

(1991) 06 BOM CK 0007

In the Bombay High Court

Case No : Appeal No. 750 of 1987 in Writ Petition No. 655 of 1982

Nabisha Hussein Shaikh

APPELLANT

Vs

K.K. Uppal and Others

RESPONDENT

Date of Decision : 24-06-1991

Acts Referred:

Bombay Port Trust Employees (Conduct) Regulations, 1975 — Regulation 3
Prevention of Corruption Act, 1947 — Section 2, 8

Citation : (1992) 1 BomCR 197

Hon'ble Judges : S.P. Bharucha, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : J.P. Cama and H.M. Havnur, for the Appellant; Dilip Dwarkadas, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—This is an appeal preferred by the Original petitioner in Writ Petition No. 655 of 1982 against the judgment and order of the learned Single Judge dated 24-6-1986 dismissing the writ petition. The appellant at the relevant time was working as Clerk, Grade I, with the Docks Department of the Bombay Port Trust, and had challenged the orders whereby he had been dismissed from service by the Chairman of the B.P.T. The appellant had been served with a charge-sheet dated 14-5-1977 alleging therein that he was in possession of assets worth Rs. 90,054/- approximately, which were disproportionate to his known source of income and that, consequently, he had failed to maintain absolute integrity in relation to his duties as a B.P.T. employee and thereby violated the general principles regarding the maintenance of absolute integrity and devotion to duty in the discharge of his duties equivalent to Rule 3 of the B.P.T. Employees (conduct) Regulations, 1976. Pursuant to the service of this charge-sheet, the B.P.T. had instituted a disciplinary enquiry against the appellant. The Enquiry Officer held that the charges levelled against him stood proved. Briefly stated, the charge-sheet alleged that between the period 1-1-1953 and 31-3-1976, the appellant had committed gross misconduct in so

far as he has been found in possession of assets worth Rs. 90,055/- approximately, and that these assets were disproportionate to his known sources of income and furthermore, that the appellant could not satisfactorily account for these assets. The record indicates that prior to the service of the charge-sheet, an enquiry was conducted by the Central Bureau of Investigation (CBI) into these very allegations and that the C.B.I. submitted a report to the B.P.T. to the effect that the C.B.I. did not propose to prosecute the appellant for offences under the Prevention of Corruption Act as there was no sufficient evidence on record for this purpose. On receipt of this report from the C.B.I., without carrying out any further investigations, the B.P.T. served a charge-sheet on the appellant as indicated above. It is of some relevance to record that the admitted position is that the B.P.T. did not conduct any additional or separate enquiries or investigations and that the solitary basis for the charge-sheet served on the appellant was the report received from the C.B.I. We are rather surprised by these facts and, therefore, made doubly sure at the hearing of the appeal that the B.P.T. has proceeded to commence disciplinary proceedings against the appellant, in the face of the C.B.I. report and without any other material in its possession.

2. The Enquiry Officer, at the conclusion of the enquiry, submitted his report dated 29-11-1979. The appellant was thereafter asked to show cause as to why he should not be compulsorily retired from service on the ground that the charges levelled against him had been established and, furthermore, as to why the subsistence allowance already paid to him during the period of his suspension be varied. The Docks Manager, who is the Disciplinary Authority, by order dated 3-1-1981, directed that the appellant be compulsorily retired from service with immediate effect and that his period of suspension be treated as such. Thereafter the Chairman, by a notice dated 9-9-1981, asked the appellant to show cause having regard to the facts and circumstances of the case as to why the order of the Disciplinary Authority should not be reviewed and why the appellant should not be inflicted with the penalty of dismissal from service. The appellant sent a reply to the Chairman dated 27-9-1981 in which he referred to a writ petition filed by him before the High Court. He requested the Chairman to wait until the decision of that writ petition. The Chairman thereafter proceeded to pass an order dated 21-10-1981 dismissing the appellant from service, which order was forwarded to the appellant by the Docks Manager along with his memorandum dated 13-10-1981. The Chairman has recorded the fact that the legal advisor of the B.P.T. has pointed out to the Chairman that no writ petition had, in fact, been filed in the High Court. The Chairman further stated that the appellant had not shown any valid cause against the proposed action to review the penalty of compulsory retirement and also recorded that since the charge proved was a grave one, the penalty of compulsory retirement was raised to an order of dismissal from service. It is against these orders that the appellant filed the original writ petition. As indicated by us earlier, the learned Single Judge, after hearing learned Counsel appearing on behalf of the petitioner and the

respondents, upheld the orders in question. The appellant thereafter preferred the present appeal principally on the ground that the orders in question have resulted in miscarriage of justice and that, consequently, they were liable to be quashed.

