i.e. money came from possession of accused. Trial Court has been liberal in leaving apart the ornaments. Mathematically trial court is correct that disproportionate assets are valued at Rs.1,57,029, but considering that the accused had to explain matters for a period of about 30 years, the High Court confined the value to rupees one lakh. High Court took note of the value of property in respect of which offence is committed, under sec. 5(3B) of the Act enhanced the fine amount to Rs. one lakh.

High Court observed that authorities under whom accused worked were not vigilant and the Central Bureau of Investigation was not alert. Conduct Rules were not adhered to be enforced meticulously. Steps should be taken to make the investigation more simple and more liability should be fixed on public servants to explain their conduct to Courts when questioned.

(377)

- (A) Judge — approach of**
- (B) Guilty — let no one who is guilty, escape**

Correct approach of a Judge conducting criminal trial should be that no innocent should be punished and no guilty person should go unpunished.

Jayalal Sahu vs. State of Orissa, 1994 Cri.L.J. ORI 2254

Seventeen accused persons faced trial being charged with commission of offences punishable under secs. 302 and 436 read with sec.149 of IPC on the accusation of having committed murder and mischief by fire by causing destruction of residential house. While dealing with the appeals the Orissa High Court observed that the correct approach of a Judge conducting criminal trial should be that no innocent person should be punished and no guilty person should go unpunished.

It is no judicial heroism to blindly follow the oft repeated saying, let hundred guilty men be acquitted but let not one innocent be punished. It is undesirable to acquit a guilty person and / or punish an innocent person. Any exaggerated devotion to benefit of doubt is disservice to the society.

(378)

Misconduct — past misconduct

Disciplinary authority taking into consideration past two penalties, without their inclusion in the charge and without giving an opportunity in that regard, in imposing the penalty, is violative of principles of natural justice.

M.S. Bejwa vs. Punjab National Bank, 1994 (1) SLR P&H 131

Petitioner, Officer in Middle Management Grade Scale II, in the Punjab National Bank was reverted as Assistant Manager in Junior Management Grade Scale I. High Court observed that the petitioner was held to have violated Reg.5(3) of the Punjab National Bank Officer Employees (Conduct) Regulations and that he did not obtain or send intimation for starting the business in the name of his wife and accepted the wrong address given by his wife in the partnership deed, though it was not part of the charge. Punishing authority also took into consideration the fact that the petitioner had committed various irregularities in the past on account of which major penalty of reduction of salary by three stages had been imposed by order dated 15.11.1984 and minor penalty of withholding of one graded increment with cumulative effect has been imposed by order dated 25.06.1986. It is thus clear that matter beyond the charge had been taken into consideration. The previous punishment or the misconduct was never a part of the charge. Consequently he had no opportunity to meet this aspect of the matter and failure to give such an opportunity is violative of the principles of natural justice.

(379)

Witnesses — cross-examination of all, at one time

Witnesses shall be cross-examined immediately after examination and not all at one time.

Bank of India vs. Apurba Kumar Saha, 1994(3) SLJ SC 32

The respondent, clerk-cum-cashier in the Bank of India, did not cross-examine the witnesses of the Bank as and when each of them was examined-in-chief. He wanted the Inquiry Officer to complete the examination-in-chief of all the Bank's witnesses and make them available for cross-examination at once. Since the Inquiry Officer wanted the respondent or his representative to cross-examine the witnesses of the Bank as and when each of them was examined-in-chief, both of them boycotted the inquiry. The Inquiry Officer prepared his report of enquiry, on the basis of evidence recorded by him and found the respondent guilty of the charges leveled against him. The disciplinary authority, agreeing with the inquiry officer, ordered discharge of the respondent from the bank service.

Supreme Court held that there was no violation of principles of natural justice in conducting the disciplinary proceedings against the respondent. An employee who had refused to avail of the opportunities provided to him cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself.

(380)

(A) Inquiry report — furnishing copy

Non-furnishing of copy of Inquiry report to charged officer does not vitiate the order of penalty where it is passed prior to 20-11-90 (date of decision in Ramzan Khan Case).

(B) Penalty — quantum of

Where penalty imposed is harsh, High Court or administrative Tribunal should refer matter to the Disciplinary or Appellate Authority for consideration, but not interfere itself.

(C) Court jurisdiction

Power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eye of the court.

State Bank of India vs. Samarendra Kishore Endow, 1994 (1) SLR SC 516

Respondent, Branch Manager, State Bank of India was removed from service in disciplinary proceedings. Three charges related to claim of hiring charges for transport of household goods on transfer and furnishing of false receipts, the fourth charge related to deposits in his S.B. Account indicating that he had disproportionate assets and the fifth to disbursement of a construction loan of Rs. 1 lakh. Disciplinary authority held charge No. 4 as not proved and the remaining four as proved. A departmental appeal failed but the Gauhati High Court allowed a writ petition.

Supreme Court held that non-supply of Inquiry Officer's report before imposing the penalty does not vitiate the order of punishment in view of the decision of the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad vs. B. Karunakar, 1993 (5) SLR 532 SC, in as much as the order of punishment in the case is prior to 20.11.1990.

Supreme Court also held that the High Court went wrong in holding that the finding of guilty on the four charges is based on no evidence.

For these reasons, Supreme Court set aside the judgment of the High Court and examined the question of punishment, and observed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. Power under Article 226 is one of judicial review. It is not an appeal from a decision, but a review of the manner in which the decision was made. In other words the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eye of the Court", as was held by the Supreme Court long back in State of Andhra Pradesh vs. S. Sree Rama Rao, AIR 1963 SC 1723. Supreme Court referred to their own decisions in State of Orissa vs. Bidyabhushan Mohapatra, AIR 1963 SC 779, Railway Board, Delhi vs. Niranjan Singh, AIR 1969 SC 960, Bhagat Ram vs. State of Himachal Pradesh, AIR 1993 SC 454, Union of India vs. Sardar Bahadur, 1972 SLR 355 SC, Union of India vs. Tulsiram Patel, AIR 1985 SC 1416 and Union of India vs. Perma Nanda, AIR 1989 SC 1985.

Supreme Court clarified that the observations of the Supreme Court in Tulsiram Patel case that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the appellate Court or by

High Court, are not relevant to cases of penalty imposed after regular inquiry, as understood in Perma Nanda case.

Supreme Court observed that the punishment of removal in the instant case may be harsh but this is a matter which the Disciplinary Authority or the Appellate Authority should consider and not the High Court or Administrative Tribunal and the proper course to be adopted in such situations would be to send the matter either to the Disciplinary authority or the Appellate Authority to impose appropriate punishment. Supreme Court observed that the Appellate Authority shall consider whether a lesser punishment is not called for in the facts and circumstances of the case.

(381)

(A) Misconduct — in quasi-judicial functions

Institution of disciplinary proceedings in respect of survey work of Inspecting Assistant Commissioner of Income Tax.

(B) Court jurisdiction

Administrative Tribunal or High Court has no jurisdiction to look into the truth or correctness of charges even in a proceeding against the final order and much less at the stage of framing of charges.

Union of India vs. Upendra Singh, 1994(1) SLR SC 831

A memorandum of charges was issued to Deputy Commissioner of Income Tax (respondent) on 7.2.91 alleging misconduct in respect of survey of Raghuvanshi Group of builders on 9.1.74 while working as Inspecting Asst. Commissioner of Income Tax, Bombay. As soon as the memo of charges was issued, he approached the Tribunal for quashing the charges and the Tribunal passed an interim order of stay for 14 days. Supreme Court allowed an appeal against this order on 10.9.92 and directed that the disciplinary proceedings would continue. When the matter went back to the Tribunal, it went into the correctness of the charges on the basis of the material produced by the respondent and quashed the charges holding that the charges do not indicate any corrupt motive or any culpability on the part of the respondent.

Supreme Court observed that the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority and

found that the charges are not true. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed, no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. If a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable, how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it. Supreme Court set aside the order of the Tribunal and allowed the appeal and ordered that the disciplinary inquiry shall proceed.

(382)

Court order — ambiguity or anomaly, removal of

Any doubt or ambiguity in an order passed by a court of law can be removed by the court which passed the order and not by the authority according to its own understanding.

S. Nagaraj vs. State of Karnataka, 1994(1) SLJ SC 61

The Supreme Court observed that law on the binding effect of an order passed by a Court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a Court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher Court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper.

Any order passed by a Court of Law, more so by the higher courts and specially the Supreme Court whose decisions are declarations of law are not

only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by authority according to its own understanding.

(383)

Suspension — satisfaction of competent authority, recital of

Absence of recital of satisfaction of competent authority in the order of suspension does not render the order invalid.

State of Haryana vs. Hari Ram Yadav, 1994(2) SLR SC 63

The mere fact that the order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place the respondent under suspension, does not render the order invalid.

The law is well settled that in cases where the exercise of statutory power is subject to the fulfillment of a condition, then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfillment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the said condition is not fulfilled. There is no averment in the petition challenging the validity of the order of suspension on the above said ground. In the absence of any such averment it must be held that the order was passed after fulfilling the requirement of rule 3(1) of the All India Services (D&A) Rules, 1969 in view of the presumption as to the regularity of official acts which would be applicable, and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place the respondent under suspension is of no consequence. The Tribunal was in error in invalidating the order of suspension only on that ground.

(384)

Suspension — court jurisdiction

Where serious allegations of misconduct are alleged, the Tribunal would not be justified in interfering with the orders of suspension, of the competent authority pending enquiry.

State of Orissa vs. Bimal Kumar Mohanty, 1994 (2) SLR SC 384

The respondent was Manager of Orissa State Guest House at Bhubaneshwar. The matter came up before the Supreme Court against the orders of the State Administrative Tribunal, Bhubaneshwar interfering with the orders of suspension of the respondent.

Supreme Court observed that the Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority.

Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity or perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get way even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge. In this view, the Supreme Court held that the Tribunal was quite unjustified in interfering with the orders of suspension pending enquiry.

(385)

Suspension — treatment of period

It is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds.

Depot Manager, A.P.S.R.T.C. vs. V. Venkateswarulu, 1994(2) SLJ SC 180

The question for consideration in the appeals is whether an employee of the Andhra Pradesh State Road Transport Corporation, who was kept under suspension pending investigation, inquiry or trial in a criminal prosecution, is entitled to salary for the period of suspension after the criminal proceedings are terminated in his favour. The High Court answered the question in the affirmative and in favour of the respondents.

The Supreme Court held that the appointing authority or any other authority mentioned in Regulation 18 of the A.P.S.R.T.C. Employees (CCA) Regulations, 1967 can place an employee under suspension who is facing investigation or trial on a criminal charge. The employee is entitled to the payment of subsistence allowance during the period of suspension under Regulation 20.

Regulation 20(3) which denied subsistence allowance to an employee suspended under Regulation 18(1) (b) (during investigation/trial on a criminal charge) has since been deleted by the amendment. The Supreme Court agreed with the High Court that with the deletion of Regulation 20(3), the classification made under Regulation 21(3) has become redundant. The High Court was, however, not justified in holding that on acquittal and reinstatement, an employee becomes—without any further scrutiny—entitled to the payment of full salary for the period during which he remained under suspension. Regulations 21(1) and 21(2) are equally applicable to an employee who remained under suspension because of investigation/trial on a criminal charge. The competent authority is bound to examine each case in terms of Regulations 21(1) or 21(2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned. In other words it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. The employee concerned has to be given a show cause notice in respect of the proposed action and his reply taken into consideration before passing the final order.

(386)

(A) Defence Assistant

Charged employee cannot insist on having assistance of a particular employee.

(B) Penalty — imposition of two penalties

Ordering recovery of amount lost besides imposition of reduction of pay, legal and valid.

K. Chinnaiah vs. Secretary, Min. of Communications, 1995 (3) SLR CAT HYD 324

The applicant was a Postal Assistant in the Head Post office at Nizamabad and as an outcome of disciplinary proceedings, he was imposed the penalty of reduction of pay by one stage for 3 years and ordered recovery of Rs.1000, the amount found missing in his custody.

The Charged Officer asked for the assistance of one M.Mohan Rao, Sub-Postmaster at Santhapeta in Ongole district, a far off place and insisted on having him alone and refused to take the assistance of any other employee posted at headquarters or at the place where the inquiry is held. In the circumstances, the Tribunal held, it did not amount to denial of help of a defence assistant and denial of reasonable opportunity to defend himself.

Tribunal further held that normally there will be no need for two penalties at one time but the penalty of recovery from the pay of whole or part of any pecuniary loss caused by an official by negligence or breach of order can be imposed along with other penalties.

(387)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

Sanction under sec. 6 P.C. Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) not necessary for prosecution of a public servant who ceased to be a public servant on date of taking cognizance of offence.

R. Balakrishna Pillai vs. State, 1995 Cri.L.J. KER 963

The High Court of Kerala held that no sanction is required under sec. 6 P.C. Act, 1947 (corresponding to sec. 19 P.C. Act, 1988) for prosecuting an accused public servant before a special judge when he has ceased to be a public servant on the date of taking cognizance of the offence by the said court. Section 6 of the Prevention of Corruption Act, 1947 says that no court shall take cognizance of an offence punishable under sec. 161 or sec. 165 IPC or under sub-sec.(2) of sec. 5 of the P.C. Act, 1947 (corresponding to sec. 7, 11, 13(2) of P.C. Act, 1988) alleged to have been committed by a public servant except with the previous sanction in the case of a person who is employed in connection with the affairs of a State and is not removable from his office, save by or with the sanction of the State Government. Thus, where an accused, Minister in charge of Electricity, was alleged to have sold certain units of electric current in pursuance of conspiracy and though at the time when the offence is alleged to have been committed he was employed in connection with the affairs of the State but he had ceased to be a public servant at the time the court was asked to take cognizance of the offence. The provisions of sec. 6(1) (b) of the Act would not be attracted and the question of previous sanction before cognizance is taken by the special court does not therefore arise.

(388)

- (A) P.C. Act, 1988 — Secs. 7, 13(1) (d)**
- (B) Trap — appreciation of evidence**

Appreciation of evidence in a trap case.
- (C) Trap — complainant, not an accomplice**

Complainant in a trap is not an accomplice.

(D) Trap — accompanying witness

Not a rule that an independent witness should accompany the complainant in a trap.

(E) P.C. Act, 1988 — Sec. 19**(F) Sanction of prosecution — under P.C. Act**

Non-examination of sanctioning authority not fatal when sanction order contains details showing application of mind by said authority.

Rajasingh vs. State, 1995 Cri.L.J. MAD 955

The Madras High Court held that the Sanctioning Authority should apply its mind to the facts alleged and only after being satisfied that the sanction was a necessity, the sanction order should be signed. In this case, even though the sanctioning authority, who accorded sanction, was not examined as a witness, the sanction order gives the details of the records and his statement about perusal of the records before granting sanction. In the sanction order at the top, under the caption 'reference' it was mentioned that detailed investigation report and connected records were placed before him. Therefore, the detailed investigation report and the connected records were sent to the sanctioning authority for his perusal. The said authority has stated in his order that he, after fully and carefully examining the materials placed before him with regard to the allegations and the circumstances of the case, was satisfied that this appellant should be prosecuted in Court of law. The High Court held that non-examination of the sanctioning authority is not fatal when the sanction order contains details showing application of mind by the said authority.

The High Court further observed that though the payment of bribe also is an offence under the Prevention of Corruption Act, when the person giving bribe had no intention of achieving his purpose but only in order to expose the conduct of the public servant and to bring him to book, he paid the amount as directed by the police, the person giving bribe cannot be treated as an accomplice.

The High Court observed that the prosecution story of acceptance of bribe by the accused was corroborated by the independent witness, that the defence of the accused that the money was found concealed in the Service Book of the complainant who sought some entries to be made by the accused in the said service book was not substantiated and that the accused did not state the said fact to the police inspector immediately after the trap and held that the acceptance of bribe by the accused is proved.

The High Court further held that where a trap is arranged on allegation of demand of bribe by a public servant, it is not a rule that along with the trap witness, another independent witness should accompany. Some times too many persons or even one stranger along with a trap witness may create suspicion in the mind of the accused to behave differently.

(389)

- (A) P.C. Act, 1988 — Sec. 13(1) (e)
- (B) Disproportionate assets — appreciation of evidence

Appreciation of evidence in a case of disproportionate assets.

- (C) Disproportionate assets — known sources of income

Receipt from windfall, or gains of graft, crime or immoral secretions by persons prima facie would not be receipt for the “known sources of income” of a public servant.

State vs. Bharat Chandra Roul, 1995 Cri.L.J. ORI 2417

The Orissa High Court held that the phrase “known sources of income” in sec. 13(1) (e) of P.C. Act, 1988 has clearly laid the emphasis on the word “income”. It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term “income” by itself, is classic and has a wide connotation. Whatever comes in or is received is income. But, however wide the import and connotation of the term “income”, it is incapable of being understood as meaning receipt having a nexus to one’s labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term “Income”. Therefore it can be said that though income in receipt in the hand of its recipient, every receipt would not partake into the character of income. Due the public servant, whatever return he gets of his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime or immoral secretions by persons prima facie would not be receipt for the “known sources of income” of a public servant.

The High Court made a detailed study and found that the accused was in possession of assets disproportionate to his known sources of income to the tune of Rs.5,00,000 among others holding that there is proof of highly inflated figures from agricultural income claimed by him. The huge expenditure in marriages of daughters is not explained and there is no proper explanation given for the property in the name of his wife. The High Court convicted him under sec. 13(1) (e) r/w 13(2) of the P.C. Act, 1988 and sec. 8(3) of the Orissa Special Courts Act, 1990 and sentenced him to 3 years rigorous imprisonment and to pay a fine of Rs. 5 lakhs.

(390)

(A) Departmental action and prosecution

- (i) *No statutory bar for Departmental action and Criminal Proceedings to go on simultaneously.*
- (ii) *Departmental action and Criminal Proceedings distinguished.*

(B) Departmental action and acquittal

Penalty of dismissal imposed in Departmental Proceedings, unaffected by subsequent acquittal by criminal court.

Laxman Lal vs. State of Rajasthan, 1994(5) SLR RAJ (DB) 120

This is an appeal against the order of the High Court, where a Single Judge dismissed the writ petition filed by the appellant against the order of the Deputy Inspector General of Police, Udaipur, as well as the order of dismissal.

The Division Bench of the High Court found no force in the contentions raised by the appellant. There was no statutory bar for disciplinary proceedings and court prosecution to go on simultaneously and the proceedings before the disciplinary authority already stood concluded and punishment had been imposed on the basis of the enquiry itself and the acquittal of the appellant later by the criminal court had no effect whatsoever on the conclusions arrived at in the enquiry resulting in punishment. These proceedings became final much before the verdict of the criminal trial and there was hardly any justification for the authorities to reconsider the case of the appellant after more than two years of the conclusion of the proceedings and finality of the order on the basis of the findings recorded by the criminal court in appeal.

The High Court pointed out that the punishment of the appellant was not based on the findings of conviction recorded by the Magistrate. It was totally an independent enquiry and the acquittal by the criminal court later had no effect whatsoever on those proceedings. It was also noted by the Single Judge of the High Court that apart from common charges, yet there was charge No.6 relating to absence of the appellant from duty and a delinquent employee against whom proceedings by the disciplinary authority are initiated it would be open for the said authority to proceed since the two proceedings are entirely different in nature and aimed at to achieve different ends. The appellant could have and should have made efforts to get the disciplinary proceedings stayed in the situation

but no such attempt was made and the proceedings were allowed to continue till punishment and the appellant woke up from his slumber after more than two years on his acquittal by the appellate court. The proceedings which are initiated by the employer are aimed at to ensure the proper conduct of the employee and are further aimed at to maintain discipline and dignity while in service and further that unscrupulous element may not be continued in service. The object of the criminal trial is to punish the offender and the court dealing with the trial has no jurisdiction to take any disciplinary action against an unscrupulous employee since that domain exclusively vests in the disciplinary authority. The proceedings by the department can well proceed to find out the misconduct of the employee even if a criminal case is pending on identical facts. The proceedings, thus, taken by the disciplinary authority do not suffer from any illegality or impropriety.

Coming to the fact as to in the given situation what would be the effect of acquittal of the appellant on the disciplinary enquiry conducted by the authorities culminating in his dismissal on the basis of the material on record, the High Court observed that the appellant has been found guilty by the District Superintendent of Police which order was confirmed in appeal by the Deputy Inspector General of Police, Udaipur. The appellant was also found guilty by the Magistrate and was convicted. The acquittal later by the Additional Sessions Judge in appeal was of no consequence on the proceedings which had been concluded long before and the order having not been challenged further had become final.

The High Court (Division Bench) expressed itself in agreement with the Single Judge and dismissed the appeal.

(391)

Documents — supply of copies/inspection

Charged Officer entitled to supply of copies of documents or where voluminous, for inspection of documents.

Committee of Management, Kisan Degree College vs. Shanbu Saran Pandey, 1995(1) SLR SC 31

If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not

given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent.

It is stated in the letter written by Enquiry Officer that inspection of documents would be given at the time of final hearing. That obviously is an erroneous procedure followed by the Enquiry Officer. In the first instance he should be given the opportunity for inspection and thereafter the enquiry should be conducted and then the delinquent should be heard at the time of conclusion of his enquiry. In this case the procedure for conducting the enquiry adopted is clearly in violation of the principles of natural justice.

(392)

Court jurisdiction

Administrative Tribunal can only examine the procedural correctness of the decision-making process and cannot go into or discuss the truth and correctness of the charges.

***Transport Commissioner, Madras vs. A. Radha Krishna Moorthy,
1995 (1) SLR SC 239***

The respondent, Additional Regional Transport Officer, Madras (Central) from 20.6.84 was promoted as Deputy Transport Commissioner in Sept. 1985. Disciplinary proceedings were instituted against him on charges of misappropriation of large amount of Government money. He approached the Tamil Nadu Administrative Tribunal and the Tribunal quashed the charges.

On appeal, the Supreme Court observed that so far as the truth and correctness of the charges are concerned, it was not a matter for the Tribunal to go into, more particularly at a stage prior to the conclusion of the disciplinary enquiry. Even when the matter comes to the Tribunal after the imposition of punishment it has no jurisdiction to go into truth of the allegations / charges except in case where they are based on no evidence i.e. where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Art. 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. Supreme Court held that for this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

(393)

Penalty — censure

Opportunity to show cause against imposition of censure should be given, even where Rules provide otherwise.

***State of U.P. vs. Vijay Kumar Tripathi, 1995(1) SLR SC 244:
AIR 1995 SC 1130***

The respondent was Addl. District Magistrate (Executive) at Byanpu, Varanasi district and was awarded a censure entry in his character roll on the ground that he pressurised the carpet traders of that area to render financial assistance to students who were agitating against the reservation policy of the Government. The UP Civil Services (CCA) Rules, Rules 49, 55-B (a), provide that whenever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course, it may impose the penalty of censure without having to frame a formal charge against the Government servant or call for explanation.

Supreme Court observed that the normal rule enunciated is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes, either expressly or by necessary intendment, application of the principles of natural justice but in that event validity of the Rule may fall for consideration. Consistent with the above rule, ordinarily speaking, an opportunity to show cause against the proposed imposition of penalty of censure should be given before its imposition. Censure is a penalty and it has adverse consequences. Hence the necessity to read the said principles. It would certainly be open to the competent authority in a given case to provide a post-decisional opportunity instead of a pre- decisional hearing.

(394)

Departmental action — delay in

- (i) *On the plea of delay, the court should weigh the factors appearing for and against the plea and take decision on the totality of circumstances by a process of balancing.*
- (ii) *How long a delay is too long depends upon the facts of the case.*

State of Punjab vs. Chaman Lal Goyal, 1995(1) SLR SC 700

The respondent was the Superintendent of Nabha High Security Jail. Disciplinary proceedings were instituted against him in connection with the escape of terrorist inmates from the jail. The High Court quashed the memo of charges, mainly on the ground of delay.

The Supreme Court observed that there is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges. It is true to say that such disciplinary proceeding must be conducted soon after the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the inquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. The court has to indulge in a process of balancing.

The Supreme Court observed that the principles enunciated in A.R. Anthulay vs. R.S. Nayak, 1992(1) SCC 225, though pertain to criminal prosecution, are broadly applicable to a plea of delay in taking disciplinary proceedings as well. Ultimately, the court has to balance and weigh the several relevant factors and determine in each case whether the right to speedy trial has been denied in a given case. The nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. Applying the balancing process, the Supreme Court expressed the view that the quashing of the charges and of the order appointing inquiry officer was not warranted.

(395)

Departmental action and conviction

- (i) *High Court suspending the sentence imposed by trial court, no bar to taking disciplinary proceedings on the basis of conduct which led to conviction.*
- (ii) *Where the Government servant is found guilty of corruption by a criminal court, it may not be advisable to retain such person in service until conviction is set aside.*

***Deputy Director of Collegiate Education vs. S. Nagoor Meera,
1995 (2) SLR SC 379: AIR 1995 SC 1364***

The respondent was Superintendent in the office of the Regional Deputy Director, Collegiate Education, Madurai and he was convicted under sec. 420 IPC and sec. 5 of Prevention of Corruption Act, 1947 (corresponding to sec. 13 of P.C. Act, 1988) and sentenced to one year RI and a fine of Rs.1000. On an appeal filed by the respondent on 14.2.91, the High Court suspended the sentence and released him on bail. A show cause notice was issued on 27-10-93 calling upon him to show cause why he should not be dismissed from service. The Tamil Nadu Administrative Tribunal quashed the notice on the ground that the criminal proceedings are being continued in the appellate court and the applicant cannot be proceeded against until they are concluded and further that there was inordinate delay of two years and eight months in issuing the show cause notice.

The Supreme Court observed that what is really relevant is the conduct of the Government servant which has led to his conviction on a criminal charge. The respondent has been found guilty of corruption by a criminal court and until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. Supreme Court also observed that the delay, if it can be called one, in initiating the proceeding has been properly explained as due to obtaining legal opinion whether action could be taken in view of the order of the High Court suspending the sentence. Supreme Court set aside the order of the Tribunal.

(396)

(A) Double jeopardy

(B) Penalty — promotion during its currency

*Non-consideration of promotion during currency of penalty,
does not constitute double jeopardy.*

State of Tamil Nadu vs. K.S. Murugesan, 1995(3) SLJ SC 237

The Supreme Court referred to the case of Union of India vs. K.V. Janakiraman, AIR 1991 SC 2010 and held that it is clear that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands an impediment. Unless the period of punishment gets expired by afflux of time, the claim for consideration during the said period cannot be taken up. Otherwise,

it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, the Supreme Court held that the doctrine of double jeopardy has no application and non-consideration is neither violative of Art. 20(2) nor Art.14 read with Art.16 of the Constitution.

(397)

Judicial Service — disciplinary control

Article 235 of the Constitution says control over the district courts and the courts subordinate thereto including posting and promotion of, and the grant of leave to, persons belonging to the Judicial service of a State and holding any post inferior to the post of District Judge shall vest in the High Court and the control to be exercised also relates to matters of discipline so far as judges of the subordinate courts are concerned which is an absolute necessity for the maintenance of judicial independence.

Pranlal Manilal Parikh vs. State of Gujarat, 1995 (4) SLR SC 694

The appellant was a Judicial officer, a Civil Judge (Judicial Division) in the Judicial service of the State of Gujarat. He was dealt with in disciplinary proceedings for claiming false traveling allowance for journeys by train from headquarters to the place of sittings at the Link Court without purchasing a ticket, and was dismissed from service.

The inquiry was initiated by the Government and a District Judge was appointed as Inquiry Officer and at the conclusion of the inquiry, he was served with a notice to show cause against dismissal and an order dated 3.11.65 was passed dismissing him from service. The order of dismissal was quashed on the ground that the State Government was not competent to order and initiate the inquiry. Thereupon, the High Court of Gujarat on the administrative side initiated a fresh inquiry on the same charge and the inquiry conducted pursuant to the High Court direction also ended in the dismissal of the delinquent from service. On the State Government refusing to pay the salary for the period of deemed suspension, the matter ultimately came up before the Supreme Court.

The Supreme Court observed that the Constitution places control over subordinate courts, in the High Court. Art. 235 says that the control over the District Courts and the courts subordinate thereto including posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and

holding any post inferior to the post of District Judge shall vest in the High Court. It is therefore clear that the control to be exercised also relates to matters of discipline so far as judges of the subordinate courts are concerned which is an absolute necessity for the maintenance of judicial independence. Admittedly, in the instant case, the inquiry was initiated by the State Government. The tentative decision to impose the penalty of dismissal was also formed by the State Government before the issuance of the second show cause notice to the delinquent. The final decision to impose the penalty of dismissal was also taken by the State Government and communicated on 3.11.65. That was clearly in contravention of the control jurisdiction of the High Court under Art. 235 of the Constitution. The entire proceedings beginning with the departmental inquiry and concluding with the order of dismissal was therefore, by an authority which Art. 235 did not countenance to exercise jurisdiction. The order of dismissal was therefore clearly passed in derogation of the concept of judicial independence and control enshrined in Art. 235 of Constitution. Such an inquiry and consequential order passed pursuant thereto can have no efficacy in law.

(398)

- (A) P.C. Act, 1988 — Sec. 13(1) (e)**
- (B) Disproportionate assets — margin to be allowed**

It is inappropriate, indeed undesirable, to extend benefit beyond 10% of total income, in determining disproportion of assets.

- (C) Misconduct — of disproportionate assets**

Possession of assets disproportionate to known sources of income constitutes misconduct.

- (D) Court jurisdiction**
- (E) Disciplinary authority — sole judge**
- (F) Evidence — some evidence, enough**

- (i) Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.*
 - (ii) Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court / tribunal, where conclusions are based on some evidence.*

- (iii) *The disciplinary authority is the sole judge of facts and the court / tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.*

B.C. Chaturvedi vs. Union of India 1995(5) SLR SC 778: AIR 1996 SC 484

In this case, departmental action was taken against the appellant, an Income Tax Officer, for possession of assets disproportionate to his known sources of income.

The Supreme Court dealt with the question whether the charge of being in possession of disproportionate assets is a misconduct. Supreme Court held that being a public servant, if at any time during the period of his office, he is proved to have been in possession, by himself or through any person on his behalf, of pecuniary resources or property disproportionate to his known sources of income, he is enjoined to satisfactorily account for the same. If he fails to account for, he commits misconduct. Therefore, as in a prosecution, a public servant is liable to punishment in disciplinary action. The need to make this misconduct expressly a part of enumerated items of misconduct under Central Civil Services (CCA) Rules, is obviated.

The Supreme Court observed that a three-judge bench of the Supreme Court in Krishna and Agnihotri vs. State of M.P., (1977 1 SCC 816) held that if the excess was comparatively small (it was less than 10% of the total income in that case), it would be right to hold that the assets found in the possession of the accused were not disproportionate to his known source of income raising the presumption under sub-section (3) of section 5 of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(1)(e) of P.C. Act, 1988). The Supreme Court observed that the said principle was evolved by the Supreme Court to give benefit of doubt, due to inflationary trend in the appreciation of the value of the assets. The benefit thereof appears to be the maximum. The reason being that if the percentage begins to rise in each case, it gets extended till it reaches the level of incredulity to give the benefit of doubt. It would, therefore, be inappropriate, indeed undesirable, to extend the principle of deduction beyond 10% in calculating disproportionate assets of a delinquent officer.

The Supreme Court laid down the following guidelines for judicial review in a writ petition under Art. 226 of the Constitution against orders of the disciplinary authority.

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court / Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with, whether the findings or conclusions are based on some evidence and whether the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court / tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has extensive power to reappreciate the evidence and the nature of punishment. The Court / Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court / Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court / Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of that case".

(399)

Penalty — for corruption

Dismissal is the appropriate penalty for misconduct of corruption.

State of Tamil Nadu vs. K.Guruswamy, 1995(8) SLR SC 556

The respondent was convicted under sec. 5(1)(d) read with sec. 5(2) of P.C. Act, 1947 (corresponding to sec. 13(1)(d) read with sec 13(2) of P.C. Act, 1988) as well as sec. 201 IPC and sentenced to imprisonment by the trial court and following this he was dismissed from service on 27-11-1978 under rule 17(c)

of Tamil Nadu Civil Services Rules which is evidently referable to proviso (a) to Art. 311(2) of the Constitution of India. Subsequently on 10-12-1981 the High Court dismissed the appeal preferred by the respondent and a special leave petition filed by him was also dismissed. The respondent approached the High Court by way of a writ petition questioning the order of his dismissal which was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal set aside the dismissal order on the ground that no ample opportunity was given to the respondent to show cause against the action proposed. The Tribunal held that though the respondent did not show cause pursuant to the show cause notice yet it was obligatory upon the authority to consider the appropriate punishment called for in the facts and circumstances of the case.

The Supreme Court was of the opinion that the said principle can make no difference in the facts of the case. The respondent has been convicted for corruption and there can be nothing short of dismissal in such cases. No other lesser punishment can be contemplated in such cases. In that view of the matter, Supreme Court allowed the appeal and restored the order of dismissal.

(400)

Plea of guilty

Charge of misappropriation held proved on admission in statement of defence in reply to the charge. No defence that money was spent for arrangements for visit of Minister or that it was spent under directions of Block Development Officer.

Secretary to the Panchayat Raj vs. Mohd. Ikramuddin, 1995(8) SLR SC 816

The respondent, Manager-cum-Chief Accountant in the Panchayat Samiti, Venkatapuram was dismissed from service on various charges including misappropriating the Panchayat Samiti's fund. The Andhra Pradesh Administrative Tribunal set aside the dismissal and directed the reinstatement of the respondent.

The Supreme Court observed that the reply of the respondent to the charge is an admission in clear terms that he advanced a sum of Rs.3965.60 for the arrangement in respect of the visit of a Minister. It is surprising how can an official entrusted with the money for the disbursement of scholarships to tribal students expend the same in welcoming a visiting Minister. The Supreme Court held that the charge against the respondent is proved on his own admission. No further enquiry of any type is necessary under law. Even if it is assumed that the money was spent by the respondent under the directions of the Block Development

Officer that cannot be a defence to the charge served on the respondent. This is one instance where the government money meant for a noble purpose was spent for an ignoble purpose. The Supreme Court held that the charge of misappropriating and misusing the government funds is proved against the respondent on his own admission and that this alone is sufficient to warrant the dismissal of the respondent from the service.

(401)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) Trap — complainant, accompanying witness turning hostile**
- (C) Evidence — of hostile complainant and accompanying witness**
- (D) Trap — appreciation of evidence**
- (E) Trap — corroboration of trap witness**
 - (i) Appreciation of evidence in a trap case, where the complainant and the accompanying witness did not unfold a consistent case in all respects.*
 - (ii) Need for corroboration of trap witness and the extent and nature depend upon facts and circumstances of each case.*

M.O. Shamshuddin vs. State of Kerala, 1995(II) Crimes SC 282

In this case, a Tahsildar (A1) was trapped when he demanded Rs. 500 as illegal gratification for issuance of a patta but instead of himself taking the money, he asked the complainant to give it to his Village Assistant (A2) and he did so. A2 received and put the money in his pant pocket, where from it was recovered by the Investigating Officer. To add to it, during the trial, the complainant and the accompanying witness did not unfold a consistent case in all respects, the former making efforts to exculpate A2 and the latter to exculpate A1 with the result the accompanying witness had to be treated as hostile. Even then, the trial court as well as the High Court after carefully scrutinising the evidence of the complainant along with the evidence of the two mediators, held that the guilt of both the accused was established beyond all reasonable doubt and convicted them for offences under sec. 5(2) read with sec. 5(1)(d) of the Prevention of Corruption Act, 1947 and sec. 161 IPC read with sec. 120-B IPC (corresponding to sec.13(2) r/w.13(1)(d), sec.7 r/w. sec.120-B IPC).

The Supreme Court held that it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe giver has to be scrutinized very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances.

The Supreme Court observed that it is not in dispute that the complainant had to get a patta issued by A.1 Tahsildar and he categorically stated that A.1 made the demand. A.2, Village Assistant was his Assistant and the tainted money was recovered from A.2 while he was just going out of the office of A.1. Unless A.1 had demanded the money and has also directed him to hand over the same to A.2, there was no reason at all as to why the complainant should hand over the money to A.2. The complainant has consistently stated that A.1 demanded the bribe and that A.2 received the amount as stated by him. Therefore it cannot be said that there is no corroboration regarding the demand. This is a case where each of the accused tried to throw the blame on the other but taking the overall circumstances into consideration in the light of the evidence of the mediators, along with the evidence of the complainant and the accompanying witness both the courts below have consistently held that the evidence of these witnesses establishes the guilt of the accused and the Supreme Court saw no reason to come to a different conclusion.

(402)

Misconduct — in judicial functions

Magistrate conducting auction of timber involved in a forest offence without authority and settling the bid for a very low amount constitutes misconduct.

High Court of A.P. vs. G. Narasa Reddy, 1996 (3) ALTAP 146

This writ appeal arose out of the judgment of a Single Judge of the High Court of Andhra Pradesh dated 2-12-1994, whereby a Single Judge quashed the order of dismissal of the respondent from judicial service.

The Respondent, while functioning as Munsiff Magistrate Achampet conducted auction of timber involved in a forest offence without authority and settled the bid for a very low amount, having confiscated teak logs without jurisdiction, manipulating date of proclamation of sale, the name of the highest bidder and other particulars.

After discussing the facts and circumstances of the case, the Division Bench of the High Court held that the conduct of the Munsiff Magistrate betrays the guilty mind and his conduct as a judicial officer smacks of some ulterior motive and court can take note of the features that, the human nature being what it is, there was some bad purpose in passing the order of confiscation of the 17 teak logs and auctioning them. The High Court held that the Munsiff Magistrate had not acted innocently in confiscating and selling the property by auction, but had acted in a manner that reflects on his reputation or integrity and indicates that his acts were unbecoming of a Judicial Officer establishing misconduct in the discharge of his duty.

The High Court held that imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the appellate authority to interfere with it but not to the High Court or the Administrative Tribunal. The Supreme Court can exercise equitable jurisdiction under Art. 136 of the Constitution of India, but the High Court has no such power or jurisdiction under Art. 226 of the Constitution of India.

The High Court allowed the appeal.

(403)

Preliminary enquiry

Preliminary enquiry is not compulsory though desirable. It is administrative action. The purpose is to find out whether there is sufficient justification for embarking on a full-fledged departmental inquiry. Disciplinary authority need not disclose the material to the delinquent. There is no fixed procedure. Disciplinary authority need not record its satisfaction. The question of prejudging the issues does not arise and the

delinquent need not be given an opportunity, and principles of natural justice do not apply.

Depot Manager, APSRTC, Medak vs. Mohd. Ismail, 1996 (4) ALT AP 502

The High Court laid down that a preliminary enquiry preceding a regular departmental inquiry is not compulsory, though desirable for the purpose of satisfaction of the Disciplinary authority whether there is a *prima facie* case and sufficient justification for embarking on a full fledged departmental inquiry. Preliminary enquiry is neither a judicial nor a quasi judicial act; it is purely an administrative action. The preliminary enquiry does not result either in exoneration or punishment, but it merely guides the employer whether to proceed against the employee or not. There is no obligation on the part of the disciplinary authority to disclose the materials and evidence collected in the course of the preliminary enquiry or the findings to the delinquent. The satisfaction arrived at and the material and the evidence collected in the preliminary enquiry may be a basis for initiating departmental enquiry and if the disciplinary authority wants to make use of the materials and evidence collected in the preliminary enquiry against the delinquent in the departmental Inquiry, then, law requires that such materials and evidence should be disclosed to the delinquent and the delinquent should be given a reasonable opportunity to have his say regarding those materials.

A preliminary enquiry is of very informal character and the methods are likely to vary in accordance with the requirements of each case. The procedure of enquiry is wholly at the discretion of the officer holding the enquiry. The disciplinary authority need not record its satisfaction in writing nor is it required to give reasons for initiating the regular departmental enquiry.

If the disciplinary authority, on the basis of the preliminary enquiry, forms an opinion and records that the delinquent is *prima facie* guilty of misconduct, it does not amount to prejudging the issue. The disciplinary authority need not maintain record of the preliminary enquiry. It need not give any opportunity to the delinquent to have his say in the preliminary enquiry. The delinquent will not be bound by even his own statement recorded in the preliminary enquiry unless the same is produced in the departmental inquiry and proved in accordance with law. The findings recorded by the disciplinary authority in the course of preliminary enquiry will in no way prejudicate the delinquent and those findings will not violate any of the rights of the delinquent. There is thus absolutely no scope for applying the rule of official or departmental bias to a preliminary enquiry.

The doctrine of principles of natural justice is not applicable to preliminary enquiries.

(404)

(A) Misconduct — what constitutes, what doesn't

'Misconduct' receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty.

(B) Misconduct — in judicial functions

Conduct of a judicial officer in exercise of his judicial functions can be the subject matter of disciplinary action.

K. Someswara Kumar vs. High Court of A.P., 1996 (4) SLR AP 275

The Appellant, a subordinate Judge was dealt with in disciplinary action and imposed the penalty of compulsory retirement for passing an award in a land acquisition matter enhancing the compensation amount exorbitantly.

On appeal, the High Court held that on the facts of the case, the sub-judge had acted in order to unduly favour the party and that it is not necessary that he should have been actuated by corrupt motive. The conduct of a judicial officer in exercise of his judicial functions can be the subject matter of disciplinary action. Judicial probity is of utmost importance. Conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If he conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. The misconduct receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

(405)

Charge sheet — non-formal

Where necessary particulars are mentioned, communication not conforming to a formal charge sheet may not matter.

**State Bank of Bikaner & Jaipur vs. Prabhu Dayal Grover,
1996(1) SLJ SC 145**

The Supreme Court observed that the letter communicating the accusation does not answer the description of a formal charge sheet but the contents thereof specifically disclose the charge levelled against him viz., that of

accepting a bribe of Rs.300 from Sri Maniram in the year 1978 for issuing a demand draft. It may be said that the exact date of acceptance of bribe was not disclosed but along with the letter was enclosed a copy of the complaint received from Maniram which not only disclosed the date but also satisfied the requirement of a statement of allegations envisaged in Regulation 68 of State Bank of Bikaner & Jaipur Officers' Service Regulations, 1979, in that all the details regarding the demand and acceptance of the bribe have been stated. The Supreme Court held that it can not therefore be said that the respondent was not fully apprised of the accusation levelled against him to enable him to effectively reply thereto and that in other words, the provisions of the Regulation have been substantially complied with, though not formally.

(406)

(A) P.C. Act, 1988 — Sec. 19

(B) Sanction of prosecution — under P.C. Act

- (i) *Providing opportunity of hearing to the accused before according sanction of prosecution does not arise.*
- (ii) *Exoneration of the accused in departmental action is not relevant for issue of sanction of prosecution.*

Superintendent of Police, CBI vs. Deepak Chowdary, 1996(1) SLJ SC 171

In this case, the sanction of prosecution issued by the competent authority under sec. 6(1)(c) of the P.C. Act, 1947 (corresponding to sec. 19 (1)(c) of P.C. Act, 1988) against the respondent, Branch Manager, United Bank of India at Calcutta was quashed by the High Court on two grounds, namely that the respondent was not given any opportunity of hearing before granting sanction of prosecution and in the departmental enquiry conducted by the Bank, he was exonerated of the charge and as such it was not expedient to proceed with the prosecution of the respondent.

The Supreme Court observed that the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to

grant sanction. The grant of sanction, therefore, being administrative act, the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.

The Supreme Court held that the second ground of departmental exoneration by the disciplinary authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which the sanction has been sought for.

(407)

- (A) Departmental action — delay in**
- (B) Suspension — court jurisdiction**

Setting aside order of suspension and departmental inquiry and quashing the charge on ground of delay in initiation of disciplinary proceedings in a case of embezzlement, by the Administrative Tribunal is grossest error in exercise of judicial review, where the Government servant was placed under suspension and disciplinary proceedings and court prosecution were pending.

***Secretary to Government, Prohibition and Excise department vs.
L. Srinivasan, 1996 (2) SLR SC 291***

The respondent while working as Assistant Section Officer, Home, Prohibition and Excise department was placed under suspension and disciplinary proceedings were initiated and criminal prosecution launched for embezzlement and fabrication of false records etc. The Tamilnadu Administrative Tribunal, Madras set aside the order of suspension and departmental enquiry and quashed the charges on the ground of delay in initiation of disciplinary proceedings.

The Supreme Court observed that in the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records and that "Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied." The Supreme Court allowed the appeals and set aside the order of the tribunal.

(408)

- (A) Disciplinary proceedings — initiation of
- (B) Disciplinary authority — subordinate authority framing charges and conducting inquiry

Not necessary that charges should be framed only by an authority competent to impose proposed penalty or that inquiry should be conducted by such authority.

***Inspector General of Police vs. Thavasiappan, 1996 (2) SLR SC 470:
AIR 1996 SC 1318***

A Departmental proceeding was initiated against the respondent, a Sub-Inspector of Police, on an allegation of misconduct committed by him. A Dy. Superintendent of Police was appointed as an Inquiry Officer and he framed the charges and served the same on the respondent. He then held an inquiry and submitted his report to the DIG of Police, who was competent to award the proposed penalty. The DIG agreed with the findings recorded by the inquiry officer and imposed the penalty of compulsory retirement. The respondent filed an appeal against that order to the Inspector General of Police and it was dismissed. The respondent approached the Tamilnadu Administrative Tribunal and it accepted the contention of the respondent that the charge memo should be issued by the disciplinary authority empowered to impose the penalty specified therein and if any lower authority has initiated proceedings by issuing the charge memo then the penalty will be limited to those that such lower authority can award to the delinquent concerned and that the DSP could not have imposed the penalty of compulsory retirement and the Tribunal set aside the order of penalty.

The Supreme Court observed that as to who shall initiate and conduct a disciplinary proceeding, the Rules are silent and that the relevant Rule provides that the Governor or any other authority empowered by him may institute disciplinary proceedings and that it is an enabling provision. From the way it is worded it is not possible to infer that the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in the Rule only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the Inquiry should be held by that authority only which is competent to impose the penalties mentioned in the Rule. An act of instituting a disciplinary proceeding is quite different from conducting an inquiry. The Rule provides how an inquiry should be

held in a case where it is proposed to impose on a member of the service any of the penalties specified. It lays down the different steps that have to be taken in the course of the inquiry proceeding. The Rule is completely silent as regards the person who should perform those acts except that the report of the inquiry has to be prepared by the authority holding the inquiry. The Rule itself contemplates that the inquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second paragraph of the sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the inquiry then it should not have provided that a report of the inquiry shall be prepared by the authority holding the inquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the inquiry should be conducted by such authority.

(409)

Misconduct — acting beyond authority

Bank Manager acting beyond his authority in a number of instances over a period inspite of instructions constitutes misconduct under Regs. 3 and 24 of Central Bank of India Officer Employees (D&A) Regulations.

Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik, 1996 (2) SLR SC 728

The respondent was an officer of the Central Bank of India. While he was working as Branch Manager, Paradeep Branch, he was suspended pending enquiry and 10 charges were framed against him. In the enquiry some of the charges were established and he was dismissed from service. The departmental appeal was dismissed and he filed a Writ in the Orrisa High Court challenging the dismissal order. The High Court held that the charge of misconduct was not established and allowed the writ petition.

On an appeal filed by the Bank, the Supreme Court set aside the judgment of the High Court and held as follows:

(i) Acting beyond one's authority is by itself a breach of Regulation 3 of the Central Bank of India Officer Employees (Discipline & Appeal) Regulations 1976. It constitutes misconduct within the meaning of Regulation 24 and no further proof of loss is necessary.

(ii) In the case of a Bank, every officer / employee is supposed to act within the limits of his authority and indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous consideration.

(iii) The very act of acting beyond authority, that too a course of conduct spread over a sufficiently long period and involving innumerable instances, is by itself a misconduct.

(410)

Conviction — suspension of

Court should not suspend conviction on flimsy grounds and specially in cases involving moral turpitude.

State of Tamil Nadu vs. A. Jaganathan, 1996(3) SLJ SC 9

The High Court of Madras relying on the decision of the Supreme Court in the case of Rama Narang vs. Ramesh Narang, (1995) 2 S.C.C. 513, took the view that for the reasons to be recorded in writing by the appellate Court, the conviction or order of sentence can be suspended during the pendency of the same and that the power of the appellate Court or the High Court to suspend the conviction or sentence is always inherent and can be exercised at any stage.

Supreme Court held that in the Rama Narang case, the conviction and sentences both were suspended on the reasoning that if the conviction and sentences are not suspended the damage would be caused which could not be undone if ultimately the revision of the appellants of that case was allowed. But in the present case in the event the revisions against their conviction and sentences are allowed by the High Court the damage, if any, caused to the respondents with regard to payment of stipend etc. can well be revived and made good to the respondents. If such trifling matters are taken into consideration, then every conviction will have to be suspended pending appeal or revision involving the slightest disadvantage to a convict. Supreme Court observed that the High Court made an observation but did not consider at all the moral conduct of the respondents in as much as one respondent who was the Police Inspector has been convicted under Sec.392, 218 and 466 IPC, while the other respondents have been convicted under the P.C.Act. In such a case the discretionary power to suspend the conviction either under Sections 389(1) or under Section 482 Cr.P.C. should not have been exercised. The orders impugned thus cannot be sustained.

(411)

Documents — defence documents, relevance

Charged Officer entitled to supply of only documents which are relevant.

State of Tamil Nadu vs. K.V. Perumal, 1996(3) SLJ SC 43

The Supreme Court observed that the Tribunal seems to be under the impression that the Inquiry Officer/disciplinary authority is bound to supply each and every document that may be asked for by the delinquent officer/employee. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. The Tribunal has not gone into the question nor has it expressed any opinion whether the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out in State Bank of Patiala vs. S.K. Sharma, 1996(3) SCALE 202. It was the duty of the respondent to point out how each and every document was relevant to the charges or to the inquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case. Since this has not been done by the Tribunal, it has to go back for a rehearing.

(412)

Judicial Service — disciplinary control

Article 235 of the Constitution of India vests the control over District Courts and the Courts subordinate thereto, including disciplinary control in the High Court.

T. Lakshmi Narasimha Chari vs. High Court of A.P., 1996 (4) SLR SC 1

Both the Judicial Officers T. Lakshmi Narasimha Chari and K. David Wilson, were directly recruited District Munsiffs in the Andhra Pradesh State Judicial Service and were appointed by the Governor. Disciplinary Proceedings were held against them for certain acts of misconduct and they were removed from service by the High Court. They challenged the orders of removal before the High Court of Andhra Pradesh on the ground that the Governor alone was competent to impose the penalty of removal and not the High Court. The full Bench of the High Court dismissed their writ petitions on the following grounds:

(1) Article 235 of the constitution of India vests the control over District Courts and the courts subordinate thereto, in the High Court. The control includes the disciplinary control over the conduct and discipline of the members of the subordinate judiciary.

(2) In the State of Andhra Pradesh except for the posts of District Judge filled by direct recruitment or by promotion and the posts of District Munsiffs filled by direct recruitment or by transfer for which the appointments have to be made by the Governor of the State of Andhra Pradesh, it is the High Court which is the appointing authority to the posts of Judicial Second Class Magistrate, to the posts of District Munsiff by promotion from the category of Judicial Second Class Magistrate and the posts of Subordinate Judge by promotion from the cadre of District Munsiff.

(3) In the case of persons appointed or promoted to be District Judges or the District Munsiffs appointed directly or by transfer by the Governor, if the High Court exercising disciplinary control over them recommends to the Governor to impose on them the major penalty of dismissal or removal or reduction in rank, such a recommendation is binding on the Governor by virtue of Article 235 of the Constitution.

(4) Rule 11(1) of the Andhra Pradesh Civil Services (Classification, Control, and Appeal) Rules, 1963 is ultra vires Article 235 of the Constitution in so far as it denies to the High Court the authority to impose punishments, both major and minor, regarded as necessary and proper in disciplinary enquiries held against the subordinate judicial officers who have been holding the posts to which they have been either initially appointed or promoted by the High Court.

(5) There is no right of appeal under Rule 21(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 to the Governor against the order of the High Court passed in exercise of its disciplinary jurisdiction against all the members of the subordinate judiciary including District Judges. Rule 21(2) must be read down to mean that the right of appeal saved under Article 235 of the Constitution is available only in respect of matters not relating to the disciplinary control vested in the High Court over members of the Subordinate Judicial Service.

On the various points mentioned above, the Supreme Court laid down the correct legal propositions as detailed below:

The Supreme Court upheld the propositions laid down by the High Court in points 1 to 3 mentioned above. The Supreme Court however pointed out that the High Court, inspite of the settled legal position did not adopt the correct procedure

DECISIONS (413)

for issuance of the order of removal from service of these two judicial officers. The High Court, instead of sending its recommendation to the Governor for issuing the order of removal from service, which would be binding on the Governor, proceeded to issue the order of removal from service itself.

As regards point No.4, the Supreme Court set aside the decision of the High Court in view of the fact that neither T. Lakshmi Narasimha Chari nor K. David Wilson were initially appointed directly as District Munsiff by the High Court and the question of considering the validity of Rule 11(1) did not arise in this case and it was therefore, unnecessary for the High Court to have raised that question and then to have considered and decided the same in the abstract.

As regards Point No.5, the Supreme Court disagreed with the view of the High Court and held that the power of control over persons belonging to the Judicial service of a State vests in the High Court and that the appeal must be decided by the Governor only in accordance with the opinion of the High Court, that such an appeal has to be forwarded by the Governor to the High Court for its opinion which would enable the High Court to reconsider its earlier decision and give its opinion to the governor, in accordance with which the Governor must decide the appeal and that in this process, any comments by the Governor on the merits of the case should also receive consideration of the High Court before it forms the final opinion and forwards its recommendation to the Governor for decision of the appeal in accordance with that opinion. This is the scheme and requirement of Article 235.

(413)

Departmental action and prosecution

No bar to proceed simultaneously with departmental inquiry and criminal trial. Supreme Court laid down guidelines.

***Depot Manager, APSRTC vs. Mohd. Yousuf Miya, 1996(6) SLR SC 629:
AIR 1997 SC 2232***

Appellant, Driver, Andhra Pradesh State Road Transport Corporation was proceeded against on a charge of lack of anticipation in causing an accident in which a cyclist died on 15-9-95. Simultaneously, prosecution was launched. High Court stayed the departmental proceedings.

Supreme Court considered the question whether it would be right to stay the criminal proceedings pending departmental inquiry and held that the purpose of departmental inquiry and of prosecution are two different and distinct

aspects. The criminal prosecution is launched for an offence in violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights, punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental inquiry. The inquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The inquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental inquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence, in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental inquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case.

It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304A and 338 IPC. The Supreme Court held that, under these circumstances, the High Court was not right in staying the proceedings.

(414)

(A) Trap — hostile evidence of 17 witnesses

(B) Evidence — of 17 hostile witnesses

Not a case of no evidence, where charge held proved on the sole testimony of complainant even though 17 witnesses turned hostile.

(C) Evidence — standard of proof

Standard of proof is preponderance of probability in disciplinary proceedings.

(D) Evidence Act — applicability of

Evidence Act has no application to disciplinary proceedings.

(E) Penalty — quantum of

What should be the penalty to be imposed, is for the disciplinary authority to consider.

(F) Public Service Commission

View of Public Service Commission, only recommendatory, not binding on Government.

N. Rajarathinam vs. State of Tamil Nadu, 1996(6) SLR SC 696

The petitioner, Assistant Commercial Tax Officer, was dismissed from service on 6-1-89. The Administrative Tribunal set aside the order. The Supreme Court remitted the matter to the Tribunal holding that administrative member alone cannot decide. The Tribunal upheld the order of dismissal and the matter came up before the Supreme Court.

The Supreme Court found no force in the contention that as many as 17 witnesses examined by the Government to prove the charges of demand and acceptance turned hostile, the solitary evidence of PW.1 is without corroboration of material particulars and is not sufficient for order of dismissal. The Evidence Act has no application in disciplinary proceedings. The report of the Tribunal for Disciplinary Proceedings was material before the disciplinary authority to take action. The Public Service Commission recommended to take a lenient view but it is only recommendatory and the Government was not bound to accept it. The Government accepted the finding of the Tribunal for Disciplinary Proceedings that preponderance of probabilities did establish the charge. This finding having been based upon the evidence of PW.1, it cannot be said that it is based on no evidence. If all the relevant facts and circumstances and the evidence on record are

taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the penalty to be imposed is for the disciplinary authority to consider. While taking decision to impose the penalty of dismissal, if the disciplinary authority had taken the totality of all the facts and circumstances it is for the authority to take a decision keeping in view the discipline in the service. The fact that there was no allegation of misconduct against the officer during his earlier career does not mean that proved allegation is not sufficient to impose the penalty of dismissal.

(415)

Lokayukta/ Upa-Lokayukta

Lokayukta/ Upa-Lokayukta has no jurisdiction over APSRTC and Cooperative Societies

***Institution of A.P.Lokayukta/Upa-Lokayukta vs. T.Rama Subba Reddy,
1996(7) SLR SC 145***

A mere look at the definition of the word ‘officer’ as found in Section 2(i) of Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 shows that before a person can be said to be a public servant because he is an officer it must be shown that he was appointed to a public service or post in connection with the affairs of the State of Andhra Pradesh. The writ petitioners were either working in Andhra Pradesh State Road Transport Corporation or in Co-operative Societies registered under the Andhra Pradesh Co-operative Societies Act, 1964. They could not be said to be persons appointed to a public service or post in connection with the affairs of State of Andhra Pradesh and they were not full-fledged government servants who would be entitled to enjoy the protection of Article 311 of the Constitution of India. Therefore, the attempt on the part of the appellants to attract the jurisdiction of the Lokayukta against the writ petitioners on this ground was unsustainable.

(416)

- (A) **P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) **Trap — foisting of, defence contention**
- (C) **Trap — appreciation of evidence**
 - (i) *Appreciation of evidence in a trap case.*
 - (ii) *Supreme Court rejected defence contention of thrusting of marked currency notes in the pocket of*

accused and observed: "Had the CBI people been interested in foisting a case against the appellant and that too nakedly, it was no cause for the raid party to have created a drama of putting the notes into his pocket and in that way to have soiled his hands with phenolphthalein powder. Without any such ritual the case could have been foisted."

Satpal Kapoor vs. State of Punjab, AIR 1996 SC 107

The Supreme Court observed that on a successful trap being laid, the appellant was tried and found guilty for having accepted a bribe of Rs.100 from the complainant. The prosecution story is of the usual kind. The demand of bribe was made by the appellant under the threat that he would, as an authorised Food Inspector, purchase samples of milk from the complainant and put him to harassment. Otherwise in his capacity as Health Inspector he had complained to the authorities concerned about the insanitation created by the complainant in keeping cattle in his railway quarters. In these circumstances, the CBI and the department of Vigilance were moved into the matter and the trap was organised. The tainted currency of two notes of rupees 50 denomination were found in the pocket of the appellant on the successful completion of the trap. The version of the appellant was that the complainant had walked into his office and on his own, put the two notes on the top of an almirah placed in the covered verandah in front of his office and that the CBI officials on arrival had forcibly put those currency notes in his pocket. His case was that the CBI Inspector was inimical towards him and that was the reason for false implication.

The Supreme Court observed that the defence of the appellant presupposes that there was a raid. He has given the counter version as stated above, but it does not probabilise in the facts and circumstances. Supreme Court observed: "Had the CBI people been interested in foisting a case against the appellant and that too nakedly, it was no cause for the raid party to have created a drama of putting the notes into his pocket and in that way to have soiled his hands with phenolphthalein powder. Without any such ritual the case could have been foisted." The appellant led no contemporaneous evidence from which it could be proved or inferred that the appellant was a victim of an organised false trap. The Supreme Court held that the conviction under sec. 5 (2) of the Prevention of Corruption Act, 1947 (Corresponding to sec. 13(2) of P.C. Act, 1988) was well-based requiring no interference.

(417)**Trap — acceptance of bribe money by middleman**

When the complainant paid the money to middleman on the directions of accused public servant, then it is as good as if the accused public servant had taken the money and passed on to middleman.

Virendranath vs. State of Maharashtra, AIR 1996 SC 490

The Supreme Court examined the contention raised by A1, Police Officer, that since the tainted money was found from A2, owner of the restaurant, complicity of A1 is ruled out, and observed that the fact that the tainted money in the hands of the complainant was meant to be passed on to A1 as bribe is beyond dispute in view of the consistent and cogent evidence of the members of the trap party. P.W. 3 is an independent witness in that regard, being a witness to the effect that it is at the asking of A1 that A2 took the tainted money and that before hand talk had ensued between A1 and the complainant, the bribe money with the complainant was meant to pass on to A1 at the restaurant of A2, the convenient place chosen by him. When the complainant paid the money to A2 on the directions of A1 then it was as good as if A1 had taken the money and passed on to A2. Acceptance is thus established from the conduct of A1.

On this understanding of the situation, the Supreme Court held that it is difficult to accept the contention of A1 that he was not guilty of the crime. The Supreme Court rejected the contention outright and confirmed the conviction of A1.

(418)

- (A) P.C. Act, 1988 — Sec. 13(1) (e)**
- (B) Disproportionate assets — opportunity to accused before registration**

Not necessary to give opportunity of being heard to the accused before registration of a case of disproportionate assets.

State of Maharashtra vs. Ishwar Piraji Kalpatri, AIR 1996 SC 722

The Supreme Court observed that it is no doubt true that evidence had to be gathered and a *prima facie* opinion formed that the provisions of sec. 5(1)(e) of the P.C. Act, 1947 (corresponding to sec. 13(1)(e) of the P.C. Act, 1988) are

attracted before first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a *prima facie* opinion that an officer may be guilty of criminal misconduct leading to the filing of the First Information Report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. The opportunity which is to be afforded to the delinquent officer under sec. 5(1) (e) of satisfactorily explaining about his assets and resources is before the Court when the trial commences and not at an earlier stage. Thus the finding that principles of natural justice had been violated, as no opportunity was given before the registration of the case, would be clearly unwarranted.

(419)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under Sec. 197 Cr.P.C.

- (i) *Sanction under sec. 197 Cr.P.C. is required even when the public servant ceases to hold his office on the date of taking cognizance of offence.*
- (ii) *Minister alleged to have supplied certain units of Electricity to private industry without consent of Government. Alleged criminal conspiracy had direct nexus with discharge of his official duties. Sanction of prosecution considered necessary, under sec. 197 Cr.P.C.*

R. Balakrishna Pillai vs. State of Kerala, AIR 1996 SC 901

The Supreme Court observed that the Law Commission in its 41st Report, while dealing with sec. 197 Cr.P.C., as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by sec.197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view that the question of the expediency of prosecuting any public servant". It was in pursuance of this observation that the expression 'was' came

to be employed in sec. 197 after the expression 'is', to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted. Sanction is required even when the public servant ceases to hold his office on the date of taking cognizance of offence.

The Supreme Court further observed that the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of Karnataka 'without the consent of the Government of Kerala which is an illegal act' under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs. 19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act in as much as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under sec. 120-B IPC. The Supreme Court held that it is clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of sec. 197(1) Cr.P.C. The Supreme Court was unable to accept the view taken by the High Court of Kerala in so far as the requirement of sanction under sec. 197(1) Cr.P.C. is concerned in relation to the charge of criminal conspiracy.

The Supreme Court allowed the appeal, set aside the decision of the High Court in so far as that charge is concerned and held that sanction under sec. 197(1) Cr.P.C. was a sine qua non.

(420)

Principles of natural justice — guidelines

- (i) *Violation of any and every facet of principles of natural justice does not render decision void.*
- (ii) *Supreme Court laid down guidelines.*

***State Bank of Patiala vs. S.K. Sharma, AIR 1996 SC 1669:
1996 (2) SLR SC 631***

Respondent, Manager, State Bank of Patiala was charged with temporary misappropriation and he was removed from service. The order was challenged on the ground of non-furnishing of copies of statements of witnesses and documents. A list of documents / witnesses was furnished before the commencement of enquiry and copies of documents and statements recorded during preliminary enquiry were not supplied. Half an hour before commencement of enquiry proceedings, respondent perused documents and statements of witnesses.

The Supreme Court held that though the copies of the statement of two witnesses were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. One of the two witnesses was not examined. The respondent did not raise any objection during the enquiry that the non-furnishing of copies of the statements is disabling him or has disabled him from effectively cross-examining the witnesses or to defend himself. The trial court has not found that any prejudice has resulted from the said violation. The appellate court has no doubt said that it has prejudiced the respondent's case but except merely mentioning the same, it has not specified in what manner and in what sense was the respondent prejudiced in his defence. The High Court of course has not referred to the aspect of prejudice at all.

For the above reasons, the Supreme Court held that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses and it cannot be said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry.

The Supreme Court has issued the following guidelines in this regard:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary / departmental enquiry in violation of the rules / regulations / statutory provisions governing such enquiries should not be set aside automatically. The court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) it is procedural in character.

(2) A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer / employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz, whether such violation has prejudiced the delinquent officer / employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and / or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. It may be remembered that there may be certain procedural provisions which are of fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. In a case where there is a provision expressly providing that after the evidence of the employer / government is over, the employee shall be given an opportunity to lead defence in his evidence and the enquiry officer does not give that opportunity inspite of the delinquent officer / employee asking for it, the prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considering all things. Now this very aspect can also be looked at from the point of view of directory and mandatory provisions. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In case of procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer / employee has not waived it or that the provision could not be waived by him, then the Court

or Tribunal should make appropriate directions (including the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in "B. Karunaker". The ultimate test is always the same, viz. test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules / regulations / statutory provisions and the only obligation is to observe the principles of natural justice or, for the matter, wherever such principles are held to be implied by the very nature and impact of the order / action, the court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule. In other words, a distinction must be made between "no opportunity" and no adequate opportunity i.e., between "no notice" / "no hearing" and "no fair hearing" (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice. In other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer / employee did or did not have fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the tests in which behalf are laid down elsewhere).

(6) While applying the rule of audi alteram partem (the primary principle of natural justice), the Court / Tribunal / Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz. to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interest of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the court may have to balance public / State interest with the requirement of natural justice and arrive at an appropriate decision.

(421)

Plea of guilty

In the face of admission of guilt by Charged Officer, of failing to deposit the money collected by him, rejection of his belated request to examine more witnesses, by the Inquiry Officer, justified.

**Addl. District Magistrate (City), Agra vs. Prabhaker Chaturvedi,
AIR 1996 SC 2359**

The respondent, an employee in the office of the Addl. District Magistrate (City), Agra was dismissed from service for misappropriation of Rs.21,094.80 collected by him partly in March, 1984 and partly in Aug. 1984 for a few months upto 14-12-84. The High Court set aside the order on the ground that he was not given adequate opportunity of defending himself as he was not permitted to examine witnesses nor was he supplied documents asked for by him.

The Supreme Court observed that the respondent himself by his statement dated 14-12-84 admitted to have received Rs.21,000 and odd and which could not be deposited by him on account of carelessness and fault, that it could not have been brought about by coercion and that the order sheet of the Inquiry Officer clearly shows that the respondent stated that he did not want to give any documentary or oral evidence and that the rejection of his request later to examine four more witnesses considering it as an after thought by the Inquiry Officer, was proper. Supreme Court held that the charge stood proved on the admission and that the imposition of penalty of dismissal was justified.

(422)

Recovery of loss (non-penal)

Recovery is one of the penalties but it does not mean that recovery cannot be ordered otherwise, where loss is due to negligence / omission / commission of employee.

Rajesh Kumar Kapoor vs. Union of India, 1997(2) SLJ CAT JAIPUR 380

One of the penalties mentioned in Rule 6 of Railway Servants (D&A) Rules is recovery of any loss that may be caused by an employee to the organisation. It does not mean if any loss is to be recovered on account of negligence or other acts of omission or commission on the part of an employee, that can be done only by initiating disciplinary proceedings against the applicant which must culminate in imposition of minor penalty of recovery of loss on him. That provision in Rule 6 simply means that one of the minor penalties that may be imposed is recovery of loss but it does not follow that any recovery of loss can be effected only after following the procedure laid down in the Railway Servants (D&A) Rules.

(423)

Fresh inquiry / De novo inquiry

Ignoring the first inquiry report without any reason and ordering de novo inquiry, not sustainable.

B. Balakishan Reddy vs. Andhra Pradesh State Electricity Board, 1997(8) SLR AP 347

The High Court of Andhra Pradesh observed that the first inquiry report was in favour of the delinquent and it does not suffer from any infirmity. There is no provision in the relevant rules giving any power to the disciplinary authority to ignore the report of the inquiry officer submitted to it and to direct a de novo inquiry. Order of the disciplinary authority to ignore the first inquiry report without assigning any reasons, and appointing another inquiry officer is not sustainable.

(424)

Penalty — recovery, on death of employee

On death, disciplinary proceedings for causing loss, abates.

Saroja Shivakumar vs. State Bank of Mysore, 1997(3) SLR KAR 22

On the death of the employee, disciplinary proceedings for causing pecuniary loss to the Bank, which are pending, abates. High Court directed the Bank to compute the difference in salary payable to the deceased officer making adjustment of the subsistence allowance paid to him and pay the balance to the petitioner, and to pay entire balance of terminal benefits. High Court also held that denial of compassionate appointment is improper.

(425)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — appreciation of evidence

(C) Trap — ‘accept’, ‘obtain’

(i) Appreciation of evidence in a trap case.

(ii) ‘Acceptance’ under sec. 161 IPC and ‘obtaining’ under sec. 5(1) (d) of P.C. Act, 1947 (corresponding to secs. 7, 13(1) (d) of P.C. Act, 1988) considered. It cannot be said that without a prior demand, there cannot be acceptance.

C.K. Damodaran Nair vs. Government of India, 1997 Cri.L.J. SC 739

Four Provident Fund Inspectors of Calicut including the appellant were tried by the Special Judge, Ernakulam for offences punishable under sec. 161 IPC and sec. 5(2) read with sec. 5(1) (d) of P.C. Act, 1947 (corresponding to sec.7 and sec. 13(2) read with sec. 13(1)(d) of P.C. Act, 1988). The Special Judge acquitted all of them, and the High Court set aside the acquittal of the appellant and convicted him for the above offences while maintaining the acquittal of the other three.

The Supreme Court observed that from a combined reading of sec. 161 IPC and sec. 4(1) of the P.C. Act, 1947 (corresponding to sec. 20 of the P.C. Act, 1988), it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had 'accepted' or 'obtained' Rs.1,000/- as gratification from the complainant, not only the first two ingredients of the former would stand proved but also the third, in view of the presumption under the latter which the court is bound to draw unless, of course, the appellant, in his turn has succeeded in rebutting that presumption. Obviously, such a consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to 'acceptance' within the meaning of sec. 161 IPC. It cannot be said, therefore, as an abstract proposition of law that without a prior demand there cannot be acceptance.

The position will, however, be different so far as an offence under sec. 5(1)(d) read with sec. 5(2) of the P.C. Act, 1947 is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under sec. 4(1) of the Act.

The Supreme Court observed that the appellant did not dispute the fact that the sum of Rs. 1000 was recovered from his possession. While according to the prosecution the appellant 'accepted' that amount, the appellant contended that the same was thrust into his trouser pocket by the complainant. From the judgment of the trial court it is found that the principal reason which weighed with it for accepting the case of the defence in preference to that of the prosecution

was that the complainant was an interested witness and the two independent witnesses did not speak about any demand made by the appellant. The Supreme Court was in complete agreement with the High Court that the finding recorded by the trial Court in this regard is patently perverse. Both the independent witnesses categorically stated that they saw complainant taking out the notes from his shirt pocket and handing over the same to the appellant, and the appellant, after counting those notes, putting them in the right front pocket of his trousers. The unimpeachable evidence of these two independent witnesses conclusively proves that the transaction was consensual. That necessarily means that the appellant ‘accepted’ the money and the defence story that the complainant thrusted the money is patently untrue. Consequent upon such proof, the presumption under sec. 4(1) of the P.C. Act, 1947 would operate and since the appellant did not rebut that presumption the conviction of the appellant under sec. 161 IPC has got to be upheld.

On the question whether the conviction of the appellant for the other offence under sec. 5(1)(d) read with sec. 5(2) of the P.C. Act can be sustained or not, the Supreme Court observed that the prosecution led evidence that the appellant and the other accused persons had earlier demanded bribe to exempt their hospital from the operation of the Employees Provident Funds Act. Since there is no reason to disbelieve their evidence and since their evidence gets amply corroborated by the fact of acceptance of Rs.1000 by the appellant subsequently on 2.4.1984, as testified by a number of witnesses and it is manifested that the appellant obtained the money pursuant to the demand earlier made by him by abusing his position as a public servant. The Supreme Court held that the conviction of the appellant under sec. 5(2) of the P.C. Act is also well-merited.

(426)

Sanction of prosecution — under court orders

Sanction order is erroneous, having been passed mechanically as per orders of High Court.

***Mansukhlal Vithaldas Chauhan vs. State of Gujarat,
1997 Cri.L.J. SC 4059***

Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction

whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

In the instant case the High Court issued the mandamus directing the Secretary, sanctioning authority to grant sanction for prosecution of accused-appellant in bribery case. Thus by issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant, whether the complaint of gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Govt. that the firm had been black-listed once and there was demand for some amount to be paid to Govt. by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under sec. 6 of the P.C. Act, 1947 (corresponding to sec. 19 of the P.C. Act, 1988), it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order passed by the Secretary and not that of the High Court. This is a classic case where a Brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court.

The sanctioning authority, in the instant case, was left with no choice except to sanction the prosecution and in passing the order of sanction, it acted mechanically in obedience to the mandamus issued by the High Court by putting the signature on a proforma drawn up by the office. Since the correctness and validity of the 'sanction order' was assailed before the Court, the Supreme Court had necessarily to consider the High Court judgment and its impact on the

“sanction”. The so-called finality cannot shut out the scrutiny of the judgment in terms of actus curiac neminem gravabit as the order of the High Court in directing the sanction to be granted, besides being erroneous, was harmful to the interest of the appellant, who had a right, a valuable right, of fair trial at every stage, from the initiation till the conclusion of the proceedings.

(427)

Departmental action and prosecution

No legal bar for both criminal and departmental proceedings to go on simultaneously, but in certain situations, may not be desirable, advisable or appropriate.

State of Rajasthan vs. B.K. Meena, 1997(1) SLJ SC 86

Respondent, Member of Indian Administrative Service, was prosecuted for misappropriation of public funds and simultaneously disciplinary proceedings were initiated. Supreme Court held: There is no legal bar for both criminal and departmental proceedings to go on simultaneously but in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary inquiry when a criminal case is pending on identical charges.

The staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only valid ground for staying disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced, and this may be done in cases of grave nature involving questions of fact and law. It means that not only the charges must be grave but the case must also involve complicated questions of law and fact. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It only serves the interest of the guilty and dishonest.

(428)

(A) Cr.P.C. — Sec. 161

(B) Witnesses — examination of

Statement recorded under section 161 Cr.P.C. being taken on record after being read over and its affirmation by the witness, is not illegal.

***State Bank of Bikaner & Jaipur vs. Srinath Gupta, 1997(1) SLJ SC 109:
AIR 1997 SC 243***

The respondent, Head-Cashier of State Bank of Bikaner & Jaipur was dismissed from service on 27-6-79 on charges of demanding and accepting bribes for arranging sanction of bank loans, and other acts of corruption. The High Court, however, by judgment dated 5-8-92 quashed the order on the ground that the statements recorded under section 161 Cr.P.C. were admitted as evidence.

The Supreme Court held that the statements under section 161 Cr.P.C. may not be admissible in the criminal trial. In the instant disciplinary inquiry, the person who made the statement has been examined before the inquiry officer. It was open to the witness to have stated orally the entire contents of what was recorded in his statement under section 161 Cr.P.C. Instead of following this time-consuming procedure, the statement recorded under section 161 Cr.P.C. was read over to the witness who admitted the contents thereof. In this way the earlier statement under section 161 Cr.P.C. became a part of the examination-in-chief of the witness before the inquiry officer. It is not in dispute that the statements had been given to the respondent in advance and full opportunity was granted to him to cross-examine the said witness. The Supreme Court drew attention to their observation in the case of State of Mysore vs. S.S. Makapur, 1963(2) SCR 943, where it was held that the position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him and admitted in the evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statements should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities. In Khatri vs. State of Bihar, 1981(3) SCR 145, the Supreme Court observed that the bar under Chapter XII is applicable only where the statement recorded under section 161 Cr.P.C. is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made and that if such

statement is sought to be used in any proceedings other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. The Supreme Court held that the only conclusion which could be arrived at is that no illegality has been committed by taking on record the statements which had been made under section 161 Cr.P.C.

(429)

(A) Preliminary enquiry report

Preliminary enquiry report, not required to be supplied, where not relied upon.

(B) Common proceedings

(C) Evidence — of co-charged official

(D) Evidence Act — applicability of

(i) *Taking into account statement of co-charged official in common proceedings in adjudging misconduct, not objectionable.*

(ii) *Evidence Act, not applicable in a departmental inquiry.*

***Vijay Kumar Nigam (dead) through Lrs. vs. State of M.P.,
1997(1) SLR SC 17***

The appellant, Sub-Inspector of Police was dismissed from service on a charge of receiving illegal gratification from an organiser of gambling, by order dated 31-7-71 and his dismissal was confirmed by the Inspector General of Police, by order dated 21-1-74. The Division Bench of the High Court upheld the order of dismissal.

The Supreme Court held that the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action and it does not form any foundation for passing the order of dismissal, and it is not necessary to supply a copy of the report to the charged officer. The High Court found as a fact that all the statements of persons that formed basis for the report, recorded during the preliminary enquiry, were supplied to the delinquent officer.

On the question of holding of a joint inquiry along with a constable, the Supreme Court held that in a departmental inquiry, the question whether or not any delinquent officer is co-accused with others does not arise, but only in a

prosecution under the IPC or the Prevention of Corruption Act. The evidence recorded in the departmental inquiry ‘*stricto sensu*’ is not evidence as per the provisions of the Evidence Act. Evidence Act is not applicable in a departmental inquiry. The statement of the constable formed part of the record and it could be taken into account in adjudging the misconduct against the Sub-Inspector. The appeal is dismissed.

(430)

(A) Court jurisdiction

(B) Charge — setting aside by Court/Tribunal

Court or Tribunal not justified to go into whether the charges are true, for it would be a matter of production of evidence for consideration at the inquiry.

Deputy Inspector General of Police vs. K.S. Swaminathan,
1997 (1) SLR SC 176

This is an appeal by special leave against the order of the Tamil Nadu Administrative Tribunal dated 15-4-94 setting aside the charge memo dated 28-9-91 on the ground that the charges were vague.

The Supreme Court observed that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been issued, the Tribunal or Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the inquiry by the inquiry officer. At the stage of framing of the charge, the statement of facts and the charge-sheet supplied are required to be looked into by the court or the Tribunal as to the nature of the charge, i.e. whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer.

(431)

Evidence — onus of proof

In Disciplinary cases, it is not a strict rule that burden of proof cannot be on the other side. It depends on the nature of charges and the explanation offered.

***Orissa Mining Corporation vs. Ananda Chandra Prusty,
1997(1) SLR SC 286***

There is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation.

The charge was that the respondent made certain false notings on account of which loans were disbursed to certain ineligible persons. His case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent.

(432)

(A) Disciplinary Proceedings Tribunal

(B) Vigilance Commission — consultation with

Consultation with the Andhra Pradesh Vigilance Commission provided for in the A.P.C.S. (DPT) Rules 1961, not mandatory.

State of Andhra Pradesh vs. Dr. Rahimuddin Kamal, 1997 (1) SLR SC 513: AIR 1997 SC 947

The respondent, Deputy Collector in the State of Andhra Pradesh, was removed from service on 23-9-77 for absence from duty and the period of absence was treated as dies non by order dated 13-12-77. The Andhra Pradesh Administrative Tribunal dismissed his representation petition on 10-6-84 but on a review petition, set aside the order of removal and upheld the order treating the period of absence as dies non, by order dated 7-8-84. The Government of Andhra Pradesh annulled the said order in exercise of its powers under Article 371-D(5) of the Constitution of India, by order dated 31-10-84. The High Court of Andhra Pradesh allowed the writ petition filed by the respondent and set aside the order dated 31-10-84 passed by the Government. The matter came up before the Supreme Court by an appeal.

The only question for consideration is as to whether the Tribunal was right in setting aside the order of removal passed on 23-9-77 solely on the ground that before passing the order, the Government did not consult the State Vigilance

Commission as clause (2) of rule 4 of the A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules 1961 stipulated that the Government shall consult the Vigilance Commission before deciding whether the case shall be tried in a court of law or inquired into by the Tribunal or departmental authority. The Supreme Court held that the word "shall" appearing in clause (2) of rule 4 is not mandatory and consequently non-consultation with the Vigilance Commission would not render the order of removal of the respondent illegal, on the analogy of the interpretation of the word "shall" occurring in Article 320 (3) (c) of the Constitution in respect of consultation with the Service Commission. The Supreme Court upheld the order of removal of the respondent.

(433)

(A) Misconduct — good and sufficient reasons

Not appearing before Medical Board with a view to avoid inquiry regarding true state of health is an act of insubordination and disobedience of an order by police officer and constitutes good and sufficient reason for initiating disciplinary proceedings, though there is no specific conduct rule in that regard.

(B) Disciplinary Proceedings — initiation of

Not necessary that disciplinary authority alone should initiate departmental proceedings against delinquent Government servant.

Secretary to Government vs. A.C.J. Britto, 1997(1) SLR SC 732

The Supreme Court observed that the proceeding was initiated against the respondent, Sub-Inspector of Police, for his conduct of indiscipline in disobeying a lawful order passed by his superior officer to appear before the Medical Board. The act of insubordination or disobedience of an order by a police officer has to be viewed seriously as higher degree of discipline is expected of a member belonging to the Police Force. Therefore, it cannot be said that there was no good and sufficient reason or a valid justification for initiating the disciplinary proceedings against him. On the contention of the respondent that in the absence of any specific Rule treating non-compliance with an order of a superior police officer or non-appearance before a Medical Board as an act of misconduct, no disciplinary proceedings should have been initiated against him for the said act of delinquency, the Supreme Court distinguished the case of

A.L. Kalra vs. Project and Equipment Corporation of India Ltd., 1984(3) SCC 316. In the said case, the Service Rules made a clear distinction about what would constitute misconduct, in that rule 4 was given the heading 'General' and rule 5 was given the heading 'Misconduct' and Supreme Court observed that in the said case "failure to keep such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconducts in Rule 5". Thus the decision in that case turned upon the scheme of those rules and construction placed upon rules 4 and 5 of those rules. The Supreme Court has not laid down as a general principle that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act. The rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of the Service penalties specified therein 'for good and sufficient reason'. Therefore, the decision of the Supreme Court in A.L. Kalra's case is clearly distinguishable. The Supreme Court observed that his not appearing before the Medical Board was with a view to avoid an enquiry regarding his true state of health so that he was not compelled to resume duty. It was thus an act of disobedience and indiscipline. Therefore, in the facts and circumstances of the case, it cannot be said that there was no good and sufficient reason for initiating a disciplinary proceeding against the respondent.

The Supreme Court observed that the view taken by the Administrative Tribunal that only the disciplinary authority can initiate a departmental proceeding against the delinquent Government servant, is contrary to the law laid down by the Supreme Court, in Inspector General of Police vs. Thavasiappan, 1996(2) SLR SC 470 and in that view set aside the contrary finding recorded by the Tribunal.

(434)

(A) Common proceedings

(B) Common proceedings — appellate authority

- (i) No right to charged officers in common proceedings to seek splitting up of proceedings.*
- (ii) Can examine Co-Charged Officers in defence.*
- (iii) Appellate authority imposing penalty in common proceedings as primary authority, not violative.*

(C) Penalty — quantum of

Omission to repeat same mistake of imposing lesser penalty, not violative of Article 14.

***Balbir Chand vs. Food Corporation of India Ltd., 1997(1)
SLR SC 756***

The petitioner, Manager in the Food Corporation of India at Chandigarh, was dealt with in departmental action on a charge of dereliction of duty in failure to submit the report of verification in respect of a contractor truthfully, and removed from service. The order of removal was confirmed by the Board. The High Court dismissed the petition in limine.

On the contention of the appellant that he was removed from service by the Managing Director, whereas Zonal Manager was the disciplinary authority, the Supreme Court pointed out that as it was a joint inquiry the highest in the hierarchy of competent authority who could take disciplinary action against the charged officers was the Managing Director and that there is no prohibition in law that a higher authority should not impose the penalty as the primary authority in the matter of disciplinary action. In this case, a right of second appeal/ revision also was provided to the Board. There was no violation of Article 14 of the Constitution.

On the contention that the petitioner should be given an opportunity of splitting up the matter and that common proceedings caused grave prejudice, the Supreme Court held that the provision of an opportunity of splitting up the matter is only instruction issued as guidelines. If one charged officer cites another charged officer as a witness, the inquiry need not per se be split up and if that procedure is adopted normally all the delinquents would be prone to seek split up of proceedings. In disciplinary proceedings the concept of co-accused does not arise and each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the inquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the disciplinary authority. Under these circumstances, the need to split up the cases is obviously redundant, time-consuming and dilatory. The Supreme Court held that there is no illegality in the action taken.

On the contention that some of the delinquents were let off with a minor penalty, the Supreme Court held that merely because one of the officers was wrongly given the lesser penalty, it cannot be held that they too should also be given the lesser penalty. Omission to repeat the same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and take appropriate decision according to law.

(435)

Misconduct — good and sufficient reasons

Police Constable appearing before Sub-Inspector in drunken condition constitutes good and sufficient reason for initiating disciplinary proceedings.

Government of Tamil Nadu vs. S. Vel Raj, 1997(2) SLJ SC 32

The respondent, Police Constable, when he appeared before the Sub-Inspector at 8 P.M. on 7.7.84 was on duty. At that time he was found in a drunken condition and was in 'mufti'. He had even admitted before the S.I. that he had consumed 'arrack' and it was for that reason that he was smelling of alcohol.

On the question that the said acts of the Constable did not constitute any misconduct, Supreme Court observed that what was required to be considered is whether there was 'good and sufficient reason' for initiating a disciplinary proceedings against him and that his behaviour has to be regarded as an act of gross misconduct and upheld the order of the departmental appellate authority enhancing the penalty of reversion to a lower grade to one of compulsory retirement.

(436)

Preliminary enquiry

Preliminary enquiry loses relevance after initiation of full-fledged disciplinary inquiry.

***Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra,
1997(2) SLJ SC 91***

On the contention that preliminary enquiry was not properly conducted in imposing the penalty of removal from service for misappropriation of Rs.1440, Supreme Court held that preliminary enquiry has nothing to do with the inquiry conducted after the issue of charge sheet, that the former action would be to find whether disciplinary inquiry should be initiated against the delinquent and that after full-fledged inquiry was held, the preliminary enquiry had lost its importance.

(437)

Suspension — treatment of period

Acquittal does not automatically entitle one to get the consequential benefits as a matter of course.

***Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra,
1997(2) SLJ SC 166***

It is true that when a Government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period. The object of sanction of law behind prosecution is to put an end to crime against the society and thereby restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool-proof, the act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits.

This grant of consequential benefits with all back-wages etc. cannot be as a matter of course. It would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may inquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the

authority, may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowances etc). Rules 72(3), 72(5) and 72(7) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1991 give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits.

(438)

Penalty — quantum of

Imposition of penalty is the right of disciplinary authority and the Tribunal has no power to direct to reconsider the matter.

Government of Andhra Pradesh vs. B. Ashok Kumar, 1997(2) SLJ SC 238

The respondent, an Inspector of Police, was placed before the Tribunal for Disciplinary Proceedings on the charge of demanding and accepting Rs.3,000/- as illegal gratification for refraining from registering a complaint and prosecuting him. The Tribunal held the charge as proved but recommended to impose the penalty of stoppage of three increments with cumulative effect. The Government however dismissed him from service on 28-7-95. On the Application having been filed before it the Administrative Tribunal, while accepting that the charge has been proved, was of the view that the Government should reconsider the question of imposition of the penalty of stoppage of three increments.

The Supreme Court held that it is a legal settled position that imposition of the penalty is the right of the disciplinary authority consistent with the magnitude and the misconduct imputed and the evidence in support thereof. The Inspector of Police, a higher ranking officer, if he demands and accepts illegal gratification and restrains himself from initiating prosecution against the offender, it would have an effect on the maintenance of law and order in the society. The Tribunal has no power to direct the appellant to reconsider the matter.

(439)

Administrative Tribunal — jurisdiction of High Court

Jurisdiction of High Court over Administrative Tribunals analysed.

L. Chandra Kumar vs. Union of India, 1997(2) SLR SC 1

The power of judicial review over legislative action vested in the High Courts under Art. 226 of the Constitution and in the Supreme Court under Art.32 is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. A situation where the High Courts are divested of all other judicial functions apart from that of Constitutional interpretation is equally to be avoided. Cl.2 (d) of Art. 323-A and Cl.3 (d) of Art. 323-B to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Arts. 226/227 and 32 of the Constitution are unconstitutional. Sec. 28 of the Administrative Tribunals Act, 1985 and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Arts. 323-A and 323-B would to the same extent be unconstitutional. The jurisdiction conferred on High Courts and Supreme Court is a part of the inviolable basic structure of the Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Arts. 226/227 and 32 of the Constitution.

The Tribunals created under Arts. 323-A and 323-B of the Constitution are possessed of the competence to test the Constitutional validity of the statutory provisions and rules. All decisions of these Tribunals will, however, be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the area of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except when that legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Sec. 5(6) of the Act is valid and constitutional and is to be interpreted in the indicated manner. When a question involves the interpretation of a statutory provision or rule in relation to the Constitution, proviso to Sec. 5(6) will automatically apply and the matter will be referred by Chairman to a Bench of two members one of which will be judicial member and vires of statutory provision and rule will never arise for adjudication before a single member Bench or a Bench which does not consist of a judicial member.

(440)

- (A) Misconduct — in judicial functions
- (B) Evidence — standard of Proof
- (C) Evidence — some evidence, enough

Charge of demand of illegal gratification by a civil judge from a defendant in a civil suit for eviction, held proved on the basis of proof of preponderance of probability and some material on record.

High Court of Judicature at Bombay vs. Udaysingh, 1997(4) SLR SC 690

The respondent was a Civil Judge at Nasik. An allegation was made against him that on 21-10-89 he had sent a word through a messenger to a defendant in a civil suit for eviction, demanding Rs.10,000 as illegal gratification to deliver judgment in her favour. She complained to her advocate who in turn complained to the Asst. Govt. Pleader who in turn complained to the District Govt. Pleader. The District Govt. Pleader informed the District Judge and the District Judge made adverse remarks against the respondent in his confidential report for 1989-90. The respondent made an appeal to the High Court to expunge the remarks. The High Court directed the District Judge to substantiate the remarks after recording the evidence of the aforesaid advocates. Their statements came to be recorded and the District Govt. Pleader sent a letter dated 4-5-90 to the District Judge. On the basis of the statements of the aforesaid three persons and the complainant, the High Court initiated disciplinary inquiry against the respondent. The inquiry officer held the charge as not proved but the High Court disagreed with him. The disciplinary committee of the High Court recommended for dismissal and the Government imposed the penalty of dismissal. The respondent filed a writ petition and the Division Bench of the High Court set aside the order of dismissal. The matter came up before the Supreme Court by appeal and it held as follows:

It is true that due to time lag between the date of the complaint and the date of recording of evidence by the inquiry officer there is bound to be some discrepancies in evidence. But the disciplinary proceedings are not a criminal trial and the scope of inquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. In the case of disciplinary inquiry, the technical rules of evidence and the doctrine of "proof beyond doubt" have no application. Preponderance of probabilities and some material on record

would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down is to see whether there is evidence on record to reach the conclusion and whether a reasonable man would be justified in reaching the conclusion. Since the evidence of the complainant, the aggrieved defendant against whom a decree for eviction was passed by the respondent, alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, the latter to the Assistant Government Pleader and he to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established. The District Government Pleader wrote a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties. There is thus some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption. It is difficult to accept the contention that the District Judge was biased and that he fabricated false evidence. When that evidence was available before the High Court, the disciplinary authority, it cannot be said that it is not (sic) a case of no evidence, nor could it be said that no reasonable person like the committee of five judges and thereafter the Government could reach the conclusion that the charge was proved. It would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct stands proved.

The respondent is a judicial officer and the maintenance of the discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, the imposition of penalty of dismissal from service is well justified. The Supreme Court upheld the order of dismissal of the respondent.

(441)

Adverse remarks

Object of writing confidential reports and communication of the same is to afford the employee opportunity to make amends to his remiss.

Swatanter Singh vs. State of Haryana, 1997(5) SLR SC 378

The petitioner was Sub-Inspector of Police and adverse entries were made in his confidential report and they were communicated to him by the Superintendent of Police on 2-8-95. His representation was rejected by the Dy. Inspector General of Police on 21-12-95 and his further representation was rejected by the Director General of Police on 13-5-96 on the ground that there was no provision for a second representation. His writ petition was dismissed by the High Court and the matter came up before the Supreme Court.

The Supreme Court held: "It is true that in view of the settled legal position, the object of writing the Confidential Reports or Character Roll of a Government servant and communication of the adverse remarks is to afford an opportunity to the concerned officer to make amends to his remiss; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home his lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a Government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore, would contain the assessment of the work; devotion to duty and integrity of the officer concerned. The entries indicate and reflect that the Superintendent of Police had assessed the reputation of the officer, his honesty, reliability and general reputation gathered around the officer's performance of the duty and shortfalls in that behalf." The Supreme Court added that it cannot be said that the remarks are vague without any particulars and therefore cannot be sustained. The officer made the remarks on the basis of the reputation of the petitioner. It was therefore for him to improve his conduct, prove honesty and integrity in future in which event, obviously, the authority would appreciate and make necessary remarks for the subsequent period. The Supreme Court dismissed the petition.

(442)

Misconduct — sexual harassment

Supreme Court laid down guidelines and norms for specific protection of women from sexual harassment in work places.

Visakha vs. State of Rajasthan, AIR 1997 SC 3011

Supreme Court laid down guidelines taking note of the fact that the civil and penal laws in the country do not adequately provide for specific protection of

woman from sexual harassment at places of work and suggested a definition of sexual harassment.

It held that it is the duty of the employer or other persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(443)

- (A) Constitution of India—Art. 311(2) second proviso cl. (a)**
- (B) Departmental action and conviction — show cause notice**

No need to issue show cause notice for imposing penalty on the basis of conduct leading to conviction.

***Pradeep Kumar Sharma vs. Union of India, 1998(1)
SLJ CAT Chandigarh 525***

The applicant, Inspector of Works, was removed from service by order dated 31-5-96 on the basis of conduct leading to his conviction of a criminal offence. The applicant contended that the order was invalid as it was passed without giving him any show cause notice or opportunity of being heard. The Tribunal held that the offences are definitely of a serious nature and involve moral turpitude and that no show cause notice was required to be issued before imposing the penalty.

(444)

- (A) Departmental action and retirement**
- (B) Pension Rules — date of institution of proceedings**
- (C) Suspension — is date of initiation of proceedings under Pension Rules**

Date of suspension is date of initiation of disciplinary proceedings, for four-year limitation under pension rules.

G. Venkatapathi Raju vs. Union of India, 1998(1) SLJ CAT HYD 38

Applicant, while working as Superintendent of Central Excise, was placed under suspension on 21-7-95 and he retired from service on 31-8-95. On denial of payment of pension and retiral benefits, the applicant contended that disciplinary action is deemed to have been initiated only after a formal charge sheet has been issued and that the date of suspension is not the date of initiation of the departmental proceedings.

The Central Administrative Tribunal, Hyderabad held that the disciplinary proceedings start when suspension order is issued as per rule 9(6)(a) of the CCS (Pension) Rules. It is evident that the applicant had been placed under suspension on a *prima facie* case having been established. Tribunal held that the departmental proceedings have been initiated by issue of the suspension order dated 21-7-95 earlier to his retirement on 31-8-95.

(445)

Plea of guilty

Imposing penalty on a clear and unconditional admission of charges is in order.

***M. Sambasiva Rao vs. Chief General Manager, A.P., 1998(1)
SLJ CAT HYD 508***

The applicant wrote a letter clearly and unconditionally admitting the charges and praying for pardon. The Central Administrative Tribunal, Hyderabad held the order of the disciplinary authority compulsorily retiring him without holding an inquiry called for no interference.

(446)

Pension Rules — judicial proceedings

Judicial proceedings should relate to misconduct, for taking action under Pension Rules.

***Bhagwati Charan Verma vs. Union of India, 1998(1)
SLJ CAT Mumbai 576***

Applicant, S.O./Engineer (SD), Bhabha Atomic Research Centre, retired from service on 30-11-95. Judicial proceedings were initiated against him in the year 1983 on a private complaint and as such in terms of rule 9(4) of CCS (Pension) Rules his gratuity and commutation value of pension were withheld.

The Central Administrative Tribunal, Mumbai held that the term “judicial proceedings” will have to be interpreted in the society they keep, viz. disciplinary proceedings and as such judicial proceedings should relate to misconduct and that they do not include proceedings initiated on the basis of private complaint.

(447)

Misconduct — bigamy

Divorce of first wife as per prevailing custom should be established by the employee.

R.S. Khandwal vs. Union of India, 1998(1) SLJ CAT New Delhi 16

The applicant, Upper Division Clerk, was removed from service for entering into a second marriage during the subsistence of the first marriage. Applicant has not disputed his second marriage but asserted that as per prevailing caste custom in his backward community of barbers in the State of Haryana, he divorced his first wife and took the second wife in marriage.

The Central Administrative Tribunal, New Delhi held that custom should be established by clear and unambiguous evidence and it must not be opposed to morality or public policy and it must not be expressly forbidden by the legislature and it is incumbent on a party setting up a custom to prove the custom on which he relies. The Tribunal held that the disciplinary authority and the appellate authority were right in holding that the applicant failed to prove divorce from his first wife in accordance with his alleged caste custom. Tribunal also held that withdrawal of complaint by the first wife is of no use where the charges were duly proved.

(448)

Further inquiry — by fresh Inquiry Officer

Entrustment of further inquiry to another Inquiry Officer on the ground, earlier Inquiry Officer was not capable of conducting inquiry properly, is in order.

R.K. Sharma vs. Union of India, 1998(1) SLJ CAT New Delhi 223

The applicant, while functioning as Assistant, Direct Taxes Division (Department of Revenue) was proceeded against departmentally. The Inquiry Officer held the charges as not proved but the disciplinary authority did not

DECISIONS (449) & (450)

agree and remanded the case for further inquiry to a new Inquiry Officer as the former one was not capable to hold inquiry and was also transferred.

The Central Administrative Tribunal, New Delhi held that the order of the disciplinary authority for change of the Inquiry Officer and remanding the case for further inquiry, cannot be faulted. The Tribunal also held that the facts in the present case are entirely different from the case of K.R. Deb vs. Collector, Central Excise, Shillong, AIR 1971 SC 1447, and that the order of the disciplinary authority made it clear why it had disagreed with the findings of the Inquiry Officer and it was not a de novo inquiry but a further inquiry which was being ordered and the same was entrusted to another Inquiry Officer as the earlier one was found not capable of conducting the inquiry properly and he having been transferred out of the Department. On facts there are no materials to conclude that the disciplinary authority was determined to get some Inquiry Officer to report against the applicant.

(449)

Fresh inquiry / De novo inquiry

Appointment of another Inquiry Officer to conduct the inquiry de novo, where rules provided for it, upheld on the facts of the case.

Shiv Chowdhary (Smt.) vs. State of Rajasthan, 1998(6) SLR RAJ 701

The petitioner was served with a charge sheet that as warden of the hostel in the Government College for Physical Education hatched a conspiracy for exploiting some girl students sexually. Regular inquiry was held and the disciplinary authority not being satisfied with the inquiry report passed an order directing to hold the inquiry de novo. Rule 16.9 of the Rajasthan Civil Services (CCA) Rules, 1958 provides for de novo inquiry. The disciplinary authority initiated proceedings against the Additional Presenting Officer who closed the evidence after examining himself and did not examine the complainant and other officers who held the preliminary enquiry.

The High Court held that no prejudice would be caused by appointing another inquiry officer to conduct the inquiry de novo.

(450)

Suspension — in contemplation of disciplinary proceedings

Placing under suspension in contemplation of disciplinary proceedings before superannuation is in order.

Secretary to Government vs. K.Munniappan, 1998(1) SLJ SC 47

The respondent, Divisional Engineer (National Highways), Salem, before being superannuated, was placed under suspension on the ground that an inquiry into grave criminal offence is contemplated. The Tamilnadu Administrative Tribunal set aside the order on 25-6-96 on the ground that the rule 17 of the Tamil Nadu Civil Services (CCA) Rules does not empower the appellant to suspend the respondent pending such an inquiry.

The Supreme Court held that a member of a service may be placed under suspension, where an inquiry into grave charge against him is "contemplated" or "is pending" or a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. Actual pendency of enquiry is not a pre-condition to suspend an officer. Pending further investigation into the offences is one of the grounds. If the officer is allowed to retire, there would be no occasion to take effective steps to satisfactorily tackle the enormity of the crime which involves embezzlement of funds of the Government to the tune of Rs.7.82 crores. The Supreme Court observed that in a case involving embezzlement of public funds by several persons in a concerted way, a thread-bare investigation is required to be undertaken by the Inquiry Officer and, therefore, in the nature of the situation, it would be difficult to find fault with the authorities for not completing investigation expeditiously. Supreme Court allowed the appeal.

(451)**Disciplinary proceedings — initiation of**

Not necessary that appointing authority should issue charge sheet; controlling officer issuing it is in order.

Steel Authority of India vs. Dr. R.K. Diwakar, 1998(1) SLJ SC 57

The delinquents challenged the charge sheets on the ground that their appointing authority/disciplinary authority being the Managing Director, the charge memo issued by the Director, Medical and Health Services was invalid. In fact the powers to initiate disciplinary action had been delegated to the Director. The Supreme Court held that even if there was no delegation, the Director being controlling officer can issue the charge sheet.

(452)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)
- (B) Disproportionate assets — contravention of Conduct Rules

On acquittal in court prosecution and dropping of disciplinary proceedings, taking action on charges of contravention of Conduct Rules, is in order.

**Govt. of Andhra Pradesh vs. C.Muralidhar, 1998(1)
SLJ SC 210: 1997(4) SLR SC 756**

The respondent, Motor Vehicle Inspector, was prosecuted for an offence of possession of disproportionate assets and proceedings were also initiated. On his acquittal in the criminal case the departmental charges were dropped and a fresh charge sheet was issued for acquiring/disposing of property without permission. The Administrative Tribunal quashed the charges.

The Supreme Court held that on his acquittal in the criminal case what was dropped was the charge of disproportionate assets only and not the charges for acquiring/disposing of property without permission.

(453)

- (A) Departmental action and conviction
- (B) Sentence — suspension of

Suspension of sentence, no bar to taking action on basis of conduct leading to conviction.

Union of India vs. Ramesh Kumar, 1998(1) SLJ SC 241

The respondent, Inspector, Food & Civil Supplies Department of Delhi Administration, was dismissed on the basis of conduct leading to his conviction in a criminal case. The Administrative Tribunal set aside the dismissal as the Appellate Court suspended the sentence and granted bail.

The Supreme Court held that the correct import of suspension of sentence is that sentence based on conviction is for the time being postponed or kept in abeyance and the accused avoids undergoing sentence during the pendency of the criminal appeal. The conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Government servant on a

misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the Appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court.

(454)

Misconduct — bandh

There cannot be any right to call or enforce a “Bandh”. There is a distinction between a bandh and Strike or “Hartal”.

Communist Party of India (M) vs. Bharat Kumar, 1998(1) SLR SC 20

The Supreme Court was satisfied that the distinction drawn by the High Court between a “Bandh” and a call for general strike or “Hartal” is well made out with reference to the effect of a “Bandh” on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a “Bandh” which interferes with the exercise of the fundamental freedom of other citizens, in addition to causing national loss in many ways. There is a distinction between a Bandh on the one hand and a call for general strike or “Hartal” on the other.

(455)

Sealed cover procedure

Can be adopted only if, on the date of consideration for promotion, departmental proceedings had been initiated or are pending or on its conclusion, final orders are pending or employee is under suspension.

Union of India vs. Dr. (Smt.) Sudha Salhan, 1998(1) SLR SC 705

The respondent was considered by the departmental promotion committee for promotion on 8-3-89 but the proceedings of the selection committee were placed in sealed cover. She was placed under suspension on 16-4-91 and charge-sheet was issued on 8-5-91.

DECISIONS (456)

The Supreme Court observed that the question of adopting sealed cover procedure stood concluded by the three-judge decision of the Supreme Court in Union of India & ors. vs. K.B.Janakiraman & ors., 1991(4) SCC 109: 1991(5) SLR 602 SC and expressed itself in agreement with the decision and added that if on the date on which the name of a person is considered by the departmental promotion committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the “sealed cover” procedure cannot be adopted. The recommendation of the departmental promotion committee can be placed in a “sealed cover” only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the departmental promotion committee would be opened, and the recommendation would be given effect to.

(456)

Conduct Rules and Fundamental Rights

Conduct rules can put reasonable restriction of rights in the interest of discipline.

M.H.Devendrappa vs. Karnataka State Small Industries Development Corporation, 1998(2) SLJ SC 50

The appellant issued a press statement against the administration. He also wrote statements against the employer criticising various actions. He claimed it was as office bearer of association and as per his fundamental rights, and challenged the validity of conduct rules which curtail freedom. Rule 22 of the Service Rules of the Corporation is clearly meant to maintain discipline within the service, to ensure efficient performance of duty by the employees, to protect the interests and prestige of the Corporation. Therefore an employee who disobeys the service rules or displays negligence, inefficiency or insubordination or does anything detrimental to the interests or prestige of the Corporation or acts in conflict with official instructions or is guilty of misconduct, is liable to disciplinary action. Rule 22 is not primarily or even essentially designed to restrict, in any way, freedom of speech or expression or the right to form associations or unions and it does not violate Articles 19(1)(a) or 19(1)(c).

Joining Government service has, implicitly in it, if not explicitly so laid down, the observance of a certain code of conduct necessary for the proper discharge of functions as a Government servant. Making public statements against the head of the organisation on a political issue amounts to lowering the prestige of the organisation in which he worked. On a proper balancing of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, the Supreme Court held that this was a fit case where the employer was entitled to take disciplinary action.

(457)

Disciplinary Proceedings Tribunal — Sec. 4 before amendment

Government have no jurisdiction to hold disciplinary proceedings under sec. 4 of A.P.Civil Services (DPT) Act, 1960 before its amendment in 1993 except to refer to the Tribunal.

State of Andhra Pradesh vs. Dr. K. Ramachandran, 1998(2) SLJ SC 262

Government of Andhra Pradesh imposed penalty of 20% cut in the pension of the respondent for a period of 5 years by order dated 3-3-81. Administrative Tribunal set aside the order on the ground that the Government had no jurisdiction to hold disciplinary proceedings and they could be held only by the Tribunal under the Andhra Pradesh Civil Services (DPT) Act, 1960. The Supreme Court upheld the order of the Tribunal and observed that under sec. 4 of the Act because of the use of the word “shall” therein, the case had to be referred to the Tribunal constituted under the Act. At the relevant time when the disciplinary proceedings were started against the respondent the Government had no jurisdiction to hold departmental proceedings and had no choice except to refer the case to the Tribunal.

Section 4 of the Act which was in mandatory terms was amended by Andhra Pradesh Act 6 of 1993 and the word “shall” was replaced by the word “may” which gave a discretion to the Government to refer or not to refer the matter to the Tribunal.

(458)

C.C.A. Rules — continuation of proceedings under old rules

Inquiry proceedings initiated under old rules could be continued even after coming into force of the new rules.

***State of Andhra Pradesh vs. N. Radhakishan, 1998(3)
SLJ SC 162***

The respondent, Asst. Town Planner, Municipal Corporation urged that without cancelling the earlier memo of charge dated 22-12-87 issued under the A.P.C.S. (CCA) Rules, 1963, the latter memo of charge dated 31-7-95 could not have been issued under the new 1991 rules.

The Supreme Court observed that under rule 45 of 1991 Rules, the inquiry proceedings initiated under 1963 Rules could be continued even after coming into force of the 1991 Rules. It is correct that inquiry proceedings did progress after issuance of memo of charge dated 22-12-87 to the extent that an Inquiry Officer was appointed and should have been concluded under 1963 Rules. If the memo of charge has been served for the first time before 1991, there would have been no difficulty. However, in the present case it could be only an irregularity and not an illegality vitiating the inquiry proceedings in as much as after the Inquiry Officer was appointed under memo dated 22-12-87, there had not been any progress. If a fresh memo was issued on the same charges against the delinquent officer it cannot be said that any prejudice has been caused to him.

(459)

Pension Rules — withholding pension and recovery from pension

- (i) *Unauthorised absence is a grave misconduct and full pension can be withheld.*
- (ii) *Pension can be withheld for misconduct other than causing pecuniary loss also.*

Union of India vs. B.Dev, 1998(4) SLR SC 744

The charge, as framed expressly charged the respondent with having committed grave misconduct by remaining absent from duty without authorisation and by continuing to disobey Government orders issued to him for joining duty. He was charged with lack of devotion to duty and of conduct unbecoming a Government servant. The finding also is that the charge of grave misconduct has been proved. Supreme Court held that the conduct falls under rule 9 of the CCS (Pension) Rules and full pension can be withheld.

Under the explanation (b) to Rule 8 the expression 'grave misconduct' is defined "to include the communication or disclosure of any secret official

code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923." The explanation clearly extends grave misconduct to cover communication of any official secrets. It is not an exhaustive definition. Supreme Court held that the Tribunal is not right in concluding that the only kind of misconduct which should be held to be grave misconduct is communication etc of an official secret. There can be many kinds of grave misconduct. The explanation does not confine grave misconduct to only the type of misconduct described there.

Rule 9 of CCS (Pension) Rules gives to the President the right of (1) withholding or withdrawing a pension or part thereof (2) either permanently or for a specified period and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention that rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.

(460)

Documents — proof of

Not necessary to examine witnesses, where genuineness of documents is not disputed.

Director General, Indian Council of Medical Research vs. Dr. Anil Kumar Ghosh, 1998(5) SLR SC 659

The Supreme Court observed that there is absolutely no justification in the allegation that principles of natural justice have been violated. The first respondent did not furnish any list of witnesses and only in the course of inquiry he requested the Inquiry Officer to examine the officials of the Municipality who had issued the certificates produced by him in support of his claim of H.R.A. The High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been issued by the high officials of the Municipality and unless the factum of such issuance was in dispute there was no necessity to examine those officials. At another stage the first respondent challenged the authenticity of the internal audit report and wanted the author thereof to be examined in order to substantiate the same. The Presenting Officer stated that the said report was not necessary for the case and the same was not introduced in evidence. Hence, there was no necessity to examine the Accounts Officer who prepared the internal audit report. If the first respondent

wanted to examine any witness on his side he was given sufficient opportunity to produce witnesses and examine them but he did not do so. The record shows that he was permitted to reopen his defence and present further defence but he did not have any witness to be called as defence witness on his behalf.

The Supreme Court also observed that the objection that the certified copies of the assessment register should not have been marked without examining the concerned officials of the Municipality is untenable. The genuineness of the documents was never in dispute. In fact, the case of the first respondent is that the assessment in the municipal register was only for the purpose of taxation and it is not relevant for the claim of HRA.

(461)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

- (i) Public servant liable to be prosecuted under the P.C. Act, whether he continues in office or not.*
 - (ii) No sanction is required to prosecute a retired public servant, under sec. 19 of P.C. Act, 1988.*

Kalicharan Mahapatra vs. State of Orissa, 1998(5) SLR SC 669

The main contention of the appellant, retired Superintendent of Police in the State Police Service, Orissa, was that the legislature did not include a retired public servant within the purview of the Prevention of Corruption Act, and that there is no mention in the Act about a person who ceased to be a public servant, in distinction with the provisions of sec. 197 Cr.P.C.

The Supreme Court held that the sanction contemplated in sec. 197 Cr.P.C. concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the Prevention of Corruption Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. The Supreme Court further held that a public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in sec. 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant,

is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.

Note : Sanction is required even for retired public servants after the amendment by Act 16 of 2018

(462)

P.C. Act offences — closure of case

Not necessary to obtain sanction from prosecuting (sanctioning) authority before approaching court for closure of case under sec. 173(2) Cr.P.C.

State vs. Raj Kumar Jain, 1998(5) SLR SC 673

The Central Bureau of Investigation registered a case against the respondent, a Junior Engineer of New Delhi Municipal Corporation under sec. 5(2) read with sec. 5(1)(e) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(2) read with sec. 13(1)(e) of P.C. Act, 1988) and in the investigation that followed, found that the allegations could not be substantiated. Accordingly the CBI submitted report under sec. 173(2) Cr.P.C. before the Special Judge, Delhi praying for closure of the case. The Special Judge declined to accept the report on the ground that after the investigation was complete, the CBI was required to place the materials collected during investigation before the sanctioning authority and it was for that authority to grant or refuse sanction. According to the Special Judge, it was only with the opinion of the sanctioning authority that the CBI could submit its report under sec. 173(2) Cr.P.C. With these observations the Special Judge issued the following directions: "It is directed that further investigation should be conducted and in the first instance, the Prosecution / Investigating officer must approach the concerned sanctioning authority before coming to the Court to find out if the said authority would grant permission to prosecute the accused or not". The High Court dismissed the revision petition filed by the CBI with a finding that the directions issued by the Special Judge were proper and legal.

The Supreme Court observed that from a plain reading of sec. 6(1) of the Prevention of Corruption Act, 1947 (corresponding to sec. 19(1) of P.C. Act, 1988), it is evidently clear that a Court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the section the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary

prosecutions. Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a *prima facie* case was made out against the respondent to place him on trial and accordingly prepared a charge sheet against him, then only the question of obtaining sanction of the authority under sec. 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under sec. 173(2) Cr.P.C. for discharge of the respondent.

(463)

- (A) Inquiry report — disciplinary authority disagreeing with findings**
- (B) Disciplinary authority — disagreeing with Inquiry Officer**

Disciplinary Authority, where it differs with the finding of not guilty of the Inquiry Officer, should communicate reasons for such disagreement with inquiry report, to Charged Officer.

Punjab National Bank vs. Kunj Behari Misra, 1998(5) SLR SC 715

The Supreme Court held: If the inquiry officer had given an adverse finding, as per Karunakar's case, (1993)4 SCC 727, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to him by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the

delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary authority before final findings on the charges are recorded and punishment imposed. Even if the rules are silent, hearing should be given to employee when disciplinary authority disagrees with inquiry officer and draws its own findings.

Disciplinary authority should give its tentative reasons for disagreement to employee before it records its findings.

(464)

Fresh inquiry / De novo inquiry

Disciplinary Authority can order de novo inquiry where the Inquiry Officer relied on letters of witnesses without examining them.

Union of India vs. P. Thayagarajan, 1998(5) SLR SC 734

The Disciplinary Authority noticed certain irregularities in the conduct of the inquiry which were of vital nature, in particular, that the Inquiry Officer acted on the letters of witnesses without examining them during inquiry and he was of the view that the witnesses should have been examined in person and the procedure adopted by the Inquiry Officer was contrary to the relevant rules in taking their letters as statements. The Inquiry Officer did not ascertain the facts necessary for the conclusion of the case. Therefore, the disciplinary authority set aside the findings recorded by him and directed de novo inquiry. The Division Bench of the High Court allowed the appeal by the respondent taking the view that such power is not available to the Disciplinary Authority.

The Supreme Court held that if in a particular case where there has been no proper inquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous inquiries on the ground that the report of the Inquiry

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Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the disciplinary authority set aside the inquiry is that the procedure adopted by the Inquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand results in a miscarriage thereof. Therefore, the Supreme Court was of the view that Rule 27(c) of the Central Reserve Police Force Rules, 1955 enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering de novo inquiry in a case of present nature.

(465)

Disciplinary authority — appointment of Inquiry Officer

Appointment of inquiry officer by regular disciplinary authority before appointment of adhoc Disciplinary authority on account of disciplinary authority appearing as witness, causes no prejudice.

Asst. Supdt. of Post Offices vs. G. Mohan Nair, 1998(6) SLR SC 783

The respondent, Extra Departmental Delivery Agent in Kerala, was proceeded against departmentally for failure to deliver money orders. The disciplinary authority, Assistant Superintendent of Post Offices issued a charge-sheet on 4-4-1990 and appointed an inquiry officer and presenting officer on 17-7-1990. The said disciplinary authority appeared as a witness at the inquiry and gave evidence. As such he appointed Deputy Superintendent of Post Offices, a superior officer as an adhoc disciplinary authority to deal with the case, on 24-5-90 and the latter imposed the penalty of removal from service. The Central Administrative Tribunal set aside the proceedings on the ground that the inquiry officer was appointed by the original disciplinary authority and not by the adhoc disciplinary authority.

The Supreme Court held that there is no material to indicate that any prejudice was caused to the respondent and no bias or mala fides has been made against the inquiry officer or the presenting officer and the actual order has been passed by the ad hoc disciplinary authority. The Supreme Court allowed the appeal.

(466)

(A) Public Servant — M.P. / MLA

Members of Parliament are public servants in terms of sub-cl. (viii) of cl. (c) of sec. 2 of P.C. Act, 1988.

(B) Sanction of prosecution — for MP / MLA

Sanction is not necessary for prosecution of Member of Parliament.

P.V. Narishmha Rao vs. State 1998 Cri. L.J. SC 2930

The Supreme Court observed that in the Constitution, the word 'office' has not been used in the provisions relating to Members of Parliament and Members of State Legislature but in other parliamentary enactments relating to members of parliament, the word 'office' has been used. Having regard to the provisions of the Constitution and the Representation of the People Act, 1951 as well as the Salary, Allowances and Pension of Members of Parliament Act, 1954, it can be said that membership of Parliament is an 'office' inasmuch as it is a position carrying certain responsibilities which are of a public character and it has an existence independent of the holder of the office. A member of parliament thus holds an 'office'. As regards the question whether a Member of Parliament is authorised or required to perform any public duty by virtue of his office, the words "faithfully discharge the duty upon which I am about to enter" in the Form of Oath or Affirmation which is required to be made by a Member of Parliament show that a Member of Parliament is required to discharge certain duties after he is sworn in as a Member of Parliament. Under the Constitution, the Union Executive is responsible to Parliament and Members of Parliament act as watchdogs on the functioning of the Council of Ministers. In addition, a Member of Parliament plays an important role in Parliamentary proceedings, including enactment of legislation, which is a sovereign function. The duties discharged by him are such in which the State, the public and the community at large have an interest and the said duties are, therefore, public duties. It can be said that a Member of Parliament is authorised and required by the Constitution to perform these duties and the said duties are performed by him by virtue of his office. Member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties are in the nature of public duties. A Member of parliament would, therefore, fall within the ambit of sub-cl (viii) of cl. (c) of sec.2 of the Prevention of Corruption Act, 1988.

The Supreme Court further observed that it cannot be said that since Parliament is held in Veeraswami case (1991 (3) SCR 189) to be not suitable to grant sanction for prosecution of a M.P. and as there is no other authority who can grant sanction, the MPs are outside the purview of Prevention of Corruption Act, 1988. The enlarged definition of public servant in sec. 2(c) of the Prevention of Corruption Act, 1988 includes persons who are not removable by any single individual authority and can only be removed by a collective body. Sub. cl. (ix) speaks of a person "who is the President, Secretary or other office-bearer of a registered cooperative society". The Supreme Court further observed that the definition of 'public servant' in sec. 2(c) of the Prevention of Corruption Act, 1988 includes persons who are public servants under that provision though the criterion of removability does not apply to them and there is no single individual authority which is competent to grant sanction for their prosecution under sec. 19 of the Prevention of Corruption Act, 1988. In respect of a Member of Parliament the Constitution does not confer on any particular authority the power to remove him. There is no authority who would be competent under cls. (a), (b) or (c) of sec. 19(1) of the Prevention of Corruption Act, 1988 to grant sanction for his prosecution. This does not, however, lead to the conclusion that he cannot be treated as a 'public servant' under sec. 2 (c) (viii) of the Prevention of Corruption Act, 1988 if, on a proper interpretation of the said provision he is found to be a public servant. When there is an authority competent to remove a public servant and to grant sanction for prosecution under sec. 19(1) of the Prevention of Corruption Act, 1988, the requirement of sanction precludes a Court from taking cognizance of the offences mentioned in sec. 19(1) against him in the absence of such sanction, but if there is no authority competent to remove a public servant and to grant sanction for his prosecution under sec. 19(1) there is no limitation on the power of the Court to take cognizance under sec. 190 Cr.P.C. of the offences mentioned in sec. 19(1) of the Prevention of Corruption Act, 1988.

The requirement of sanction under sec. 19(1) is intended as a safeguard against criminal prosecution of public servant on the basis of malicious or frivolous allegations by interested persons. The object underlying the said requirement is not to condone the commission of an offence by a public servant. The inapplicability of the provisions of sec. 19(1) to a public servant would only mean that the intended safeguard was not intended to be made available to him. The Supreme Court held that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under sec. 19(1), it cannot be said that a Member of Parliament is outside the purview of the Prevention of Corruption Act, 1988.

(467)

(A) Trap — appreciation of evidence

Appreciation of evidence of panch witness and investigating officer in a case of trap.

(B) Trap — phenolphthalein solution, sending to Chemical Examiner

Phenolphthalein test is used not because there is any direction by the statutory provision, but for the satisfaction of the officials that the public servant would have really handled the bribe money. The reasoning that the reliability of the trap is impaired as the solution is not sent to Chemical Examiner is too puerile for acceptance.

State of U.P. vs. Zakaullah, AIR 1998 SC 1474

The Supreme Court observed that the necessity for 'independent witness' in cases of police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other manner, it cannot be said that those are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependent of the police or other officials for any purpose, whatsoever.

The Supreme Court observed that the most important evidence is that of P.W.4, Superintendent of Police who arranged the trap. He had no interest against the respondent. The verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein power on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test is conducted for his conscientious satisfaction that he was

proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily. The evidence of such a witness as P.W.4 can be acted on even without the help of any corroboration.

The reasoning of the High Court that reliability of the trap was impaired as the solution collected in the phial was not sent to Chemical Examiner is too puerile for acceptance. The Supreme Court observed that they have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. The said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money.

(468)

Inquiry — ex parte

In an ex parte proceedings, where charge sheet sent by registered post was returned “left without any instructions”, as also subsequent communications, failure to furnish copy of Service Commission advice, causes no prejudice.

B. Venkateswarulu vs. Administrative Officer of ISRO Satellite Centre, 1999(2) SLJ CAT Bangalore 241

The applicant, a Scientific Engineer, ISRO Satellite Centre, Department of Space, was proceeded against in disciplinary proceedings for unauthorised absence. Charge sheet sent by registered post to the address given by him was returned “left without any instructions”. The communication sent by Inquiry Officer to appear for the inquiry as well as subsequent communications informing him of the dates of the inquiry were all returned with endorsement “left without instructions” or “whereabouts not known”. The inquiry proceeded ex parte and the inquiry officer issued notice requiring the applicant to submit written brief and it was also returned unserved with the endorsement “left without instructions”. Disciplinary authority sought advice of Union Public Service Commission and the latter sought the opinion of the Law Ministry. The Ministry of Personnel by letter dated 26.4.95, informed the Department of Space that the charge sheet may be either affixed at the door of the residence of the employee or alternatively the charge sheet may be published in some local newspapers. The disciplinary authority got a notification issued referring to the charge sheet framed against the applicant and about the communications addressed to the last known address

having been undelivered and calling upon the applicant to respond within 15 days failing which it would be presumed that he has no submissions to make or defence to offer, and it was published in newspapers of wide circulation. Thereafter the U.P.S.C. gave its advice concurring with the finding of the Inquiry Officer that the charge has been established and the opinion that the penalty of dismissal would meet the ends of justice. Thereupon, the disciplinary authority, by order dated 7-11-1996, imposed the penalty of dismissal. The applicant challenged the order on the ground that a copy of the advice of the UPSC was not sent to him before imposing the penalty and he was not examined with regard to the evidence under rule 14(18) of CCS (CCA) Rules, 1965.

The Central Administrative Tribunal, Bangalore recounted the efforts made by the disciplinary authority as mentioned above and that in the circumstances the applicant can not have any grievance about the proceedings having been taken ex parte. The Tribunal held that even though the copy of advice of the UPSC was not sent to the applicant before the punishment order was passed by the disciplinary authority that order cannot straightaway be quashed on that ground unless the lapse has caused prejudice. Even if a copy of the advice had been sent it would not have been received by the applicant and it would have come back and no purpose would have been served by sending it to the applicant's last known address. It would have been an idle formality. Non-compliance with the formality did not cause any prejudice

The Tribunal also held that it cannot be said that merely because Rule 14(18) is not complied with, the order gets vitiated without proof of prejudice and that in the circumstances of the case no prejudice was caused.

(469)

Pension Rules — four year limitation

Disciplinary proceedings, where the order of penalty was quashed, can be continued after retirement, without bar of four-year limitation.

Ram Charan Singh vs. Union of India, 1999(1) SLJ CAT DEL 520

The applicant, Deputy Collector, Customs and Central Excise, was removed from service on 27-3-86. The Central Administrative Tribunal quashed the said order on 6-12-94 with certain observations and directions. In the meanwhile, he retired from service on 30-11-94 on attaining the age of superannuation. The disciplinary proceedings were treated as having been continued by the disciplinary

authority and were concluded by passing the second order dated 25-10-95 under Rule 9(2)(a) of the CCS (Pension) Rules, 1972 by the President imposing a 50% cut in the pension. Thereupon, the applicant approached the Central Administrative Tribunal, New Delhi.

The Tribunal held that the order of the President dated 27-3-86 imposing the penalty of removal from service was quashed on the ground that it was not in accordance with the new sub-rule (4) of Rule 15 of the rules and hence not sustainable and it was left to the President to pass an appropriate order. The charges, the inquiry report and the disciplinary proceedings have not been quashed and there is neither any adjudication on the merits of the charges nor any exoneration from the charges. On the contention that the said order was not valid as the disciplinary proceedings has already come to an end on 27-3-86 and there was no question of continuing the proceedings beyond the date of the order of the Tribunal dated 6-12-94, the Tribunal held that though the penalty order of removal was quashed, there was no direction by the Tribunal for reinstatement of the applicant and it was left to the discretion of the President to pass an appropriate order and in the circumstances the disciplinary proceedings are deemed to have been continued till the passing of the order dated 25-10-95 and that there was no infirmity or illegality in continuing the disciplinary proceedings under rule 9 of the CCS (Pension) Rules, 1972, and the bar of limitation is not applicable.

(470)

Vigilance Commission — consultation with

There is nothing wrong in the Central Vigilance Commission advising the disciplinary authority.

Kanti Lal vs. Union of India, 1999(2) SLJ CAT Delhi 7

The Central Administrative Tribunal held that the Central Vigilance Commission is an expert body to whom Central Government departments go in for advice. Such seeking of advice and guidance is mandatory under the instructions. The purpose of the Central Vigilance Commission is to ensure that the departmental proceedings are conducted in accordance with law and the procedure established in law and the Government officials accused of violating the conduct rules or committing dereliction of duties are not let off or punished without proper evidence and reasons. The advice tendered by the Central Vigilance Commission is on similar footing with the opinion obtained from the UPSC. Because the department followed the advice of the Central Vigilance Commission for compulsory retirement,

it does not follow that the departmental decision was taken without application of mind and that the departmental authorities have only repeated in a mechanical manner the CVC's advice. The Central Vigilance Commission renders only an expert opinion to the disciplinary authority just as any other judicial officer seeks expert assistance from so many sources and arrives at his own conclusion. Simply because the CVC's advice was followed, it does not mean that it was followed without application of mind. Any decision-making authority can rely on any advice and follow the same. That does not mean it ceases to be the decision of the authority. There is nothing wrong in an expert body advising the disciplinary authority on the basis of the material before it. Such advice can be accepted or rejected. It does not mean that there is application of mind only when the advice is rejected. Even if the advice is accepted the inference always is that it was accepted after the authority satisfied itself that the advice was proper.

(471)

Court jurisdiction

Summary of guidelines of Court Jurisdiction in disciplinary proceedings.

Ratneswar Karmakar vs. Union of India, 1999(2) SLJ CAT GUWAHATI 138

The Central Administrative Tribunal, Guwahati summarized guidelines of court jurisdiction in disciplinary proceedings as per court decisions as follows:

- (a) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of rules/ regulations/ statutory provisions governing such inquiries should not be set aside automatically;
- (b) The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the finding reached by the disciplinary authority is based on no evidence;
- (c) The standard of proof required in a domestic inquiry is only preponderance of probability and not proof beyond reasonable doubt;
- (d) Where there is some evidence on record, the Disciplinary Authority cannot be faulted and the Court/Tribunal cannot re-appreciate the evidence;
- (e) Rules of evidence do not apply to domestic inquiry;
- (f) The Court/Tribunal cannot act as a fact-finding forum;
- (g) Reasonable opportunity or fair treatment given to the delinquent official must be judged on the "touchstone of prejudice" caused, if any, on the facts and circumstances of each case.

(472)

- (A) Departmental action and retirement**
- (B) Pension Rules — date of institution of proceedings**
- (C) Suspension — is date of initiation of proceedings under Pension Rules**

Disciplinary proceedings stand instituted with issue of suspension orders; and charge sheet may be issued after retirement.

N.Haribhaskar vs. State of Tamil Nadu, 1999(1)

SLJ CAT MAD 311

The applicant, Chief Secretary of Tamil Nadu, while under extension upto 30-6-96, was placed under suspension on 5-6-96. The suspension came to an end on 30-6-96 on his retirement from service. A charge sheet was issued on 17-7-96. It was contended by the applicant that as the suspension came to an end on 30-6-96 no action could be taken thereafter.

The Central Administrative Tribunal, Madras held that proceedings were already instituted on 5-6-96 and as such charge sheet could be issued on 17-7-96. The disciplinary action to be taken against the applicant under D&A Rules must be instituted before he retired from service and it has been done in this case by passing an order of suspension on 5-6-96. The disciplinary proceedings instituted on 5-6-96 can be continued under rule 6(1)(a) read with Explanation (a) of DCRB Rules. The departmental proceedings already initiated as contemplated under Explanation (a) to Rule 6 of the DCRB Rules, 1958 can be continued under Rule 6(1)(a) as it is deemed to be a proceedings under sub rule (1)(a) of Rule 6 of the DCRB Rules, 1958. A conjoined reading of Rule 6(1)(a) and Explanation (a) shows that the departmental proceedings shall be deemed to be initiated, if charges are framed or if the employee is placed under suspension from an earlier date. The applicant has been kept under suspension before the date of his superannuation. The proceeding is deemed to be instituted on 5-6-96 itself and had to be continued as if the pensioner remained in service beyond 30-6-96. The issue of charge sheet on 17-7-96 under the D & A Rules is part of the proceedings. The Tribunal held that it is open to the respondent to proceed under the AIS (DCRB) Rules, 1958 as the applicant has attained the age of superannuation and has retired.

(473)

(A) Misconduct — in quasi-judicial functions**(B) Misconduct — of disciplinary authority**

Disciplinary authority can be proceeded against in disciplinary action for misconduct of imposing a lenient penalty.

S. Venkatesan vs. Union of India, 1999(2)

SLJ CAT MAD 492

The applicant, who was an Assistant Engineer, was working in Open Line Organisation, Madras, when the front pair of wheels of Trivendrum-Madras Mail derailed on 19-4-95. The Inter-departmental Committee which was formed to go into the cause of the derailment submitted its report to the Divisional Railway Manager, Madras Division on 6-6-95 holding that C. Ramamurthy, Permanent Way Inspector Gr.I, Avadi and Traction Loco Controller were responsible for the derailment. As the derailment occurred at Avadi, which came under the jurisdiction of the applicant, the applicant was called upon to take appropriate disciplinary action against C.Ramamurthy, Permanent way Inspector G-I. After considering the inquiry report submitted to the Divisional Railway Manager, Madras by the Inter-departmental Inquiry Committee, the applicant issued a minor penalty charge memo to the said C.Ramamurthy on 4-9-95. On 19-9-95, Ramamurthy submitted his explanation and after considering the reply, the applicant by an order dated 29-9-95 imposed the minor penalty of withholding the delinquent officer's annual increment for a period of six months (non-recurring). This was brought to the notice of the General Manager, Southern Railway and a charge memo was issued to the applicant on 12-4-96 which is challenged in this application. The charge reads as under:

"Shri S. Venkatesan, Sr. DEN/Co-Ord/MAS while working as Sr./DEN/Central/MAS, in his capacity of disciplinary authority in a DAR case pertaining to the derailment of Train No. 6320 Trivandrum-Madras Up mail on 19-4-95 at Avadi, imposed a relatively quite lenient penalty to the delinquent staff (PWI/AVD) who was held responsible for track related deficiencies which contributed to the accident according to the Enquiry Report accepted by DRM/MAS and thereby contravened the provision of Rule 3(1)(ii), (iii) and Rule 3(2)(i) of the Railway Services Conduct Rules."

The applicant submitted his explanation on 3-5-96 and thereupon it was decided to hold an inquiry and an inquiry officer is appointed by an order dated 27-5-96 and this order is under challenge before the Tribunal.

DECISIONS (474)

The applicant mainly contended that for exercising a quasi judicial power, the charge memo has been issued. Issuing a charge memo to Ramamurthy and imposing a minor penalty on him is quasi-judicial in nature and no proceedings can be taken against the applicant questioning the exercise of power by the applicant, especially when the applicant has exercised a quasi-judicial power. In other words, when the applicant, a disciplinary authority, has thought fit to impose a minor penalty on a delinquent officer, it is not open to the respondents to take disciplinary proceedings against the applicant. It is also pointed out by the applicant that the minor penalty imposed by the applicant has been revised by the revisional authority and as such there is no case for invoking Rule 3(1)(ii),(iii) and Rule 3(2)(1) of the Railway Services Conduct Rules, 1966 against the applicant. The applicant has not committed any misconduct while discharging his quasi-judicial powers and the applicant acted in a bona fide manner and there was no ill-motive.

The question which thus arose for consideration before the Tribunal is whether a charge sheet can be framed against a disciplinary authority on the ground that he had not imposed a proper punishment on a delinquent officer in a disciplinary proceedings especially when he had exercised quasi-judicial power in imposing punishment.

The Tribunal referred, among others, to the Supreme Court decision in S. Govinda Menon vs. Union of India, AIR 1967 SC 1274, where the Supreme Court rejected the contention of the appellant that the proceedings initiated against him were without jurisdiction as no disciplinary proceedings could be taken against him for action of omission with regard to the work as Commissioner under the enactment and the orders made by him being quasi-judicial in nature and that it can be impugned only in appropriate proceedings taken under the Act. The Tribunal also referred to the decision in Union of India vs. K.K. Dhawan, 1993(1) SLR SC 700, where the Supreme Court gave guidelines of the types of cases involving exercise of quasi-judicial power, in which disciplinary action can be taken. The Tribunal found no merit in the contentions of the applicant and dismissed the application.

(474)

Pension Rules — continuation of invalid proceedings

Proceedings set aside on the ground of non-supply of copy of CVC report can be continued after retirement from service.

Amarnath Batabhyal vs. Union of India, 1999(2) SLJ CAT Mumbai 42

The applicant, an I.A.S. Officer, was imposed the penalty of compulsory retirement on 19-4-89 and the order was set aside by the Tribunal on 25-1-91 on the ground that a copy of the inquiry report was not furnished to him. The applicant was reinstated and placed under suspension and the disciplinary proceedings were continued and an order was passed compulsorily retiring him from service on 24-2-94. Again the Tribunal set aside the order on the ground of non-supply of a copy of CVC report. In the meantime he retired from service on superannuation on 30-9-95. He was issued a fresh order dated 15-11-96 continuing the proceedings. It was contended that he ceased to be a member of the service on 30-9-95 and he is no more governed by AIS (D&A) Rules, 1969 and that no fresh inquiry could be instituted against him.

The Tribunal held that the proceedings were initiated before his retirement on 30-9-95 and that the judgment of the Tribunal dated 9-2-96 by which liberty has been granted to initiate action afresh from the stage of supplying of CVC report will be covered by Rule 6(1)(a) of the AIS (DCRB) Rules, 1958 as these proceedings would be in continuation of the old proceedings which were initiated while he was in service.

(475)**Vigilance Commission — consultation with**

Taking decision in consultation with Vigilance Commission does not mean non-application of mind by disciplinary authority.

Narinder Singh vs. Railway Board, 1999(3) SLJ CAT New Delhi 61

The Tribunal held: The notings show that the disciplinary authority, while passing the impugned order dismissing the applicant from service has indeed considered and reconsidered the matter carefully in consultation with the concerned officials in the department and the Central Vigilance Commission, and merely because finally, the disciplinary authority agreed with the recommendations of the CVC does not ipso facto mean that he felt that it was an obligation on his part to accept the advice of the CVC as there was no such compulsion on him.

In the circumstances of the case and in the absence of materials on record to warrant the conclusion urged by the applicant, the Tribunal held that it cannot agree that the decision of the disciplinary authority to order dismissal of the applicant from service was a decision without application of mind on the dictates of the CVC.

(476)

Pension Rules — four year limitation

Proceedings in respect of misconduct stretching from 1992 to December, 1993, not time barred where charge sheet is issued to the Government servant on 02.08.97, after his retirement on 31.10.1996.

Mohd. Tahseen vs. Government of A.P., 1999(4) SLR AP 6

Petitioner, Additional Superintendent of Police, Hyderabad, retired from service on 31-10-96. A charge sheet was issued to him on 2-8-97, after his retirement. Petitioner contended that the action was time-barred because the misconduct which took place in 1992 was beyond 4 years prior to the institution of the proceedings.

The High Court of Andhra Pradesh held that though the first misconduct attributed to him was related to December 1992, the matter did not end there and the petitioner continued his involvement in the affair in which the allegation is that he abused his official position and falsely detained an innocent person in illegal custody to extract some reimbursement of amount from that person said to have been illegally collected from someone who seems to have approached the petitioner for redressal, in December 1993. The allegation of misconduct includes the period in December 1993 which appears to be continuation from December 1992. There is nothing to show that the entire incident attributing misconduct to the petitioner falls beyond four years from the date of institution of departmental inquiry, namely, 2-8-97. There is no illegality or violation of any rules.

(477)

Conduct Rules — acquisition of property by wife

Acquisition of property by wife in her name, where not paid for by the Government Servant, not attracted by Conduct Rules.

Pitambar Lal Goyal, Additional District & Sessions Judge vs. State of Haryana, 1999(1) SLJ P&H 188

The High Court observed that even if it is assumed that the petitioner had the knowledge, he was required to inform the prescribed authority or obtain its previous sanction only if he was acquiring or disposing of property "either in his own name or in the name of any member of his family." In the present case, it is established on the record that the petitioner's wife had bought the plot of land with her own money. She is not a Government servant. The petitioner had not

paid for the transaction. He was not acquiring the property either in his own name or in the name of a member of his family. The High Court held that the transaction did not fall within the mischief of Rule 18(2) of Government Employees (Conduct) Rules, 1966.

(478)

- (A) **P.C. Act, 1988 — Sec. 19**
- (B) **Sanction of prosecution — under P.C. Act**

Sanctioning authority not obliged to grant opportunity of giving explanation and hearing to the accused.

- (C) **Disproportionate assets — opportunity to explain before framing of charge**

At the time of framing of charge, not proper for the trial court to rely upon documents filed by accused in support of his claim that no case was made out.

***State Anti-Corruption Bureau, Hyderabad vs. P. Suryaprakasam,
1999 SCC (Cri) 373***

The Supreme Court held that at the time of framing of a charge, what the trial court is required to, and can consider are only the police report referred to under sec. 173 Cr.P.C. and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. Of course, at that stage the accused may be examined but that is a prerogative of the court only. In the present case the High Court in quashing the proceedings not only looked into the documents filed by the respondent in support of his claim that no case was made out against him even before the trial had commenced but relied upon them to conclude that no offence was committed by him. This approach of the High Court is also contrary to the settled law of the land.

Supreme Court further held that the sanctioning authority is not obliged to grant an opportunity of giving an explanation and hearing to the accused.

(479)

Disproportionate Assets — fresh FIR covering period investigated earlier

There is no bar for registering fresh FIR and investigating an offence of disproportionate assets for the period 1-8-78 to 25-7-95 merely because the period 1-8-78 to 24-8-89 was earlier investigated and case closed.

M. Krishna vs. State of Karnataka, 1999 Cri.L.J. SC 2583

The appellant is a Class-I Officer in Karnataka Administrative Service. A case was registered against him on 24-8-89 under sec. 13(1)(e) read with sec. 13(2) of P.C. Act, 1988 in respect of the period 1-8-78 to 24-8-89 and after investigation, 'B' report was submitted and properties of the appellant which have been earlier attached were directed to be released. Subsequently a fresh case was registered covering the period 1-8-78 to 25-7-95.

The Supreme Court observed that there is no provision in the Criminal Procedure Code which debars the filing of an FIR and investigating into the alleged offences merely because for an earlier period, there was First Information Report which was duly investigated into and culminated in a 'B' form which was accepted by a competent court. At the same time, the conclusion of the High Court that the present proceeding relates to fresh alleged assets and fresh check period is not wholly correct, in as much as admittedly the check period from 1-8-78 till 24-8-89 was the subject matter in the crime case No.22 of 89 and the same ended in submission of 'B' form. Though the earlier period also could be a subject matter of investigation for variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account, yet at the same time the results of the earlier investigation cannot be totally obliterated and ignored by the Investigating Agency. But that cannot be a ground for quashing of the First Information Report itself and for injunctioning the investigating authority to investigate into the offence alleged.

(480)

Misconduct — not washed off by promotion

Where law specifically provides to consider for promotion despite a pending enquiry or contemplated inquiry, the promotion does not wash off effect of misconduct.

State of M.P. vs. R.N.Mishra, 1999(1) SLJ SC 70

The Supreme Court held that an employee /officer who is required to be considered for promotion, despite the pendency of preliminary enquiry or contemplated inquiry against him, is promoted, having been found fit, the promotion so made would not amount to condonation of misconduct which is subject matter of the inquiry. In the present case misconduct came to light in 1976 when a preliminary enquiry was ordered and while the enquiry was continuing, the State Government promoted him on 7-4-77. The state Government could not have excluded him from the zone of consideration, merely on the ground that a preliminary enquiry was pending.

In such a situation the doctrine of condonation of misconduct cannot be applied as to wash off the acts of misconduct which was the subject matter of preliminary enquiry. Consequently the penalty of withholding of two increments imposed on him by the State Government by order dated 26-9-96 was valid and legal.

(481)

Suspension — continuance of

Order of suspension issued pending investigation continues in operation after filing of the charge sheet.

State of Tamil Nadu vs. G.A. Ethiraj, 1999(1) SLJ SC 112

The Supreme Court observed that the respondent, Deputy Superintendent of Police, was involved in a case of corruption and was placed under suspension until further orders by order dated 22-8-95. The Tribunal accepted the contention of the respondent and set aside the order of suspension holding that the charge sheet had already been filed against him and that the premise on which the order of suspension was passed is no longer in existence since the stage of investigation is already over and a charge sheet has been filed and as such the order of suspension cannot survive any further.

Supreme Court held that the respondent was placed under suspension till further orders and the order was not confined to the period of investigation. After the completion of the investigation, the charge sheet has been filed. This means that as a result of the filing of the charge sheet the reason for keeping the respondent under suspension continues and it cannot be said that the said reason has ceased to exist after the filing of the charge sheet.

(482)

Charge sheet — service of

Charge Sheet sent by registered post, returned with endorsement "not found", cannot be treated as served.

Union of India vs. Dinanath Shantaram Karekar, 1999(1) SLJ SC 180

The charge sheet which was sent to the respondent at his home address available in his personal file by Registered Post was returned with the postal endorsement "not found". The Supreme Court held that it cannot be legally treated to have been served.

The appellant should have made further efforts to serve the charge sheet. Single effort, in the circumstances of the case, cannot be treated as sufficient. So far as the service of the show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effected by publication in a newspaper without making any earlier effort to serve him personally by tendering it either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show cause notice was published was popular newspaper which was expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived.

(483)

(A) Inquiry — previous statements, supply of copies

Failure to furnish copies of previous statements of witnesses cited in charge sheet on request by charged officer for him to give his reply, causes prejudice.

(B) Documents — supply of copies/inspection

Charged Officer should be given opportunity to inspect documents cited in support of the charge.

State of U.P. vs. Shatrughan Lal, 1999(1) SLJ SC 213

The respondent was a Lekhpal in the service of the Uttar Pradesh State Government. He was dismissed from service after a regular departmental inquiry. The matter came up before the Supreme Court on the question that the findings of departmental proceedings and the order removing him from service were illegal and void.

The Supreme Court held that the preliminary enquiry is conducted invariably behind the back of the delinquent employee and it constitutes the whole basis of the charge-sheet. Before a person is called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if they are proposed to be examined at the departmental inquiry, and that a lapse in this regard would vitiate the departmental proceedings. Copies of the documents indicated in the charge-sheet to be relied upon as proof in support of articles of charges were also not supplied nor was any offer made to him to inspect those documents. If the disciplinary authority did not intend to give copies of the documents, it should have indicated in writing that he may inspect those documents. Supreme Court dismissed the appeal.

(484)**Lokayukta / Upa-Lokayukta**

Lokayukta/Upa-Lokayukta (Karnataka) has no jurisdiction to investigate disproportionate assets cases.

State of Karnataka vs. Kempaiah, 1999 (2) SLJ SC 116

On 17.12.92, an unsigned representation containing allegations against certain Government officers including the respondent, Kempaiah, an IPS Officer, who was working as Deputy Commissioner of Police, East Bangalore, during the relevant period, was forwarded by the Under Secretary to the Governor of Karnataka to the Registrar, Lokayukta, Bangalore for taking necessary action under sec. 2 (1) of the Karnataka Lokayukta Act, 1984. The Lokayukta referred it for investigation to the police wing of the Upalokayukta for preliminary inquiry under sec. 7 (2) of the Karnataka Lokayukta Act, 1984 and an FIR was issued under sec. 13 (1) (e) read with 13 (2) of P.C. Act. It was challenged that ‘action’ meant only an administrative action and it did not cover the investigation in question.

The Supreme Court observed that a perusal of the definition of the word ‘action’ in sec. 2(1) of the Act indicates that it encompasses administrative action taken in any form whether by way of recommendation or finding or ‘in any other manner’, e.g., granting licenses or privileges, awarding contract, distributing Government land under statutory Rules or otherwise or withholding decision on any matter etc. The expression ‘in any other manner’ takes it in fold the last mentioned categorises of administrative actions. The expression follows ‘decision’, ‘recommendation’ or ‘finding’. So it connotes other categories of administrative action; it cannot be interpreted to mean actions, which have no nexus to any administrative action.

The Supreme Court expressed itself in entire agreement with the view expressed by the High Court that the word ‘action’ does not include investigation of an offence of possession of disproportionate assets.

(485)**(A) Departmental action and prosecution**

- (i) *Case law on simultaneous departmental action and prosecution summarized.*
- (ii) *On the facts of the case, held that as raid and recovery at the residence were not proved in the court prosecution, it would be unjust to treat it otherwise in the departmental action.*

(iii) ‘Dismissal’ set aside, following acquittal in court prosecution.

(B) Suspension — subsistence allowance, non-payment of

Ex parte inquiry stands vitiated where charged official was unable to attend due to non-payment of subsistence allowance.

Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd., 1999(2) SLR SC 338

The Security Officer of Bharat Gold Mines Limited (respondent) was proceeded against in a regular departmental action for being found in possession of mining sponge gold ball and ‘gold bearing sand’ in a raid conducted on his residence on 2-6-85 and dismissed from service on 7-6-86. Simultaneously, he was prosecuted on the same facts but was acquitted on 3-2-87.

The Supreme Court once again examined the position of simultaneous departmental action and prosecution and summarised the case law as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately; (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case; (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet; (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed; (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

Applying these norms to the instant case, the Supreme Court observed that the criminal case as also the departmental proceedings were based on identical set of facts namely, ‘the raid conducted at the appellant’s residence and recovery

of incriminating articles therefrom.' The findings recorded by the inquiry officer indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the security officer and had effected recovery. They were the only witnesses examined by the inquiry officer and the inquiry officer relying upon their statements, came to the conclusion that the charges were established. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from his residence. The whole case of prosecution was thrown out and he was acquitted. The Supreme Court held that in the situation where the appellant is acquitted by judicial pronouncement with the finding that the 'raids and recovery' at the residence were not proved it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

The Supreme Court upheld the contention of the security officer that he could not attend the inquiry because of non-payment of subsistence allowance during the period of his suspension, besides his being sick and held that the findings recorded by the inquiry officer in an ex parte inquiry stand vitiated. The Supreme Court allowed the appeal.

(486)

(A) Sanction of prosecution — under P.C. Act

Sanction of prosecution not required under P.C. Act where accused ceased to be public servant on the date when court took cognizance of the offence.

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

Sanction of prosecution not required under sec. 197 Cr.P.C. for offence of conspiracy under sec. 120B IPC read with sec. 409 IPC and sec. 5(2) P.C. Act, 1947 (corresponding to sec. 13(2) of P.C. Act, 1988) as it is no part of the duty of public servant while discharging his official duties to enter into a criminal conspiracy or to indulge in criminal misconduct.

State of Kerala vs. V. Padmanabhan Nair, 1999(6) Supreme 1

The Supreme Court reiterated that the correct legal position is that an accused facing prosecution for offences under the Prevention of Corruption Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences.

DECISIONS (486)

The Supreme Court held that the High Court was at any rate wrong in quashing the prosecution proceedings in so far as they related to offences under the P.C. Act.

The Supreme Court also considered the contention of the respondent that for offences under secs. 406 and 409 read with sec. 120B of the IPC, sanction under sec. 197 of the Code is a condition precedent for launching the prosecution and held that it is equally fallacious. The Supreme Court pointed out that they stated the correct legal position in Shreekanth Ramayya Munnipalli vs. State of Bombay, AIR 1955 SC 287 and also Amrik Singh vs. State of Pepsu, AIR 1955 309 that it is not every offence committed by a public servant which requires sanction for prosecution under sec. 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad vs. State of Bihar, 1972(3) SCC 89 as follows:

“As far as the offence of criminal conspiracy punishable under sec. 120B, read with sec. 409 IPC is concerned and also sec. 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in sec. 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under sec. 197 of the Code of Criminal Procedure is, therefore, no bar”.

A Single Judge of the High Court declined to follow the aforesaid legal position in the present case on the sole premise that the offence under sec. 406 of the IPC has also been fastened against the accused besides sec. 409 of the IPC. The Supreme Court was unable to discern the rationale in the distinguishment. Secs. 406 and 409 of the IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under sec. 406 is a public servant (or holding any one of the positions listed in the section) the offence would escalate to sec. 409 of the Penal Code. When the Supreme Court held that in regard to the offence under sec. 409 of the IPC read with sec. 120B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, there is no sense in stating that if the offence is under sec. 406 read with sec. 120B IPC it would make all the difference vis-a-vis sec. 197 of the Code.

For the aforesaid reasons, the Supreme Court held that the High Court has committed a grave error in quashing the prosecution proceedings.

Note : Sanction is required even for retired public servants after the amendment by Act 16 of 2018

(487)

(A) Cr.P.C. Sec. 164 — statement cannot be recorded from private person direct

(B) Witnesses — statement under sec. 164 Cr.P.C.

No person who is not an accused can straight away go to a magistrate and require him to record a statement which he proposes to make.

Jogendra Nahak vs. State of Orissa, 1999(6) Supreme 379

The Supreme Court held that a person who is not an accused cannot straightway go to a magistrate and require him to record a statement which he proposes to make. In the scheme of provisions under Chapter XII of the Code of Criminal Procedure, there is no stage at which a magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. If a magistrate is obliged to record the statements of all such persons who approach him, the situation would become anomalous and every magistrate court will be further crowded with a number of such intending witnesses brought up at the behest of accused persons.

If a magistrate has power to record statement of any person under Section 164 of the code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. The Supreme Court was unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the magistrate on being approached for the purpose and those not to be recorded. The contention that there may be instances when the investigating officer would be disinclined to record statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightaway approach a magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers), the Supreme Court did not find any special reason why the magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under Section 164 of the Code. On the other hand, if door is opened

to such persons to get in and if the magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the magistrate courts for the purpose of creating record in advance for the purpose of helping the culprits.

Thus, on a consideration of various aspects, the Supreme Court was disinclined to interpret Section 164(1) of the Code as empowering a magistrate to record the statement of a person unsponsored by the investigating agency.

(488)

Disproportionate assets — bank account, seizure of

Investigating officer has power to seize bank account and issue direction to bank officer prohibiting account of the accused being operated upon.

State of Maharashtra vs. Tapas D. Neogy, 1999(8) Supreme 149

The Supreme Court considered the divergent views taken by the different High Courts with regard to the power of seizure under sec. 102 Cr.P.C., and whether the bank account can be held to be ‘property’ within the meaning of said sec.102(1) and saw no justification to give any narrow interpretation to the provisions of the Cr.P.C.

The Supreme Court observed that it is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of sec. 102 Cr.P.C. and the underlying object engrafted therein, inasmuch as, if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. The Supreme Court was, therefore, persuaded to take the view that the bank account of the accused or any of his relation is ‘property’ within the meaning of sec.102 Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of sec. 13, the

legislatures have provided that the Courts in fixing the amount of fine shall take into consideration the amount or the value of property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section of sec. 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by the Supreme Court in respect of the power of seizure under sec. 102 Cr.P.C. is in accordance with the intention of the legislature engrafted in sec. 16 of the Prevention of Corruption Act referred to above.

In the aforesaid premises, the Supreme Court has no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon.

(489)

Pension Rules — four year limitation

Four-year limitation does not operate in respect of proceedings pursued after retirement, on account of penalty of removal from service being set aside by Tribunal.

***Chandrasekhar Puttur vs. Telecom District Manager, 2000(2)
SLJ CAT Bangalore 445***

Applicant was removed from service but the Central Administrative Tribunal set aside the order of removal with liberty to take further action as per rules. By this time applicant retired from service and proceedings continued under rule 9(1) of the Pension Rules.

On the application of limitation under the Pension Rules, the Central Administrative Tribunal observed that when the penalty order is set aside by the Tribunal or in an appeal on account of an irregularity in the inquiry and liberty is given to the competent authority to continue the proceedings from the stage at which the irregularity occurred, then for all practical purposes, that part of the proceedings which has been held to be void should be treated as non est and the result would be that the proceedings must be deemed to have been pending when the employee retired from service. Sub-rule (2)(b) indicates that it is only where the proceedings are to be instituted after the retirement, the sanction of the President is required. The Tribunal was unable to hold that any distinction can be made between the two classes of cases referred to by the applicant. When

once it is held that sanction of the President is not necessary in respect of first class of cases it necessarily follows that such a sanction would not be necessary even in the second class as what is required to be done after the quashing of the penalty order on account of defect in the proceedings is to continue the same proceedings from that particular stage and not initiate any fresh proceedings.

(490)

Revision / Review

Revisional authority has power to order fresh inquiry by the disciplinary authority.

M.C.Garg vs. Union of India, 2000(2) SLJ CAT Chandigarh 126

The disciplinary proceedings were initiated under rule 16 of the CCS (CCA) Rules, 1965 and a penalty of stoppage of one increment for a period of two years with cumulative effect was imposed on 19-5-95, on a charge of misappropriation of Rs.700 while working as Sub-Post Master. The penalty was confirmed in appeal. However, the revisional authority found the punishment awarded to be insufficient and passed an order dated 31-10-97 asking the disciplinary authority to undertake de novo proceedings from the stage of issue of fresh charge-sheet under rule 14 of CCS(CCA) Rules, 1965. The order was challenged on the ground that rule 29 does not provide for a de novo inquiry by issuing a fresh charge-sheet and that the competent authority is not empowered to convert action taken under rule 16 into the one envisaged under rule 14.

The Central Administrative Tribunal, held that rule 29 makes it plain that the revisional authority has the power to revise the orders of the disciplinary authority and to pass such orders as deemed fit in the circumstances of the case and this will definitely include the power to order an inquiry.

(491)

Fresh inquiry / De novo inquiry

- (i) *De novo inquiry not permissible where further inquiry alone is provided for.*
- (ii) *Difference between 'de novo inquiry' and 'further inquiry', dealt with.*

Gulab singh vs. Union of India, 2000(1) SLJ CAT DEL 380

A careful reading of rule 15 of CCS (CCA) Rules would clearly show that under sub-rule (1), the disciplinary authority can remit the case to the inquiry

authority for inquiry and report for reasons to be recorded in writing. Further inquiry does not mean a de novo inquiry afresh. What is a further inquiry as contemplated under the said rule came up for consideration before the Supreme Court in K.R.Deb vs. Collector of Central Excise, Shillong where it was held that the said rule provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry Officer to record further evidence and that there is no provision in the Rule for completely setting aside previous inquiry on the ground that the report of the Inquiry Officer does not appeal to the disciplinary authority and that the disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. The Tribunal observed that there is a world of difference between de novo inquiry and further inquiry, that in the further inquiry whatever omission was there in the inquiry which can be supplied as per rules, can be supplied by adducing further evidence, but if it is a de novo inquiry whatever was recorded at the earlier inquiry would not form part of the inquiry file which is likely to prejudice the Government servant facing the charge, that if it is allowed, the disciplinary authority, if he finds that the evidence at the inquiry is in favour of the charged officer, can wipe them off by ordering a de novo inquiry to be commenced with a clean slate. The Central Administrative Tribunal held that de novo inquiry cannot be held from the very beginning.

(492)

Evidence — previous statements, as examination-in-chief

Prior statements can be taken as examination-in-chief on affirmation by witness, provided charged officer has opportunity to cross-examine

***Dhan Singh, Armed Police, Pitam Pura vs. Commissioner of Police,
2000(3) SLJ CAT DEL 87***

Applicants challenged the inquiry on the plea that witnesses were shown pre-recorded statements and not examined direct.

The Central Administrative Tribunal, New Delhi found that witnesses had confirmed their statements when questioned by the Inquiry Officer and that thereafter they were cross-examined by the Charged Officer. The Tribunal held that there is no flaw as the rule provided 'as far as may be' and that flaw, if any, which causes no prejudice, cannot be fatal.

(493)

Suspension — effect of non-review

Suspension comes to an end where no review is done within 90 days as required by amendment, both under rules 3(1) and 3(3) of AIS (D&A) Rules, 1969.

Ashutosh Bhargava vs. Union of India, 2000(3) SLJ CAT Jaipur 271

Applicant, Member of All India Service, was caught red-handed while taking bribe and placed under suspension under rule 3(3) AIS (D&A) Rules. No review of suspension was done within 90 days as required by amendment to sub-rule (8).

The Tribunal rejected the plea that sub-rule (8) applies to suspension under Rule 3(1) and not 3(3) and observed that the rule-making authority has clearly clarified to the Tribunal that the O.M. was applicable to suspension under Rule 3(3) also and held that suspension came to an end automatically on expiry of 90 days. Tribunal also held that the amendment placed suspension under rule 3(1) and 3(3) on the same pedestal.

(494)

(A) Penalty — imposition of two penalties

(B) Penalty — recovery of loss

Recovery of loss, besides imposing minor penalty, without holding inquiry, in order.

Ram Khilari vs. Union of India, 2000(1) SLJ CAT Lucknow 454

The applicant, Junior Engineer in the Telecom Department, challenged the orders imposing the penalty of censure and directing recovery of Rs.19,140.

The Central Administrative Tribunal held that the responsibility for loss caused to the Government on account of shortage in stores and stock has to be fixed on the applicant, who was incharge of the stores during the relevant period. Since no shortage was reported by him when he took over charge, the shortage at the time when he handed over charge has to be explained only by him and in the event of his failure to do so, he would be liable to whatever disciplinary action is considered necessary in the facts of the case. Since the penalty levied was minor, it was not necessary to hold a preliminary enquiry (sic) by appointing an enquiry officer. The Tribunal held that the penalty of censure along with the order for recovery of Rs.19,140 was fully justified.

(495)**Penalty — recovery of loss**

Not necessary to hold inquiry for ordering recovery of loss, being minor penalty.

Shivmurat Koli vs. Joint Director (Inspection Cell) RDSO, 2000(3)

SLJ CAT Mumbai 411

The Signal Inspector of Railway Electrification at Bhopal was issued a minor penalty charge sheet dated 13-1-1993 alleging that he caused loss of 23 rail posts. Without conducting any inquiry, the disciplinary authority, by order dated 27-10-93 imposed penalty of recovery of 50% of the cost of the rail posts.

The Central Administrative Tribunal rejected the contention of the applicant that it could not be done without holding an inquiry even though it is a minor penalty and held that the rules do not mandate it and there was no such request made by him.

(496)**Conviction — suspension of, does not affect suspension of official**

Suspension of conviction does not amount to acquittal and does not call for revocation of order of suspension.

Janardan Gharu Yadav vs. Union of India, 2000(3) SLJ CAT Mumbai 414

The applicant, Sub-Inspector in the Security Department of India Government Mint, was convicted by the Addl. Sessions Judge and on appeal, the High Court of Bombay ordered suspension of the conviction. The applicant contended that the order of conviction has become null and void and the order of suspension from service should be revoked.

The Central Administrative Tribunal held that suspension of conviction does not mean acquittal and that as the appeal is pending, the conviction is not operative till the decision of the appeal.

(497)

- (A) **Criminal Law Amendment Ordinance, 1944**
- (B) **Disproportionate assets — attachment of property**

Special Judge has jurisdiction to order attachment under Criminal Law Amendment Ordinance, 1944 even at the stage of investigation.

Rongala Mohan Rao vs. State, 2000(1) ALD (Crl.) AP641

The revision is directed against the order passed by the Special Judge for ACB Cases, Visakhapatnam under the Criminal Law Amendment Ordinance, 1944, on the ground that the ACB Court has no jurisdiction since the case has not reached the stage of trial.

The High Court observed that the properties sought to be attached are within the jurisdiction of the Special Judge for ACB Cases, Visakhapatnam. Certainly the Special Judge has power to order attachment even in cases which are at the investigation stage. If literal meaning is given to the term 'District Judge' used in sec.3 of the Criminal Law Amendment Ordinance, 1944, it would result in dichotomy of the jurisdiction and such interpretation is not called for. The Special Judge is of the rank of the District Judge. If he has power to order attachment during trial, certainly he has power to pass any order auxiliary to his powers even when the case is at the investigation stage. It is the ACB Department which is dealing with the case and doing investigation, and, therefore, only the Special Judge has power to pass attachment of the property even at the stage of investigation as is done in this case. The High Court held that the interpretation given by the Special Judge with regard to the harmonious construction is correct and that there is no ground to interfere with the impugned order.

(498)

- (A) **Witnesses — examination of**

Not necessary to examine all cited witnesses.

- (B) **Charge sheet — format of**

Failure to follow format not of consequence if all particulars are given.

Ashok Kumar Monga vs. UCO Bank, 2000(2) SLJ DEL 337

The appellant contended that the Bank examined only 5 of the 19 witnesses cited in the list of witnesses and that this has prejudiced his defence. The High Court held that it is not mandatory to examine all cited witnesses if the disciplinary authority feels that charges are proved by 5 of them and that the Bank has right to

drop the remaining witnesses. If the appellant thought that some of the witnesses not examined by the Bank are relevant, he could always summon them as his witnesses.

A show cause notice was issued which was treated as a charge sheet. The appellant challenged it on the ground that it was not in the proper format. The High Court held that what matters is the substance and not the format of charge sheet and that the show cause notice contained all details.

(499)

- (A) P.C. Act, 1988 — Sec.13 (1)(e), Explanation**
- (B) Disproportionate assets — income from known sources**

Income received should be from a lawful source and such receipts ought to have been intimated to the authorities also.

J. Prem vs. State, 2000 Cri.L.J MAD 619

The petitioners are husband and wife and accused in Special Case on the file of the Chief Judicial Magistrate-cum-Additional District Judge, Cuddalore. The first accused has been charged for an offence under sec. 13(2) read with sec. 13(1)(e) of the Prevention of Corruption Act, 1988 and the second accused was charged for offences under sec. 109 IPC read with sec. 13(2) read with sec. 13(1)(e) of the said Act. The first accused became a Member of the Legislative Assembly on 17-6-91 and he became the Minister on 17-5-93.

The High Court held that there is *prima facie* material to frame charge against both of them and that there is absolutely no force in the contention of the petitioners. The first accused contended that he had acquired lot of income from the taxi as well as cool drinks shop and the second accused contended that she had acquired properties out of her own funds as well as the funds given by her father. The High Court referred to the provisions of sec.13 of the P.C. Act and the Explanation thereunder and observed that it is clear that the income received by the accused should be from a lawful source and such receipts ought to have been intimated to the authorities concerned also. Admittedly, the petitioners have not filed any income-tax returns relating to the check period in question including the income now proposed by them. Under the circumstance, the only conclusion that can be drawn is that there is a *prima facie* material to proceed further against these petitioners and it cannot be said that the charge is groundless against them. In this view, the High Court declined to interfere.

(500)

P.C. Act, 1988 — Sec. 17, second proviso

Superintendent of Police authorising investigation for offence under sec. 13(1)(e) of P.C. Act, 1988 in terms of sec. 17, proviso 2 is not required to write a judgment or a reasoned order.

Mahavir Prasad Shrivastava vs. State of M.P., 2000 Cri.L.J. MP 1232

The High Court observed that it is not the general law that in every case when an order of authorisation to investigate is passed, the name of the Superintendent of Police, name of the accused and the name of the Investigating Officer are filled in blanks, and otherwise the order is speaking, it is no order in the eye of law. That was never the intention of the law. There is no special mechanism or form of an order by the Superintendent of Police authorising investigation for offence under sec. 13(1)(e) of the Prevention of Corruption Act, 1988 in terms of sec. 17 proviso 2 thereof, anywhere mentioned. At the stage when investigation is being authorised, the full facts are not before the S.P. Only the allegations are there. The necessity of authorisation by a Superintendent of Police according to the 2nd proviso arose because it has been thought in the public interest and in the interest of the concerned public servant that at least a responsible officer of the rank of S.P. should authorise investigation and it should not start otherwise. The S.P. is not required to write a judgment or a reasoned order. He is to satisfy himself that it is necessary to investigate, but, he need not record the reason of that satisfaction. Even otherwise validity of authorisation cannot be allowed to be entered into at pre-charge stage.

(501)

(A) P.C. Act, 1988 — to be liberally construed

P.C. Act is a social legislation and should be liberally construed so as to advance its object.

(B) P.C. Act, 1988 — Sec. 13(1)(e)

(C) P.C. Act, 1988 — Sec. 17

(D) Disproportionate assets — authorisation to investigate

Order of authorisation issued by Superintendent of Police under sec. 17 of P.C. Act, 1988, for investigation of offence under sec. 13(1)(e), not invalid merely because it is in typed proforma.

State of Madhya Pradesh vs. Shri Ram Singh, 2000 Cri.L.J. SC 1401

The High Court of Madhya Pradesh quashed the investigations and consequent proceedings against the respondents initiated, conducted and concluded by the police under sec. 13(1)(e) read with sec. 13(2) of the P.C.Act, 1988 on the ground that investigation had not been conducted by an authorised officer in terms of sec. 17 of the Act.

The Supreme Court observed that the Prevention of Corruption Act was intended to make effective provision for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. The Supreme Court held that procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and decided cases under it.

The Supreme Court pointed out that a three judge Bench of the Supreme Court in H.N. Rishbud vs. State of Delhi, AIR 1955 SC 196 had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial.

The Supreme Court observed that in the instant appeals, after registration of the FIR, the Superintendent of Police is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The Supreme Court held that the facts of the case of State of Haryana vs. Bhajan Lal, AIR 1992 SC 604 were distinguishable as in the instant case the SP appears to have applied his mind and passed the order authorising the investigation by an Inspector under the peculiar circumstances of the case. The reasons for entrustment of investigation were obvious. The High Court should not have liberally construed the provisions of the Act in favour of the accused resulting in closure of the trial of the serious charges made against the respondents in relation to commission of offences punishable under an Act legislated to curb the illegal and corrupt practices of the public officers. The Supreme Court was not satisfied with the finding of the High Court that merely because the order of the SP was in typed proforma, that showed the non-application of the mind or could be held to have been passed in a mechanical and casual manner. The order clearly indicates the name of the

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accused, the number of FIR, nature of the offence and power of SP permitting him to authorise a junior officer to investigate. The time between the registration of the FIR and authorisation in terms of second proviso to sec. 17 shows further the application of mind and the circumstances which weighed with the SP to direct authorisation to order the investigation.

(502)

(A) Misconduct — sexual harassment

Assessment of evidence in a case of sexual harassment of a female employee at her work place.

(B) Court jurisdiction

Judicial review is directed not against the decision but is confined to the examination of the decision-making process. Purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court.

Apparel Export Promotion Council vs. A.K. Chopra, 2000(1)

SLJ SC 65: AIR 1999 SC 625

The respondent was Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant in the case. It was alleged that the respondent tried to molest a woman employee of the council, Miss X (name withheld by the Supreme Court), who was at that time working as a clerk-cum-typist, on 12-8-88. Though she was not competent or trained to take dictations, he took her to the business centre at Taj Palace Hotel for taking dictation and type out the matter. There he tried to sit too close to her and despite her objection did not give up his objectionable behaviour. After she took dictation from the Director, he (respondent) took her to the Business Centre in the basement of the Hotel for typing the matter and taking advantage of the isolated place he again tried to sit close to her and touch her despite her objections. He repeated his overtures. He went out for a while but came back and resumed his objectionable acts. He tried to molest her physically in the lift also while coming to the basement but she saved herself by pressing the emergency button, which made the door of the lift open.

The respondent was placed under suspension on 18-8-88 and a charge sheet was served on him. A Director of the Council was appointed as Inquiry

Officer and he held that the respondent acted against moral sanctions and that his acts against Miss X did not withstand the test of decency and modesty and held the charges levelled against the respondent as proved. The Disciplinary authority agreeing with the report of the Inquiry Officer imposed the penalty of removing him from service with immediate effect, on 28-6-1989.

The respondent filed a departmental appeal before the Staff Committee and it was dismissed. The respondent thereupon filed a writ petition before the High Court and a Single Judge allowing it opined that “the petitioner tried to molest and not that the petitioner had in fact molested the complainant”. The Division Bench dismissed the appeal filed by the Council against reinstatement of the respondent, agreeing with the findings of the Single Judge.

The Supreme Court observed: The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based entirely on no evidence or that the findings were wholly perverse and /or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion, and impose some other punishment or penalty.

The Supreme Court held: Judicial Review is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police vs. Evans, (1982)3 ALL ER 141, observed: “The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court.”

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The Supreme Court further held: The material on the record, thus, clearly establishes an unwelcome sexually determined behavior on the part of the respondent against Miss X which is also an attempt to outrage her modesty. Any action or gesture, whether directly or by implication aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. The evidence on the record clearly establishes that the respondent caused sexual harassment to Miss X, taking advantage of his superior position in the Council.

The Supreme Court referred to the definition of sexual harassment suggested in *Vishaka vs. State of Rajasthan*, (1997) 6 SCC 241 and held: An analysis of the definition shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.

The Supreme Court further held: In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case.

The Supreme Court set aside the order of the High Court and upheld the departmental action.

(503)

(A) Misconduct — in judicial functions

Magistrate proceeded against for misconduct committed in the trial of a case.

(B) Inquiry report — disciplinary authority disagreeing with findings

(C) Disciplinary authority — disagreeing with Inquiry Officer

Where Disciplinary authority differs with the Inquiry Officer, not necessary to discuss materials in detail and contest the conclusions of the Inquiry Officer.

***High Court of judicature at Bombay vs. Shashikant S. Patil,
2000(1) SLJ SC 98***

The first respondent, while functioning as Judicial Magistrate of First Class at Ahmadnagar acquitted the accused in a Police case and was alleged to have issued a warrant of arrest against the complainant in the said case at the behest of the accused, and the complainant was arrested and paraded through the streets of his locality. The Joint District Judge conducted the inquiry and held him not guilty of the charges but the Disciplinary Committee of the High Court consisting of five judges disagreed with the findings and issued a show cause notice proposing to impose a penalty of dismissal. On a consideration of the representation, the Disciplinary Committee recommended imposition of the penalty of compulsory retirement and the Governor issued orders accordingly.