3. Mr. Cama, learned Counsel appearing on behalf of the appellant, has, in the first instance, attacked the validity of the charge-sheet on the ground that the appellant was charged with misconduct alleging that the acquisition by him of assets disproportionate to his known sources of income constituted contravention of "the equivalent to" Regulation 3 of the B.P.T. Employees (Conduct) Regulations, 1976. Mr. Cama submitted that the very basis of the charge-sheet is misconceived in so far as admittedly Regulation 3 of the Regulations, on the basis of which the appellant has been charge-sheeted, came into existence only on 19-6-1976. This position is not disputed. Mr. Cama submits that in so far as the period of misconduct that is alleged in the charge-sheet spans the period 1-1-1953 and 31-3-1976, admittedly, the entire period is prior to the coming into operation of the Conduct Regulations in question. Mr. Cama submits that it is well-settled law that the Regulations in question cannot have retrospective application and that they can only apply prospectively. He further submits that as far as the present proceedings are concerned that it is wholly impermissible to levy a charge under a regulation and allege misconduct under a rule that was not in existence at the time when the misconduct is alleged. In support of this proposition. Mr. Cama has placed strong reliance on the decision of the Supreme Court in the case of *Pyare Lal Sharma Vs. Managing Director and Others*, . At paragraph (21) of that judgment, the Supreme Court has unequivocally observed that it is a basic principle of natural justice that no one can be penalised on the ground of conduct which was not penal on the day it was committed. Since in fact the relevant provision was not in force at the time when the misconduct was alleged, the appellant is entitled to the protection of clause (1) of Article 20 of the Constitution of India and it was not permissible to conclude that he had committed misconduct under the Regulations in question.

4. Mr. Cama has further submitted with regard to this argument that in a proceeding of the present type the charge that has been levelled against the appellant ought to have been proved in the manner in which it was framed. Mr. Cama further submitted that in so far as the appellant was required to meet the charge in question, it was not open to the respondents to level a charge against him and thereafter to have resort to some analogous or parallel provisions of law. To this extent, Mr. Cama has assailed, with respect, the approach of the learned Single Judge in upholding the arguments canvassed by the respondents that under the Central Civil Services Rules, there existed an identical or parallel provision requiring an employee of a Public Sector organization to maintain absolute integrity with regard to his duties at all times was sufficient for the purpose of conveying to the appellant the knowledge as to what exactly was the charge levelled against him and what accusations he has to meet. Mr. Cama, in passing, sought to place reliance on a decision of the Supreme Court in the case

of A.L. Kalra v. P & E Corpn. of India Ltd. 1984 Lab.I.C. 961. At paragraph (22) of that judgment, the Supreme Court had observed:---

"Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct,"

The Supreme Court further went on to observe :

"Where one of the rules of a public sector company relating to conduct and discipline of its employees provided for maintaining "absolute integrity" and to "do nothing which is unbecoming of a public servant", it must be held that the rule is vague and of a general nature. What is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Failure to keep to 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 misconduct, specifically enumerated in the conduct and discipline rules".

To summarize, Mr. Cama has essentially submitted that having regard to the charge-sheet served on the present appellant where it can be demonstrated that Regulation (3) was not in existence on the date of the service of the charge-sheet and where, according to Mr. Cama, the charges themselves were vague, the charge-sheet itself would be unsustainable. These submissions were in addition to the basic plea that there was absolutely no basis to charge-sheet the employee in the first instance and that the institution of the disciplinary proceedings themselves was mala fide.