The Division Bench of the High Court quashed the order on the ground that the Disciplinary Committee did not put forth adequate reasons for differing from the findings of the Inquiry Officer and did not discuss how the Inquiry Officer went wrong and why his findings were not acceptable to the Committee. The Division Bench upheld the contention of the first respondent that “when the Disciplinary Authority differed from the findings entered by an Inquiry Officer, it is imperative to discuss materials in detail and contest the conclusions of the Inquiry Officer and then record their own conclusions.”

The Supreme Court held: “The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the Inquiry Officer it is imperative to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer’s report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the views expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the

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disciplinary authority should “discuss materials in detail and contest the conclusions of the Inquiry Officer.” Otherwise the position of the disciplinary authority would get relegated to a subordinate level.

Supreme Court set aside the judgment of the Division Bench of the Bombay High Court.

(504)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — abetment by private persons**
Private persons liable under sec.109 IPC read with sec.13(1) (e) of P.C.Act, 1988.
- (C) P.C. Act, 1988 — Sec. 13(1)(e), Explanation**
- (D) Disproportionate assets — income from known sources**

“Known sources of income” of public servant should be any lawful source and the receipt of such income should have been intimated in accordance with the provisions of law applicable.

P.Nallammal vs. State, 2000(1) SLJ SC 320

Some of the former Ministers of the Tamil Nadu Government in the Ministry headed by the erstwhile Chief Minister Smt. Jayalalitha are being prosecuted before certain Special Courts for the offence, inter alia, under sec.13(1)(e) of the Prevention of Corruption Act, 1988. The former speaker of the Tamil Nadu Legislative Assembly is also facing a similar charge. They are indicted on the premise that they were public servants during the relevant time and that each one has amassed wealth disproportionate to his/her known sources of income, for which he/she is unable to account. But in all such cases, some of their kith and kin are also being arraigned as co-accused to face the said offence read with sec.109 Indian Penal Code. Appellants herein are all those kith and kin who are now being proceeded against for the said offences in conjunction with the public servant concerned.

The Supreme Court held that sec. 4 of the P.C. Act confers exclusive jurisdiction to Special Judges appointed under the P.C. Act to try the offences specified in sec. 3(1) of the P.C. Act. The placement of the monosyllable “only” in sub-section (1) is such that the very object of the sub-section can be discerned

as to emphasize the exclusivity of the jurisdiction of the Special Judges to try all offences enveloped in sec.3(1). Clause (b) of the sub-section encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the P.C.Act. If such conspiracy or abetment of "any of the offences" punishable under the P.C.Act can be tried "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the P.C.Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the court of a Special Judge having jurisdiction in the matter.

The Supreme Court observed that it is true that sec.11 (sic, section 19) deals with a case of abetment of offences defined under secs. 8 and 9, and it is also true that sec.12 specifically deals with the case of abetment of offences under secs. 7 and 11. But that is no ground to hold that the P.C.Act does not contemplate abetment of any of the offences specified in sec.13 of the P.C.Act. Sec. 13 of the P.C.Act is enacted as a substitute (sic) for secs. 161 to 165-A of the Penal Code which were part of Chapter IX of that Code under the title "All offences by or relating to public servants". One of the objects of the new Act was to incorporate all the provisions to make them more effective. The legislative intent is manifest that abettors of all the different offences under sec.13(1)(e) of the P.C.Act should also be dealt with along with the public servant in the same trial held by the Special Judge.

The Supreme Court further observed that as per the Explanation to sec.13(1)(e), the "known sources of income" of the public servant, for the purpose of satisfying the court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of sec.13(1)(e) of the P.C.Act by showing other legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the sub- section.

The Supreme Court held that there is no force in the contention that the offences under sec.13(1)(e) of the P.C.Act cannot be abetted by another person and that consequently, in a prosecution for offences under sec.13(1)(e), of public servants, their kith and kin also could be arraigned as co-accused to face the said offence read with sec. 109 of IPC.

(505)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

It is not open to the Court of appeal to reverse a conviction and sentence passed by the trial Court on the mere premise that there was no valid sanction to prosecute.

Central Bureau of Investigation vs. V.K. Sehgal, 2000(2) SLJ SC 85

In a case where the accused failed to raise the question of valid sanction, the trial would normally proceed to its logical end by making judicial scrutiny of the entire materials. If that case ends in conviction, there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant, because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or malafide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial, the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Sec. 465 Cr.P.C.

The Supreme Court held that under sec. 19(3)(a), no order of conviction and sentence can be reversed or altered by a Court of appeal or revision even “on the ground of the absence of sanction” unless in the opinion of that Court a failure of justice has been occasioned thereby. By adding the Explanation, the said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the appellate as well as revisional Courts are debarred from interfering with the conviction and sentence merely on that ground.

(506)

Witnesses — defence witnesses

Trial Court has power to prune list of defence witnesses.

Arivazhagan vs. State, 2000(2) SCALE 263

The question that arose before the Supreme Court is whether the accused has a right to examine a myriad of 267 witnesses in a case of prosecution for an offence under sec. 13(1)(e) of the P.C. Act, 1988 (disproportionate assets) read with sec. 109 IPC, where the prosecution examined witnesses by summoning

41 persons and a further question whether the court has any power to prune down the list of such witnesses.

The Special Judge made a scrutiny of the list and dissected the names into four divisions and permitted two witnesses each from the first and second divisions and ten witnesses each from the third and fourth divisions. He observed that as many as 109 witnesses were cited to speak about the masonry works, wood works, painting works etc. and that examination of one or two engineers will be sufficient and it would save the time also. He also observed that in the third division all the witnesses were cited only to speak about the "agriculture and business income" of the accused and that he could advisedly confine to ten witnesses in that division. Regarding the fourth division the Special Judge observed 90 witnesses were cited to speak about the loans, gifts etc. and that he could examine ten of them. The High Court permitted examination of 24 more witnesses.

The Supreme Court observed that the position of an accused who is involved in a trial under the P.C. Act is more cumbered than an accused in other cases due to legislative curbs. One of them is envisaged in sec. 22 of the P.C. Act. The court is not obliged to direct an accused involved under the P.C. Act to enter upon his defence until the Special Court has the occasion to see the list of his witnesses and also the list of his documents to be adduced in evidence on the defence side. An accused in other cases has to be called upon to enter on his defence irrespective of whether he would propose to adduce defence evidence because it is a choice to be exercised by him only after he is called upon to enter on his defence. But the accused under P.C. Act need be called upon to enter on his defence only after the trial judge has occasion to peruse the names of the witnesses as well as the purpose of examination of each one of them, and also the nature of the documents which he proposed to adduce as his evidence.

It is true that the concept of speedy trial must apply to all trials, but in the trials for offences relating to corruption the pace must be accelerated with greater momentum due to a variety of reasons. Parliament expressed grave concern over the rampant ever-growing corruption among public servants which has been a major cause for the demoralisation of the society. When corrupt public servants are booked they try to take advantage of the delay-prone procedural trammels of the legal system by keeping the penal consequences at bay for a considerable time. It was this reality which impelled the Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the P.C. Act is one of the measures evolved to curtail the delay in corruption cases. So the construction of sec. 243(1) of the Code as telescoped by sec. 22 of the P.C. Act must be consistent with the aforesaid legislative intent.

The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to short list such witnesses. If the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it.

Supreme Court held that after the appellant completes his evidence in accordance with the permission now granted as per the impugned orders, it is open to the appellant to convince the trial court that some more persons need be examined in the interest of justice, if the appellant then thinks that such a course is necessary. The trial court will then decide whether it is essential for a just decision of the case to examine more witnesses on the defence side. If the court is so satisfied, the Special Judge can permit the appellant to examine such additional witnesses the examination of whom he considers essential for a just decision of the case or he can exercise the powers envisaged in sec. 311 of the Code in respect of such witnesses.

(507)

Misconduct — bigamy

A Hindu marrying, after conversion to Islam, a second time during the life time of his wife commits an offence and such marriage is void.

Lily Thomas vs. Union of India, 2000(3) Supreme 601

If a Hindu even after conversion to Islam marries a second time during the life time of his wife, such marriage apart from being void under sections 11 and 17 of the Hindu Marriage Act, would also constitute an offence and that person would be liable to be prosecuted under sec. 494 Indian Penal Code. Even under the Muslim Law, plurality of marriages is not unconditionally conferred upon the husband. It would, therefore, be doing injustice to Islamic Law to urge that the convert is entitled to practice bigamy notwithstanding the continuance of his marriage under the law to which he belonged before conversion.

(508)**Witnesses — plight of**

Supreme Court expressed its deep concern over the plight of witnesses in endless adjournments, a game of unscrupulous lawyers, non-payment of diet money, harassment by subordinate court staff, prosecution of hostile witnesses etc.

Jagjit Singh vs. State of Punjab, 2000(4) Supreme 364

The Supreme Court made the following observations in a case of appeals against conviction by the Punjab & Haryana High Court, under secs.302, 302 read with 34 of the Indian Penal Code.

"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that, a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause, a court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a hapless situation. For all these reasons and others, a person abhors becoming a witness. It is the administration of justice that suffers.

Then, appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has

come that all the courts, district courts, subordinate courts are linked to the High Court with a computer and a proper check is made on the adjournments and recording of evidence. The Bar Council of India and the State Bar Councils must play their part and lend their support to put the criminal system back on its trail.

Perjury has also become a way of life in the law courts. A trial judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of sec. 340(3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure”.

(509)

- (A) Witnesses — examination of**
- (B) Witnesses — interview by Public Prosecutor**
- (C) Witnesses — giving up hostile witness**
 - (i) If the Public Prosecutor got reliable information that any witness would not support the prosecution version, he is free to state in court about that fact and skip that witness being examined as a prosecution witness.*
 - (ii) Public Prosecutor can interview the witness before hand.*
 - (iii) He can also give up witnesses where more witnesses are cited.*
 - (iv) It is open to the defence to cite a given-up witness and examine him as defence witness.*

Hukam Singh vs. State of Rajasthan, 2000(6) Supreme 245

The Supreme Court observed that in trials before a Court of Sessions the prosecution “shall be conducted by a Public Prosecutor”. Section 226 of the Code of Criminal Procedure enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support

the prosecution case, he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in section 231 of the Code of Criminal Procedure, Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point, the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited.

If the Public Prosecutor got reliable information that any one among a category would not support the prosecution version, he is free to state in court about that fact and skip that witness being examined as a prosecution witness. It is open to the defence to cite him and examine him as defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness before hand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.

(510)

Constable of Hyderabad City — Authority competent to dismiss

Commissioner of Police alone competent to dismiss police constable of Hyderabad city.

Dy. Commissioner of Police vs. Mohd.Khaja Ali, 2000(7) Supreme 606

Supreme Court held that the provisions of City Police Act, 1348F are holding the field and are not in any manner superseded by the provisions of the Andhra Pradesh Civil Services (CCA) Rules, 1963 and A.P. Police Subordinate Service Rules insofar as they relate to dismissal of police constable by the Commissioner of Police, Hyderabad city. The Supreme Court observed that by now more than 22 years have passed and the law laid down therein has been followed in the State of Andhra Pradesh for all these years.

The Supreme Court held that they were not inclined to disturb the impugned order.

(511)

Evidence — refreshing memory by Investigating Officer

Investigating Officer can refresh his memory from contemporaneous record of what he had recorded during investigation, while answering questions in court.

State of Karnataka vs. K. Yarappa Reddy, AIR 2000 SC 185

The Supreme Court observed, in a case of murder, that the trial court cannot overlook the reality that an Investigating Officer comes to the court for giving evidence after conducting investigation in many other cases also in the meanwhile. Evidence giving process should not bog down to memory tests of witnesses. An Investigating Officer must answer the questions in Court, as far as possible, only with reference to what he had recorded during investigation. Such records are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question.

Sec. 159 of the Evidence Act is couched in a language recognising the aforesaid necessity. The section reads thus:

“159. Refreshing memory— A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.”

The objection of the defence counsel when Investigating Officer wanted to reply by referring to the records of investigation is, therefore, untenable and unjustified. The trial court should repel such objections.

(512)

- (A) Departmental action and retirement**
- (B) Pension Rules — date of institution of proceedings**
- (C) Suspension — is date of initiation of proceedings under Pension Rules**

Departmental proceedings against a retired employee are deemed to be instituted on the date of suspension, where suspension is in contemplation of disciplinary proceedings.

M.N. Bapat vs. Union of India, 2001(1) SLJ CAT BAN 287

The Tribunal considered the question whether the disciplinary proceedings could be deemed to have been initiated on the date of suspension in terms of rule 9 of the Central Civil Services (Pension) Rules, 1972. The Tribunal observed that sub-rule 6(a) stipulates that the date of institution of the proceedings shall be the date on which the statement of charges is issued. As an alternative, it is provided that if the Government servant had been placed under suspension from an earlier date, then such date shall be the date of institution of the proceedings. If sub-rule 6(a) is read as a whole it would be clear that if only the charge sheet is issued later but the Government servant is kept under suspension earlier in contemplation of disciplinary inquiry, the date of suspension could be taken as the date of institution of the proceedings.

The Tribunal observed that however, suspension made in respect of one proceeding cannot be treated as suspension in respect of another disciplinary proceedings initiated subsequently. If a Government servant is kept under suspension under Rule 10(1)(b) of the CCA Rules because a case in respect of a criminal offence is under investigation or trial that suspension cannot be treated as suspension for the sake of departmental proceedings for a misconduct, unless an order under sub-rule 5(b) of Rule 10 is passed. In such a case once the investigation, inquiry or trial comes to an end and the Government servant is absolved of the criminal charge the suspension would have to come to an end unless it had been revoked earlier. The Tribunal held that it is only if the Government servant had been kept under suspension in contemplation of disciplinary inquiry and the charge sheet is issued later, it would be possible to take the date of suspension as the date of the institution of the proceedings under sub-rule 6(a) of Rule 9 of the Pension Rules.

The Tribunal held that in the instant case, admittedly the applicant was kept under suspension not in contemplation of disciplinary or departmental inquiry against him but because a case against him for criminal offence was under investigation by the CBI. The suspension was effected under Rule 10(1) (b) of the CCA Rules. It was, therefore, not open to the respondents to rely on the date of that suspension to initiate disciplinary proceedings after retirement of the applicant by taking recourse to sub-rule 6(a) of Rule 9.

(513)**Misconduct — unbecoming conduct**

Government servant living with another woman and neglecting his wife and children constitutes unbecoming conduct.

B.S. Kunwar vs. Union of India, 2001(2) SLJ CAT Jaipur 323

The applicant, Field Officer with the Special Bureau under Government of India contended that there was no charge of bigamy against him which was a prescribed misconduct under Rule 21 of the Central Civil Services (Conduct) Rules, 1964 and that the charge of neglecting his wife and living with another woman was not prescribed as misconduct under the rules and that the disciplinary authority had no power, authority or jurisdiction to punish him on such a charge and further that living with another woman is not a misconduct, even keeping a mistress is not a misconduct.

The Central Administrative Tribunal referred to the case of Ministry of Finance vs. S.B.Ramesh, AIR 1998 SC 853 and pointed out that therein the Supreme Court disapproved of the interpretation of misconduct given by the Tribunal in the said case, which interpretation sought to indicate that even if it is proved that a Government servant, who is already married is living with another woman, it will not alone justify a finding that such Government servant is guilty of misconduct deserving departmental action and punishment.

The Tribunal held in the instant case that the observations of the Supreme Court laid down the law that living with another woman and neglecting his wife and children, by a Government servant, is a misconduct, one unbecoming of a Government servant.

(514)

(A) C.C.A. Rules — conducting inquiry under old rules

High Court held, no prejudice is caused by conducting inquiry under the old CCA Rules of 1963 instead of under new 1991 Rules.

(B) Charge — framing of by Inquiry Officer

Framing of charge by Inquiry Officer would not vitiate the inquiry.

V. Rajamallaiah vs. High Court of A.P., 2001(3) SLR AP 683

The petitioner, Deputy Nazir in the court of Special Judicial First Class Magistrate (Excise), Karimnagar assailed the validity of the disciplinary action taken against him by the District & Sessions Judge dated 1-8-1996 and the order of the High Court of Andhra Pradesh confirming the order of the District & Sessions Judge on the ground, among others, that he was proceeded against

as per the procedure laid down under the repealed A.P.C.S. (CCA) Rules, 1963 instead of under the 1991 Rules.

The Andhra Pradesh High Court held that in terms of fair procedure contemplated in both the rules, there is not any substantial difference and that no prejudice is caused to the petitioner. The High Court observed that whether the charges are framed by the disciplinary authority himself or the same are framed by the Inquiry Officer appointed by him, would not make any difference in regards fairness to be extended to the charged employee in terms of procedure. The crux of the matter is that the charge has to be proved satisfactorily by substantive legal evidence by the disciplinary authority. Simply because the charge was framed by the Inquiry Officer, that itself would not vitiate the enquiry conducted by the Inquiry Officer or the findings recorded by him.

(515)

Conviction — suspension of

Conviction cannot be suspended where in the event of the conviction being set aside, the damage which is likely to be caused or caused will be compensated by reinstatement.

A.V.V. Satyanarayana vs. State of A.P., 2001 Cri.L.J. AP 4595

The question that arose for consideration before the High Court of Andhra Pradesh is whether it has jurisdiction under sec. 389(1) Cr.P.C. to suspend the order of conviction.

High Court of Andhra Pradesh observed that it is clear that under sec. 389(1) Cr.P.C., the conviction can also be suspended, but the main criteria indicated is that the damage by virtue of the conviction done, if cannot be undone at a future date, the court can suspend the conviction also. In the instant case, the petitioners appear to be Government servants involved in a case of leakage of question papers and they are likely to be removed from service by virtue of conviction, though the sentence has been suspended. The appellant contended that this is an appropriate case, where suspension of the conviction may be granted because the petitioners services are likely to be affected.

High Court did not accept this submission for the reason that even if the services of the petitioners are affected in any manner, eventually in the event of the conviction and sentence being set aside, they are bound to be reinstated into the service. In other words, the damage which is likely to be caused or caused will

certainly be compensated by reinstatement in the event of their succeeding in the appeal. Before seeking the relief under sec. 389 the petitioners shall have to necessarily establish, *prima facie*, firstly what is the damage caused or likely to be caused and secondly such damage cannot be corrected/rectified at a later stage, in the event of his success in the appeal or revision. The High Court observed that the damage that is caused or likely to be caused would only be tentative but not conclusive. In this view of the matter, the High Court did not find any valid reason to suspend the conviction.

(516)

(A) Evidence — certified copy of document

(B) Documents — certified copy

Production of certified copy, where original is a confidential document, held proper.

***R.P. Tewari vs. General Manager, Indian Oil Corporation Limited,
2001(3) SLJ DEL 348***

The High Court observed that an extract from the occurrence register of Air Force Station, Palam duly certified by the air force authorities was produced before the inquiry authority through a Management witness, who in his examination-in-chief and in his cross-examination of the petitioner had confirmed that on 12-12-1981 he met Capt. Chahar who showed him the occurrence book where the incident was recorded. This is further confirmed by him that this is the certified true extract of the same occurrence book as seen by him. The occurrence book being highly confidential document of Air Force Station, Palam, could not be produced before the Enquiry Committee in original.

The High Court was satisfied with the explanation given by the respondents in the counter affidavit that "Extract of occurrence" was produced as the Air Force could not produce the entire occurrence book being a highly confidential document. Accordingly, if certified copy of the extract of occurrence dated 12-12-1981 was produced, it was a right course of action being adopted in these circumstances. Petitioner did not suffer any prejudice and had right to cross examine on this document. The authenticity of the document cannot be disputed which was duly certified by the Air Force authorities. Moreover, in the departmental enquiry strict rules of evidence are not applicable and even hear-say evidence is admissible once proper explanation for that is shown.

(517)

Tender of pardon

- (i) *Special Judge has power to tender pardon at investigation stage i.e. before filing of charge sheet.*
- (ii) *Tender of pardon cannot be objected by a co-accused at investigation stage.*

***Ashok Kumar Aggarwal vs. Central Bureau of Investigation,
2001 Cri.L.J. DEL 3710***

The Delhi High Court observed that Special Judge in fact enjoys more powers than a Session Judge acting under the Code of Criminal Procedure for the reason that the Special Judge is vested with the powers of not only Sessions Court, but of the Magisterial Court also for the purposes of the offences under the Act. He conducts entire proceedings against an accused from the date of his arrest till the final conclusion of the trial. A plain reading of sec. 5(2) of the Prevention of Corruption Act, 1988 shows that the legislature has in no way restricted the powers of a Special Judge in the matter of tender of pardon to any stage of the proceedings. Had the legislature intended to do so, it could have specifically laid down in sec. 5(2) of the Act that a Special Judge after filing of the charge sheet only may tender pardon to a person concerned with the offence. In fact tender of pardon at the stage of investigations is more meaningful and result-oriented for the investigators. Therefore, Special Judge has powers to record the statement of an accused and tender him pardon before filing of the charge sheet. Thus a Special Judge trying offences under the Act has dual powers of Sessions Judge as well as Magistrate and controls and conducts the proceedings under the Code prior to filing of the charge sheet as well as after the filing of charge sheet for holding trial. The Special Judge by virtue of sec. 5(2) of the Act enjoys powers contained in sec. 306 as well as sec. 307 of the Criminal Procedure Code.

When an accused applies for pardon and the prosecution also supports him, the matter remains between the court and the accused applying for pardon and the other accused have no right whatsoever to intervene or ask for hearing. The other accused against whom evidence of the approver is likely to be used, shall have sufficient opportunity to cross-examine the approver when examined in the course of trial and show to the court that his evidence is not reliable or he is not a trustworthy witness. The law does not prohibit tender of pardon to a

principal accused even. The tender of pardon remains within the domain of judicial discretion of the court before which the request of an accused for tender of pardon is made. Therefore, a co-accused cannot be permitted to raise objections against tender of pardon to another accused at investigation stage.

(518)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

Passing a common sanction order against more than 25 accused persons, justified and valid.

Ahamed Kalnad vs. State of Kerala, 2001 Cri.L.J. KER 4448

This is a case of prosecution under sec. 5(2) read with sec. 5(1)(d) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13 (2) read with sec. 13(1)(d) of P.C. Act, 1988), where a common sanction order was passed for more than 25 accused persons.

The High Court observed that there is considerable merit in the contention of the respondent-State that the offences involved in all these cases being similar and part of an alleged larger conspiracy, passing of a common sanction order is justified. High Court observed that no authority has been placed before them to show that sanction order should always be separate in respect of each accused or for each case. High Court held that passing common order is justified and valid.

(519)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) Trap — appreciation of evidence**

Appreciation of evidence in a trap case.

M. Palanisamy vs. State, 2001 Cri.L.J. MAD 3892

Accused, a Village Administrative Officer and his Assistant, are alleged to have obtained money for issuing community certificates. The evidence on record proved that there was demand of bribe and receipt of amount by the accused. The amount, which was kept in a register by the accused, was recovered during the course of the trap. The phenolphthalein test conducted on the fingers of accused proved positive. The Madras High Court held that the conviction of the accused under secs. 7, 13(1)(d) read with sec. 13(2) of the P.C. Act, 1988, cannot be interfered with.

(520)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — FIR and charge sheet — quashing of**
- (C) Court jurisdiction**

No ground to quash FIR and charge sheet for disproportionate assets in writ jurisdiction.

***Sheel Kumar Choubey vs. State of Madhya Pradesh,
2001 Cri.L.J. MP 3728***

The petitioner prayed for a writ for quashment of entire investigation and further to quash the First Information Report registered against him for possession of disproportionate assets under sec. 13(1)(e) of the Prevention of Corruption Act, 1988.

The Madhya Pradesh High Court observed that on a perusal of the charge sheet it cannot be said that there is no material against the petitioner or present case is totally without any evidence. It can also not be said that allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. In fact, if submissions of the petitioner are appreciated in proper perspective it can safely be concluded that they are in the realm of defence. The petitioner may eventually be acquitted by explaining his stand and adducing cogent evidence in support of his pleas but that would not be a factor to be taken into consideration at this juncture for quashment of the charge sheet and FIR. If the petitioner would have been able to cover his case in one of the seven illustrations as indicated in the case of State of Haryana vs. Choudhary Bhajan Lal (1992 Cri.L.J. 527) then there would have been possibility of quashing the proceeding.

(521)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — opportunity to explain before framing of charge**

Not necessary for the court to defer framing of charge under sec. 13(1)(e) of P.C. Act, 1988, until the public servant is given an opportunity to explain the excess or surplus of the assets.

State vs. S. Bangarappa, 2001 Cri.L.J. SC 111

A case has been charge sheeted by the Central Bureau of Investigation against S.Bangarappa, one time Chief Minister of Karnataka State alleging that he had amassed wealth grossly disproportionate to his known sources of income during a check period when he held public offices either as Minister or Chief Minister, and thereby committed an offence under sec. 13(2) of the P.C. Act, 1988 read with sec. 13(1)(e) thereof.

The Supreme Court expressed that they had no doubt that the materials which the prosecution enumerated are sufficient to frame the charge for the offence under sec. 13(2) read with sec. 13(1)(e) of the P.C. Act, 1988. No doubt the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public servant to account for such excess. The offence becomes complete on the failure of the public servant to account or explain such excess. It does not mean that the court could not frame charge until the public servant fails to explain the excess or surplus pointed out to be the wealth or assets of the public servant concerned. This exercise can be completed only in the trial. The opportunity which is to be afforded to the public servant of satisfactorily explaining about his assets and resources is before the court when the trial commences, and not at an earlier stage.

(522)

- (A) P.C. Act, 1988 — Sec. 20**
- (B) Trap — presumption**

Once prosecution establishes that gratification has been paid, or accepted by a public servant, court is under legal compulsion to draw the presumption laid down under law.

***Madhukar Bhaskarrao Joshi vs. State of Maharashtra,
2001 Cri.L.J. SC 175***

In this case, the public servant admitted that the money was paid to him by a private party, but he sought to explain that it was an amount otherwise payable to him and hence it was no gratification at all.

Once the prosecution established that gratification in any form - cash or kind - had been paid or accepted by a public servant, the court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive

or reward to do (or forbear from doing) any official act. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

The Supreme Court repelled the contention of the appellant that prosecution has a further duty to prove beyond the fact that the complainant had paid the demanded money to him, for enabling it to lay the hand on the legal presumption employed in the Prevention of Corruption Act.

(523)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) Trap — appreciation of evidence
- (C) Trap — complainant, accompanying witness turning hostile
- (D) Evidence — of hostile complainant and accompanying witness

Appreciation of evidence in a trap case where the complainant and accompanying witness turned hostile and two defence witnesses were examined. The accused was convicted by the trial court and conviction upheld by High Court and Supreme Court.

- (E) P.C. Act, 1988 — Sec. 20
- (F) Trap — presumption

Presumption under sec. 20 of P.C. Act, 1988 explained. Presumption thereunder, compulsory and not discretionary. Where prosecution proved that accused received gratification from complainant, court can draw legal

presumption that said gratification was accepted as reward for doing public duty.

(G) Evidence — proof of fact

Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

M.Narsinga Rao vs. State of Andhra Pradesh, 2001 Cri.L.J. SC 515

The appellant, Manager of a Milk Chilling Centre attached to Andhra Pradesh Dairy Development Cooperative Federation, is alleged to have received a bribe of Rs.500 from a milk transporting contractor on 20-4-89 in a trap. He was convicted by the Special Judge and the High Court confirmed it. The matter came up before the Supreme Court by an appeal.

The Supreme Court observed that when the appellant was caught red-handed with the currency notes, he never demurred that they were not received by him. In fact, the story that the currency notes were stuffed into his pocket was concocted by the appellant only after lapse of a period of 4 years and that too when appellant faced the trial in the court.

During trial, the complainant and the accompanying witness denied having paid any bribe to the appellant and also denied that the appellant demanded the bribe amount. They were declared hostile by the Public Prosecutor and cross-examined. The trial court and the High Court disbelieved the defence evidence in toto and found that the complainant and the accompanying witness were won over by the appellant and that is why they turned against their own version recorded by the I.O. and subsequently by a Magistrate under section 164 Cr.P.C. The Special Judge ordered the two witnesses to be prosecuted for perjury, and the said course suggested by the trial court found approval from the High Court also.

The Supreme Court observed that the only condition for drawing the legal presumption under sec. 20 of the P.C.Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved but that is not the only mode envisaged in the Evidence Act. The word 'proof' need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of

evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word 'proved' in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

The Supreme Court observed that ofcourse the appellant made a serious endeavour to rebut the presumption through two modes. One is to make the complainant and accompanying witness speak to the version of the appellant and the other is by examining two witnesses on the defence side. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the dates when the alleged demand was made by the appellant.

But the trial court and the High Court held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The Supreme Court held that the concurrent finding made by the two courts does not require any interference.

(524)

(A) P.C. Act, 1988 — Secs. 7, 13(1)(d)

(B) Trap — appreciation of evidence

Appreciation of evidence in a trap case. Supreme Court was in agreement with High Court in holding the accused persons guilty of the offence.

(C) Cr.P.C. — Sec. 313 — examination of accused

High Court conducting additional examination of accused under sec. 313 Cr.P.C. so as to rectify "irregularity", is no illegality.

Rambhau vs. State of Maharashtra, 2001 Cri.L.J. SC 2343

The Supreme Court held that the prosecution has clearly established that the appellant No.1 is a public servant and in discharge of his official duties made a demand of Rs.1300 from P.W.1 Sangamlal as an illegal gratification, and taking into account the evidence as is available on record, appellant No.2 also has played a very significant role in negotiating on the figure of the amount and

further having the notes exchanged at the dictate of appellant No.1, it cannot thus be said that appellant No.2 substantially abetted the crime. The Supreme Court recorded its agreement in the finding of the High Court that the appellants are guilty of the offence for which they were charged and the question of recording a finding of acquittal in the matter cannot by any stretch be sustained.

The Supreme Court further observed that where in a case under sec. 13 of the P.C.Act, 1988, the factum of demand by the accused on earlier day stood proved by evidence and the seizure of tainted notes on the next day was also proved which completed the offence, however the factum of demand and payment on that day was not put to the accused in his examination under sec. 313 Cr.P.C. and therefore the High Court conducted the additional examination of the accused so as to rectify the "irregularity" as cropped up and pointed out by defence, such a course adopted by the High Court was not illegal as omission to put to the accused the demand next day cannot be said to be of such a nature which would go to the root of the matter and was not a defect incurable in nature but a mere irregularity which the High Court thought it fit to cure.

(Note: The decision of the Bombay High Court in this case setting aside the acquittal is dealt with under State of Maharashtra vs. Rambhau Fakira Pannase, 1994 Cri.L.J. BOM 475.)

(525)

(A) Court jurisdiction

(B) Conviction, sentence — direction not to affect service career, not proper

Appellate court has no jurisdiction to give direction that conviction and sentence awarded shall not affect service career of accused.

Commandant 20 Bn ITB Police vs. Sanjay Binoja, 2001 Cri.L.J. SC 2349

Aggrieved by order of conviction and sentence under Central Reserve Police Force Act, 1949, the respondent who was Constable in Border Police Force filed an appeal which was disposed of by the Additional Sessions Judge, upholding his conviction but modifying the sentence to the extent of till the rising of the court. The appellate court further directed that "this order shall not adversely affect the service career of the accused". This order is challenged in this appeal. The appellant herein thereupon filed a revision petition in the High Court. The High Court held that the appellate court had the power to pass the impugned

order. Not satisfied with the order of the High Court, the appellant filed the present appeal.

The Supreme Court observed that cl.(e) of sec.386 of the Code of Criminal Procedure empowers the court to make any amendment or pass any consequential or incidental order that may be just or proper. The powers of the court under this section are subject to the other provisions of law. Orders contemplated under Cl.(e) for amendment of the impugned order or consequential or incidental orders are only such orders which are permissible under the Code or any other law in force. Such a power does not confer a jurisdiction upon the appellate court to pass orders which tend to interfere with the service career of the convict. Amendment of the order means amendment of the main order and does not empower the court to pass an order which affects the rights of a party not before it. Incidental or consequential orders are such orders which are permissible under law and likely to follow as a result of the main order. The consequential or incidental orders contemplated under cl.(e) of sec. 386 of the Code are orders which follow as a matter of course being necessary compliments to the main orders without which the latter would be incomplete and ineffective, such as issuance of directions for refund of fine realised from accused ultimately acquitted or on the reversal of acquittal any direction as to punishment, fine or compensation payable under sec. 250 of the Code and the like. The High Court committed a mistake of law by clothing the order of appellate court to be an order passed in terms of sec. 386 of the Code.

The Supreme Court held that after passing the order of conviction and sentence, the Criminal Court should not have issued any direction relating to the service career of the respondent which is governed by the Act, Rules made thereunder and the service rules governing his conditions of service. In this way the judgment of the High Court being not sustainable is liable to be set aside.

(526)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — appreciation of evidence**

Appreciation of evidence in a case of disproportionate assets.

K. Ponnuswamy vs. State of Tamil Nadu, 2001 Cri.L.J. SC 3960

The appellant was elected as a Member of the Legislative Assembly, Tamil Nadu State in June, 1991. He became the Deputy Speaker on 3-7-1991 and Minister on 17-5-1993 and continued till 9- 5-1996, which is taken as the

check period. Accused 2 is the wife of A.1 and A.3 is their daughter. A.4 is the son of A.1's brother and A.5 is brother of A.1. A.6 is the Chartered Accountant who had submitted Income-tax and wealth-tax returns of A.2 to A.5. The charge against the appellant (A.1) is that whilst he was holding the office as Minister of Education, Government of Tamil Nadu during the check period, he abused his position as a public servant and acquired and possessed pecuniary resources and properties in his name and in the names of A.2 to A.5 disproportionate to his known sources of income to the extent of Rs.77,49,337.77.

The trial court convicted the appellant under sec. 13(1)(e) read with sec.13(2) of the Prevention of Corruption Act, 1988. The trial court also convicted A.2 to A.5 under sec. 109 IPC and sec. 13(1)(e) read with 13(2) of the P.C. Act. The trial court acquitted A.6, Chartered Accountant. The trial court further directed confiscation of pecuniary resources and properties to the extent of Rs.77,49,337.77.

The appellant and A.2 to A.5 filed criminal appeals and the High Court by its judgement dated 12-4-2001 acquitted A.2 to A.5 but confirmed the conviction of the appellant.

The Supreme Court, while disposing of the SLPs filed by the appellant, held that the prosecution has established beyond a reasonable doubt, that prior to the check period Accused Nos. 1, 2 and 3 had no real source of income, except some meagre incomes, i.e. the appellant only earned a small salary as a Lecturer and A.2 had small agricultural and other income. A.3, being a student had no real source of income. Prior to the check period the financial condition of the family was such that the appellant could not even repay his small debts. The creditors had to recover their amounts by filing suits and executing decrees. The High Court presumed that A.4 had independent income. However, prior to the check period A.4 had not been afflicted by any love and affection and had not made any gifts to any member of the family of the appellant. Prior to the check period A.4 did not even extend help to pay off the small debts of the appellant even after the decrees had been passed against him. Yet suddenly, during the check period, i.e. when the appellant is a Minister, A.4 donates large sums of money to A.2 and A.3. The natural presumption, considering the common course of natural events and human conduct is that the appellant would have used his nephew A.4 to transfer his monies to A.2 and A.3. This is the supposition which any prudent man under these circumstances would act upon considering the natural course of events. The trial court and the High Court thus rightly took this as proved by legal evidence. The Prosecution having established by legal evidence that the monies were transferred by the appellant to A.2 and A.3 through A.4 and that

these were monies of the appellant in the hands of A.2 and A.3, it was for the appellant to satisfactorily account for the gifts. He could have done so by showing that even before the check period A.4 had made gifts of substantial amounts. It has not been claimed by A.2 and/or A.3 and/or A.4 that before the check period also A.4 had made any such gifts. It is also not their case that after the check period gifts were made. Thus the trial court and the High Court were right in not believing the case of gifts supposedly made out of a sudden burst of love and affection. Both the trial court and the High Court were right in convicting the appellant.

The Supreme Court observed that they were told that the State is going to file an appeal against the acquittal of A.2 and A.3, they (Supreme Court) are not making any comments thereon.

The Supreme Court held that there is no infirmity in the order of the High Court so far as the conviction of the appellant is concerned and saw no reason to interfere.

(527)

- (A) Cr.P.C. — Sec. 173(2)(8)
- (B) Investigation — further investigation after final report

Special Judge can order further investigation under sec. 173(8) Cr.P.C., on receipt of final report under sec. 173(2) Cr.P.C. for ends of justice, but he cannot direct that further investigation shall be conducted by an officer of a particular rank.

Hemant Dhasmana vs. Central Bureau of Investigation, 2001 Cri.L.J. SC 4190

This is a case of trap laid by the Central Bureau of Investigation against the Chief Commissioner of Income-tax, in which, after the investigation, the CBI turned against the complainant and ordered him to be prosecuted for giving false information with intent to cause the public servant use his lawful power to the detriment of the public. However, the final report laid by the CBI was not acceptable to the Special Judge and he directed further investigation into the matter but the High Court reversed the said direction by the impugned order.

The Supreme Court held that although the sub-section 8 of sec. 173 Cr.P.C. does not, in specific terms, mention about the powers of the Court to order further investigation, the power of the police to conduct further investigation

envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court in revision to predict that the Investigating Officer would not be able to collect any further material at all. That is an area which should have been left to the Investigating Officer to survey and recheck.

Supreme Court further held that when the Special Judge has opted to order for a further investigation, the High Court in revision against order should have stated to the CBI to comply with that direction. Nonetheless, the Special Judge or the Magistrate could not direct that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of the Magistrate while exercising the power under sec. 173(8) to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation. Supreme Court held that the direction made by the Special Judge that further investigation shall be conducted by an officer of the DIG rank of the CBI stood deleted.

(528)

- (A) P.C. Act, 1988 — Sec. 19(3)(b)(c)**
- (B) Trial — of P.C. Act cases — stay of**

No stay of trial can be granted by court by use of any power, in cases under P.C. Act, 1988.

Satya Narayan Sharma vs. State of Rajasthan, 2001 Cri.L.J. SC 4640

The Supreme Court observed that the provision prohibiting grant of stay is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of sec. 19. The sub-section consists of three clauses. For all the three clauses the controlling

non-abstane words are set out in the commencing portion as: "Notwithstanding anything contained in the Cril.P.C. 1973". Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section.

It is in cl. (c) of sec. 19(3) that prohibition against grant of stay is couched in unexceptional terms. It reads:- "No court shall stay the proceedings under the Act on any other ground". The mere fact yet another prohibition was also tagged with the above does not mean that the legislative ban contained in cl. (c) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into cl.(c) of sec. 19(3) a power to grant stay in exercise of inherent powers of the High Court. Several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending before Courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in cl.(c) of sub-section (3) of sec. 19 of the Act because the title to sec. 19 is 'previous sanction necessary for prosecution'. It could have been more advisable if the prohibition contained in sub-sec.(3) has been included in a separate section by providing a separate distinct title. Be that as it may, that is no ground for bypassing the legislative prohibition contained in the sub-section.

Sec. 19 provides (a) that no court should stay the proceedings under the Act on any ground and (b) that no court shall exercise the powers of revision in relation to any interlocutory orders passed in any inquiry, trial, appeal or other proceedings. The provision (b) above is identical to sec. 397(2) Cr.P.C. which deals with revisional power of the court. If sec. 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words 'no Court shall stay the proceedings under this Act on any other ground' clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a court is exercising inherent jurisdiction under sec. 482 Cr.P.C.

It cannot be said that sec. 19 would not apply to the inherent jurisdiction of the High Court. Sec. 482 Cr.P.C. starts with the words "Notwithstanding anything contained in the Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Sec. 482 Cr.P.C. does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. Therefore sec. 19 would apply to a High Court. Sec. 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the

power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

Thus in cases under the Prevention of Corruption Act there can be no stay of trials. Further, the Supreme Court clarified that in appropriate cases proceedings under sec. 482 can be adopted. However, even if petition under sec. 482 Cr.P.C. is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned court to expedite the hearing of that petition. However, merely because the concerned court is not in a position to take up the petition for hearing, would be no ground for staying the trial even temporarily.

Since the stays are granted by courts without considering and/or in contravention of sec. 19(3)(c) of the Act has an adverse effect on combating corruption amongst public servants, the Supreme Court directed all the High Courts to list all cases in which such stay is granted before the court concerned so that appropriate action can be taken by that court in the light of the decision.

C1. (b) of sec. 19(3) contains the prohibition against stay of proceedings under this Act, but it is restricted to sanction aspect alone. No error, omission or irregularity in the sanction shall be a ground for staying the proceedings under this Act unless it is satisfied that such error, omission or irregularity has resulted in a such failure of justice'. In determining whether there was any such failure of justice it is mandated that the court shall have regard to the fact whether the objection regarding that aspect could or should have been raised at any earlier stage in the proceedings. Merely because objection regarding sanction was raised at the early stage is not a ground for holding that there was failure of justice. If the Special Judge has overruled the objection raised regarding that aspect it is normally inconceivable that there could be any failure of justice even if such objections were to be upheld by the High Court. Overruling an objection on the ground of sanction does not end the case detrimentally to the accused. It only equips a judicial forum to examine the allegations against a public servant judicially. Hence, it is an uphill task to show that discountenance of any objection regarding sanction has resulted in a failure of justice. The corollary of it is this: The High Court would not normally grant stay on that ground either.

(529)

(A) Court jurisdiction

High Court exercising jurisdiction of judicial review cannot interfere with the findings of fact arrived at in departmental proceedings except in a case of mala fides or perversity.

(B) Evidence — some evidence, enough

Where there is some evidence in support of the conclusion arrived at by the disciplinary authority, the conclusion has to be sustained.

(C) Sealed cover procedure

Employee cannot be deprived of promotion taking into account proceedings of a later period.

Bank of India vs. Degala Suryanarayana, 2001(1) SLJ SC 113

The Supreme Court held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority.

So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. A perusal of the order dated 5-1-1995 of the Disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the court.

The Supreme Court further observed that the sealed cover procedure is a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over.

As on 1-1-1986, the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the chargesheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the departmental enquiry proceedings initiated at the fag end of the year 1991. The Supreme Court held that the High Court was therefore right in directing the promotion to be given effect to, which the respondent was found entitled as on 1-1-1986 and that the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.

(530)

Sealed cover procedure

Commencement of fresh disciplinary proceedings should not come in the way of giving effect to recommendation of Departmental Promotion Committee kept in sealed cover, where exonerated in the earlier proceedings.

Delhi Jal Board vs. Mahinder Singh, 2000(1) SLJ SC 398

The Supreme Court observed that the right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the Disciplinary Enquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any Disciplinary Enquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC met.

The Supreme Court held that the mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time

the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.

(531)

Penalty — recovery of loss

Recovery from pay of pecuniary loss caused by employee by negligence or breach of orders, can be ordered by following minor penalty procedure. Not necessary to conduct inquiry, in case of denial. Discretion vests with the disciplinary authority.

***Food Corporation of India, Hyderabad vs. A. Prahalada Rao,
2001(2) SLJ SC 204***

The Supreme Court considered the interpretation given by the High Court to Regulation 60 of the Food Corporation of India (Staff) Regulations, 1971 which prescribes the procedure for imposing minor penalties. In the writ petition filed by the respondent, Assistant Manager (Quality Control) at Kakinada, challenging the order imposing penalty of recovery of Rs.7356 from his pay by 21 monthly instalments on the ground of dereliction of his duties, which caused loss to the Corporation, a Single Judge of the High Court held that once the employee denies the charge, it is incumbent upon the authorities to conduct an inquiry by giving an opportunity to him and render findings on the charge; otherwise there is every scope for the disciplinary authority to misuse the power under the Regulation. The court set aside the order imposing minor penalty as the procedure contemplated for imposing major penalty was not followed. In appeal, the Division Bench of the High Court confirmed the same by observing: "where the employee disputes that any loss is caused to the Corporation either by his negligence or breach of order, and if so, how much pecuniary loss has been incurred, it is but necessary that an enquiry should be conducted; otherwise it is impossible to arrive at a correct finding with regard to the causing of loss by the employee by his negligence or breach of order and with regard to the quantum of loss." The aforesaid interpretation of Rules given by the High Court is challenged in this appeal.

The Supreme Court expressed the view that on the basis of the allegation that Food Corporation of India is misusing its power of imposing minor penalties, the Regulation cannot be interpreted contrary to its language. Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold enquiry in a particular case or not. But that would not mean that in all

cases where employee disputes his liability, a full-fledged enquiry should be held. Otherwise, the entire purpose of incorporating summary procedure for imposing minor penalties would be frustrated. If the discretion given under Regulation 60(1)(b) is misused or is exercised in arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. It is for the disciplinary authority to decide whether regular departmental enquiry as contemplated under Regulation 58 for imposing major penalty should be followed or not. This discretion cannot be curtailed by interpretation which is contrary to the language used. The Supreme Court observed that it is apparent that High Court erroneously interpreted the Regulation by holding that once the employee denies the charge, it is incumbent upon the authority to conduct enquiry contemplated for imposing major penalty. It also erred in holding that where the employee denies that loss is caused to the Corporation either by his negligence or breach of order, such enquiry should be held. It is settled law that Court's power of judicial review in such cases is limited and court can interfere where the authority held the enquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry and imposing punishment or where the conclusion or finding reached by the disciplinary authority is based on no evidence or is such that no reasonable person would have ever reached. As per the Regulation, holding of regular departmental enquiry is a discretionary power of the disciplinary authority which is to be exercised by considering the facts of each case and if it is misused or used arbitrarily, it would be subject to judicial review.

(532)

(A) Court jurisdiction

(B) Conviction — suspension of

High Court, on appeal of a public servant against his conviction and sentence for corruption charges, can suspend the sentence during pendency of the appeal but cannot suspend conviction.

K.C. Sareen vs. C.B.I., Chandigarh, 2001(5) Supreme 437

The Supreme Court observed that the legal position is that though the power to suspend an order of conviction, apart from the order of sentence, is not alien to sec.389(1) of the Criminal Procedure Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the

ramifications of keeping such conviction in abeyance. It is in the light of this legal position that the question as to what should be the position when a public servant is convicted of an offence under the Prevention of Corruption Act, should be examined. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the P.C. Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the P.C. Act, de hors the sentence of imprisonment as a sequel thereto, is a different matter.

The Supreme Court observed that corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the Republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises, the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should nor even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption, is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would corrode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall-out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue

to hold such public office even without the help of a court order suspending the conviction. This policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence or imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction inspite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

(533)

- (A) P.C. Act, 1988 — Secs. 7, 13(2)**
- (B) Sentence — adequacy of**
- (C) Conviction, sentence — direction not to affect service career, not proper**
- (D) Court jurisdiction**

High Court unjustified in reducing sentence and directing that conviction will not affect service.

State of U.P. vs. Shatruhan Lal, 2001(7) Supreme 95

The accused respondent stood convicted under sec. 161 IPC and sec. 5(2) of the P.C. Act, 1947 (Corresponding to secs. 7, 13(2) of P.C. Act, 1988) and sentenced to imprisonment for 2 years under sec. 161 IPC and 2 years under sec. 5(2) of the P.C. Act. In appeal, the accused not having pressed the appeal on merits, the High Court upheld the conviction of the accused, but so far as the sentence is concerned, altered the sentence to the period already undergone. It is still surprising to note that after altering the sentence, as stated above, the High Court further directs that the order of conviction will not affect the service of the appellant in the capacity as a public servant.

The Supreme Court failed to understand wherefrom the High Court gets this jurisdiction to make such observation. Even on the question of sentence, sec. 5(2) originally did not provide for a compulsory period of sentence. But the Parliament amended the provision on the ground that experience shows that there has been a tendency amongst the courts to deal too leniently with public servants convicted under the P.C. Act. The object and reason of the amendment indicates that where imprisonment is awarded, the period is frequently too small to have adequate punitive or deterrent effect and the amounts of fine imposed are frequently grossly incommensurate with the corrupt gains, and the intended

amendment was thought of as a measure which will ensure that adequate punishment is awarded in cases of proved corruption. In the teeth of the aforesaid provision without any rhyme and reason, the High Court was wholly unjustified in altering the sentence to sentence already undergone merely because the incident was of year 1977.

In the aforesaid premises, the Supreme Court had no hesitation to come to the conclusion that the High Court erred in law in interfering with the sentence awarded as well as in making observation that the conviction will not affect the service of the accused persons in the Public Employment.

(534)

Fresh inquiry / De novo inquiry

Issuance of fresh charge sheet containing same charges as earlier, in pursuance of orders of appellate authority for a de novo inquiry from the stage of issue of charge sheet, not illegal.

S. Ramesh vs. Senior Superintendent of Post Offices, 2002(1) SLJ CAT BANG 28

The applicant who was working as Treasurer in Ashok Nagar Post Office having been removed from service in a disciplinary proceedings which has been confirmed by the appellate authority has filed the application challenging the orders among others, on the ground that enquiry should have been conducted on the basis of old charge sheet instead of serving another charge sheet after the appellate authority directed for de novo enquiry.

The Administrative Tribunal held that so far as allegation regarding issuance of a second charge sheet is concerned, the same has been done as per the direction of the appellate authority in the appeal filed by the applicant at the first instance — who directed for de novo enquiry from the stage of issue of charge sheet. The second charge sheet is same as the first one. No new/fresh charge has been framed in the second charge sheet against him. As such no bias can be attributed and there is no illegality committed by the authority in serving the same charge sheet as the appellate authority directed for de novo enquiry from the stage of charge sheet.

(535)

Suspension — using of wrong term ‘under trial’

Where powers under Rule 3(3) of AIS (D&A) Rules, 1969 are available, using of a wrong term ‘under trial’, when trial is not pending, does not make the order of suspension invalid.

Gurdial Singh vs. Union of India, 2002(3) SLJ CAT Ahmedabad 142

The applicant was placed under suspension on the sole ground that criminal cases are under trial against him in the court of the Special Judge, Delhi but when the order was passed i.e. on 18-7-2000, there was no case pending against him in the court of Special Judge, Delhi. The Special Judge had as far back as 22-1-1998 refused to take cognizance of the charge sheets filed in his court against the applicant and consigned six charge sheets to the record room. There was no case pending against the applicant in the court of the Special Judge, Delhi or any other court, in respect of the FIR referred to in the suspension order. When no case was pending for trial against him on the date of the impugned order or even prior to that, there was no reason to exercise the powers under sub-rule (3) of Rule 3 of the All-India Services (D&A) Rules, 1969. The order of suspension therefore according to the applicant is liable to be quashed.

The Tribunal held that merely because the word 'under trial' is used in the suspension order, it cannot be said that as no trial had commenced, the power to suspend the applicant was exercised on the non existing facts and as such the order was honest and hence, a void order.

So far the submissions that the order was passed on the ground of non existent facts and that on the day on which the order was passed there was no trial pending and therefore the order is vitiated on account of the order being in abuse of powers, the Tribunal observed that the order can be said to be passed in abuse of powers if the same does not satisfy the ingredients of sub-rule (3) of Rule 3 of the AIS (D&A) Rules , 1969. If any of the ingredients i.e. investigation, inquiry or trial was pending, then obviously the Government had power to resort to sub-rule (3) of Rule 3 and suspend the member of the service. In the instant case it is no doubt true that the charge sheets were consigned to record room but then the accused in those charge sheets were not discharged or acquitted by the Special Judge. On the contrary, the liberty was given to the prosecution to file a fresh charge sheet on the same charges. This would mean that though the stage of trial was not reached the stage of inquiry was still pending. The Tribunal further held that the offences with which the applicant is charged are of grave nature and the State Government has, after due consideration into the gravity of the misconduct of the applicant and the nature of the evidence against him, passed the order of suspension. The order was also passed in the exercise of the powers made available by sub-rule (3) of Rule 3 of AIS Rules and therefore it cannot be said that it was passed without any powers.

(536)

(A) Administrative Instructions — not binding

Administrative instructions are mere guidelines. They do not interfere with the discretion of competent authorities. There is nothing wrong in Government directing authorities to place an officer under suspension.

(B) Administrative Instructions — not justiciable

Guidelines issued by Government requiring Investigating Officers to complete investigation, preferably within six months, have no statutory force. They do not confer any enforceable right, and any breach is not justiciable.

J. Venkateswarlu vs. Union of India, 2002(1) ALD (Crl.) AP 838

The High Court held that the instructions issued by the Government of Andhra Pradesh in Memo. No. 700/SC.D/88-4, dated 13-2-1989 are mere guidelines. They are made for the guidance of all the concerned including the investigating/enquiring authorities. Those guidelines in no manner interfere with the discretion and jurisdiction of the competent authorities concerned either in the matter of placing the accused officer under suspension pending enquiry or initiating such action, as may be necessary, in public interest to protect the integrity and purity of the investigation process. Clause (4)(d) of the said Memorandum of guidelines suggests that in a case where the charge sheet is filed against an accused officer he should be placed under suspension. The impugned clause does not suffer from any legal infirmity. The Government is always entitled to issue guidelines for the benefit of its officers in order to structure their discretion in the matter of exercise of statutory power in public interest. There is nothing wrong in Government directing the authorities concerned to place its officer under suspension particularly when a charge sheet under the provisions of Prevention of Corruption Act, 1988 is filed in a competent court of jurisdiction after completing the investigation. The guidelines issued are not in nature of any command as such. The authorities concerned have to weigh and take various relevant factors into consideration before exercising their jurisdiction to place an officer under suspension pending enquiry. The High Court observed that the competent authority cannot be prevented from initiating any action as such against the petitioner. Such a course is not permissible in law.

The High Court also considered the contention of the petitioner that the failure to complete the investigation within six months in terms of the instructions

issued in the above-said Memo vitiates the entire investigation and the report submitted by the Investigating Officer and that no further proceedings can be allowed to go on against the petitioner since the Investigating Officer failed to complete the investigation within six months as is required in accordance with the said Memo issued by the Government.

The guidelines issued by the Government requiring the Investigating Officers to complete the investigation expeditiously, preferably within six months, do not have any statutory force and they were merely in the nature of instructions for the guidance of the Investigating Officers. It is well settled that a writ in the nature of mandamus cannot be issued to enforce the administrative instructions. The guidelines issued by the Government to its Investigating Officers do not confer any enforceable right upon any person. Any breach of those guidelines is not justiciable. The guidelines issued by the Government did not give rise to any legal right in favour of the petitioner. In the circumstances, a writ of mandamus does not lie to enforce the guidelines, which were nothing more than administrative instructions. Breach of those guidelines would not give rise to any cause of action.

(537)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

Sanction of prosecution under sec. 197 Cr.P.C. is required only (i) where the accused is a public servant not removable from office save by or with the sanction of the Government and (ii) the offence is committed by him in the discharge of his duties.

Bihari Lal vs. State, 2002 Cri.L.J. DEL 3715

The prosecution case is that the petitioner while working as a Peon in the Oriental Insurance Company, misappropriated a sum of Rs.2,17,258 entrusted to him for depositing in the Bank. The petitioner contended that no prosecution against him could be launched without sanction under sec. 197 Cr.P.C.

The High Court observed that a bare reading of sec. 197 Cr.P.C. shows that for its applicability, merely being a public servant is not enough. It has to be shown (i) that such a public servant is or was not removable from office save by or with the sanction of the Government and (ii) that the alleged offence should have been committed by him while acting or purporting to act in discharge of his duties. Petitioner was merely a peon, who could be removed by the Divisional

Manager or the Manager of the company and he is not a public servant who could be removed only by the State or Central Government. In the absence of any such averments, the first ingredient necessary for invoking sec. 197 Cr.P.C. is not justified.

The High Court further held that the act of embezzlement, fabricating false bank receipt and producing the same in proof of his having deposited the said amount in the bank cannot be said to have been done in discharge of his official duty. It can never be the official duty of any public servant to embezzle the amount, forge the receipt and produce the same to show that the money has been deposited. The High Court held that as such no sanction is required for his prosecution under sec. 197 Cr.P.C.

(538)

- (A) Cr.P.C. — Sec. 156(3)**
- (B) Disproportionate assets — private complaint, registration of F.I.R.**

- (i) *There is nothing improper in the Special Judge sending a private complaint of disproportionate assets to the police for investigation and also the police registering a crime on the basis of a private complaint.*
- (ii) *There is no need to conduct preliminary enquiry.*

P. Raghuthaman vs. State of Kerala, 2002 Cri.L.J. KER 337

The question which arose for consideration is whether before registering a crime on the basis of a private complaint forwarded to the Vigilance Special Cell for investigation under sec. 156(3) Cr.P.C. from the Court of the Enquiry Commissioner and Special Judge, Vigilance, whether it is mandatory that the Vigilance Special Cell has to conduct a preliminary enquiry.

The High Court held that when a complaint is forwarded to the police under sec. 156(3) Cr.P.C. for investigation, the police is bound to register a crime and investigate. Even if the police conducts a preliminary enquiry regarding the allegations made in the private complaint, the police cannot say that there is no need for registering a crime on the basis of the private complaint. The Vigilance Cell can conduct a preliminary enquiry when information is given to the Vigilance Cell regarding commission of the offences under the Prevention of Corruption Act and the Vigilance Cell proposes to register a crime on the basis of that

information. But the Vigilance Cell is bound to register a crime on the basis of the complaint sent to it for investigation under sec. 156(3) Cr.P.C. and hence the Vigilance Cell cannot be faulted for registering a crime without conducting a preliminary enquiry.

The High Court observed that when it is said that the Special Judge can receive a private complaint alleging commission of offence under the P.C. Act and proceed on the basis of that, it implies that all the procedure prescribed under the Code of Criminal Procedure for dealing with a private complaint can be followed by the Special Judge. Different provisions of the Code say as to what the Magistrate has to do on receiving a private complaint. Under sec. 156(3) Cr.P.C. the Magistrate on receiving a private complaint can forward the same to the police for investigation. In so far as there is no provision in the statute which says that a private complaint received by the Special Judge should not be sent to the police for investigation under sec. 156(3) Cr.P.C. necessarily the Special Judge will have the power to send the complaint to the police for investigation.

The High Court further observed that under the Code, the Special Judge will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied. The court of Special Judge being the Court of original criminal jurisdiction, special Judge can send a private complaint received by him to the police for investigation under sec. 156(3) Cr.P.C. So, there is nothing improper in sending a private complaint to the police for investigation and also the police registering a crime on the basis of the private complaint.

(539)

- (A) P.C. Act, 1988 — Sec. 13(1)(d)**
- (B) Criminal misconduct — obtaining pecuniary advantage to others**
 - (i) Assessment of evidence in a case of criminal misconduct of obtaining pecuniary advantage to others.*
 - (ii) It is not necessary that the public servant must receive the pecuniary advantage from third party and pass it on to the other person for his benefit.*

R. Gopalakrishnan vs. State, 2002 Cri.L.J. MAD 47

The appellant was convicted for the offence under sec. 5(2) r/w. 5(1)(d) of the Prevention of Corruption Act, 1947 (corresponding to sec. 13(2) r/w. 13(1)(d)

of P.C. Act, 1988) and sentenced to one year R.I. The charge against him is that while functioning as Manager of Perambur Branch of the Syndicate Bank, obtained pecuniary advantage for others by procuring loan of Rs.24 lakhs by furnishing bank guarantee even without deducting bank commission, without taking permission from the Head Office and without prior intimation to Head Office and the matter came up before the High Court in an appeal.

The High Court held that on a plain reading of the express words "obtains for himself" used in the clause (1)(d) of Sec. 5, there cannot be any doubt that every benefit obtained by a public servant for himself, or for any other person by abusing his position as a public servant falls within the mischief of the said clause. The words "to obtain pecuniary advantage for any other person" would clearly mean that by abusing his position, he got the other person to obtain the pecuniary advantage. The words "obtain for himself" would mean that obtaining the pecuniary advantage either by himself or through somebody else for himself. Similarly, the words "to obtain for any other person" would mean, to make an effort to enable any other person to obtain the pecuniary advantage. It definitely does not mean that the public servant must receive the pecuniary advantage from third party and pass it on to the other person for his benefit. In the instant case the accused appellant while working as Manager of Syndicate Bank dishonestly in violation of the circulars and Rules and Regulations, had allowed the other accused to overdraw the loan amount to the tune of Rs. 15 lakhs without any permission or intimation to the Head Office. In order to get the loan of total amount of Rs. 24 lakhs for the other accused, he went and met the office-bearers of the creditor Company, and requested them for the issue of loan in favour of the other accused and for the said amount, he also issued bank guarantee, even though he knew that he is not competent to issue such a guarantee, on the same day i.e. on 12-9- 1985. This was further extended on 30-4-1986 up to 21-7-1988. Even for the extension, there was no ratification. The issuance of bank guarantee to the tune of Rs. 24 lakhs or its extension on different periods had not even been intimated to the Head Office. Admittedly, these things had not been entered into the books of accounts maintained in the Bank by the appellant. Admittedly, the bank guarantee was issued without taking any third party security or collecting the bank commission as provided in the Rules and Regulations. These acts have all been done by the appellant in order to help the other accused to get the loan of Rs. 24 lakhs by abusing his position as a public servant with dishonest intention. Therefore, the main ingredient "obtaining the pecuniary advantage by abusing the position with dishonest intention" is clearly made out. Thus, both the ingredients, namely, "abuse" as well as "obtain" are explicitly present in this case.

DECISIONS (540) & (541)

High Court held that the conviction for the offence under sec. 5(2) r/w. sec. 5(1)(d) of the Prevention of Corruption Act, 1947 imposed upon the appellant by the trial court is perfectly justified.

(540)

- (A) P.C. Act, 1988 — Sec. 13(1)(c)**
- (B) Misappropriation — criminal misconduct under P.C. Act**

Appreciation of evidence of an offence of misappropriation under sec. 13(1)(c) of P.C. Act, 1988.

S. Jayaseelan vs. State by SPE, C.B.I., Madras, 2002 Cri.L.J. MAD 732

This is a case of Special Police Establishment, C.B.I. where the appellant, Cashier, Indian Overseas Bank was convicted for offences under secs. 409, 477-A IPC and sec. 5(2) read with sec. 5(1)(c) of the P.C. Act, 1947 (corresponding to sec. 13(2) read with sec. 13(1)(c) of P.C. Act, 1988) for breach of trust and falsification of accounts.

The High Court held that element of dishonesty is explicit, in view of the fact that on several occasions, the appellant made entries in the passbooks on various loanees accounts and received the cash amounts and did not choose to show the payments in the ledger books. Once it is proved that the amount was entrusted to him, then under sec. 106 of Evidence Act, he has to establish as to what happened to the said amount and that fact lies within the knowledge of the accused and as such, the burden of establishing the said fact is upon him. The High Court did not accept the defence plea that he never received any amount from the loanees and alternatively that the amount had been paid back. High Court also held that the fact that the appellant had repaid entire amount before investigation would not absolve him of criminal liability.

(541)

Court jurisdiction

If two views are possible, court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power, in judicial review.

Union of India vs. Harjeet Singh Sandhu, 2002(1) SLJ SC 1

The respondent was proceeded against in a General Court Martial under sec. 19 of the Army Act, 1950 and ultimately it came up in appeal before the Supreme Court.

The Supreme Court observed: Exercise of power under sec. 19 of the Army Act read with Rule 14 of the Army Rules, 1954 is open to judicial review on well settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by mala fides or is found to be based wholly on extraneous and/or irrelevant grounds or is found to be a clear case of colourable exercise of/or abuse of power or what is sometimes called fraud on power, i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the Court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material available on which the action can be sustained. The Court would presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the Court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.

(542)

Defence Assistant — restriction on number of cases

Restriction on number of cases for a person to take up as defence assistant, to not more than two, is genuine and reasonable and also just, proper and necessary in public interest, despite no such restriction for a Presenting Officer.

Indian Overseas Bank vs. I.O.B. Officer's Association, 2002(1) SLJ SC 97

These appeals have been filed by the Indian Overseas Bank, Canara Bank and Vijaya Bank against the common judgment of a Division Bench of the Karnataka High Court. These Banks had their own regulations for regulating the conduct, discipline and appeal pertaining to their officers and employees. Those regulations contained a provision enabling an officer/employee to take the assistance of any other officer-employee to defend him in any disciplinary proceedings. This was sought to be amended by a circular order providing for the addition of a note to the relevant regulation in the following terms: "Note: The officer employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance." This move was said to have been triggered by the communication of the Government of India dated 5-12-84, issued from the Ministry of Finance, Department of Economic Affairs (Banking Division), on the basis of the suggestion emanating from the Central Vigilance Commission and in consultation with the Reserve Bank of India.

The challenge to the said amendment based on the alleged violation of Art.14 of the Constitution of India, at the instance of the association of the officers of the respective Banks, came to be upheld under the judgments which are the subject-matter of these appeals. The High Court held that when there is no similar restriction vis-à-vis the managements to employ a presenting officer having more than two pending disciplinary cases on hand the stipulation so made in respect of defence officer for employees alone is discriminatory and does not really and may not also serve the purpose of avoiding delay in finalisation of the disciplinary proceedings. The further reason, which weighed with the High Court, was that there may be only a few qualified officers in the organisation to defend the officers charged with allegations of misconduct and with such a stipulation many such employees may not be available in every organisation to be chosen by the concerned employees facing charges, to represent them and consequently it results in deprivation, to the officer-employee, of an effective opportunity to get proper assistance from his colleagues for his defence.

Supreme Court observed that the issue ought to have been considered on the basis of the nature and character of the extent of rights, if any, of an officer-employee to have, in a domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by the Supreme Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulations and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

Supreme Court were of the view that the serious fallacy underlying the reasoning adopted by the High Court seems to be the assumption that an omission to correspondingly fix such a ceiling in respect of the engagement of the presenting officers confer any right as such in the management to flout the said norm or standard when it comes to them and have its own way in nominating the presenting officers who even held more than two pending disciplinary cases in their hands. It is on such an assumption only that the laudable object of averting inordinate delay in completion and ensuring an expeditious finalisation

of the disciplinary proceedings, which really motivated the cause for amendment under challenge, came to be viewed with a suspicion and not capable of being really achieved. The grievance entertained with reference to the invidious nature of an alleged and assumed discrimination also proceeded on such a surmise based on the fact that the ceiling imposed was only in respect of the appointment of a defence officer leaving otherwise a free hand to the management in the appointment of a presenting officer. In the process of such assumption, the High Court seems to have overlooked the realities of the fact situation specifically noticed by the Government of India of one defence officer holding brief in 50 pending matters, which necessarily called for such specific ceiling vis-a-vis the defence officer for the reason that the selection and choice of which is inevitably with the officer-employee concerned and that in the absence of such a stipulation, the management would suffer a serious handicap in observing such a rule or principle to so regulate to the surprise of the officers/employees both facing enquiries and those to be drafted for defence. So far as the management is concerned, it can always observe the same while considering the need for choosing a presenting officer in an individual case even in the absence of a stipulation therefor. The mere possibility or otherwise of any action which may result in differential standard or norm being adopted in a given case, cannot be assumed to provide sufficient ground or reason to undermine the right of the management to make a regulation or standing order of the nature in question or militate against the reasonableness or justness of the said provision, whatever may be the scope available for ventilating otherwise a grievance in an individual case of any adoption of differential standards or norms to the detriment of the officer-employee concerned. Further, the Supreme Court are also of the view that a stipulation of the nature under consideration, apart from paving way for expeditious culmination of the disciplinary proceedings by avoiding unnecessary delays on the part of a defence officer holding too many engagements on his hand finding difficult to coordinate his appearance in various proceedings, would equally go a long way to ensure that no monopoly is created in a chosen few for such purposes and that the services of the proposed defence officers are equally available in proper measure to the Institutions which employ them in greater public interest. The Banks in question, being Nationalised Banks with a wide network of units at national level, there could be no concrete basis for an assumption that many employees, who are well-versed in the administrative procedures and conversant with the functioning of the Board and the rules, bye-laws and regulations would not be available to be chosen for defending the officers/employees facing enquiries and consequently there is no reason or justification whatsoever to erase the amendment from the Rule book on a mere apprehension that, otherwise, it is likely to prejudice and adversely affect the officers facing charges in effectively defending themselves.

DECISIONS (543) & (544)

Supreme Court observed that the circumstances, which necessitated the amendment on the suggestion emanating from the Government of India in consultation with the Reserve Bank of India, appear to be not only genuine and reasonable but the amendment made is also just, proper and necessary in public interest. The Supreme Court was unable to agree with the view taken by the High Court that the amendment suffers the vice of Art.14 of the Constitution of India and set aside the judgment of the High Court.

(543)

Penalty — quantum of

It is not for the court to determine the quantum of penalty, once charges are proved.

Union of India vs. Narain Singh, 2002(3) SLJ SC 151

The respondent, Driver in the Border Security Force, was charge sheeted for (i) disobeying the lawful command given by the superior officer and (ii) assaulting the superior officer. During Court Martial, he admitted the charges and pleaded pardon. The disciplinary authority, on admitted facts, found the respondent guilty of the charges and dismissed him from service. The appellate authority dismissed the appeal filed by him. His writ petition was dismissed by a single Judge of the High Court of Rajasthan. The Division Bench however set aside the order of dismissal holding that, among other things, when a poor person pleads guilty to the misconduct committed by him then the extreme penalty from service was un-called for and imposed the penalty of stoppage of three increments without cumulative effect.

Supreme Court observed that the law is clear. It is not for the court to determine the quantum of punishment once charges are proved. It cannot be said that the punishment of dismissal is not commensurate with the charges. It is not for the court to interfere on misplaced grounds of sympathy and/or mercy. In this view of the matter, the Supreme Court allowed the appeal.

(544)

P.C. Act, 1988 — Sec. 17

Notifications issued by Government in exercise of powers under sec. 5A of P.C. Act, 1947 empowering and authorising Inspectors of Police to investigate cases registered under the said Act are saved under the saving provision of the re-enacted P.C. Act, 1988.

State of Punjab vs. Harnek Singh, 2002 Cri.L.J. SC 1494

The Supreme Court held that the notifications issued by the Government of Punjab, in exercise of the powers conferred under sec. 5A of the P.C. Act, 1947, empowering and authorising the Inspectors of Police posted in Special Inquiry Agency of the Vigilance Department, Govt. of Punjab to investigate the cases registered under the said Act were saved under the saving provision of the re-enacted P.C. Act, 1988. Such notifications are not inconsistent with the provisions of re-enacted Act and are deemed to continue in force as having been issued under the re-enacted 1988 Act till the aforesaid notifications are specifically superseded or withdrawn or modified under the 1988 Act. The investigation conducted by the Inspectors of Police authorised in that behalf under the 1947 Act are held to be proper, legal and valid investigation under the re-enacted Act and do not suffer from any vice of illegality of jurisdiction. There is no inconsistency between sec. 5A of the P.C. Act, 1947 and sec. 17 of the P.C. Act, 1988 and provisions of General Clauses Act would be applicable and with the aid of sub-section (2) of sec. 30 anything done or any action taken or purported to have been done or taken in pursuance of 1947 Act be deemed to have been done or taken under or in pursuance of the corresponding provision of 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the aforesaid notifications were issued under the then prevalent corresponding law. Otherwise also there does not appear any inconsistency between the two enactments except that the scope and field covered by 1988 Act has been widened and enlarged. Both the en-actments deal with the same subject matter, i.e. corruption amongst the public servants and make provision to deal with such a menace. Therefore, proceedings on basis of FIR registered against accused not liable to be quashed on ground that inspectors who had investigated cases were not the authorised officers in terms of sec. 17 of the P.C. Act, 1988.

The Supreme Court further held that the provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including secs. 6 and 24 thereof. The submission that as reference made in sub-section (2) of sec. 30 of the P.A. Act, 1988 is only to sec. 6 of General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act cannot be accepted. There is no dispute that 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of sec. 24 of the General Clauses Act are specifically

applicable. It appears that as sec. 6 of the General Clauses Act applies to repealed enactments, the Legislature in its wisdom thought it proper to make the same specifically applicable in 1988 Act also which is a repealed and re-enacted statute. Reference to sec. 6 of General Clauses Act in sub-section (1) of sec. 30 has been made to avoid any confusion or mis-understanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the Legislature had intended not to apply the provisions of sec. 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that sec. 24 of the General Clauses Act is specifically applicable to repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention that sec. 24 of General Clauses Act is not applicable would render the provisions of 1988 Act redundant inasmuch as appointments, notifications, orders, schemes, rules, bye-laws made or issued under the repealed act would be deemed to be non-existent making the working of the re-enacted law impossible.

(545)

- (A) P.C. Act, 1988 — Sec. 13(1)(d)**
- (B) P.C. Act, 1988 — ‘accepts’ as against ‘obtains’**

Mere acceptance of money would not be sufficient for convicting the accused under sec. 13(1)(d)(i) of P.C. Act, 1988, as sec. 7 of the Act used the words ‘accepts’ or ‘obtains’ whereas sec. 13(1)(d)(i) omitted the word ‘accepts’ and emphasized the word ‘obtains’.

- (C) P.C. Act, 1988 — Sec. 20**

Statutory presumption under sec. 20 of P.C. Act, 1988 is not available for clause (d) of sub-section (1) of sec. 13.

Subash Parbat Sonvane vs. State of Gujarat, 2002 Cri.L.J. SC 2787

Appellant was convicted by the Special Judge, City Civil Court, Ahmedabad by judgment and order dated 10-9-1997 for the offence punishable under sec. 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500. He was also convicted for the offence punishable under secs. 13(1)(d) and 13(2) of the Act and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500. Against that judgment and order, appellant preferred criminal

Appeal before the High Court, and the High Court dismissed the said appeal by passing the impugned judgment. That order is challenged by filing this appeal.

The Supreme Court observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under sec. 13(1)(d)(i). In Secs. 7 and 13(1)(a) and (b) of the Act, the Legislature has specifically used the word 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of sec. 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under clause (ii), he obtains such thing by abusing his position as public servant; and sub-clause (iii) contemplates that while holding office as the public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under sec. 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

In the instant case, the complainant has not supported the prosecution case on main ingredients of demand and acceptance and was treated hostile. In cross-examination also, he has not supported the prosecution version on demand or acceptance of the amount. The trial court has also observed that the complainant deliberately does not support on the points of demand and acceptance. However, the court relied upon the evidence of panch witness. From his evidence, it is difficult to find out any statement made by him that accused demanded any amount from the complainant. The relevant part of the evidence of this witness suggests that when the prosecution party went to the police chowki, accused asked the complainant as to why he had come there at that time. To that, complainant replied that he was waiting since one O' clock and that he has brought one witness to be examined. Accused informed him to come in the evening as his writer was not present. When the accused started to go towards toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. From this evidence, it cannot be inferred that accused demanded any amount from the complainant or that he had obtained the same. It is apparent that the trial court and the High Court misread the evidence of the panch witness and held that there was demand by the accused and the amount was paid to him by the complainant. It was unreasonable to hold that accused demanded money from

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the complainant. Complainant denied the said story and the panch witness had not stated so.

The Supreme Court further held that the statutory presumption under sec. 20 of the Prevention of Corruption Act, 1988 is available for the offence punishable under sec. 7 or sec. 11 or clause (a) or clause (b) of sub-section (1) of sec. 13 and not for clause (d) of sub- section (1) of sec. 13.

In this view of the matter, the Supreme Court partly allowed the appeal and set aside the judgment and order passed by the High Court confirming the order passed by the Special Judge convicting the appellant for the offence punishable under sec. 13(1)(d)(i) and acquitted the appellant for the same.

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Disproportionate Assets — Sec. 13(1)(e) P.C. Act, 1988 materially different from sec. 5(1)(e) P.C. Act, 1947

Where the accused committed the offence when P.C. Act, 1947 was in operation, he shall not be deemed to have been charged under sec. 13(1)(e) P.C. Act, 1988 as it is materially different from sec. 5(1)(e) P.C. Act, 1947.

Jagan M. Seshadri vs. State of Tamil Nadu, 2002 Cri.L.J. SC 2982

The Supreme Court observed that when the offence was committed it was the P.C. Act, 1947 which was in operation. At the time when FIR was lodged, it was also the 1947 Act which was in operation. Reliance on sec. 30(2) of the P.C. Act, 1988 to hold that offence for which the appellant should have been charged was one which fell under sec. 13 of the 1988 Act is wholly misplaced. The framing of charge by the trial court under sec. 5(1)(e) read with sec. 5(2) of the 1947 Act for offence allegedly committed during check period 1977-1984 is not invalid. The appellant shall not be ‘deemed’ to have been charged for offences under sec. 13(1)(e) read with sec. 13(2) of the 1988 Act.

A bare reading of sec. 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, in so far as it is not inconsistent with the provisions of the Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It does not substitute sec. 13 of P.C. Act, 1988 in place of sec. 5 of the 1947 Act. Sec. 30(2) is applicable “without prejudice to the application of sec. 6 of the General Clauses Act, 1897”. The application of sec. 13 of the 1988 Act to the fact situation of the present case would offend

sec. 6 of the General Clauses Act, which, inter alia provides that repeal shall not (i) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder or (ii) affect any investigation, legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture or punishment. Sec. 13 both in the matter of punishment as also by the addition of the explanation to sec. 13(1)(e) is materially different from sec. 5 of the 1947 Act. The presumption permitted to be raised under the explanation to sec. 13(1)(e) was not available to be raised under sec. 5(1)(e) of the 1947 Act. This difference can have a material bearing on the case.

The Supreme Court observed that on a careful perusal of the explanation given by the appellant regarding the source of receipt of Rs. 50,000 and Rs. 40,000 which amounts alone were canvassed before the Supreme Court to be beyond the 'known sources of income' of the appellant, they found ample support for his explanation in the prosecution evidence itself. The evidence of the prosecution witnesses clearly supports the explanation given by the appellant. The appellant had thus, discharged the burden of explaining the sources of those amounts. Their non-mention in the property statement of the appellant would have no consequence because explanation to sec. 13(1)(e) is not to be read as an explanation to sec. 5(1)(e) of the 1947 Act.

The Supreme Court held that the judgment of the High Court reversing a well merited order of acquittal recorded by the trial court, cannot be sustained.

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Witnesses — turning hostile

Where public prosecutor did not seek permission to cross-examine witness for prosecution when he deposed in favour of the defence during his examination-in-chief and allowed his cross-examination by the defence, it does not call for interference.

State of Bihar vs. Lalu Prasad alias Lalu Prasad Yadav, 2002 Cri.L.J. SC 3236

The Supreme Court observed that when the witness called by the prosecution has resiled from his expected stand even in chief-examination the permission to put cross-questions should have been sought then. The refusal of permission to cross question the witness sought by the Public Prosecutor after cross-examination of witness was over cannot be said to be a wrong exercise of

discretion vested in the trial Judge liable to be interfered with in appeal. Moreover if the public prosecutor is not prepared to own the testimony of the witness examined by him he can give expression of it in different forms. One of such forms is the one envisaged in sec. 154 of the Evidence Act. The very fact that he sought permission of the court soon after the end of the cross-examination was enough to indicate his resolve not to own all what the witness said in his evidence. It is again open to the public prosecutor to tell the court during final consideration that he is not inclined to own the evidence of any particular witness in spite of fact the said witness was examined on his side. When such options are available to a public prosecutor it is not a useful exercise for the Supreme Court to consider whether the witness shall again be called back for the purpose of putting cross questions to him.

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Trial — time limits

Supreme Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. Supreme Court overruled earlier decisions.

P. Ramachandra Rao vs. State of Karnataka, 2002(3) Supreme 260

The Supreme Court (a seven-Judge Bench) observed that bars of limitation judicially engrafted are, no doubt, meant to provide a solution, but a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. Such bars of limitation are uncalled for and impermissible, first, because it tantamounts to impermissible legislation—an activity beyond the power which the Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in A.R. Antulay vs. R.S. Nayak, 1992(1) SCC 225 and, therefore, run counter to the doctrine of precedents and their binding efficacy.

Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which cannot be done by judicial directives and within the arena of the judicial law-making power available to

constitutional courts, howsoever liberally the Supreme Court may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may be issued, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973. The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained is that these decisions run counter to that extent to the dictum of constitution Bench in A.R. Antulay's case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents.

After elaborate consideration, the Supreme Court held that in Common Cause (I), 1996(4) SCC 32, Common Cause(II), 1996(6) SCC 775, Raj Deo Sharma (I), 1998(7) SCC 507 and Raj Deo Sharma (II), 1999(7) SCC 604, the court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused, and overruled the above-said four decisions.

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(A) Public Servant

(B) P.C. Act, 1988 — Sec. 2(c)

Employees of a co-operative society which is controlled or aided by the Government, are public servants covered by sub-clause (iii) of cl. (c) of sec. 2 of the P.C. Act, 1988.

Government of Andhra Pradesh vs. P. Venku Reddy, 2002(3) Decisions Today (SC) 399

Government of Andhra Pradesh and District Co-operative Central Bank Limited, Nellore, through its General Manager, preferred this appeal challenging the order dated 26-9-2001 of the Division Bench of High Court of Andhra Pradesh whereby criminal case instituted against the respondent/accused, who was

working as Supervisor in the District Co-operative Central Bank Limited, Nellore, for alleged offence of accepting bribe punishable under provisions of the Prevention of Corruption Act, 1988 has been quashed.

The High Court by the impugned order quashed the criminal case pending against the respondent No.1 under the P.C. Act, 1988 on the sole ground that the accused is not a 'public servant' as defined in sub-clause (ix) of clause (c) of sec. 2 of the P.C. Act, 1988. In the opinion of the High Court, definition contained in sub-clause (ix) of clause (c) of sec. 2 of the 1988 Act covers only President, Secretary and other office bearers of a registered co-operative society engaged amongst others, business in banking.

The Supreme Court concluded that the High Court is clearly in error in relying on sub-clause (ix) and overlooking sub-clause (iii) of cl. (c) of sec. 2 of the 1988 Act for quashing the proceedings on the ground that the respondent/accused is not covered by the definition of 'public servant'.

Supreme Court observed that it is evident that in the expansive definition of 'public servant', elected office-bearers with President and Secretary of a registered co-operative society which is engaged in trade amongst others in "banking" and 'receiving or having received any financial aid' from the Central or State Government, are included although such elected office bearers are not servants in employment of the co-operative societies. But employees or servants of a co-operative society which is controlled or aided by the government, are covered by sub-clause (iii) of cl. (c) of sec. 2 of the 1988 Act. Merely because such employees of co-operative societies are not covered by sub-clause (ix) along with holders of elective offices, High Court ought not to have overlooked that the respondent, who is admittedly an employee of a co-operative bank which is controlled and aided by the government, is covered within the comprehensive definition of 'public servant' as contained in sub-clause (iii) of cl.(c) of sec. 2 of the 1988 Act. It is not disputed that the respondent/accused is in service of a co-operative Central Bank which is an 'authority or body' controlled and aided by the Government.

It cannot be lost sight of that the 1988 Act, as its predecessor, i.e. the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a very wide definition of 'public servant' in cl. (c) of sec. 2 of the 1988 Act.

Under the repealed Act of 1947 as provided in sec. 2 of the 1988 Act, the definition of 'public servant' was restricted to 'public servants' as defined in

sec. 21 of the Indian Penal Code. In order to curb effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of 'public servant' has been given in cl. (c) of sec. 2 of the 1988 Act.

In construing definition of 'public servant' in cl. (c) of sec. 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with much wider definition of 'public servant', was brought in force to purify public administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing growing corruption in Government and semi-Government departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction.

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(A) Cr.P.C. — Sec. 173(5), (8)

(B) Documents — additional documents, production of

There is no bar to produce additional documents after submission of charge sheet.

Central Bureau of Investigation vs. R.S. Pai, JT 2002(3) SC 460

Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay by judgment and order dated 26-7-2000, rejected miscellaneous application filed by the Central Bureau of Investigation (CBI) for production of additional documents in a case of prosecution under sec. 120-B read with sec. 420 IPC and sec. 13(2) read with sec. 13(1)(d) of P.C. Act, 1988 against the Divisional Manger of Syndicate Bank and Managing Director of Fair Growth Investments Ltd. The respondents filed discharge application before the special court. Pending hearing those applications, appellant sought production of additional documents, which were gathered during investigation but were not produced before the court. That application was rejected and consequently this appeal was filed.

Supreme Court observed that normally the investigating officer is required to produce all the relevant documents at the time of submitting the charge sheet.

At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report of charge sheet, it is always open to the investigation officer to produce the same with the permission of the court. Considering the preliminary stage of prosecution and the context in which police officer is required to forward to the magistrate, all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) of sec. 173 Cr.P.C. cannot be interpreted as mandatory but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the magistrate but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under sec. 173(4) Cr.P.C., 1898 was considered by the Supreme Court in Narayan Rao vs. State of Andhra Pradesh, 1958 SCR 283 and it was held that the word 'shall' occurring in sub- section (4) of sec. 173 and sub-section (3) of sec. 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of sec. 173 also makes it abundantly clear that even after the charge sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. The Supreme Court held that the impugned order passed by the special court cannot be sustained, and allowed the application filed by the appellant for production of additional documents.

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- (A) Judge — approach of**
- (B) Guilty — let no one who is guilty, escape**

A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Miscarriage of justice arises from the acquittal of the guilty no less than from the conviction of the innocent.

- (C) Proof — benefit of doubt**

A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based on reason and common sense. Proof beyond reasonable doubt is a guideline and not a fetish. Vague hunches cannot take the place of judicial evaluation.

- (D) Evidence — statement, false in part - appreciation of
- (E) Witnesses — statement, false in part - appreciation of

The maxim “falsus in uno falsus in omnibus” (false in one thing, false in everything) is untenable. It has no application in India.

Gangadhar Behera vs. State of Orissa, 2002(7) Supreme 276

This is a case where the accused-appellants questioned their conviction on being found guilty of offences under sec. 302 read with secs. 149 and 148 IPC.