5. As against this, it has been vehemently submitted by Mr. Dwarkadas, learned Counsel appearing on behalf of the B.P.T., that a perusal of the charge-sheet will very clearly indicate that the appellant was informed that the misconduct in question constituted acts equivalent to a breach of Regulation (3) of the B.P.T. Conduct Regulations which had by then become applicable to the B.P.T. Employees. This is weird logic and we are unable to accept the submission because, as rightly contended by Mr. Cama, the effect of accepting this contention would be to give retrospective application to the Conduct Regulations which is something impermissible in law. Quite apart from this, one cannot have resort to the general conduct regulations applicable to the Central Government Employees because the appellant was neither informed of those Regulations nor did he stand charged under those Regulations. Additionally, by virtue of the observations of the Supreme Court reproduced by us above in the A.L. Kalra's case, 1984 Lab.I.C. 961, the Supreme Court has held that the wording of Rule 3 of those Regulations is itself too vague and hence cannot be of any help to the B.P.T. and cannot form the basis of any charge. The institution of a disciplinary

proceeding against an employee entails serious consequences and we are not prepared to condone the action of the B.P.T. in commencing such proceedings when the C.B.I. report indicated that there was no case against the employee. We are constrained to hold that either there was total non-application of mind on the part of the respondents, or more likely, as alleged by Mr. Cama, the action was founded on mala fides. In either case, there was no justification in law for the action.

6. We are reinforced in this view by another unusual aspect of this case which concerns the interpretation of the term "disproportionate". The relevant regulations do not define this term and the Prevention of Corruption Act uses it to signify a situation where there exists a yawning gap between all sources of income and the assets found with the employee. The provisions of that Act have been made applicable in cases where the difference is appreciable and in instances shocking, and where there could never have been such acquisition except through corrupt means. In arriving at that conclusion, it is a condition precedent that the explanation tendered by the employee must be found to be hopelessly untenable or without any foundation. Mr. Cama submitted, and in our opinion with some justification, that the term "disproportionate assets" can only apply where the assets are "out of all proportion" and not marginally in excess of the source of earning. On the facts of the present case, we are of the considered view that the initial premise on which this disciplinary proceeding was instituted was itself wholly baseless.

7. Disciplinary proceedings of the present type are penal in character and it is, therefore, very essential that the maintainability of such proceedings must pass the rigorous test of judicial scrutiny. As observed in the case of *Derby Corporation v. Derbyshire County Council* (1897) A.C. 550, by Lord Herschell, it is the end result that is material.

"Where a proceeding is one to enforce a penalty, or where a proceeding is one-not that it must end in a penalty, because the decision may be in favour of the person against whom it is taken-but where the proceeding is of such a nature that it may result in a penalty, it is a penal proceeding".

Having regard to the fact that the finality of such a proceeding could very well result in the loss of employment, the authorities concerned are, as of necessity, required to scrutinize with meticulous care the justification for commencement of such proceedings. Institution of a disciplinary enquiry is almost invariably accompanied by an order for suspension and it is now a matter of experience that such proceedings do not culminate even in a matter of years. The courts cannot, therefore, sanction any degree of laxity in relation to mechanical resort to such action unless there is good and adequate material available for adopting such a procedure in the first instance.

8. In this context, a passing reference to certain provisions of the Prevention of Corruption Act would not be out of place, because Mr. Dwarkadas, learned

Counsel appearing on behalf of the B.P.T., advanced a submission that in any case where an employee is found with property or assets in excess of his known sources of income that a presumption arises against the employee, thereby requiring the charge-sheeted employee to rebut that presumption, In the first place, it is essential to bear in mind that this is not a prosecution under the provisions of the Prevention of Corruption Act and, consequently, those statutory provisions are inapplicable to the present proceeding. Furthermore, the presumption that arises in such prosecutions is an exception to the ordinary principle of criminal jurisprudence as has been observed by the Supreme Court in the case of Sajjan Singh Vs. The State of Punjab, , the relevant observations being "this is a deliberate departure from the ordinary principle of criminal jurisprudence, under which the burden of proving the guilt of the accused in criminal proceedings lies all the way on the prosecution". What needs to be emphasised is that the Prevention of Corruption Act itself while considering the concept of assets disproportionate to the known sources of income proceeds on the footing that they are assets in respect of which the accused cannot satisfactorily account. The law does contemplate a situation whereby an accused person may have legitimately acquired his assets from sources of income other than those known to the employer, in which case he has the option of satisfactorily accounting for these assets. The law also envisages that the term "disproportionate" must necessarily imply a degree of magnitude which is far in excess to that which could have resulted from accountable sources and would necessarily exclude cases where the assets bear a reasonable proportion to the known or accountable sources.