Dealing with the contention regarding interestedness of the witnesses for furthering prosecution version, Supreme Court observed that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. The plea to apply the principle of ‘falsus in uno falsus in omnibus’ (false in one thing, false in everything) is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim ‘falsus in uno falsus in omnibus’ has no application in India and the witnesses cannot be branded as liar. The maxim ‘falsus in uno falsus in omnibus’ has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called ‘a mandatory rule of evidence’ (Nisar Alli vs. State of U.P., AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a

necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate accused who had been acquitted from those who were convicted (*Gurucharan Singh vs. State of Punjab*, AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment (*Sorabh vs. State of M.P.*, 1972 3 SCC 751 and *Ugar Ahir vs. State of Bihar*, AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto (*Zwinglee Ariel vs. State of M.P.*, AIR 1954 SC 15 and *Balaka Singh vs. State of Punjab*, AIR 1975 SC 1962). As observed by the Supreme Court in *State of Rajasthan vs. Kalki*, AIR 1981 SC 1390, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in *Krishna Mochi vs. State of Bihar etc*, JT 2002(4) SC 186.

Supreme Court observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law (*Gurbachan Singh vs. Satpal Singh*, AIR

1990 SC 2091). Prosecution is not required to meet any and every hypothesis put forward by the accused (State of U.P. vs. Ashok Kumar Srivastava, AIR 1992 SC 840). A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish (Inder Singh vs. State (Delhi Admn.), AIR 1978 SC 1091). Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties". (Per Viscount Simon in Stirland vs. Director of Public Prosecution, 1944 AC(PC) 315 quoted in State of U.P. vs. Anil Singh, AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.

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Misconduct — bandh

T. K. Rangarajan vs. Government of Tamilnadu AIR 2003 SC 3032

The Supreme Court, while pronouncing on legality of the mass strike, said that 'there is no legal, moral or equitable right with the government employees to go on strike'.

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Trap – presumption

T. Shankar Prasad vs. State of AP AIR 2004 SC 1242

On 25.4.1992 the complainant requested the accused T. Shankar Prasad, Asst. Commercial Tax Officer to get the way bills duly stamped and signed by him. The officer demanded Rs.400/- as bribe in the presence of other accused. Complainant reported the matter to the Anti Corruption Bureau officials on 28.4.1992 and trap was arranged. The complainant approached the accused T. Shankar Prasad who directed him to pay the amount to other accused Ghaiz Basha, Junior Assistant. When the latter received the bribe amount from the

complainant the trap party caught hold of both the officers and the amount was recovered from the possession of second accused and the sodium carbonate solution test conducted proved positive. Stand of the accused T. Shankar Prasad was that no money was recovered from his possession. The other accused Ghaiz Basha took the plea that there was no material to show that he had demanded any bribe. He further stated that he had accepted the amount to be deposited as advance tax and when he was about to write the challan, the Anti Corruption Bureau officials caught hold of him and implicated him falsely.

The trial Court noticed that PW-1 had partially resiled from the statement made by him during investigation. He made half-hearted attempt to support the accused Ghaiz Basha. The trial Court found them guilty under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. The High Court also dismissed the appeal.

The Supreme Court held that when money was recovered from the pocket of one of the accused persons a presumption under Section 7 read with section 20 of the Act is obligatory. It is a presumption of law and cast an obligation on Court to operate it in every case brought in Section 7. The presumption is a rebuttable presumption and it is by proof and not by explanation which may seem to be plausible. The evidence of PWs 4, 5, 7 and 8 read with the evidence of PW-1 established recovery of money from A-2. A belated and stale explanation was offered by A-2 that the money was paid towards tax. An overall consideration of the materials sufficiently substantiate, in the case on hand the prevalence of a system and methodology cleverly adopted by the accused that the demand will be specified when both the accused were present and thereafter as and when the A-1 puts his signature the party has to meet A-2, at his seat for fixing the seal and making entry in the Register to make the process complete only after collecting the amount already specified by A-1 in A-2's presence. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.

The Supreme Court finally concluded that the High Court's judgment is irreversible.

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Court jurisdiction

***Ajit Pramod Kumar Jogi vs Union of India (UoI) and Ors.
on 6th February, 2004 in Chhattisgarh High Court***

As per the First Information Report lodged on 7-12-2003 by Shri Virendra Pandey at the Police Station, Anti-Corruption Bureau, Raipur, the Acting Chief

Minister Shri Ajit Jogi, his son Amit Jogi and Shri B. R. Khunte, Member of Parliament had entered into a criminal conspiracy to split the newly elected M.L.A.S of Bhartiya Janata Party by giving them a bribe of Rs. 45/- lakhs and in furtherance of that conspiracy on 5-12-2003 in the afternoon he received the telephonic call from Shri B. R. Kunte that if efforts are made, Shri Baliram Kashyap can become the Chief Minister and in this respect Shri Ajit Jogi can also render his help.

On receiving this report the Inspector of Police, Anti-Corruption Bureau. Chhattisgarh, Raipur registered F.I.R. under Sections 13(l) (d), 13(2), 12 and 15 of the Prevention of Corruption Act, 1988 and Sections 134 and 120B of the Indian Penal Code. Thereafter consequent upon the consent notification of the Government of Chattisgarh, the Cabinet Secretariat, Govt. of India vide its notification dated 9.12.2003 transferred the investigation of the case to Central Bureau of Investigation.

The petitioner contended that it was trick being played upon the petitioner and in law the petitioner cannot commit the alleged offences based upon an alleged and illegitimate trap of the complainant trickster.

The High Court placed reliance on various Supreme Court judgments notably Union of India v. Prakash P. Hinduja reported in (2003) 5 JT (SC) 300 : (2003 Cri LJ 3117)

"The legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of the police station in Court under Section 173(2), Cr.P.C., this field being exclusively reserved for the investigating agency."

The High Court held that in the present case, if the allegations leveled are looked into against the petitioner along with two other persons and as per the role played by the petitioner with other persons named in the F.I.R., meeting with certain persons at an isolated place, currency changing the hands, talks on telephone, letter given assuring the support of a particular person to stall him as Chief Minister, *prima facie* discloses reasons to suspect the commission of cognizable offences. The High Court further held that at this stage, it is neither necessary nor in the interest of everyone to express any opinion and jump over to any conclusion and, at this stage, passing any order will amounts to interference in the field of the Investigating Agency and that the petitioner has

not been able to make out a case, which warrants the invoking of the extraordinary jurisdiction by this Court for quashing of F.I.R.

In the result, the Hon'ble High Court held that it did not find any reason to invoke the extraordinary jurisdiction under Articles 226/227 of the Constitution for quashing of the F.I.R. at this stage, because the investigation is still at the preliminary stage and dismissed the petition.

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- (A) P.C. Act, 1988 – Secs. 7, 13(1)(d)**
- (B) P.C. Act, 1988 – Sec. 19**
- (C) Departmental action and prosecution**

Munshilalshakya vs. State of Rajasthan 2005 (1) CCR 338 Rajasthan

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 28.7.2003 with the prayer that by appropriate writ, order or direction, the respondents Nos. 2 to 4, officials of Anti Corruption Bureau, be directed to file final report before the competent court in respect of case No. 302/2000 under Sections 7, 13(1)(d)(2) of the Prevention of Corruption Act, 1988 registered in the Anti-Corruption Department against the petitioner and the respondents Nos. 2 to 4 be further directed not to write letters pressurizing the respondent No. 5 District Education Officer (Elementary), Banswara to accord sanction for prosecution of the petitioner.

The petitioner was LDC in the Education Department and on 14.7.2000, a trap was laid by the Anti Corruption Bureau on the complaint of one Shankerlal Rawat that the petitioner had demanded Rs. 50/- each from ten teachers for passing their arrear bills and in the trap, Rs. 500/- were recovered from an almirah and upon this, FIR being No. 302/2000 under Sections 7, 13(1)(d)(2) of the Act of 1988 was registered in the Anti-Corruption Department against the petitioner.

According to the petitioner, as per section 19 of the Act of 1988, prior sanction was necessary for prosecution of the petitioner and the District Education Officer (Elementary) refused to give sanction twice vide orders dated 6.2.2001 and 25.4.2001 and he was also exonerated of all the charges framed against him on the complaint of one Shankerlal. The petitioner contended that inspite of refusal to give sanction twice, the respondents Nos. 2 to 4 have not filed Final Report in this case and on the contrary pressurizing the authorities of the Education Department to accord sanction for prosecution of the petitioner

The High Court of Rajasthan observed that the question for consideration was whether in the facts and circumstances mentioned above, relief as sought for by the petitioner can be granted by this Court under Article 226 of the Constitution of India or not.

The Court held that sanction cannot be refused on the ground of exoneration in departmental enquiry as the Supreme Court of India in the case of 'Superintendent of Police (C.B.I.) vs. Deepak Chowdhary' observed that exoneration in a departmental enquiry is no ground to refuse sanction. The Rajasthan High Court also quoted the case of Mansukhlal Vithaldas Chauhan vs. State of Gujarat wherein Hon'ble Supreme Court observed that the High Court cannot order the sanctioning authority to accord sanction for prosecution under Section 19(1) of the Act of 1988.

The High Court of Rajasthan observed that if the High Court cannot insist the sanctioning authority to grant sanction meaning thereby the High Court cannot issue directions to the concerned Department to submit Final Report and therefore, the prayer of the petitioner that the respondents Nos. 2 to 4 be directed to submit FR in the case No. 302/2000 cannot be accepted. The Court held that the petitioner was not entitled to the reliefs sought for under Article 226 of the Constitution of India and dismissed the writ petition.

(556)

- (A) P.C. Act, 1988 – Secs. 7, 13(1)(d)
- (B) P.C. Act, 1988 – Sec. 20
- (C) Presumption

State of A.P. vs. R.Jeevaratnam 2004 Supreme Court Cases (6) 488

Officer of Port Trust demanded and accepted bribe – received money in the specified hotel room - caught red handed with marked money of Rs.10000/- in a brief case in his possession. The Respondent was therefore prosecuted under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. The Special Judge convicted the accused.

On appeal, the High Court concluded that as the file was already cleared the question of doing favour or not doing favour did not arise and that the Respondent's version that the money must have been put into his briefcase when he had gone to the toilet was probable. The High Court concluded that the evidence of P.Ws. 1 and 2 did not establish that any demand was made and acquitted the Respondent even of the offence under Section 7 of the Prevention of Corruption Act.

The Supreme Court observed that it had earlier analyzed the law on subject and held that the term “shall be presumed” in Section 20(1) showed that Courts had to compulsorily draw a presumption. It held that the only condition for drawing the presumption is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. It is held that the condition need not be satisfied only through direct evidence. It is held that proof did not mean direct proof as that would be impossible but the proof must be one which would induce a reasonable man to come to a particular conclusion. It was held that once it is proved that gratification has been accepted the presumption automatically arose.

In the instant case, the Supreme Court held that his explanation that he had gone to the hotel to book a table for the night of 31st December is belied by the fact that there is no evidence that any table was booked by the Respondent. Thus it was proved that an offence under Section 7 of the Prevention of Corruption Act had been committed.

The Supreme Court held that the High Court was entirely wrong in coming to a conclusion that there was no proof of demand. The evidence of P.Ws. 1 and 2, to the effect, that when the Respondent came into the room he was told that P.W.2 was the Group Finance Manager, who had brought Rs. 10,000/- as demanded and the further evidence that the Respondent assured that the file would be cleared clearly establish that there was a demand and receipt of the money was as a bribe. The Supreme Court observed that this evidence has not been shaken in cross- examination, and held that the offence under Section 13(1)(d) read with Section 13(2) had also been made out.

The Supreme Court set aside the Judgment of the High Court and convicted the Respondent under Section 7 and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

(557)

P.C. Act, 1988 – Sec. 13(1)(d)

State of A.P. vs. K. Punardana Rao on 3 September, 2004 in Supreme Court of India

This is an appeal preferred by the State of Andhra Pradesh against the acquittal of the respondent by High Court of Andhra Pradesh who was convicted by the Special Judge for SPE and ACB cases, Nellore, for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The respondent was working as a Commercial Tax Officer at Naidupet. The de-facto complainant Badri Audhiseshaiyah was the proprietor of two firms.

On 9.8.1992, the complainant went to the house of the respondent and gave him Rs.20,000/- Trap party immediately intervened and Rs. 20,000/- was recovered from the possession of the respondent Officer. On being subjected to chemical test, the fingers of the respondent were found positive and the pyjama allegedly worn by the respondent Officer was also found to be positive on chemical test. The complainant was examined as PW 1.

The Supreme Court held that the High Court in appeal rejected the evidence of PW 1 and held that it was suspicious. The defence of the respondent was that on 8.8.1992, he was not at Nellore and that he had gone to Chirala and attended the Panchayat at the instance of DW 3 Major D. Samuel in Chirala. The respondent also contended that on chemical test his fingers were found to be positive only as he had shaken hands with PW-1 and his pyjama pockets were also contaminated with chemical substance as a mediator of the trap party had searched his pockets for the tainted money.

The Supreme Court held that the explanation of the respondent that he shook hands with PW-1 and thus his hands got contaminated with chemical substance, is highly improbable.

The Supreme Court further held that the alibi set up by the respondent that on 8.8.1992, he was not in Naidupet, also is not free from suspicion as he stated that he had produced two tickets with certain specified number and how he could have remembered the number of tickets creates some doubt. The Supreme Court further held that there is nothing on record to show that the respondent had availed leave on 7.8.1992, the day on which he is alleged to have left Naidupet.

The Supreme Court observed that the High Court committed a serious error by rejecting the evidence of PW-1 and the evidence of the accompanying witnesses of the trap party. The Supreme Court held that the High Court failed to appreciate the evidence in the correct perspective and minor flaws in the prosecution evidence were given undue importance and the impeccable evidence which unmistakably proved the guilt of the respondent was ignored. The Supreme Court held that the acquittal of the accused was clearly erroneous and the same is reversed.

(558)

- (A) P.C. Act, 1988 — Sec. 19
- (B) Sanction of prosecution – under P.C. Act

*State by Police Inspector vs. Sri T. Venkatesh Murthy 2004
AIR SC 5117 (15)*

It is held by the Supreme Court that in view of Sub Section (3) of Sec. 19 of Prevention of Corruption Act, 1988 mere any omission, error or irregularity

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in the matter of according sanction would not affect validity of proceedings unless Court recorded satisfaction that it resulted in failure of justice and Sub Section (4) postulates that in determining under Sub Section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. The combined reading of Sub Section (3) & (4) make it clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under Sub Section (1) unless in the opinion of that Court failure of justice has in fact been occasioned thereby. Clause (b) of sub Section (3) is also relevant. It shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. The “failure of justice” would appear sometimes as etymological chameleon. The criminal Court particularly superior court should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage. It would also be relevant of Sec. 462 and 465 of Cr.P.C which provides about Proceedings in wrong place and Finding or sentence when reversible by reason of error, omission or irregularity.

(559)

Sanction of prosecution — under P.C. Act

Sankar Bhai, Lalith Bhai Rot vs. State of Gujarat 2006 SCC Crl.346

Section 19 of P.C.Act – in the absence of any thing to show that any defect or irregularity in sanction caused failure of Justice – plea relating to sanction is without substance.

(560)

Tender of pardon

***Dipesh Chandak vs. Union of India, 2004 (7) Supreme 173
= 2005 (1) ALT 4.1 (DN SC) in Supreme Court of India***

Grant of pardon – Appellant-accused in Fodder Scam Case was accused of misappropriation of funds and of withdrawals from the State Exchequer by issuing fake bills for supplies never made to the Animal Husbandry Department. He was granted pardon by Special Judge, CBI on condition of his making a full

and complete disclosure. On the basis of the statement made by him giving full and complete disclosure, the Income Tax Department sought prosecution of appellant under Sections 277 and 278 of the Income Tax Act, for having filed false returns of income tax.

The Appellant filed a Petition under Section 482 of the Criminal Procedure Code for quashing this complaint. By the impugned Judgment that Petition has been dismissed, inter alia, on the ground that as yet the terms of the pardon have not been fulfilled. It is held that till full evidence is given by the Appellant and the trial of all cases is concluded he continues to be an accused and, therefore, cannot claim immunity from prosecution.

The Appellant filed Appeal before the Supreme Court of India. The learned counsel for the petitioner argued that the pardon must necessarily mean that no prosecution can be based in respect of the same offence. He submitted that the offences for which the Appellant was being tried were the same in respect of which he was now being sought to be prosecuted under Sections 277 and 278 of the Income Tax Act. He submitted that the High Court was thus wrong in not quashing the prosecution.

The Supreme Court of India held that it is clear that to get benefit of the pardon the Appellant has to make a full and frank disclosure regarding the offences of misappropriation. If he does not make a full and complete disclosure, the pardon may be cancelled. If he makes a full and complete disclosure he faces the prospect of being convicted in the prosecution under Sections 277 and 278 of the Income Tax Act. Article 20(2) of the Constitution of India enjoins that no person can be compelled to be a witness against himself. To continue with the prosecution would thus amount to forcing the Appellant to give evidence against himself or to risk pardon being cancelled as he cannot make a full and complete disclosure for fear of being convicted in the other case. Thus, even though the pardon may not extend to these offences, in our view, this is a fit case where the Government should consider not prosecuting the Appellant under these Sections. To insist on so prosecuting may result in valuable evidence being lost in the fodder scam cases.

The Supreme Court therefore, directed that the prosecution under Sections 277 and 278 of the Income Tax Act will stand stayed till trial of the cases in which pardon is granted is over. The Court held that if the Appellant makes a full and complete disclosure, then, the prosecution under Sections 277 and 278 should not be allowed to proceed and granted to the Appellant liberty to apply for quashing that prosecution at that stage.

(561)

Inquiry Officer — conducting preliminary enquiry

That the person who holds the preliminary enquiry cannot hold the regular enquiry as it would be violation of principles of natural justice

**Kerala State Handloom vs. Shri.T.R.Raveendran
on 27 September, 2004 Kerala High Court**

The petitioner contended that the Labour Court failed to grant opportunity to the petitioner to adduce fresh evidence on the ground that no such opportunity was sought for in the written statement itself has resulted in miscarriage of justice. According to the learned counsel, the reasons stated by the Labour Court for setting aside the enquiry that the officer who conducted the enquiry was also a member of the team which conducted the preliminary enquiry to find out whether there is a *prima facie* case for proceeding against the worker is not a ground for setting aside the enquiry conducted by him. It is pointed out that from the mere fact that an officer who conducted preliminary investigation and gave report that the workman was *prima facie* guilty does not become a prosecutor and he is not debarred from holding the enquiry nor it is indicative of any bias against the workman concerned. It is further contended that the Labour Court has not considered the validity of the enquiry independently on its merits

It is contended before the Tribunal that the person who holds the preliminary enquiry cannot hold the regular enquiry as it would be violation of principles of natural justice. It is pointed out that preliminary enquiry is a fact finding enquiry in which facts are gathered and therefore, the person who discovers those facts cannot be expected to act in a detached and unbiased manner in the regular enquiry. A regular enquiry is a quasi-judicial proceeding while a preliminary enquiry is not. In the said context, it is therefore essential that the person holding the regular enquiry should be totally unbiased. It is submitted that a person holding the preliminary enquiry is bound to have been influenced during the course of factual investigation which he has made in the preliminary enquiry.

The Labour Court considered the legality of the domestic enquiry as a preliminary issue. The Labour Court found that the enquiry conducted by the enquiry officer is vitiated and held that the enquiry report is liable to be set aside. A final award was passed on 25.10.2004. The Labour Court answered the reference holding that the dismissal of the workman from the service of the petitioner is unsustainable. A direction is issued to reinstate the workman within one month and held that the workman will be entitled to 50% of the back wages and other attendant benefits.

The Labour Court examined the contentions raised by the parties and appreciated the evidence on record. The Labour Court on facts held that a perusal of Exts.M1 & M2 shows that Adv.Reghunath, who was the enquiry officer, was very much involved in the preliminary enquiry also. The learned Judge relied on Ext.M7 letter dated 27.12.1988 issued by the Regional Manager to the Managing Director. The learned Judge also noticed that the two witnesses examined as MW1 & MW2 are also seen to have admitted that their statements was recorded by the present enquiry officer and that the statement of allegations appended to the charge states that it is based on a preliminary enquiry report that the charge memo is issued. Therefore, the Labour Court found that in such a case, the worker expressed an apprehension that the enquiry officer was approaching the issue with a closed mind and no reasonable and fair opportunity was given to him to defend the charge appear to be justified. The Labour Court also observed that the enquiry officer is also not cited and examined by the management to swear that he had conducted the enquiry in an impartial and fair manner and that there is nothing in evidence to deny the allegation of the worker about the involvement of the worker against the pre-charges stage. The Labour Court also observed that the management after the preliminary order, did not appear and no request was made to lead fresh evidence for the charges. The court observed that it is for the management to seek an opportunity; either at the initial stage or during the pendency of the proceedings to substantiate the charges and the Labour Court cannot suo motu call upon the management to substantiate the charges afresh.

Considering the charges found to be proved, the dismissal of the workman from the service of the Corporation is unjustified. The question raised by the parties and issues involved are considered in the light of the contentions and evidence on record. This Court finds that the petitioner has not made out any sustainable grounds for interference in this proceedings under Article 226 of the Constitution of India.

The writ petition is therefore, dismissed.

(562)

Trap — phenolphthalein solution, sending to Chemical Examiner

State of West Bengal vs. Kailash Chandra Pandey, [AIR 2005 SC 119]

In this case the currency notes and part of the accused were not sent to F.S.L. for chemical examination. Court observed that “Just because the notes

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were not sent for F.S.L. examination, it cannot be a ground to disbelieve the prosecution story. Just because the accused did not append the signature on the seizure memo and non-seizure of the pyjama is not fatal to the prosecution.

The Supreme Court further observed that the Appellate Court should be slow in re-appreciating the evidence. The Supreme Court time and again has emphasized that since the trial court has the occasion to see the demeanour of the witnesses and it is in a better position to appreciate it, the Appellate Court should not lightly brush aside the appreciation done by the trial court except for cogent reasons. In this connection, a reference was to be made to the decision of this Court in *State of Punjab v. Hari Singh*, AIR 1974 SC 1168: 1974 Cr. LJ 822.

(563)

Trap - appreciation of evidence

State of A.P vs. S. Janardhana Rao on 17 November, 2004

The prosecution case, in short, was that S.Janardhana Rao (A-1) was the member of Andhra Pradesh Higher Judicial Service and posted as IIIrd Metropolitan Sessions Judge, Hyderabad, at the relevant time A-2 was a police constable attached to the court of A-1. Before A-1, Sessions Case No. 186 of 1989 was pending trial in which besides others, Sant Esher Singh (PW-1) and Rajinder Singh (PW-2) were accused. As the trial of the said case was at its final stage, A-1 is alleged to have sent message through PW-21 (A-2 turned to be an approver, pardon was granted to him and he was examined as PW-21) to PWs 1 and 2 demanding a sum of Rs. 6 lacs as illegal gratification for recording their acquittal in the said case, but ultimately the amount was reduced by A-1 to Rs. 3 lacs.

PW-1 met the learned Chief Justice of Andhra Pradesh High Court and permission was granted by the High Court to conduct trap and register case. Thereupon, officials of ACB organized a trap and they went to the court of A-1 on 4th September, 1996 which was a date fixed in the case where A-1 pronounced in open court the code word that "all the matters will be adjourned to 6th September, 1996" which could be taken as confirmation that PW-21 approached PWs 1 and 2 on his behalf and the work would be done. Thereafter, on the same day PWs 1 and 21 along with the trap party went to the house of A-1 at Hanumakonda in which his wife and son were residing and handed over the money in a plastic bag (Rs. 3 lacs). Thereafter, PWs 1 and 21 came out from the house and gave pre-arranged signal to the members of the trap party consisting

of G.Bal Reddy (PW-22), PW-23 and the mediator (PW.3) who entered the house, met wife of A-1 and asked her about the receipt of the sum of Rs. 3 lacs, which she denied. Thereafter, money was found in the flush tank of one of the bathrooms containing sum of Rs. 3 lacs. In the meantime, according to pre-arranged plan, the officials of ACB, after making a call that money was handed over to A-1's wife, entered the flat of A-1 in Secunderabad and found that A-1 was entertaining PW-1.

Stating the aforesaid facts, a first information report was lodged for prosecution of A-1, and others. Upon conclusion of trial, the learned Special Judge convicted A-1, whereupon A-1 filed petition in High Court of A.P challenging his conviction. The appeal filed by A-1 was allowed and he was acquitted of all the charges. Thereupon State of A.P. filed the present appeal before the Supreme Court of India.

The Supreme Court held that the statements of PWs have been relied upon by the trial court to prove the case against the respondent upon threadbare discussion of their evidence and the High Court was not justified in disbelieving the same on account of minor contradictions.

The Court observed that the judgment of High Court acquitting him suffers from the vice of perversity as it has refused to place reliance upon the evidence of witnesses merely on the basis of certain minor contradictions in the evidence of witnesses, though, they have supported the prosecution case on all material particulars and set aside the judgment rendered by the High Court so far the same relates to A-1, and restored the order of conviction of A-1 recorded by the trial court.

(564)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)
- (B) Disproportionate assets — income from known sources

*Hindustan Petroleum Corporation Ltd. and others
appellant vs. Sarvesh Berry 2005 SCC (Crl) 1605*

Prevention of Corruption Act, 1988 – Sec. 13(1)(e) – known sources of income – meaning – expression relates to sources which are within the knowledge of authorities and not within the knowledge of accused – onus is on accused to prove that the assets found were not disproportionate to the known sources of income.

(565)

(A) Constitution of India — Art. 311(2)

(B) Inquiry report — furnishing copy

*Non-supply of copy of enquiry report to delinquent employee
— he must show how prejudice was caused to him by failure
to supply.*

***Divisional Manager, Plantation ... vs. Munnu Barrick and Ors.
on 17 December, 2004 Supreme court of India***

Respondent Nos. 1 to 8 were workmen working with the Andaman Nicobar Islands Forest and Plantation Development Corporation (Appellant). The conditions of service of the workmen are governed by the Rules framed by the Appellant known as IES Rules. On an allegation of commission of misconduct of giving less outturn and instigating other workmen to slow down work and give less daily outturn, they were placed under suspension and thereafter chargesheets were served on the workmen.

The workmen despite notice did not participate in the domestic enquiry whereupon an ex-parte enquiry was conducted. The disciplinary authority by an order dated 12.6.1995 directed removal of the workmen from services. Along with the orders of removal, a copy of the enquiry report was also enclosed.

An industrial dispute was raised by the workmen culminating in a reference made by the Administrator, Andaman and Nicobar Islands to the Labour Court, Andaman and Nicobar Islands by a notification dated 13.3.1997. The learned Presiding Officer, Labour Court in his award dated 10.11.1998, held that the orders of removal passed against the workmen were bad in law and non compliance with the mandate of Article 311(2) of the Constitution as a copy of the enquiry report was not served upon the workmen with a second show-cause notice. The Presiding Officer, Labour Court also held that principle of natural justice, Audi Alterum Partem was clearly violated and contravened as the delinquent workmen were denied of their right to receive the copy of inquiry report as well as the right of hearing before final order imposing major penalty and consequently directed reinstatement of workmen in service with all back wages and service benefits attached thereto.

The said order was questioned by the Appellant in a writ petition filed before the Calcutta High Court. Before a learned Single Judge of the said court,

a contention was raised by the Appellant herein that it should be permitted to proceed with the disciplinary proceeding against the Respondent Workmen from the stage of service of the report of the Inquiry Officer on them. The said contention was rejected by the learned Single Judge by an order dated 20.12.2000 on the premise that the Appellant had not filed any application for adduction of additional evidence before the Labour Court. A Letters Patent Appeal there against was preferred before the Division Bench which was barred by limitation. A review application filed before the said court also came to be dismissed by an order dated 10.10.2001. Hence, an appeal was filed before the Supreme Court of India.

The Supreme Court held that in law, the concerned workmen do not enjoy any status as they are not the employees of Union of India and furthermore, their conditions of service, were not governed by any rule made under Article 309 of the Constitution and their services were also not protected under Article 311 thereof. The Supreme Court observed that the workmen did not avail the opportunity of departmental appeal against an order of the Disciplinary Authority and in such an appeal they could have shown as to how and in what manner and to what extent they were prejudiced by non-supply of a copy of the enquiry report.

The Supreme Court held that in Managing Director, ECIL, Hyderabad, etc. etc. v. B. Karunakar, etc. etc., it had clearly held that the employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report.

Referring to a large number of decisions, the Supreme Court opined that the Presiding Officer, Labour Court, committed a manifest error in invoking Article 311 of the Constitution of India and that the High Court should have given an opportunity to complete the disciplinary proceeding from the stage of supplying a copy of the enquiry report to the workmen so as to enable them to raise a contention as regard correctness of the findings of the Inquiry Officer contained in the report as also on the quantum of punishment proposed to be imposed by the Appellant while issuing a second show cause notice.

The Supreme Court held that ordinarily, it would have remitted the matter back to the Division Bench for consideration of the matter on merit but it was satisfied that the learned Single Judge of the High Court as well as the Presiding Officer, Labour Court have seriously erred in passing the impugned award and judgments. Therefore, the Supreme Court, with a view to do complete justice to the parties set aside all the impugned judgments and remitted the matter back to the Presiding Officer, Labour Court for consideration of the matter afresh.

(566)

Termination — of contractual service

Termination of contractual service by notice does not attract provisions of Art. 311(2) of Constitution as there is neither a dismissal nor a removal from service, nor is it a reduction in rank.

***Kamlapati Tripathi (vs) District Basic Education Officer,
2005 3 ESC 1986; 2005 0 Supreme (All) 329***

The brief facts of the case are that the petitioner was given appointment by the opposite party No. 4 i.e. The Adhyaksh Shiksha Samiti Gram Panchayat, Naurani, Rampur, District Ambedkar Nagar vide order dated 4.8.1999. In compliance of the order dated 4.8.1999, the petitioner had joined at Prathmik Vidyalaya, Fidai Ganeshpur and started working. Since the petitioner was not paid his salary, he moved an application dated 31.12.1999 to the opposite party No.4. Since the opposite party No.4 did not take any steps on the aforesaid application, the petitioner moved an application dated 31.1.2000 before opposite party No.1 i.e. District Basic Education Officer. On the aforesaid application, the opposite party No.1 wrote a letter dated 21.2.2000 to the concerned School Head Master, indicating therein that the appointment of the petitioner is irregular. On receipt of the aforesaid letter, which was received by the Head Master on 24.2.2000, the opposite party No.2 passed an order, which appears to be back dated wherein it has been mentioned that since the appointment is irregular and, as such, the petitioner may be restrained from coming to the College.

Being aggrieved against the aforesaid action, the petitioner has preferred the instant writ petition sought inter-alia the following reliefs:

"(a) That a writ, order or direction in the nature of certiorari may be issued quashing the order dated 19.8.1999 contained in Annexure-6 issued by the opposite party No.2. (b) That a writ, order or direction in the nature of mandamus may be issued commanding the opposite parties to allow the petitioner to continue in service and to get salary regularly without any effect of the order Annexure-6. (c) That a writ, order or direction in the nature of mandamus may be issued commanding the opposite parties to allow the petitioner his salary from 4.8.1999 till date.

During the course of his argument, learned Standing Counsel has produced the copy of the Scheme dated 26.5.1999 and the G.O. dated 1.7.2000

for perusal of the Court. She contended that the writ petition is not maintainable as the appointment on the post of Shiksha Mitra is contractual as per provisions stated hereinabove. She further submits that Shiksha Mitra is paid honorarium under the contract for service but not salary by the Government because they are not a Government servant and is not amenable to protection of Article 311(2) of the Constitution of India.

The Court held that in the very first paragraph of the Government Order dated 1.7.2000, it has been clarified by the State Government that 'Shiksha Mitra Programme is not employment Programme' meaning thereby that the programme is meant for imparting proper education to the village students and Shiksha Mitra cannot treat himself/herself to be a Government Employee. Moreover, Shiksha Mitra is not holder of a civil post and is not a Government servant but is engaged on contract basis service for a specific period of only one-year, which ends on 31st May next year.

The Court also quoted the Hon'ble Apex Court's judgement in *Satish Chandra Anand v. Union of India*, wherein the petitioner, who had been engaged on the basis of a special contract for a certain term, was discharged from service after notice filed petition against the order. Hon'ble Apex Court held that Article 311 had no application because there was neither a dismissal nor a removal from service, nor a reduction in rank and as Article 311 had no application, no question of discrimination arose.

The Court held that the appointment of the petitioner was for a fixed period which expires as per provisions of the Government Order which came to an end on 31st May every year and he has been paid honorarium for the period he had worked and, as such, in view of the provisions of law laid down by Hon'ble Apex Court as well as other cases passed by this Court, the petitioner can only agitate his rights under the contract which had been denied to him and to pursue in the ordinary Courts of the land such remedies for a breach and further held that the remedy of a writ is misconceived.

(567)

(A) P.C. Act, 1988 — Sec. 19

(B) Sanction of prosecution — under P.C. Act

C.S.Krishnamurthy vs. State of Karnataka A.I.R. 2005 SC 2790

This appeal is directed against an order passed by learned Single Judge of the High Court of Karnataka at Bangalore in Criminal Appeal No. 608 of 1998 whereby learned Single Judge by his order dated June 10, 2004 has allowed the

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appeal of State and set aside the order of the XXI Additional Sessions Judge and Special Judge for CBI at Bangalore City whereby he acquitted the appellant accused under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act 1947 (similar to Section 13(2) read with 13 (1)(e) of PC Act, 1988) on the ground of sanction being invalid in CC No. 131/1990 dated 20th March, 1998.

Learned Special Judge acquitted the accused and held that there was no proper sanction. Learned Special Judge held that the prosecution has failed to prove the valid Sanction and therefore, prosecution is without jurisdiction and he acquitted the accused of all charges. Aggrieved against the order, an appeal was presented by the CBI to the High Court. Learned Single Judge of the High Court of Karnataka, after examining the evidence came to the conclusion that the sanction accorded by the prosecution is valid and set aside the order of the learned Sessions Judge and remitted the matter back to the Special Judge, CBI, Bangalore to register the case and to decide the matter afresh after hearing both the parties. Aggrieved the appellant filed appeal in the Supreme Court.

The Supreme Court held that the sanction order itself discloses the facts that the incumbent is being prosecuted under the provisions of the Prevention of Corruption Act for accumulating moveable and immovable assets worth Rs.4,01,454.58 paise which is disproportionate to his known source of income and he has failed to give satisfactory account for the same. In the present case, facts mentioned in sanction order are eloquent for constituting *prima facie* offence under Section 5(2) read with Section 5(1)(e) (similar to Section 13(2) read with 13 (1)(e) of PC Act, 1988) of the PC Act, 1947. Therefore, there is due application of mind by sanctioning authority and the sanction is valid.

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Inquiry report — disciplinary authority disagreeing with findings

National Fertilizers Ltd. vs. P.K. Khanna, 2005 (6) Supreme Court 230: (2005) 7 SCC 597

The Supreme Court observed that the two issues which arise for determination in this appeal are;

- 1) Whether it is necessary for the Disciplinary Authority to give reasons for agreeing with the Enquiry Officer's report when the delinquent officer has submitted a representation challenging the report of the Enquiry Officer?.

2) Whether the Disciplinary Authority is bound to issue notice to the delinquent officer before passing the order of punishment?

On the basis of the Enquiry Officer's report, on 18th June, 1991 the respondent was removed from service. The respondent filed a Civil Suit challenging the order of removal.

In compliance with the order of the Civil Court, a copy of the Enquiry Officer's report was made available to the respondent, and he submitted his representation to the Disciplinary Authority. The DA imposed the penalty of removal from service. The respondent's appeal to the Chairman and Managing Director was rejected.

The respondent challenged the order of removal under Article 226 before the High Court of Punjab and Haryana. The Division Bench was of the view that after supply of the Enquiry Officer's report a delinquent employee, if he opts to submit his reply/objections against the finding of the Enquiry Officer, it is imperative for the Disciplinary Authority to deal with the objections giving his own reasons in support of his conclusion. According to the High Court, failure to give reasons dealing with the respondent's objections to the Enquiry Officer's report amounted to violation of principles of natural justice. This defect in the Disciplinary Authority's order was also true of the Appellate Authority's order. The orders of the Disciplinary Authority and the Appellate Authority were accordingly set aside with liberty granted to the Disciplinary Authority to pass fresh orders keeping in view the observations made by the High Court.

The Supreme Court did not agree with the reasoning or with the conclusion reached by the High Court and held that the High Court misapplied the law. The various decisions referred to in the impugned judgment make it clear that the Disciplinary Authority is required to give reasons only when Disciplinary Authority does not agree with finding of the Enquiry Officer. In this case the Disciplinary Authority had concurred with the findings of the Enquiry Officer wholly. The Supreme Court quoted the case of *Ram Kumar v. State of Haryana 1997 (Suppl.) SC 582*, wherein it dismissed the challenge to the order of punishment in the following words:-

"In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also

has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order".

The Supreme Court in the present case adopted the above view and held that the position is further clarified by Rule 33 of the Employees (Conduct Discipline & Appeal) Rules. It reads as follows:-

1. The Disciplinary Authority, if it is not itself the Enquiring Authority may, for reasons to be recorded by it in writing remit the case to the Enquiry Authority for fresh or further Enquiry and report and the Enquiring Authority shall there upon proceed to hold the further Enquiry according to the provisions of Rule 32 as far as may be.
2. The Disciplinary Authority shall, if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
3. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule-29 should be imposed on the employee shall, notwithstanding any thing contained in Rule 31, make an order imposing such penalty.
4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

The Court held that it is apparent from Sub-rule (2) that the Disciplinary Authority is not required to record its reasons if it concurs with the Enquiry Officer's findings in contradiction with the situation in which the Disciplinary

Authority disagrees with the findings of the Disciplinary Authority. Only in the latter case does Sub-rule (2) expressly mandate that the Disciplinary Authority shall, if it disagrees with the findings of the Enquiry Officer record its reasons for such disagreement as well as its own findings on such charges.

The Supreme Court held that, it would be open to the respondent to raise all such grounds before the Appellate Authority, who should deal with the same.

The Supreme Court observed that the appropriate order in the circumstances of the case will be to remand the matter back to the Appellate Authority to reconsider the respondent's plea that the Disciplinary Authority had not appreciated the respondent's objection correctly and disposed of the appeal by modifying the order of the High Court setting aside the decision of the appellate authority so that the matter may be remanded back to the Appellate Authority for reconsideration of the objections raised by the respondent to the Enquiry Report.

(569)

Common proceedings

Disciplinary proceedings against Category III officers conducted by Managing Director as per Appendix-11 — Senior Regional Manager was the Disciplinary Authority. Right of appeal against the order of Managing Director also availed by making appeal to the Chairman — Held that there is no bar on the authority higher than the Disciplinary Authority to conduct the disciplinary proceedings — Held further that no right of petitioner has been infringed.

Ved Prakash and O.S. Gautam vs. Food Corporation Of India, 2005 Supreme (Del) 869

The petitioners herein-Mr.Ved Prakash and Mr. O.S.Gautam are the employees of the Food Corporation of india (hereinafter referred to as respondents, for short) and were holding substantive posts of Technical assistant Grade II, at Kotkapura in Faridkot District, Punjab, during the period 1996-97 and thereafter at FSD Rampuraphul, Bhatinda, Punjab.

The Managing Director of the respondents vide memorandum dated 17th March, 1997 initiated common departmental proceedings against the two petitioners along with twenty one other employees. This was followed by another memorandum dated 8th April, 1997 issued by the managing Director of the

respondent, with allegations of misconduct against the petitioners and others for accepting sub-standard rice at large scale at various centres in Faridkot district, Punjab by recording fictitious analysis results at the time of acceptance of the stocks. The said misconduct was detected upon surprise inspection conducted by the headquarters squad.

The petitioners objected to the orders passed by the Managing Director of the respondent, inter alia, stating that they were category III officials and accordingly the Senior Regional Manager was their disciplinary Authority and the Zonal Manager was their appellate Authority, as per Appendix 11 of the Food corporation of India Staff Regulations, 1971 (hereinafter referred to as 'regulations, for short). It was contended that the Managing Director of Respondent No.1 has encroached upon the jurisdiction and power of disciplinary Authority, thereby depriving the petitioners of the normal channel of appeal to the Appellate authority.

The High Court of Delhi held that it does not think that there is any merit in the contention raised by the petitioners that there could not be a common departmental proceedings. Clause 62 of the Regulations permits and allows holding of common disciplinary proceedings. It is also not difficult to comprehend the logic and the object officers may be involved in a matter and therefore it may be desirable and necessary to have common departmental proceedings. Common disciplinary proceedings will not only save time, effort and energy but it will also ensure just and fair decision, so that the guilty officer can be identified and officers are not able to escape by throwing blame on others. It may also be noted that it has not been argued before us that conditions specified in Regulation 62 have not been complied with.

The High Court also held that regulation 62 specifically permits and allows common departmental proceedings and a higher Authority to act as a Disciplinary Authority, when common proceedings are initiated against several officers. Validity of regulation 62 has not been challenged before us and therefore, the action of the respondent in initiating common proceedings and a higher authority acting as a disciplinary Authority for all the delinquent officers against whom proceedings have been initiated cannot therefore, be faulted.

(570)

- (A) Constitution of India — Art. 311**
- (B) Public Sector Undertakings — protection of employees**

That Article 311 was not applicable to person, who was employed by the Corporation as he neither belonged to

Civil Service of the Union nor held a civil post under the Union.

**Ajit Kumar Nag vs. G.M. (P.J.) Indian Oil Co. Ltd. Haldia & others,
19th September, 2005 Appeal (Civil) 4544 of 2005
(IN Supreme Court of India)**

The Supreme Court held that an employee of a Corporation cannot be said to have held a ‘civil post’ and, therefore, not entitled to protection of Article 311. According to the Court, the Corporation could not be said to be a ‘department of the Government’ and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the appellant was not entitled to invoke Article 311.

(571)

- (A) P.C.Act, 1988 – Sec.19**
- (B) Cr.P.C. — Sec. 300**

Bar of retrial under Section 300, Cr. P.C. Applicable only when conviction or acquittal recorded by Court having requisite jurisdiction to take cognizance and try accused.

- (C) Sanction of prosecution — where invalid, subsequent trial with proper sanction, not barred**

Where accused is acquitted on the ground that the prosecution was without proper sanction, subsequent trial after obtaining proper sanction, not barred.

State of Karnataka through CBI vs. C.Nagarajswamy AIR 2005 SC 4308

Prosecution for Corruption. Prior sanction for taking cognizance is essential under Section 19 of P.C. Act. Whether when accused discharged after full-fledged trial for want of sanction, bar of retrial under Section 300, Cr.P.C. after valid sanction attracted?. Held, “no”. Court has no jurisdiction to try accused for want of sanction even if judgment of conviction or acquittal was recorded. It would not make any distinction for purpose of invoking Section 300, Cr.P.C. It would have been rendered illegal and without jurisdiction. Retrial not to be directed where trial conducted by Court of Competent Jurisdiction ending in conviction or acquittal.

DECISIONS (572) & (573)

The Supreme Court also held that the Trial Court was not bound to record judgement of conviction or acquittal when the prosecution was without valid sanction.

Even if the same was recorded it could be said to have been rendered illegal and without jurisdiction and that subsequent trial with proper sanction is not barred.

(572)

Sanction of prosecution — under P.C. Act

State through Inspector of Police ACB vs. K.Narasimhachari
AIR 2006 SC 628

Sanction order was issued in the name of the Governor and was authenticated by the Secretary to the Government. Signature of the secretary was proved through PW.6 who was working in the General administration Department at that time. It is a public document u/s.74 of Indian Evidence Act and is admissible in evidence.

(573)

- (A) P.C.Act, 1988 – Sec.19**
- (B) Documents — certified copy**

Thursday vs. By Adv. Sri.P.Chandrasekhar on 30 December, 2005

Ext.P99 is the copy of the prosecution sanction granted by the Chief Engineer of the Kerala State Electricity Board. It was submitted by the learned Public Prosecutor that the Crl.A.No. 168 of 2006 original sanction was produced in another case against the accused. It is not known or explained how the original sanction happened to be produced in another case. Even the Ext.P99 copy shows that the materials on the basis of which the sanction was granted by the Chief Engineer are in fact the materials relating to this case. If so, it is not known how or why the original sanction was produced in another case. A reading of the sanction shows that the allegations therein, and also the matters regarding which sanction was granted, are exactly the allegations and matters in this case. In such a situation, the original sanction should have been produced by the prosecution in this case. The VACB did not make any effort to take back the prosecution sanction and produce it here, or even to obtain a certified copy of the prosecution sanction from the court. Ext.P99 is only a true copy, and not a certified copy. The person who certified it as true copy was not examined.

Ext.P99 document was only marked through the Investigating Officer. In Savithri vs. Crl.A.No. 168 of 2006 Deputy Superintendent, Vigilance and Anti Corruption Bureau (2015 (3) KLT 909), this Court held that the Investigating Officer is not the right and the competent person to prove a prosecution sanction granted under Section 19 of the Prevention of Corruption Act. In so many decisions, this Court has settled that the prosecution sanction must be proved by the person who granted the sanction or issued the sanction order, except in cases where the sanction can claim some sanctity or immunity. In this case, the prosecution did not care to examine the Chief Engineer who granted the sanction, or even the officer who certified Ext.P99 as true copy. In a case where a prosecution cannot be sustained in the absence of a proper sanction, the prosecution must prove the original sanction itself, and to prove it in evidence, the person who granted the sanction must be examined. This is the trend of all the decisions on the point. But in this case, there is no original prosecution sanction. What is produced as Ext.P99 is not even a Crl.A.No. 168 of 2006 certified copy, and even the person who granted the sanction was not examined to prove the copy. In such a situation, it will have to be found that there is no proper and valid prosecution sanction in this case. On this ground itself, the accused is entitled for acquittal as regards the charge under the PC Act, in view of the bar under Section 19 of the Prevention of Corruption Act.

(574)

Common proceedings

Where two or more officer employees are concerned in a case, the authority competent to impose a major penalty on all such officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings.

Arun Kumar Alva vs. Vijaya Bank, 2006 3 AIR (Kar)(R) 94; 2006 0 Supreme (Kar) 229

In the year 1971, the petitioner was appointed as a Clerk in the establishment of the respondent-Bank. From time to time the petitioner was promoted and in the year 1993, he was promoted to Middle Management Grade Scale III. Between 1989 and 1993 the petitioner was working as Manager at West of Chord Road Branch, Bangalore. In the year 1994 the respondent-Bank appointed an Investigating Officer to investigate the irregularities committed by the petitioner and others between 1989 to 1992 at West of Chord Road Branch. The Investigating Officer submitted his report on 2-8-1994 to the Disciplinary

Authority. The Disciplinary Authority issued a show-cause notice on 24-12-1994 to the petitioner. On 18-8-1995, the petitioner submitted his reply. The Disciplinary Authority, not being satisfied with the reply submitted by the petitioner, issued a chargesheet on 24-4-1997.

The Enquiry Officer submitted his report stating that the charges levelled against the petitioner as proved. The Disciplinary Authority after hearing the petitioner passed the impugned order of penalty dismissing the petitioner from service. The Appellate Authority rejected the appeal filed by the petitioner and confirmed the order of dismissal of the petitioner. Hence, this writ petition.

The learned counsel for the petitioner argued that the petitioner and seven others were issued with charge-sheets on identical charges and the respondent - Bank, instead of holding a joint enquiry against the petitioner and seven other officers, held separate enquiries in contravention of Regulation 10 of the Vijaya Bank Officer Employees (Conduct) Regulations, 1981.

Regulation 10 of the Regulations reads as under:

"10. Common Proceedings.- Where two or more officer employees are concerned in a case, the authority competent to impose a major penalty on all such officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings".

The Court held that the charge-sheet was issued to the petitioner and seven others and it is also not in dispute that the charges levelled against the petitioner and seven others are inter-linked, identical and similar. Further, a perusal of the investigation report makes it clear that the primary accountability for certain irregularities in the respondent-Bank was fixed on seven other employees and not on the petitioner. The investigation report fixes the accountability on the petitioner that he did not ensure the compliance of certain instructions and regulations by the other employees. Therefore, the failure on the part of respondent-Bank in not holding a common enquiry proceedings against the petitioner and seven others vitiates the enquiry proceedings as the same is contrary to Regulation 10 of the Regulations.

The contention of the respondent-Bank that the word 'may' in Regulation 10 of the Regulations is directory and not mandatory is unacceptable. The Supreme Court of India in the case of The Textile Commissioner and Others vs. Sagar Textile Mills (Private) Limited and Another, held that the word 'may' is capable of meaning must or shall in the light of the context and where a discretion is conferred upon a public authority coupled with an obligation the word 'may'

which denotes discretion should be considered to mean a command. In view of this dictum of the Apex Court the word 'may' in Regulation 10 of the Regulations is not directory but it is mandatory. There are no reasons in this case for the respondent-Bank in not holding common proceedings against the petitioner and seven others particularly when the charges levelled against the petitioner and seven others are inter-related and identical. The High Court held that there is no substance and merit in the contention of the respondent-Bank that the word 'may' in Regulation 10 of the Regulations is directory and not mandatory.

(575)

Misconduct — in quasi-judicial functions

Union of India and others vs. Duli Chand - 2006-TIOL-78-SC-MISC-LB

While performing judicial or quasi judicial functions, if the authority acted negligently or omitted essential conditions prescribed for exercise of such power, disciplinary proceedings could be initiated.

(576)

Charge — framing of by Inquiry Officer

Rule 20 (3) of the 1991 Rules read with Rule 20 (2) enables the disciplinary authority or the cadre controlling authority to draw up the articles of charge or cause to be drawn up.

K. Swarna Kumari vs. Government of A. P., 2006 (2) ALD 585

One of the grievances of the petitioner herein [vide ground (b)] is that it was not the High Court (the disciplinary authority) but the Inquiry Officer who had framed the charges and the additional charges. This procedure, according to the petitioner, is inconsistent with Rule 20 (2) and (3) of the APSCS (CC&A) Rules, 1991. According to the petitioner's interpretation the provisions of rule 20 (2) and (3) require the disciplinary authority itself to draw up the substance of the imputations of misconduct or misbehaviour, into definite and distinct articles of charge.

The Supreme Court held that a true and fair construction of rule 20 (3) does not support the petitioner's interpretation. Rule 20 (3) of the 1991 Rules read with Rule 20 (2) enables the disciplinary authority or the cadre controlling authority to draw up the articles of charge or cause to be drawn up. This clause (highlighted herein) of Rule 20 (3) permits the disciplinary authority (the High Court) to direct the inquiring authority to draw up the articles of charge. The resolution of the

High court vide its orders dated 19-11-1997 and 6-1-1998 constitute a decision of the high Court causing the inquiring authority to draw up the articles of charge against the petitioner. As this issue (of the interpretation of Rule 20) is one of substance and the grievance of the petitioner in this regard is of substantive violation of the statutory Rules, we consider it integral to the issues presented for reference to this Larger Bench and have therefore considered it appropriate to interpret the provisions of Rule 20 to the above, limited extent.

(577)

Misconduct — what constitutes, what doesn't

Prisekutty vs. Union of India (UoI) on 5 July, 2006 Kerala High Court

Civil suit filed against the petitioner telephone mechanic for failure to pay the amount due to a lady – imprisonment in a civil prison for one month in pursuance of a decree passed by the civil court does not amount to misconduct as per Rules 3 and 17 of the Central Civil Services (Conduct) Rules. Rule 3 of the Central Civil Services (Conduct) Rules reads as follows:

- (1) Every Government servant shall at all times-
 - (i) maintain absolute integrity;
 - (ii) maintain devotion to duty: and
 - (iii) do nothing which is unbecoming of a Government servant".

Further Rule 17 of the Central Civil Services (Conduct) Rules reads as follows:

Insolvency and habitual indebtedness - A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent, shall forthwith report the full facts of the legal proceedings to the Government.

Note: The burden of proving that the insolvency or indebtedness was the result of circumstances which, with the exercise of ordinary diligence, the Government servant could not have foreseen, or over which he had no control, and had not proceeded from extravagant or dissipated habits, shall be upon the Government servant.

Reading of the above Rules show that in order to prove the above misconduct it should be established that the incumbent has committed misconduct as alleged. It is to be noted that for Ext.P5 memo of charges, the

petitioner has submitted his explanation and though the enquiry officer has not considered the same after passing Ext.P8 order by the disciplinary authority, the petitioner had also given a further explanation as Ext.P7. In Ext.P7, the petitioner has specifically contended that the charges now framed against him would not lie in the facts and circumstances proved before the enquiry officer. The specific charges against the petitioner as per the points for determination framed by the enquiry officer are as follows:

- a. Whether there was a suit O.S.No. 361/1999 against Shri. D Prisekutty before the Hon'ble Court of the Munsiff, Chengannur, with prayer to recover the money?
- b. If so, whether the said court pronounced its judgment and decree in the above mentioned suit on 7.9.99 allowing the plaintiff to recover the plaint amount of Rs. 72,350/- with interest at the rate of 12% p.a on the principal sum of Rs. 57,000/- from the date of suit till the date of realisation, from the defendant and his assets?
- c. Whether Shri. D. Prisekutty, the defendant in the suit O.S.No. 316/99 failed to inform about its details and also the particulars of the judgment and decree in the case to any of his superior officers? If so,
- d. Whether this amounts to suppression of material information on the part of Shri. D. Prisekutty by which he has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant violating Rules 3(1)(i), 3(1) (ii), 3(1)(iii) of the CCS (Conduct) Rules, 1964?

Firstly the learned Counsel relies on a judgment reported in K.S.R.T.C vs. Abdul Latheef 2005 (3) KLT 955 in which this Court held that even if there was conviction under a criminal case based on which a misconduct is alleged, it should be proved that the crime alleged against the petitioner involves moral turpitude and this Court even taken a view that conviction under Section 138 of the N.I. Act is not enough to hold that a misconduct involving in a criminal case and it could be taken as a basis for alleging any misconduct at all. Further in Ibrahim Kannu v. State of Kerala 2005 (4) KLT 1034 another Bench of this Court had taken the same view and hold that offence under Section 138 of the N.I. Act being an offence in the commercial practice cannot be taken as one involving moral turpitude in the absence of any other cogent material to discern moral turpitude.

The facts of the case in hand would clearly indicate that the suit was filed against the petitioner for recovery of an amount due to the plaintiff and the

DECISIONS (578)

petitioner could not contest the suit due to his absence and an exparte decree is passed against him. Though the petitioner was imprisoned in the civil prison for not satisfying the decree, that by itself is not a reason to file charge of misconduct against him either under Rule 3 or Rule 17 of the Central Civil Services (Conduct) Rules.

In the above circumstances this Court is of the view that Exts.P8, P10 and P12 are not justifiable. Accordingly, these orders are quashed. There will be a direction to the respondents to reinstate the petitioner in service forthwith with all service benefits.

This Writ Petition is allowed accordingly.

(578)

Charge — amendment of

The Disciplinary authority has power to amend or alter the charge but here neither the charge was amended nor altered and straightway minor penalty was imposed without any notice, opportunity to hearing and make representation in respect of the said allegation – The entire proceedings are vitiated being violation of principles of natural justice.

Gopi Ram Goyal vs. State of Rajasthan, 2006 Supreme (Raj) 2311

While working as Superintending Engineer, the petitioner was served with a charge sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 vide memorandum dated 23.8.1986 for supervisory negligence over Mr. N.C. Garg, JEN and V.N. Sharma, Sub Engineer for the period of his working as Executive Engineer. The petitioner submitted a detailed reply to the charge sheet which was examined and the said enquiry was converted into one under Rule 17 of the Rules of 1958 vide order dated 14.10.1990. Thereafter, after hearing the petitioner, punishment of censure was imposed vide order dated 31.7.1991 even after finding that though the petitioner who was charged with the responsibility for violation of Rules 70-75 of the PWF & AR is not proved, but was responsible for supervisory negligence under Rules 75-79 of the PWF & AR.

Against the said order, the petitioner filed review petition under Rule 33 of the Rules of 1958 which came to be dismissed vide order dated 15.1.1993 being time barred by 37 days. In the meanwhile, the case of the petitioner had also become due for promotion to the post of Additional Chief Engineer and his case was considered. Result of the same was kept in sealed cover. The petitioner has also retired from service on 31.7.1991.

The petitioner has been punished for violation of the Rules for which he has not been charged, therefore, the disciplinary authority has acted beyond the scope of the charge. The law on the charge that it should be specific and not vague, supported by statement of allegation or in the alternative, particulars must find place in the charge itself, is well settled. Here, in the instant case, petitioner was absolved of the responsibility of violation of Rules 70-75 of the PWF & AR, therefore, the disciplinary authority has acted beyond its power to consider violation of the Rules 75-79 of the PWF & AR for which neither any fresh memo of charge nor amended memo of charge nor an opportunity of making representation as well as personal hearing was given to him. Therefore, the entire proceedings are vitiated being violation of the principles of natural justice.

(579)

- (A) Constitution of India — Art. 311(2) second proviso cl.(c)**
- (B) Inquiry — not expedient**

Employee was dismissed from services by the authority by invoking sub clause (c) of the Proviso to Clause (2) of Article 311 of the constitution of India in the interest of the security of the State and by stating that it was not expedient to hold an enquiry in the case – sustainable.

B. Murali Krishnan vs. Union of India 2006 15 ILRDLH 1358; 2006 O Supreme (Del) 2034

Petitioner joined the Information Bureau Headquarters as Security Assistant (General) on 15th January, 1991. (b) Vide order dated 28th August, 1998, he was appointed to the post of security Guard in the Ministry of External Affairs on deputation basis with immediate effect for the period of five years. He was posted by the Ministry of external Affairs at the High Commission of India in Islamabad as a Security guard. He reported at the Indian High Commission in Islamabad on 28th December, 1998. (c) On 17th July, 1999, which according to the petitioner was a holiday for the high Commission, the petitioner along with another person Sh. Govind Singh were on night duty at the residence of the High Commissioner of India as well as the office of the High Commissioner of India. The petitioner claims that he along with Sh. Govind Singh went to the market to purchase goods and various articles for the mess, of which Sh. Govind Singh was the in-charge for the whole month. The petitioner states that since his duty was in the night, and he was free during the day he accompanied Sh.

Govind Singh to the market. He claims that in the market he met Pakistani Police Officials who were on duty outside the High commission. He states that he knew these Pakistani Police Officials who took the petitioner and Sh. Govind Singh to Lake View Hotel. He states that in the hotel they were framed into an incidence of raping a Pakistani girl. He further states that the Pakistani Police also took photographs of the petitioner and Sh. Govind Singh along with the girl under duress and they were also manhandled and made to write a confessional statement. He states that they were threatened that the photographs and the statement would be sent to the Indian High Commission and to the families of the two persons including the petitioner in India and that they would be published in the newspaper, unless they agreed to do their bidding. He states that thereafter they were let off. (d) Thereafter, the petitioner and Sh. Govind Singh applied for leave. While the leave of the petitioner was sanctioned, Sh. Govind Singh was denied leave on account of shortage of staff. Thereafter, the petitioner and Sh. Govind Singh were sent back to India and they were interrogated. Vide order dated 10.11.1999, the petitioner was dismissed from services by the respondents by invoking sub clause (c) of the Proviso to Clause (2) of Article 311 of the constitution of India in the interest of the security of the State and by stating that it was not expedient to hold an enquiry in the case of the petitioner. (e) The petitioner and Shri Govind Singh challenged their dismissal from services by filing Original Application No. 2253/1999. The applicants also moved M. A. No. 1393/2000 seeking production of all the relevant records which were submitted before the Committee of Secretaries to process the case for dismissal of the petitioner. (f) The respondents appeared before the Tribunal and claimed privilege in respect of the relevant official records. An affidavit was filed by the Secretary to the Government of India, Ministry of Home Affairs. He stated that the records could not be disclosed without serious damage to the public interest and violation of the mandatory provision of the Constitution. He further stated that the disclosure of the material would seriously invade the secrecy enjoyed and the proceedings of the Cabinet. Privilege was claimed against production of the following records :-

“(i) The records and files containing the information on the basis of which the president of India was satisfied for the purpose of exercising his powers under proviso (c) to clause (2) of Article 311 of the Constitution of India. (ii) The records and files containing the narration of description of activities of S/shriGovind Singh and B. Muralikrishnan which led to their dismissal from service in exercise of powers under Article 311 (2) (c) of the Constitution of India. (iii) The records and files containing the details of misconduct of S/shri Govind Singh and B. Muralikrishnan leading to their dismissal as covered in CCS (Conduct) Rules, 1965, in so far as the same relates to dismissal under Article 311 (2) (c) of the Constitution of India. (iv) Records and files containing the deliberations,

recommendations and findings of the Committee of Advisers (as envisaged in O. M. dated 26th July, 1980) advising the President to exercise powers under Article 311 (2) (c) of the constitution of India." (g) The Tribunal, thereafter, proceeded to consider the claim of privilege. After considering the Law laid down by the Supreme Court on the subject of claim of privilege, the Tribunal in paragraph 12 and 13 of its order observed as follows:-"12. From the aforesaid, it is clear that unpublished official records which the applicants wanted to be produced regarding which privilege is being claimed pertaining to the same controversy as we have referred to above, the Head of the department, namely, the then Home Secretary had claimed privilege in this regard. As would be noticed hereinafter, the same pertained to certain documents which are kept away from the public gaze in public interest. When such is the situation, the respondents indeed could claim privilege though the files were made available to the Bench for perusal. 13. In the present case before us, documents do pertain to the information relating to the narration and description of activities of the applicants, their misconduct and also the record containing the deliberations, recommendations and findings of the Committee. Keeping in view the nature of the acts purported to have been committed by the applicants, their disclosures certainly would not be in public interest and the privilege has rightly been claimed. Consequently the Misc. Application No. 1393/2000 must fail." (h) After disposing of the Miscellaneous Application No. 1393/2000 and upholding the claim of privilege made by the respondents, the Tribunal proceeded to consider the scope of Article 311 (2) (c) of the Constitution of India.

On appeal, the High Court of Delhi, declined to interfere with the order of the Tribunal in the present case. The submissions made by the learned counsel for the petitioner are all submissions of facts. The endeavour of the petitioner's counsel is to question the factual basis on which the respondents have proceeded against the petitioner. The High Court held that while exercising its jurisdiction under Article 226 of the Constitution of India cannot go into the disputed question of facts. The Tribunal has gone into the facts and the factual findings of the Tribunal that have been extracted here-in-above. The same are based on the pleadings as well as the records perused by the Tribunal.

(580)

P.C. Act, 1988 — Sec. 8

Prakash Singh Badal Vs. State of Punjab, 2007 AIR SCW 1415

Hon'ble Apex Court held that if a public servant accepts gratification for inducing any public servant to do or to forbear to do any official act, then he

would fall in the net of Sections 8 & 9 of PC Act. From the dictum laid down in the said judgment, it could be seen that Section 8 not only covers the private person but also the public servant. When that being the legal position, the private person cannot be let off merely for the reason that he accepts or attempts or agrees to accept the illegal gratification from a public servant to induce another public servant. Furthermore, the object of the prevention of corruption act is to deal with the public servants and those who abet them.

(581)

Suspension – pending inquiry

***Abhilakh Singh Yadav vs. State of Madhya Pradesh
on 7 December, 2016 in Madhya Pradesh High Court***

The petitioner was placed under suspension passed by Collector on account of registration of case in Crime No. 158/2012 registered by the Police Station Gohad Chauraha, District Bhind and also on account of his detention of the said offence. The petitioner filed 482 CrPC before the High Court for quashing the above FIR. This Court vide order dated 08/10/2012 has issued notice in the case and as an interim measure, directed that no coercive action be taken against the petitioner. The petitioner further prayed that now more than 12 months have already elapsed after passing of suspension order, however, it may be revoked because continuation of his suspension is not desirable in fair administration of justice.

After hearing learned counsel for the parties and on perusal of provision or rule 9 of the Rules of 1966, it is apparent that the competent authority and disciplinary authority may place a person under suspension in case of criminal offence is under inquiry or trial against him, as per amended proviso the Government Servant may invariably be placed under suspension if chargesheet has been filed, after sanction of prosecution against him. On perusal of the order of suspension, it reveals that action has not been taken against the petitioner under the provision of Prevention of Corruption Act. However, it may come within the purview of amended provisions of rule 9 of the Rules of 1966, which came into force in the year 2007. Thus, looking to the proviso, it reveals that either on registration of offence or in continuation of trial, a person can be suspended, but such power is not unfettered, and based upon discretion which ought to be exercised judiciously by the authority competent or by appellate authority.

Finally, the Hon'ble High Court disposed the petition with a direction that on submitting a representation by the petitioner within a period of three

weeks from the date of receipt of certified copy of this order and on filing application seeking revocation, it shall be considered and decided by the competent authority in the light of the judgment referred hereinabove and to pass appropriate order within a period of two months from the date of receipt of such representation.

(582)

Trap – Accompanying Witness

***Dr. N. Anantha Narayanan vs. State of Kerala on 2 March, 2007
in Kerala High Court***

Accused working as an Anaesthesiologist at Taluk Headquarters Hospital, Muvattapuzha, he demanded a sum of Rs.300/- from PW.2 for giving anaesthesia to his sister, one Nabeeza (CW.5) who was admitted in the said hospital for undergoing Thyroidectomy surgery. The appellant was found not guilty of the offence punishable under Section 13 (1)(d) read with Section 13(2) of the P.C. Act. The appellant was also given the benefit of Section 428 Cr.P.C. The above conviction and sentence are challenged in this appeal.

This witness further stated that he accompanied PW.2 and his brother Moidheen to the hospital and on entering the consultation room of the appellant and after getting a signal from the said Moidheen, PW.2 gave the tainted currency notes to the appellant who accepted the currency notes with his left hand and after counting the currency notes, the appellant placed the same under the brief case kept on the table. PW.3 further stated that as soon as PW.2 gave the signal, PW.12 and other members of the trap team entered the consultation room of the appellant and found the currency notes kept under the brief case and that the currency notes when subjected to phenolphthalein test were found to be the same currency notes which were entrusted with PW.2 as per Ext.P4 entrustment mahazar as the test gave positive result.

PW.3, the trap witness who had accompanied PW.2 had given evidence to the effect that PW.2 gave the currency notes to the appellant on demand and the appellant had accepted the same with his left hand and then placed the currency notes under the brief case kept on the table. The evidence of PW.3 is supported by the recovery made by PW.12 who had given evidence to the effect that MO.1 series of currency notes recovered as per Ext.P5 mahazar were the same currency notes which were brought to his office by PW.2 and which he had entrusted with PW.2 as per Ext.P4 mahazar. Hence, the contention of the learned senior counsel that there was no independent evidence to corroborate the evidence of PW.2 cannot be accepted.

(583)

Misconduct — what constitutes, what doesn't

Inspector Prem Chand vs. Govt. of NCT Delhi & ors. 2007 (4) SCC 566

The Supreme Court observed that an error of judgement in not seizing the tainted currency notes, after the accused did not accept the same, was not per se a misconduct. A negligence simplicitor also would not mean to be a misconduct. The Supreme Court held that the appellant Inspector cannot be said to have committed any misconduct.

(584)

Constitution of India — Art. 311(1)

Articles 311 - Termination of service on the basis of disciplinary proceedings - Reliance on joint inspection report which was claimed to be contrary to the guidelines - Held that violation of guidelines did not affect its admissibility - Order of dismissal passed by an authority subordinate to appointing authority but who was authorised under the modified Rules to pass such order - Held that Order of termination is in accordance with law.

S.L. Varun vs. Delhi Power Company Ltd., 2007 Supreme (Del) 756

The third contention of the appellant is that Member (Administration) was not a competent authority to impose stiff major penalty. It was submitted that the appellant was appointed as Assistant commissioner on the recommendation of the UPSC by Delhi Electric Supply committee (DESC, for short) in 1986 and, therefore, said Committee was the appellant's appointing authority. The said Committee later on became Delhi Vidyut Board (DVB) and accordingly the order of punishment could have been only passed by Delhi Vidyut Board (DVB) and not by Member (Administration).

A reading of Exception (v) shows that the requirement under the provisions of CCS (CCA) Rules, 1965 was modified and unlike Article 311 (1) of the Constitution of India, major penalties of compulsory retirement, removal from service and dismissal from service could be imposed by the authority as mentioned in the schedule of the notification dated 25th May, 1999. This schedule was subsequently amended on 2nd April, 2002. As per the schedule on the date of the penalty order dated 20th May, 2002, the appointing authority and the authority competent to impose major stiff penalty was Member (Administration).

Unlike Article 311 (1), Exception (v) does not require that major penalty should not be imposed by an authority subordinate to that by which he was appointed but by the authority specified in the schedule but not lower than the appointing authority. Admittedly the order of punishment has been passed by an authority mentioned in the applicable schedule and the appointing authority.

(585)

Penalty — promotion during its currency

Union of India and Others vs. A.N.Mohanan
Supreme Court of India in Case No: Appeal (civil) 2020 of 2007
on 18 April, 2007

Departmental enquiry started against the respondent on 3.8.1999. The Departmental Promotion Committee (in short the 'DPC') made the selection on 1.11.1999. Since the enquiry was pending against the respondent, sealed cover procedure was adopted. On 13.9.2001 the penalty of censure was awarded. Promotion was granted to the respondent on 26.11.2001. However, he claimed that promotion should have been given to him with effect from 1.11.1999. He moved the CAT seeking for such direction. CAT by its order dated 18th June, 2004 held that penalty of censure is not a bar for promotion and though the sealed cover procedure was adopted, the sealed cover should have been opened and the recommendation of DPC should have been given effect to by giving the respondent promotional benefit with effect from 1.11.1999.

The order of CAT was challenged before the High Court by filing of a writ petition. The High Court noted that awarding of penalty of censure would not affect the promotion of the respondent and the department was not right in contending that the awarding of penalty (censure) would stand in the way of promotion. Accordingly the writ petition was dismissed.

The Supreme Court of India referred to Rule 3.1 of the Office Memorandum relating to promotion of government servants dated 14.9.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training which is as below:

"If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the Criminal prosecution against him, the finding of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

DECISIONS (586)

The Supreme Court of India held that awarding of censure is a blameworthy factor and a bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

The Supreme Court held that the claim of respondent for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999 and consequently set aside the judgments of CAT and the High Court.

(586)

- (A) Sealed cover procedure**
- (B) Charge sheet — issue of**

Service Law – Sealed cover procedure – DPC recommended the case of the respondent for promotion – On the day on which the DPC held its meeting, no vigilance enquiry was pending nor any decision was taken by the employer to initiate a departmental proceeding against him – A sealed cover procedure, as per paragraph 6 of the circular, can be adopted only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC – Thus this procedure could be adopted only if a charge sheet had been issued or a disciplinary proceeding was pending against – As a charge sheet was issued only after seven months, there was no bar in promoting the respondent at the material time as no ground existed at the material time.

Union of India vs. Sangram Keshari Nayak 2007 (6) SCC 704; 2007 Supreme (SC) 594

Respondent was recruited to Indian Railway Traffic Services and later promoted to the post of Junior Administrative Officer and subsequently placed in the selection grade. Being eligible for the post of Senior Administrative Grade, Respondent's name was also included in the select list of the DPC. Because of a vigilance case pending against him, sealed cover procedure was adopted by the DPC purported to be in terms of the circular in question providing for the procedure and guidelines to be followed in respect of the officers who are to be

promoted from Grade B to Grade A and of Railway officers against whom disciplinary / court proceedings were pending. Interpretation of this circular is the subject matter of this appeal.

Paragraph 6 of the said Circular, which is relevant reads, thus:

"6. A Government Servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a Sealed Cover by the Departmental promotion Committee. He shall not be promoted until the conclusion of disciplinary case/ criminal proceedings and the provisions contained in this letter will be applicable in his case also."

An original application filed by the respondent before the Calcutta Bench of the Central Administrative Tribunal, which was eventually transferred to the Cuttack Bench, praying for a direction to the appellants to promote him to the said post from the date when his junior was appointed, was allowed by a judgment and order dated 19.08.2003. A writ petition filed by the appellants there against has been dismissed by the High Court, by reason of the impugned judgment.

The Tribunal as also the High Court proceeded to determine the issue on the basis that the term "Government Servant under cloud" would be the employees against whom a chargesheet has been issued, relying on or on the basis of paragraph 2 of the said circular, the relevant portion whereof reads as under:

"2. At the time of consideration of the case of Government Servants for empanelment, details of Government Servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) Government Servants under suspension;
- (ii) Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;
- (iii) Government Servants in respect of whom prosecution for a criminal charge is pending"

The Supreme Court held that whereas paragraph 6 of the said circular letter provides for a sealed cover procedure to be adopted by the DPC, the same has to be taken recourse to only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. Further held that the recommendations of the DPC, therefore, can be refused to be given effect to only inter alia when one or the other conditions mentioned in paragraph 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a chargesheet had been issued or, in other words, a disciplinary proceeding was pending. The Supreme Court noted that a chargesheet was issued as against him only on 24.09.1999.

The Supreme Court held that there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999 as no material was placed before the DPC to take recourse to the sealed cover procedure.

The Supreme Court also placed reliance on its judgment "K.V. Janakiraman holding:

"16 The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure."

The Supreme Court dismissed the appeal with costs.

(587)

Court jurisdiction

G.Umasekaran vs. State of Tamil Nadu Rep. on 27 April, 2007 Madras High Court

The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceeding excepting in a case of mala fides or perversity.

The petitioner herein Thiru.G.Umasekaran was formerly working as Regional Transport Officer at Coimbatore, Erode and Madurai. During the relevant period from 01.03.1986 to 31.12.1990, while working as Regional Transport Officer, he was charged for abusing his official position, by corrupt practice, and acquired assets in the form of movable and immovable properties in his name and also in the name of his wife to an extent of Rs.3,99,645.24/- disproportionate to the known sources of his legitimate income.

It was alleged by the second respondent that the petitioner had constructed a house, bearing D.No.12 and 13, at Anaikaran Thottam, Ganapathy Village, Coimbatore in the name of his wife Tmt.U.Manimozhi, during the year 1989-1990, without getting permission from the competent authority, as required under Rule 7 (i) of Tamil Nadu Government Servants Conduct Rules, 1973. He failed to obtain prior permission from the Department for purchasing a house bearing Door No.178, Lakshmi Mills Colony, P.N.Palayam, Coimbatore in the name of his wife in February 1989, thereby violating Rule 7 (1) of Tamil Nadu Government Servants Conduct Rules, 1973.

The case was assigned to Tribunal for Disciplinary Proceedings (TDP). Inquiry was conducted and the TDP held that the charge of Disproportionate Assets is partly proved and the other two charges that he violated Rule 7 (1) of Tamil Nadu Government Servants Conduct Rules, 1973 are proved. After following due procedure, penalty of compulsory retirement was imposed on him.

The petitioner appealed before the Tamilnadu Adminstrative Tribunal against the order and his appeal was dismissed. Hence, he appealed before High Court.

The learned counsel for the petitioner argued that the third respondent, Tamil Nadu Administrative Tribunal has erroneously held that the findings of the Tribunal for Disciplinary Proceedings are based on evidence and the conclusion arrived at was not perverse.

The High Court held that as per this ruling in Kuldeep Singh vs. Commissioner of Police, normally the High Court and the Apex Court will not interfere with the findings of fact recorded at the domestic enquiry and if the finding of guilt is based on no evidence, or if it is construed as perverse, then the same would be amenable to judicial scrutiny. Therefore, as laid down by the Hon'ble Supreme Court, there is a broad distinction between proper decisions and the decisions based on perverse finding. As per the rulings of the Hon'ble Apex Court, if there is no evidence or the evidence, which is thoroughly unreliable and no reasonable person would act upon it, the order could be construed as perverse, but if there is some evidence on record, which is acceptable and which could be relied upon, howsoever compendious, it may be, the conclusions would not be treated as perverse and the findings would not be interfered with. The High Court also referred to the decision of Apex Court in Bank of India vs. Degala Suryanarayana, reported in (1999) 5 SCC 762 to support the same point.

The Court held that as per the findings of the respondents, based on evidence, there was disproportionate assets to the tune of Rs.1,37,725.42/- and

the respondents have disbelieved the contention that the petitioner and his wife had borrowed Rs.1,20,000/-, as there is no legally acceptable evidence on the side of the petitioner for the alleged borrowing. Further held that in view of the Rule 7 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 and in the light of the decisions of the Hon'ble Apex Court referred above, the departmental proceedings and the decision of the respondents are based on evidence available on record and there is no perverse finding and dismissed the writ petition.

(588)

Order — imposing penalty

State of Punjab vs. Nirmal Singh (2007) 8 SCC 108

The individual had challenged the award of minor penalty without providing him personal hearing. Rejecting his submission, the Hon'ble Supreme Court held that "6. Rule 21 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970 deals with the review. A perusal of the aforesaid rule shows that there is no provision of personal hearing in regard to inflicting minor penalties. The Rule contemplates a personal hearing only when the Disciplinary Authority proposes to impose any of the major penalties specified in Clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses. Admittedly, by an order dated 20.10.2003, the respondent was inflicted punishment of stoppage of two increments with cumulative effect, which is a minor punishment. Further held that the High Court was clearly in error in setting aside the order dated 24.6.2004 passed by the Competent Authority on the ground of violation of principles of natural justice.

(589)

Conviction — suspension of

State of Punjab vs. Deepak Mattu on 18 September, 2007 in Supreme Court of India

The respondent, Accused Officer was working as Junior Engineer in Punjab State Electricity Board and he was convicted in case under Prevention of Corruption Act and he was sentenced to 1 ½ year of rigorous imprisonment and a fine of Rs.1,000/- In appeal, Accused filed application for suspending of conviction purported to be u/s 389 of CrPC, the learned Judge of Special Court suspended sentence as well as conviction during the pendency of appeal on

the following grounds (i) it will take a long time to decide the appeal; and (ii) there are fairly good points to argue. The High Court also supported the judgment did not interfere with the above order. Hence, the appellant approached the Supreme Court.

The Hon'ble Supreme Court held that an order of suspension of conviction admittedly is not to be readily granted and the High Court in its order passed a judgment irrespective of conviction and sentence, only on two grounds; (i) A long time may be taken to decide the appeal. (ii) There are good points to argue, without assigning any special reasons. The Court held that possible delay in disposal of the appeal and there are arguable points by itself may not be sufficient to grant suspension of a conviction.

The Supreme Court quoted the case of K.C. Sareen, in which it was opined;

"11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

The Hon'ble Supreme Court opined that the view of the High Court is not correct and held that Corruption by public servants has now reached a monstrous dimension in India and it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level and consequently allowed the petition

(590)

Charge — should be definite

***C.V. Mohan Kumar vs. The Commissioner of Central Excise
and Ors. 2008(2) SLJ104 (CAT)***

A perusal of the charge memorandum indicates that the allegation made against the applicant is based on hearsay evidence without any documentary or circumstantial evidence. The Hon'ble Apex Court in a catena of cases held that charge sheet issued must be definite, precise and specific and must contain full particulars in regard to period, time, place and person. Otherwise it would be considered as vague and the inquiry would be vitiated. It is further submitted that the amount was not seized from the applicant nor the said money was produced in the disciplinary proceedings. It was also not adduced that the applicant had demanded and accepted the seized money. Thus the basis of the charge memorandum is vague and untenable.

(591)

Criminal Law Amendment Ordinance, 1944 – Validity

The Criminal Law (Amendment) Ordinance, 1944 being a pre-constitutional law, whether the Ordinance has got any validity or can continue to remain valid after the commencement of the Constitution of India?

V. K. Rajan vs. State of Kerala 2008 CrLJ 909; 2007 Supreme (Ker) 594

In all these cases, main questions to be considered are common. Validity of the Criminal Law (Amendment) Ordinance, 1944 (hereinafter referred to as 'the Ordinance') and jurisdiction of District Judge under the Ordinance after enactment of the Prevention of Corruption Act, 1988 (in short 'P.C. Act') are the main questions to be considered in these cases. In Crl. Appeal No.1400 of 2007 appellant was facing investigation for the case registered against him for the offence punishable under Section 13(2) read with Section 13(1) (e) of the P.C. Act alleging that the appellant had amassed wealth disproportionate to his income. The check period is 1.1.1994 to 12.5.2005. While the investigation was continuing, an application was filed by the Investigating Officer before the District Court for attachment of his properties invoking provisions of Section 3 and 5 of the Ordinance. The District Court passed an order attaching certain properties scheduled in the petition. When the case came up for admission, after admitting the appeal, referred the case to Division Bench as some important questions of

law are involved in this case. When petition for attachment was filed under the above Ordinance, preliminary objection was filed to decide the question of maintainability of the petition by the petitioners in Crl.M.C.No.2526 of 2007. That petition was dismissed. After that order, the above Crl. M.C. was filed under Section 482 of the Code of Criminal Procedure. The very same petitioners applied for production of certain documents. Those petitions were dismissed. Hence, they again filed Crl.M.C.No.2559 of 2007. Since criminal appeal involving almost similar points was referred to the Division Bench, these criminal miscellaneous petitions were also referred to the Division Bench.

According to the learned single Judge, following questions are to be answered by the Division Bench:

- i. Whether the District Court has got the power or jurisdiction to pass the impugned order under the provisions of the Prevention of Corruption Act, 1988?
- ii. Whether the State of Kerala can be represented by an Investigating Officer to file an Original Petition before the District Court as the State has to be represented either by a Public Prosecutor appointed under Section 24 Cr.P.C. or by a Government Pleader duly appointed?
- iii. The Criminal Law (Amendment) Ordinance, 1944 being a pre-constitutional law, whether the Ordinance has got any validity or can continue to remain valid after the commencement of the Constitution of India?
- iv. Whether an Ordinance by the Governor General of India under the provisions of Section 72 of Schedule IX of the Government of India Act, 1935 can be considered as an existing law as contemplated under Article 366 (10) of the Constitution of India and whether such an Ordinance can continue as an existing law as per Article 372 (2) of the Constitution of India?
- v. Whether the Criminal Law (Amendment) Ordinance, 1944 has got any validity after the expiry of six months as contemplated under Article 123 of the Constitution of India?"

The above section shows that Ordinance was amended by the provisions of P.C. Act to the extent mentioned therein. Therefore, in view of the clear provisions in the P.C. Act it is clear that the provisions of the Ordinance are adopted in the P.C. Act and are still applicable. The Kerala High Court held that

that the Ordinance is valid and still applicable and any provisions of the Ordinance as amended by section 5 (6) and section 29 of the P.C. Act are valid as specifically accepted and adopted by the provisions of the P.C. Act. A plethora of decisions of Supreme Court and High Court were cited to show that the Ordinance is still valid. (See: M.M. Sales and Exports (India) (Pvt.) Ltd. and others v. The State of UP and others (AIR 1974 Allahabad 263); State of Bihar v. Santo Kumar Mith and others (AIR 1952 Patna 148) etc.) Therefore, Ordinance is accepted and followed throughout India after Independence till now and hence the Court answered question Nos. (iii), (iv) and (v) affirmatively in favour of the prosecution and against the appellant and petitioner.

(592)

Conviction — suspension of

***Daya Shanker Rai and Anr. vs. State of U.P.
on 29 November, 2007 in Allahabad High Court***

The applicants-appellants have moved the application, for suspension of conviction, in the criminal appeal, wherein the appellants and others were convicted and sentenced inter alia to seven years rigorous imprisonment each under Section 307 IPC.

At that time enlarged on bail, the sentence of the appellants was suspended, but no order had been passed suspending the conviction.

The appellants are seeking suspension of their conviction because it is urged that appellant-applicant No. 1 Daya Shanker Rai is a government servant and the department is taking action against him in view of the fact that his conviction has not been suspended.

The Court held that a general prayer for suspension of conviction has been made only by pointing out that the appellant being a government servant would be liable for departmental action unless the conviction was stayed and that as the appeal had been filed, the conviction should necessarily be stayed without indicating the specific disqualification that would ensue in the fact and circumstances of the present case unless the order of conviction was suspended.

Learned Counsel for the appellants contends that an order of suspension of the conviction should invariably be passed and there is inherent power to stay the order of conviction under Section 389(1) of the Code of Criminal Procedure. Learned Counsel for the appellants has referred to some authorities of the Apex

Court for setting up the proposition that except for cases under the Prevention of Corruption Act, in other matters, the conviction should invariably be suspended when an appeal is filed.

The Hon'ble High Court held that the contention of learned Counsel for the appellants that there could be a restraint on suspension of the conviction only in cases under the Prevention of Corruption Act is not correct. In other cases, which involve questions of moral turpitude, the order of conviction should not be stayed on the mere asking that they would entail some disqualifications for the accused.

The High Court referred to the judgment in A. Jaganathan wherein the High Court's order suspending the conviction was set aside by the Apex Court because the High Court did not consider the moral conduct of the respondent, such as the fact that the respondent A. Jaganathan, who being attached as Inspector to a police station had eroded the confidence reposed in him and had been convicted under Sections 392/218/466 IPC, while the other public servants accused had been convicted under the provisions of Prevention of Corruption Act.

The High Court observed that appellant No. 2, who is not said to be a public servant has even used a firearm and appellant No. 1 has also used a Lathi along with other accused and the other accused had been convicted under Section 307 IPC in the said incident and five persons on the prosecution side have received a number of injuries including firearm injuries.

The Hon'ble Court held that the applicant-appellant has not been able to make out any good ground for obtaining an order suspending his conviction by the judgement and order dated 9.3.2006.

(593)

Court jurisdiction

Reasoning adopted and conclusions arrived at by competent authority as well as Appellate authority were quite legal and proper which did not call for interference at hands of this Court since, appellate authority had agreed with findings arrived at by competent authority on all material aspects and came to conclusion that petitioner No. 1 was habitual smuggler of gold and that properties in question had been illegally acquired by petitioners.

***Durlabhai Narsibhai Jogia and Ors. vs. Appellate Tribunal for
Forfeited and Ors. 2008 Cri.L.J. 2379***

The Gujarat High Court held that there was concurrent finding of facts by competent authority as well as appellate authority and therefore, the Court could not enter into arena of re-appreciation of evidence on record to come to different conclusion than one taken by authorities below. Scope of powers while dealing with petition filed under Article 226 of Constitution was very limited and must be confined strictly to errors apparent on face of record. Reappraisal of evidence on record for finding out error would amount to exercise of appellate jurisdiction which was not permissible. In this petition no grounds exist which would justify this Court to interfere. No evidence whatsoever had been produced to show that properties in question were purchased out of licit source of income by petitioners, and therefore, impugned orders as well as notice could not be quashed and set aside. Hence, petition dismissed.

(594)

Trap – legitimate and illegitimate

***Moni Shankar vs Union of India and Another
on 4 March, 2008 Supreme Court of India***

The Enquiry Officer acted as a Prosecutor and not as an independent quasi judicial authority; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

This appeal is directed against the judgment and order dated 8th March, 2006 passed by a Division Bench of the High Court of Bombay in Writ Petition No. 3748 of 2003 whereby it allowed the writ petition filed by the respondents herein from the judgment and order dated 6th January, 2003 passed by the Central Administrative Tribunal, Mumbai Bench, in O.A. No. 283 of 2002.

Appellant herein was working as Booking Supervisor with the Central Railways. He was transferred to Chatrapati Shivaji Terminus in December, 1997. On or about 17th April, 1998 a decoy check was laid in the course whereof he was found to have overcharged a sum of Rs.5/- on the ticket issued to a decoy passenger. A departmental proceeding was initiated wherein the following imputations of charges were drawn:-

Article - I: He overcharged the decoy passenger by Rs. 5/- (Rs. Five) on issue of one M/E Ticket No. 8148090 Ex. CSTM to Bhubaneshwar.

Article - II: He was found having Rs. 199/- (Rs. One hundred ninety nine) short in his railway cash.

Article - III: He declared his private cash in computer that the monetary ceiling for the satisfactory staff, without being certified by the supervisor in the private cash register."

In the said departmental proceeding, appellant inter alia raised a contention as regard to non compliance of paragraphs 704 and 705 of the Railway Vigilance Manual (the Manual) in the manner in which the purported trap was laid. It was furthermore contended that provisions of Rule 9(21) of the Railway Servant Discipline and Appeal Rules have not been complied with.

Appellant was found guilty of the said charges in the said departmental proceeding. A penalty of reduction to the lowest scale of pay fixing his pay at the lowest level at Rs.3,200/- for a period of five years was imposed. An appeal and consequently a revision preferred by him were dismissed by the Appellate Authority as also the Revisional Authority by orders dated 31st May, 2000 and 7th November, 2000 respectively.

He filed an O.A. before the Central Administrative Tribunal, Mumbai Bench. It was registered as O.A. No. 283 of 2002.

By reason of a judgment and order dated 6th January, 2003, the same was allowed opining that in terms of paragraphs 704 and 705 of the Manual, the trap ought to have been laid in presence of the independent witness or Gazetted Officer and as only one Head Constable of the RPF and not two Gazetted Officers had been assigned to witness the trap and furthermore the Head Constable was at a distance of more than 30 meters, he could not have heard the conversations by and between the appellant and the decoy passenger and thus the charges could not be said to have been proved. It was moreover found that the decoy passenger neither counted the money at the window nor protested that the balance amount was less by Rs.5/-, and in fact admitted to have left the window and came back half an hour later with the Vigilance Inspector which pointed out loopholes in the trap. It was pointed out that the appellant was not examined by the Enquiry Officer in terms of the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules (the Rules), which is mandatory in nature. It was also held that there was no evidence as regards the charge of returning Rs.5/- less to the complainant.

Aggrieved by and dissatisfied with the said judgment of the Tribunal, the respondents filed a writ petition before the High Court. By reason of the

impugned judgment dated 8th March, 2006 the said writ petition was allowed by the High Court opining that the Central Administrative Tribunal in its original order having entered into the realm of evidence and re-appreciated the same, exceeded its jurisdiction.

The Enquiry Officer had put the following questions to the appellant:

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?"

Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.

The High Court, on the other hand, as indicated hereinbefore, proceeded to opine that the Tribunal committed a serious illegality in entering into the realm of evidence. It is permissible in law to look to the evidence for the purpose of ascertaining as to whether the statutory requirement had been complied with or not.

The High Court, thus, committed a serious error in not taking into consideration paragraph 705 of the Manual.

The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go by.

It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges levelled against the appellant were without any bias.

The High Court also committed a serious error in opining that sub- rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied from the said opportunity.

The cumulative effect of the illegalities/irregularities were required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the

High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a Prosecutor and not as an independent quasi judicial authority; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

The impugned judgment, therefore, cannot be sustained. It is set aside accordingly and that of the Tribunal restored. The appeal is allowed with costs.

(595)

Court jurisdiction

Markand C. Gandhi vs. Rohini M. Dandekar

Civil Appeal No. 4168 of 2008 Decided On: 17.07.2008

On a complaint, the Bar Council of India (B.C.I) held that the appellant had committed professional misconduct and suspended him from practice as an advocate before any court or authority in India for a period of five years and imposed a cost of Rs. 5,000/- to be paid by him to the Bar Council of India.

On appeal, the Supreme Court observed that from a bare perusal of the order, it would appear that, virtually, there was no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law and such an order was not expected from a Committee constituted by a statutory body like Bar Council of India.

The Supreme Court further opined that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem was arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which made the order wholly unwarranted and liable to be set aside. Further opined that the case was a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which was considered to be one of the most noble profession if not the most.

Accordingly, the appeal was allowed, impugned order rendered by the Disciplinary Committee of the B.C.I. was set aside and the matter is remitted, for fresh consideration and decision on merits in accordance with law. The Chairman of the B.C.I. was directed to constitute an altogether different Committee for dealing with the case.

(596)

Conviction—suspension of

Central Bureau of Investigation, New Delhi vs. M. N. Sharma, 2009 AIR (SC) 1185; 2009 Cr.L.J. 1116; 2008 (3) SCC (Cri) 572

Respondent who was working as Sub-Registrar, Tehsildar and was convicted by learned Special Judge, Tis Hazari Courts, Delhi, for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short 'P.C. Act) and Section 120-B of the Indian Penal Code, 1860 (in short 'IPC') and sentenced to undergo rigorous imprisonment for a period of one year, 2 years and one year respectively and to pay a fine of Rs.2000/- with default stipulation. Against the judgment in question respondent filed the aforesaid Criminal appeal which was admitted. After admission of the appeal, respondent filed an application in terms of Section 389(1) of the Code of Criminal Procedure, 1973 (in short the 'Code') read with Section 482 of the Code for suspension of the judgment of learned Special Judge.

The High Court by order dated 3.2.2006 stayed the conviction. According to the appellant, the view expressed by this Court in K.C. Sareen v. CBI, Chandigarh (2001(6) SCC 584) was not kept in view. The High Court dismissed that application. The order of High Court "conviction of the respondent shall remain stayed during the pendency of Criminal Appeal" was contested in the Supreme Court.

The Supreme Court held that Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine."

It is to be noted that the learned Single Judge while directing suspension of conviction indicated no reasons. Above being the position the order of the learned Single Judge directing the suspension/stay of the conviction cannot stand and is set aside.

(597)

(A) P.C. Act, 1988 — Sec. 13(1) (e)

(B) Disproportionate assets — known sources of income

*Receipt from windfall, or gains of graft, crime or immoral secretions by persons *prima facie* would not be receipt for the “known sources of income” of a public servant.*

N. Rama Krishnaiah [died] through L.Rs. Vs State of AP.

17th October, 2008

The A.P.High Court held that Section 13 of Prevention of Corruption Act, 1988 (in short the ‘Act’) deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of Sub-section (1) of the section is applicable when the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known source of income. Clause (e) of Sub-section (1), of Section 5 of the Old Act was in similar lines. But there have been drastic amendments. Under the new clause, the earlier concept of “known sources of income” has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into “source of income” of an accused to a large extent, as it is stated in the explanation that “known sources of income” means income received from any lawful sources, the receipt of which has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. The expression “known source of income” has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that “known sources of income” means sources known to the accused. The prosecution cannot, in the very nature of things be expected to know the affairs of an accused person. Those will be matters “specially within the knowledge” of the accused, within the meaning of Section 106, of the Indian Evidence Act, 1872 (in short, the ‘Evidence Act’).

The emphasis of the phrase “known sources of income” in Section 13 (1) (e) (old Section 5(1) (e)) is clearly on the word “income.” It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term “income” by itself, is classic and has a wide connotation.

Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income" in receipt in the hand of its recipient, every receipt would not partake into the character of income. For the public servant, whatever return he gets of his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime or immoral secretions by persons *prima facie* would not be receipt for the "known sources of income" of a public servant.

(598)

- (A) Principles of natural justice – not to stretch too far**
- (B) Inquiry Officer — appointment of**

The Inquiring Officer having been appointed at the very initial stage while issuing show cause, the petitioner was denied an opportunity to explain his position.

Kaushik Bose vs. The State of West Bengal & Ors on 17 December, 2008 in the High Court at Calcutta

By filing the instant application under Article 226 of the Constitution, the petitioner sought for quashing and/or setting aside of the impugned order No. T/Charge Sheet dated 20.11.2007 and impugned memorandum of charge sheet being dated 20.11.2007 issued by the Chief Operating Manager of the Calcutta Tramways Company Limited as well as for other reliefs.

Grievances of the petitioner as ventilated in the instant application may briefly be stated as follows: -

The petitioner is a Bus Conductor No.28/7388 at Ghasbagan under Calcutta Tramways Company (1978) Limited. He was served with an impugned charge sheet dated 20.11.2007 as well as the impugned order dated 20.11.2007 whereby the name of the Inquiring Authority and the Presenting Officer had been mentioned for the purpose of holding an enquiry. This was done even before receipt of the reply to the purported Articles of charge as mentioned in the charge sheet. Issuing Authority being respondent No.4, thus, made up his mind to hold an enquiry with pre-conceived idea even before submission of written

statement of defence. The Disciplinary Authority thus did not consider it necessary to ascertain as to whether the proposed show cause which the petitioner was directed to submit would reflect sufficient explanation regarding the charges. This, by itself, reflects bias and closed mind as well as mala fide intention of the disciplinary authority. The manner in which the charges had been made would indicate that the authority concerned had virtually arrived at the conclusion of guilt. The petitioner by letter dated 5.12.2007 submitted a reply thereby denying the material allegations made against him and raising dispute regarding maintainability of the enquiry thus initiated. On 4.12.2007, the Enquiry Authority issued a letter asking the petitioner to appear on 10.12.2007 at 2 p.m. at the Traffic Office, Tollygunge. The petitioner on receipt of the same submitted a representation through proper channel. Such representation dated 12.12.2007 was kept pending and the petitioner sought for adjournment till disposal of the representation. The Authority concerned however, arbitrarily proceeded with the enquiry thereby compelling the petitioner to approach this court for redressal of his grievances.

As against this, respondent Nos. 4 & 5 contested the case by filing an Affidavit-in-Opposition thereby denying the material allegations made by the petitioner. The said respondents claimed that the writ petitioner had suppressed the documents i.e., show cause notice dated 30.8.2007 issued by the Chief Operating Manager and his reply dated 5.9.2007, letter dated 7.5.2008 issued by the Enquiring Authority and the petitioner's reply dated 10th May, 2008, petitioner's letter dated 27.11.2007 addressed to the Chief Operating Manager, his letter dated 20.3.2008 addressed to the Inquiring Officer and also letter dated 19.3.2008 written to the Chief Operating Manager. The said respondents thus alleged that for such wilful suppression of material documents, the writ application is liable to be dismissed.

The petitioner filed a supplementary affidavit to the same. The petitioner alleged that the manner in which the disciplinary proceeding had been initiated and subsequently conducted had caused serious prejudice to the writ petitioner.

For proper appreciation of the controversy raised in the present writ application, it is necessary to refer to the charges against the present petitioner.

It was alleged that while performing duty on 30th July, 2007 at route E-11, one Sudhir Pramanik boarded the vehicle and gave the petitioner a note of Rs.100/- and wanted a ticket of Rs.5/-. The petitioner gave him a ticket of Rs.5/- bearing No.095-6402 but could not refund Rs.95/-. He noted the matter on the reverse side of the ticket and deposited Rs.95/- as passenger balance on 30th

July, 2007. The passenger, Sudhir Pramanik, claimed the refund at Head Office on 30.7.2007. On scrutiny, it was found that the said ticket was not issued to the petitioner on 30.7.2007. On further scrutiny, it was found that the ticket was issued to him on 29.7.2007 and the petitioner showed it in the waybill as "sold". He was charged under Clause 12 (a) (9) of the Amended Standing Order of the Company. The disciplinary proceeding was thus initiated against the petitioner for his alleged gross misconduct and major misdemeanour.

On behalf of the petitioner, it was submitted that the order of holding an enquiry against the petitioner was issued on 20th November, 2007. Charge sheet was issued on the same date. And, on that very date, the authority concerned being the Chief Operating Manager, appointed Sri Anupam Biswas, Traffic Officer, as Inquiring Authority and Sri Swapan Malakar, as Presenting Officer.

It was submitted by learned Counsel that the approach of the authority thus appears to be 'come what may; we will finish you'. Mr. Maity submitted that bias is, thus, manifestly reflected and the disciplinary proceeding thus was meant to be a mere formality. Alleging that the authority concerned approached with a closed mind, it was submitted that the proceeding under reference thus, cannot stand a moment's judicial scrutiny. The Inquiring Officer having been appointed at the very initial stage while issuing show cause, the petitioner was denied an opportunity to explain his position.

In response to this, Mr. Bhattacharjee, as learned Counsel for the respondents-authority, submitted that there had been wilful suppression of material facts. Referring to the annexures to the affidavit-in-opposition, it was submitted that the petitioner was served with a show cause notice by letter dated 30th August, 2007 and the petitioner replied to the same by his letter dated 5th September, 2007 addressed to the Chief Operating Manager, the Calcutta Tramways Corporation. It was then submitted that charge sheet was submitted long after that and as such, there could be no basis for assailing the disciplinary proceeding on the ground that it was initiated with a closed mind.

Mr. Bhattacharjee then submitted that the allegation that the authority concerned acted in a mala fide manner cannot also stand since there is no such material to indicate the same. Allegation of mala fide cannot be vague, nor it can be left for imagination or guess.

It was thus categorically submitted on behalf of the respondents-authority that issuance of charge sheet was preceded by issuance of a 'show cause'.

In course of submission reference was made to the Amended Standing Orders. Order No.13 of the same deals with charge sheet. It follows therefrom

that an employee charged with a major misdemeanour is entitled to receive a copy of charge or charges and must have to be given opportunity to rebut the charge or charges. In case the concerned employee evades receiving of the charge sheet or he cannot be found, the charge sheet is required to be displayed on the notice board. It also lays down that an opportunity to file or submit a reply is, thus, required to be given. Thereafter, as soon as possible an enquiry is to be instituted by the departmental head at which an employee so charged shall be given every opportunity to rebut the charge or charges and shall have the right to cross-examination.

Mr. Bhattacharjee emphatically submitted that there could be no scope for raising any grievance and no basis for alleging that the petitioner has at any point of time been denied an opportunity to defend himself. It was further submitted that in absence of prejudice, the mere fact that an Inquiring Officer had been nominated even prior to the framing of charge against the delinquent cannot invite criticism. In the case of K.E.B. vs. T.S. Venkatarangaiah, as reported in 1992(1) SLR page 769, learned Division Bench of the Karnataka High Court held that if the delinquent after denying the charges participates in the enquiry without any objection and no prejudice is caused to him, nominating the Inquiring Officer would be a mere formality. Mr. Bhattacharjee then added that this also could not be the basis for any grievance whatsoever. Mr. Bhattacharjee deriving inspiration from the decision in the case of State of Punjab vs. V.K. Khanna & Ors., as reported in AIR 2001 Supreme Court 343, submitted that the test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. When there is real danger of bias, administrative action cannot be sustained. But when the allegation pertains to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise. The Apex Court in the said case also held that the expression 'mala fide' has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehension but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide. It is also well settled that general allegation of personal vendetta without any definite evidence therefore, cannot be said to be a sufficient assertion worth acceptance in a Court of Law.

Producing a copy of the Conductor's records, it was contended on behalf of the respondents-authority that the petitioner is consistent in his acts of misconduct and for this, there had been orders for reversion as well.

Mr. Maity submitted that the petitioner being not given a reasonable opportunity, the disciplinary enquiry was clearly conducted in violation of the principles of natural justice.

Such a serious grievance of violation of the principles of natural justice cannot be permitted to be ventilated in a vague manner. Principle of natural justice cannot be permitted to be stretched in an unnatural way. Moreover, persons holding public office are expected to function in a manner which can inspire the confidence of the people and does not allow raising of any accusing finger. Our society is unfortunately considered as 'soft' one. It is for all to harmoniously combine and respond to the challenge. This is essentially required to be done in order to arrest, if not wipe out, the ever deteriorating sense of values. There must be concrete material so as to hold that there had been such violation. After careful consideration of the entire materials available on record, the High Court held that it did not find any illegality or impropriety either in issuance of the charge sheet dated 20th November, 2007 or in the proceeding in pursuant to the same. Accordingly, there is no merit in the grievances as ventilated. In the result, the High Court dismissed the W.P. No.9099 (W) of 2008.

(599)

(A) Conjectures

(B) Evidence —— of suspicion

Departmental proceeding being a quasi-judicial proceeding, the charges levelled against the delinquent officer must be found to have been proved.

Roop Singh Negi vs. Punjab National Bank, 19 Dec 2008 2009 (2) SCC 570; 2009 (1) Supreme 438

The Supreme Court held that the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant before the police, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural

justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

(600)

Evidence — onus of proof

The onus of proof lying upon the accused person is to prove his case by a preponderance of probability and as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts.

**C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala
AIR 2009 SC 2022**

Burden of proof to rebut presumption under Section 20 placed on accused, not akin to that placed on prosecution to prove case beyond reasonable doubt. Sufficient if accused succeeds in proving preponderance of probability in favour of his case.

The Supreme Court held that it is satisfied that the appellant has proved his case by the test of preponderance of probability and it accordingly reached the conclusion that the amount was not taken by the appellant as gratification. He was made to believe that amount paid to him was towards the repayment of loan taken by PW2 from Accused No. 1.

(601)

- (A) P.C. Act, 1988 — Sec. 19
- (B) Sanction of prosecution – under P.C. Act

State of Madhya Pradesh vs. Jiyala 2010 AIR SC 1451

The Hon'ble Apex Court held that the High Court was not justified interfering with finding or sentence or order passed by a Special Judge under the Act. As per Sec. 19(3)(a) of the Act “No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned.”

(602)

Witnesses — defence witnesses

Delhi High Court:

K. V. Kulkarni vs. Bank of India and Others on 13 August, 2009

The contention of the Petitioner who is Chief Bank manager in the writ petition is that the respondent No. 3 was pre-determined to dismiss the Petitioner from the service and the departmental enquiry was an eyewash and that the Petitioner was deprived of reasonable opportunity to defend himself and further the respondent did not allow to produce the defence witnesses and that the enquiry is vitiated. The denial of reasonable opportunity to the petitioner to defend himself though he submitted a list of seven witnesses who are relevant to his case.

The charges framed against the Petitioner in the departmental enquiry is that (1) abuse his official position and thereby committed misconduct; (2) without carrying out pre-sanction inspection allowed the release of part of facilities to the borrower company, beyond the purview of employment.

The first contention of the Petitioner that the enquiry authority at the instance of the Presiding Officer had compelled the Petitioner to dispose his defence and it should be in the form of written statement duly signed by the witnesses. This aspect was questioned since it was strange procedure and unknown to law to submit the text of examination of the defence witnesses. The second contention that the enquiry authority denied to adjourn the matter since the defence representative of the Petitioner was unable to attend to the enquiry, is illegal and further the conducting of the disciplinary proceedings were deliberately delayed till the compulsory retirement of vital witness of the Petitioner. As per the above the Petitioner contended that the enquiry authority as well as the appellate authority conducted enquiry one sided and not providing reasonable opportunity to the Petitioner to get examined his defence witnesses and that he filed the present writ petition before the Hon'ble High Court of Delhi.

For the above contentions of Petitioner the Hon'ble Court of Delhi held that the recording of evidence of PW-1 had taken place in the absence of defence assistance, however this by itself would not amount to denial of fair opportunity to the Petitioner because he himself agreed to record the evidence of said witness in the absence of his defence assistant and later did not choose to cross examine

the said witness. Even in case of the second witness/PW-2 the Petitioner nor his defence assistant choose to file petition for their examination if required when they had an opportunity and that the Petitioner cannot be complained.

Further the Petitioner has simply given the names of six witnesses whom he intends to examine in his defence and when the enquiring authority asked to give the relevancy of the witnesses, the Petitioner has simply stated that he wanted to get examined so and so witnesses without mentioning the relevancy of the said witnesses. It was further held that the enquiry authority cannot call the text of the defence witnesses but the purpose and relevancy as stated above was not disclosed by the Petitioner and when asked in the arguments the counsel for the Petitioner, no satisfactory answer was given. However, the enquiry authority permitted two witnesses on behalf of the Petitioner and it is evident from the record that the case against the Petitioner is based on the documentary evidence. Thus, the enquiry authority had rightly not permitted the Petitioner to summon eight witnesses in his defence, no prejudice is caused to the Petitioner. With regard to the delay aspect in holding the enquiry is not inordinate, nor it causes any prejudice to the Petitioner. There is no basis that the delay in holding the enquiry was with a purpose to compulsory retire a vital witness of the Petitioner.

In view of the findings the Hon'ble Court held that the material on record, that this case hinges upon the documentary evidence which has been dealt with, by the Enquiring Authority in its correct perspective and the Hon'ble Court do not find any procedural irregularity except for the fact that Enquiring Authority had exceeded its jurisdiction in calling upon the petitioner to furnish the text of the evidence of the defence witnesses. However, as already observed above, this irregularity does not go to the root of the matter because the petitioner has not been able to satisfy the Enquiring Authority, Appellate Authority or even this Court about the relevance of the witnesses which the petitioner wanted to get examined in his defence. So, petitioner suffers no prejudice.

(603)

Misconduct —— lack of efficiency

Lack of efficiency or failure to obtain highest standards in discharge of duties attached to public office does not construe misconduct.

Osmania University, Hyderabad, Rep. by its Registrar vs. V. Nageshwar Rao, 2010 4 ALD 362; 2010 5 ALT 184; 2009 0 Supreme (AP) 553

The respondent herein, at the relevant time, was a Professor in the appellant University. The respondent was appointed as Convenor for conducting

Law Common Entrance Test (LAWCET) for the academic year 1996-97. The test was held on 16.6.1996 at 82 centres all over the State. 36,000 candidates appeared for the test. The process of evaluation was entrusted to a computer institute headed by a Professor. After completing the process, the results were released to the press on 29.6.1996.

On the complaint of alleged malpractices in the process of common entrance test, an enquiry was instituted by the appellant University and the respondent was placed under suspension by the Executive Council and later disciplinary proceedings were initiated against him. Sri M. Gopal Krishnan, a retired I.A.S. officer was appointed as enquiry officer.

The enquiry officer, after a detailed enquiry, submitted his report dated 9.7.1997 to the appellant. The report of the enquiry officer exonerated the respondent of charges 1 and 3. As regards charge No.2, the enquiry officer observed that the respondent is slightly guilty of a part of the second charge to the extent of "non- verification of the top (say) 30 or even 20 rankers in the LAWCET." In the light of the said finding, the enquiry officer went one step ahead and recommended imposition of the punishment of censure on the respondent. On receipt of the said report, the appellant issued a show cause notice dated 26.8.1997 to the respondent, wherein it is stated that the Executive Council was, *prima facie*, of the opinion that the findings of the enquiry officer are correct, but found that the punishment suggested by the enquiry officer is inadequate and not commensurate with the proven charges. The respondent was, therefore, called upon by the said show cause notice as to why the penalty of stoppage of two grade increments with cumulative effect shall not be imposed on him and also not to give any administrative assignment to him thereafter. The respondent submitted his explanation in reply to the said show cause notice. By an order dated 20.12.1997, the appellant imposed on the respondent, the above mentioned penalty proposed in the show cause notice.

It is not the case of the appellant that while appointing the respondent as Convenor of the LAWCET examination for 1996-97, the appellant instructed the respondent to personally verify the answer sheets of any of the candidates. The enquiry officer himself found that such a thing was not expected of a Convenor in view of the high magnitude of the answer sheets and the number of examination centres. Even according to the enquiry officer, the respondent, at the worst, can be said to be guilty of inefficiency and lack of foresight. Therefore, in our opinion, the learned Single Judge has not committed any error in holding that the respondent was not guilty of misconduct. As held by the Supreme Court in *J. Ahmed*, lack of efficiency or attainment of highest standards in discharge of duties attached to a public office does not *ipso facto* constitute misconduct and

lapse in performance of duty. The appellant, in its show cause notice, clearly stated that it was in agreement with the findings of the enquiry officer. Therefore, even if the findings of the enquiry officer are taken on their face value, they do not constitute misconduct warranting imposition of penalty on the respondent. In this view of the matter, we do not find any reason to interfere with the finding of the learned Single Judge that the respondent is not guilty of misconduct for being imposed any penalty. The judgments referred to by the learned Standing Counsel are not of any help to the appellant in the light of the finding that the respondent has not committed any misconduct.

(604)

Charge — withdrawn and re-issued

After withdrawal of the charge memo, a fresh charge memo has been issued without assigning the sufficient reasons thereof, as such, there is a breach to comply with the Board's decision, which subsequently became a Rule in the procedural law of the departmental proceeding.

Alok Dey Roy vs. Union Of India 2010 1 CLR 228; 2009 123 FLR 853; 2010 3 LLJ 252; 2009 0 Supreme (Cal) 621

Assailing the order dated July 31, 2008 passed in O.A. No. 756/2008 by Central Administrative Tribunal, Calcutta Bench, this writ application has been filed. The issue involved herein is on a very short question whether on cancelling a first charge-sheet as issued in a departmental proceeding second charge-sheet could be issued without disclosing the sufficient reasons while issuing the second charge-sheet on dropping the first disciplinary proceeding. The writ petitioner is a Railway employee and is controlled by the regulation framed by the Railway Authority. The Railway Board has framed a rule on issue when any departmental proceeding is dropped and subsequently proceeding is initiated by a fresh charge-sheet. Railway Board has framed the guidance and necessary action and it ultimately became a rule by incorporating the same in the Manual. The relevant communication of the Railway Board reads such:

“ 2. The matter has been examined and it is clarified that once the proceedings initiated under Rule 9 or Rule 11 of RS (D and A) Rules, 1968 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be

DECISIONS (605)

considered in the circumstances of the case. It is, therefore, necessary that when the intention is to issue a fresh charge-sheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge-sheet afresh appropriate to the nature of the charges. Please acknowledge receipt. Index No. 1033: Sufficient reasons should be worded for issuing fresh charge Memorandum after cancellation/ withdrawal of original charge Memorandum or after dropping disciplinary proceedings."

The Hon'ble Court held that it is not finding, any such rule in the said rule itself. Since it is an admitted position that the Railway Authority has already amended the relevant rule and incorporated the same under Index No. 1033 of the Railway Manual, the same is binding to the Railway Officers, who initiated the departmental proceeding. It has not been done in the instant case, accordingly there is a mandatory breach and the impugned charge memo being the second charge memo on withdrawing the earlier charge memo is not legally sustainable due to the lack of sufficient reasons for issuing the fresh charge memo on withdrawing the earlier charge memo. It accordingly is set aside and quashed. Impugned judgment of the Tribunal dated July 31, 2008 passed in O.A. No.756/ 2008 is also set aside and quashed on the basis of the aforesaid observation. However, the quashing of the second charge memo as issued on withdrawing the first charge memo, will not debar the respondent, Railway Authority, to issue appropriate charge memo following the rule under Index No. 1033 as referred to above, namely, specifying the sufficient reasons in the charge memo itself for issuing the fresh charge memo. The writ application, accordingly, is allowed with a cost of Rs.20,000/- payable by the Railway Authority to the writ petitioner. Such cost to be paid within a month from this date.

(605)

Exoneration

Exoneration in Departmental enquiry is not a ground to refuse sanction.

Susanta Kumar Dey vs. Union of India, 2010 Cr.LJ 1171 (Cal) Division Bench of High Court

The Division Bench of Calcutta High Court held that Criminal and Departmental proceedings are entirely different from each other as they operate in different fields and have different objectives and that exoneration in Departmental proceedings is not relevant for Criminal prosecution.

(606)

- (A) Dismissal
- (B) Sentence – suspension of
- (C) Departmental action and conviction

Dismissal from service due to conviction in a criminal case—Suspension of sentence does not do away effects of conviction—However, State or disciplinary authority should not mechanically pass order of dismissal from service in case of prosecution in criminal cases—But, continuing an employee who is convicted of a serious offence, in service is not only against public interest but would also demoralize other honest officers.

State of A. P. rep. by its Prl. Secretary to Govt vs. P. Rajasekhar, 2010 (1) ALD 595; 2010 (1) ALT 468; 2009 Supreme (AP) 810

The respondent herein was working as a Bill Collector in Nizamabad Municipal Corporation. He was involved in ACB trap case out of which CCNo.41 of 2003 was registered with the Principal Special Judge for SPE and ACB Cases Hyderabad. Under judgment dated 17.03.2008 the respondent was convicted and against the said conviction he preferred an appeal before this Court. Pending the said criminal appeal by orders of this Court dated 10.04.2008, the sentence imposed on the respondent in CC No.41 of 2003 was suspended. However, in view of the conviction of the respondent, the petitioners vide proceedings dated 28.05.2008 passed orders of dismissal against the respondent. Questioning the said orders, the respondent filed O.A.No.4088 of 2008 before APAT.

The petitioners resisted the contention of the respondent by placing reliance upon the decision in Nagoor Meera's case as well as Ramesh Kumar's case and also relied upon another unreported decision of the AP High Court in WP.No.13421 of 2006 and batch dated 27.09.2006 in support of the contention that disciplinary authority need not wait till the criminal appeal preferred by the Government servant is disposed of and notwithstanding the pendency of the appeal and suspension of the sentence, the disciplinary authority can pass an order of dismissal against the convicted employee.

The Tribunal, set aside the order of dismissal passed against the respondent with liberty to the petitioners to invoke Rule 8(2)(b) of the CCA Rules, if they so desire, whereby the petitioners can suspend the Government employee pending appeal. The said order, as stated above, is under challenge in this writ

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petition. The respondents asserted that there are several such cases where convicted government servants are reinducted.

The High Court expressed its view that that State as a model employer cannot act in such selective manner. The enunciation of the legal position is well settled by several pronouncements of the Supreme Court and this Court. The observations of the Supreme Court in Sareen's case in particular leave no room for doubt as to how the State/ disciplinary authority must act in a situation where the government employee is convicted of a serious offence. The power of dismissal or removal exercised by the State/disciplinary authority in such cases has been held to be in public interest. It has also been held that continuing such officer in service would not only be against public interest but would also demoralize other honest officers. Furthermore, the action and treatment towards government employees by the State cannot be discriminatory or selective. The aforesaid selective treatment by the State/disciplinary authority would, therefore, be contrary to public interest apart from violative of law declared by the Supreme Court. We, therefore, strongly deprecate such discriminatory and selective treatment and direct the State/disciplinary authority to review all such cases where the Government servants have suffered conviction and even if appeals or revisions against the conviction are pending, in the light of this decision take appropriate corrective action and file a compliance report before this Court within six (6) months from the date of receipt of a copy of this order. A copy of this order may be marked to the Chief Secretary to the Government of Andhra Pradesh, for necessary and appropriate action.

In the light of the above, therefore, all the writ petitions deserve to be allowed and are accordingly allowed and the impugned orders of the Tribunal are set aside and the OAs filed by the respondents are dismissed. There shall be no order as to costs.

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Suspension — subsistence allowance, non-payment of

Union of India vs. R.K. Chopra on 1 February, 2010 in Supreme Court

The Respondent working as a Desk Officer in the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industries. While so, CBI registered a case against him under P.C. Act, 1988. The Respondent / Accused Officer was placed under suspension on 06.06.1989 under rule 10 (2) of the CCS (CCA) Rules 1965.

The respondent made a representation on 22-07-2002 for revision of subsistence allowance based on 5th Pay Commission Report to the Government. The request was rejected twice. As the case was ended in conviction on 30-03-2002, he was dismissed from service on 04-08-2005.

The respondent approached CAT after dismissal from service challenging the rejection of orders of the Government for revision of subsistence allowance. The CAT ordered that the respondent would be entitled to arrears of revision of subsistence allowance from 01.01.2002 till 04.08.2005 when he was dismissed from service.

Aggrieved by the order of the CAT, the Government of India took up the matter before the Delhi High Court which was dismissed and an SLP was filed. The Hon'ble Supreme Court held that "*On a combined reading of Note 3 to Rule 7 of the Revised Pay Rules and FR 53(1)(ii)(a) with the clarification with Office Memorandum dated 27th August, 1958 it is clear that if the revision of pay takes effect from a date prior to the date of suspension of a Government servant then he would be entitled to benefit of increment in pay and in the subsistence allowance for the period of suspension, but if the revision scale of pay takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him, only after reinstatement depending on the fact whether the period of suspension is treated as duty or not. In view of the clear distinction drawn by the Rule making authority between the cases in which the Revised scale of pay takes effect from a date prior to the date of suspension and a date falling within the period of suspension, the plea of discrimination raised cannot be sustained especially when there is no challenge to the Rules. The benefit of pay revision and the consequent revision of subsistence allowance stand postponed till the conclusion of the departmental proceedings, if the pay revision has come into effect while the Government servant is under suspension. So far as the present case is concerned, the Revised Pay Rules came into force on 1st January, 1996 when the respondent was under suspension and later, he was dismissed from service on 04.08.2005 and hence the benefit of pay revision or the revision of subsistence allowance did not accrue to him. The Tribunal as well as the High Court have committed an error in holding that the respondent is entitled to the benefit of Revised Pay Rules.*" and allowed the appeal.

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Sanction of prosecution — under P.C. Act

K.Srinivasulu vs. Government of A.P. 2010 (2) ALT Crl.147 (DB), A.P.

Grant of sanction is an administrative function and it is neither a quasi judicial Act nor is there lis involved. The question of giving an opportunity of hearing to the accused before granting sanction does not arise.

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Termination – application of Art.311(2) of Constitution

Service Law - Termination without holding domestic enquiry- Order of termination based on service entries as well as alleged admission made by employee-Employee denying such admission and alleging alteration in service record to his detriment-In such event proper domestic enquiry becomes inevitable-Employer cannot invoke provisions of Article 311 to dispense with domestic enquiry by simply asserting that domestic enquiry was not possible. Order of termination quashed.

Sheopurari Singh vs. Coal India Ltd. through its C.M.D, Coal India Ltd., 2010 Supreme (Mah) 345

The respondents issued show cause notice as to why the petitioner should not be removed from the service charging the petitioner of impersonation, manipulation of CMPF record for fraudulently getting induced into service in place of one Shri Sheo Purari Singh s/o Keshari Singh. The petitioner filed several replies/representations and urged for holding an inquiry.

Without holding any inquiry by taking recourse to the provisions of Rule 34 (1) (ii) of Coal India Executives Conduct, Discipline and Appeal Rules, 1978, respondent no.1 removed the petitioner from service. Thereafter his appeal was also rejected by the respondent no.2.

The learned counsel for the petitioner urged that rule 34.1 (ii) to which recourse was taken by the respondents for terminating the services of the petitioner requires that for following special procedure in cases falling under the said rule the disciplinary authority has to record the reason in writing for satisfaction reached that "it is not reasonably practicable to hold an enquiry in the matter provided under the rules".

Rule 34.1 (ii) of Coal India Executives' Conduct Discipline and Appeal Rules, 1978 is as below:

"34.1 (ii) Whether the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules".

The High Court observed that after considering the provisions of above stated Rule 34.1 and the provisions of Article 311 of the Constitution, it came to the conclusion that there is substance in the submissions of the learned counsel for the petitioner of the said provision being in pari materia with the provisions of Article 311 of the Constitution which also provides for dismissal of an employee by dispensing the inquiry by the appointing authority in certain contingencies.

The High Court referred to the landmark decision in the case of Tulshiram Patel in Hon'ble Apex Court in which Hon'ble Apex Court held that:

"The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that 'it is not reasonably practicable to hold' the inquiry contemplated by clause (2) of Article 311'. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. Each case must be judged on its own merits and in the light of its own facts and circumstances."

The High Court held that having regard to the claim of the petitioner that he is the original employee and that the alleged record being not the record made at the inception of his service and the same being tampered, it is difficult to accept that the same could have been relied as being such a record either without inquiry regarding the relevant aspect being held or at least the petitioner being given an opportunity to contest the said stand of the respondent.

The High Court also held that the aforesaid facets considered upon the said law, does not reveal that in the case of the petitioner, with his such a stand,

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only on the basis of such a material relied, without inquiry, the satisfaction could have been reached for dispensing of an inquiry.

The High Court quashed and set aside the communication dated 8/9 th August, 2007 issued by respondent no.1 removing the petitioner from the service without holding an inquiry and so also the order dated 24th November, 2007 passed by the Appellate Authority rejecting the appeal preferred by the petitioner against removal from his service and communication dated 14th December, 2007 intimating the same to the petitioner.

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Inquiry report — should be reasoned one

Shyamal Kumar Sarkar vs. Bangiya Gramin Vikash Bank & Anron

21 April, 2010 Calcutta High Court

An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion.

In Anil Kumar vs. Presiding Officer & Ors., AIR 1985 SC 1121, their Lordships of the Supreme Court said and held as follows:

“We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons.....”

Holding that the inquiry officer’s report was no report at all, their Lordships set aside the order terminating Anil Kumar’s service and directed his reinstatement in post with certain back wages.

In this case it is evident from the inquiry officer's report—relevant parts whereof have been quoted hereinbefore—that while the inquiry officer concluded that not the evidence but the undisclosed facts and circumstances of the case proved charge (c) beyond reasonable doubt, without referring to the evidence and discussing how the evidence proved the allegations concerned, he again concluded that charge (e) stood proved beyond doubt. He did not apply his mind, discuss the evidence, give reasons in support of his conclusions. The report is no report in law.

The disciplinary authority did not record any independent findings, and it is evident from what he said in his letter dated June 30, 1993 giving the petitioner opportunity of submitting representation against the proposed punishment. The disciplinary authority simply concurred with the findings of the inquiry officer. It shows that the disciplinary authority did not apply his independent mind as well.

In view of these facts and the law laid down by the Supreme Court in Anil Kumar v. Presiding Officer & Ors., AIR 1985 SC 1121, I am of the view that both the impugned order and the inquiry report are liable to be set aside. I am unable to accept the contention that in view of what was said by the Supreme Court in Ajit Jain v. National Insurance Co. Ltd. &Ors., (2002)10 SCC 580, the matter should be remitted to the disciplinary authority.

In Ajit Jain their Lordships of the Supreme Court accepted the submissions to relegate the parties to the appropriate stage of the departmental proceedings on the ground that order inflicting the punishment of dismissal was vitiated by infirmity that had crept in the departmental proceedings. But their Lordships ultimately did not relegate the parties to any stage of the departmental proceedings because Ajit was not in a position to take employment.

In the present situation, I am of the view that the matter cannot be remitted to the inquiry officer for submitting a fresh inquiry report. The inquiry report is dated May 31, 1993. The officer who conducted the inquiry is no longer available. There is no reason to permit the bank to conduct a fresh inquiry or to appoint a new inquiry officer to submit a fresh report on the basis of the evidence taken down by the inquiry officer who submitted the report dated May 31, 1993.

The matter cannot either be remitted to the disciplinary authority who concurred with the findings of the inquiry officer. His power to disagree with the findings of the inquiry officer and record his independent findings cannot be restored by a remand. Simply because according to the bank both the charges

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(c) and (e) are serious in nature, it cannot be permitted to punish the petitioner by any means.

For these reasons, I allow the petition, set aside the impugned order dated July 28, 1993 and the inquiry report dated May 31, 1993. The bank is directed to give the petitioner all benefits to which he would have been entitled in the absence of the punishment inflicted by the impugned order. This direction shall be complied with within four weeks from the date of communication of this order. The contempt rule is discharged.

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Misconduct — in quasi-judicial functions

Ashish Abrol, Joint Commissioner of Income Tax vs. Union of India (UOI) through the Secretary, Ministry of Finance, Department of Revenue and Director General of Income Tax (Vigilance) [MANU/CA/0171/2010]

Whether action could have been initiated against the Applicant while passing an order of assessment in quasi-judicial proceedings? In its decision dated 23.4.2010, the Principal Bench referred to a number of decisions of the Hon'ble Supreme Court and the High Court of Delhi including that of Union of India and Ors vs. K.K. Dhawan MANU/SC/0232/1993: 1993 (2) SCC 56, wherein the Supreme Court held that when an officer in exercise of judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person, he is not acting as a Judge. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind. The above judgment also provides the non-exhaustive list of the circumstances wherein disciplinary action can be taken against the erring official: Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion of duty; If there is prima facie material to show recklessness or misconduct in the discharge of his duty; If he has acted in a manner which is unbecoming of a Government servant; If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; If he had acted in order to unduly favour a party; If he had been actuated by corrupt motive, however small the bribe may be.

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(A) Inquiry Officer —— cross-examination of Charged officer

(B) Principles of natural justice – bias

Gujarat vs. Gautam on 30 April, 2010 Gujarat High Court

Inquiry Officer has acted being prosecutor and Judge and it shows bias and in absence of Presenting Officer, participation of Inquiry Officer itself suggests that inquiry was not conducted in independent manner and due to that principle of natural justice has been violated and it caused great prejudice

In this petition, petitioner has challenged interim order on preliminary point, which has been raised by respondent in respect to legality and validity of departmental inquiry which has been decided by Labour Court, Baroda on 15/7/2009 vide ex.52 in reference LCV no. 1007/1998. The Labour Court has come to conclusion that departmental inquiry, which was initiated against workman Shri Gautam Surendra Amin is held by petitioner against principle of Natural Justice. Therefore, same has been vitiated. On 4/11/2009, this Court has passed following order:

The original documents of departmental inquiry produced before Labour Court vide exh 25 to 51. Exh. 25 is a charge sheet. Thereafter, exh 29 statement was recorded by Inquiry officer of respondent workman. Vide exh 31, one R. K. Shah was examined as witness of petitioner Company who has been called by Inquiry Officer. Vide exh 33 one P. M. Dave, exh 35 Y. S. Shah, exh 37 R. C. Trivedi and exh 40 Ms. Minaxi Adeshra and A. N. Chauhan were examined as witnesses before Inquiry Officer. This all witnesses were called by Inquiry Officer and before Inquiry Officer statement has been recorded in response to question raised by Inquiry officer to witnesses. It was not a voluntarily statement made by each witness before Inquiry Officer but reply has been given by each witness against question raised by Inquiry Officer. So, witnesses have been examined by Inquiry Officer. Thereafter, right of cross examination to such witness has been given to respondent workman. The reply given by each witness has been recorded by Inquiry officer and such reply was in response to question put by Inquiry Officer to such witness. In exh 25, Charge sheet, it is necessary to note that except witness Ms. Adeshara name of any other witness has not been mentioned by petitioner. So it was not clear that how many witnesses and who has been examined by petitioner before Inquiry Officer against present respondent workman. The list of witness has not been provided

by Inquiry Officer or petitioner company to respondent workman. Undisputedly, Presenting Officer was not appointed by Inquiry Officer or petitioner company. The charge sheet was issued by executive Director of petitioner company but Executive Director was not examined in departmental inquiry. On R D Bhatt has appointed as Inquiry Officer whose name has been mentioned in charge sheet. In absence of Presenting Officer whole inquiry apparently conducted by Inquiry Officer who has to be considered an independent person to decide on the basis of evidence whether charges which are levelled against workman is proved or not proved? Such independent person who has considered to be an Inquiry Officer has called witnesses whose names are not mentioned in charge sheet and no such list of witnesses given to workman in advance. Except Ms. Adeshara no other name is mentioned in charge sheet as witness to be examined in departmental inquiry. At page 76, question has been asked by Inquiry Officer to respondent workman. The respondent workman was examined by Inquiry Officer exh 42 and question was asked to him and also in cross examination certain question was asked by Inquiry Officer. Therefore, apparently prima facie independent inquiry was not conducted by petitioner company. The entire correspondence, arrangement and management has been made by Inquiry Officer which prima facie found by Labour Court that it amounts to violating principle of natural justice. The certain decision has been relied by petitioner which has been referred in order, in case of A. K. Cripak and Ors Vs Union of India and Ors reported in AIR 1970 150, in case of Board of Trustees of Port of Bombay and Ors Vs. Vijay Ratanrao Surve and Ors reported in 2000 (2) LLJ 613 and Central Bank of India Ltd vs. V. Karunamoy Benarji reported in 1967 (II) LLJ 739.

In view of our aforesaid discussion, we are of the opinion that the impugned order of dismissal is passed on the basis of the enquiry proceedings conducted in contravention of the Rule of bias as a basic principle of natural justice and such order of dismissal from service cannot be sustained in law and therefore, it is declared to be illegal, invalid, null and void.

In view of decision given by this Court as referred above and looking to facts of present case, witness who was examined before Inquiry Officer whose list was not given in advance to workman except one witness name. Rest of persons have been examined without supplying name of such witness of workman. Each witness has been examined by Inquiry Officer and each witness have been given answer to question put by Inquiry Officer has been recorded by Inquiry Officer and workman was also examined by Inquiry Officer in questionnaire, which shows bias of Inquiry Officer against respondent workman. It is not role of Inquiry Officer to ask any question to any

witness including workman. He has to record merely proceeding which has been carried out in departmental inquiry, instead of that looking to record as it is in facts of present case, Inquiry Officer has participated in inquiry as person of petitioner company. The Inquiry Officer is not remained independent but he has participated in inquiry as person involved in inquiry which was not his function at all while conducting departmental inquiry. Therefore, apparently it has been found from record which produced by petitioner that Inquiry Officer has acted being prosecutor and Judge and it shows bias and in absence of Presenting Officer, participation of Inquiry Officer itself suggests that inquiry was not conducted in independent manner and due to that principle of natural justice has been violated and it cause great prejudice to workman who has to appear before Higher officer of petitioner Company as Inquiry Officer. Therefore, order passed by Labour Court, wherein it is held that inquiry conducted by Inquiry Officer who has been appointed by Petitioner company is vitiated because Principle of Natural justice has been violated. For that, Labour Court, Baroda has not committed any error which would require interference by this Court while exercising power under Art. 227 of Constitution of India. The decision which has been recorded by learned advocate Mr. Naik is not helpful to him because it is not applicable to facts of present case.

Respondent was appointed on fixed term for a period of two years with effect from 16/19th August, 1993. Respondent was offered appointment on probation on the post of account clerk (JR) in Gr. IV-A on 20/22nd November, 1995. On 17th April, 1997, a complaint was lodged by the officer of petitioner company against respondent workman for his continued misconduct of harassment and misbehaving with his female colleague, threatening his superior officer. This complaint was filed by Mr. RK Shah, Senior Manager (Finance). On 19th April, 1997, General Manager (Finance) has agreed with the views expressed in said note. It is necessary to note that on the basis of aforesaid note, no preliminary inquiry was initiated and no statement of any person has been obtained of those who are witnesses of such incident. Petitioner company has straightway issued charge sheet to respondent on 30th June, 1997 which was replied by respondent workman on 4th July, 1997 denying allegations made in charge sheet and pointing out that he is completely handicapped person and on that quota, he was appointed by petitioner company. In reply, there is total denial of incident itself by respondent workman. Thereafter, on 8th July, 1997, after a period of four days from receiving reply from respondent workman, departmental inquiry was fixed by petitioner company. On 8th July, 1997, inquiry officer Shri Gautam Amin has recorded statement of respondent workman in form of question-answer and thereafter, inquiry was adjourned to 12th July, 1997. It was informed to respondent workman that on next date of

hearing, one Mr. RK Shah, PM Dave will be examined in departmental inquiry. Accordingly, inquiry officer has informed RK Shah by letter dated 8th July, 1997 to remain present in departmental inquiry on 12th July, 1997. On 12th July, 1997, no Presenting Officer has been appointed by inquiry officer and inquiry officer has acted as a man of the company, not remained independent and workman has not appointed any person as defence representative. Question was asked by Inquiry Officer to Mr. RK Shah, Senior Manager (Finance) who has made complaint that in respect of note dated 17th July, 1997, if he wants to make any further statement, then, he can give details. Accordingly, statement of Shri RK Shah was recorded, who was considered to be witness. After completion of statement in respect to question put by Inquiry Officer to Mr. RK Shah, workman was given opportunity to cross examine witness Mr. RK Shah. Thereafter, workman has cross examined and inquiry was completed on that day and it was adjourned to 15th July, 1997 for examination of Shri PM Dave.

Accordingly, on 14th July, 1997, letter was written by inquiry officer to Mr. PM Dave, Suresh Desai to remain present in inquiry on 15th July, 1997. Question was asked by inquiry officer to Shri PM Dave what he wants to say about charge sheet. Accordingly, statement was given by him and thereafter, he was cross examined by respondent workman. One Suresh H. Desai was examined and question was asked to him by inquiry officer what he has to say about charge sheet against workman. After completion of his statement, he was cross examined by workman. Thereafter, question was asked by inquiry officer to Suresh Desai after cross examination of Suresh Desai done by workman and it was emphasized by Suresh Desai that complaint filed by Ms. Meenaxi is correct. Then, inquiry was adjourned to 16.7.1997 and Inquiry Officer has called Mr. YS Shah by letter dated 15th July, 1997 and one Mr. KD Thakkar. Mr. YS Shah and Mr. KD Thakkar, both remained present and were examined by inquiry officer in departmental inquiry and thereafter, it was cross examined by respondent workman. Thereafter, inquiry officer has asked question to both witnesses about complaint made by Ms. Meenaxi. Thereafter, Mr. KD Thakkar, Senior Manager (Finance) was examined by inquiry officer and in respect to question put by inquiry officer, Mr. KD Thakkar has given reply and thereafter, he was cross examined by respondent workman. Then, inquiry officer adjourned inquiry to 17th July, 1997 calling witness RC Trivedi by letter dated 16th July, 1997 and one Mr. GL Maskar was also called for evidence and on 17th July, 1997, one Mr. RC Trivedi supervisor was examined and question was asked by inquiry officer and he gave his reply and thereafter, he was cross examined by respondent workman and on the same day, GL Maskar was also examined by Inquiry Officer and initially, question was put to him by inquiry officer that what he has to say about charge sheet and then,

Mr. Maskar has given his statement which was cross examined by respondent workman. Cross examination was offered and it was informed to respondent workman by inquiry officer whether he wants to examine any defence witness or produce any documentary evidence, then, time was given for two days and thereafter, no one was examined by respondent workman and ultimately on 29.7.1997, Ms. Meenaxi Adeshara was called by inquiry officer for her evidence on 31st July, 1997 and one Mr. Ashok Chauhan was also called by inquiry officer. Inquiry officer has asked question to Ms. Meenaxi what she has to say about charge sheet against respondent workman and she made statement in response to question put by inquiry officer and delinquent respondent has cross examined it which was completed and again one Mr. Ashok Chauhan was examined by inquiry officer which was cross examined by respondent workman. Thereafter, inquiry was fixed to 12th August, 1997 and inquiry officer has called respondent by letter dated 11.8.1997. On 12th August, 1997, certain question were asked to respondent by inquiry officer page 76 and 77, which are relevant, has been asked by inquiry officer to respondent in respect to defence document DD 1 to DD 5 and certain questions put to respondent workman by inquiry officer on 12th August, 1997 which continued upto page 82. Inquiry Officer has cross examined respondent workman from page 76 to 82 in respect to allegations made against respondent workman in charge sheet. This nature of cross examination of respondent workman done by inquiry officer has been considered as defence statement of respondent workman but in fact, it was not a defence statement but a separate independent question were put to him by inquiry officer and answer has been given on merits relating to allegations made in the charge sheet.

In view of the aforesaid observations and discussions made by this court after considering entire inquiry and also considering contentions raised by learned Advocate Mr. Naik, according to my opinion, labour court has rightly examined preliminary contention and point raised by workman and has rightly come to conclusion that inquiry is vitiated and for that, labour court has not committed any error which would require interference of this court in exercise of powers under Article 227 of Constitution of India.

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Evidence — circumstantial

Ravindra Kumar Ganvir vs. State of M.P on 21 May, 2010 (Madhya Pradesh High Court)

Appellant has filed this appeal against the judgment dated 31st October, 2001 passed by First Additional Sessions Judge and Special Judge (Prevention

of Corruption) Act, Bhopal in Special Case No.4/1998, convicting the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 201 of the Indian Penal Code.

The accused/appellant was posted as City Superintendent of Police, Bhopal at that time. Complainant Govind Tolani made complaint to him that he and his brother had given their shop to Manoj and Mahesh to run it under 'Naukarnama', but they started disputing their title and possession therefore, he requested him to help him in getting back his shop.

Appellant demanded bribe. The Complainant recorded his conversation with the appellant in a cassette and submitted written complaint to S.P.E.Lokayukta Office, Bhopal.

A trap was organised. The complainant along with the trap party went near Appellant's quarter and complainant alone went to his quarter no.128. After remaining inside for about 10 minutes, he came out and gave a pre-arranged signal. The trap party went on the first floor in the room of accused, but they did not find him there. After about 10 minutes, accused came out from bathroom with wet hands. Thereafter, the phenolphthalein test conducted on his hands yielded positive result. Despite search of the room, the bed sheet and other places, the money could not be recovered. It was guessed that he flushed the bribe money in the commode. Since the occurrence had taken place in the night, trap party waited and at about 10.00 a.m sewage line was checked. Three chambers constructed within the boundary wall of quarter no. 128 were checked, but currency notes were not found. However, when chamber constructed inside the boundary wall of quarter no.129 was checked the currency notes of bribe money were found lying. Numbers of the currency notes tallied with the numbers noted in the preliminary panchnama. The bribe money was seized.

The High Court held that there is no scope for presumption that currency notes were planted by the complainant or any other member of the trap party in the chamber which was closed in the backside courtyard of quarter no.129 and therefore, it is constrained to hold that the appellant voluntarily accepted the bribe money from the complainant. It was also held that the fact of recovery of the currency notes from the sewage chamber connected to the house of appellant rendered significant corroboration to this fact.

The High Court also observed that in Hazari Lal Vs. State (Delhi Administration)- (1980) 2 SCC 390, the Supreme Court held that:

"If the currency notes were thrown out by the accused, but were found to be the same notes which were handed over to accused an inference can be raised that accused accepted the same. It is not necessary that the passing of the money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events following in quick succession in the given case may lead to inference that the money was obtained by the accused."

The High Court held that in the facts and circumstances of the present case, in view of the provision of Section 20 of the Prevention of Corruption Act, 1988, it can be presumed that the appellant, who once accepted the currency notes from the complainant and flushed them out in the toilet which were ultimately recovered from the sewage chamber in the next morning, were accepted by the appellant voluntarily as a motive such as is mentioned in Section 7 of the Act.

The High Court also held that it has been proved that the bribe money accepted by the appellant was flushed by him in the sewage line with a view of causing disappearance of the evidence against him with the intention of screening himself from the legal punishment and thus, the appellant was rightly held guilty for commission of the offence under Section 201 of the Indian Penal Code.

Finally, the High Court dismissed his appeal.

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Departmental action and adverse remarks

Indu Bhushan Dwivedi vs. State of Jharkhand & Anr AIR 2010 SC 2472

The appellant while he was posted as Sub-Divisional Judicial Magistrate at Chaibasa, a news item appeared in 'Dainik Jagran' dated 2.7.2003 suggesting that the appellant had misbehaved and manhandled an accused, named, Anup Kumar and Constable Sheo Pujan Baitha.

High Court of Jharkhand took cognizance of the newspaper report and he was placed under Suspension. A regular departmental inquiry was initiated against the appellant on the following charges:

- 1) Misbehaved and manhandled the accused Anup Kumar as well as constable Shri Sheo Pujan Baitha.
- 2) During the period of suspension, remained absent from headquarter from 6.7.2003 after making over charge to SDJM, Porhat on 5.7.2003 and remained out of headquarter without any information till 10.9.2003.

- 3) Used derogatory words against the Court using expression "Merciless Direction of the Hon'ble Court".

After considering the reply, Inquiry Officer was appointed and he submitted report dated 4.6.2005 with the conclusion that charges No.2 and 3 have been proved against the appellant but charge No.1 has not been proved.

The High Court accepted the inquiry report and show cause notice was issued to the appellant for imposition of a major penalty. In reply to show cause, the Appellant inter-alia claimed that there was no adverse report regarding his integrity, honesty and sincerity and he was never found guilty of any act of insubordination or indiscipline and pointed out that in the latest report, the District Judge had commended his work.

After considering the reply of the appellant, the High Court recommended his dismissal from service. The State Government accepted the recommendation of the High Court and passed dismissal order dated 22.2.2006.

The appellant challenged the aforementioned order by contending that the same is vitiated due to violation of the rules of natural justice because while recommending his dismissal from service, the High Court had considered uncommunicated adverse remarks recorded in the Annual Confidential Report without informing him that the same were being relied upon for deciding the quantum of punishment. Another ground taken by the appellant was that the punishment of dismissal from service was totally disproportionate to the charges found proved against him.

The Division Bench of the High Court held that when the High Court proposed the punishment of dismissal from service and the appellant himself made a request in his reply that his past record may be considered, no prejudice can be said to have been caused to him on account of consideration of the adverse reports. The Division Bench then proceeded to impose punishment of compulsory retirement upon the appellant.

The Appellant filed an appeal for setting aside order dated 29.3.2007 passed by the Division Bench of Jharkhand High Court

The Supreme Court held that it can reasonably be presumed that if the adverse remarks were communicated to him, the appellant would have made representation for expunging the same. However, as the adverse remarks were not communicated to him, the appellant could not avail that opportunity. The Supreme Court further held that since the un-communicated adverse remarks contained in the Annual Confidential Reports of the appellant became foundation of the decision taken by the High Court to recommend his dismissal from service

and he was not noticed about the proposed consideration of those remarks, it must be held that the appellant was seriously prejudiced.

The Supreme Court allowed the Appeal and set aside the impugned order of the Division Bench of the High Court. Further directed the High Court of Jharkhand to consider the issue of quantum of punishment afresh and make fresh recommendation to the State Government within a period of four months from the date of receipt/production of copy of this order and if the High Court still feels that the adverse remarks in the Annual Confidential Reports should be considered, then such report(s) shall be communicated to him and he should be given an opportunity to make appropriate representation.

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Inquiry Officer — witness to the incident

The legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority.

Mohd. Yunus Khan vs. State of U.P. & Ors on 28 September, 2010 Supreme Court of India

The facts of the present case reveal that a person who initiated the disciplinary proceedings against the appellant for disobeying his own orders; appointed his subordinate as an inquiry officer; appeared as a witness in the proceedings to prove the charges of disobedience of his orders; accepted the enquiry report; and further passed the order of punishment - i.e. dismissal of the appellant from service. The question does arise as to whether such a course is permissible in law.

A Constitution Bench of this Court in State of U.P. v. Mohd. Noor, AIR 1958 SC 86, rejected a submission made on behalf of the State that there was nothing wrong with the Presiding Officer of a Tribunal appearing as a witness and deciding the same case, observing as under:

“The two roles could not obviously be played by one and the same person.....the act of Shri B. N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We

find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri. B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding.”

A similar view was taken by this Court in *Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School &Ors.*, AIR 1993 SC 2155, observing that a person cannot be a witness in the enquiry as well as the inquiry officer.

The legal maxim “*nemo debet esse judex in propria causa*” (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void.

We are of the considered opinion that the initiation of disciplinary proceedings against the appellant and the conclusion thereof by the imposition of the punishment by the Commandant, who had himself been a witness, was in flagrant violation of the principles of natural justice and thus, stood vitiated. “Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law.” All other consequential orders passed in appeal etc. remained inconsequential. More so, a protest/disobedience against an illegal order may not be termed as misconduct in every case. In an appropriate case, it may be termed as revolting to one’s sense of justice. In view of the above, we are of the considered opinion that the protest raised by the appellant against the punishment imposed for his absence could not give rise to a cause of action for initiating the disciplinary proceedings.

The appellant joined the service on 10.2.1969 and his services stood terminated vide order dated 8.4.2003. Therefore, the benefit of service rendered by the appellant for more than 34 years stood forfeited. At the time of his removal

from service, the appellant was 54 years of age. Thus, he had been visited with serious punishment on the verge of retirement.

The order of punishment is null and void and therefore, cannot be given effect to. The appeal deserves to be allowed. The appellant had already reached the age of superannuation and no fresh enquiry can be initiated in the matter if the earlier proceedings are rendered null and void for the violation of the statutory provisions and principles of natural justice. In the facts and circumstances of the case and in order to meet the ends of justice, it is desirable that the appellant be paid 50% of the wages from the date of removal from service till the date of reaching the age of superannuation and he be granted retiral benefits in accordance with law from the date of his retirement.

In view of the above, appeal stands disposed of.

(616)

- (A) **Suspension — Continuance of**
- (B) **Suspension — Court Jurisdiction**

***R.Ravichandran vs. The Additional Commissioner of Police,
Traffic, Chennai & Anr. on 5 October, 2010 in Madras High Court***

On a written complaint from Janakiraman, with the Director of Vigilance and Anti-Corruption, to the effect that the Head Constable Mr.Ravichandran (the writ petitioner herein) and the Sub Inspector of Police, Mr.Gokuldoss, demanded Rs.3,000/- as bribe, for releasing a Tourist Ambassdor Car, involved in a road accident, the Vigilance and Anti-Corruption Police, laid a successful trap on 04.02.2008 and caught the petitioner and the above said Sub-Inspector of Police, red-handed. He was placed under suspension on 05.02.2008. Subsequently, a charge sheet was filed on the file of the learned Chief Judicial Magistrate/Sub Judge, Chengalpet, in CC No.10/08.

The petitioner has submitted that the respondent has not reviewed the order of suspension, after the filing of the charge sheet as provided under G.O.Ms.No.40, P & AR Department, dated 30.1.1996. His representations, dated 24.8.2008 and 23.01.2009, to revoke the order of suspension were rejected by the 1st Respondent on the ground that the petitioner has been charge sheeted in the criminal case and it is pending trial. Being aggrieved by the same, the petitioner has filed writ petition to quash the suspension order, dated 05.02.2008 and the order, dated 24.02.2009, rejecting his request for revocation.

Learned Senior Counsel for the petitioner submitted that when the charge sheet has already been filed, the question of tampering with the witnesses will not arise and therefore, the respondents ought to have restored the petitioner in service and if necessary, place him in an insignificant post. Referring to the interim order granted by the High Court of Madras on 24.07.2009, on the ground that there was no progress in the trial and also of the fact of its compliance in reinstating the petitioner, Learned Senior Counsel submitted that the petitioner may be permitted to continue discharge his duties, till the disposal of the trial.

The High Court held that the order of suspension for a misconduct, involving moral turpitude, in the instant case, alleged act of corruption and the further order, refusing to revoke the order of suspension, both being discretionary and administrative in nature, should not ordinarily be interfered with by the High Court under Article 226 of the Constitution of India.

The High Court further held that as rightly observed by the Supreme Court, by allowing a government servant, facing serious charges of corruption or misappropriation or embezzlement, etc., to be retained in service, public interest would be affected and allowing such persons to be retained in service, in Court's view, would give a signal to the erring government servants that if the trial is not taken up, for sometime, then the order of suspension would be revoked automatically. The High Court held that a person charged with a serious offence of corruption, for which, punishment may even extend to 10 years, cannot at any stretch of imagination, be inducted or retained in the department, pending disposal of the trial, as the very conduct, reputation of the person is questionable.

The High Court further held that Courts being the custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of government money and it is the responsibility of the appointing/disciplinary, authority/government to take into consideration that other employees/servants of the department are not demoralised.

Finally, the High Court held that there is no manifest illegality in the order of suspension and the order rejecting his request for revocation and the request of the Learned Senior Counsel that the petitioner may be allowed to discharge his duties, in view of the interim order, cannot be considered and the Interim order granted in M.P.No.1 of 2009, dated 24.07.2009, is vacated. The High Court dismissed the Writ Petition.

(617)**Plea of guilty**

Order of removal had also been passed taking into consideration admission of charges by Respondent.

***Union of India and Ors. vs. Ganga Prasad Pandey 2011(4) CGLJ498
(18.11.2010 - CGHC): MANU/CG/0489/2010***

Tribunal allowed Application of Respondent and ordered reinstatement and quashed penalty of removal and directed reinstatement in service forthwith without any back wages and also observed that there was delay beyond period of two months, Applicant would be entitled to salary and all back wages with consequential benefits as if he was reinstated. Hence, this Petition. Whether, Tribunal was justified in setting aside order of punishment. Held, respondent had been removed from service after conducting departmental enquiry on basis of evidence adduced in departmental proceedings and also on ground that delinquent employee had himself admitted misappropriation and deposited amount defalcated. Further, disciplinary Authority had relied upon evidence of depositor, who had confirmed charges against Respondent. Departmental proceedings were initiated against Respondent on allegation that he did not deposit amounts received by him from depositors in their recurring deposit account after receiving same from them and same was duly established from record. Therefore, Tribunal was not justified in passing impugned order.

(618)

- (A) Documents —— supply of copies / inspection**
- (B) Principles of natural justice – reasonable opportunity**

Whether the enquiry is vitiated for non-supply of (i) preliminary enquiry report and (ii) copies of all the documents relied upon in the charge-sheet.

A. Sadanand vs. Syndicate Bank, 2011 (3) ALD 470; 2011 (2) ALT 717

The petitioner was recruited as a Clerk in the Syndicate Bank on 15.9.1976. While working at Shalibanda Branch, by proceedings dated 30.04.1996 the petitioner was placed under suspension pending enquiry into various irregularities amounting to gross misconduct. Thereafter, charge-sheet dated 25.06.1996 was issued and after conducting enquiry, all the charges were held proved. Accordingly the 2nd respondent by proceedings dated 23.11.1999 ordered penalty of dismissal from service with immediate effect and on appeal the same was confirmed by 1st respondent by order dated 20.03.2000.

The petitioner was directed to submit his written statement of defence within 15 days from the date of receipt of the charge-sheet. The petitioner by letter dated 25.07.1996 requested to provide all relevant documents on which the charge-sheet was based upon so as to enable him to submit his written statement of defence. By letter dated 31.07.1996 the petitioner was informed that all documents connected to the case would be made available for verification at the appropriate stage and he was advised to submit his written statement of defence within seven days.

Aggrieved by the said action of the respondents, the petitioner filed W.P.No.16216 of 1996. The said writ petition was disposed of by this Court by order dated 5.11.1996 directing the respondents to furnish all the relevant material in support of the imputations of the allegations made against the petitioner within two weeks. The 1st respondent Bank was also directed to complete the departmental enquiry within six months from the date of furnishing the copies of documents to the petitioner. Pursuant thereto, the 2nd respondent vide his letter dated 16.12.1996 furnished Photostat copies of 179 documents on which the Bank had relied upon to substantiate the charges levelled against the petitioner and called upon the petitioner to submit his written statement of defence within seven days. The petitioner while contending that some of the relevant documents were not still made available, by letter dated 26.12.1996 requested to furnish the copies of 21 documents specified therein. The petitioner had also requested in the letter dated 26.12.1996 to furnish a copy of the report of the investigating officer, who was cited as a witness, if the respondents were relying upon the said report. In response to the same, the 2nd respondent by letter dated 5.2.1997 while sending copies of 11 documents informed the petitioner that the other documents sought by the petitioner were missing from the records of the Branch as mentioned in the charge-sheet itself. It was also stated that the respondents did not rely upon the report of the investigating officer for issuing the charge sheet and therefore the same was not furnished to the petitioner.

The petitioner was admittedly furnished all the documents that were referred to in the charge-sheet except the eight documents which were missing from the records of the respondent Bank. It is relevant to note that in the charge-sheet itself it was mentioned that those documents were missing and it was alleged that the said missing documents were suspected to have been destroyed by the petitioner himself to suppress the fraudulent acts committed by him. Hence no motive can be attributed to the respondents for not supplying those documents and the petitioner's allegation that the said documents were not supplied with an intention to deny him an effective opportunity of hearing is unfounded. Moreover this is a case where the petitioner did not submit any reply to the charges levelled against him. He did not even deny the allegations nor

pleaded that he had no access to the documents allegedly missing from the records of the Bank. Except the eight (8) documents which were said to be missing from the records of the Bank, since all other documents referred to in the charge-sheet were admittedly supplied, the petitioner could have submitted his explanation explaining the prejudice caused to him on account of non-availability of those eight documents. However the petitioner did not choose to even respond to the show-cause notice in spite of several opportunities given. The petitioner could not plead or establish any such prejudice even before this Court. Therefore, the enquiry proceedings cannot be held to be vitiated for violation of principles of natural justice on the ground that the copies of the some of the documents were not furnished to the petitioner.

(619)

- (A) **P.C. Act, 1988 — Sec. 19**
- (B) **Sanction of prosecution – under P.C. Act**
- (C) **Disproportionate assets — authorization to investigate**
- (D) **Additional evidence**

Additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest.

Ashok Tshering Bhutia vs. State of Sikkim (2011) 4 SCC 402 in Supreme Court of India

This appeal has been preferred against the judgment and order dated 11.12.2002 passed by the High Court of Sikkim at Gangtok in Criminal Appeal No. 4 of 2002, upholding the judgment and order dated 30.5.2002, passed by the Special Judge, Prevention of Corruption Act, Gangtok in Criminal Case No. 4 of 1997, convicting the appellant for the offences punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

During the hearing of Criminal Appeal No.4 of 2002 before the High Court an argument was advanced before the High Court that a large number of documents, particularly the Exhibits regarding telephone and electricity bills though relied by the Special Judge during the trial, had not been proved in evidence and therefore, the judgment of the Special Court suffered from fundamental procedural errors and stood vitiated.

The High Court remitted the matter to the Trial Court giving an opportunity to the prosecution to prove those documents and directed the Trial Court to

send the file back to the High Court after completing that formality. The Special Judge considered the matter in the light of the directions issued by the High Court and issued summons to 12 witnesses to appear before it to prove the aforesaid documents. In spite of all this, the prosecution failed to prove said documents as the original records of aforesaid documents, which related to the bills of telephone and electricity expenditure aggregating to Rs.1,04,364/- . The Special Judge referred the matter back to the High Court and the High Court heard the arguments and dismissed the appeal.

Aggrieved, the appellant preferred appeal before Supreme Court of India.

The learned senior counsel appearing for the appellant, has raised a large number of issues contending inter-alia that the FIR could not have been lodged without the written order/direction of the Superintendent of Police and sanction could not have been accorded without taking into account the assets and income shown in Ex.D-4. He has further argued that the documents very heavily relied upon by the prosecution had never been proved in spite of remand of the case for that purpose and remand even for limited purpose to prove the documents was impermissible as it is tantamount to giving an opportunity to the prosecution to fill up any lacunae in its case. The learned counsel argued that the procedural error committed by the prosecution is not curable and therefore, the entire prosecution proceedings stood vitiated.

The Supreme Court referring to the earlier precedents has observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. The Court has further held that a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.

The Supreme Court observed that Additional evidence at appellate stage is permissible, in case of a failure of justice and such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. The Supreme Court observed that the primary object of the provisions of Section 391 Cr.P.C.

is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth.

The Supreme Court while referring to its various judgments held that the law on the point can be summarised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. The Court also held that generally, such power is exercised to have formal proof of the documents etc. just to meet the ends of justice and the provisions of Section 391 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution's case.

The Supreme Court observed that in the instant case, the electricity and telephone bills have not been proved at the time of trial and the High Court while hearing the appeal remitted the matter back to the Trial Court to allow the prosecution to prove the said documents and in spite of giving full opportunity to the prosecution witnesses, the said bills were not proved. The Supreme Court held that though it may be permissible in law as referred to hereinabove to get the formal approval of the documents by adducing additional evidence, but it cannot be held even by any stretch of imagination that in absence of proving the said documents the same can be relied upon. The Supreme Court therefore, held that the judgments of the courts below suffered from a fundamental procedural error and the amount shown in the said bills to the tune of Rs.1,04,364/- cannot be taken into account.

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(A) Court jurisdiction

(B) Departmental action and acquittal

State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya
(2011) 4 SCC 584

The Supreme Court of India held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries.

The Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

(621)

- (A) Constitution of India—Art. 311(2) second proviso cl.(c)**
- (B) Inquiry — not expedient**

There are credible and substantial materials on record in terms of clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid action of invoking the extra ordinary provisions like clause (c) to second proviso to Article 311(2) was also found to be justified by the Tribunal in the earlier stage of litigation itself.

Union of India and Anr. Vs M.M. Sharma Civil Appeal No. 2797 OF 2011

The respondent was posted as First Secretary in the Embassy of India, Beijing, China. While on special assignment, the respondent came under adverse notice and was found to be involved in an unauthorized and undesirable liaison with foreign nationals of the host country. The Director, Intelligence Bureau (IB) upon completion of the said inquiry forwarded a detailed report including findings of the Inquiry Officer. The aforesaid report was considered and it was felt that in view of the seriousness of the case and the adverse implications on the security of the State, it would not be expedient to hold the inquiry due to the following reasons: -

- (i)** The respondent was on special assignment and entrusted with responsible duties of external intelligence. Any formal inquiry

would jeopardize security of India, as it would reveal details of intelligence operation in the host country.

- (ii) For a proper disciplinary inquiry to be conducted, witnesses would be required to be examined. In this case witnesses can be either foreign nationals or officers working under cover in Indian Embassy in China and examination thereof would certainly jeopardize the security of the State.

Consequently, the competent authority took a decision that the services of the respondent should be dispensed with by exercising powers under Clause (c) of Second Proviso to Article 311(2) of the Constitution of India and dismissed him from service.

The respondent challenged the aforesaid order by filing an Original Application before the Central Administrative Tribunal. The Tribunal did not interfere with exercising of powers under Clause (c) of Second Proviso to Article 311(2) of the Constitution of India, but directed the Government to re-consider whether the aforesaid penalty awarded to the respondent could be substituted by any other punishment. The competent authority considered and issued order dated:03.06.2010 that it was not possible either to substitute the penalty of Shri M.M. Sharma from 'dismissal' to 'reduction in rank' or to grant him any pensionary benefits.

The aforesaid order was again challenged before the Tribunal and it dismissed the Original Application and also held that invocation of power under Article 311(2) (c) of the Constitution of India cannot be faulted with because of the sensitive nature of the issues involved.

The aforesaid order of the Trbunal was challenged by the respondent before the High Court of Delhi and the High Court partly allowed the writ petition holding that the order which was passed by the competent authority dated:03.06.2010 was not a reasoned order and issued a direction that the appellants must pass a reasoned order showing its application and set aside the order by the Tribunal dated:04.08.2010.

The aforesaid Judgment and Order passed by the High Court was challenged by the petitioners in Supreme Court of India.

The Supreme Court observed that clause (b) of the second proviso to Article 311 (2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded

DECISIONS (622)

in writing before an action is taken and Clause (c) of the second proviso to Article 311 (2) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State.

The Supreme Court held that a very high level committee considered the entire record and the allegations against the respondent and on the basis of the materials available on record, the committee *prima facie* came to the conclusion that action could be taken for his dismissal under clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid recommendation is available on record and the High Court could have called for such record and therefrom satisfy itself that there are sufficient and cogent reasons recorded for taking action under Article 311(2) (c) of the Constitution and also for imposing the penalty for dispensation of the service of the respondent by way of dismissal from the service.

The Supreme Court held that in its considered opinion, in the present case, charges against the delinquent officer being very serious and also in view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged and the reasons recorded in the official file against the person for dismissing him from service need not be incorporated in the impugned order passed.

The Supreme Court further held that if in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer.

The Supreme Court finally held that the order and direction passed by the High Court cannot be sustained and set aside the same and restored the order dated 04.08.2010 passed by the Central Administrative Tribunal.

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Documents – additional documents, production of

Karanit Singh vs. State Rep. on 29 June, 2011

Though the hard disk is a document falling within the meaning of Sec.3 of Evidence Act, the accused is entitled only for those documents which are

relied on by the prosecution. The only contention of the petitioner is that the laptop which was used at the time of search proceedings contains the documents in its original form and what was furnished to the petitioner/accused is only a fabricated document. According to the petitioner, the purpose of calling for the hard disk and the lap top is to retrieve the original documents of search proceedings.

The Madras High Court held that it is farfetched to imagine that what was furnished to the petitioner is only a fabricated document and not the generated copy as found in the hard disk.

It is also pertinent to note that the laptop/hard disk contains not only the search proceedings but also other confidential documents for which the petitioner is not entitled for access. No doubt, when a file is deleted its contents are not actually erased from the computer storage memory. With appropriate tools, the contents can be retrieved. However, the allegation that the petitioner was furnished only with fabricated documents stands in a different footing. Moreover, the accused is entitled only for those documents which are relied on by the prosecution.

In the decision of the Delhi High Court relied on by the petitioner, the prosecution has in fact relied on the hard disk which was subjected for examination by the Andhra Pradesh Forensic Laboratory.

In the instant case, the search proceedings were entered into laptop and the copies were generated and furnished to the accused which were also relied on by the prosecution. Alleging that the entries have been manipulated or fabricated is not on a sound base and no purpose will be served if the laptop and hard disk, being electronic documents were produced. Therefore, the petitioner is not entitled for production of laptop and hard disk.

To sum up, the General diary, and the Daily diary and the pocket note book if any, can be produced by the respondent for which the petitioner/accused or his counsel can have an access. The office laptop and hard disk which were used for search proceedings were not relevant and necessary, therefore, they need not be produced.

The entire file containing the report which was placed before the sanctioning authority for sanction is a relevant document only for the perusal of the court to satisfy itself that the sanctioning authority had applied his mind on the facts placed before him while according sanction. Therefore, the same can be produced for the above said limited purpose.

For the reasons, the criminal original petition is partly allowed and the respondent is directed to produce General diary and if available, can also produce Daily diary and his pocket note book. The trial court is directed to call for the sanction file from the sanctioning authority for its perusal.

As far as the relief sought for producing the laptop and the hard disk, the same is not granted since the aforesaid things are not relevant to the case of the petitioner. Consequently, the petition stands dismissed as far as the above relief is concerned.

(623)

Inquiry — previous statements, supply of copies

***Jahid Shaikh and others vs. State of Gujarat and another
Supreme Court of India in Transfer Petition (Crl) No.55 of 2010
on 6 July, 2011***

Among the more glaring examples of bias and prejudice pointed out by Mr. Prashant Bhushan was the allegation that charges were framed against the accused without supplying them with the essential documents which were required to be supplied under section 207 of Cr.P.C. only when the majority of the accused were not being represented through the counsel. Mr. Bhushan submitted that in cases instituted upon police report, Sec 207 Cr.P.C. makes it obligatory on the part of the magistrate to provide the accused, without delay, free of cost, copies of the police report, the first information report recorded under section 154 Cr.P.C., the statement recorded under subsection 3 of section 161 Cr.P.C. of all the persons whom the prosecution proposed to examine as witnesses, the confessions and statements recorded under section 164 Cr.P.C., as well as any other document or relevant extract forwarded to the magistrate with the police report under Section 5 of section 173 Cr.P.C.

Mr. Bhushan urged that under section 227 Cr.P.C. that the accused have a right to oppose the framing of charges on the basis of the evidence gathered during the investigation, which requires the accused to have copies of all documents mentioned in section 207 of the code, Mr. Bhushan submitted that the said rights to have the police papers had been violated by the respondents, in as much as most of the accused did not have access to all the papers at the time of framing of charges against them.

Mr. Bhushan submitted that those who had been favoured with copies of the police papers were unable to understand the same as they were in Gujarati, which language was not known to most of the accused, as the most of them

were from outside of the state of Gujarat. Mr. Bhusan also submitted that the learned advocates of those who were provided with copies of the charge sheets in Gujarati were barely given four days time to consider the same to prepare their case for discharge of accused.

The presiding officers, against whom the bias had been alleged, will no longer be in charge of the proceedings of the trial, the conditions in Gujarat today are not exactly the same as they were at the time of the incidents which would justify the shifting of the trial from the state of Gujarat? On the other hand in case of sessions trial is transferred to outside the state of Gujarat for trial, the prosecution will have to arrange for production of witnesses who are large in number at any venue that may be designated outside state of Gujarat.

The transfer petition is disposed with aforesaid observation there will be no order as to cost.

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Charge – should contain necessary particulars

Any charge which is deficient in the details relating to the misconduct may be described as a vague charge. Such a charge shall have the effect of initiating the proceedings.

***Anil Gilurker vs. Bilaspur Raipur Kshetria Gramin Bank and Anr.
[JT 2011(10) SC 373] Decided on: 15.09.2011***

The Hon'ble Supreme Court observed that a plain reading of the charges and the statement of imputations reproduced above would show that only vague allegations were made against the Appellant that he had sanctioned loans to a large number of brick manufacturing units by committing irregularities, but did not disburse the entire loan amount to the borrowers and while a portion of the loan amount was deposited in the account of the borrowers, the balance was misappropriated by him and others. The details of the loan accounts or the names of the borrowers have not been mentioned in the charges. The amounts of loan which were sanctioned and the amounts which were actually disbursed to the borrowers and the amounts alleged to have been misappropriated by the Appellant have not been mentioned.

The Supreme Court also observed that along with the charge-sheet dated 31.01.1989 no statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans sanctioned, disbursed and misappropriated were furnished to the appellant, and yet the

disciplinary authority has called upon the appellant to submit his written defence statement in reply to the charges and failed to appreciate how the appellant could have submitted his written statement in defence in respect of the charges and how a fair enquiry could be held unless he was furnished with the particulars of the loan accounts or the names of the borrowers, the amounts of loan sanctioned, the amounts actually disbursed and the amounts misappropriated were also furnished in the chargesheet.

The Supreme Court set aside the order of the Division Bench and restored the order of the learned Single Judge who had held that the charges levelled against the delinquent officer in the charge-sheet were vague and not specific and the entire enquiry is vitiated and quashed the orders of the disciplinary authority and the appellate authority removing the appellant and directed reinstatement of the appellant in service.

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- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution – under P.C. Act**

**Dinesh Kumar vs. Chairman, Airport Authority of India & another 2012
AIR SC 858**

The Hon'ble Apex Court relied on Prakash Singh Badal and another 2007 AIR SC 1274 and observed as follows:

"The provisions contained in Sec.19(1)(2)(3) & (4) of Prevention of Corruption Act came up for consideration before this Court in Prakash Singh Badal and another 2007 AIR SC 1274 in para 48 of the Judgment –

"The sanction in the instant case is related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

Based on above decision the Hon'ble Apex Court held that the absence of sanction could be raised at the inception and threshold by an aggrieved person however where sanction order exists but its legality and validity is put in question such issues has to be raised in the course of trial.

(626)**Bias**

Judicial bias. Doctrine of waiver. Issue of bias should be raised by party at earliest if it is aware of it and knows its right to raise issue at earliest. Otherwise it would be deemed to have been waived.

State of Punjab vs. Davinder Pal Singh Bhullar and Ors.
AIR 2012 SC 364

The allegations of judicial bias are required to be scrutinized taking into consideration the factual matrix of the case in hand. The Court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial “coram non-judice”.

If a party knows the material facts and is conscious of his legal rights in that matter, but fails to take the plea of bias at the earlier stage of the proceedings, it creates an effective bar of waiver against him. In such facts and circumstances, it would be clear that the party wanted to take a chance to secure a favourable order from the official/Court and when he found that he was confronted with an un-favourable order, he adopted the device of raising the issue of bias. The issue of bias must be raised by the party at the earliest.

(627)**Departmental action and prosecution**

Just because the Government had earlier referred the matter of trap laid by the ACB to the Tribunal for Disciplinary Proceedings for a detailed enquiry, it cannot be automatically presumed that the sanction for criminal prosecution under P.C. Act is rejected unless so specifically stated in the Memo. Writ petition challenging the G.O. which granted the sanction for such prosecution is dismissed.

***K. Rama Krishna Raju vs. Govt. of A. P. rep. by its Prl. Secretary,
Revenue Dept, 2012 (2) ALD 425; 2012 (2) ALT 12; 2011 Supreme (AP)***

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The petitioner was working as a Surveyor in the office of the Deputy Director of Survey and Land Records, Hyderabad. A complaint was made to the 3rd respondent that the President and Secretary of Pochamma temple had submitted a requisition to conduct survey of the lands of the temple in order to protect the said lands from encroachment. On the ground that the petitioner had demanded Rs.2000/-, for conducting the survey, a trap was laid on 22.2.2008 and, pursuant thereto, Crime No.5/RCT-CR-1/2008 was registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988. The matter was, thereafter, entrusted to the Tribunal for Disciplinary Proceedings, vide memo. dated 5.2.2009, for a detailed enquiry into the allegations leveled against the petitioner. It is the petitioner's case that the sanction granted thereafter on 4.7.2009, to prosecute him in a court of law, in effect, amounted to reviewing the earlier Government memo. dated 5.2.2009 whereby it was decided to take disciplinary action against him. The petitioner's case, in short, is that the government has no power to review its own order and once a decision is taken, either to grant or not to grant sanction to prosecute a public servant in terms of Section 19 of the Prevention of Corruption Act, it is final and cannot be subsequently reviewed by the Government.

The allegations leveled against the petitioner are of having taken a bribe. Public servants should not be permitted to evade prosecution in cases where such serious allegations of corruption are levelled against them. In such matters this Court would be loathe to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to entertain a Writ Petition seeking a relief which, in effect, is to evade prosecution under the provisions of the Prevention of Corruption Act, 1988.

Viewed from any angle, the impugned G.O. does not necessitate interference. The writ petition fails and is, accordingly, dismissed. No costs.

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(A) Sanction of prosecution — under P.C. Act

(B) Cr.P.C. — Sec.197

*Grant or Refusal of Sanction – Manner of and
Considerations for*

Subramaniam Swamy (Dr.) vs. Manmohan Singh and another,
AIR 2012 SC 1185: 2012 (3) SCC 64

Competent Authority is not bound to give opportunity of hearing to the person against whom sanction is sought for prosecution, as the said Authority does not discharge quasi judicial function in the course of grant or refusal of such sanction in terms of Section 19 of the P.C.Act of 1988, as well as under Section 197 of Criminal Procedure Code, 1973, and is also barred from undertaking detailed inquiry as to truthfulness or falsity of allegations made against the public servant, but can only ascertain existence of *prima facie* commission of offence on the basis of materials made available by investigating agency or complainant.