9. Mr. Cama has next submitted that the findings of the Enquiry Officer are perverse in so far as they are insufficient and unable to bring a reasonable man to a conclusion of guilt. Mr. Cama has taken us through the report of the Enquiry Officer. It is relevant to mention that neither the Disciplinary Authority nor for that matter the Reviewing Authority, i.e., the Chairman of the B.P.T., have added to the findings of the Enquiry Officer nor have they given any independent reasons of their own . What we are left with, therefore, is the report of the Enquiry Officer alone. Relying on the well-settled law on the point, it is the basic contention of Mr. Cama that there must be some degree of definiteness on the point of guilt of the employee concerned. Mr. Cama has placed reliance on a decision of the Supreme Court in the case of Nand Kishore Prasad Vs. State of Bihar and Others, . In that decision at paragraph (18), the Supreme Court had observed as follows:---

"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. Suspicion cannot be allowed to take the place of proof even in domestic enquires".

The Supreme Court had occasion at that time to reiterate the principles enunciated in the case of the Union of India (UOI) Vs. H.C. Goel, . The Supreme Court had at paragraph (27) of that judgment observed as follows:---

"Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules".

It is on the basis of these principles that Mr. Cama has advanced the submission that this Court should examine the record of the case for the limited purpose of ascertaining whether, the findings of the Enquiry Officer were justified. Mr. Dwarkadas has, however, submitted that the appellant cannot contend before the High Court that re-appreciation of the evidence should be done. We agree with the submission and it is not our function nor do we propose to re-appreciate, the evidence in the present case. What is being pointed out by Mr. Cama is principally that there are certain peculiar and distinguishing aspects of the present case which require to be looked at. The first of them is the fact prosecuting authority, namely the B.P.T., did not lead any evidence whatsoever in the present proceedings. The Enquiry Officer has accepted this position. As against this, the appellant gave evidence, in addition to which he examined certain witnesses in support of his contention. Dealing with this aspect of the case, the Enquiry officer has proceeded on the footing that the appellant before us has not challenged the correctness of the material that was sought to be produced. In paragraph (15) of the report the Enquiry Officer has observed as follows:---

"In view of the CSE not challenging the statement of income, expenditure and assets, the ambit of the enquiry has been very much shortened. The moot point that remains for consideration is that the CSE having admitted the fact that the assets between him and his wife being disproportionate to the known sources of income of himself and his wife, to the tune of Rs. 80, 635, it was for him to explain that he has acquired these assets from income which was earned by legitimate means".

Mr. Cama has, in the first instance, drawn our attention to page (79) of the original record wherein the appellant has very clearly stated that he does not accept the correctness of the charges levelled against him and that he proposes to challenge the same. What the appellant and his representative can at the highest be said to have accepted is the statement of income produced by B.P.T. and the compilation produced by the Police Officer. The findings of the Enquiry Officer that the appellant had accepted the charges is, therefore, incorrect.

10. It is on the basis of these principles that Mr. Cama has submitted that, in the first instance, this Court will have to evaluate from the record as to whether it can be justifiably said that there existed some evidence or there existed material on the basis of which with some degree of definiteness the guilt of the appellant can be said to have been established. It is Mr. Cama's submission that the findings of the Enquiry Officer are perverse and that the disciplinary authority has not independently applied his mind before acting on the basis of these findings and, furthermore, that as is disclosed from the order of the Chairman, he has also not undertaken any independent appraisal of the material on record. The Enquiry Officer has, in the first instance, accepted the position that even though the B.P.T. has not produced any evidence, that the admissions on the part of the appellant are sufficient to bring home the charge to the appellant. In support of this submission, Mr. Dwarkadas submitted that if the figures as set out in the charge-sheet indicated that the appellant was in possession of assets of a certain aggregate value regardless of whether the figures differed from time to time, that it was for the appellant to fully explain that the acquisition of these assets was not due to illegal or corrupt means which would constitute misconduct. Mr. Dwarkadas submitted that if the appellant failed to discharge this duty, that the irresistible conclusion has to be that the assets of which he was found in possession were acquired by improper means and that , consequently, the misconduct was established.