The Hon'ble court held that today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambulary vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

(629)

- (A) **Judicial Service — disciplinary control**
- (B) **Compulsory retirement (non-penal) — of judicial officers**

Service - Compulsory Retirement - Legality thereof - Appeal against order passed by High Court of Jharkhand whereby, High Court had sustained order of reversion and order of compulsory retirement passed against Appellant - Whether High Court was justified in passing order, in reverting Appellant from post of Chief Judicial Magistrate to rank of Munsif (Civil Judge, Junior Division) - Whether High Court was justified in passing order of compulsorily retiring Appellant from service in public interest.

Nand Kumar Verma vs. State of Jharkhand and Ors
Civil Appellate No. 1458 of 2012 (Special Leave Petition (C) No. 5921 of
2007) in the Supreme Court of India

The Appellant was initially appointed as Munsif (now known as Civil Judge, Junior Division) in the Bihar Subordinate Judicial Service in the year 1975 and his services were confirmed as Munsif in the year 1980. Subsequently, in the year 1986, he was promoted to the rank of Sub-Judge (Civil Judge, Senior Division) and confirmed on the same rank w.e.f. 19.01.1988. In the year 1987, the Appellant was made Sub Judge-cum-Addl. Chief Judicial Magistrate. Thereafter, in November 1989, he was posted as Chief Judicial Magistrate by the Patna High Court vide Notification dated 5.11.1989. While he was working as a Chief Judicial Magistrate at Gopalganj, an inspection was made by the portfolio Judge and on noticing certain omissions and commissions in granting bail in certain cases by the Appellant, certain adverse remarks were made against him in the note made on 09.03.1994. Further, the Appellant had also passed an Order dated 10.2.1994 granting bail to one person accused of offences punishable under Section 302 of the I.P.C. in Mohammadpur Police Station Case No. 90/93. This was taken as an exception by the learned District Judge and also by the High Court while deciding the Criminal Miscellaneous Petition No. 11327/1994. The High Court of Patna vide Order dated 12.09.1994 in Cr. Misc. No. 11327 of 1994, whilst commenting adversely against the Appellant, had observed that the Appellant had granted bail in the said matter on extraneous consideration and further directed the matter to be placed before the Hon'ble Chief Justice of the High Court for taking necessary action.

In the second explanation offered by the Appellant dated 21.12.1994 he had, specifically, adverted to the allegations made for granting bail indiscriminately even in cases of heinous crimes. The said explanation was placed before the Standing Committee of the High Court for its consideration in its meeting dated 5.1.1995 as an Additional Agenda which was duly accepted by the High Court. Thereafter, the same was communicated to the Appellant by the Registrar General of the High Court vide his order dated 1.2.1995.

In view of the above discussion, we are of the opinion that the High Court was not justified in sustaining the orders passed by the Full Court of the same High Court. Accordingly, we allow this appeal, set aside the orders passed by the High Court. Since the Appellant has retired from service on attaining the age of superannuation, he is entitled to all the monetary benefits from the date of his notional posting as C.J.M. till his notional retirement from service on attaining the age of superannuation, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.

(630)**Evidence — onus of proof**

Chodagudi Sambasivarao vs. State, 2012 (2) ALD (Crl.) 201 (AP)

The point onus of proof was clearly discussed and the Hon'ble Court held that initial burden on prosecution to prove demand and acceptance, *dehors* plea of alibi of accused. Burden cannot be placed on accused officer to prove that there was no demand made by him. Burden shifts on accused only after it has been established by prosecution, on evidence either oral or circumstantial to prove demand by Accused Officer.

(631)**Misconduct — what constitutes, what doesn't**

Words and Phrases – Misconduct and disgraceful conduct –

What constitutes misconduct – How to determine – Distinction between misconduct and disgraceful conduct

Ravi Yashwant Bhoir vs. District Collector, Raigad, 2012 0 AIR (SC) 1339; 2012 4 SCC 407; 2012 0 Supreme (SC) 211

The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as mis-demeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.

(632)

- (A) Evidence — of suspicion
- (B) P.C. Act, 1988 – Sec. 20
- (C) P.C. Act, 1988 – Sec. 13(1)(e)

Om Prakash Sharma vs. C.B.I. on 26 March, 2012 in Delhi High Court

The Petitioner challenges the order dated 4th May, 2011 passed by the Learned Special Judge CBI-I, Central Delhi framing charge for offence punishable under Disproportionate Assets case Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 against the Petitioner in CC No. 141/2007 arising out of RC No. 8(A)/91-SIU-VIII CBI.

Learned counsel for the Petitioner contends that while framing the charge, the Learned Special Judge ignored all the documents, which were in possession of the CBI. He states that he is not basing his claim on the documents, which are not in possession of the CBI like the orders passed by the Income Tax Appellate Authority adjudicating finally the income of the Petitioners family members, which would be the defence available to the Petitioner at the time of trial, in view of the decision of the Hon'ble Supreme Court in State of Orissa vs. Debendra Nath Padhi (2005) 1 SCC 568.

The Hon'ble High Court relying upon State of Bihar vs. Ramesh Singh, (1977) 4 SCC 39, contended that at the stage of charge the benefit of suspicion enures to the prosecution and not to the accused.

Since strong suspicion arises of the Petitioner having committed the offence under Section 13(2) read with 13(1)(e) of the P.C. Act, the absurdities in the calculation of income can be dealt with at the stage of trial.

It may be noted that for an offence punishable under Section 13(1)(e) read with Section 13(2) P.C. Act, no statutory presumption is available under Section 20 P.C. Act. However, the learned Special Judge has raised the presumption on the basis of the fact that the Petitioner has been involved in a case accepting Rs.10 lakhs as bribe and has gone to the extent of holding that this would certainly be not his first misadventure, the Petitioner ought to have been indulging in this kind of activity in the past and getting caught while accepting bribe of Rs.10 lakhs raises strong suspicion that indeed he had been indulging in this kind of practice earlier also and had accumulated assets disproportionate to his known sources of income. The Learned Special Judge lost sight of the presumption of innocence available to the accused. No presumption except a statutory presumption can be raised.

Since the trial has already started and in view of the law laid down by the Supreme Court, this Court will not act as an appellate Court and enter into an exercise of calculating the assets at this stage. It would be thus appropriate that the issues raised by the Petitioner are dealt with during trial. Petition is dismissed.

(633)

Termination — of probationer

B. Mallikarjuna Reddy vs. State Bank of India in Andhra Pradesh High Court decided on 10.04.2012

Respondent bank came to know that an FIR was lodged against Petitioner in Tadepalli Police Station on ground that he was involved in cooperating with banned Maoist Party and having considered evidence pertaining to case, they declared Petitioner not suitable for post and accordingly, his probation was not extended resulting in terminating service - Hence, this Petition - Whether, Respondent/Bank rightly terminated services of Petitioner - Held, no person should be suspected or harassed merely because he was related to an extremist (Maoist) - Experience of society reveals, once a person was suspected and harassed, he may be forced to become an extremist - Taking birth in a particular caste, religion, region or to a particular parents was not in hands of such person - Therefore relationship such as brother or sister to a particular person was nothing but an accident - Merely because a person was related to an extremist (Maoist) as a brother, sister or brother-in-law or son, it did not mean that he was a sympathizer or follower of Maoist philosophy - Therefore if a person was punished merely because he had expressed certain views or if he was in possession of certain literature, same was nothing but violative of Article 19 of Constitution of India - No person could be punished merely because he had certain views, ideology or philosophy or even when he shares his views with others by writing books or articles or in a public speech - Thus termination of services of Petitioner appeared to be clearly illegal and violative of principles of natural justice and accordingly, Respondents were directed to reinstate Petitioner in service with continuity of service and all consequential benefits - Writ Petition allowed.

Ratio Decidendi

"No person can be punished merely because he has certain views, ideology or philosophy or even when he shares his views with others by writing books or articles or in a public speech."

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- (A) **Appeal — consideration of**
- (B) **Application of mind**

Vijay Singh vs. State of U.P. and Ors. AIR 2012 SC 2840

The appellant when posted as Sub-Inspector of Police at Police Station, Moth, District Jhansi in the year 2010, had arrested Sahab Singh Yadav for

offence punishable under Section 60 of the U.P. Excise Act and after concluding the investigation, filed a chargesheet before the competent court against the said accused. During the pendency of the said case in court, a show cause notice was served upon him by the Senior Superintendent of Police, Jhansi to show cause as to why his integrity certificate for the year 2010 be not withheld, as a preliminary enquiry had been held wherein it had come on record that the appellant while conducting investigation of the said offence did not record the past criminal history of the accused.

The appellant filed reply to the said show cause notice pointing out that the said offence was bailable. The purpose of finding out the past criminal history of an accused is relevant in non-bailable cases as it may be a relevant issue for considering his bail application. More so, withholding the integrity could not be the punishment and as the criminal case was sub-judice before the competent court against the said accused on the chargesheet submitted by him, no action could be taken against the appellant unless the court comes to the conclusion that investigation was defective. The disciplinary authority, i.e. Senior Superintendent of Police without disclosing as under what circumstances not recording the past criminal history of the accused involved in the case had prejudiced the cause of the prosecution found that the charge framed against the appellant stood proved. Therefore, the integrity certificate for the year 2010 was directed to be withheld vide impugned order.

An appeal before the Deputy Inspector General of Police stating inter-alia that punishment so imposed was not permissible under the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The appeal was rejected and a revision before the Additional Director General of Police was also rejected.

The appellant filed a Writ Petition which was dismissed by the High Court by the impugned judgment and order dated 19.7.2011 and hence he filed appeal before Supreme Court of India.

The Supreme Court observed that the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991 and the issue involved is required to be examined from another angle also. Held that holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one and therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed.

The Supreme Court observed that it failed to understand, if the revisional authority was of the view that integrity could not be withheld as punishment, why the mistake committed by the disciplinary authority as well as by the appellate authority could not be rectified by him. This shows a total non-application of mind. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision etc. otherwise it would be a case of non-application of mind.

The Supreme Court held that the punishment order is not maintainable in the eyes of law and quashed the order withholding integrity certificate for the year 2010 and all subsequent orders.

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- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) P.C. Act, 1988 — Sec. 20
- (C) Trap — presumption

Presumption under sec. 20 of P.C.Act, 1988 explained.

Presumption thereunder, compulsory and not discretionary.

Where prosecution proved that accused received gratification from complainant, court can draw legal presumption that said gratification was accepted as reward for doing public duty.

- (D) Bribe — quantum of

Shivrao Waman Rao Deshmukh vs. State of Maharashtra on 8 May, 2012

In the appeal, it was submitted for accused no.1 that no tainted money was recovered from the possession of accused no.1 and so there was no need for him to give explanation. Alternatively, it was submitted that accused no.1 has given reasonable and probable explanation in respect of the amount and so this explanation ought to have been accepted by the Trial Court. Some arguments were advanced in respect of the sanction given for prosecution of accused no.1. For accused no.2, it was submitted that there is no evidence on ‘demand’ made by accused no.2 and if the amount was accepted by accused no.2 as per the instructions of accused no.1, the probability that the amount was legally recoverable needs to be kept in mind.

The evidence shows that additional amount of Rs. 380/- was also recovered from the possession of accused no.2. Specific evidence is given by

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the witnesses that accused no.2 was preparing receipt as per the instructions of accused no.1 when accused no.2 was simply a peon. This circumstance needs to be kept in mind at the time of appreciation of aforesaid evidence.

It was not necessary for the prosecution to prove that there was some work of the complainant pending with the accused and for that work the amount was obtained by the accused for proving offence under Section 13(1)(d) of the Act. This section simply prohibits a public servant from obtaining pecuniary advantage or valuable thing and so in the present case the prosecution can prove offence only by proving that the amount of Rs. 150/- as bribe amount was obtained by the accused, who is public servant.

The High Court of Bombay held that the provision of Section 20 of the Prevention of Corruption Act, 1988, shows that as soon as the prosecution proves that the accused accepted the gratification (other than legal remuneration), the Court is bound to presume, unless contrary is proved that the accused accepted such gratification as a motive or reward, as described in section 7 of the Act. Section 20 shows that the burden is on the accused to rebut this presumption.

Alternate argument was advanced, in view of the section 20 (3) of the Prevention of Corruption Act, 1988 that the amount shown to be recovered in the case is only Rs. 150/- and so this amount can be treated as trivial amount and so inference of corruption may not be drawn in this case. This Court has already observed that even without aid of Section 20, the prosecution can prove its case. Further whether in a particular case amount demanded was trivial or not needs to be decided by the Court for that case. Discretion is given under the provision and the Court may decline to draw the presumption of Section 20 if in the opinion of the Court the amount was trivial. This court has no hesitation to observe that the amount involved, Rs. 150/- was not trivial amount, as it was demanded and accepted in the year 1998. In those days, ordinary labour was getting hardly Rs. 30/- per day as wages. In the case of Kootha Perumal (cited supra) the bribe amount was only Rs.50/- and the incident was of 1993, but in view of the facts of that case, the accused was convicted and sentenced for similar offences.

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Evidence — onus of proof

Explanation furnished by Appellants that, they had falsely been enroped due to enmity could not be proved because no evidence could be brought on record indicating any previous enmity between complainant and Appellants.

Mukut Bihari and Ors. vs. State of Rajasthan AIR 2012 SC 2270

Burden rests on Accused to displace statutory presumption raised under Section 20 of Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that money was accepted by him, other than as a motive or reward as referred to in Section 7 of Act, 1988. While invoking provisions of Section 20 of Act, Court was required to consider explanation offered by Accused, if any, only on touchstone of preponderance of probability and not on touchstone of proof beyond all reasonable doubt.

The onus of proof lying upon the accused person is to prove his case by a preponderance of probability and as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts.

(637)

- (A) Misconduct — gravity of
- (B) Penalty — quantum of

***Surajmal No.411 Ehc vs. the State of Haryana and Others
on 29 May, 2012 Punjab – Haryana High Court***

In order to gauge gravity of misconduct, what matters, is not frequency but as obliquity or delinquency.

In Bhagwat Parsad vs. Inspector General of Police and others, 1967 SLR 807, it has been held that the use of word 'acts' did not exclude a single act of misconduct. In order to give effect to the legislative intent words in plural number may be construed to include the singular and the words importing the singular only, may be applied to plurality of acts, things or persons. In order to gauge gravity of misconduct, what matters, is not frequency but as obliquity or delinquency. It was for the police officer who judged the infraction of the police rules to determine the seriousness of the misconduct and to decide upon the suitability of the punishment. This would show that it is the gravity of the misconduct which would determine the punishment to be imposed upon the delinquent employee and for that such misconduct proving incorrigibility and complete unfitness for police service, if found, punishment of dismissal shall be awarded. Regard, however, under those circumstances, also shall be had to the length of service of the offender and his claim to pension, which again would be dependent upon the misconduct proved against the delinquent employee.

Further, this Court in the cases of Ex. Constable Sat Pal vs. State of Haryana, 1998 (2) SCT 408 and Rajesh Kumar vs. State of Haryana and others, 2005 (3) SCT 512 has held that absence from duty is a gravest act of misconduct. Hon'ble the Supreme Court also in the case of State of U.P. vs. Ashok Kumar and another, AIR 1996 SC 736 has held absence from duty in a disciplined force to be an act which would amount to a gravest act of misconduct.

Thus, the opinion formed by the Punishing Authority that the misconduct of the petitioner amounts to a gravest act of misconduct which is sufficient to award punishment of dismissal from service is in consonance with the Statutory Rules and is justified as the conduct of the petitioner does not leave any manner of doubt that he is incorrigible and completely unfit for police service as a police officer is required to be disciplined, committed, punctual and honest with impeccable integrity and above all showing respect for law. Keeping a police officer in service where he is absent from duty without intimation would create indiscipline and would encourage others also to indulge in such type of misconduct which would leave the police force a paralysed, ineffective and inactive force which cannot be permitted.

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Charge sheet — issue of, by subordinate authority

There is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

The Secretary, Minister of Defence & Ors. vs. Prabhash Chandra Mirdha
2012 0 AIR (SC) 2250; 2012 0 AIR (SCW) 3470; 2012 5 JT 524; 2012 5
Scale 734; 2012 11 SCC 565; 2012 6 SCJ 90; 2012 0 Supreme (SC) 411

(A) Respondent had been working as an Assistant Foreman in the Ordnance Factory, Yeddu-mailaram, when charge memo dated 8.1.1992 was issued to him on the alleged demand of bribe of Rs.37,000/- and acceptance of Rs.4,150/- on 3.8.1991 in cash from the representative of firm M/s Teela International Limited, Hosur, Bangalore. (B) Aggrieved by the said charge memo, respondent preferred O.A. No. 1641 of 1995 before the Central Administrative Tribunal, Hyderabad (hereinafter called as 'Tribunal) on 23.12.1995 on the ground that the charge memo had been issued to the respondent by the authority not

competent to do so, being subordinate to his appointing authority. (C) The said application was allowed vide judgment and order dated 4.1.1996 only on the ground that the officer who had issued the charge memo was subordinate to the appointing authority of the delinquent and thus, had no competence to initiate the disciplinary proceedings. (D) Aggrieved by the said order, a Review Application was filed by the appellants which was dismissed vide order dated 20.3.1997. (E) Aggrieved, the appellants filed the Writ Petition No. 14674 of 1997 before the High Court which has been dismissed vide impugned judgment and order dated 30.6.2004. Review Application filed by the appellants also stood dismissed vide order dated 13.8.2004. Hence, this appeal.

The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India, 1950 that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.

In so far as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority.

(639)

Misconduct — bigamy

Dismissal from the service of Assam Rifles on the charge of bigamy.

Union of India and Ors. vs. Ramashankar Gupta and Ors. 2012 (4) GLT 532 (28.06.2012-GUHC):MANU/GH/0530/2012

Bigamy is prohibited by Rule 21 of the Central Civil Services (Conduct) Rules, 1965. When bigamy is expressly prohibited under the law (except the two exceptions mentioned in the proviso which are not attracted and applicable in the present case), it would not be correct to say that punishment of dismissal from service on a proven charge of bigamy would be disproportionate on the ground that under the criminal law bigamy is a compoundable offence, more so when the delinquent was a member of a disciplined force like the Assam Rifles. Continuation of such a person in the force may have an adverse affect on the

overall image of the force. It may affect the public perception that a person guilty of bigamy can still continue as a member of such force. Moreover, it may have a cascading effect on the overall morale and discipline of the force. The further view taken by the Single Bench that the second marriage has nothing to do with either the official position of the petitioner or the discharge of official duties does not appear to us to be a correct appreciation of the consequences of a proven charge of bigamy.

(640)

- (A) P.C. Act, 1988 — Sec. 17**
- (B) Investigation — by designated police officer**

***Dharamvir Bhaduria vs. Union of India
through SP-CBI on 29th June, 2012 Jharkand High Court***

The learned Sr. Counsel appearing for the petitioner submitted that the case lodged under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act has been investigated and even the charge sheet has been submitted by the Inspector of Police, though in terms of the provision of Section 17(c) of the Prevention of Corruption Act, only Deputy Inspector of Police or the Officer of the equivalent rank is competent to make investigation of the case registered under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act but here the case has been investigated by the Inspector of the C.B.I and as such, entire prosecution gets vitiated.

The High Court held that the plain meaning of sub-section (1) appears to be that the Inspector of Police of the Delhi Special Police Establishment is the designated officer to investigate the case under the Prevention of Corruption Act whereas Assistant Commissioner of Police in the metropolitan areas as specified in sub-section (b) and the Deputy Superintendent of Police or of an officer of the equivalent rank at the place other than specified in clause (b) are the designated officer. Restriction imposed under the proviso of sub-section never relates to the designated officer of the Delhi Special Police Establishment rather it operates when an officer below the rank of Inspector of Police of the regular establishment of the police force is entrusted with the investigation relating to offence under the Prevention of Corruption Act.

The High Court also held that a conjoint reading of the main provision of Section 17 and two provisos thereto shows that the investigation by the designated police officer is the rule and the investigation by an officer of a lower rank is an exception.

The High Court held that the Inspector of the Delhi Special Police Establishment never requires any authorization by the State Government for making any investigation of the case instituted under the Prevention of Corruption Act and therefore dismissed the application.

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- (A) Termination – of probationer**
- (B) Constitution of India — Art. 311**

Termination of Probation and discharge from service - If an allegation is made that an officer of the rank of SDPO (DSP) is involved in settling civil disputes and demanded illegal gratification for the same, it is the primary duty of the immediate controlling authorities as well as DGP as the Head of the Police Department to act promptly and take necessary action - Action which commenced at the instance of IGP on a complaint received and culminated in the order of Government discharging the writ petitioner-DSP, is, therefore, sustainable on facts and law - Termination of writ petitioner even on the ground of misconduct falls within the domain of Rule 17 (a) of the Rules to the exclusion of the application of Article 311 of the Constitution.

Govt. of A.P., rep. by its Prl. Secretary to Govt, Home Dept., vs. Palla Venkata Ratnam, 2012 6 ALD 305; 2012 5 ALT 685; 2012 0 Supreme (AP) 585

The Respondent was selected as Dy. Superintendent of Police (DSP) on 10.03.2010 and she was posted as DSP on 21.11.2011 at Ramachandrapuram, Medak district. Thereafter, she was kept under suspension on the allegation of settling land disputes and demanding illegal gratification, followed by G.O.Ms.No.14, dated:25.01.2012 terminating/discharging her from the service under Rule 17(a)(ii) of A.P.State and Subordinate Service Rules, 1996 (the General Rules) under which the services of probationers are liable to be terminated at any time before declaration of probation. Aggrieved by the order, she filed O.A. before the Tribunal.

The Tribunal allowed the O.A. The appellants filed W.P. before the High Court.

DECISIONS (642)

The High Court held that termination even on ground of misconduct falls within the domain of Rule 17(a) of the Rules to the exclusion of the application of Article 311 and what emerges is when the question of misconduct itself is a ground to discharge the probationer any termination or discharge on that ground cannot be held to be punishment.

The High Court observed that when the factum enquiry or preliminary enquiry to ascertain the genuineness of the corresponding allegations made in the context of the suitability of the employment is valid, under the same analogy any preliminary enquiry conducted with regards to the misconduct of the appellant is also valid when the very misconduct is a ground for discharge as per the law enacted.

The Court held that when the law provides that misconduct is a ground of discharge, it is not illegal to conduct necessary fact finding summary enquiry to ascertain the correctness of it in view of the principles laid down and set aside the order of the Tribunal

(642)

Departmental action and conviction

Termination of service - Termination of service of a driver of Zilla Parishad. Consequent to his conviction under Section 304-A of IPC unjustified.

***Champalal vs. Additional Commissioner, 29 Aug 2012
2012 6 AIIMR 547; 2012 0 Supreme (Mah) 1627***

By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 30.12.1991 passed by the Chief Executive Officer, Zilla Parishad, Nagpur holding that the petitioner – Champalal could not have been retained in service, in public interest. Though this order mentions provision of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as “the 1979 Rules” for short) or Rule 13(1) thereof, it is not in dispute that same reference needs to be construed as reference to Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as “the 1964 Rules” for short). Petitioner, thereafter had preferred an appeal under Rule 13 of 1964 Rules before the Additional Commissioner, Nagpur Division, Nagpur and that Authority has maintained said order.

During the pendency of this challenge, the petitioner expired on 03.01.2008 and his legal heirs are prosecuting this challenge further.

The deceased Champalal was a driver in the employment of respondent no.2 Zilla Parishad. He was due to retire in March, 1994, but, he has been removed from service on 30.12.1991 because of an accident which took place on 12.04.1991. It is not in dispute that at the time of accident he was driving a private Tractor and was using it for some personal work. He was not performing the duty under respondent no.2. In the said accident, a person was killed and Crime No.37/1991 under Section 304A of the Indian Penal Code was registered against Champalal. Before the Court of Judicial Magistrate, First Class, Ramtek, Champalal accepted his guilt and was convicted u/s 304A with imprisonment till rising of the Court with fine of Rs. 1000/- and in default, to undergo 30 days simple imprisonment. Impugned order dated 30.12.1991 passed by the Chief Executive Officer notes this punishment, and mentions that because of conduct which led to his conviction, Champalal was removed from service. The Appellate Authority has maintained this application of mind & action.

The appellate authority i.e. respondent no.1 – has also fallen in same error. It has also overlooked the fact that it is conduct which is punishable departmentally and not the conviction which needs to be taken cognizance of. Order of the punishment dated 30.12.1991 as also appellate order dated 23.2.1994 are, therefore, unsustainable and the same are quashed and set aside. 3 years after the punishment, Champalal had reached the age of superannuation and he expired 14 years after the said superannuation. Thus, during his lifetime he actually suffered the punishment & hence, this judgment is of no practical utility for him. Hence, we see no point in placing the issue back before respondent no. 2 for reconsideration of the controversy.

The reinstatement cannot be given to Champalal and he has expired in year 2008. He reached the age of superannuation in March, 1994. There is nothing before us to show entitlement of deceased to back wages & hence wages from the date of removal till the date of superannuation cannot be allowed & same are declined. We direct respondent No.2 to treat Champalal as superannuated after attaining his normal age of superannuation i.e. w.e.f. 31.3.1994. If he was otherwise eligible and not already paid, the pension payable to him upon such superannuation shall be calculated till the date of his death i.e. till 3.1.2008 within period of four months from today & fifty percent thereof shall be paid to his widow namely petitioner No.2 Smt. Leelabai Paliwal after completing necessary verification as per law. For the period after death of Champalal, she or the other dependents shall be paid family pension in accordance with law after examining their entitlement to the same.

DECISIONS (643) & (644)

In case the pension is found payable to Champalal, his widow shall receive fifty percent of the amount of the arrears thereof, within period of six months from today. The person entitled to family pension shall receive the arrears of the family pension within further period of six months. The current family pension shall however be released to eligible person within 6 months from today. If this exercise is not completed within the stipulated period, the person entitled/widow shall be entitled to interest upon the amount remaining in arrears at the rates prescribed from time-to-time on Provident Fund. The Writ Petition is thus partly allowed.

(643)

Exoneration

State of N.C.T. of Delhi vs. Ajay Kumar Tyagi (2012)9 SCC 685

Exoneration in departmental proceeding *ipso facto* would not result into quashing of criminal prosecution. However, if prosecution against accused solely based on finding in proceeding and that finding set aside by superior authority in hierarchy, the very foundation goes and prosecution may be quashed. But that principle will not apply in case of departmental proceeding. As criminal trial and departmental proceeding held by two different entities. Further they are not in same hierarchy. Order of High Court unsustainable and set aside.

(644)

Departmental action and acquittal

Acquittal in criminal proceedings cannot have any adverse impact on departmental proceedings.

Avinash Sadashiv Bhosale (D) Thr. L.Rs. vs. Union of India (UOI) and Ors. (2012)13 SCC 142

Acquittal in criminal proceedings on account of failure of prosecution in producing necessary evidence before trial court. Cannot have any adverse impact on evidentiary value of material produced by Bank before enquiry officer in departmental proceedings. Findings recorded by enquiry officer. Cannot be said to be based on no evidence. Disciplinary authority allowed all submissions made by appellant. Appellant cannot possibly claim that there was breach of rule of natural justice. Appellate authority has also given cogent reasons in support of its conclusions. No merit in appeal.

Legal point in respect of departmental and criminal proceedings is as follows:

- (a) There is no legal bar for both proceedings to go on simultaneously.
- (b) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (c) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (d) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

(645)

Penalty — dismissal with retrospective effect

Railway Servants (Discipline and Appeal) Rules 1968 - Rules 14, 9—Removal from service - Even under R.14 (i), disciplinary authority is required to give an opportunity of making representation to Railway Servant and it is only after considering his representation and on application of mind to his conduct and gravity of misconduct committed by him resulting in his conviction, to take a decision with regard to nature and extent of penalty to be imposed - Power vested in a statutory authority can be exercised only with prospective effect unless statute itself empowers authority to exercise power with retrospective effect No such power conferred on petitioners under Rules.

***The Divisional Manager, South Central Railway vs. P. Bhaskar Rao, 2013
1 ALD 309; 2013 1 ALT 197***

The High Court of Andhra Pradesh held that law is well-settled that power vested in a statutory authority can be exercised only with prospective effect unless the statute itself empowers the authority to exercise the power

DECISIONS (646) & (647)

with retrospective effect. Therefore, the writ petitioners are not competent to impose the penalty of removal from service with retrospective effect since no such power is conferred under Railway Servants (Discipline & Appeal) Rules, 1968. Hence the Tribunal has rightly relied upon R. JEEVARATNAM'S case and declared that the order of removal dated 31.10.2008 should be effective only from 31.10.2008 but not w.e.f. 7.11.1994.

(646)

Departmental action and acquittal

Acquittal in criminal proceedings on self-same facts, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

The Deputy Inspector General of Police and Anr. vs. S. Samuthiram, AIR 2013 SC 14

The Supreme Court held that mere acquittal of an employee by a criminal Court has no impact on the disciplinary proceedings initiated by the Department. The Court noted that the respondent is a member of a disciplined force and non examination of two key witnesses before the criminal Court that is Adiyodi and Peter was a serious flaw in the conduct of the criminal case by the Prosecution. Further held that considering the facts and circumstances of the case, the possibility of winning over P.Ws. 1 and 2 in the criminal case cannot be ruled out and it is of the view that the respondent was not honourably acquitted by the criminal Court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

(647)

- (A) P.C. Act, 1988 — Sec. 7**
- (B) Presumption**
- (C) P.C. Act, 1988 — Sec. 20**

D.Sudharshan vs. A.C.B., Warangal Range, Warangal presumption – 2013 (2) ALD (Crl.) 53

In Para 8 it is held that Under Section 20(1) of the Act when the recovery of tainted amount from the possession of the accused is proved by the evidence on record and if it is found to be voluntarily accepted it becomes obligatory on the part of the court to draw a legal presumption against the accused to the effect that the accused as accepted the bribe amount as motive or reward as

mentioned in Section 7 of the act and then the burden shifts on the accused to rebut the presumption. The burden required for discharging the presumption may not be of the standard of proof beyond all reasonable doubt but of the standard of preponderance of probability. The defence raised by the accused therefore should appear to be probable. The mere explanation given by the accused is not enough but the explanation must be supported by the circumstances which probablise the defence theory put forth by the accused.

(648)

Exoneration

***Vijay Kumar Meena vs. Central Bureau of Investigation,
2013 Cr.L.J. 2113 (Raj)***

The Rajasthan High Court held that mere exoneration in the departmental enquiry cannot automatically result in dropping criminal proceedings.

(649)

Probation of Offenders Act

***Shyam Lal Verma vs. Central Bureau of Investigation 2013(3)
ALT (Crl.) 9 (SC)***

Shyam Lal Verma was charged under Section 477-A IPC read with Section 13(1)(c) and 13(2) of the Prevention of Corruption Act 1988. After full-fledged trial, the Trial Court convicted him under the above mentioned Sections. However, instead of awarding sentence, the Trial Court released the appellant under the Probation of Offenders Act, 1958 on executing a personal bond in the sum of Rs.50,000/- and furnishing two sureties each of the like amount for a period of one year. He was also directed to maintain peace and good behaviour during this period.

Aggrieved by the above decision of the Trial Court, the CBI filed an appeal before the High Court. The High Court allowed the appeal of the CBI and sentenced him for a period of one year under Sections 477-A IPC and under Section 13(1)(c) read with Section 13(2) for a further period of one year. He appealed before the Supreme Court

The Supreme Court referred to its earlier judgment held that Section 13 of PC Act, 1988 provides for a minimum sentence of one year and in other words in cases where a specific provision prescribed minimum sentence, provisions of Probation of Offenders Act cannot be invoked.

Appeal dismissed by Apex Court.

(650)

- (A) Appeal — consideration of**
- (B) Application of mind**

***Yog Lal Rai vs. State of Bihar & Ors
on 23 January, 2013 Patna High Court***

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

Thus, what is expected of an appellate authority is application of mind and active consideration of the issues involved. Absence of elaborate description or reason would not violate the principle of natural justice.

The Hon'ble Supreme Court has, as early as in the matter of R.P.Bhatt v. Union of India and others, (A.I.R. 1986 S.C. 1040), held that in case the appellate authority agrees with the disciplinary authority, the appellate authority is not required to give elaborate reasons on each point. On perusal of the minutes of the Board of Directors, it is apparent that the relevant issues were considered by the appellate authority. In the present case, as we have recorded hereinabove, the impugned communication does indicate active application of mind and consideration of record. The Court held that it is unable to agree with Mr. Giri that the appellate order is vitiated for violation of principle of natural justice.

(651)

Rules – retrospective operation

***Government of Andhra Pradesh vs. Ch. Gandhi 2013 0 AIR (SC) 2113;
2013 5 SCC 111; 2013 0 Supreme (SC) 168***

The present appeals by special leave are directed against the judgment and order passed by the High Court of Judicature, Andhra Pradesh at Hyderabad whereby the Division Bench overturned the order dated 16.5.2007 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad on the ground that the disciplinary authority had imposed two major penalties.

The disciplinary authority, after following the requisite procedure, imposed the penalty of reversion to the post of Junior Accountant for two years with the stipulation that there would be postponement of future increments.

Aggrieved by the said punishment, the respondent approached the Tribunal and the Tribunal dismissed the original application.

The High Court held that as far as the imposition of punishment was concerned, a contention was advanced that he had been imposed two major penalties which were not in consonance with the Rules. The High Court referred to the order of punishment, Rule 9 of the APCS (CC&A) Rules, 1991 in short "Rules" that deals with major penalties and sub-Rule 27 of Rule 11 of the said Rules and came to hold that the penalty imposed by the disciplinary authority did amount to imposition of two penalties and, accordingly, set aside the punishment which had been concurred with by the tribunal and clarified that the said overturning of the orders would not preclude the authorities to pass appropriate orders pertaining to punishment keeping in view the provisions of the Rules.

The High Court came to the above conclusion of 'imposition of two penalties' because at the time of initiation of disciplinary proceedings, Rule 9(vii) of APCS (CC&A) Rules, 1991 was as below:

"Reduction to a lower rank in the seniority list or to a lower stage in the seniority list or to a lower stage in the timescale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate."

After amendment on 06.12.2003, Rule 9 (vii) was split into two parts as below:

vii)(a) save as provided for in clause (v)(b), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vii)(b) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions, regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

The punishment was imposed on 1.12.2005 after amendment of Rules.

The Supreme Court observed that the only aspect that requires to be dwelled upon was whether the punishment could be imposed in accordance with the amended Rules or under the unamended Rules.

The Supreme Court observed that in the unamended Rules, clause (vii) only related to reduction to a lower rank in the seniority list or to a lower time scale of pay or in the lower grade or pay not being lower than that to which he was directly recruited. It did not have the stipulation of postponement of future increment on restoration to the higher category.

The Supreme Court held that the provision which was substituted by the amending Rules, does not obliterate the rights of the parties as if they never existed and the amended Rule is prospective.

The learned counsel for the State argued that the respondent had no vested right to be imposed a particular punishment under the unamended Rules.

The Supreme Court discussed at length about vested and accrued rights in service jurisprudence and observed that amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution and in the present case the amendment to the rules is not retrospective. The Supreme Court held that there can be no cavil that by amending the rule, a person cannot be subjected to a penalty greater than which might have been inflicted under the rule in force at the time of commission of delinquency or misconduct.

The Supreme Court stated its observations as below:

"In the case at hand, under unamended Rule, there were, apart from stoppage of increment with cumulative effect and reduction in rank, grade, post or service, three major punishments, namely, compulsory retirement, removal and dismissal from service by which there was severance of service. The maximum punishment that could have been imposed on an employee after conducting due departmental enquiry was dismissal from service. The rule making authority, by way of amendment, has bifurcated Rule 9 (vii) into two parts, namely, rules 9(vii)(a) and 9(vii)(b). As is evincible, the charge-sheet only referred to the imposition of major penalty or to be dealt with under the said Rules relating to major penalty. In this backdrop, it would be difficult to say that the employee had the vested right to be imposed a particular punishment as envisaged under the unamended Rules.

Once the charges have been proven, he could have been imposed the punishment of compulsory retirement or removal from service or dismissal from service. The rule-making authority thought it apposite to amend the Rules to introduce a different kind of punishment which is lesser than the maximum punishment or, for that matter, lesser punishment than that of compulsory retirement from service. Rule 9(vii) was only dealing with reduction or reversion but issuance of any other direction was not a part of it. It has come by way of amendment. The same being a lesser punishment than the maximum, in our considered opinion, is imposable and the disciplinary authority has not committed any error by imposing the said punishment, regard being had to the nature of charges. It can be looked from another angle. The rule-making authority has split Rule 9(vii) into two parts-one is harsher than the other, but, both are less severe than the other punishments, namely, compulsory retirement, removal from service or dismissal. The reason behind it, as we perceive, is not to let off one with simple reduction but to give a direction about the condition of pay on restoration and also not to impose a harsher punishment which may not be proportionate. In our view, the same really does not affect any vested or accrued right. It also does not violate any constitutional protection."

The Supreme Court finally held that order passed by the High Court that a double punishment has been imposed does not withstand scrutiny and set aside the orders of High Court and restored the order of punishment imposed by the disciplinary authority.

(652)

Charge — to be read with statement of imputations

Charge-sheet was vague and did not disclose complete facts which lead to levelling of charges against Petitioner. Enquiry thereupon, could not be held as proper enquiry. Petitioner had no opportunity to meet charges for want of material document.

V.S.Singh vs. Durg Rajnandgaon Gramin Bank and Ors. (12.03.2013-CGHC) 2013(2) CGLJ10 MANU/CG/0172/2013

The Chattisgarh High Court held that It has not been provided that the charge-sheet must contain imputation of charges, list of documents and list of witnesses, however, the principles of natural justice requires that proper materials

or opportunity to the delinquent employee be provided to enable him to put forward his case and file proper response. If the petitioner was not provided details of charges, contention of the petitioner that he was not in a position to defend or put forward his case properly, merits acceptance. Impugned orders quashed. Petition allowed.

(653)

- (A) P.C. Act, 1988 – Sec. 13(1)(e)**
- (B) Trial – time limits**

Niranjan Hemchandra Sashittal and Ors. vs. State of Maharashtra on 15th March, AIR 2013 SC 1682

The gravamen of grievance of the petitioners in this petition preferred under Article 32 of the Constitution of India pertains to procrastination in trial, gradual corrosion of their social reputation, deprivation of respectable livelihood because of order of suspension passed against the petitioner No. 1 during which he was getting a meagre subsistence allowance and has reached the age of superannuation without being considered for promotion, extreme suffering of emotional and mental stress and strain, and denial of speedy trial that has impaired their Fundamental Right enshrined under Article 21 of the Constitution.

The facts as uncurtained are that the Anti Corruption Bureau (ACB), after conducting a preliminary enquiry, filed an FIR on 26.6.1986 against the petitioner No.1 who was a Deputy Commissioner in the Department of Prohibition and Excise, Maharashtra Government, Raids were conducted and it was found that the petitioner, a public servant, had acquired assets worth Rs.33.44 lakhs which were in excess of his known sources of income. After obtaining sanction chargesheet was lodged on 4.3.1993 before the Special Court. The offence alleged against the petitioner, the public servant, was under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

It is put forth by the petitioner that after the Supreme Court disposed of earlier criminal appeals, charges were framed only on 15.12.2007 and from 2011, the Investigating Officer retired and absented himself before the learned trial judge to give his Evidence.

The stand of the State of Maharashtra, respondent No. 1, is that after delivery of the judgment in the earlier appeals, the accused on 29.3.2001 moved numerous miscellaneous applications seeking various reliefs. On number of occasions, the accused himself moved applications for adjournment and

sometimes sought adjournment to go out of the country. It is the case of the prosecution that because of adjournments, the charges could not be framed within a reasonable time but ultimately, on 15.12.2007, the charges were framed. It is contended that on most of the dates, the accused has taken adjournment on some pretext or the other.

The Supreme Court referred to the case of Mohd. Hussain alias Julfikar Ali v. State (Government of NCT of Delhi) wherein it has pointed out the subtle distinction between "Speedy trial" and "fair trial" as below:

"Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end."

The Supreme Court held that it is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right.

when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs. 33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind.

The Supreme Court observed that it can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done and to put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people.

The Supreme Court held that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, it is not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings, but directed the learned Special Judge to dispose of the trial by the end of December, 2013 positively.

(654)

Constitution of India — Art. 311(2) second proviso cl.(c)

The petition was primarily on the ground that sub-clause (c) to second proviso to Article 311 (2) of the Constitution of India could not have been invoked only because an FIR is registered against him. According to him he is not involved in any activity which would consider prejudicial to the security of the State.

Dhiraj Mohali vs. Union of India and Ors. W.P.(C) 6075/2011 in the High Court of Delhi, at New Delhi

The challenge in this writ petition is to the order dated August 25, 2010 passed in OA No.1492/2008 whereby the challenge of the petitioner to the order of the President dated May 28, 2008 by which he has been dismissed from service under sub-clause (c) to second proviso to Article 311 (2)of the Constitution of India has been rejected.

The brief facts are the petitioner while working as JIO-II/WT of SIB Raipur Chattisgarh was arrested by the local police along with two other persons in March 2008 in connection with a criminal case No.58/2006 under Sections 365/ 420/395/120-B/34of IPC registered against them. He was put under deemed suspension and remained under suspension till his dismissal from service.

A very high-level committee considered the entire record and the allegations against the respondent and on the basis of the materials available on record, the committee *prima facie* came to the conclusion that action could be taken for his dismissal under sub-clause (c) to the second proviso to Article 311 (2) of the Constitution. The aforesaid recommendation is available on record and the High Court could have called for such record and therefrom satisfy itself that there are sufficient and cogent reasons recorded for taking action under Article 311(2)(c) of the Constitution and also for imposing the penalty for dispensation of the service of the respondent by way of dismissal from the service.

The High Court held that charges against the delinquent officer being very serious and also in view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged. The reasons recorded in the official file against the person for dismissing him from service need not be incorporated in the impugned order passed.

The High Court did not find any infirmity in the impugned order and dismissed the writ petition.

(655)

Penalty — censure

While recording punishment of ‘censure’ observation had been made that there was no mala fide on part of Petitioner.

Ajay Kumar Singh vs. C.B.I. and Ors. 2013 (3) J.L.J.R.244 MANU/JH/1062/2013

This application has been filed for quashing of the order dated 21.4.2006 passed by the Special Judge, C.B.I., Dhanbad in R.C. case no.1(A) of 2003(D), whereby and whereunder cognizance of the offences punishable under Sections 120B, 420, 467, 468, 471 of the Indian Penal Code and also under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act has been taken against the petitioner.

The learned counsel for the petitioner submitted that for the same charges which is the subject matter of R.C. Case No.1A of 2003/D, the petitioner had been put on departmental proceedings and was inflicted punishment of reduction of one lower stage in the time scale of pay for a period of one year. Further, submitted that those orders were challenged before the appellate authority and the appellate authority modified the order of punishment by substituting with

'censure' after recording finding that there is no mala fide or gross negligence on the part of the petitioner, though casualness appears to be there on his part.

The learned counsel for the petitioner minor punishment has been inflicted but the disciplinary authority did categorically find that there is no mala fide or gross negligence on the part of the petitioner and since the criminal element has never been found, the case be quashed keeping in view the ratio laid down by the Hon'ble Supreme Court in a case of P.S.Rajya vs State of Bihar [(1996) 9 SCC 1] and Radheshyam Kejriwal vs. State of West Bengal and another [(2011) 3 SCC 581] holding therein that if the charge which is identical could not be established in the departmental proceeding where the standard of proof required to establish the guilt is quite lesser than the standard of proof required to establish the guilt in criminal case, the criminal proceeding should not be allowed to be continued, rather be quashed.

The High Court observed that in the instant case, it has already been noted that it has never been the case of the petitioner that the petitioner has been exonerated from the charges, rather he has been inflicted with minor punishment 'censure' but while recording the punishment of 'censure' observation has been made that there was no mala fide on the part of the petitioner. The High Court further held that even if such observation is there, it would hardly make any difference in a criminal case as criminality or no criminality is to be found out by the court in a criminal case on the basis of evidences collected by the investigating agency during investigation as has been held by the Hon'ble Supreme Court at number of occasions including in a case of State (NCT of Delhi) vs. Ajay Kumar Tyagi .

(656)

- (A) Charge — should be definite**
- (B) Fresh inquiry**
- (C) Departmental action — delay in**

Charges should be specific and definite giving details of incident which formed basis of charges particularly in respect of an order involving adverse or penal consequences. No enquiry can be sustained on vague charges. Evidence adduced should not be perfunctory, even if delinquent does not take defence of or protests against vague charges. On facts held, impugned judgment directing enquiry afresh on vague charges, and that too after appellant's retirement in the year 2002, unsustainable

Anant R. Kulkarni vs. Y.P. Education Society, (2013) 6 SCC 515

The appellant was appointed as Assistant Teacher in the school run by the respondents on 7.6.1965, and was promoted as the Head Master of the said school on 21.6.1979. A new Management Committee came into power in the year 2000, and began to raise allegations of misconduct against the appellant.

The respondents-management issued show-cause notice dated 21.2.2001 to the appellant, under Rule 28 of the Maharashtra Employees of Private School Rules, 1981 (hereinafter referred to as the 'Rules 1981'), seeking an explanation as to why disciplinary proceedings should not be initiated against him, for his alleged misconduct. The appellant submitted his reply on 3.3.2001, and also challenged the eligibility of some of the elected members of the Management Committee. The Management Committee, vide resolution dated 4.3.2001 took a decision to hold disciplinary proceedings against the appellant as per the provisions of Rule 36 of the Rules 1981, and in pursuance thereof, a chargesheet dated 17.5.2001 containing 12 charges of misconduct, was served upon the appellant. The appellant vide letter dated 1.7.2001, submitted his clarifications with respect to the said charges that had been levelled against him.

An Enquiry Committee consisting of two members instead of three, as per the Rules 1981, conducted the enquiry and submitted its enquiry report on 20.5.2002, making a recommendation that the appellant be dismissed from service. The said enquiry report was accepted by the Management Committee, and the services of the appellant were terminated vide order dated 24.5.2002 w.e.f. 31.5.2002. Aggrieved, the appellant challenged the said termination order by filing before the Tribunal. However, upon reaching the age of superannuation, the appellant stood retired on 30.9.2002. The Tribunal vide judgment and order dated 19.10.2002 held, that none of the charges levelled against the appellant stood proved, and that the enquiry had not been conducted according to the Rules 1981. Thus, the termination order against the appellant was quashed.

The learned Single Judge of the High Court vide order dated:20.4.2011, upheld the judgment of the Tribunal, and found the enquiry to be entirely defective and thus, illegal. The Division Bench too, upheld the judgment of the learned Single Judge, as well as that of the Tribunal, but simultaneously also held, that the respondents were at liberty to proceed with the enquiry afresh, as regards the said charges. Hence, the appellant filed appeal before Supreme Court.

Supreme Court held that there was no allegation of misappropriation/ embezzlement or any charge which may cast a doubt upon the integrity of the

appellant, or further, anything which may indicate even the slightest moral turpitude on the part of the appellant. The charges relate to accounts and to the discharge of his functions as the Headmaster of the school. The appellant provided satisfactory explanation for each of the allegations levelled against him. Moreover, he retired in the year 2002 and the question of holding any fresh enquiry on such vague charges is therefore, unwarranted and uncalled for.

Further held that the charges leveled against the appellant were entirely vague, irrelevant and unspecific and the charges were not accompanied by any statement of allegations, or any details thereof. The Court held that it was not therefore permissible, for the respondents to hold an enquiry on such charges and moreover, it is a settled legal proposition that a departmental enquiry can be quashed on the ground of delay provided the charges are not very grave.

The Court held that the Tribunal as well as the learned Single Judge have examined all the charges on merit and also found that the enquiry was not conducted as per the Rules 1981 and it was not the cause of the Management Committee which had been prejudiced, rather it had been the other way around. The Court held that in such a fact-situation, it was not necessary for the Division Bench to permit the respondents to hold a fresh enquiry on the said charges and that too after more than a decade of the retirement of the appellant and allowed the appeal.

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Evidence — documentary

G. Venkatanarayanan vs. The Inspector of Police on 1 May, 2013 [Madras High Court]

Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. The High Court held that there is no illegality in adopting such a course. (However, if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

The above procedure, if followed, will have two advantages.

First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”

The Trial Court, applying the decision relied on by the Prosecution reported in AIR 2001 SC 1158:2001 3 SCC (Bipin Shantilal Panchal Vs. State of Gujarat and another) to the case on hand, has ultimately held that it is well settled law that if the Petitioner/A1 wanted to raise objection, he can do so at the time of marking LD.51 through LW.31 and at this stage, the objection raised by the Petitioner/A1 cannot be considered as there are no merits and that the Valuation Officer or the Assessing Officer is empowered to evaluate the immovable property under Section 142A of Income Tax Act and that the Circulars and the Official Memorandum relate to investigation of cases of Disproportionate Assets empower the DIG to utilize the services of the Income Tax Department whenever necessary.

In the opinion of this Court, the Petition filed by the Petitioner/A1 is premature. As stated above, as per Section 136 of the Indian Evidence Act, the Judge is the competent person to decide as to the admissibility of evidence. The Trial Court, after carefully analysing the relevant provisions of law and the CBI Manual, has rightly dismissed the Petition filed under Section 136 of the Indian Evidence Act, by the Petitioner/A1, by a detailed and reasoned order, which warrants no interference by this Court.

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- (A) P.C. Act, 1988 – Sec. 13(1)(e)**
- (B) Investigation — illegality, effect of**

Illegality in the investigation does not vitiate the trial unless prejudice is caused.

A P Pathak vs CBI on 3 May, 2013 Delhi High Court

A complaint was forwarded by the CVC to CBI on 8 th February 2011 regarding acquisition of disproportionate assets by the Petitioner. On receipt of the complaint discreet verifications including calling of the income-tax details were made resulting in the registration of FIR on 31st August, 2011. As per the stand of the CBI during verification it was not revealed that status of the Petitioner was an officer of a Joint Secretary level. After the registration of the FIR searches were conducted at the residential premises/ properties of the Petitioner. During the search the Petitioner claimed himself to be an officer of the level of Joint Secretary. It was clarified by the Ministry that the Petitioner was granted proforma promotion to the post of Chief Engineer (Civil) and thus was holding the post equivalent to Joint Secretary in the Govt. of India. Further investigation was kept in abeyance and on 20th October, 2011 CBI sought post-facto approval of the Government under Section 6(A) of the DSPE Act which was conveyed to the CBI vide letter of the Joint Secretary and Chief Vigilance officer of the Ministry dated 9th November, 2011.

The Petitioner sought quashing of FIR 31.08.2011 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and proceedings pursuant thereto including the investigation, in view of the non-compliance of mandatory provision of Section 6A of the Delhi Special Police Establishment Act (in short the DSPE Act).

Learned counsel for the Petitioner contended that since the Petitioner was a Joint Secretary level officer it was mandatory on the part of the CBI to have taken the prior approval of the Central Government under Section 6(A)(2) of the DSPE Act before proceeding with the investigation as no trap was to be laid immediately.

The Court observed that in the light of Section 19(3)(a) PC Act it was held that the illegality in the investigation does not vitiate the trial unless prejudice is caused. The same would have no application when the accused agitates the illegality at the first available opportunity.

The Court further observed that though initial searches were conducted without the approval, however thereafter on receipt of the intimation from the Petitioner that he was Joint Secretary level officer, the investigation was kept on hold and approval was taken. Thus, if this Court quashes the earlier investigation prior to the approval, the same would be an incorrect procedure of law as investigation cannot be accepted or quashed piecemeal

The court held at had the approval not been taken at all and the investigation completed, the same would have been illegal. Further an investigation cannot be set at naught piecemeal. The Court dismissed the petition in view of the fact that the CBI had taken the approval after it became aware of the status of the Petitioner the illegality committed at the inception of investigation gets cured and the same would not permit the Court to quash the earlier investigation.

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(A) P.C. Act, 1988 — Sec. 19

(B) Sanction of prosecution — under P.C. Act

State of Maharashtra Vs Mahesh G.Jain' reported in 2013 (8) SCC 119

The sanction order may expressly show that the sanctioning authority has perused the material placed before it and after consideration of the circumstances, has granted sanction for prosecution. It is obligatory under Section 19 of P.C. Act that the 2nd respondent shall peruse the concerned documents and shall come to a definite conclusion that it is a fit case for prosecution or otherwise. The Supreme Court of India held that in question that whether sanction granted by the competent authority was defective and illegal as there was non-application of mind which would show lack of satisfaction.... "1) Mohd. Iqbal Ahmed vs. State of Andhra Pradesh, 2) Superintendent of Police (C.B.I.) vs. Deepak Chowdhary and others 3) R. Sundararajan vs. State by DSP, SPE, CBI, Chennai; 4) State of Karnata vs. Ameerjan. From the aforesaid authorities the following principles can be culled out: - (a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. (b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution. (c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him. (d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence. (e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. (f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction. (g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity."

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Cr.P.C. — Sec. 313 — examination of accused

The circumstances which are not put to the accused in his examination under Sec. 313 Cr.P.C. cannot be used against him and must be excluded from consideration.

Sujit Biswas vs. State of Assam AIR 2013 SC 3817

Criminal trial, purpose of examining the accused person under the section is to meet the requirement of the principles of natural justice. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the Court to examine the accused and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Sec.313 Cr.P.C. cannot be used against him and must be excluded from consideration.

(661)

- (A) **Misconduct — devotion to duty**
- (B) **Misconduct — negligence in discharge of duty**

Where the officer not worked diligently and the acts of omission/commissions were detrimental to the public interest, as it has caused loss to the exchequer, shows lack of devotion to duty and would constitute grave misconduct/grave negligence.

Union of India vs. H.S. Roorkiwal, 23 Jul 2013 2013 0 Supreme (Del) 884

The respondent No.1 in was working as Deputy General Manager, Telecom District Dhule, Maharashtra Telecom Circle, Mumbai when major penalty proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against him vide Memorandum dated September 22, 2003.

The Inquiry Officer, after conclusion of the inquiry, submitted his report dated September 23, 2006 wherein he held the charges framed against the respondent No.1 to be fully established inter alia by holding that:

"XV. The flaws in the estimate work order, bills along with the joint measurement book were totally not checked by the CO. The CO's plea is that he is not supposed to check all these matters and he has only to sign the documents seems little strange and improper. The CO failed to maintain absolute integrity, displayed gross lack of devotion to duty, acted in a manner unbecoming of a Govt. Servant and also failed to ensure integrity and Devotion to duty of Shri R M Joshi, SDE and Shri D C Das, DE working Under his control and authority and thereby contravened Rule 3 (1) (i), (ii), (iii) and 3 (2) (i) of CCS(Conduct) Rules, 1964."

After following due procedure, a penalty of 20% cut in pension for a period of 5 years was imposed which was upheld in the review. The Respondent No.1 appealed against the decision in Tribunal.

The Tribunal held that the role of the respondent No.1 had been considered and found to be supervisory and the act on the part of the Respondent No.1 would only amount to a procedural irregularity. Noting Rule 9 of CCS (Pension) Rules 1972, the Tribunal held that supervisory or procedural lapse could not be considered to be grave misconduct or negligence for the respondent No.1 to suffer the penalty of cut in pension and accordingly quashed the order of penalty dated February 22, 2008. The Union of India appealed against the judgment of the Tribunal.

The High Court of Delhi held that the magnitude of the loss is enormous and the respondent No.1 being a Deputy General Manager was holding a responsible post and was required to ensure that the procedure laid down has been scrupulously followed. Further held that the plea of the Respondent No.1 that he was not supposed to check all the matters and he has only to sign the documents has not been accepted by the Inquiry Officer, being strange and improper stand.

The Court held that being a sanctioning authority he surely knows the purpose and importance of his signature and without his signature no payment could have been released to the contractor. Further held that, at the level of Deputy General Manager he is the custodian of the finances on behalf of the petitioner and is required to be attentive to the fact that every paisa released to the contractor is accounted for.

The Court held that surely it is a case where the Respondent No.1, not worked diligently and the acts of omission/commissions were detrimental to the public interest, as it has caused loss to the exchequer, shows lack of devotion to duty and would constitute grave misconduct/grave negligence and the Tribunal has clearly erred by holding it to be a case of a supervisory lapse. The Court set aside the order of the Tribunal.

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Further inquiry — by fresh Inquiry Officer

Unless the inquiry is conducted in total conformity with the procedure contemplated under law, it is not permissible to the disciplinary authority to impose any punishment on the delinquent/employee.

The Government of A.P vs K.Sayoji Rao Writ Petition No.17646 of 2009

AP 26 July, 2013

There is no special provision empowering the authorities to appoint another Inquiry Officer after submission of inquiry report by the previous inquiry officer. The 2nd inquiring authority, by merely referring to the earlier inquiry report of the 1st inquiry officer and without examining the independent witnesses by giving opportunity to cross-examine them, has submitted the inquiry report. The High Court of A.P. held that it is in agreement with the findings recorded by the Tribunal for setting aside the order of punishment imposed on the respondent/delinquent.

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(A) P.C. Act, 1988 — Sec. 20

(B) Trap — corroboration of trap witness

Degree of corroboration of trap witness, clarified.

State of Punjab vs. Madan Mohan Lal Verma MANU/SC/0776/2013:

(2013) 14 SCC 153 in Supreme Court of India

The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised Under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability,

that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide Ram Prakash Arora vs. State of Punjab, T. Subramanian vs. State of T.N., State of Kerala vs. C.P. Rao and Mukut Bihari vs. State of Rajasthan).

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Adverse remarks

Recording of adverse remarks in Annual Confidential Report (ACR)

Vinod Kumar vs. State of Haryana and Ors., AIR 2014 SC 33

Remarks pertained to character and antecedents of Appellant. Representation made by Appellant to get the remarks expunged was rejected and against this no further step was taken for almost nine years when in another representation remarks were expunged. After the change of regime when new Director General of Police took over the charge, he noticed this phenomenon where the adverse remarks were expunged. The Supreme Court held that the reasons given for expunging the remarks on “corruption” and substituting the same by “good remarks” are shocking and untenable.

The Court held that once a representation is rejected by the immediate superior officer, one more representation is permissible and allowed to be made to the next higher authority, revision or second representation to the higher authority was made within prescribed period (in fact within few days of the rejection of representation by the IGP) and such a representation to the higher authority was permissible, it cannot be said in this case that the order of the DGP was without jurisdiction i.e. on a representation “which was not permissible” in law. Appeal was accordingly allowed.

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- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

C.B.I. vs. Ashok Kumar Aggarwal, reported in (2014) 14 SCC 295

“16. In view of the above, the legal propositions can be summarized as under:

16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.”

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- (A) Presumption**
- (B) P.C. Act, 1988 — Sec. 20**

S. Kumaraswamy vs. state of A.P. ALT (Crl) 2014 (2) 41

Hon’ble High Court of A.P. held that the optional presumption under sec. 114(a) of Evidence Act and statutory presumption u/s 20 of P.C. Act are to

be drawn on the proof of possession of bribe amount with A.O. In this case Hon'ble Court also held that the examination of sanctioning authority is not necessary, but examination of officer who is acquainted with the signature of the sanctioning authority is sufficient to prove the sanction.

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Disciplinary authority — consulting others

The holding of disciplinary inquiry involves quasi-judicial functions to be performed at every stage, by every authority concerned, and such quasi-judicial authority functions can be performed by them only by an independent application of mind their own mind alone, totally aloof, removed, or un-influenced by the opinion of anybody, or of the Vigilance wing of the organization, which may be interested in successfully prosecuting a delinquent Government official, ensnared / caught / nabbed by the Vigilance Wing/section in a particular action on wrong footing, the Vigilance Wing/section of any organization cannot be allowed to have its own say at any of the stages of the proceedings of the disciplinary enquiry.

Dr. A.K. Singh & others vs. Secretary, Ministry of Health and Family Welfare & others, O.A. No.2790/2012 at Central Administrative Tribunal (Principal Bench), Delhi

Applicant No.3 before us was working as Assistant Depot Manager in Govt. Medical Store Depot (GMSD, in short), while the applicant No.4 was working as Depot Superintendent in GMSD. All four of the applicants before us were covered by the aforementioned common charge sheet dated 04.06.1999. The case against the four applicants before us, and the three others, whose names have been mentioned in Annexure A-1 as reproduced above, had started with the registration of a Preliminary Enquiry by the Anti-Corruption Branch (ACB, in short) of the Central Bureau of Investigation (CBI, in short). After their investigations, when the CBI came to the conclusion that there was insufficient evidence to launch criminal prosecution against the applicants before us and others, the CBI had referred the same for departmental action as may be deemed fit.

In the case of the CBI also, under the Delhi Special Police Establishment Act, 1946, no role has been assigned other than that of a criminal investigation agency, and since an investigating agency looking into the criminality aspect cannot act in quasi-judicial capacity, and cannot similarly interpose itself as

DECISIONS (668)

either an Inquiry Authority, or the Disciplinary Authority, or the Appellate Authority, or the Revisional Authority under the CCS (CCA) Rules, 1965. Therefore, even the CBI cannot also have any role to play, or called upon to give any opinion or suggestion to any of these four statutory authorities prescribed under the CCS (CCA) Rules, 1965, who are required to act in quasi-judicial capacity in their own right, and are individually responsible to apply their own mind alone, and to scrupulously follow the principles of natural justice.

The CCS (CCA) Rules, 1965, provide that the functions of the Enquiry Officer, the Disciplinary Authority, the Appellate Authority and the Review/Revisional Authority are all quasi-judicial in nature. Quasi-judicial functions have to be performed only by those sitting in the chair concerned in substantive capacity. Quasi-judicial functions cannot be performed by them by seeking opinions of outside authorities or persons, who are not concerned with the quasi-judicial proceedings, and who do not have a stake, or capacity, or legal standing, to perform any such quasi-judicial functions. Therefore, consultations with both CVC and DoP&T are categorically held to have been illegal in this case.

(668)

Administrative Instructions — not binding

Government has right to issue instruction to Prosecuting Officer with regard to withdrawal from Prosecution. But not binding on public prosecutor.

Ranjana Agnihotri and Ors. vs. Union of India and Ors. 2013(11) ADJ 22, (12.12.2013-ALLHC):MANU/UP/1835/2013

The Allahabad High Court held that Government has right to issue instruction or direction to Subordinates in hierarchy of system for particular purpose, subject to constitutional and statutory limitation. Section 321 of Cr.P.C. did not contain any caveat or rider on power of State Government to issue direction or instruction for withdrawal of prosecution. The Court further held that instruction or order passed by government should not be binding on Public Prosecutor and on the basis of available material, Public Prosecutor had to take decision independently and record his own satisfaction before moving Application in Court for withdrawal from Prosecution.

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Conviction — suspension of***K.K. Verma vs C.B.I. on 26 February, 2014 in Delhi High Court***

The legal position is this: Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

The appellant K.K. Verma who was working as the Assistant Manager (Vigilance), had conducted field verification with respect to the said complaint and had also met Inspector Sunil Dutt in this regard, in CBI office at Jam Nagar House. On 12.9.2001, the appellant met him outside his office and enquired about the verification which he was making. When the complainant (Inspector Sunil Dutt) told him that the verification was in its last stage, the appellant allegedly asked him to prepare his recommendation in such a manner that the matter gets referred back to the Vigilance Department of FCI, and offered to pay Rs.1.00 lakh to him for this purpose. The appellant also made a telephone call to the complainant on 13.9.2001, whereupon he (the complainant) reported the matter to his superior officers. A trap was then laid to catch the appellant red-handed while offering bribe to the complainant and two public officers were arranged. One of them was to act as a shadow witness and remain with the complainant. A digital recorder was also procured for the purpose. As per the case set out by CBI one of the panch witnesses sat in Room No.36. When the appellant came to the said office he was introduced to the other panch witness Ram Niwas as the person assisting the complainant. The draft report was shown to the appellant, who suggested a few changes. Thereafter the appellant took out a typed-written paper from his pocket and gave it to the complainant, asking him to incorporate the recommendation typed on that paper in his report. He then took out a white envelope and offered the same to the complainant who accepted the envelope, which was found to contain another brown envelope with currency notes. The complainant kept the envelope on the table whereas the panch witness Ram Niwas went out. The other members of the team then entered the room and seized the currency notes as well as typed report which the appellant had brought with him.

The Hon'ble court's considered view was that the facts and circumstances of the case do not justify stay of the conviction of the appellant under Section 7/ 12 of the PC Act. He has been charged with a serious offence that he offered bribe to an officer of CBI for the purpose of obtaining a report which could result in the inquiry being conducted by the complainant coming back to the Vigilance Department of FCI, where the appellant at that time was posted. The purpose obviously could be to favour the persons against whom the inquiry was directed, while examining the matter in the Vigilance Department of FCI. The Court held that it would not in public interest to allow a public servant who has been convicted of an offence under the provisions of PC Act to continue in the public employment held by him, since there is a reasonable possibility of such a person indulging into corrupt practices so as to make money during the limited period he would be holding the public office. Moreover, allowing a person convicted on corruption charges to join duty would demoralize the honest officers in his department besides encouraging the dishonest ones. In the event of the appeal of the appellant being allowed, he would be entitled to full back-wages and, therefore, would not suffer any financial loss on account of his dismissal subsequent to his conviction.

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Misconduct — of false date of birth

Balgovind Singh vs. The State of Jharkhand and Ors on 6 May, 2014

This appeal has been preferred against judgment and order dated 8th July, 2013 of the learned Single Judge in W.P. (S). No. 7716 of 2012, whereby said writ petition filed by this petitioner, appellant of the present case, has been dismissed.

This writ petition was filed with a prayer to quash and set aside the order dated 27th November, 2012 i.e., order of dismissal from the post of Sahyogi Teacher, issued by the District Superintendent of Education-cum-District Programming Officer, Sarva Shiksha Abhiyan, District Palamau.

The brief facts of the case are that the appellant was selected as Sahyogi Teacher. At the time of entry into service, the appellant gave his date of birth as 12th January, 1968. It was later discovered by the District Superintendent of Education, Palamau that his actual date of birth was 12th January, 1965.

Services of the original petitioner (appellant) were terminated mainly for two reasons. One is that at the time of selection this appellant fraudulently gave an incorrect date of birth as 12th January, 1968 whereas, his actual date of birth

is 12th January, 1965 as per the original of his matriculation certificate produced at the time of hearing before his dismissal before the concerned authority and secondly, he was found over-age as per his matriculation certificate. For these two reasons his appointment was cancelled by the District Superintendent of Education, Palamau. The appellant filed writ petition and the same was dismissed based on two reasons that there is false representation of facts by the appellant and that the originally petitioner was over aged as per the age limit fixed for the said appointment. Aggrieved on which the appellant preferred Letters Patent Appeal.

The Hon'ble High Court of Jharkhand heard both sides and held that there was no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons.

"He was appointed as Para Teacher on 3rd January, 2006 by the Village Education Committee, Koriadiah, Palamau after his selection, papers regarding his credentials have been sent to the high ranking officers of the State, where upon, after scrutiny it was found that his date of birth is 12th January, 1965 and not 12th January, 1968 as per his matriculation certificate.

Thus, there was a false representation by the original petitioner about his date of birth at the time of his selection.

Thus, it appears that if upper age limit for selection is 40 years, then he is over-age. Assuming without admitting that there was no proper fixation of upper age limit then also the fact remains that there was a false narration of the date of birth by the appellant for getting appointment. This itself amounts to misconduct and especially, for a candidate, who is going to be a teacher, such misconduct is unpardonable and therefore, his services have rightly been terminated by the District Superintendent of Education-cum-District Programming Officer, Sarva Shiksha Aviyan, Palamau."

The Court held that the aforesaid reasons have been properly appreciated by the learned Single Judge while dismissing the writ petition vide order dated 8th July, 2013.

Thus the High Court found no substance in the Letters Patent Appeal, and accordingly dismissed it.

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Departmental action and conviction

That the conduct of Government servant that had led to conviction on the criminal charge and the circumstances of the case are to be considered by the disciplinary authority before imposing the appropriate punishment.

Govt. of A.P. vs. B.Jagjeewan Rao, 2014 13 SCC 239; 2015 1 SCC (L&S) 346; 2014 O Supreme (SC) 1028

The facts lie in a narrow compass. The Respondent herein was charge-sheeted for offences punishable Under Section 7 and 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') and eventually after trial was convicted and sentenced to rigorous imprisonment of one year and payment of fine of Rs.1000/- with a default clause. He assailed the conviction and sentence in Criminal Appeal No. 371/2007 and the High Court vide order dated 29.03.2007 entertaining an application under Section 389(1) of the Code of Criminal Procedure, 1973 (for short, 'the Code,') directed suspension of sentence and enlargement on bail on certain conditions. Be it noted, the High Court did not direct stay of the judgment of conviction recorded by the learned trial judge.

After the conviction the Department of Finance issued G.O.No.91, dated 16.4.2007 dismissing the Respondent from service by invoking power under Rule 25 of A.P.C.S. (CC&A) Rules, 1991 (for short, 'the Rules'). The correctness of said order of dismissal was called in question before the Tribunal on the foundation that once there was an order under Section 389(1) of the Code, the concerned Department could not have taken recourse to Rule 25(1) of the Rules to dismiss the Respondent from service. The Tribunal repelled the said submission of the Respondent and resultantly, dismissed the original application.

Being dissatisfied with the aforesaid decision, the Respondent preferred a writ petition and the High Court analysing the effect and impact of Rule 25(1) of the Rules and taking note of the order passed in criminal appeal came to hold that when the criminal appeal was pending for adjudication and there had been suspension of sentence, the concerned Department could not have passed an order of dismissal from service, and accordingly quashed the order of the tribunal and lanicated the order of dismissal

The Supreme Court held that, keeping in view the expected standard of administration, conviction on the charge of corruption has to be viewed seriously

and unless the conviction is annulled, an employer cannot be compelled to take an employee back in service. Therefore, the High Court has clearly erred in its interpretation of Rule 25(1) and further committed illegality in not keeping in mind the distinction between stay of conviction and suspension of sentence as envisaged under Section 389(1) of the Code.

In the result, the Supreme Court allowed the appeal and the judgment and order of the High Court, being sensitively susceptible, are set aside.

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- (A) P.C. Act, 1988 – Secs. 7, 13(1)(d)
- (B) P.C. Act, 1988 – Secs. 7, 13(2)
- (C) Presumption
- (D) P.C. Act, 1988 — Sec. 20

*Sri N Rajanna vs. State of Karnataka on 26 June, 2014
[Karnataka High Court]*

The petitioners are Commercial Tax Officer (Accused No.1) and Commercial Tax Inspector (Accused No.2). The Accused No.1 instructed the complainant to give the bribe money to Accused No.2 and they were trapped by Lokayuktha Police. On completion of the investigation, charge sheet has been laid against them for the offences under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The petitioners filed petition requesting for discharge on the ground that the material placed on record by the investigating agency is insufficient to frame a charge for the aforesaid offences. The learned Special Judge by the impugned order has rejected the applications. It is this order of the learned Special Judge which is challenged in these revision petitions.

It is the contention of the learned counsel for the petitioner (Accused No.1) that there was collection of evidence prior to filing of First Information Report and therefore, the investigation is vitiated and charge sheet has to be quashed. He further submits that Accused No. 1 was not in the possession of a sum of Rs.25,000/-, said to have been paid by the complainant. The learned counsel for the petitioner (Accused No.2) submits that there is no demand made by accused No.2 and the amount which is said to have been paid was on the instructions of accused No.1 to receive the said sum towards the tax and therefore, in the absence of any demand, a charge cannot be framed for the offence punishable under Section 7 of the Prevention of Corruption Act.

The High Court referred to the law is laid down by the Apex Court in a decision reported in (2014) 1 SCC (Cri) 524 - (Lalita Kumari vs. Government of Uttar Pradesh and Others) wherein it was held that when preliminary enquiry is to be conducted will depend on the facts and circumstances of each case and Corruption cases is one category in which preliminary enquiry may be made. Further more, as could been seen from the facts on hand, though the complainant orally had informed about the demand made by the petitioner for the registration of the First Information Report, they wanted to ascertain the version of the complainant and it may be for that reason the complainant had recorded the conversation and this conduct on the part of the Lokayuktha police, in the opinion of the Court, does not amount to collection of the evidence before registration of the crime.

The High Court further observed that even assuming for the time being that the system of tape recorder was put in the mobile of the complainant prior to its registration, if a complaint is filed along with such recorded conversation, that would be part of the FIR and therefore, that does not come in the way of prosecution and on this ground, registration of FIR cannot be illegal.

The High Court observed that insofar as the non receipt of cash amount by accused No.1 is concerned, the perusal of statement of CW-1 would reveal that an amount of Rs.25,000/- is said to have been paid towards penalty as also illegal gratification. Accused No.1 instructed accused No.2 to receive the said amount on his behalf and this version of the prosecution is made available in the statement of CW-1, CW-2, so also accused Nos.1 and 2. The Court held that it is on the basis of this fact, a charge sheet is laid against accused No.1 for demand of the said sum and payment of the sum on his instruction to accused No.2 and merely because of accused No.1 was not in the possession of the amount that itself is insufficient at this stage to seek an order of discharge.

The Court observed that insofar as accused No.2 is concerned, he contends that there is no demand, but as could be seen from the provision of Section 20 of the Prevention of Corruption Act, whenever any public servant accepts any gratification (other than illegal remuneration) unless contrary is proved it is assumed that he had accepted the said sum as gratification as contemplated under Section 7 of the Prevention of Corruption Act and therefore presumption exists in favour of the prosecution under the aforesaid provision.

The High Court finally rejected the revision petitions.

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Constitution of India — Art. 311(2) second proviso cl.(b)

***The General Manager vs. Shri Arun Kumar on 21 July, 2014
Central Administrative Tribunal Principal Bench***

The Hon'ble Tribunal held that though, while deciding a Review Application, we cannot take subsequent events into account, but the occurrence of the subsequent events only goes to prove that on the date when the Disciplinary Authority had taken a decision that there may be threat of violence and an intimidation of witnesses, if a regular inquiry had been ordered, the Disciplinary Authority was perhaps not very much off the mark. The Hon'ble Apex Court has again and again held that administrative/departmental authorities are best judges of facts, being close to the workplace, and that Courts and Tribunals should be loath to enter into the realm of facts by themselves, to decide differently.

In view of the persuasive force of the case laws discussed, since in the order passed by the Disciplinary Authority, the reason for his coming to the conclusion of dispensing with the Disciplinary Enquiry was specifically indicated as follows, to our mind, this fulfills the requirement of there being some reason for the Disciplinary Authority to come to the conclusion that the conduct of the disciplinary inquiry was not reasonably practicable :-

"You are harassing the handling agents and extorting illegal money. You have created an atmosphere of fear and intimidation. People are afraid of you and your antisocial elements regarding the safety of their life and property and they would not come forward to depose against you in a departmental enquiry in this kind of atmosphere. I am convinced that it would not be reasonably practicable to hold a detailed departmental enquiry prescribed under the Railway Servants (D&A) Rules, 1968. Under the powers vested in me under Article 311(2)(b) of Constitution of India and for the reasons recorded above I dispense with the holding of the enquiry prescribed under the Rules."

Therefore, in the light of the overwhelming case laws supporting the authority of the Disciplinary Authority to assess the facts situation, as on the date of his passing of the order impugned in the O.A., as discussed above, and since an obvious illegality had crept in the earlier order of this Tribunal, inasmuch as the Bench that day had somehow taken it upon itself to re-appreciate the given facts, and to arrive at its own different conclusion. The Tribunal allowed the Review Application and recalled the order passed in OA No.2118/2009 on 29.09.2010.

Review Application is, therefore, allowed and the OA is restored to its original number.

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Disproportionate assets — margin to be allowed

***Akunuri Haranadha Babu Rao vs. State 28th August, 2014
[High Court of AP]***

After detailed deliberations with the representatives of the Associations, the concerned Heads of Departments / Departments on the issues raised by the representatives of the Confederation, the Group of Ministers have submitted a report containing recommendations on the issues for consideration of the Government. The Government, after careful examination, have accepted the recommendation of the Group of Ministers, that while evaluating the disproportionate assets, the existing margin of 10% may be enhanced to 20%. From a perusal of the above Memos at a glimpse, it is manifest that the State Government issued the Memos for the benefit of the Government employees, who were involved in ACB cases. The Government servant is entitled to the benefit of the said Memos in respect of disproportionate assets as given below:

20% margin from 13.02.1989 to 27.02.2003

10% margin from 28.02.2003 to 14.10.2008

20% margin from 15.10.2008 onwards.

The Hon'ble Apex Court extended the benefit of 10% margin in case of disproportionate assets after full-fledged trial only. For one reason or the other, the petitioner did not challenge the sanction order for not extending the benefit of 20% margin to him. The disproportionate assets shown in the charge sheet is only a *prima facie* figure. The possibility of variation of margin of disproportionate assets at the time of trial cannot be ruled out completely.

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Reversion/reduction — of direct recruit

Direct recruit cannot be reverted to a lower post against which he was never appointed.

***V. Chandra vs. Principal Secretary/Commissioner of Commercial Taxes,
on 5 September, 2014***

The Petitioner was recruited to the post of Record clerk in the office of Deputy Commercial Tax Officer, Nanguneri, Tirunelevi of Tamil Nadu Commercial Taxes Department. The petitioner was reverted from the post of Record Clerk to Office Assistant. A charge memo, dated 03.10.2000 was issued against the

petitioner while the petitioner was working at Puliyarai Check post, alleging that the petitioner had connived with other officials in the Check post in allowing the vehicles carrying bone meal to pass through the Check post without making entries in the Movement Register to Kerala State and thus paved way for the dealers to evade tax. Basing on the above allegations the competent authority initiated disciplinary proceedings against the petitioner under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

The petitioner challenged the orders of the respondent and has come forward with this present writ petition. The Hon'ble Madras High Court observed that imposing the punishment of reduction from the post of Record Clerk to the post of Office Assistant cannot be sustained in view of the dictum of the Hon'ble Supreme Court in "Nyadar Singh versus Union of India and others" reported in "1989 (1) LLN 10, wherein, the Hon'ble Supreme Court while dealing with the similar issue of imposing the penalty of reduction on a Government servant, recruited directly to a particular post, to a post lower than to which, he was so recruited, held that it is improper and cannot be sustained in law.

The Hon'ble Madras High Court held that the impugned order of the respondent imposing the penalty of reduction on the petitioner who has been recruited to the post of Record Clerk, to the post of Office Assistant, lower than the post which she was recruited, cannot be sustained and it is liable to be set aside. The Hon'ble High Court allowed the petition and directed the respondents to restore the petitioner to her original position.

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- (A) P.C. Act, 1988 – Sec. 13(1)(e)**
- (B) Criminal Law Amendment Ordinance, 1944**

K. Somasekhar Reddy vs. State, Rep. by Spl. P.P., High Court at Hyderabad, 15 Sep 2014 2 ALD(Cri) 847; 2015 3 ALT(Cri) 181; 2014 0 Supreme(AP) 964

Appellant No.2 is the wife and appellant Nos.3 and 4 are the children of the appellant No.1. In Cr.No.9/RCA-TCD/2011, appellant No.1 is charged for the offences under Section 13(2) r/w 13 (e) of Prevention of Corruption Act, 1988 (for short P.C. Act, 1988) for acquiring assets disproportionate to his known sources of income.

While so, the Investigating Officer (I.O) filed application under the provisions of Section 3 of Criminal Law (Amendment) Ordinance, 1944 (for short

Ordinance 1944) seeking interim attachment of the properties belonging to all the appellants shown in the Annexures to the petition. The trial Court in its order dated 11.01.2012 issued ad interim attachment and ordered notice to the appellants under Section 4 of Ordinance 1944. The appellants, it appears, filed their objections against the said attachment.

While so, as per Section 10 of Ordinance 1944 the order of attachment of properties made under Section 4(1) of the said Ordinance shall continue in force for a period of one year from the date of aforesaid order unless cognizance of the offence is taken in the meanwhile or unless the Court on application by the agent of the State Government passes an extension order. Admittedly, neither was done in this case within one year. However, subsequently the I.O filed two petitions i.e, Crl.M.P.No.123 of 2014 under Section 5 of Limitation Act to condone the delay of 464 days in filing the extension petition and Crl.M.P.No.124 of 2014 under Section 10 (a) of Ordinance, 1944 seeking extension of interim attachment. The appellants filed their counter in those applications. The trial court by a common order dated 06.06.2014 allowed those two petitions and condoned the delay of 464 days and extended the interim attachment for one more year from the date of its common order.

Hence, the two Criminal Appeals filed.

The first argument is that the provisions of Limitation Act have no application to the proceedings before a Criminal Court. The Court held that the argument was not correct. It is one thing to say that the Limitation Act has only limited application to the proceedings before a Criminal Court and another thing to say that the Limitation Act has altogether no application. When the preamble and scheme of the Act are read together, they depict that the Act intends to consolidate and amend the law for laying suits and other proceedings and the provisions of the Act are legislated to sub-serve this object. The primordial object of the Limitation Act is to serve a caveat that law will help those who recognize their rights and seek redressal in a court of law within a specified time but not those who slumber over their rights and knock the doors of justice at their will. Inordinate delay either wantonly or unwittingly in institution of proceedings, create adverse situations like non-availability of evidence both oral and documentary, efface of memory of oral witnesses, physical changes of the subject property due to natural vagaries etc. Hence, time limitation has been prescribed for laying suits and other proceedings before a court of law through the Limitation Act.

The provisions of the Act would rather show their application in a limited sphere to the criminal proceedings before Criminal Courts. Certain express

provisions laid down in the Limitation Act would avouch the same. For instance, Article 114 of Limitation Act prescribes the period of limitation for carrying out an appeal against an order of acquittal, whereas Article 115 lays down the period for filing an appeal against conviction under Cr.P.C. Article 131 prescribes period of limitation for filing revision both under C.P.C. and Cr.P.C. Article 132 prescribes limitation for High Court to grant certificate of fitness to appeal to Supreme Court. Article 133 applies to application to the Supreme Court for Special Leave to Appeal. Thus, the above provisions narrate the applicability of Limitation Act though in a narrow compass to the proceedings in a Criminal Court. This has been reiterated by Apex Court in K.Venkeswara Rao and another v. Bekkam Narasimha Reddi (AIR 1969 SC 872) and others thus:

The Indian Limitation Act of 1968 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment; the extent of such application is governed by Section 29(2) of the Limitation Act.

So, there can be no demur regarding the application of Limitation Act to the proceedings in Criminal Court. This point is answered accordingly.

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- (A) P.C. Act, 1988 — Secs. 7, 13(1) (d)**
- (B) Trap — evidence of raid party**

Appreciation of evidence of raid party in a trap case, dealt with.

Vinod Kumar vs. State of Punjab on 23 September, 2014 in Supreme Court of India

The accused officer / appellant worked as Octroi Inspector and he demanded and accepted Rs.500/- for permitting the complainant to enter into the municipal area as complainant / PW-5, used to bring earth in tractor trolley within the municipal area of Rajpura. Trial court convicted the accused. High Court confirmed the same.

The complainant supported the case in chief examination and turned hostile in cross examination. The learned trial Judge, on the basis of the evidence brought on record, came to hold that though the complainant had not supported the case of the prosecution yet prosecution had been able to prove the demand

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and acceptance of the bribe and the recovery of the tainted money from the accused and, therefore, the presumption as envisaged under Section 20 of the Act would get attracted and accordingly convicted the accused.

The Hon'ble Supreme Court placed reliance on Basawan Singh, the Constitution Bench, after referring to the decision in Shiv Bahadur Singh V. State of Vindhya Pradesh, opined that the said decision does not lay down an invariable rule that the evidence of the witness of the raiding party must be discarded in the absence of any independent corroboration. The larger Bench proceeded to state thus:

“.....The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.”

Finally, the Hon'ble Supreme Court discussed various judgments and dismissed the appeal filed by the accused officer.

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Suspension of sentence

**Dr.Vijay Kumar Jatav vs. The State of Madhya Pradesh
on 10 October, 2014 in Madhya Pradesh High Court**

The petitioner was convicted by Special Judge on 30-04-2014 under Prevention of Corruption Act. The sentence has been suspended on appeal. Based on conviction, Government passed the dismissal order against the petitioner which was challenged in High Court. The learned counsel for the petitioner submitted that since the sentence has been suspended, impugned order could not have been passed and also as per rule 19 of MP Civil Services (Classification, Control and Appeal) Rules, 1966, the department was required to “consult” the PSC, whereas in place of effective “consultation” the respondents have obtained “consent”, which is bad in law.

The High Court held that the petitioner has been held guilty by the Special Court under Prevention of Corruption Act. This is trite that mere suspension of sentence would not mean that conviction has been stayed and stated that in (1997) 7 SCC 514 (Union of India vs. Ramesh Kumar), the Apex Court opined that employee has no right to be reinstated in service when his appeal against conviction is admitted and execution of sentence is suspended during pendency of appeal and accordingly the Hon'ble High Court rejected the prayer of the petitioner.

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Court jurisdiction

Union of India vs. P. Gunasekaran (2015) 2SCC 610

The Apex Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings: Under Article 226/227 of the Constitution of India, the High Court shall not: (i) re-appreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the evidence; (v) interfere, if there be some legal evidence on which findings can be based; (vi) correct the error of fact however grave it may appear to be; (vii) go into the proportionality of punishment unless it shocks its conscience.

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Criminal misconduct — obtaining pecuniary advantage to others

Obtaining pecuniary advantage to others is also covered under Sec. 13 of P.C. Act.

Vinayak Narayan Deosthali vs. CBI Judgment dated 05.11.2014 SC

The Hon'ble Supreme Court of India held that “the accused issued Bank Receipts in lieu of the physical delivery of securities, when the securities were not available with the Bank at all”. “The accused had no authority to transfer or divert EEPC’s funds to the account of Harshad S. Mehta (HSM) and, therefore, he had committed illegality, obviously with an intention to give HSM undue pecuniary advantage of those funds. These circumstances, therefore, clearly establish the criminal conspiracy between the accused and HSM as also. The

object of illegally diverting the EEPC's funds to the account of HSM enabling HSM to obtain undue pecuniary advantage by the accused by misusing his position as public servant by corrupt or illegal means, showing the transactions to be the securities transactions of HSM camouflaging the same as if the transactions were of UCO Bank."

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- (A) P.C. Act, 1988 — Sec. 17**
- (B) Trap – authorization to investigate**
- (C) Trap – investigation by unauthorised person**

Union of India vs. Nathamuni: [Supreme Court on 1st December, 2014.]