11. For purposes of examining this argument, it is necessary for us go into the very basis on which the present disciplinary proceeding has been founded. As indicated by us earlier, the B.P.T. has charge-sheeted the appellant purely on the basis of the report from the C.B.I. authorities. The charge-sheet alleges that the appellant is in possession of assets worth Rs. 90,054/- whereas in paragraph (3) of the Enquiry Officer's Report, a calculation has been set out on the basis of which it is alleged that the assets disproportionate to the appellant's known sources of income constitute Rs. 1,06,640/- Thereafter, the Enquiry Officer records a concession that the presenting officer conceded that on the basis of certain loans which the appellant had taken from the B.P.T. this figure would have to stand amended to Rs. 80, 635/- .Suffice it to state at this stage that the drafting of the charge-sheet itself obviously suffers from total non-application of mind in so far as the particulars set out in the charge-sheet could not be substantiate at the very beginning of the enquiry itself and it is for this reason that Mr. Cama has justifiably contended that the procedure adopted by the B.P.T. in the enquiry itself was defective and the enquiry is vitiated on this ground in so far as the appellant was not aware as to what precise charges he was required to answer. In addition to this a perusal of the Enquiry Officer's Report indicates that in paragraph (41), the Enquiry Officer comes to the conclusion that the disproportionate assets should, in fact, amount to Rs. 58,135/-. In passing it is necessary to observe that the manner in which the Enquiry Officer has proceeded is highly unsatisfactory in so far as what is sought to be done by the B.P.T. is evident from Annexure-"A" to the Enquiry Officer's Report. In the first instance,

a statement has been prepared indicating the income of the appellant during the relevant period and various other items have been added to this statement including Item 9 which is a substantial amount of Rs. 1,13,626/- being, what according to the authorities is, the income earned by the wife of the appellant during the period 1962 to 1976. Thereafter, at Annexure "B" appears a statement of expenditure of the employee in respect of his expenses for the period January 1962 to April 1976. As many as 20 different heads have been set out and it is quite evident from an examination of these heads that what is sought to be done is to arrive at an approximation with regard to the various heads of expenditure. It is on the basis of a deduction of the heads of expenditure from the total income that the authority has come to the conclusion that the appellant could not have saved beyond a certain amount and a statement of assets has been produced at Exhibit "C" and the final conclusion has been arrived at that the excess of assets over the so-called savings constitutes what is defined as being disproportionate to the known source of income. The matter does not rest there because the evidence of the presenting officer, who incidentally was the Police Officer who investigated the case, indicates that the C.B.I. did enquire into the all important questions as to whether the appellant had, in fact, secured any amounts of money by illegal or improper means in relation to his duties with the B.P.T. The witness was specifically questioned with regard to this aspect of the matter and he has unequivocally admitted that there was no evidence of the appellant having taken bribes or of his having indulged in any misconduct whereby he could have secured unfair advantage or amassed any illegal gains in the course of his employment. It is most unfortunate for us to note at the expense of repetition, that the report of the C.B.I. to the B.P.T. very clearly recorded these facts that there was no such evidence or material which the B.P.T. could adduce even at the Enquiry, and it was for this reason that the C.B.I. has decided not to proceed against the appellant in spite of which the respondents have mechanically proceeded to charge-sheet the present appellant.

12. We are constrained to observe that even though there may be no absolute prohibition to a presenting officer doubling as a witness, that the practice is an unhealthy and improper one which ought to be avoided because it presents an opportunity to the prosecutor to be a witness in his own case.

13. In the course of the arguments, it was submitted by Mr. Cama, that the appellant when asked to explain the different assets that were shown in the list (Exh. "C") had submitted an explanation whereby he, inter alia, contended that the two flats and the shop had, in fact, been paid for by his wife who was doing an independent business in kerosene. He has also pointed out that his wife was an Income Tax and sales-tax payer and that she has done substantial turnover in the course of those years. He had pointed out that his wife possessed a motor-tanker as also six bulls and four kerosene-carts that were used for distribution of kerosene. The Enquiry Officer has accepted this position and consequently that the amount of Rs. 1,13,000/- does constitute the earnings of the appellant's

wife. It is necessary for us to indicate out disapproval with regard to the wrong procedure adopted by the respondents in clubbing the wife's income with that of the appellant. Where it was demonstrated that the wife was carrying on her own separate business and was an Income Tax and sales-tax assessee, there was no justification whatsoever for her income or assets derived therefrom to be clubbed with those of her husband. In this view of the matter, having regard also to the fact that the C.B.I. investigation had very clearly recorded that the appellant had not indulged in any acts in the course of his employment whereby he could have amassed any assets disproportionate to his known source of income, the finding of the Enquiry Officer which is to the effect that the appellant is guilty of the charges levelled against him would be wholly unsustainable and deserves to be set aside.

14. It is necessary for us to deal, in passing, with one or two important aspects of the Enquiry Officer's report, the first of those being the repeated reference to the fact that the appellant is alleged to have admitted the possession of assets being disproportionate to his known source of income. Mr. Cama has drawn our attention to page 79 of the record of the enquiry proceedings wherein the appellant has very clearly and categorically stated in his evidence before the Enquiry Officer that he does not accept the correctness of the charges and that he proposes to challenge the same. The concessions, if any, made by the appellant's representative Dr. Maitra in the course of the conduct of the enquiry have obviously been misconstrued by the Enquiry Officer and it is on this basis that Mr. Dwarkadas, learned Counsel appearing on behalf of the respondents, forcefully contended that where the appellant has admitted the correctness of the charges and where the appellant has tried to explain away the assets that he was found in possession with and has failed to do so, it was unnecessary for the B.P.T. to lead any further evidence. There can be little dispute with regard to the proposition that the onus of proving the charges lay squarely on the B.P.T. and that the B.P.T. cannot take shelter behind the so-called admissions. We are satisfied from the record that the appellant has not admitted the charges in question. On the other hand, a perusal of the record, particularly the detailed references made by the Enquiry Officer, very clearly indicates that the appellant had not only disputed each of the heads but that he had even led evidence in his defence. In passing, it is necessary for us to deal with two of these heads.

15. The appellant had contended that an amount of Rs. 42,000/- had been received by him and his two brothers as consideration for vacating certain premises. The appellant had given all the details and the appellant has not only led evidence to this effect and produced his brother as a witness but he has also produced one more independent witness to this transaction. In spite of this evidence, the Enquiry Officer has unfortunately recorded the conclusion that in the absence of the landlord giving evidence and in the absence of documentary proof being produced before him that it was impossible to accept the evidence with regard to the receipt of this substantial amount of money. Similarly, with regard to the gold ornaments possessed by the appellant's wife, the Enquiry

Officer has stated that he was willing to accept the position that the appellant's wife had received from her grand-mother approximately 18 to 20 tolas gold which the Enquiry Officer accepted, and he thereafter rejected the evidence regarding the balance out of the amount of 33 tolas of gold having been received by her at the time of the marriage. In paragraph (38) of the report, the Enquiry Officer has not indicated any reason whatsoever for his having accepted part of the evidence and discarded the remaining.

16. It is unnecessary for us to go into any of the remaining areas which are inconsequential, because we have carefully evaluated the record for purposes of assessing as to whether there existed material on the basis of which the charges can be said to have been proved. We find the reasoning and conclusions of the Enquiry Officer to be wholly erroneous. In paragraph (49) of the report, the Enquiry Officer states : ""In conclusion, although the administration has not brought on record any evidence to show that the CSE has acquired disproportionate assets as stated above, and as has been proved during this enquiry by any illegal means such as accepting illegal gratification, or by fraud or by dishonesty, etc., the fact remains that a public servant who is just a clerk has got assets disproportionate to his known sources of income to the tune of Rs. 58,135/-."

Apart from the wording being rather unintelligible, the Enquiry Officer has come to this conclusion without there being any justification whatsoever from the record, on the basis of conjecture and on the basis of illogical reasoning. In this view of the matter, the findings recorded by the Enquiry officer will have to be quashed and set aside.