A trap was laid and the accused T.Nathamuni, Inspector of Income Tax was caught red handed while accepting the bribe amount. Initially, the case was investigated by Inspector of Police and owing to some administrative reasons, the Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Chennai filed petition dated 22.9.2007 under Section 17 of the Prevention of Corruption Act, 1988 before the Court of Special Judge CBI cases, Madurai seeking permission for investigation of the case by Sub-Inspector of Police, instead of Inspector of Police. The Special Judge for CBI cases, Madurai vide order dated 24.09.2009 allowed the aforesaid petition permitting the Sub-Inspector of Police to investigate the case. After completion of investigation, charge sheet dated 01.12.2009 was filed in the Court of Special Sessions Judge for CBI cases, Madurai and the Court took cognizance and assigned it CC No.7/2009.

During the course of trial, the respondent moved the High Court to call for the records and to quash the order dated 24.09.2009 passed by the Special Judge, Madurai permitting Sub-Inspector of Police to investigate the case.

The High Court vide its impugned order dated 5.7.2013 set aside aforesaid order of the Trial Court on the ground that Section 17 of the Act provides that if the officer not below the rank of Inspector of Police is authorized by the Government, such officer can investigate the case without permission of the Court. There is no specific provision in Section 17 of the Act that the Sub-Inspector of Police is also empowered to investigate the case with the permission of the Court. The High Court further observed that the Special Court without assigning any reason in the order permitted the Sub-Inspector of Police to investigate the matter and the same is not in accordance with law.

Hence, appeals were preferred by the Union of India as well as the State.

The Supreme Court held that the matter of investigation by an officer not authorized by law has been held to be irregular and indisputably, by the order of the Magistrate investigation was conducted by Sub-Inspector, CBI who, after completion of investigation, submitted charge-sheet. The Supreme Court observed that it was only during the trial, objection was raised by the Respondent that the order passed by the Magistrate permitting Sub-Inspector, CBI to investigate is without jurisdiction and consequently, the investigation conducted by the officer is vitiated in law. The Supreme Court further held that curiously enough, the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused and held that it is well settled that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.

The Supreme Court held that the High Court erred in overlooking the gist of order of Special Judge permitting the Sub-Inspector to investigate. Further, held that having regard to the fact that no case of prejudice or miscarriage of justice by reason of investigation by the Sub-Inspector of Police is made out, the order of the High Court cannot be sustained in law and set aside the order passed by the High Court.

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- (A) P.C. Act, 1988 — Sec. 20
- (B) Presumption

Sirajbhai Rasulabhai Vora vs. State of Gujarat 2015(2) Crimes 454

Thus, it was sufficient to draw presumption against accused under Section 20 of Act - Prosecution need not prove that money was paid to public servant - Demand on part of one accused and acceptance by other accused as per instruction of one accused in presence of complainant was proved - Thus, there was no reason to disbelieve case of prosecution against accused persons - Therefore, conviction of Appellants was justified - Appeal dismissed. [paras 22 and 26].

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Suspension — issue of fresh order

Union of India vs. R.C.Bakshi on 26 February, 2015 in Delhi High Court

The respondent was working as Income Tax Officer (Group B). On 26.06.1997 a trap was laid down by CBI wherein he was caught red handed for

accepting bribe of Rs.10,000/- A case was registered against him under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he was taken into custody on the same date i.e., on 26.06.1997 and was released on bail on 1.7.1997. He was placed under deemed suspension vide order dated 16.7.1997, passed under Sub-Rule 2 of Rule 10 of CCS (CCA) Rules, 1965 (hereinafter referred to as the 'Rules, 1965') w.e.f. 26.6.1997. Later he was acquitted vide order dated 12.8.2005 passed by the learned Special Judge, Delhi.

The respondent made request to the Government / Petitioner to revoke the order of the suspension and to direct reinstatement and also regularise his past service treating on duty along with release of all consequential benefits.

The Government rejected his request but also extended suspension for a further period of 180 days or till the date of his superannuation whichever is early from the date of the said order.

The respondent preferred OA before the Tribunal and the Tribunal allowed stating that the period of suspension has to be regulated on the acquittal of respondent by placing reliance on the judgment of the Apex Court in the case of Union of India vs. Rajeev Kumar, JT 2003 (5) SC 617. The Government preferred a writ stating that apart from trap case, there is also Disproportionate Assets case against accused and the DA case is still pending.

The High Court observed that it was not in dispute between the parties that in the said case of possessing disproportionate assets, the respondent was not under detention for a period exceeding 48 hours and therefore, there could not have been question of his deemed suspension in terms of Rule 10(2)(a) of the Rules, 1965.

The High Court further observed Rule 10(5)(b) deals with a situation where the Government Servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise). However, if any other disciplinary proceedings are commenced against him during the continuance of that suspension in that case, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, can direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. Thus for continuance of the suspension order there must be some other disciplinary proceedings pending at the time when the first disciplinary proceeding comes to an end and then the Competent Authority shall, for reasons recorded may order that the government servant shall continue to remain under suspension till the termination of all such proceedings against him.

The High Court held that in the present case, apparently no such order of continuation of suspension order was passed by any competent authority and the learned CAT while taking note of the decision of the Apex Court in Rajiv Kumar's case, took a view that it was impermissible for the petitioner to continue the suspension at a stretch without passing any order under Rule 10 (5) (b). The High Court held that it is in complete agreement with the reasoning given by the learned CAT in the impugned order and dismissed the petition.

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Charge — mention of penalty

That the labour court has erred in holding that the enquiry was vitiated and prejudice caused to workman because disciplinary authority/General Manager had already made up his mind to dismiss the delinquent while issuing show cause notice of proposed punishment and had not done an independent assessment of the reply of workman to the show cause notice.

Badarpur Thermal Power Station vs. Central Govt. Industrial Tribunal cum Labour Court & ANR. W. P.(C) 1078/2003 in the High Court of Delhi

The petitioner has challenged the award on the following grounds:

- (a) That the labour court had erred in holding that the petitioner ought not to have been proceeded with the departmental enquiry, since a criminal case was pending trial and thus the inquiry was not fair. It is argued that there is not bar in law, to simultaneously continue with the departmental enquiry and the pendency of a criminal trial does not automatically stay the continuance of a departmental inquiry and thus the findings of the labour court to this effect are contrary to law.
- (b) That the labour court has erred in holding that the enquiry was vitiated and prejudice caused to workman because disciplinary authority/General Manager had already made up his mind to dismiss the delinquent while issuing show cause notice of proposed punishment and had not done an independent assessment of the reply of workman to the show cause notice. It is submitted that it is a normal practice that the disciplinary authority after considering the report of the enquiry officer, *prima facie* forms an opinion of the proposed punishment and then issue a show cause notice to the delinquent. Also the finding of the labour court that there was no independent assessment of the disciplinary authority is contrary to the record and thus perverse.

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- (c) That the labour court has erred in holding that the order of the appellate authority was mala fide and without application of mind. The order of the appellate authority clearly shows that the appellate authority had applied its minds and thereafter only passed its order.
- (d) That the labour court has totally erred in law when it has passed its award on the consideration that subsequent acquittal in a criminal case vitiates the inquiry.
- (e) That the order of reinstatement of daily wage workman is in violation of a settled principle of law. A daily wager has no substantive right to hold the post and thus cannot be ordered to be reinstated.
- (f) That the workman had lost confidence of the management and thus cannot be ordered to be reinstated.

From the perusal of the dismissal order it is apparent that the disciplinary authority, who is the General Manager in this case, had duly considered the reply of the delinquent to the show cause notice. The dismissal order clearly shows that the General Manager had gone through the proceedings of the inquiry and the report of the inquiry officer again and thereafter only gave its findings that it did not find any justifying reason in the show cause notice for reconsideration of the proposed punishment. The dismissal order also shows that the general manager had considered the contention of the workman that the principle of natural justice had been violated and the charge was not established in the inquiry as not correct. It has been held that from the proceedings of the enquiry the charge was fully established and the charge was found based on the evidences adduced at the inquiry which had been conducted following the principles of natural justice. He thereafter held that he did not find any reason to disagree to the findings of the inquiry officer and any reason to modify the proposed punishment and also held that the charges being grave and serious justify the proposed punishment of dismissal. He also considered the previous reports of the workman which were of unblemished nature. It is therefore is clear that the due consideration was given to the reply to show cause notice. The authority applied its mind and has not passed the order in mechanical manner. The findings of the labour court on this count are therefore perverse.

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Departmental action and conviction

The order of conviction shall continue unless it is set aside by the Appellate Court. Any action taken against the government servant for misconduct which led to his conviction does not cease to be effective on granting of interim bail.

**Ajay Kumar Bhardwaj vs. DTC, 03 Mar 2015 219 DLT 702;
2015 0 Supreme (Del) 3735**

The brief facts of the case are that the petitioner Sh. Ajay Kumar Bhardwaj was appointed at Delhi Transport Corporation (DTC) as Assistant Fitter on 11.04.1983. During the aforesaid employment of petitioner with respondent No. 1 i.e. Delhi Transport Corporation, the petitioner along-with other co-accused were involved in a racket of cheating, and defrauding MTNL to the tune of Rs. 67,20,000/- . After the investigation, the charge-sheet against the petitioner along with the co-accused persons were filed before the concerned Court and the petitioner was convicted u/s. 420 IPC and under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

The petitioner aggrieved by the judgment filed a criminal appeal before the Bench dealing with the Criminal Jurisdiction (Crl. Appeal No. 987 of 2010) challenging the conviction which is still pending before the aforesaid Bench. The aforementioned Bench declined to suspend the sentence of the petitioner during pendency of the Criminal Appeal. The petitioner thereafter approached the Hon'ble Supreme Court for grant of bail and the Hon'ble Supreme Court vide order dated 15.11.2010 granted him interim bail.

After securing his interim bail from the Hon'ble Supreme Court, the petitioner sought permission from respondents to join his duty which was not allowed. However, the respondents after issuing a show-cause notice dated 17.01.2011 dismissed the petitioner from service vide order dated 11.02.2011. He appealed before the Central Administrative Tribunal and vide order dated: 28.09.2012, the CAT declined to grant him any relief and aggrieved from the same, the petitioner has filed the present writ-petition.

The learned counsel for the petitioner contended that according to Office Order 201 dated:24.11.1954, "The question of taking departmental action against an employee convicted by Court, will be taken up only after the employee's appeal has been decided by the Appellate Court".

The High observed that the bare perusal of Office Order 201 dated 24.11.1954 makes it clear that it lays down procedure to be followed in dealing with situations where drivers meet with an accident during discharge of his/their duties and does not relate to a situation where an employee is on official duty and doing criminal acts which is without the preview of its official duty.

The High Court further observed that the aforesaid Office Orders are crystal clear that the orders were framed for dealing with the employees who were prosecuted while on duty and it has nothing to do with any kind of the

criminal acts which may be undertaken by the employees beyond the scope of their official duties.

The Court held that the present petitioner is not a driver/employee and acts committed by him which led to his conviction were neither connected with his official business nor were his acts arising out of his official discharge of duties and therefore, the benefit of the Executive Instruction dated 05.08.1955 cannot be given to the petitioner and upheld the order dated: 28.09.2012 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi and dismissed the Writ Petition

(686)

Constitution of India — Art. 311(2) second proviso cl.(b)

Article 311(2), second Proviso, clause (b) – Dispensing with departmental enquiry – Requirements – Satisfaction of competent authority –Appellant being a senior, permanent and non-transferable officer of the concerned jail, his junior jail officers, the only possible witnesses, were not likely to come forward to depose against him – Links of the escaped under-trial prisoners with the dreaded terrorist outfit also a deterrent for witnesses to come forward – Competent authority rightly recorded its satisfaction, giving reasons, about holding of departmental enquiry being reasonably not practical against the appellant/petitioners.

Ved Mitter Gill (VS) Union Territory Administration, Chandigarh, 26 Mar 2015 AIR(SC) 1796; 2015 (3) SCC(Cri) 440; 2015 Supreme(SC) 257

In January 2004, appellant/Ved Mitter Gill was holding charge of the post of Deputy Superintendent of Police, Model Jail, Burail, Chandigarh. Dalbir Singh Sandhu was also holding the post of Deputy Superintendent of Jail, whilst Paramjit Singh Rana was posted as Assistant Superintendent of Jail, Nishan Singh and Inder Singh were working as Head Warder and Warder respectively.

Four under trials facing trial for the assassination of a former Chief Minister of Punjab Shri Beant Singh and Jagdev Singh, who was being tried for the charge of murder, escaped from the Model Jail, Burail, Chandigarh, by digging a 94 feet long underground tunnel. By an order dated 1.3.2004, the Advisor to the Administrator, Union Territory, Chandigarh dismissed the appellant and the petitioners in transferred cases from service with immediate effect.

The orders of dismissal were assailed by the appellant, as well as by the petitioners, before the Central Administrative Tribunal, Chandigarh Bench. All the above applications were dismissed by the Administrative Tribunal. Ved Mitter Gill assailed the order dated 30.1.2006 passed by the Administrative Tribunal before the High Court, which was dismissed.

The Supreme Court also held that the parameters laid down by this Court, for a valid/legal application of clause (b) to the second proviso under Article 311(2) of the Constitution of India, were duly complied with. The appeal and transferred cases dismissed.

(687)

Departmental action and prosecution

Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

The State of Andhra Pradesh Rep. ... vs G.L.Ganeswara Rao... on 27 March, 2015 Andhra High Court

The Anti-Corruption Bureau registered a criminal case against 1st respondent, Inspector of Survey, dated 26.12.2009, for possession of assets disproportionate to his known sources of income. Charge sheet was filed in the Special Court for ACB & SPE cases and disciplinary proceedings dated 05.02.2011 were issued proposing to hold an enquiry against him in accordance with the procedure laid down in Rule 20 of the APCS (CC&A) Rules, 1991.

The respondent filed OA in the Tribunal seeking to declare the proceedings dated 05.02.2011, as arbitrary, illegal, malafide, in violation of Articles 14 and 21 of the Constitution of India.

The Tribunal by its order dated: 23.07.2014, held that charge No.1 related to non-submission of annual property statements for the years 2006, 2007, 2008 and 2010; charge No.2 related to his acquiring assets disproportionate to the known source of income to a tune of Rs.40,75,500/- without informing the Government; the documents sought to be relied upon, to prove the disproportionate assets, and the witnesses were the same both in the enquiry and in the criminal case pending before the ACB Court; since the competent court was already seized of the matter on the same issue, the impugned proceedings should not have been issued till the disposal of the criminal case;

if the enquiry was permitted to be proceeded with, the 1st respondent would be forced to disclose his defence in advance in the disciplinary enquiry; he would thereby suffer irreparable injury; on the other hand, the Government would not suffer any injury since they could take further action in the matter depending upon the result in the criminal case.

The Tribunal directed the respondents not to proceed with the departmental enquiry initiated against the 1st respondent, vide proceedings of the Commissioner dated 05.02.2011, till the disposal of the ACB cases pending on the file of the Special Judge for SPE & ACB cases.

Hence the Appeal in High Court.

The High Court observed that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave, and continuance of the disciplinary proceedings is likely to prejudice their defense before the Criminal Court.

The High Court held that it is evident that the charge levelled against the 1st respondent in the disciplinary enquiry is distinct and different from the charge levelled against him in the criminal case.

The principles, applicable in this regard, are: (i) departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately; (ii) if the departmental proceedings and the criminal case are based on identical and similar set of facts, and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case; (iii) whether the nature of a charge in a criminal case is grave, and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence, and material collected against him during investigation or as reflected in the charge sheet; (iv) the factors, mentioned at (ii) and (iii) above, cannot be considered in isolation to stay the departmental proceedings, but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed; (v) if the criminal case does not proceed, or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that, if the employee is found not guilty, his honour may be vindicated

and, in case he is found guilty, the administration may get rid of him at the earliest.

The High Court ordered that the disciplinary proceedings shall be continued in accordance with law uninfluenced by any observations made, on the merits of the case, either in the order of the Tribunal or in the order passed by it.

(688)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)
- (B) Disproportionate assets — FIR and charge sheet — quashing of

*Mucherla Satyanarayana vs. the State of Andhra Pradesh
on 31st March, 2015*

The ACB, AO and Government were clear on the aspect that sanction was sought for in respect of trap case only. So, from the above documents, there is no demur that what was sought for by the ACB and refused by the Government was sanction for prosecution of petitioner/AO in a trap case but not in disproportionate assets case. It is needless to emphasise that soliciting bribe and acquiring assets disproportionate to the known sources of income by a public servant are two different and distinct offences under PC Act. Therefore, one should not be mistaken that refusal by the Government for prosecution in trap case as refusal for prosecution in disproportionate case also.

The High Court of Andhra Pradesh held that mere delay in investigation cannot be taken as a sole ground to quash the proceedings. Except harping that his right to fair trial is affected the petitioner could not put-forth how the delay has prejudiced his defence and therefore, did not uphold the argument.

(689)

Suspension — issue of fresh order

*Mr. Kuldeep Mathur vs. State of Rajasthan & Ors on 15 April, 2015
Rajasthan High Court - Jodhpur*

ACB registered a case against the petitioner while he was working in the post of Nakedar in the Mining Department. The petitioner was suspended on 26.07.2004 and subsequently reinstated by order dated: 29.11.2005. Pursuant

to the prosecution sanction being granted, the petitioner was again placed under suspension vide order dated:10.08.2009. The petitioner approached the court by filing WPs on both suspension and prosecution.

The High Court stayed the suspension order and he was reinstated. The High Court held that the prosecution sanction order was issued without application of mind and was just verbatim reproduction of the draft submitted by ACB. However, liberty was given to consider grant of sanction afresh. Govt. issued sanction for prosecution vide order dated: 17.01.2012 and again suspended him vide order dated:17.01.2012.

The petitioner thus approached the Court by way of writ petition assailing the order dated 17.01.2012, placing him under suspension and the order dated 17.01.2012, according sanction to prosecute him for the offences under the Prevention of Corruption Act.

This Court held that the suspension of an employee, looking to the facts and circumstances of the case, may be desired urgently or on emergent basis but in those circumstances also the competent authority must record its satisfaction for exercising powers under Rule 13. If such satisfaction is not recorded and suspension is effected merely on basis of the instructions given by the administrative circulars then that is nothing but colourable exercise of power.

The Hon'ble High Court on going through the suspension order, held that it is evident that though the Government instructions/circulars are not referred to in the suspension order but the fact still remains that the petitioner's fresh suspension was ordered merely because prosecution sanction had been granted against him. It is clearly reflected from the order that the competent authority did not apply its mind independently to the facts of the case while placing the petitioner under suspension third time on the basis of the same set of facts and after 8 years of the alleged delinquency. The High Court observed that fresh sanction order was passed even with greater degree of non-application of mind.

The High Court therefore allowed the WP and quashed and set aside the impugned orders placing the petitioner under suspension and according sanction to prosecute him for the offence under the Prevention of Corruption Act. However, liberty was given to the competent authority to reconsider the matter for passing a fresh order of sanction for prosecuting the petitioner, if so desired and warranted in the facts of the case.

(690)

- (A) P.C.Act, 1988 – Secs.7, 13(1)(d)
- (B) Trap — Evidence — what is not hit by Sec.162 Cr.P.C.
- (C) Cr.P.C. — Sec. 162
- (D) Evidence — of hostile witness

Mahipal Singh vs. State on 20 April, 2015 in Delhi High Court

The appellant / accused officer ASI Mahipal Singh was convicted for the offence punishable under sections (u/s) 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') punishable under Section 13(2) PC Act. Complainant supported the case of prosecution in chief examination and turned hostile in cross examination.

The accused preferred an appeal basing on the stand that the complainant has not supported the case of the prosecution and the complainant stated that the accused was accompanied by another person when the complainant went to PS Chandni Mahal on the day of trap. He had stated that the other person with the accused had demanded the illegal gratification, and he was the one who accepted the bribe from him. Thus, the demand and acceptance of illegal gratification, which are essential ingredients, were not established by the prosecution against the accused. The accused further taken a plea that the panch witness (PW-7) also did not support the case of the prosecution.

The Hon'ble Judge placed reliance on the decision in Sat Paul was followed by the Supreme Court in Koli Lakhmanbhai Chanabhai vs. State of Gujarat, AIR 2000 SC 210. The Supreme Court, inter alia, held as follows:

"It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence. [Re: Bhagwan Singh v. State of Haryana (1976) 1 SCC 389 : (AIR 1976 SC 202 : 1976 Crl LJ 203) and Sat Paul v. Delhi Administration (1976) 1 SCC 727 : (AIR 1976 SC 294: 1976 Crl LJ 295)]"

Therefore, merely because the complainant (PW-6) and the panch witness (PW-7) have turned hostile to a certain extent, the accused cannot

claim that their testimonies have to be disregarded altogether as it would require a deeper scrutiny of the entire evidence to examine whether, despite the said witnesses turning partially hostile, the said witnesses are creditworthy qua their testimony relied upon by the prosecution.

On the application of the aforesaid decision, the Hon'ble Court held that there is no hesitation in concluding that Ex. PW-6/D i.e. post raid proceedings/ panchnama as well as the seizure memo Ex. PW-6/C are not hit by Section 161 or 162 Cr PC, insofar as they do not purport to incriminate the accused and merely constitute record of the proceedings which took place, to which the complainant and the panch witness were witnesses.

It was further held that the aforesaid condition i.e. acceptance or agreement to accept any gratification need not to be proved only through direct evidence. Proof must be one which would induce a reasonable man to come to a particular conclusion. It was held that once it is proved that gratification has been accepted, the mandatory presumption under Section 20 must automatically arise and dismissed the appeal.

(691)

- (A) P.C. Act, 1988 – Secs. 7, 13(1)(d)**
- (B) P.C. Act, 1988 – Sec. 20**

State of Andhra Pradesh vs. P. Venkateshwari
Decided On: 06.05.2015 in Supreme Court

The accused Respondent was working as Sub Registrar in the office of Sub Registrar and Assurance, Sattypali, Khammam District was trapped as he demanded accepted the bribe. Trial convicted u/s 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988. High Court set aside conviction of Respondent / Accused. Hence, present appeal.

The contention raised by the Counsel for the respondent that mere recovery of money by itself cannot prove the charge of the prosecution against the accused Respondent in the absence of any evidence to establish payment of bribe or to show that the accused Respondent voluntarily accepted the money. The positive phenolphthalein test is not the conclusive proof that the accused Respondent took the bribe. The learned Counsel cited a number of cases in support of the respective contentions raised by them. In addition, it was submitted that the complainant in a trap case stands in the position of an accomplice and his evidence cannot be accepted without corroboration. The Hon'ble Supreme

Court decided for point for determination whether impugned order rightly acquitted Accused for offences in question.

The Supreme Court held that in the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act. Accused had not successfully rebutted presumption under Section 20 of Act.

The Supreme Court held that the prosecution established demand and acceptance of tainted money and set aside the impugned order. Order passed by Special Judge convicting Accused under Sections 7 and 13(1)(d) read with Section 13(2) of Act was restored. Appeal allowed.

(692)

Misconduct — sexual harassment

**S.K.Jasra vs. Union of India & Others Judgment
dated 28.05.2015 Delhi HC.**

The petitioner was working as a Joint Director in the Directorate of Pay, Pension and Regulations (Directorate of Education of PP&R), Air Headquarters, Ministry of Defence. Mrs. Nirmala Devi (complainant) was also posted as a Peon at the same Directorate as that of the Petitioner. In March 2009 a charge memo was issued to him for behaving in a sexually in-appropriate manner with the daughter and daughter-in-law of the Complainant.

Thereafter, Disciplinary Proceedings were initiated against the petitioner. After following the due procedure, the competent authority imposed upon him the "Penalty of reduction of pay by three stages for a period of two years with further orders that he will not earn increments during these two years and his future increments will remain postponed" by order dated:21.09.2010.

The petitioner submitted a review application against the penalty order which was rejected. The petitioner thereafter filed an O.A. before the learned

Tribunal assailing the order of penalty and rejection of the review petition. The learned Tribunal allowed the aforesaid O.A. and quashed and set aside the impugned order of penalty dated 21.09.2010 and remanded back the case to the Disciplinary Authority, to re-examine and to pass a fresh speaking and reasoned order within a period of three months.

The Respondents appealed in the High Court of Delhi and the High Court agreed with the judgment of Tribunal but with some modifications. Thereafter, the Disciplinary Authority imposed a more severe penalty vide order dated 28.09.2012, i.e., reduction in rank from Joint Director (in-situ) to that of Deputy Director.

On further appeal, the Tribunal vide order dated:10.09.2013 refused to interfere with the order of Disciplinary Authority, but directed respondents to take a view regarding the penalty imposed upon the applicant.

The order of Tribunal dated:10.09.2013 was challenged in High Court of Delhi. The petitioner contended that he should not be liable for any penalty which may be imposed upon him in pursuance of disciplinary proceedings as the alleged acts are in no way connected to the discharge of his official duties.

The High Court held that in the instant case, the Complainant, a widow being distraught sought help for her daughter, who was estranged from her husband and the petitioner on the pretext of offering her a helping hand not only shattered the trust of the person (Director, PP&R) who had reposed faith in him and bestowed him with the task of helping the Complainant, but misused the dominant position that he was holding, courtesy his being a senior officer at the place where the complainant was working. The High Court further held that he misbehaved with the daughter and daughter-in-law of the complainant in a sexually inappropriate manner. The High Court held that the abuse of dominant position by the petitioner outrightly reveals the nexus between the improper conduct of the petitioner with his official duties.

The High Court further held that this is not a case of sexual harassment of a woman at workplace, but it is a clear case of misconduct or of a conduct that was 'unbecoming of a government servant' as stipulated under Rule 3 (1) (iii) of the C.C.S. (Conduct) Rules, 1964. People with upright moral values and integrity should only make way into public service and not those, who are beasts in disguise. A public servant should at all times, be it in a professional set-up or otherwise conduct himself in a manner that is not subversive to discipline. The High Court held that it did not find any infirmity with the order of the learned tribunal dated 10.09.2013 passed in O.A and upheld the same.

(693)

Conduct Rules and Fundamental Rights

Government servant for criticising the actions of the government though was forbidden under Conduct Rules, was still considered as the fundamental right guaranteed under Article 19(1)(a) of Constitution of India.

G. Arasukumar vs. State Bank of India, rep. by its Asst. General Manager 2015 3 LW 849; 2015 0 Supreme (Mad) 2155

The three writ appeals arise out of a challenge to the charge memos, issued way back in the year 2007. The three Appellants in W.A.Nos. 336, 356 and 357 of 2008 are employees of the State Bank of India which is the sole Respondent in all the appeals. The Appellant in W.A.336 of 2008 (G.Arasukumar) was at the relevant time employed as a Senior Assistant in the Anna Salai Branch of the State Bank of India. At that time he was the treasurer of Ambedkar Union.

These three Appellants through their trade union sent a letter to the Governor of Reserve Bank of India, Chennai to take suitable action against the then Chief General Manager, SBI Chennai Circle (Pradip Chaudhary) for his gross negligence in dealing with missing currency of Rs.30 lakhs by a letter dated 2.5.2006. The trade union also sent a reminder letter to the RBI, Chennai. The Reserve Bank of India through its Deputy General Manager sent reply to the Ambedkar Union by a reply dated 28.2.2007 that the matter has been taken up with the bank suitably.

Even before any corrective action could be initiated by the RBI, the Respondent SBI through its counsel issued a legal notice to the Ambedkar Union as well as the three Appellants herein, being the office-bearers of the Union, alleging that the Union pasted posters denigrating the Bank and its officers. The wall poster allegedly put up by the Ambedkar Union, when translated into English reads as follows :

“In State Bank fence is eating the crops! Officers! Can you swindle public funds?”

The Respondent SBI filed a civil suit against the Ambedkar Union and the three appellants claiming damages in a sum of Rs.11,00,000/- for pasting posters in public and issuing handbills to public making defamatory allegations and causing damage to the reputation of the bank.

Notwithstanding the filing of the suit, the respondent Bank also initiated disciplinary proceedings against the three (3) office bearers of the Union by issuing a charge memos.

The High Court held that publishing posters and distributing hand bills is a means to ventilate the grievances of the employees and free speech in our country is recognised as a fundamental right under Article 19(1) of the Constitution subject to reasonable restriction.

The Court held that it did not find any misconduct as having been committed by the Appellants by the publication of the poster in the name of their trade union as the contents of the poster if translated properly did not disclose any misconduct. On the other hand, it is the duty of every citizen to safeguard public properties as enjoined in the fundamental duties imposed on them by Article 51A of the constitution. The High Court further held that that the Respondent SBI was right in initiating a disciplinary action against the three appellants in respect of the poster in question either on the ground it had interfered with the commercial interest of the bank or it had defamed the bank and it did not find anything defamatory in the contents of the poster which gave rise to the impugned charge memos against the appellants.

The High Court set aside the charge memos.

(694)

Misconduct — not washed off by promotion

***Patel Ram Meena vs. Reserve Bank of India Through ...on 27 July, 2015
Rajasthan High Court***

All instances of misconduct and punishment imposed during the entire service of an employee (all categories) be furnished at the time of his / her consideration for promotion.

It is well settled that an employee of the government or any of its instrumentalities has only a right to consideration for promotion and not to promotion. It is also well settled that albeit the jurisdiction of the writ court under Article 226 of the Constitution of India can reach, on challenge made, injustice or arbitrariness wherever, yet where a challenge is to the correctness of assessments made by a Departmental Promotion Committee / Select Committee, a writ Court has, as a rule, restrained its hands and not interfered except in the cases of Wednesbury unreasonableness, ex-facie unfairness,

bias and mala fides. The inquiry in this writ petition therefore, has to be whether the petitioner has been arbitrarily and illegally over-looked for further promotion to the post of Assistant Care Taker in the Class-III service and whether the Selection Committee acted mala fide and abused its powers in unfairly assessing adversely, the suitability of the petitioner to the promotional post.

The Honble Apex Court in the case of Badrinath Vs. Government of Tamil Nadu and others, (2000) 8 SCC 395 had an occasion to deal with the washing off theory. It was held that if adverse remarks relate to a period, prior to an earlier promotion, they indeed can be treated as having lost their sting and being rendered weak subject to the rider that if they relate to dishonesty or lack of integrity, they can be considered to have not lost their strength fully so as to be ignored altogether

In the context of enunciation by the Honble Apex Court, the fact of the instant case indicate that the petitioner's misconduct for tampering with a certificate issued by the respondent Bank's Jaipur Office in a departmental enquiry culminated in punishment and placing him in the lowest rank of the pay scale. The misconduct pertained to the dishonesty of the petitioner and would not cease to be relevant for assessment of his suitability for promotion from Class-IV to the post of Assistant Care Taker in the Class-III cadre of the Bank even subsequent to his promotion within Class-IV service. The reason lies in the fact that Rule 1.4 read with Rule 3 of the RBIs Master Circular on Promotion Policy for Class-III & IV employees provides that promotion to the posts in Class-III as of Assistant Care Taker was to be based on consideration of the entire record of an employee in Class-IV for determination of suitability. Seniority of the employee was relevant only for the purposes of zone of consideration. Promotion to the post of Assistant Care Taker in Class-III from the feeder cadre of Class-IV is not on the basis of seniority or even seniority-cum-merit where only minimum merit for promotion is to be evaluated but on the basis of suitability determined with reference to the entire service record of the employee.

In the circumstances I find no arbitrariness or unfairness attributable to the Selection Committee in taking into consideration the punishment visited upon the petitioner under the order dated 19.8.1998 and holding that he was not suitable for promotion as Assistant Care Taker as the said punishment related to the petitioner's integrity and dishonesty. The argument of mala fides vitiating the petitioner's supersession to the post of Assistant Care Taker is also a non-sequitur as the members of the Select Committee or even one of them have not been impleaded economine nor in-fact any allegations regarding them made in the writ petition. The Select Committee was thus unable to hold that an employee

found guilty of serious misconduct in 1998 and barely managing to avoid consequent punishment of dismissal only on humanitarian ground could be entitled to promotion to a post where the criteria was suitability.

Counsel for the petitioner then submitted that 'stale' part of the petitioner's service record relating to 1998 was emphasized by the Select Committee which over-looked that no adverse material obtained thereafter on the record against the petitioner. Hence, the act of the Select Committee Meeting of December 2014 superseding the petitioner on the post of Assistant Care Taker against the vacancy of 2015, was wholly arbitrary. The argument only deserves to be noticed for being rejected as it is de hors the mandate of the respondent Bank's extant Promotion Policy and the circular dated 10.2.2003 that the service record of an employee has to be considered at the time of promotion.

In Raghunath Rai Bareja Vs. Punjab National Bank &Ors, (2007) 2 SCC 230 the Hon'ble Apex Court has referred to the legal maxim i.e Dura Lex Sed Lex i.e. law is hard, but it is the law. It is also well settled that where there is a conflict between law and equity, it is the law which will prevail. In Sudhir Kumar Consul Vs. Allahbad Bank, (2011) 3 SCC 486, the Hon'ble Apex Court has held that sympathy of the Court cannot over-ride Rules and Regulations. The upshot of the above consideration of the petitioner's case is that, it is without merit and hence liable to be dismissed.

(695)

Cr.P.C. — Sec. 162

Section 162 of Code of Criminal Procedure, 1973 bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein.

V.K. Mishra and Ors. vs. State of Uttarakhand and Ors. AIR 2015 SC 3043

The words in Section 162 of Code of Criminal Procedure, 1973 "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for

contradiction but only after strict compliance with Section 145 of Evidence Act, 1872 that is by drawing attention to the parts intended for contradiction.

The statements under Section 161 of Code of Criminal Procedure, 1973 recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of Evidence Act, 1872; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

(696)

Suspension — effect of acquittal

S. Rajagopal vs. The Registrar decided on 27 August, 2015 in Madras High Court

The petitioner while working as Chief Accounts Officer, on officiating Basis in Gujarat Circle, was prosecuted in ACB Case No.3/2006, on the ground that he had demanded a sum of Rs.400/- from a subscriber. Upon filing of the FIR, he was reverted from the post of Chief Accounts Officer to the post of Senior Accounts officer. By order, dated 15.07.2004, he was placed under suspension. Thereafter, the said suspension was revoked on 15.07.2005 and he was reinstated in to service. In the criminal case, lodged against him - ACB Case No.3 of 2006, under the provisions of the Prevention of Corruption Act, the learned Special Judge and Presiding Officer of Fast Track Court, Vadodara, acquitted him, by a detailed judgment, dated 31.03.2008.

The department has not passed orders treating the period of suspension as duty with full pay and allowances and granted other service benefits. The petitioner filed OA before CAT and the CAT passed orders as

“Since the applicant is now on bail, the final outcome of the Criminal Appeal pending before the Hon’ble High Court of Gujarat will decide the other benefits to which the applicant is entitled. Hence, the respondents are directed to consider the request of the applicant in terms of FR 54-B (3) as cited supra and pass appropriate orders.”

The petitioner challenged the order of the CAT and filed a writ before the Hon’ble High Court. The Hon’ble High Court placed reliance on decision of Hon’ble Supreme Court in *Garikapati Veeraya vs. N. Subbaiah Choudhry in AIR*

DECISIONS (697) & (698)

1957 SC 540 that it is not open to respondents, not to regularise the period as duty. It has to be regularised.

Accordingly, the Hon'ble High Court allowed the petition and directed to regularise the period of suspension, as duty, with all consequential benefits, including promotions, on par with his immediate juniors.

(697)

- (A) P.C. Act, 1988 — Sec. 7**
- (B) Trap — motive or reward**
- (C) Trap – evidence of panch witness**

Indra Vijay Alok vs. State of Madhya Pradesh
[2015 0 AIR (SC) 3681]

If complainant's evidence is corroborated by trustworthy evidence of other witnesses, accused can be convicted even if the Panch witness becomes hostile. When amount given as gratification is recovered from accused, presumption as to motive can be drawn u/s 20 unless rebutted.

(698)

- (A) Constitution of India — Art. 20(2)**
- (B) Cr.P.C. – Sec. 300 (1)**
- (C) Sanction of prosecution — where invalid, subsequent trial with proper sanction, not barred**

Where in a case under Prevention of Corruption Act after full-fledged trial, trial Court found that sanction for prosecution was not valid and discharged accused, fresh prosecution after obtaining sanction for prosecution would not attract the bar u/s 300 Cr.P.C.

State of Karnataka through C.B.I. vs. C. Nagarajaswamy,
2005 0 AIR (SC) 4308; 2005 0 Supreme (SC) 1359

Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same

may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. It is true that in terms of Clause (2) of Article 20 of the Constitution of India no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code was enacted having regard to the said provision. Sub-section (1) of Section 300 of the Code reads as under:

“Persons once convicted or acquitted not to be tried for same offence—
 (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.”

The essential conditions for invoking the bar under said provision are:

- (i) the court had requisite jurisdiction to take cognizance and tried the accused; and
- (ii) the court has recorded an order of conviction or acquittal, and such conviction/acquittal remains in force.

The Supreme Court has held that in view of the authoritative pronouncements, it is not possible to agree with the decision of the High Court that the Trial Court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid and held that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as even then, it would be held to have been rendered illegally and without jurisdiction.

The Supreme Court has held that keeping in view of the aforementioned principles and having regard to the facts and circumstances of this case, it is of the opinion that the interest of justice shall be sub-served if while allowing these

appeals and setting aside the judgments of the High Court, the trial court is requested to dispose of the matters at an early date preferably within six months from the date of communication of this order, subject, of course, to rendition of all cooperation of the Respondents herein. Further held that in the event, the trial is not completed within the aforementioned period, it would be open to the Respondents to approach the High Court again.

(699)

Principles of natural justice – reasonable opportunity

Service law – Complaint of illegal appointment on ground of lack of proper qualification – Enquiry conducted by vigilance – Not confining to the complaint – Enlarging its scope to conduct of the officer – Not a domestic enquiry – It was an ex parte enquiry held behind the back of the officer concerned by Vigilance – Dismissal on that basis – No departmental enquiry held – No charge framed or served – Not a case of dispensing with enquiry – Dismissal not a termination simpliciter – Enquiry and punishment casting stigma on the officer – Compliance of natural justice imperative – Dismissal held illegal – Appellant directed to be reinstated with 50% back wages.

Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar, 2016 AIR (SC) 467; 2015 15 SCC 151; 2015 0 Supreme (SC) 966

The appellant applied for the post of Physiotherapist under Class-II Post in the Indira Gandhi Institute of Medical Sciences (IGIMS). The selection committee of the institute selected him for the appointment in the post as the Chest Therapist. The screening committee observed that the post of Physiotherapist and Chest Therapist are of similar nature and hence, the post of Chest Therapist may be considered from the applications received for the post of Physiotherapist.

The appellant received the letter of appointment for the post of Chest Therapist on 14.01.1999. The appellant joined the post on 20.08.1999.

A complaint was received by the Vigilance Department, Government of Bihar on 3.11.2004 relating to the illegal appointment of the appellant on the post of Chest Therapist. The complaint contained that the advertisement for Physiotherapist and Chest Therapist were different because streams are different

and the appointment of the appellant was absolutely illegal. The reports of the enquiry reflected on various aspects and pointed out that the appointment was illegal.

The appellant was asked by the Director of IGIMS to show cause within three days as to why on account of illegal appointment his services should not be terminated. The petitioner sent his reply on 20.03.2005 and asked for the copy of the complaint as well as the entire report submitted by the Vigilance Department.

Despite the request made by the appellant all the documents were not supplied to him which the appellant considered vital. However, he submitted the reply on 08.04.2005 and on 09.04.2005 the Director, IGIMS, terminated his services.

The appellant filed writ petition and single judge quashed the order of termination and directed that appellant should be treated in service with all consequential benefits on the ground that the appellant was all through kept in the dark as to on what grounds his service had been terminated and further he was not furnished with the necessary documents which formed the part of enquiry. The Division Bench allowed the appeal and unsettled the decision rendered by the learned Single Judge.

The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. When the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice.

Consequently, the appeal is allowed and the judgment and order passed by the Division Bench of the High Court is set aside and that of the learned Single Judge is upheld, though on different grounds. Accordingly, it is directed that the appellant be reinstated in service within a period of six weeks and he shall be entitled to 50% towards his salary which shall be paid to him within the said period. In the facts and circumstances, there shall be no order as to costs.

(700)

Departmental action and prosecution

Kota Joji vs. Railway Protection Force (RPF), Rep. by its Sr. Div. Security Commissioner (SCR), Vijayawada, 2016 5 ALD 60; 2016 O LIC 3458; 2015 O Supreme (AP) 924

The charge-sheet issued to the petitioner in the departmental proceedings and in criminal case is distinct and different. The contention of the petitioner that the departmental proceedings and criminal case cannot go parallel is misconceived since the petitioner has been issued a charge-sheet by the Department under Rule 153 of the RPF Rules for his misconduct being the member of the Railway Protection Force (RPF). The charges were framed by the 1st respondent-Disciplinary Authority basing on the report received from the CBI, Visakhapatnam along with the letter dated 16.4.2015. The petitioner is charged for serious misconduct of unbecoming of a Railway servant, failure to maintain integrity, misusing his official position for personal gain and for tarnishing the image of the Force. The contention of the petitioner that as per Rule 162 of the RPF Rules, the respondents could not have initiated departmental proceedings while criminal proceedings are pending is incorrect and is the result of misinterpretation of the Rule.

In the instant case, the imputation against the petitioner is that he demanded illegal gratification of Rs. 6,000/- from a hawker and accepted the same for the purpose of allowing him to sell the boiled groundnuts in the trains unauthorisedly. Merely because the charge is under Section 7 of the Prevention of Corruption Act, it cannot be said that it is grave in nature. In the considered view of this Court, the charge is very simple. The criminal case pending against the petitioner does not involve any complicated questions of law and fact. Considerable length of time would be taken by the trial court to render its verdict in the criminal case. Having regard to the facts and circumstances of the case and also the nature of the charges, this Court is of the considered view that the staying of departmental proceedings till the judgment of the trial court in the

criminal case against the petitioner is quite unwarranted. It would be neither in the interests of the department nor in the interests of the petitioner himself. Therefore, this Court is not inclined to grant the prayer in the present writ petition. For the foregoing reasons, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

Similar view also expressed in State of A. P. rep. by its Prl. Secretary, Revenue (Vig.I) Dept., Secretariat vs. G. L. Ganeswara Rao, 2015 (5) ALD 124; 2015 (3) ALT 561.

(701)

Application of mind

It was contended before the High Court that the sanction to prosecute the accused had not been granted in accordance with law as there had been no application of mind.

**Balbhadra Parashar vs. State of Madhya Pradesh
AIR 2016 SC 1554**

The Court is only concerned with validity of grant of sanction and nothing else. The only ground of attack is that there has been no application of mind. The High Court, as is demonstrable, has opined that while granting sanction a detailed reasoned judgment is not required to be passed. It has also come to hold that the authority had applied its mind. Nothing has been brought on record to substantiate that the sanction was granted in an absolutely mechanical manner

The Court is of the considered view that the sanction granted in this case does not suffer from any infirmity so as to declare it as illegal. Therefore, the Court is not inclined to interfere with the order passed by the High Court.

(702)

Cr.P.C. — Sec. 161

Contradiction of evidence of the complainant, statement recorded under Section 161 of Cr.P.C. was not proved. The same could have been used by the prosecution after it had strictly complied with Section 145 of the Indian Evidence Act, 1872.

Krishan Chander vs. State of Delhi AIR 2016 SC 298

Contradictory statement. Conviction set aside. Demand of bribe of Rs.5000/- for releasing on bail. Complainant paid Rs. 4,000/- as bribe to the

appellant. K.K. was released on bail. Appellant asked the complainant to pay him the balance amount of Rs.1,000/- . There was no demand of bribe money by the appellant from the complainant. Contradiction of evidence of the complainant. Statement recorded under Section 161 of Cr.P.C. was not proved. Both the trial court and the High Court are erroneous as there is no substantive evidence. Appellant was erroneously convicted for the charges framed against him. Prosecution has failed to prove the factum of demand of bribe money. This is the sine qua non for convicting him for the offences. Judgment and order of the High Court suffers from error in law. Judgment is set aside. Appeal is allowed. Appellant is directed to be released.

(703)

Court order — ambiguity or anomaly, removal of

Once an error is found in order/judgment which is apparent on the face of record and meets test of review jurisdiction, there is no reason to feel hesitant in accepting such mistake and rectify the same – Reason for such frank admission is to ensure that this kind of patent error from record is removed which led to a wrong conclusion and consequently wrong is also remedied – For adopting such course of action, Court is guided by doctrine of ex debito justitiae as well as fundamental principle of administration of justice that no one should suffer because of mistake of Court.

Chairman & Man. Director Central Bank of India vs. Central Bank of India SC/ST Employees Welfare Association, 2016 AIR (SC) 326; 2016 0 Supreme(SC) 9

The issue that needed determination by the Supreme Court was as to whether there is any reservation in promotions from one officer grade/scale to higher grade/scale when such promotions are to be made on selection basis, i.e. on merits. Position taken by appellant banks was that there is no rule of reservation for promotion in Class-A (Class-I) to post/scales having basic salary of more than Rs. 5,700 per month and OM dated August 13, 1997 at best provides only a concession in manner officers belonging to SC/ST category are to be considered for promotion.

The Supreme Court in its judgment dated:09.01.2015 clarified that at present there is no provision for reservation in promotion by selection only in respect of those posts which carry an ultimate salary of Rs.5,700/- per month (revised to Rs.18,300/- by 5th Central Pay Commission and Rs.20,800/- per month in respect of those Public Sector Undertakings following IDA pattern). Qua appellant Banks, that would be in respect of Scale-VII and above. Therefore,

to carry out promotions from Scale-I upwards upto Scale-VI, reservation in promotion in favour of SC/ST employees has to be given.

Review petitions are filed by the Union of India as well as certain banks which were parties to the appeals.

Learned Attorney General submitted that a fundamental error, which was an error apparent on the face of the record, had crept in paragraph 34 of the judgment wherein it was observed that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than Rs.5,700 (pre-revised). He pointed out that in the earlier portion of the same paragraph, the Supreme Court had reiterated, after detailed discussion, that there is no reservation in promotion by selection in Group-A posts which carry an ultimate salary of Rs.5,700 per month and in such cases it is only the concession that applies.

The Supreme Court while quoting various of its judgments held that “Once an error is found in order/judgment which is apparent on the face of record and meets test of review jurisdiction, there is no reason to feel hesitant in accepting such mistake and rectifying the same – Reason for such frank admission is to ensure that this kind of patent error from record is removed which led to a wrong conclusion and consequently wrong is also remedied – For adopting such course of action, Court is guided by doctrine of ex debito justitiae as well as fundamental principle of administration of justice that no one should suffer because of mistake of Court”.

Finally, the Supreme Court allowed the review petitions by deleting paragraph Nos. 33 to 36 of the judgment and the directions contained therein, as well as the directions contained in paragraph No.37 and inserted new paragraph no.33 as below:

“33. Result of the aforesaid discussion would be to allow these appeals and set aside the judgment of the High Court. While doing so, we reiterate that it is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make a provision for reservation in promotions from Scale I to Scale II and upward, and if so, up to which post.”

(704)

Court jurisdiction

The findings recorded by the Disciplinary Authority which are affirmed or diluted by the Appellate Authority should not be interfered with unless the applicant shows that the order is without jurisdiction; or that there is procedural irregularity in conducting the enquiry.

***Shri R.P. Gupta vs.0 Union of India O.A.No.230 of 2012
(CAT Lucknow Bench)***

In OAs challenging the orders in disciplinary proceedings, the scope of interference of the Tribunals is very limited. In a catena of judgments by the Hon'ble Apex Court, it has been held that the judicial review in the disciplinary matters should not be in the form of re-appreciation of evidence. The Courts should only look at the correctness of process and not get into re-evaluation of evidence before the Inquiry Officer. The findings recorded by the Disciplinary Authority which are affirmed or diluted by the Appellate Authority should not be interfered with unless the applicant shows that the order is without jurisdiction; or that there is procedural irregularity in conducting the enquiry. The Hon'ble Apex Court in the case of S.R.Tewari vs. Union of India has held that the role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

(705)

- (A) Cr.P.C. — Sec. 197**
- (B) Sanction of prosecution — under Sec. 197 Cr.P.C.**

***Devinder Singh & Ors. vs. State of Punjab through CBI
(2016)12 SCC 87***

The case set up by the appellants in Criminal Appeal No.190 of 2003 is that they are the officers of the Punjab Police. On 22.7.1993 four persons were killed in an encounter with the police. On the basis of the complaint lodged by Chaman Lal, father of one of the deceased, the CBI obtained sanction from the State Government to prosecute the accused and filed chargesheet. At the relevant time, under section 6 of the 1983 Act, sanction from Central Government was required. The appellants filed application under section 227 of the Cr.P.C. for discharge on the ground that they had acted in the incident in the course of their duty and sanction granted by the State Government was without jurisdiction, illegal and void.

The CBI contested that there was no need for obtaining any sanction because the deceased had been killed in a fake encounter. The Special Court dismissed the application filed by the accused persons and held that as per prosecution case it is a case of fake Encounter and the same could not be said to be an act in discharge of official duties and therefore sanction is not required. Aggrieved thereby the appellants filed Crl. Appeal in the Supreme Court.

The Supreme Court of India while referring to its various previous judgments summarized the principles emerging from the decisions as under:

- I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.
- II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C has to be construed narrowly and in a restricted manner.
- III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.
- IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 Cr.P.C, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C would apply.
- V. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.
- VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

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VII. Question of sanction can be raised at the time of framing of charge and it can be decided *prima facie* on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

The Supreme Court held that considering the aforesaid principles in case, the version of the prosecution is found to be correct that there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties. The Supreme Court also held that the trial court had *prima facie* to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law.

(706)

Charge – should be definite

The charge-sheet must be specific and must set out all the necessary particulars and details irrespective of the fact whether the delinquent knows it or not; he must have told about the charges and it was not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge.

G.Satyanarayana vs. the Eastern Power Distribution Company of A.P., Visakhapatnam, rep. by its Chief General Manager & another in Writ Petition No.16288 of 2004

This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of Certiorari by calling the records and to quash the Proceedings of the first respondent dated 31.8.2004 dismissing the appellant, by declaring the same as arbitrary and for a consequential direction to the respondents to extend all service benefits to the petitioner as a Junior Accounts Officer.

The petitioner joined the service of the State Electricity Board as Typist in the year 1971 after due process of selection. By virtue of seniority, the petitioner was promoted as L.D.C/Junior Accounts Officer in the year 1992 after passing the Accounts Test for Subordinate Officers Part I. In order to get promotion as Junior Accounts Officer, the requisite qualification is graduation in Commerce or Accountancy High Grade Examination. On suspicion, the respondents initiated enquiry with regard to the genuineness of the B.Com Degree certificate produced by the petitioner and appointed the Divisional Engineer, Enquiries, as enquiry officer. After Enquiry, petitioner was given a show cause notice calling his explanation as to why he should not be removed from service for the alleged misconduct to which the petitioner submitted his explanation. Being not satisfied with the same, the second respondent passed final order dismissing the petitioner from service, vide proceedings dated 31.08.2004.

The Charge is as below:

Charge: The Junior Accounts Officer has got employment by producing bogus Provisional Certificate of Graduation in Commerce Certificate of Ranchi University Dt. 10.11.03 as per service register. When he was asked to produce the original certificate, he produced Xerox copy of the B.Com decree Dt. 9.7.92 of Andhra University when it was referred for genuineness to the Controller of Examinations Andhra University the certificate was confirmed as not genuine and fake. The delinquent has cheated the department and got employment by producing bogus certificate.

The High Court of Andhra Pradesh observed that opportunity was not given to the appellant to submit his explanation to the letter of Ranchi University declaring that the provisional certificate was fake. The gist of the charge is that the petitioner got employment by producing fake Degree certificate. The petitioner is expected to face the enquiry as if he got appointment by producing fake Degree Certificate On the contrary, the enquiry officer gave a finding that the petitioner got promotion by cheating the department. Even if the finding of the enquiry officer is taken into consideration, no where it was mentioned in the charge that the petitioner cheated the department by producing fake certificate in order to get promotion.

The Court held that undoubtedly, the enquiry officer traversed beyond the scope of enquiry by giving a finding that the petitioner got promotion by producing fake Degree certificate. The High Court further observed that the material placed before the Court clinchingly establishes that the disciplinary authority framed the charge as if the petitioner got employment by producing a fake Degree certificate and the finding of the enquiry officer is that the petitioner got the promotion by producing a fake Degree certificate and held that the enquiry report is not sustainable either on facts or in law, consequently the proceedings issued by the first respondent dated 31.08.2004 are liable to be set aside and set aside the impugned proceedings i.e. dismissal order dated 31.08.2004 passed by the first respondent.

(707)

- (A) P.C. Act, 1988 — Sec. 13(1)(e)**
- (B) Disproportionate assets — period of check**

***Tej Prakash Shami & Anr vs. The State of W. B. & Anr on 6 May, 2016 in
Calcutta High Court***

With regard to the submission that the Investigating Officer acted beyond the scope of authorization under Section 17 of the Prevention of Corruption Act by enlarging the check period and by submitting charge sheet for disproportionate assets to the tune Rs.21,67,529/-, though the First Information Report was registered for disproportionate assets to the tune of Rs.10,62,000/-, the High Court observed that the variation between the First Information Report and the charge sheet cannot be a ground for quashing of the criminal proceeding. The First Information Report is registered on the basis of initial information about cognizable offence, whereas the charge sheet is submitted after collection of sufficient materials during investigation. The offence which is not disclosed in the First Information Report may come out during investigation and the same may be disclosed in the charge sheet which is submitted on completion of investigation. The Investigating Officer has disclosed reasons in the charge sheet how disproportionate assets of the petitioner no.1 is calculated at Rs.21,67,529/- during check period from February 1, 1998 to October 17, 2006 and why the check period was extended from June, 2006 to October 17, 2006. So, there is bound to be variation between First Information Report and charge sheet for which the petitioners are not entitled to get any benefit at this stage.

(708)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

Punjab State Warehousing Corporation vs. Bhushan Chander and another 2017 (2) ALT Crl.12 SC

The Managing Director of the Corporation had written a letter on 28.6.1989 to the concerned police authority to register a case against the first respondent for offences punishable under Sections 409/467/468 and 471 of the IPC or any other appropriate provision of law. During investigation, the investigating agency found that the accused who was working as a Godown Assistant in the Corporation had misappropriated 11 gunny bales value of which was Rs.38,841/-; that he had tampered with the record of the department; and accordingly the police authorities filed the charge-sheet for the aforesaid offences before the court of competent Judicial Magistrate. The learned Magistrate on the basis of evidence brought on record, found that the prosecution had been able to bring home the guilt against the accused and accordingly sentenced him to suffer rigorous imprisonment for three years under Section 467 and 409 IPC and two years under Section 468/471 IPC with separate default clauses.

On appeal, the learned Additional Session Judge, concurred with the conviction but modified the sentence of three years imposed under Section 409 and 467 IPC to two years

The first respondent preferred Criminal Revision No. 359/2001 in the High Court of Punjab and Haryana at Chandigarh and the only contention that was raised pertained to non-obtaining of sanction under Section 197 Cr.P.C.

The eventual conclusion recorded by the learned Single Judge is to the following effect:-

“Under normal circumstances, the offence under Sections 467/468/471 IPC may be of such a nature that requirement of obtaining sanction under Section 197 Cr.P.C may not be called for. The offences in this case have been interconnected with the main offence alleged against the petitioner under Section 409 IPC and it would clearly indicate that these offences could not be separately treated or dealt with. Requirement of obtaining sanction would be needed for an offence under Section 409 IPC and the same may not be separated from the remaining offences”.

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The Supreme Court while quoting several of its judgments observed that no sanction is needed to launch the prosecution for the offence punishable under Section 409 IPC. Further observed that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official.

The Supreme Court held that the above approach and the analysis of Hon'ble High Court are absolutely fallacious and concluded that the respondents are not entitled to have the protective umbrella of Section 197 Cr.P.C and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. The Court allowed the appeal and set aside the judgment and order passed by the High Court and remitted the matter to the High Court to decide the revision petition in accordance with law.

(709)

Criminal Law Amendment Ordinance, 1944

Whether property of person which was merely case of offence of misappropriation but who died during pendency of criminal trial can be attached in hands of his legal representatives under provisions of Criminal Law Amendment Ordinance, 1944.

U. Subhadramma and Ors. vs. State of A.P. and Ors.

AIR 2016 SC 3095

Ramachandraiah, who was the husband of Appellant No.1 U.Subhadramma was prosecuted in respect of misappropriation of funds. He was charged with misappropriation of an amount of Rs. 6,57,355.90 and along with him one Subbarayudu was charged as Accused No.2. In October, 1991, U. Ramachandraiah expired during the trial. The trial court acquitted the Accused No.2 Subbarayudu by Judgment dated 25.10.1993. However, the trial court observed on the basis of oral and documentary evidence that Ramachandraiah alone committed the offence as alleged by the prosecution.

In 1997, the State moved an application under the Criminal Law Amendment Ordinance, 1944 for attachment of property of the appellant under the criminal law. Thereon, the District Judge passed an order of interim attachment under Clause 4 of the ordinance on the basis that Ramachandraiah has committed the scheduled offences. The District Judge issued notice calling upon the appellants to show cause why the order of attachment should not be made absolute. Thereafter on 1-10-2002, the learned District Judge made the order of interim conditional attachment absolute.

The appellants then challenged the order of the learned District Judge in the High Court of Andhra Pradesh. The High Court dismissed their petition. Against the aforesaid order, the appellants have preferred appeal in the Supreme Court of India.

The Supreme Court held that in the first place, the finding of the trial court that Ramachandraiah was alone responsible for the offences is completely vitiated as null and void since Ramachandraiah had admittedly died on the date this finding was rendered. Further held that it is too well settled that a prosecution cannot continue against a dead person and consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties.

The Supreme Court held that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under clause 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Clause 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere.

The Supreme Court held that the orders of the Criminal Court vis-a-vis Ramachandraiah are illegal and liable to be set aside and the impugned judgment in appeal is unsustainable and is liable to be set aside and accordingly set aside the orders of Courts below.

(710)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)**
- (B) Trap — corroboration of complainant**

***Mukhtiar Singh vs. State of Punjab Decided on 05.07.2016
in Supreme Court of India***

Accused worked as Revenue Patwari demanded and accepted bribe as illegal gratification from the complainant. Accused was convicted by the trial

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judge u/s 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988. The same was confirmed by High Court. Accused preferred an appeal.

PW3, a clerk of the office of the Deputy Commissioner, deposed before the Court that the Appellant was working under him and he used to receive writings of the Appellant. On this basis, he identified the writing and signature of the Appellant on the copy of the Jamabandi. The Complainant narrated the whole incident before the Court. PW-5 completely corroborated with the statement of the Complainant. No true witness can possibly escape from making some discrepant details. The best piece of evidence to establish this point was the register wherein signatures of the Complainant were obtained as a token of delivery of copy of Jamabandi but no attempt was made on behalf of the Appellant to get the said Register produced on record. The objection that reliability of the trap was impaired as the solution collected in the phial was not sent to the Chemical Examiner was too puerile for acceptance. There was no evidence on record to show that the Investigating Officer shook hands with the Appellant or caught his hands and, as such there was no occasion for the phenolphthalein powder being transferred from the hands of the Investigating Officer to those of the Appellant. Even otherwise, the recovery of the tainted currency notes from the custody of the Appellant was proved by direct evidence. The Supreme Court confirmed the conviction.

(711)

- (A) Misconduct — past misconduct**
- (B) Verification of antecedents**

Avtar Singh vs. Union of India & Other SLP.No.4757/2014 & 24320/2014 judgment dated 21.07.2016 SC

Cases have been referred to the present bench for resolving the conflict of opinion in the various decisions of Division Benches of Supreme Court. The Court has considered the cleavage of opinion in various decisions on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case before or after entering into service.

The Supreme Court quoted various judgments passed by it and summarized its conclusion as thus:

- (1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before**

or after entering into service must be true and there should be no suppression or false mention of required information.

- (2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
- (3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.
- (4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -
 - (a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.
 - (b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.
 - (c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.
- (5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.
- (6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its

discretion may appoint the candidate subject to decision of such case.

- (7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.
- (8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.
- (9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/ removal or dismissal on the ground of suppression or submitting false information in verification form.
- (10) For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.
- (11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

(712)

- (A) **P.C. Act, 1988 — Sec. 13(1)(c)**
- (B) **Misappropriation — criminal misconduct under P.C. Act**
- (C) **I.P.C. — Sec. 409**

**C.B.I. vs. C.Ravikumar & 9 others judgment dated 25.11.2016
(popularly known as Harshad Mehta case) Bombay HC**

This Special Case is pertaining to the offences relating to transactions in securities, which popularly came to be known as 'Securities Scam of the

Year - 1992' and which has rocked the economy of the country. Accused No.4-Harshad S. Mehta, since deceased, (for short, "Accused No.4-HSM"), is said to be the kingpin of the said scam, who has, according to the prosecution case, in connivance with the Officers of National Housing Bank, State Bank of India and various other Banks and Financial Institutions, illegally siphoned-off crores of funds of the Banks and Financial Institutions for speculative returns by systemic and deliberate abuse of the system.

Accused No.1-Ravikumar and Accused No.2-Suresh Babu in this case, at the relevant time of incident, were Assistant General Manager and Assistant Manager, respectively, of the National Housing Bank, (for short, "NHB"). Accused No.3-Sitaraman was the Officer of the State Bank of India.

The gravamen of the charge levelled against all these Accused is of entering into criminal conspiracy with an object to commit criminal breach of trust by misappropriating the funds of NHB with an intention to obtain valuables, securities and pecuniary advantage to Accused No.4-HSM without any public interest. As per prosecution case, Accused No.1-Ravikumar and Accused No.2-Suresh Babu, being the Officers of NHB and having dominion over the funds of NHB, and Accused No.3-Sitaraman, being in-charge of the securities transactions at SBI, have committed this criminal breach of trust by misappropriating the funds of NHB, by transferring the said funds to the accounts of Accused No.4-HSM by showing fake transactions of purchase of securities from SBI, by preparing forged documents to substantiate the said transactions.

Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are further charged and tried for the offences punishable under Sections 409 r/w. 120B of IPC and Sections 13(1)(c) and 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988.

The Court observed that it is clear that in respect of the transactions of purchase of securities, nine cheques were issued under the signature of Accused No.1-Ravikumar on behalf of NHB in favour of SBI. It is further clear from the aforesaid documents that, in respect of the purchase transactions, the cheques were received by SBI and they were deposited with RBI and the amounts of those cheques were deposited in NHB's account with RBI and at the same time, the amounts were credited to the SBI account with the RBI. It is further established that in the SBI, Credit Vouchers were prepared in respect of those nine cheques, favouring the Current Account of Accused No.4-HSM and then amounts of those nine cheques were credited to the Current Account of Accused No.4-HSM with SBI.

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The evidence of PW-1 Manoj kumar Rakshit and PW-14 Sivaraman proves that neither the physical securities nor the BRs, in lieu of the physical securities, were ever received in NHB from SBI.

The above evidence, thus, relating to sale and purchase of transactions clearly goes to show that NHB Officers viz. Accused No.1-Ravikumar and Accused No.2-Suresh Babu were issuing the cheques for sale of securities, but without having the securities either in the physical form or Bank Receipts to that effect. The transactions entered into by NHB proved that they were for securities worth more than crores of rupees.

The Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992 held that Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman beyond reasonable doubt for the offences punishable under Section 409 r/w. Section 120B of IPC and Section 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 r/w. Section 120B of IPC.

(713)

Charge sheet — service of

Subhash Chandra (2927(S/S) 2009) vs. State of U. P., 2017 2 ADJ 630; 2017 0 Supreme (All) 36

This intra Court appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 has arisen from judgment and order dated 10.12.2012 passed by learned Single Judge, dismissing appellant's Writ Petition No. 2927 (SS) of 2009.

Petitioner had challenged dismissal order dated 12.5.2005 on various grounds including that no enquiry was conducted against petitioner and even charge-sheet was not served. It has been non-suited by learned Single Judge by observing that original record was perused and therefrom it was noted that notice sent to petitioner on 29.3.2004 by process server, who submitted report that petitioner has refused to accept the same. Similarly, a charge sheet dated 20.5.2004 was issued and sought to be served by special messenger, Sri Ram Lot, Z.O. Staff, Gonda who also reported that on 21.5.2004 when he went to petitioner's residence he was present but refused to receive the same. Thereafter Enquiry Officer submitted report and dismissal order was passed. Learned Single Judge has held that in view thereof, petitioner himself is responsible for not accepting the documents and cannot complain of non-service of documents and hence it cannot be said that no opportunity was given.

The Court observed that first of all, for the purpose of service of charge-sheet, the procedure required in Rule 7 was not followed. It very specifically contemplates that a charge-sheet shall be served on the charged Government servant, personally or by registered post at the address mentioned in official records. In case it could not be served in the aforesaid manner then charge-sheet shall be served by publication in a daily newspaper having wide circulation. Service of charge-sheet is mandatory. If personal service or registered post, if did not yield result of service of charge-sheet upon appellant, then Rules contemplate a mandatory procedure of publication of such charge-sheet in a daily newspaper having wide circulation.

The Court held that the entire procedure followed by respondents in passing impugned order of dismissal is patently illegal and expressed the view that learned Single Judge has erred in law in not considering Rule 7 (v) of Rules 1999, which specifically provides procedure for service of charge-sheet.

The Court allowed the Appeal and set aside the judgment dated 10.12.2012 passed by learned Single Judge in Writ Petition No. 2927 (SS) of 2009 and also the dismissal order impugned in the writ petition dated 12.05.2005.

The Court pronounced that the Petitioner shall be entitled for all consequential benefits and further held that the judgment shall not preclude respondents from proceeding in law against petitioner-appellant and pass a fresh order in accordance with law.

(714)

- (A) P.C. Act, 1988 — Sec. 13(1)(d)**
- (B) Court jurisdiction**

State of Rajasthan vs. Fatehkaran Mehdu on 3 February, 2017 Supreme Court of India

These two appeals have been filed against the common judgment dated 16.11.2010 of the High Court of Judicature for Rajasthan at Jodhpur allowing S.B. Criminal Revision Petition No. 592/2009 Fatehkaran Mehduon versus State of Rajasthan and S.B. Criminal Revision Petition No. 598/2009 Kishan Singh Rawat versus State of Rajasthan. The High Court vide its order, allowing the Criminal Revisions, set aside the order dated 05.05.2009 passed by the Special Judge, Anti Corruption Cases, Udaipur, framing charges against both the respondents under Section 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988 read with Section 120B of IPC.

After conducting the investigation, a chargesheet No. 208/2005 dated 24.10.2005 was submitted. The Special Judge, Prevention of Corruption Act, Udaipur vide order dated 05.05.2009 framed charges against both the Respondents under Section 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 and 120B IPC. Aggrieved by order dated 05.05.2009, Fatehkaran Mehdu filed S.B. Criminal Revision Petition No. 592 of 2009 and Kishan Singh Rawat filed S.B. Criminal Revision Petition No. 598 of 2009. The High Court of Rajasthan vide its judgment and order dated 16.11.2010 set aside the order dated 05.05.2009 allowing the Revision against which these two appeals have been filed by the State of Rajasthan.

As noted above, learned Special Judge had observed that final adjudication of charge cannot be made unless oral and documentary evidence are received. The High Court has not adverted to the technical map which mentions 80,000 Sq. Ft. and without adverting to that allegation, has erroneously observed that there is no allegation which may come within the meaning of 13 (1) (d) read with 13(2) of the Act. Both chargesheet and order of the learned Special Judge have specifically noted the allegations, which clearly makes out an offence under Section 13(1)(d) and 13(2) of Prevention and Corruption Act, 1988 and Section 120B I.P.C.

The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be

more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*."

The Supreme Court opined that the High Court erred in quashing the charges framed by the order dated 05.05.2009 and in result, both the appeals are allowed. The order of the High Court is set aside and the order dated 05.05.2009 is restored. The learned Special Judge is allowed to proceed with the trial in accordance with the law expeditiously.

(715)

Disproportionate assets — abetment by private persons

State of Karnataka vs Selvi J. Jayalalitha & Ors on 14 February, 2017

The case is a Disproportionate Assets Case against A1 (J.Jayalalitha), Chief Minister of the State of Tamil Nadu and the co-accused viz. A2 (Sasikala Natarajan), A3 (V.N.Sudhakaran) and A4 (J.Elavarasi).

The following charges were framed by the Special Judge, Chennai:

Firstly:- That you A1 to A4 during the period between 1.7.1991 and 30.4.1996 in Chennai and other places in Tamil Nadu, you A1 being a public servant, along with you A2 to A4, were parties to a criminal conspiracy with the object of acquiring and possession pecuniary resources of income to the extent of Rs.66,65,20,395/- in the names of you A1 and in the names of you A2 to A4 and the thirty two (32) business enterprises floated in the names of A2 to A4, for which you (A1) could not satisfactorily account and you (A2 to A4) abetted A1 by holding a substantial portion of the pecuniary resources and property in your names (A2 to A4) on behalf of you and thereby you A1 to A4 committed an offence punishable u/Sec.s 120-B I.P.C. r/w 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and within the cognizance of this Court.

Secondly: That you A1 in pursuance of the said criminal conspiracy, during the said period and the said places, being a public servant as the Chief Minister of the State of Tamil Nadu, acquired and possessed in your name and in the names of A2 to A4 and in the names of the business enterprises floated in the names of A2 to A4, pecuniary resources and property disproportionate to your known sources of income to the extent of Rs.66,65,20,395/- for which you could not satisfactorily account, and thereby you A1 committed an offence punishable

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u/Sec. 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and within the cognizance of this Court.

Thirdly: That you A2 to A4 in pursuance of the said criminal conspiracy during the said period and the said places abetted A1 who was a public servant, by intentionally aiding her in the possession of pecuniary resources and property disproportionate to her known sources of income and for which she could not satisfactorily account, by holding a substantial portion of the said pecuniary resources and property in your names and in the names of the business enterprises floated in your names, and thereby you A2 to A4 committed an offence punishable u/Sec. 109 I.P.C. r/w 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and within the cognizance of this Court.

The Trial Court held that all the above charges as proved.

Being aggrieved, appeals were filed by the accused before the High Court of Karnataka at Bangalore challenging the order passed by the Trial Court. The High Court arrived at the percentage of disproportionate assets 8.12% .The High Court, following the principles laid down in Krishnanand Agnihotri, held that when there is disproportionate asset to the extent of 10% or below, the accused are entitled to acquittal and accordingly the High Court passed the acquittal orders.

On appeal by the State of Karnataka, the Supreme Court of India held that the percentage of disproportionate assets as 8.12% as computed by the High Court is based on completely wrong reading of the evidence on record compounded by incorrect arithmetical calculations.

The Supreme Court further held that A1 to A4 have entered into a conspiracy and in furtherance of the same, A1 who was a public servant at the relevant time had come into possession of assets disproportionate to the known sources of her income during the check period and had got the same dispersed in the names of A2 to A4 and the firms & companies involved to hold these on her behalf with a masked front. Furthermore, the charge of abetment laid against A2 to A4 in the commission of the offence by A1 also stands proved.

Further held that as the sole public servant has died being A1 in this matter, though the appeals against her have abated, even then A2 to A4 are liable to be convicted and sentenced in the manner as has been held by the Trial Judge.

The Supreme Court further held that even private individuals could be prosecuted for the offence under Section 109 of I.P.C. and the Trial Court was

right in coming to the conclusion relying on the decision of Nallammal wherein it was observed that acquisition and possession by a public servant was capable of being abetted, and observed that Under Section 3 of the 1988 Act, the Special Judge had the power to try offences punishing even abetment or conspiracy of the offences mentioned in the PC Act and in our opinion, the Trial Court correctly held in this matter that private individuals can be prosecuted by the Court on the ground that they have abetted the act of criminal misconduct falling under Section 13(1)(e) of the 1988 Act committed by the public servant.

The Supreme Court further held that although A2 to A4 claims to have independent sources of income but the fact of constitution of firms and acquisition of large tracts of land out of the funds provided by A1 indicate that, all the accused congregated in the house of A1 neither for social living nor A1 allowed them free accommodation out of humanitarian concern, rather the facts and circumstances proved in evidence undoubtedly point out that A2 to A4 were accommodated in the house of A1 pursuant to the criminal conspiracy hatched by them to hold the assets of A1. The flow of money from one account to the other proves that there existed active conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in the names of the firms.

The Supreme Court of India set aside the judgment and order of the High Court and affirm and restore the judgment of the Trial Court in toto against A2 to A4.

(716)

Fresh inquiry / De novo inquiry

Issuance of fresh charge sheet containing same charges as earlier, in pursuance of orders of appellate authority for a de novo inquiry from the stage of issue of charge sheet, not illegal.

M.K. Poulose vs. Union of India on 20 February, 2017 (CAT – Ernakulam)

The brief contentions of the applicant in this original application are that without adverting the written contentions of the applicant the enquiry officer has concluded that the charge was proved and submitted enquiry report and the applicant made representation to the disciplinary authority against the enquiry report, but the disciplinary authority ordered for the removal of applicant with immediate effect and thereafter the applicant submitted appeal to the appellate authority who issued order remitting back the disciplinary proceedings for De Novo Enquiry. Aggrieved on it he files this present application before the Hon'ble Central Administrative Tribunal at Ernakulam. The applicant contended that in

order the fill up the lacuna, the De Novo Enquiry was ordered by the appellate authority. The disciplinary authority herself conducted enquiry and her subordinate officer was appointed as enquiry officer and she appeared as a witness and then the entire proceedings stands to be vitiated.

The issuance of final orders by the disciplinary authority shows that there is ambiguity in the order issued by the disciplinary authority and in order to conclude the aspects the appellate authority remitted back to the disciplinary authority for further action. The applicant questioned the same that as per the CCS (CCA) Rules, 1965 the appellate authority has no power to remit the case to the disciplinary authority for De Novo trial. As per article 311 (2) and enquiry in respect of the charge sheet is contemplated only one enquiry and he relied on the settled law of Hon'ble apex court in KR Deb vs Collector of Excise, Shillong (1971) 2 SC 102 that on the same charges De Novo proceedings cannot be conducted and that even in such cases where De Novo Enquiry is required a fresh charge has to be framed.

The rule 27 of CCS (CCA) Rules, 1965 and Rule 126 of Posts & Telegraphs Manual Vol.III was discussed with regard to the effect of De Novo proceedings – It would be over to the disciplinary authority to frame any other charge in addition or in substitution to the original charge subject to the condition that it is based on the facts of the case as initially disclosed for taking departmental action against the Government servant. As such, the Hon'ble CAT held that the appellate authority is competent under rule 18 GDS (Conduct & Engagement) Rules, 2011 and was perfectly justified in remitting the case back to the disciplinary authority by ordering of De Novo Enquiry from the stage of questioning by the enquiry authority and opportunity should be given to the applicant as per the procedure.

(717)

Suspension — subsistence allowance, non-payment of

***Dinesh Singh Raghuwanshi vs. The State of Madhya Pradesh
on 3 March, 2017 in Madhya Pradesh High Court***

The petitioner was suspended on 27.06.2016 passed by Chief Executive Officer, Zila Panchayat, Guna (M.P.), on account of passing of order dated 22/04/2016 in case Nos. 15/2014 & 19/2014 by Lokpal, Mahatma Gandhi National Rural Employment Guarantee Scheme.

The Hon'ble High Court discussed the order of suspension and non-payment of subsistence allowance and stated that the Apex Court while dealing

the said issue has observed that if a government servant is not responsible for the delay or even if he is responsible to some extent but primarily not responsible for it, however, it is for the Government to reconsider whether the order of suspension should be continued or the subsistence allowance should be varied to his advantage or not.

Accordingly, the Hon'ble Court directed that on submitting a representation by the petitioner within a period of three weeks from the date of receipt of certified copy of this order and on filing application seeking revocation, it shall be considered and decided by the competent authority in the light of the judgment referred herein above and to pass appropriate order within a period of two months from the date of receipt of such representation.

(718)

Evidence — retracted statement

***Kamal Kumar Nanda vs. State of Orissa (High Court of Orissa)
CRLEV No. 598 of 2016 (From the order dated 19.07.2016 of the Special
Judge (Vigilance), Bolangir in C.T.R. Case No. 1 of 2012)***

CRIMINAL PROCEDURE CODE, 1973 - S. 401 Petitioner was the complainant in a trap case - During trial he retracted from his previous statements recorded under sections 161 and 164 Cr.P.C. which led for the acquittal of the accused - Prosecution started against him for giving false evidence and charge framed U/s. 12 of the P.C. Act, 1988 and Sections 181, 182 I.P.C. - Hence this revision to quash the charge. In this case, there is no material on record that the petitioner has abetted the commission of the offence under sections 7 and 11 of the P.C. Act, 1988 so framing of charge U/s. 12 of the said Act suffers from non-application of mind - Moreover since no complaint made, either by the concerned public servant i.e. J.E. Subhanath Majhi or by any other public servant to whom Subhanath was administratively subordinate, the charge against the petitioner under sections 181 and 182 I.P.C. is not proper in view of section 195(1)(a)(i) Cr.P.C. - Further section 132 of the Evidence Act, 1872 does not apply to a statement made by a person during an investigation U/s. 161 Cr.P.C. - So far statement of a witness U/s. 164 Cr.P.C. is concerned it is recorded being sponsored by the investigating agency - If on compulsion by the I.O. a witness implicates an accused in the crime but during trial he exonerates the accused, it would be travesty of justice to prosecute such witness for giving false evidence - Held, in the absence of any incriminating statements and the previous statements given by the petitioner before the I.O. and Magistrate not being substantive in nature the learned trial court is erred in framing the charges - The impugned order framing charge against the petitioner is quashed.

(719)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution – under P.C. Act**

Maxi Kujur vs. State of Chattisgarh 2017 CriLJ 4787

It is made clear that alleged irregularity in sanction resulting in failure of justice to be undertaken during trial and not at any stage prior to framing of charge/application for dropping criminal proceedings upon filing charge sheet not maintainable and also the Hon'ble Spl. Court, Kurnool further relied upon Hemchand vs. State of Jharkhand 2008 (2) SCC (Crl) 537 and held that the material now placed by the accused can be looked into and considered in trial only after detailed examination of facts and on recording evidence.

(720)

- (A) Court jurisdiction**
- (B) Charge — setting aside by Court/Tribunal**

Service law – Departmental proceeding – Charge sheet – Quashing of – Not in a routine manner – Delinquent should first exhaust departmental remedies – Court/Tribunal should weigh gravity of charges and consider other relevant factors before quashing charge sheet.

***Secretary, Min of Defence vs. Prabhash Chandra Mirdha,
2012 AIR (SC) 2250***

That charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

(721)

- (A) P.C. Act, 1988 — Sec. 13(1) (c)
- (B) I.P.C. — Sec. 409
- (C) Constitution of India — Art. 20(2)
- (D) Cr.P.C. — Sec. 300(1)
- (E) Double jeopardy

Doctrine of double jeopardy. The modus operandi being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials.

State of Jharkhand through S.P., CBI vs. Lalu Prasad and Ors.
AIR 2017 SC 3389,

Offence of criminal conspiracy punishable Under Section 120B read with Sections 409, 420, 467, 468, 471, 477, 477A of the Indian Penal Code, 1860 (I.P.C.) and Section 13(1) (c) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (P.C. Act) where defalcation/general conspiracy was alleged between 1988 and 1996 and included various treasuries of erstwhile State of Bihar.

As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the P.C. Act etc. Offences were not the same in the present case. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 300 Code of Criminal Procedure, 1973.

(722)

Misconduct—absolute integrity

Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.

S.C. Shukla and Ors. vs. State of U.P. 2018 (1) ALJ 230 MANU/UP/3837/2017

The High Court expressed its view that conclusion arrived by the Enquiry Judge was based on material on record and while submitting the enquiry report he had discussed the facts and circumstances of the case on the basis of evidence on record and a conclusion has been drawn against the delinquent regarding his guilt. The enquiry was initiated by the competent authority.

On the basis of a report which was found prima-facie guilt of the delinquent officer and during the course of enquiry sufficient opportunity of hearing was given to the delinquent officer and he was provided opportunity of defence. The proceedings of the enquiry has been placed before the Court for perusal. Order of punishment was passed by the competent authority/appointing authority i.e. Governor of the State having authority to pass the order. The High Court held that on the basis of above discussion it formed a view that the petition lacked merit and deserved to be dismissed.

(723)

- (A) P.C. Act, 1988 — Sec. 13(1)(d)**
- (B) Criminal misconduct — obtaining pecuniary advantage to others**

***Neera Yadav vs. Central Bureau of Investigation on 02 August, 2017
in Crl.A.No. 253 of 2017 SC***

The appellant filed the appeal in Crl.A.No. 253 of 2017 before the Hon'ble Supreme Court of India aggrieved on the judgement on the order passed by the Special Judge Anti-Corruption Bureau, Ghaziabad and was confirmed by the Hon'ble High Court of Allahabad, wherein she found guilty for the offence U/s 13 (1) (d) r/w 13 (2) of PC Act 1988 and sentenced to Rigorous Imprisonment for three years and fine of Rs. 1,00,000/- In case of default of payment Simple Imprisonment for additional period of four months.

The brief facts of the case are that the appellant while working as Chairperson/CEO of Noida, committed crime U/s. 13 (1) (d) r/w 13 (2) of PC Act by violation of the said provisions and allotted two plots to her daughters after closure of the applications and she also got one plot by enhancement of area of her plot by another 37.5% of the area initially allotted. The CBI registered the case and filed charge sheet before the trial court found guilty of the Accused Officer for the offence of misconduct as contemplated U/s. 13 (1) (d) r/w 13 (2)

of PC Act and sentenced her as mentioned above and the same was confirmed by the Hon'ble High Court of Allahabad.

The Hon'ble Supreme Court referred number of cases including the case Manoj Narula vs Union of India (2014) 9 SCC 1, wherein it was held that "It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance". As such, the appellant is liable for conviction for two offences at one trial. One abusing appellant's official position to get the plots allotted to herself and her two daughters and one conspiring with Rajiv Kumar to get him allotment of a plot and the irregularities committed thereon and therefore the sentences imposed upon the appellant cannot be ordered to run concurrently. Thus the Hon'ble Court partly allowed the appeal by reducing the sentence of imprisonment from three years to two years.

(724)

Charge — dropped and re-issued

Once the proceedings initiated under Rules are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action, which may be considered in the circumstances of the case.

V K Gupta vs. Union of India through the Secretary Deptt. of Personnel & Training O.A. No.2283/2015 Central Administrative Tribunal Principal Bench, New Delhi

The applicant was initially recruited to the post of Assistant Grade of Central Secretariat Service (CSS) in the year 1976 through Union Public Service Commission (UPSC). He secured his regular promotions and finally reached the Senior Selection Grade (Director level) of CSS on 01.07.2011. At that time, he was posted in the Directorate General of Supplies & Disposals (DGS&D), which comes under the administrative control of Department of Commerce (respondent No.2). On some complaints in regard to irregularities in the procurement of jute bags by the DGS&D, respondent No.2 issued Annexure A-3 charge sheet dated 21.08.2012 to the applicant under Rule 14 of CCS (CCA)

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Rules, 1965 (for short “Rules 1965”) by an order and in the name of President of India. The said charge-sheet was withdrawn by the respondents dated 02.11.2012. The respondents issued a fresh charge sheet dated 09.07.2013 to the applicant containing the same charges that were mentioned in the earlier charge-sheet dated 21.08.2012.

On the preliminary objection of Mr. Barua, the Tribunal decided first to examine the matter regarding the procedure prescribed for the conduct of the disciplinary inquiry. However, before dealing with it, the Tribunal observed that issuance of impugned Annexure A-2 charge-sheet had become necessary since the earlier charge-sheet was not issued by the competent authority. As explained by the respondents, the applicant is a Director level officer belonging to CSS for whom the disciplinary authority is the Prime Minister, being the Minister In-charge of the DoPT. The Annexure A-3 charge-sheet issued by respondent No.2 was not in order. The Tribunal held that, no illegality has been committed by the respondents in withdrawing Annexure A-3 charge-sheet and issuing a fresh impugned Annexure A-2 charge sheet with the approval of the competent authority (Prime Minister). The Tribunal also did not accept the contention of learned counsel for applicant that Annexure A5 O.M. of the respondents, whereby Annexure A-3 charge-sheet was withdrawn, amounted to dropping of the charges and in fact, the charges were never dropped. Annexure A-3 charge-sheet was withdrawn for a technical reason as to the competence of the authority, who had issued it. The Tribunal finally held that the commonality of the charges mentioned in Annexures A-3 & A-2 charge sheets does not amount to issuance of two charge-sheets for the same charges and in fact, Annexure A-2 charge-sheet cannot be construed as a new/ distinct charge-sheet.

(725)

Criminal Law Amendment Ordinance, 1944

Section 13 gives ample power to deal with attached properties after termination of criminal proceedings. Attachment of property challenged. Section 12 and 13 of Criminal Law Amendment Ordinance 1944.

Ravi Sinha and Ors. vs. State of Jharkhand AIR 2017 SC 5443

The allegation in brief was that the large number of accused persons in pursuance of a conspiracy defrauded Government of Bihar (now Jharkhand) in fodder scam case to the extent of several hundred crores during the period 1990 to 1994

One Dr. S.B. Sinha, who was a public servant, was found involved in 41 criminal cases registered against various accused. Dr. S.B. Sinha was father of Ravi Sinha, appellant No. 1. An application was filed by the State of Bihar before the Court of Judicial Commissioner, Ranchi under Section 3 of Criminal Law (Amendment) Order, 1944, arraying Dr. S.B. Sinha as respondent No. 1, the appellant No. 1, Ravi Sinha as respondent No. 2, and other family members as remaining respondents to the petition by which properties mentioned in Annexure-II to the petition were to be attached.

On the basis of said application, an order was passed on 30.08.1996 by the Judicial Commissioner, Ranchi, by which the application was allowed for ad-interim attachment of the properties. It was further directed that notice be issued to the opposite parties to show-cause as to why the interim order of attachment be not made absolute.

Dr. S.B. Sinha died on 25.10.1999.

On 26.03.2001, a petition was filed by C.B.I. praying therein that order of ad-interim attachment be made absolute. The respondent Nos. 2 to 6 to the application did not participate in the proceedings before the Judicial Commissioner, Ranchi and by an order dated 03.05.2001 ad-interim attachment of properties was made absolute.