17. Mr. Cama, learned Counsel appearing on behalf of the appellant, has submitted that it was necessary for the disciplinary authority to have served a second show cause notice on the appellant giving him an opportunity to represent against the findings of the Enquiry Officer. To this effect, Mr. Cama has placed reliance on the decision of the Supreme court reported in the case of Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, . The facts of that case were entirely different in so far as the petitioner before the Court therein was a Chartered Accountant and under the Rules framed by that particular body, it was essential that a separate show cause notice be given to the delinquent before orders were passed. The present rules did not make for any such provision. Apart from this, we find from the record that the B.P.T. had, in fact, served a copy of the Enquiry Officer's report on the appellant and that the disciplinary authority had thereafter served a notice on him asking him to show cause as to why the proposed punishment of compulsory retirement should not be imposed on him. In effect, therefore, the appellant had been afforded an opportunity to show cause before the punishment was imposed on him. Mr. Cama has also placed strong reliance on the decision of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, . The facts in that case were again slightly different in so far as the contention raised therein was to the

effect that in the absence of a copy of the Enquiry Officer's report, it would be impossible for the appellant to effectively represent against the imposition of the punishment and the supreme Court has observed that the non-supply of the report in question would constitute an infringement of the rules of natural justice. The facts of the present case are distinguishable and, in our opinion, that decision would not be applicable to the present case.

18. There is one other aspect of the matter that we consider essential to be referred to. As indicated by us earlier, at the conclusion of the enquiry proceedings, the disciplinary authority imposed the punishment of compulsory retirement on the present appellant. On 9th September, 1981, the Chairman issued a suo motu notice to the appellant asking him to show cause why the punishment should not be enhanced to one of dismissal. On the basis of the present record, to our mind, even assuming the order of compulsory retirement was sustainable, there was absolutely no warrant for the issuance of this notice nor, in our judgment, was there any justification for the enhancement of the punishment awarded to the appellant by the disciplinary authority.

19. We are accordingly summarizing our conclusions on the basis of the record of this case, which we have carefully evaluated, as follows :---

- a) That the institution of the present proceeding was unjustified.
- b) That the findings of the Enquiry Officer are unsustainable in law.
- c) That the disciplinary authority has wrongly imposed the punishment of compulsory retirement on the appellant.
- d) That, on the facts of the present case, the action of the Reviewing Authority, namely, the Chairman, in having enhanced suo motu the punishment to one of an order of dismissal cannot be upheld.

20. On the question of the reliefs which the petitioners would be entitled to, Mr. Cama has submitted that the petitioner will have to be relegated to the same position as he was placed in had the action in question not been commenced and proceeded with. In restoring the status quo ante, Mr. Cama submitted that the petitioner ought to be compensated at least for the actual economic loss that has resulted and which is a direct result of the various order passed against him by the respondents. Undoubtedly, there is considerable merit in the submission which essentially means that at least in economic terms the petitioner should be treated as though the orders that have now been set aside were not passed against him at all. This case is one of those instances where it has been held that even the institution of the proceeding was unjustified. Therefore, for purposes of the arrears payable. The payment will have to be calculated as though it was paid at normal rates applicable from month to month starting with the first, month in which the petitioner's salary was reduced, and ending with the month prior to the date on which the petitioner is re-instated. The respondent shall compute the payment which would normally have been made to the petitioner on

a month too month basis. After making allowance for the payments, if any, received by the petitioner during the period upto which he was in service of the B.P.T., the balance amount payable to the petitioner shall be computed and paid to the petitioner.

21. In this view of the matter, the appeal succeeds and is accordingly allowed. The judgment and order under appeal is set aside. the order dated 3rd January, 1981 (Exhibit "B" to the petition) and 31st October, 1981 (Exhibit "C" to the petition) are quashed and set aside. The respondents shall reinstate the petitioner and shall pay to him the full salary and allowances due to him for the period 14th June, 1977 till the date of reinstatement as directed above and shall give all consequential benefits. The aforesaid order shall be complied with within eight weeks from today. The respondents shall pay to the appellant costs throughout.