Aggrieved by the orders, Criminal Appeal was filed by the appellants in the High Court of Jharkhand. The Division Bench of the High Court vide its judgment dated 21.06.2007 dismissed the criminal appeals. Aggrieved by the said judgment, Criminal Appeal was filed in Supreme Court of India.

The appellants contended that Dr. S.B. Sinha, who was allegedly the brain behind conspiracy having died on 25.10.1999, and relied on judgment of Supreme Court in U. Subhadramma & Ors. Vs. State of Andhra Pradesh, (2016) 7 SCC 797 that due to death of an accused neither any guilt can be pronounced nor any conviction can be ordered and the order of attachment of properties ought to have been withdrawn and the Judicial Commissioner committed error in making the order absolute. It was also contended that Ravi Sinha has been accused in four cases out of which in one case, he has been acquitted and in another case, he was not sent up for trial, in one case, i.e. RC No. 39/1996, appeal against conviction has already been filed in the High Court and one case is pending in the trial court. It was further contended that C.B.I. had not sought orders under Section 12 of the 1944 Ordinance at the stage of conviction in R.C. No. 39/1996, and it cannot now do so and as stage of Section 12 having come and gone, no orders can be passed with regard to properties attached.

The respondent contended that even though Dr. S.B.Sinha had died in the year 1999, the properties attached could not have been released as one of his legal heirs Ravi Sinha was also facing criminal proceedings in the same larger conspiracy to misappropriate the Government fund.

The Supreme Court held that there cannot be any dispute to the proposition that no proceedings under Ordinance, 1944 can be undertaken against the accused after his death and the prosecution cannot continue after the death of an accused. The Supreme Court further held that in the present case, there is one fact, which makes the present case different from the case of U.Subhadramma & Ors. Vs. State of Andhra Pradesh, (*supra*), i.e. in the present case, Ravi Sinha, the son of Dr. S.B. Sinha was himself accused in large number of cases.

The Supreme Court held that it is an admitted position that Ravi Sinha had been convicted in the fodder scam case and in one case trial is already going on. There being an order of conviction of Ravi Sinha and in other case trial being underway, making attachment order absolute cannot be faulted with. It is true that prosecution against Dr. S.B. Sinha could not have been continued after his death and no guilt can be pronounced of Dr. S.B. Sinha, he being dead. However, the properties which were already under attachment, having come in the hands of accused Ravi Sinha as one of the legal representatives, who has been convicted in a fodder scam case and is facing trial in another case.

The Supreme Court also held that against the order of conviction of Ravi Sinha dated 12.06.2008, appeal is already pending in the High Court as has been pleaded by the appellant and thus, criminal proceedings have not yet been terminated. The Supreme Court observed that, in one criminal case, trial is already pending against the accused in which provisions of Sections 12 and 13 of 1944 Ordinance can still be resorted to. The Supreme Court held that this submission cannot be accepted that once a judgment is pronounced in a criminal case by the Court and if no findings have been recorded with regard to attached properties, no order can be passed with regard to attached properties as Section 13 gives ample power to deal with attached properties after termination of criminal proceedings.

The Supreme Court held that order passed by the Jharkhand High Court dismissing the criminal appeals filed by the appellant against order of Judicial Commissioner making the attachment order absolute needs no interference in exercise of jurisdiction under Article 136.

(726)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under sec. 197 Cr.P.C.

**Lanka Venkata Subrahmanyam vs. State of Telangana 2018 (1) ALT
Crl.322 AP**

It is the quality of Act that is important and if it falls within the scope and range of his official duties the protection contemplated by section 197 of Cr.P.C. will be attracted.

(727)

Trap — acceptance of bribe money by middleman

**O. Yellamanda Raju. - Petitioner vs. The State of Andhra Pradesh [2018 0
Supreme (AP) 260]**

The court observed the bribe amount if not recovered directly from the person concerned and it is recovered from another person, and if there is an affirmative answer as to whether the person accepted bribe on the instructions of the prior person it establishes the guilt of both of them.

(728)

Order – provision of law, non-mention of

Wrong quoting or misquoting of the provisions of Statute or Standing Orders will not vitiate the entire disciplinary proceedings

**Hamsaveni Spinners Pvt. Ltd. vs. The Presiding Officer
on 27 June, 2018 Madras High Court**

The question arises whether wrong quoting or mis-quoting of the provisions of the statute or standing orders will vitiate the entire proceedings. There is no dispute in respect of the procedures followed by the management for conducting the disciplinary proceedings. The charge sheet has been issued to the workman and he has submitted an explanation to the charges and the domestic enquiry had been conducted and the workman participated in the domestic enquiry along with the co-workmen and pleaded guilty before the enquiry officer and the same had been recorded by the enquiry officer in his findings as stated supra.

Thus, there is no procedural irregularities in respect of the disciplinary proceedings conducted by the writ petitioner management. However, the clause stipulated in the standing orders was not mentioned in the charge sheet. This alone is the lapse committed by the writ petitioner while issuing the charge sheet against the second respondent workman. On this ground, the first respondent has rejected the approval petition filed by the writ petitioner/management.

Before advertizing to the said question we may record that wrong concession of a counsel on a pure question of law is not binding upon a party. It is furthermore trite that non-mentioning or wrong mentioning of a provision in an order may be held to be irrelevant if it is found that the requisite ingredients thereof were available on records for passing the same. We may further notice that the High Court proceeded on the basis that the penalty imposed upon him was a major penalty, and the Constitution Bench of the Hon'ble Supreme Court of India in the case of Union of India and another vs. Tulsiram Patel reported in 1985 AIR 1416, held in paragraph No.127 as follows:

.... Further, even the mention the provision which contains the source of power will not invalidate an order where the source of such power exists. See Dr.Ram Manohar Lohia vs. State of Bihar (AIR 1966 SC40) and Municipal Corporation of City of Ahmedabad vs. Ben Hiraben Manilal ((1983) 2 SCR 676). The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Art. 311(2) read with the relevant service rule. It may be mentioned that in none of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so.

In view of the fact that the Apex Court in clear terms opined that wrong quoting or misquoting of the provisions of Statute or Standing Orders will not vitiate the entire disciplinary proceedings and the rejection of the approval petition by the first respondent on this ground is unsustainable.

The Court observed that it had already gone through the procedures adopted by the writ petitioner/management for conducting the disciplinary proceedings against the second respondent/workman and found that that there was no irregularity in respect of conducting the disciplinary proceedings and the same also had been recorded by the first respondent in the order. The Court

held that there is no reason to remand the matter back to the Labour Court as the disciplinary proceedings were conducted in accordance with the established procedures and the approval petition was rejected only on the ground of misquoting of the standing orders. The Court held that it is unnecessary to send the matter back to the Labour Court for re-consideration and allowed the approval petition filed by the writ petitioner.

(729)

Defence Assistant

Anil Kumar vs. The Union of India & Ors on 2nd July, 2018

In the present case, the petitioner is challenging the order vide Memo No. 7319, dated 25.11.2005 passed by the Commandant, CISF Unit, PPT, Paradip, where under, the petitioner was removed from service by way of punishment holding that the charges are serious in nature, appropriate punishment is removal. Against that, the petitioner filed appeal before the Deputy Inspector General, Central Industrial Security Force and the appellate authority refused to interfere with the order of punishment. Against that order, the petitioner preferred revision before the Inspector General of Central Industrial Security Force who, vide order contained in Memo No. 2146 dated 10-13.11.2006, refused to interfere with the order passed by the Disciplinary Authority and affirmed the order of the appellate authority.

The brief facts of the case are that the petitioner was posted at CISF Unit, NTPC. On 13.02.2005 & 24.02.2005, the incident of misbehaviour committed by the petitioner, as per allegation, he used the abusive language as well as threatened with dire consequences. For that, a charge-sheet dated 02.05.2005 with three articles of charge was issued against the petitioner. During enquiry the petitioner refused to take defence assistance when he was asked by the authority concerned.

In this case the Hon'ble High Court of Patna gave finding on one of the aspects with regard to the defence assistance. The petitioner was asked thereby he was given an opportunity to engage a Defence Assistant but, the petitioner has refused to take the Defence Assistant, the question of deprivation of an opportunity of engaging someone to defend his case does not arise. So in view of this factual background, when the petitioner himself had refused to take assistance of any Defence Assistant as such, the issue raised by the petitioner of deprivation of opportunity to engage Defence Assistant or lawyer has no leg to stand and the same is not acceptable.

(730)

Misconduct - what constitutes, what doesn't

When officer/public servant did not discharge his duty diligently or has discharged his duty with a motivated mind and that the employee has been consistent or habitual in doing work in such manner, is said to commit 'Misconduct'

State of Bihar vs. Shaligram Sah, 2018 4 PLJR 939; 2018 0 Supreme (Pat) 1322

This is an unfortunate case, which has come in hand before us, wherein the State Government has filed the Letters Patent Appeal without any justification again in a mechanical manner as was done in the original case while taking disciplinary action. If we go through the order passed by the learned Writ Court on 07.08.2017, we find that the learned Writ Court has recorded the following observations:-

"As I have said, the case in hand is a classic example of the leisure time with the State to involve its employees in frivolous disciplinary proceeding which is founded on even frivolous charges. Annexure-1 is the charge and while charge No.1 alleges irregularities against the petitioner in the matter of allotment of houses under the Indira AwasYojana, Charge No.2 alleges insensitiveness on his part in the allotment process. There is no allegation in either of the two charges whether the allotment is accompanied with motivated action or for undutiful gains."

The learned Writ Court went into the issue on merits and found that in the matter of allotment of house under the Indira Awas Yojana, a departmental enquiry was conducted against the writ petitioner-respondent and in page 3 of the order impugned the entire finding of the enquiry officer has been recorded and the enquiry officer in his finding goes to say that the writ petitioner-respondent is not guilty of misconduct. At best, because of the amount of work entrusted to him added with the shortage of hands, he may not have been responsible in not following the guidelines meticulously, there is no ill motive, mala fide or intentional or deliberate acts. The enquiry officer, therefore, held that the allegations of misconduct are not proved. It is only a case of not following the guidelines in its letter and spirit, meaning thereby that the enquiry officer has only found that the allegations of misconduct are not correct. The allegation is not that the writ petitioner did not discharge his duty diligently or has discharged his duty with a motivated mind and there is nothing available on record to show that the employee has been consistent or habitual in doing work in such manner. The learned Writ

Court has relied upon the law laid down by the Hon'ble Supreme Court in the case of Union of India vs. J. Ahmad, reported in (1979) 2 SCC 286 wherein para 11 of the said judgment was considered and held that in such a case punishment could not be imposed.

We may take note of the fact that the enquiry report, as is re-produced in page-3 of the order impugned, was accepted by the disciplinary authority without disagreeing with it. In spite thereof, after reasonable order has been passed by the Writ Court, again this LPA has been filed by the competent authority, in our considered view, again mechanically without application of mind, even without considering the legal question involved in the matter. It is a case where even if the facts and circumstances, as indicated above, are accepted, it is only a case where the employee may have violated the guidelines that also because of the reasons recorded by the enquiry officer, i.e due to paucity of hands to deal with the matter, non-cooperation from the co-workers and certain acts attributed to the working of the bank. Once that was the position of the enquiry, the writ Court has rightly interfered into the matter.

We see no reason as to why the Letters Patent Appeal was filed with regard to such an issue where not even an iota of evidence is available to show that the integrity or the conduct of the employee was such that it has created any loss to the exchequer of the State. It is a case where the LPA is filed by the State Government without any justification.

Even though we were inclined to impose a heavy cost on the State Government, but keeping in view the prayer made by the counsel representing the State Government that the State Government will be careful in future, we are not proceeding to impose any cost into matter. The matter be brought to the notice of the Chief Secretary, Government of Bihar and he be warned not to file frivolous petitions merely because they are not held responsible or any coercive action is not taken by this Court in interfering into such appeals filed by the State Government.

With the aforesaid observations and directions, the Letters Patent Appeal stands dismissed.

(731)

(A) Court jurisdiction

(B) Disciplinary authority — sole judge

M.M. Gupta vs. Delhi Development Authority ... on 16 August, 2018

The applicant/Sri MM. Gupta, AAO has filed the above O.A. before the Central Administrative Tribunal, New Delhi for (1) quashing and setting aside the

orders of the Revisionary authority, appellate authority and disciplinary authority, (2) to quash and set aside the impugned charge sheet and subsequent inquiry proceedings/finding of inquiry officer and (3) such other further orders deemed fit and proper in the circumstances of the case.

The facts in brief are that the applicant was served with charge sheet dated 03.01.2006 alleging that while he was working as AAO had failed to point out to the Executive Engineer that the Bank Guarantee Bonds submitted by the agency are not in prescribed format and that the bank guarantee bonds issued were not got verified by the concerned bank. In that connection enquiry was conducted against the applicant and on proof of charge the disciplinary authority imposed penalty and the same was confirmed by the appellate authority. Aggrieved on which the applicant further preferred appeal before the Revising authority i.e., the Hon'ble Lieutenant Governor, Delhi. However the same was rejected vide orders dated 15.03.2017. On which the applicant filed the present application before the Central Administrative Tribunal.

The Hon'ble Central Administrative Tribunal has discussed catena of judgments of Hon'ble High Court and Hon'ble Supreme Court. The Central Administrative Tribunal mentioned the judgement of *B.C. Chaturvedi v. Union of India & others*, (1995) 6 SCC 749, that the Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

The disciplinary authority is the sole judge of facts where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued." In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant.

Thus, in the aforementioned facts and circumstances of the case and the judgements referred, the Central Administrative Tribunal held that there is no defect in the action carried out in the disciplinary proceedings and there is no merit and hence the O.A is dismissed.

(732)

Conviction — suspension of

Section 389 – Appellate court has the power to stay conviction besides suspending the sentence – The power though is by way of an exception.

Lok Prahar, through its General Secretary S.N. Shukla vs. Election Commission of India, 2018 AIR (SC) 4675; 2018 (4) Crimes (SC) 258; 2018 Supreme (SC) 940

These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 of the Cr.P.C., the disqualification under Section 8 will not operate. The decisions in Ravi Kant Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well-settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under subsections 1, 2 and 3 of Section 8 of the Representation of the People Act 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences.

Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections 1, 2 and 3 of Section 8.

When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.

(733)

Public Servant

Bayyareddy Manjunatha vs. State ACB, Warangal Range, Warangal, rep. by Spl. Public Prosecutor, High Court, Hyderabad 2019(1) HLT (Crl.) 142 P. Keshava Rao, J. Criminal Revision Case No. 1565 of 2008 Decided on 10.10.2018

Prevention of Corruption Act, 1988, Section 2(c) (xii) 7, 13(1) and 13(2)- Criminal Procedure code, 1973, Section 239– Petitioner was charged under the above mentioned Sections – Basic allegation was that the defacto complainant was having Ac.3.02 guntas of dry land in Sy.No.30 and was intended for mango plantation in the said land under the guidance of the Horticulture Department, etc. Allegedly petitioner demanded and accepted Rs.600 from the defacto complainant to do official favour for issuing rice coupons for Rs.440/-kgs, etc – It was also stated that the petitioner was appointed as a contract Horticulture Officer by Corporate Solution Private Limited and was receiving remuneration from the Government – During pendency of the criminal case, petitioner filed

Crl.M.P. under Section 239 Cr.P.C. to discharge him from the charges leveled against him – the same was dismissed–Hence the present revision.

Petitioner though appointed by Ace Corporate Solutions Private Limited was discharging public duties akin to a Horticulture Officer and comes within the definition of Section 2(c)- Merely because the petitioner was appointed as a Horticulture Officer on contract basis it cannot be said that he is not a public servant – Presence of the petitioner is dispensed with in C.C.No.19 of 2006 except whenever his presence is required – Criminal Revision case was dismissed.

(734)

- (A) **Sanction of prosecution – where invalid, subsequent trial with proper sanction, not barred**
- (B) **Double jeopardy**

*The State Of Mizoram vs. Dr. C. Sangnghina on 30 October, 2018
[Supreme Court]*

Charge sheet No.6 of 2013 was filed under Section 409 IPC and Section 13(1)(c)(d)(e) read with Section 13(2) of PC Act. The Special Court, PC Act found that the prosecution sanction against the accused/respondent was issued by the Commissioner-Secretary, Department of Personnel & Administrative Reforms (DP & AR) directly without sanction of the Governor. After hearing the parties, the learned Judge, Special Court, PC Act by an order dated 12.09.2013, discharged the accused/respondent from the charges levelled against him due to lack of proper sanction.

Subsequently, after due consideration of the materials, the Governor vide order dated 20.12.2013 in supersession of the earlier order dated 08.04.2013 granted sanction for prosecution of the respondent for the aforesaid offences and other offence punishable under any other provisions of law. In view of the fresh sanction issued against the respondent on 20.12.2013, the Inspector, ACB Mizoram on 30.01.2014 submitted fresh/supplementary charge sheet along with fresh prosecution sanction against the accused/respondent with further request to accept the fresh/supplementary charge sheet and to reopen the case.

The learned Judge, Special Court vide order dated 26.08.2014 dismissed SR (PCA) No.8 of 2014 holding that there is no provision/scope for review of its own order under Criminal Procedure Code. The learned Judge found that the second charge sheet is barred by the principles of “double jeopardy” and

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accordingly, the application to take the fresh charge sheet was dismissed by order dated 26.08.2014.

Being aggrieved by the order dated 26.08.2014 as well as the earlier order dated 12.09.2013, the State has preferred Criminal Revision Petition No.6 of 2014 before the High Court and the same was dismissed by the High Court affirming the order of the Special Court that the second charge sheet with fresh sanction cannot be entertained.

The Supreme Court held that considering the case in hand, even before commencement of trial, the respondent/accused was discharged due to lack of proper sanction, there was no impediment for filing the fresh/supplementary charge sheet after obtaining valid sanction. Unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act could not be vitiated. By filing fresh charge sheet, no prejudice is caused to the respondent nor would it result in failure of justice to be barred under the principles of “double jeopardy”.

The Court observed that the respondent/accused has not been tried nor was there a full-fledged trial. On the other hand, the order of discharge dated 12.09.2013 passed by the Special Court was only due to invalidity attached to the prosecution. When the respondent/accused was so discharged due to lack of proper sanction, the principles of “double jeopardy” will not apply. There was no bar for filing fresh/supplementary charge sheet after obtaining a valid sanction for prosecution. The Special Court once it found that there was no valid sanction, it should have directed the prosecution to do the needful. The Special Court has not given sufficient opportunities to produce valid prosecution sanction from the competent authority. The Special Court erred in refusing to take cognizance of the case even after production of valid prosecution sanction obtained from the competent authority and the High Court was not right in affirming the order of the Special Court. The Special Court and the High Court were not right in holding that the filing of the fresh charge sheet with proper sanction order for prosecution was barred under the principles of “double jeopardy”.

(735)

Charge — dropped and re-issued

*Dropping charges initially framed on ground of a technical flaw,
no bar against framing fresh charges.*

***Union of India vs. Rayees-Ul-Haque and Another in WRIT.A.No.57572 of
2012 Dt.16-11-2018***

The first respondent was an Inquiry-cum-reservation clerk posted at Gorakhpur. A minor penalty charge-sheet was served upon him on 11.03.2004

alleging that from April 2003 to June 2003, he had issued 50 concession tickets on forged concession vouchers thereby causing loss to the Railways. The first respondent denied the allegations. After considering the reply, the Assistant Commercial Manager vide order dated 19.04.2004 imposed punishment of stoppage of next increment for a period of six months temporarily and directed for recovery of Rs.26,636/- Thereafter, on 12.07.2004, the first respondent was served with a major penalty charge-sheet essentially on the same set of facts that is of issuing concessional tickets on forged concession vouchers, but by levelling other serious charges of misconduct.

In the meantime, on 13/16.08.2004, the Assistant Divisional Manager / Reviewing Authority exercising power under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 gave notice to the first respondent to submit reply as to why the punishment imposed be not enhanced. The first respondent submitted his reply to the said notice. However, on 16.02.2005, the Reviewing Authority instead of proceeding further on the notice dated 13/16.08.2004, cancelled the earlier charge-sheet of minor punishment dated 11.03.2004 as also the punishment order dated 19.04.2004 by reserving right to issue a fresh charge-sheet. As already a fresh major penalty charge-sheet had been issued to the respondent, the enquiry officer proceeded with the enquiry and finally vide order dated: 31.01.2006, he was removed from service. His appeal was dismissed on 16.06.2006.

Aggrieved by removal from service as well as dismissal of his appeal, the first respondent filed O.A. No. 1093 of 2006.

In nutshell, the Tribunal proceeded to allow the original application of the first respondent by holding that the second charge-sheet on the same set of allegation has been issued without firstly passing order withdrawing earlier, because second charge sheet was issued on 12.07.2014 and the order was issued on 16.02.2005 cancelling the earlier charge sheet of minor punishment, therefore, it is clear that the action of the respondents is totally illegal as during the lifetime of the punishment inflicted pursuant to the first charge sheet, second charge sheet on the same allegations cannot be issued. The Tribunal also held that it would also be hit by the principle of double jeopardy and held that impugned charge sheet dated 12.07.2014, order of punishment dated 31.01.2006 and order of Appellate Authority dated 16.06.2006 were not sustainable and were quashed and set aside.

The petitioners filed appeal against the orders of Tribunal.

The High Court of Allahabad observed that the charges in the two charge-sheets, although might have been drawn from the same acts of misconduct, were qualitatively different and in the second charge-sheet, the charge leveled upon the petitioner is not of mere lack of devotion towards duty but is of exhibiting conduct unbecoming of a railway servant thereby telling upon his integrity and the principle of double jeopardy would not be attracted and likewise, it cannot be said that first respondent has been punished /prosecuted / proceeded twice for the same offence /charge, because the earlier action taken against the first respondent, on minor penalty charge-sheet, was annulled by the reviewing authority while reserving right to proceed afresh.

The High Court set aside the order of Tribunal, while reverting back the case to the Tribunal to decide on various other issues concerning fairness of the inquiry raised by the Respondent which were not earlier decided by the Tribunal.

(736)

- (A) Judge — approach of**
- (B) Guilty — let no one who is guilty, escape**

Correct approach of a Judge conducting criminal trial should be that no innocent should be punished and no guilty person should go unpunished.

Jeetpal Singh vs The State, the Delhi Court

While allowing the Crl. Appeal partly on 25 January, 2019 held that “Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law” and it also held that “A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties”.

It is held that principle of just punishment is bedrock of sentencing in respect of criminal offence. Punishment should not be disproportionately excessive. The just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. There can neither be a straightjacket formula nor a solvable theory in mathematics to award the sentence. An offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors relating to the case.

(737)

P.C. Act, 1988 – Sec. 20

P.Tamilselvan vs The State on 24 April, 2019 [Madras High Court]

This Court has to look for independent corroboration before convicting the accused person. However, the evidence of bribe giver has to be scrutinized very carefully and it is for the Court to consider the appropriate evidence in the proper manner and decide whether the conviction is based upon it or not in the circumstances of the case. Therefore, as a Rule of Law, it cannot be laid down that the evidence of every complainant in a bribe case, should be corroborated otherwise it cannot be acted upon.

When the acceptance and the possession are proved, automatically the presumption under Section 20 of the Prevention of Corruption Act operates against the accused. It is for the accused to disprove the prosecution case by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Prevention of Corruption Act. In the present case, there is no proper explanation by the appellant / accused for his possession. In fact, immediately after the trap proceedings, the appellant/ accused has taken a stand that the said amount was borrowed amount. However, he changed his version during 313 Cr.P.C. questioning that the amount was forcibly thrust by P.W.2 without his willingness and hence, he has thrown the same out of the grill gate, which cannot be accepted for the reason that the appellant/accused has no proper explanation for the possession of the said amount. Hence, the prosecution has successfully discharged its initial burden and established that the said amount was possessed by the appellant/accused as illegal gratification for grant of patta.

(738)

- (A) P.C. Act, 1988 — Sec. 13(1)(d)**
- (B) Criminal misconduct — obtaining pecuniary advantage to others**

***P.N. Sambasivan vs Inspector of Police CBI/SPE
31 May, 2019 in Crl.A.No.31 of 2001 Kerala High Court***

The two criminal appeal numbers 31 & 43 of 2001 on the file of Hon'ble High Court of Kerala at Ernakulam filed by the Accused Officer-1 P.N. Sambasivan,

Branch manager, SBT, Pazhangad branch, Kochi and Accused-2 P.D. Arun Prabhu, Kochi respectively as against the conviction judgment by Hon'ble Special Court (SPE/CBI) – II, Ernakulam in C.C.No. 30/1998.

The brief facts of the case are that Accused Officer-1 and A-2 above conspired and hatched a plan to cheat the bank and thereby to cause wrongful loss to the bank. The Accused Officer-1 being Manager sanctioned withdrawal of huge amount of Rs. 11,68,908/- to the A-2 which is excess of limit of Rs.3,00,000/- and thus causing unlawful pecuniary benefit to the A-2. Further the Accused Officer-1 kept the seven cheques for months together without being presented for collection, with the object of facilitating credit to the account by that time and made false document and false entries in the bank registers. The case was registered U/Ss. 409, 420, 467, 471 & 477-A r/w 120 B of IPC and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

The trial court found guilty of Accused Officer-1 and A-2 and convicted both and sentenced to Rigorous Imprisonment for three years each and to pay fine of Rs. 10,000/- each under all sections and by applying Sec 120-B IPC, the A-2 was also sentenced for all the counts referred above. Aggrieved by the judgment of conviction the Accused Officer-1 and A-2 preferred appeal separately in Crl.A.No. 31/2001 and 43/2001 respectively on the file of Hon'ble High Court of Kerala at Ernakulam. The Hon'ble High Court allowed both the appeals and found not guilty of the offences referred above including the offence and U/s. 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 on the following findings.

1. The offence U/s 420 is not established since there is no wrongful loss caused to the bank and wrongfully gained by Accused Officer – 1 and A-2. The Accused Officer-1 officially sanctioned the loan to the second accused if at all he exceeded the limits of function he will be dealt departmentally. Further there was decree passed against for the entire interest amount liable to be paid by the A-2, due to the bank as such there is no unlawful benefit.
2. The offence U/s 409 is also not attracted since the loan was sanctioned by the Accused Officer-1 and the same was availed by A-2 and A-2 is liable to repay with interest for which the bank also obtained a decree by filing a suit against A-2 and others, as such there is no breach of trust, diversion or conversion of bank funds.
3. The offence of forgery U/s 463, the required ingredients that the Accused must have made a false document or part of such record or document

- with intent to cause injury or damage to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to elder any express or implied contract, or with intent to commit fraud and that the fraud may be committed. The case on hand the evidence establishes that Accused Officer-1 made various entries in the registers of the bank with a bonafide intention that the higher authorities would ratify overdrawal by Accused Officer-1 to A-2, but unfortunately it was not ratified as such the said act does not amount to forgery, since Accused Officer-1 has no intention of cheating or defrauding the bank, or for supporting any claim. Likewise the Sec 477-A also would not attract to the facts and circumstances of the case.
4. The Sec 13 (1) (d) r/w 13 (2) of PC Act has also no application, since any of the three required ingredients of Sec 13 (1) (d), which are explained in State vs K. Mohana Chandran and others (2017 (4) KHC 297) by the Hon'ble Supreme Court. The three ingredients – (i) the Accused must act as corrupt or illegal means; (ii) the public servant must have abused his position as a public servant and (iii) the public servant must have acted without public interest and he must have thereby gained some benefit or pecuniary advantage for himself or somebody else. As such to find a person guilty U/s 13 (1) (d) of PC Act, the first Accused Officer must have made some unlawful gain or undue gain by his wrongful Act, or he must have caused such gain or benefit to the second Accused. The second accused has not gained any unlawful benefit except overdrawal from his agriculture cash credit account. The act of the first accused cannot be said to be an act of misconduct. Misconduct means as defined under the act it must be either an illegal or corrupt act, or it must be an act of abuse of official position, or it must be an act without public interest, and in any instance, the said act of public servant must have caused some unlawful gain or benefit to him or somebody else. Sanctioning of huge amount of loan in excess to the permitted limit by bank manager (Accused Officer-1) cannot be said to be by itself an act of criminal misconduct, unless it involves some element of corruption. No doubt, if such overdrawal or sanctioning of huge amount of loan beyond permitted limits was done by accepting bribe, it would certainly come under the purview of misconduct under prevention of corruption Act. But, Accused Officer-1 did not do so. However Accused Officer-1 is liable for departmental action, but not for the prosecution U/s. 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act.

(739)

Misconduct — acting beyond authority

Shri Gautam Dhar vs. SBI & Others, 2019 SCC Online Meghalaya HC 105

Loss of confidence is the primary factor and not the amount of money misappropriated. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. In the case of a bank, every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear. The functioning of the Bank would become chaotic and unmanageable. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations.

(740)

- (A) P.C. Act, 1988 — Secs. 7, 13(2)**
- (B) P.C. Act, 1988 – Sec. 13(1)(d)**
- (C) Sentence — adequacy of**
- (D) Court jurisdiction**

Smallness of the amount of bribe cannot be a ground to reduce the sentence, more particularly in a case where the accused is convicted for the offences punishable under the PC Act. Bribe may be of one rupee or Rupees one crore, Bribe is a bribe and, as observed hereinabove, smallness of the amount of bribe alone cannot be a ground to reduce the sentence

**Bhimappa Lakshmappa Yadhalli vs. the State of Karnataka
Special Leave Petition (CRL.) NO. 5965 OF 2019**

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.02.2019 in CRLA No. 2694 of 2010 passed by the High Court of Karnataka, Circuit Bench at Dharwad, the original accused who has been convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short 'PC Act'), has preferred the present Special Leave Petition.

The learned Trial Court held the accused guilty for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act and sentenced him to undergo five years Simple Imprisonment for the offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act and also for a period of four years for the offence punishable under Section 7 read with Section 13(2) of the PC Act. However, in an appeal preferred by the original accused, by the impugned judgment and order, though the High Court has upheld the conviction of the accused for the aforesaid offences punishable under the PC Act, but has modified the order of sentence and has reduced the sentence to two years and three years for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act respectively.

The Supreme Court held that the reasoning given by the High Court is not tenable in law and is not germane and/or cannot be a ground to reduce the sentence. Smallness of the amount of bribe cannot be a ground to reduce the sentence, more particularly in a case where the accused is convicted for the offences punishable under the PC Act. Bribe may be of one rupee or Rupees one crore, Bribe is a bribe and, as observed hereinabove, smallness of the amount of bribe alone cannot be a ground to reduce the sentence. Once an accused is held guilty for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act and convicted, as per the Sentencing Policy, the sentence must be proportionate to the gravity of the offence committed. As rightly observed by the learned Trial Court, it is a serious social evil which hampers the development of the society. The said evil is a cancer to the society which is slowly destroying the health of the society. As rightly observed by the learned Trial Court, the quantum of the illegal gratification cannot be the criteria for awarding the sentence. The Court disapproved the reasoning given by the High Court while reducing the sentence in the present case and held that the High Court has shown unnecessary leniency and has reduced the sentence on a ground/reasoning which cannot be sustained. Therefore, the High Court is not justified in reducing the sentence on the grounds stated in the impugned judgment and order. However, as the State has not preferred any appeal against the impugned judgment and order, the Court rested the matter there while disapproving the reasoning given by the High Court. The Court further observed that the impugned judgment and order passed by the High Court reducing the sentence not to be treated as a precedent for any other case.

(741)

Misconduct — bigamy

***Union of India & Others vs. K.L.Micheal Writ Petition No.981/2019
dated 20.08.2019***

A retired railway employee had not seen his wife for 7 years, assuming her to be dead, committed an act of bigamy, since he, has been found guilty of misconduct, as per service rules, by the Karnataka High Court & held liable for 50% reduction in pension amount. However, considering he has retired & solely dependent on pension amount, the Court reduced the punishment from 5 years to 3 years, period already undergone by him.

The division bench modified the order of Central Administrative Tribunal (CAT). The tribunal had in October 2018, set aside the punishment imposed by Railways. Authority had after carrying out an enquiry imposed a punishment of reduction in pension benefits by 50 percent for five years, under the Railway (Services) Pension rules, for misconduct.

Railways challenged the Tribunal order in the High Court stating that “Tribunal has made a discussion to the extent that the respondent has committed an act of bigamy & when things are not disputed even by the respondent himself, setting aside the punishment order is contrary to principles of law.”

Employee opposed the appeal by saying “As the first wife has eloped, respondent has waited for seven years & presumed that she had died, thereafter entered into a second marriage. There is no error committed by the tribunal.” He also pleaded that he has retired & is surviving on pension & punishment would affect his livelihood.

The Bench of Justices L Narayana Swamy & R Devdas observed,

“There is no scope for presumption that wife would be dead, in case if she is not seen for about seven years. For the purpose of the said presumption law provides that the husband has to approach the civil court seeking declaration that his wife is dead. Instead of approaching the civil court & obtaining decree, respondent has presumed that she must have died & had contracted second marriage, which on the face of it is misconduct. Under these circumstances, the order of the tribunal is to be set aside since the reason assigned is contrary to law & fact.”

With respect to reduction in punishment bench stated,

"Hon'ble Supreme Court has held that interference with the enquiry report & punishment is not for the courts. But in the facts & circumstances of the case that the respondent has retired from service & he is surviving only on pension, if it is deprived, it is nothing but deprival of livelihood of a person. If punishment would have been imposed upon respondent during the period of his service, that would have been a different thing. Under the circumstance, though we confirm the finding of the enquiry officer & the order of punishment, but the only interference to be is with regard to the reduction of period of five years to three years."

(742)

- (A) **Departmental action and acquittal**
- (B) **Misconduct — absolute integrity**

Demanded and accepted illegal gratification of Rs.750/- as advance amount, from the complainant. Failed to maintain absolute integrity and devotion to duty. The order of dismissal which was based on the evidence before the Inquiry Officer in the disciplinary proceedings, which was different from the evidence available to the Criminal Court, was justified and needed no interference by the High Court.

Karnataka Power Trans. Corp. Ltd. vs. Sri C Nagaraju on 16 September, 2019 Supreme Court of India

Failed to maintain absolute integrity and devotion to duty. The object of a Departmental Inquiry was to find out whether the delinquent was guilty of misconduct under the conduct Rules for the purpose of determining whether he should be continued in service.

The judgment of the High Court by which the order of dismissal of Respondent No.1 from the service was set aside is the subject matter of this Appeal. Respondent No.1 was appointed as a Meter Reader-cum-Clerk in the Karnataka Power Transmission Corporation Limited (KPTCL) in the year 1974. He was promoted as a Junior Engineer in the year 1997. On 21.06.2003, Additional

Registrar of Enquiries-I, Karnataka Lokayukta, Bangalore framed a charge against the Respondent which is as follows:

“Charge:

That you DBE Sri. C. Nagaraju, while working as Junior Engineer (Elecl.) at KEB, VV-1 (O&M) South Zone, Vidyaranyapuram Circle, Mysore during the year 1998, one Sri. K. Chandrasekhar, Class II Electrical Contractor, Resident of Vidyaranyapuram, Mysore, (hereinafter called as ‘Complainant’) had approached you for obtaining electrical power supply to the house and shop of his customer Smt. Savithramma, on 14-5-1998, and you demanded a sum of Rs.1,250/- as illegal gratification, and on 16-5-1998 you once again demanded and accepted illegal gratification of Rs.750/- as advance amount, from the complainant for doing the said work of giving electrical power supply, and thereby you being a public servant failed to maintain absolute integrity and devotion to duty and did an act which was unbecoming of a Government servant and thereby [2] you have committed an act of misconduct as enumerated under Rule 3(1)(i) & (iii) of K.E.B. Employees Service (Conduct) Regulation Rules, 1988.”

Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives.

Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court.

(743)**Cr.P.C. — Sec. 173 (8)**

Fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) of Act to further investigate an offence till charges were framed.

Vinubhai Haribhai Malaviya and Ors. vs. the State of Gujarat and Ors.
AIR 2019 SC 5233,

The supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person was not wrongly arraigned as an Accused or that a prima facie guilty person is not so left out. There was no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers were traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Code of Criminal Procedure, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised *suo motu* by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered was within the discretion of the Magistrate who would exercise such discretion on the facts of each case and in accordance with law.

(744)**P.C. Act, 1988 — Sec. 17**

Yashwant Sinha vs. CBI- S. 17-A [as ins. in 2018]2020 (2) SCC 338

Scope - In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, *inter alia*, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. [Date of decision: 14-11-2019].

(745)

P.C. Act, 1988 – Secs. 7, 13(1)(d)

Sk. Hussain vs. State of A.P. (Now Telangana) Rep. by its Inspector of Police, Anti-Corruption Bureau, Range Nizamabad 2020 (1) ALT (Crl.) 82 (T.S.) Criminal Appeal No. 487 of 2006 Decided on 15.11.2019

Prevention of Corruption Act, 1988 - Section 7- Ingredients to prove offence under Section 7 of the Act- the prosecution shall establish the following ingredients; (i) the Accused Officer was a public servant at the relevant time of the offence; and (ii) the Accused Officer accepted or obtained or agreed to accept or agreed to obtain illegal gratification other than legal remuneration as a motive or reward for doing an official favour–Demand and acceptance of gratification to do an official favour to a person are *sine qua non* to prove the offence under Sections 7 and 13 (1)(d) of the Prevention of Corruption Act, 1988 – It is also settled principle that establishing both the said twin requirements beyond reasonable doubt by the prosecution is also essential to record the conviction– Mere recovery of tainted currency notes is not sufficient to prove the guilty of the Accused Officer and the prosecution must establish the twin requirements of ‘demand and acceptance of illegal gratification’ to do an official favour to P.W.1 beyond reasonable doubt – There is no direct evidence adduced by the prosecution to prove the twin requirements of demand and acceptance – Proving one alone is not sufficient and the prosecution is under the legal obligation to prove both and in the present case, the prosecution failed to prove the same – Thus, the Accused Officer is entitled for acquittal and accordingly, impugned judgment is not sustainable, both under law and on facts, and therefore the same is hereby set aside... (T.S.H.C) 82 (paras 11,12,24,26, and 27)

(746)

- (A) P.C. Act, 1988 — Sec. 7**
- (B) Trap — motive or reward**
- (C) Trap — evidence of raid party**
- (D) P.C. Act, 1988 — Sec. 20**

Vinod Kumar Garg vs. The State (Government of National Capital Territory of Delhi) [(2020) I SCC (Cri) 545]

The impugned judgment dated 7th January 2009 passed by the High Court of Delhi upholds conviction of Vinod Kumar Garg ('the appellant', for short)

under Sections 7 and 13 of the Prevention of Corruption Act, 1988 ('the Act', for short) imposed by the Special Judge, Delhi vide judgement dated 27th March 2002. The appellant has been sentenced to undergo rigorous imprisonment for one and a half years, and fine of Rs. 1,000/- for each offence and in default of payment to undergo simple imprisonment for three months on both counts separately. The sentences have been directed to run concurrently.

Nand Lal (PW-2) deposed having visited the DESU office and his meeting with Inspector Yadav for installation of electricity meter in the shed for a fan and a light. Nand Lal (PW-2) after shifting his goods etc. to the shed had again visited the DESU Office and learnt that Inspector Yadav had been transferred. Nand Lal (PW-2) had met his successor-the appellant, who had asked him to move an application for providing a meter for the electricity connection. The appellant had also stated that electricity could be provided without meter for which Nand Lal (PW-2) was asked to pay bribe of Rs.2,000/. Complaint was lodged with the Anti-Corruption Branch.

Appellant was trapped and the Inspector recovered from his pant pocket, polythene cover containing the tainted notes in the presence of Nand Lal (PW-2) and the panch witness Hemant Kumar (PW-3).

The learned Counsel for the appellant contended that there were major contradictions on material aspects in the testimonies of the complainant Nand Lal (PW-2) and the panch witness Hemant Kumar (PW-3).

The Supreme Court observed that given the time gap of 5 to 6 years between the date of trap and recording of testimonies, minor contradictions on some details were bound to occur and were natural. Further observed that the witnesses were not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time and picayune (petty) variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, which had been proved and established beyond reasonable doubt.

The Court held that the condition precedent to drawing such a legal presumption that the Accused had demanded and was paid the bribe money had been proved and established by the incriminating material on record and the presumption under Section 20 of the Act becomes applicable for the offence committed by the Appellant under Section 7 of the Act. Further held that the

DECISIONS (747)

Appellant was found in possession of the bribe money and no reasonable explanation is forthcoming that might rebut the presumption and recovery of the money from the pocket of the Appellant had also been proved without doubt.

The Supreme Court therefore, held that money was demanded and accepted not as a legal remuneration but as a motive or reward to provide electricity connection to prosecution witness for the shed and dismissed the appeal.

(747)

(A) Cr.P.C. — Sec. 197

(B) Sanction of prosecution — under Sec. 197 Cr.P.C.

(2020) 2 SCC 153: (2020) 1 SCC (Cri) 569: (2020) 1 SCC (L&S) 177: (2020) 112 AIC 110—CBI vs. B.A. Srinivasan

Respondent 1 retired on 31.10.2012 as Assistant General Manager, Vijaya Bank. On 28.10.2013, FIR was registered pursuant to complaint given by General Manager, against Respondent 1 that while working as AGM and Branch Head, Vijaya Bank, caused wrongful loss to Vijaya Bank and corresponding gains to others. That, the above acts of Shri B.A. Srinivasan (A-1), constitute offences punishable under Section 120-B r/w Sections 420, 419, 468 and 471 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. After completion of investigation, charge-sheet was filed on 31.10.2014 against Respondent 1 and other accused in respect of the said offences.

Application moved by Respondent 1 seeking discharge in terms of Sections 227 and 239 Cr.P.C. was rejected by the Special Judge.

The High Court set aside the order passed by the Special Judge, as regards Respondent I and discharged him of the offences on the basis that the protection available to a public servant while in service should also be available after his retirement.

The Supreme Court held that it has consistently been laid down that the protection under Section 197 Cr.P.C. is available to the public servants when an offence is said to have been committed “while acting or purporting to act in discharge of their official duty”, but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected.

It has also been held by the Supreme Court that, at times, the issue whether the alleged act is intricately connected with the discharge of official

functions and whether the matter would come within the expression “while acting or purporting to act in discharge of their official duty”, would get crystallised only after evidence is led and the issue of sanction can be agitated at a later stage as well.

The Supreme Court held that the High Court clearly erred in allowing criminal revision petition and accepting the challenge raised by Respondent 1 on the issue of sanction, and therefore allowed the appeal and set aside the view taken by the High Court.

(748)

- (A) P.C. Act, 1988 — Sec. 19**
- (B) Sanction of prosecution — under P.C. Act**

State of Telangana vs. Managipet (2019) 19 SCC 87: (2020) 3 SCC (Cri) 702: (2020) 210 AIC 224 - Date of decision 06.12.2019

There is no merit in the argument that there has been no sanction before the filing of the report. The sanction can be produced by the prosecution during the course of trial, so the same may not be necessary after retirement of the accused officer. The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the accused officer. The question as to whether a sanction is necessary to prosecute the accused officer, a retired public servant, is a question which can be examined during the course of the trial as held by the Supreme Court in K. Kalimuthu, (2005) 4 SCC 512. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings. (Paras 35 and 36).

(749)

Misconduct — negligence in discharge of duty

***Satyendra Singh Gurjar vs. Union of India
Writ No. 12403/2018 judgment dated 20.12.2019 Bombay High Court***

An act or omission, which is tainted with ill motive, moral turpitude and improper or unlawful behaviour with an element of wilfulness therein or any flagrant violation of an express stipulation, squarely falls within the mischief of misconduct. Negligence, lapse in performance of duty, errors of judgement or innocent mistake, on the other hand, stand at the other end of the spectrum and generally do not

DECISIONS (750) & (751)

constitute a misconduct. In a given situation, a single act or omission or error of judgement would not ordinarily constitute misconduct though when such an error or omission results in serious or atrocious consequences the same may amount to misconduct. It is not an inviolable rule of law that the gross negligence or lapse in performance of duty entailing serious consequences may not amount to misconduct. Gross or habitual negligence in performance of duty may not involve ***mens rea*** yet it may still constitute misconduct for disciplinary proceedings.

(750)

- (A) Misconduct — moral turpitude**
- (B) Dismissal**

Legality of Termination. Petitioner has been convicted under Sections 148 and 149 IPC, because he was found to be one of members of unlawful assembly. Accordingly, offence committed by him cannot be said to be an offence of moral turpitude. Moreover, it is already settled that mere conviction in a criminal case does not entail dismissal of an employee.

Rajpal Singh Nahar vs. State of Madhya Pradesh and Ors. 2021(1) SLR 567 (13.01.2020 - MPHc): MANU/MP/0069/2020

No doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Orders passed by disciplinary authority as well as appellate authority terminating services of petitioner, are hereby set-aside. Orders impugned are hereby quashed. Resultantly, petition is allowed. Respondents are directed to reinstate petitioner in service forthwith.

(751)

Antecedents — verification of

The employer can legitimately conclude that a person who has suppressed material facts does not deserve to be in its employment.

***State of Odisha and Ors. vs. Gobinda Behera (31.01.2020 - SC) 2020(3)
SLR 689(SC)***

The Respondent was seeking public employment in the State police service. His duties, on appointment to the service, would be of a responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens. To expect that an applicant for such a position would be truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of personality and character.

The case against the Respondent could not be regarded as being trivial in nature. That apart, it was evident that, despite being involved in the criminal case, the Respondent suppressed these facts from the authorities while applying for the post of a Constable in the State Police. The criminal case was quashed in exercise of the jurisdiction under Section 482 of Code of Criminal Procedure on the basis of a compromise between the parties much after the order of discharge. Hence, the view which had been taken by the High Court was palpably unsustainable. The Tribunal was justified in rejecting the application.

(752)

P.C. Act, 1988 – Secs. 7, 13(1)(d)

***Sri Indla Kishore Kumar vs. State, Rep. by the D.S.P., A.C.B., Kurnool District, Through Special Public Prosecutor for ACB Cases, High Court of Judicature at Hyderabad 2020 (1) ALT (Crl.) 193 (A.P.)
Criminal Revision Case No2591 of 2017, Decided on 31.01.2020***

Sections 7, 13(1)(d) and 13(2) – Penal Code, 1860, Sections 201 and 511 – Criminal Procedure Code, 1973, Section 239 – Discharge of Accused– Receiving of Bribe Money from Higher Official – the petitioner, who is A.O-2 was not even found at the scene of offence when the offence took place in the officer room of the Sub-Inspector of Police, who is A.O.1- After the amount was paid to A.O.1- he called A.O.2, who is outside the room and when he entered the room, he asked the de facto complainant to give money to him and directed him to exchange the said currency notes – Trial Court grossly erred in dismissing his petition to discharge him from the case by a cryptic order that there is a prima facie case against him for the offences punishable under Section 201 read with Section 511 of IPC - Criminal revision case is allowed–The impugned order is set aside–The petition filed under Section 239 of Cr.P.C. by the petitioner stands allowed. (A.P.H.C.)193.

(753)

Court jurisdiction

State of Karnataka & Another vs. N.Ganga Raj Judgment dated

14.02.2020

The Hon'ble Apex Court held that the discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the Courts are the Appellate Authority.

(754)

(A) Public Servant

(B) P.C. Act, 1988 — Sec. 2(c)

Applicability of the P.C. Act to 'Deemed Universities'.

State of Gujarat vs. Mansukhbhai Kanjibhai Shah, Criminal Appeal No. 989 of 2018

The Hon'ble Apex Court delivered a significant judgement as to the applicability of the P.C. Act to 'Deemed Universities'.

In view of the facts and circumstances of the case, two issues arose for consideration being i) whether a 'Deemed University' is covered under the provisions of the PC Act? and ii) whether the Respondent who is the trustee, of a trust which established and sponsors the Deemed University, can be termed as Public Servant under Section 2(c)(xi) of the PC Act?

Further delving into the dictionary meaning of the term 'University', to derive an independent meaning to the same as occurring under the PC Act, the Hon'ble Court concluded that a 'Deemed University' and the officials therein, do not perform any less or any different a public duty than those performed by a University simpliciter and the officials therein. Therefore, for all the above reasons, "Deemed University" under Section 3 of the UGC Act was held to be within the ambit of the term "University" under Section 2(c) (xi) of the P.C. Act.

In determining the answer to the second issue, the Hon'ble Court opined that in order to appreciate the amplitude of the word 'Public Servant', the relevance of the term 'Public Duty' could not be disregarded. The language of Section 2(b) of the PC Act indicates that any duty discharged wherein the State, the public or community at large has any interest is called a public duty.

In the particular facts and circumstances of the case, it was undisputed that imparting education to the public is a welfare activity done for public good wherein the public and the community at large has interest, and therefore the Hon'ble Court noted that, it was quite apparent that the Respondent was the final authority with regard to the grant of admission, collection of fees and donation amount and the charge sheet made serious allegations against him for collection of extra amount over the prescribed fees.

Thus, the Hon'ble Court while amplifying the ambit of the term 'University' under the PC Act to include a 'Deemed University', observed that it is important to determine the relationship of an accused with the authority or institution recognised under Section 2(c) to incriminate and/or hold him liable under the provisions of the P.C. Act. Determining the status of a person as a Public Servant under the P.C. Act may differ from case to case basis the facts and circumstances of the same.

(755)

- (A) Departmental action and prosecution**
- (B) Misconduct — sexual harassment**

***Mr. Kedarnath Mahapatra vs. Union of India & Others Writ Petition
No.3680 of 2018***

Petitioner is working in the cadre of Principal in the respondent Society. At the relevant point of time petitioner was posted in the school run by the society in Hyderabad. Mother of a girl student lodged complaint in the Rachakonda police station on 24.11.2017 alleging that petitioner misbehaved with her daughter on 28.10.2017. Crime No. 820 of 2017 was registered under Section 354 (a) of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012) (for short referred to as POCSO Act). He was arrested and sent to judicial custody and was later released on bail. On 31.10.2017, father of the girl child informed the Chairman of the Society in writing that his daughter was subjected to sexual harassment by the petitioner.

Services of petitioner were placed under suspension by order dated 7.11.2017. On 29.11.2017 disciplinary proceedings were initiated against

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petitioner and enquiry authority was appointed. The petitioner challenged the initiation and continuation of disciplinary proceedings.

The Learned Counsel for the petitioner argued that charges framed in the disciplinary proceedings were directly arising out of the crime No.820 of 2017 and if disciplinary proceedings were conducted before conclusion of trial in criminal case, grave prejudice would be caused to petitioner to defend in criminal case as he would be forced to disclose his defence in the disciplinary proceedings. According to the learned counsel, substance of the charge in the disciplinary proceedings was same to that of the charge leveled in criminal proceedings, the witnesses and documents cited were same and, therefore, disciplinary authority ought to have deferred conducting of disciplinary proceedings till conclusion of trial in the criminal case.

The High Court of Telangana held that from the precedent decisions, it was safe to assume that disciplinary action should not be stopped merely because criminal case is pending and should be concluded as expeditiously as possible. Further held that deferring disciplinary proceedings on the ground that criminal case is pending is an exception to normal rule and to be exercised in a case where the criminal proceedings involve complicated questions of facts and law and no greater harm would be caused to employer by deferring the disciplinary proceedings.

The High Court observed that whenever an allegation of sexual harassment of a girl child was made, it cannot be looked into as a normal straight jacket disciplinary action vis a vis criminal proceedings but should to be viewed more seriously and the writ Court should not interject conducting of disciplinary proceedings.

The High Court observed that the result of criminal prosecution and disciplinary action were different as in criminal case if charge was proved, it would be committing crime against society whereas, in disciplinary proceedings, if charge was proved, it would be loss of trust and confidence of employer and entail imposing one of the enumerated punishments. The Court also held that mere acquittal in criminal case would not absolve an employee from disciplinary action.

The High Court observed that the petitioner did not assert properly as to how prejudice would be caused to him in criminal case if domestic enquiry was conducted and what were the complicated questions of law and facts and also

not stated how his defense in criminal case would affect if school management relies on material in their possession and by examining the witnesses. The High Court held that as seen from the allegations leveled against petitioner, there was no complicated question of law involved and facts were also not complicated as sought to be contended.

The High Court also held that as consistently held by Apex Court and itself, it was not desirable to keep the disciplinary proceedings pending for long time and should be concluded expeditiously, more so, as allegations in Departmental proceedings concern sexual harassment of girl student.

The Court held that it was neither advisable nor desirable to defer holding disciplinary action and dismissed the Writ Petition.

(756)

Termination — of officiating post

*Delhi High Court in Dr.Rajiv Chopra vs. University of Delhi & Others
judgment dated 06.07.2020*

An officiating Government servant can be reverted to his substantive post, and this would not be a punishment or a reduction in rank and that there cannot be a vested right to continue on an officiating appointment.

(757)

- (A) Constitution of India — Arts. 14, 16, 311**
- (B) Public Sector Undertakings — protection of employees**

Employees of Government-owned Corporation are not members of Civil Service and are entitled to protection under Arts. 14 and 16 and not Art. 311 of Constitution.

- (C) Termination — of regular employee**

Termination simpliciter of services of regular employee by giving one month's notice considered by way of punishment and is illegal.

- (D) Termination – of contractual service**

***State of Gujarat vs. Vishnubhai Revabhai Chaudhari
on 8th December, 2020 in Gujarat High Court***

The respondent was appointed as a Assistant Motor Vehicle Inspector Class III on a contractual basis for initial fixed period of five years as per the Government Resolution dated 16.02.2006 and 01.08.2006 respectively, vide appointment order dated 18.06.2013, and resumed his duties on 25.06.2013.

While so, during his employment in O/o. Assistant Regional Transport Officer, Babla (Ahmedabad Rural), he was caught red-handed by ACB on 28-06-2008 by accepting bribe with a private person. Further unaccounted amount of Rs.2,00,000/- was recovered from him.

It is an admitted fact that the period of 5 years of the contractual period of the service of the applicant respondent had come to an end but the authority had not passed any order of appointment in the regular pay-scale. Considering the serious and grave nature of the offence, the contractual services of the writ applicant - respondent herein were put to an end vide order dated 14.05.2019. In other words, the authority - appellant State arrived at the conclusion that the writ applicant - respondent herein having committed misconduct should not be continued in employment. The impugned order of termination talks about the incident described in the FIR and the serious misconduct at the end of the writ applicant. Ultimately, the services of the petitioner was terminated. The writ applicant preferred Departmental Appeal before the Secretary, Port and Transport Department, wherein, the termination order was upheld vide communication dated 15.06.2016.

Subsequently, the respondent filed Writ before Single Judge for quashing and set aside the order dated 14-05-2019 passed by the Commissioner of Transport terminating the service of the respondent.

The Single Bench relied upon the decision in *Rahul Aydanbai Vank* (*supra*) was also confirmed in Letters Patent Appeal No.841 of 2019. In C/LPA/ 823/2020 ORDER the following paragraph, the Letters Patent Bench referred to *Manishbhai Nayanbhai Mod* (*supra*) and other decisions to come to the following conclusion to clearly observe that full-scale formal inquiry was requirement of law before the services could have been terminated and allowed the writ.

In the overall view of the matter, more particularly, having regard to the reasons assigned by the learned Single Judge, the view taken by the learned

Single Judge is in consonance with the law as well as the principles propounded in the above referred decisions, cannot be said to suffer from any infirmity as to warrant any interference and we are in complete agreement with the view taken by the learned Single Judge. Writ appeal dismissed.

(758)

- (A) P.C. Act, 1988 — Sec. 12**
- (B) Bribe-giver — prosecution of**

***Surajmal and Ors. vs. State of M.P. (15.12.2020-MPHC):
MANU/MP/1369/2020***

Such a person is not a bribe giver, but a genuine victim of a dishonest public servant or his agent and needs to be protected. He is to be distinguished from the person who pays the bribe money and approaches the police later, being aggrieved by the non-return of the bribe money as the work for which it was paid was not done. Complainant is aggrieved by non performance on part of public servant and is further aggrieved by non return of bribe money by public servant or his agent, police shall register an offence under section 12 of P.C. Act against such Complainant / Bribe Giver and proceed against him in accordance with law.

It is also relevant to mention here that the amendment to the P.C. Act in the year 2018, has repealed section 24 of the P.C. Act which accorded protection to bribe givers and so, the Complainant in this case was liable to be proceeded against for having committed an offence u/s. 12 of the P.C. Act, as the offence was registered in the year 2019 by the Complainant, after sec. 24 of the P.C. Act was repealed. It is time that the bribe giver is no longer given any protection but is proceeded against in such cases, more so the self-declared ones.

(759)

- (A) Misconduct — misappropriation**
- (B) Principles of natural justice – reasonable opportunity**

***Dy. General Manager & Others vs. Ajaikumar Srivastava Civil Appeal,
SLP No.32067-32068/2018, dated 05.01.2021***

Charge sheet dated 11th April, 1996 was served upon Sri Ajaikumar Srivastava, Clerk, Mumfordganj branch, Allahabad detailing seven charges of

misappropriation of funds which he had committed in discharge of his duties as an employee of the Bank.

After receiving his reply dated 08th May, 1996 denying all the charges, enquiry officer was appointed by the competent authority. The enquiry officer furnished his report of enquiry dated 22nd May, 1999 to the disciplinary authority holding that Charge No.1 was not proved, at the same time, held the Charge Nos. 2 to 7 proved against him.

The Disciplinary Authority concurred with the findings of Enquiry Officer on Charge Nos.2-7, and while assigning his reasons of disagreement held the Charge No.1 to be proved and served the copy of enquiry report dated 29th June, 1999 along with his finding of disagreement with the *prima facie* opinion based on the record of enquiry to the respondent delinquent calling for his written explanation. After obtaining the delinquent's written explanation, he was dismissed from service vide order dated 24th July, 1999. The delinquent's appeal was also rejected vide order dated 15th November, 1999.

The respondent filed appeal in High Court. The learned Single Judge of the High Court although has passed a detailed judgment but the focus was throughout on charge no.1 which was not found to be proved by the enquiry officer in his report but the disciplinary authority recorded its note of disagreement which according to the learned Single Judge of the High Court has caused great prejudice which is in violation of the principles of natural justice and the view expressed by the learned Single Judge came to be affirmed by the Division Bench of the High Court. Hence the appeal.

The Supreme Court observed that the submission which was made in regard to the note of disagreement not being served upon the respondent delinquent as to Charge no. 1 is concerned, has substance and held that the disciplinary authority on receiving the report of enquiry, if was not in agreement with the finding recorded by the enquiry officer, was under an obligation to record its reasons of disagreement and call upon the delinquent for his explanation in the first place before recording his finding of guilt and indisputedly the procedure as prescribed by law was not followed and that has caused prejudice to the respondent and indeed it was in violation of the principles of natural justice.

The Supreme Court further held that if the order of dismissal was based on the findings of charge no. 1 alone, it would have been possible for the Court to declare the order of dismissal illegal but on the finding of guilt being recorded

by the Enquiry Officer in his report in reference to charges nos.2"7 and confirmed by the disciplinary/appellate authority was not liable to be interfered and those findings established the guilt of grave delinquency which, in our view, was an apparent error being committed by the High Court while interfering with the order of penalty of dismissal inflicted upon the respondent employee.

The Court emphasized that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. The Court held that it is for this additional reason, it formed the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999 and set aside the order of High Court.

(760)

Evidence — tape-recorded

Central Bureau of Investigation ... vs. Hemant on 7 January, 2021 in Bombay High Court

The appellant - Central Bureau of Investigation (CBI) is seeking leave to prefer appeal in terms of Section 378[3] of the Code of Criminal Procedure for challenging the order of acquittal passed by the Special Judge in Special CBI Case No. 1/2015. The respondent / accused was charged for the offence punishable under Sections 7, 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988. After full-fledged trial, the Special Court held that the prosecution has failed to establish the charged offences which resulted into acquittal.

Learned Counsel appearing for CBI vehemently criticized the judgment of acquittal by making elaborate submissions. She took me through certain portion of the evidence as well as copy of the transcription of the recorded conversation to impress that there was clear evidence of demand of bribe amount. It is pointed out that the tainted currency notes were seized from the accused in presence of panch witnesses and trap party. She would submit that the evidence of complainant was well corroborated by the complaint and other evidence. The demand was verified through recorded conversation and therefore, the trial Court utterly failed in appreciating the evidence.

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The Learned Counsel for respondent would submit that the tape-recorded conversation nowhere suggest the clear demand of bribe amount. The complainant had not applied for issuance of Weaver Identity Card; however, the transcription was relating to design and about craft mela. It is his submission that the trial Court has properly analysed the evidence and the view expressed by the trial Court cannot be said to be perverse.

The accused has demanded bribe of Rs.8000/- to the complainant for issuance of Weavers Identity Card. On the basis of said demand, the complainant approached to the office of CBI on 22.07.2014 and filed report. The demand was got verified through tape recorded evidence. The officer has led trap in which the accused was found accepting bribe namely tainted currency notes of Rs.4000/- . The record indicates that the prosecution has examined in all 12 witnesses to establish the guilt.

The Hon'ble Judge have gone through the transcript and telephonic/ recorded conversation. It cannot be said that there was no element to indict the demand of bribe amount.

The complainants' evidence is specific about demand of bribe and consequential acceptance of tainted currency notes. In the circumstances, it cannot be said that there is no substance to proceed further by branding the prosecution case as totally meritless. In that view of the matter, the entire evidence requires re-appreciation. Hence, leave granted.

(761)

Tender of pardon

State vs. Shri. Vijayan V.P on 18 February, 2021 in Kerala High Court

This is an application for sanction for prosecution filed under the second proviso to Section 308(1) of the Code of Criminal Procedure, 1973.

The respondents / Accused Nos 3, 6 and 7 registered by CBI, Kerala u/ s 13 (1)(d) r/w 13(2) PC Act 1988 and 120B of IPC. The Chief Judicial Magistrate, Ernakulam had granted pardon to the respondents under Section 306 of the Code.

During trial, the respondents were examined as PW1, PW2 and PW13. They did not support the prosecution case during the trial. They were declared hostile to the prosecution. They were cross-examined by the Public Prosecutor with the permission of the court. The case ended in the acquittal.

The Special Public Prosecutor, CBI has issued certificate as contemplated under Section 308(1) of the Code in respect of the respondents. This application is filed by the State seeking sanction for trying the respondents for committing the offence of giving false evidence.

The Standing Counsel for CBI contended that the respondents violated the terms and conditions of the pardon and deliberately did not make full and true disclosure of whole circumstances of the case within their knowledge relating to the offence and other persons during trial. The Counsel for respondents contended that they were not examined under Section 306(4)(a) of the Code and therefore, they are not liable to be tried for committing the offence of giving false evidence.

When pardon is granted by the trial court under Section 307 of the Code, examination of the approver under Section 306(4) of the Code is not necessary (See Santosh Kumar v. State of Maharashtra : (2009) 6 SCC 498 and Narayan Chetanram Choudhary v. State of Maharashtra : AIR 2000 SC 3352).

The Hon'ble High Court held that in many cases, where pardon is granted under Section 307 of the Code, the approver will be examined only during the trial of the case and there will not be an examination of him under Section 306(4) of the Code. This gives an indication that non-examination of the approver under Section 306(4) of the Code does not render the order granting him pardon illegal or void and that it does not affect his status as an approver.

The Hon'ble Court held that the discussion above leads to the following conclusions. Examination under sub-section (4) of Section 306 of the Code of a person who has been granted pardon is only a matter of procedure. It is not a condition of granting pardon to an accomplice. Non-examination of an approver under subsection (4) of Section 306 of the Code does not affect the validity of the order granting pardon.

The first respondent was a person working as contingent labourer in the Calicut Airport. The second respondent was a taxi driver in the airport. The third respondent was a person who was conducting business in exchange of foreign currency near the Calicut Airport. According to the prosecution case, it was through the respondents that the money collected as bribe from the passengers was distributed among the customs officers.

Though no statement under Section 306(4) of the Code of the respondents was recorded, before granting pardon to them, their confession

statements had been recorded by the Judicial First Class Magistrate concerned under Section 164 of the Code.

The respondents 1 to 3 were examined as PW13, PW2 and PW1 respectively during the trial of the case. Then, the Public Prosecutor cross-examined them with the permission of the court and they were confronted with the statements given by them to the investigating officer and also with the confession statement made by them before the Judicial First Class Magistrate under Section 164 of the Code. With regard to the confession statement, during the trial of the case, each of the respondents admitted giving such statement before the Magistrate but deposed that such statement was given under the threat of the CBI officers. In effect, they retracted the confession made by them before the Judicial First Class Magistrate under Section 164 of the Code.

A confession statement under Section 164 of the Code is not a statement made on oath. Taking statement on oath of an accused is prohibited (See Babubhai v. State of Gujarat : AIR 2007 SC 420).

A statement made by an approver, in order to come within the purview of Section 308(2) of the Code, must be a statement made by him after granting pardon and not before (See Miral v. Emperor : AIR 1943 Sind 166).

In the instant case, in the absence of any previous statement on oath made by the respondents, it would be difficult to find that the statement made by them during the trial of the case is false. True, giving false evidence can be proved in any other manner than with reference to a statement on oath. But, it would be a difficult task.

Moreover, the CBI has not produced copy of the judgment of the trial court acquitting the accused in the case.

In the aforesaid circumstances, I find that it not expedient to grant sanction for prosecution of the respondents for committing the offence of giving false evidence. In the absence of any previous statement on oath made by the respondents before the trial of the case, it would be very difficult to prove that they committed perjury. The chances of a conviction against the respondents are very bleak and trial of a case against them for committing the offence of giving false evidence would be a wastage of precious judicial time. In these circumstances, the petition is liable to be dismissed. Accordingly, the petition was dismissed by the High Court.

(762)**Departmental action and acquittal*****Dr. S.V. Rajaliongha Rajah vs. The Secretary to the Government
(Madras High Court)***

The appellant / Dr. S.V. Rajaliongha Rajah is aggrieved by the order of dismissal passed in the writ petition for calling the records pertaining to the proceedings and consequential enquiry on the file of second respondent and to quash the same and to direct the respondents 1 & 2 to reinstate and permit him to retire from service with all back wages and all service retirement benefits etc., in view of acquittal in criminal case, the departmental disciplinary proceedings cannot be sustained.

The brief facts of the case are that the appellant was charged and after due trial for the offences U/Ss 7 & 13 (2) r/w 13 (1) (d) of PC Act, 1988 and the same was ended in acquittal. The appellant served with a charge memo. The contention of appellant that the department disciplinary proceedings initiated on the same set of allegations are impermissible. The Hon'ble High Court (single judge) in the writ petition gave clear finding that there is no bar for initiation of department disciplinary proceedings, even if an employee is acquitted from the criminal charges. Aggrieved on which the appellant filed the writ appeal.

The Hon'ble High Court of Madras discussed the facts and circumstances of the case and the judgments including the Deputy Superintendent of Police, Sriperumbudur Sub-Division I/C Chengalpattu Sub-Division Vs. W.D. Sekaran and others and held that the standard of proof required to convict a person on criminal law is distinct and different from disciplinary proceedings and dismissed the appeal.

(763)**Misconduct — political activity**

No Government Employee can take part in political activities.

***State of Tripura vs. Smt Lipika Paul
in WA No.20/2020, dated 26.02.2021 Tripura HC***

In this case, the Hon'ble Court observed that the prohibition imposed upon the government/corporation employees from participating in the political activities itself is only a reasonable restriction in the interest of maintaining

discipline among the employees and for proper discharge of their duties and the same cannot be stated to be unreasonable so as to hold the same ultra vires the Constitution. It neither offends Article 14 nor Article 19 of the Constitution.

The Hon'ble Court followed the judgment of the Hon'ble Supreme Court of India in P.Balakotaiah vs. Union of India & others 1958 AIR 232 SC which observed that " Before entering into the service since there is no restriction on his fundamental rights, he could have very actively involved himself in politics. However, having chosen to become a servant of the Government/corporation, he cannot continue such political activities as it would not be in the interest of the discipline or proper discharge or their duties attached to the service. These restrictions are, thus, absolutely essential for proper and efficient administration of the corporation".

(764)

Misconduct — bigamy

State of Rajasthan vs. Pankaj Chowdary judgment dated 19.03.2021 of Delhi HC

On March 19, 2021, up-holding a Central Administrative Tribunal (CAT) decision to set aside the dismissal of Pankaj Choudhary, a Rajasthan cadre IPS officer of the 2009-batch, the Delhi High Court ruled that an act of bigamy cannot always lead to removal of a government servant from service. It said that many family affairs which were earlier a matter of public debate are now confined to the private domain.

The concept, definition and standards of morality have also been changing with changes in appearance, dressing, language, etc. The behaviour which shocked 50 years ago is now considered as normal and or at worst an aberration, a division bench of Justices Rajiv Sahai Endlaw and Amit Bansal said in its ruling. The Court also said that ethical standards have changed since the time the All India Services (Conduct) Rules, 1968 were framed more than 50 years ago. What may have been unethical in 1968 is not necessarily unethical today and at least, not necessarily as severely unethical as it was in 1968, it said.

In 2016, a memo was served under the Conduct Rules on the IPS officer for having started living with a woman, and having a son with her despite a subsisting marriage and without any legal separation from his wife. He was dismissed from service in February 2019 by the Disciplinary Authority in

consultation with the Union Public Service Commission. He was dismissed on grounds of “grave personnel misconduct” because he had “behaved so irresponsibly and in an ungentlemanly like fashion”.

However, in December 2020, CAT revoked the order of the home ministry which had terminated the services of the officer. The High Court in its ruling said that undoubtedly, the act committed by the officer is punishable under Section 494 IPC (the provision prohibiting a person from marrying another person during the lifetime of a husband or wife). However, it added, the same is only on the complaint of some person aggrieved by the offence, which in this case would have been his wife. It is nowhere on record that there was any such complaint.

The ethical standard of an act of bigamy has to be viewed in this light and depending on the facts and circumstances of each case, the Court said. It also said that the matrimonial relationship between the officer and his first wife was strained prior to the date of his joining the IPS and they were staying separately, although a daughter was born to them in 2008.

The root cause of matrimonial disharmony between the officer and his wife was the caste to which the officer belonged and not his extramarital affair or his selection in the IPS, as was implied in the charge. It is thus not as if the officer, on making it to the elite IPS, severed his matrimonial links.

The Court also said it was not that after living separately from his wife, he immediately got into a relationship with another woman. He did so after applying for divorce. It also noted that he gave the other woman the stature of a wife and his name to the son begotten from this relationship. Though living with another woman while having a subsisting marriage may have been unacceptable till about 20 years back, in today’s time, it is viewed differently, the Court observed.

The rulings of CAT and the Delhi High Court have to be comprehended against the backdrop of the judgment of the Supreme Court in Joseph Shine vs Union of India (2018). In October 2017, Joseph Shine, a non-resident Keralite, filed a PIL under Article 32 of the Constitution. The petition challenged the constitutionality of the offence of adultery under Section 497 of the IPC read with Section 198(2) of the CrPC. Section 497 IPC criminalised adultery by imposing culpability on a man who cohabits with another person’s wife. Adultery was punishable with a maximum imprisonment of five years. Women, including consenting parties, were exempted from prosecution. Further, a married woman could not bring forth a complaint under Section 497 IPC when her husband got into a relationship with an unmarried woman.

It was argued that Section 497 was unconstitutional as the very basis for criminalising adultery was the assumption that a woman is considered as the property of the husband and cannot have relations outside marriage. The same restrictions, however, did not apply in case of the husband. Section 497 violates the right to privacy as well as the liberty of women by discriminating against married women and perpetrating gender stereotypes.

On September 27, 2018, a five-judge bench of the Supreme Court struck down Section 497 of the IPC as being violative of Articles 14, 15 and 21 of the Constitution. The Court held that constitutional guarantee in Article 15 (3) cannot be employed in a manner that entrenches paternalistic notions of “protection”. Such a view only serves to place women in a cage. Discrimination which is grounded in paternalistic and patriarchal notions cannot claim the protection of Article 15 (3) of the Constitution. The Court opined that the principle on which Section 497 rests is preservation of the sexual exclusivity of a married woman for the benefit of her husband, who is regarded as the owner of her sexuality and hence is manifestly arbitrary. It is a denial of substantive equality in so far as it reinforces the notion that women are unequal partners in a marriage.

Rule 19 of the Conduct Rules imposes restriction regarding marriage, stating that no member of the Service shall enter into or contract a marriage with a person having a spouse living; and no member of the Service having a spouse living, shall enter into or contract a marriage with any person. The government may, however, permit a member of the Service to enter into or contract any such marriage if it is satisfied that such a marriage is permissible under the personal law applicable to such member of the Service and the other party to the marriage or there are other grounds for so doing.

In the Indian armed forces also extramarital relations are a crime and adultery is described using the military euphemism “stealing the affection of a brother officer’s wife”. However, in view of the Supreme Court decision in the case of Joseph Shine, experts are of the opinion that the use of the term will also not be proper since the Supreme Court, in no uncertain terms, has stated that women cannot be treated as chattel, personal possession or property. Just like the outside society, the armed forces are also bound to change with the times and will have to yield to the judgment as far as criminality of adultery is concerned.

(765)

(A) Cr.P.C. — Sec. 154

(B) Disproportionate assets — opportunity to accused before registration

An enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income.

Charansingh vs. State of Maharashtra and Ors. AIR 2021 SC 1620

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.11.2020 passed by the High Court of Judicature at Bombay, by which the High Court has dismissed the said writ petition challenging notice dated 04.03.2020 issued by the Police Inspector, Anti-Corruption Bureau, Nagpur, the appellant has preferred the present appeal.

A complaint was received against the appellant in the office of the Director General, Anti-corruption Bureau, Maharashtra State, Mumbai on 7.2.2018, wherein various allegations have been made against the appellant and his brothers with regard to accumulating the assets disproportionate to his known sources of income.

In connection with the said complaint, Police Inspector, Anti-corruption Bureau, Nagpur had issued a notice to the appellant asking him to provide documents relating to his property, assets, bank statements, income tax returns and asking the appellant to give statement to the police.

The learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that notice dated 04.03.2020 issued by the Anti-Corruption Bureau has no statutory force.

The learned Senior Advocate has submitted that the very nature of the enquiry in respect of offence under Section 13(e) of the PC Act presupposes that it is the person against whom the allegations are made has to explain the details of his property qua his known sources of income and on the basis of the evidence/material collected during the course of ‘open enquiry’, it will be considered whether a cognizable offence is made out or not.

DECISIONS (766)

The Supreme Court has observed that in the case of Lalita Kumari, it was observed that while holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR and has given the categories of cases in which preliminary enquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

The Supreme Court held that if during the enquiry at pre-registration of FIR stage, if the appellant satisfies the ACB on the materials produced relating to his known sources of income and the assets, in that case, no FIR will be lodged and if he is not able to clarify his assets, vis-à-vis, known sources of income, then the FIR will be lodged and therefore, such an enquiry would be to safeguard his interest also which may avoid further harassment to him.

The Supreme Court dismissed the appeal.

(766)

Departmental action — delay in

M.M. Subramanian vs the Principal Secretary on 29 April, 2021 in Madras High Court

This Writ Petition has been filed seeking to quash the impugned board resolution passed by the first respondent, vide his proceedings in Ref. No. 215/SECY/TNSCT(VPM)/2019, dated 18.12.2019 and the impugned charge memo issued by the second respondent, vide his proceedings in Ka.Ku.No. 104/7104/T7/TNSTC(V)/2019-1, dated 27.12.2019 and consequently direct the respondents to disburse the retirement benefits to the petitioner.

The brief facts of the case are that the petitioner and three other officers working in transport department were charged for the offences U/S. 7 & 13 (1) (d) r/w 13 (2) of PC Act and 120-B of IPC. The case ended in the acquittal against all the four including this petitioner. Apart from the criminal proceedings departmental enquiry was also conducted against the petitioner and two others and final orders were passed against the said two others in the department proceedings, but the said enquiry was not closed against this petitioner in spite of getting acquitted in the criminal case. The petitioner made a requisition for disposal of the departmental enquiry and for his retirement benefits. However after eight years of the registration of the case and four years after acquittal of the criminal proceedings the respondent again issued charge memo (second charge memo after eight years). The same was challenged by this petitioner on the ground that it is gross violation of Article 14 of Constitution of the India and the existing provisions and fundamental rules.

The Hon'ble Court gave finding that the charge memo issued against the petitioner with an abnormal delay of eight years from the date of the case and four years from the date of its acquittal and initiation of disciplinary proceedings in a piecemeal manner against this petitioner, vitiates the entire disciplinary proceedings now initiated and it is malice and that the said charge memo is set aside, by allowing the writ petition filed by the petitioner.

(767)

- (A) Public Servant — M.P. / MLA**
- (B) Sanction of prosecution — for MP / MLA**

Sanction is not necessary for prosecution of Member of Parliament.

State of Kerala vs. K.Ajith and other 2021 Crl.L.J 4058

Destruction of public property – by MLAs – Sanction of Speaker – MLAs cannot be removed by sanction of Government as they are elected representatives of people – plea that prosecution against MLAs is vitiated for want of sanction of speaker – rejected.

(768)

Constitution of India — Art. 311(2) second proviso cl.(b)

Imposing major penalties applying the exception of Article 311(2)(b) of the Constitution of India is always a ground of judicial review and it can be set aside, if the Court comes to the conclusion that the reasons are not sufficient for dispensing with the regular departmental enquiry.

Amit Chaurasia vs. the State of M.P. & Another in Writ Petition No.3658/2021 of the High Court of Madhya Pradesh Principal Seat at Jabalpur

By the instant petition filed under Article 226 of the Constitution of India, the petitioner is questioning the legality, validity and propriety of the order dated 02.02.2021 (Annexure-P/2) whereby as per the provisions of Article 311(2) (b) of the Constitution of India, he has been dismissed from service and also challenging the order 06.02.2021 (Annexure-P/3) whereby he has been directed to vacate the Government Quarter as allotment made in his favour was cancelled in pursuance to his dismissal from service.

The facts of the case in nutshell are that the petitioner was initially appointed to the post of Constable and was posted at Police Station Kotwali, District Sagar. Thereafter, on a complaint made by a lady constable namely Sonali Nayak, an FIR vide Crime No.07/2021 was registered against the petitioner in Mahila Police Station, District Sagar on 21.01.2021 (Annexure-P/4) for the offence punishable under 3 Writ Petition No.3658/2021 Sections 452, 354, 354-Gh, 376 and 506 of the Indian Penal Code and pursuant thereto, the petitioner was arrested and sent to jail. In view of the said complaint, the petitioner was placed under suspension and thereafter, respondent No.2/ Superintendent of Police exercising the powers provided under Article 311(2)(b) of the Constitution of India, dismissed the petitioner from service vide order dated 02.02.2021 (Annexure-P/2) observing therein that the conduct of the petitioner has stigmatized the image of the Police Department. It is also observed by respondent No.2 that the manner in which the petitioner committed the crime, there was no reason for conducting any departmental enquiry and call the prosecutrix as a witness in the enquiry as that would adversely affect her dignity and image in the society. Consequently, vide order dated 06.02.2021 (Annexure-P/3), the allotment of Government Quarter No.C-05 made in the petitioner's favour was cancelled and directing him to vacate the said premise.

This Court has no hesitation to say that it is not a case in which the Disciplinary Authority can inflict the punishment of dismissal that too without conducting a regular departmental enquiry. The reason assigned in the impugned order for not conducting a regular departmental enquiry and for applying the provisions of Article 311(2)(b) of the Constitution of India is not found satisfactory for the reason that if at all that lady police constable can lodge the FIR and in relation to that would appear before the Court for getting her statement recorded, then that would not cause any harm to her dignity and respect but if she could have appeared before the Enquiry Officer for recording her statement, then that

could damage her dignity and respect, cannot be considered to be a proper reason for not conducting the regular departmental enquiry and as such, the impugned order of dismissal dated 02.02.2021 (Annexure-P/2) is not sustainable in the eyes of law and is hereby set aside. However, a liberty is granted to the respondents that if they so desire, may conduct a regular departmental enquiry as has been provided under the provisions of the Rules, 1966 for imposing the penalty after giving an opportunity of hearing to the petitioner.

(769)

Preliminary enquiry and formal inquiry

**C.B.I. and Anr. vs. Thommandru Hannah Vijayalakshmi and Ors.
(SLP (crl) 1597/2021)**

Criminal - Quashing of FIR - Possession of Disproportionate Assets - Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act 1988 and Section 109 of the Indian Penal Code 1860 - High Court quashed the FIR finding allegations leveled sustainable - Hence, the present appeal - Whether the CBI is mandatorily required to conduct a Preliminary Enquiry before the registration of an FIR in every case involving claims of alleged corruption against public servants? - Whether the judgment of the High Court to quash the FIR can be sustained in the present case?

Held, while allowing the Appeal:

An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted.

Since an Accused public servant does not have a right to be afforded a chance to explain the alleged Disproportionate Assets to the Investigating Officer before the filing of a charge sheet, a similar right cannot be granted to the Accused before the filing of an FIR by making a Preliminary Enquiry mandatory.

(770)

Misappropriation (penal)

**Mayukumar Narsinghbhai Damor vs. State of Gujarat on 15 November,
2021 Gujarat High Court**

By way of the present application under Section 439 of the Code of Criminal Procedure, 1973, applicant has prayed to release him on regular bail in

connection with the FIR registered being I-C.R No.11821008200746 of 2020 before Dahod Rural Police Station, District: Dahod for the offence punishable under Sections 406, 420, r/w. 120B of IPC and Section 66(d) of I.T.Act as well as Section Section 13(1)(a) and 13(2) of Prevention of Corruption Act, 1988.

Having gone through the contents of the FIR and subimission made by Learned Advocate appearing for the applicant as well as learned APP, appearing for the state and document produced on the record, affidavit filed by the investigating officer before this Court it reveals that initially the offence was registered under sections 406, 420 ansd 120B of IPC as well as under section 66(d) of IT Act. The complainant lodged the complaint against unknown persons. As per prosecution case, the accused persons in connivance with each other, had created bogus and forged application of agriculturist and obtained financial benefit in terms of RS. 2000/- of each applicant, as per the scheme of the central government namely PRADHANMANTRI KISAN SAMMAN NIDHI YOJNA.

Subsequently section 13 (1)(a), 13 (2) of Prevention of Corruption Act,1988, were added by the prosecution. It appears that the complainant is the government official working with the District Pnachayat as Agriculture Officer. As per the complaint total 35,436 applications were examined and received from the different Talukas of the Dahod District through the Gram Sevak. After examination of the above said application, only 2719 farmers were found as correct beneficiary of the scheme and 32,717 applications were found bogus. Out of them 1191 persons were paid Rs. 2000/- each which comes to Rs. 23,82,000/- and they were wrongly benefited persons. However they were not entitled to claim the amount under the said scheme. As per the chargesheet filed by the investigation agency charged under sections 406, 420 and 120B of IPC as well as under section 66(d) of IT Act is levelled. Further it appears from the chargesheet papers that the applicant was working as Districrt Level Entrepreneur DLE - District Panchayat and because of his position he had wrongfully got the digital user ID, by which he directly submit an application, by passing one stage of verification at the Taluka level. As per the affidavit filed by the Investigating officer, during the course of investigation it was revealed that by misusing the 3 master digital user ID applicant had created bogus 78 user ID and the same were given to the other accused persons by which various applications were submitted, approved and ultimately those persons have successful in getting the financial gain under the scheme of PRADHANMANTRI KISAN SAMMAN NIDHI YOJNA. It appears that all such bogus ID's had been utilised and created by using the master key by the applicant. The list of bogus user ID revealed from NIC is enclosed at Annexure R1. In the chargesheet, applicant is shown as

accused no. 1. Primafacie, it appears that the applicant has played master role in the entire offence, by using user ID, submitting and providing to the other accused persons from which bogus applications were processed. As per the report of In-charge Deputy Police Comissioner, Dahod dated 27-09-2021, total 17,358 persons had applied for getting any benefit of the scheme through online. However, they were not entitle to claim for getting any benefit under the scheme and 16,553 persons got amount of Rs. 2,000/- deposited in their account by way of three installments. Total amount of missappropriation comes to Rs. 9,06,24,000/. As per the report, present applicant has received an amount of Rs. 7,70,000/- from the resepctive applicants with the connivance of other accused persons. The bona fide shown by the present applicant by way of depositing an amount of Rs. 7,70,000/- before the District and Sessions court Dahod, cannot be considered by this court. Considering the involvement of the present applicant in the serious offend

e of cheating and criminal breach of trust, the basic requirement to bring home the accusations under section of 405 of the code i.e. entrustment and dishonest intention actuated by the applicant and misappropriated it or converted it to his own use to the detriment of the persons who entrusted are established. Primafacie it is proved at this stage the dishonest intentions from the very beginning of the said offence. Considering the involvement in the offence and active participation and role played by him in commission of the offence, this court is of the considered view that the prayer made by the present applicant cannot be considered as he is shown as accused no. 1 in the charge-sheet. Hence present application is ordered to be dismissed. Rule is discharged.

(771)

- (A) P.C. Act, 1988 — Secs. 7, 13(1)(d)
- (B) Trap – held proved, where complainant died before trial

CRIMINAL APPEAL NO. 1669 OF 2009 Neeraj Dutta vs State (Govt. of N.C.T. of Delhi) on 15 December, 2022

The present reference, concerning the Prevention of Corruption Act, 1988, arises out of the order dated 28.02.2019, passed by a two-judge bench of Supreme Court itself, wherein they expressed certain doubts as to the validity of the position of law as expounded in the case of P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152. In that case, the Court held that, in the absence of primary evidence

of the complainant due to his death, inferential deductions in order to sustain a conviction under Sections 7 and 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 was impermissible in law.

However, the Court, vide order dated 28.02.2019, highlighted a number of judgments, such as Kishan Chand Mangal vs. State of Rajasthan, (1982) 3 SCC 466; Hazari Lal vs. State (Delhi Administration), (1980) 2 SCC 390; and M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691, wherein this Court, despite the absence of primary evidence of the complainant, sustained the conviction of the accused by relying on other evidence, and raising a presumption under the statute.

Noting the divergence in the treatment of the evidentiary requirement for proving the offence under Sections 7 and 13(1) (d) read with Section 13(2), Prevention of Corruption Act, 1988, the Court referred the following question of a law for determination by a Constitution bench headed by Chief Justice:

"The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution."

The Constitution Bench of Supreme Court of India after referring to a number of judgments on the subject finally held that in the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.