A B.C. CHATURVEDI

v.

UNION OF INDIA AND ORS.

NOVEMBER 1, 1995

B [K. RAMASWAMY, B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ]

Administrative Law—Judicial Review—Scope of—Order of the disciplinary authority—On what grounds can be challenged.

C *Service Law—Civil Services (Classification and Control) Rules, 1965—Misconduct—Meaning of—Public officer found in possession of pecuniary resources/property in excess of his known source of income—Whether misconduct—Criminal misconduct—Prevention of corruption Act, 1947—Section 5(1)(e).*

D *Service Law—Delay in laying charges—Effect of—Delay caused as CBI was conducting investigation for prosecution under section 5 (1) (e) of Prevention of Corruption Act, 1947—Evidence collected not strong enough—Departmental proceedings recommended—Held, delay is not fatal.*

E *Service Law—Promotion pending inquiry—Held, cannot act as impediment in penalizing the delinquent officer after inquiry.*

Service Law—Penalty—When can be substituted/altered by Court/Tribunal—Disciplinary authority imposing penalty of dismissal from service—Held, can be interfered with only when it shocks conscience of the F *Court/Tribunal.*

Constitution of India—Article 142—Whether power to do complete justice is available to the High Courts—Constitution of India—Articles 226 and 227.

G **The appellant was an Income Tax Officer. An investigation was conducted against the appellant by the C.B.I. which disclosed that the appellant possessed assets disproportionate to his known source of income. As the evidence collected by the CBI was not found strong enough to lay prosecution under Section 5(1)(e) of the Prevention of Corruption** H **Act, 1947(equivalent to Section 13(1)(e) of the Prevention of Corruption**

Act, 1988) it was suggested that a departmental enquiry may be initiated against the appellant. Thereafter, the appellant was charged for violating various conduct rules and for misconduct. A

On inquiry, the Inquiry Officer found the charges against the appellant as having been proved. The appellant was thereafter dismissed from service after consultation with the UPSC. The Administrative Tribunal upheld the recording of the Inquiry Officer that the charges had been proved but converted the order of dismissal from service into that of compulsory retirement keeping in view the length of service of the appellant, the academic record of the appellant, the fact that he was promoted even after the disciplinary proceedings had been initiated and that it would be difficult for the appellant to get a new job or take up a new profession at his stage. B C

Being aggrieved by that part of the order of Administrative Tribunal which confirmed dismissal of the appellant from the service, the appellant preferred appeal before this Court contending that : D

(a) possession of assets disproportionate to the known source of income is not "misconduct" under the Civil Services (Classification and Control) Appeal Rules, 1965 :

(b) there was abnormal delay in laying the charges; E

(c) the appellant was promoted as Assistant Commissioner of Income of Tax pending enquiry and therefore, no departmental action could be taken against him;

(d) the order of dismissal is bad in view of the judgment of the Supreme Court in *Union of India & Ors.* v. *Mohd. Ramzan Khan*, [1991] 1 SCC 588; as admittedly the enquiry report was never supplied to the appellant; and F

(e) in view of the judgment of the Supreme Court in *Krishnanand* v. *State of M.P.*, [1977] 1 SCC 816; ten percent of the disproportionate assets ought to have been deducted. G

The Union of India also filed an appeal before this Court contending that the Tribunal had erred in changing the punishment awarded to the appellant from dismissal into compulsory retirement. H

A Dismissing the appeal of the appellant and allowing the appeal of the Union of India, this Court

HELD : *Per Ramaswami J, (for himself and Jeevan Reddy, J.)*

1.1. Judicial Review is not an appeal from a decision but a review of
B 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 eye of the Court. [655-D]

C 1.2. When an inquiry is conducted on the charge of misconduct by a public servant, the Court/Tribunal is concerned has to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence. The Court/Tribunal may interfere where the authority held the proceedings
D 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 or 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
E interfere with the conclusion or finding, and mould the relief so as to make it appropriate to the facts of the each case. [655-E-H]

1.3. 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
F enquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence cannot be permitted to be canvassed before the Court/Tribunal. [656-A]

Union of India v. *H.C. Goel*, [1964] 4 SCR 718; *Union of India & Ors.*
G v. *S.L. Abbas*, [1993] 4 SCC 357; *Administrator of Dadra & Nagar Haveli* v. *H.P. Vora*, [1993] Supp. 1 SCC 551 and *State Bank of India & Ors.* v. *Samarendra Kishore Endow & Anr.*, [1994] 2 SCC 537, referred to and relied on.

2. Section 5(1)(e) of the Prevention of Corruption Act, 1947 defines
H "criminal misconduct." Being a public servant, if at any time, during the

period of his office a person is proved to have been in possession, by himself or any person on his behalf, of pecuniary resources or property disproportionate to his known source of income he is enjoined to satisfactorily account for the same. If he fails to account for it, he commits misconduct. Therefore, as in a prosecution laid under section 5(1) (e) of the Prevention of Corruption Act, 1947 a public servant is liable to punishment, the need to make this misconduct expressly a part of enumerated items of misconduct under Central Civil Services (Classification and Control) Appeal Rules, 1965 is obviated. A public servant in possession of assets disproportionate to his known source of income, when he had not satisfactorily accounted for, commits a misconduct amenable to disciplinary action under the Civil Services (Classification and Control) Appeal Rules, 1965. [653-F, 654-B-C, F]

A.K. Kalra v. *Project and Equipment Corp.*, [1984] 3 SCC 316, distinguished.

3.1. In a case of the present type, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. To connect the offices with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the Police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. [654-G-H, 655-A-B]

3.2. The C.B.I. had investigated the present case and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1) (e) of the Prevention of Corruption Act, 1947. It had, however, recommended to take disciplinary action, which was thereafter initiated. Much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution of India. [655-C]

4. It is true that pending disciplinary proceeding, the appellant was promoted as Assistant Commissioner of Income-Tax. Two courses in this behalf are open to the competent authority, viz., sealed cover procedure

A which is unusually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the latter course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision and to pass
B an order consistent with the finding of proved misconduct. [653-D]

5. The principle evolved in *Krishnanand's* case by the Supreme Court was to give benefit of doubt, due to inflationary trend in the appreciation of the value of the assets. The benefit therefore, appears to be the maxi-
C mum. It would, therefore, be inappropriate to extend the principle of deduction beyond 10% in calculating disproportionate assets of a delinquent officer. [657-B, D]

Krishnanand v. *State of M.P.*, [1977] 1 SCC 816, explained and distinguished.

D

6. A Constitution Bench of the Supreme Court in *Managing Director ECIL Hyderabad* v. *B. Karunakar & Ors.*, held that the relief granted in *Ramzan Khan's* case was erroneous and that the ratio in *Ramzan Khan's* case would apply to the punishment imposed by the disciplinary authority
E after the date of the judgment in *Ramzan Khan's* case. Since the controversy is no long *res integra*, the appellant is not entitled to the benefit of *Ramzan Khan's* ratio as admittedly he was dismissed from service on October 29, 1986 whereas judgment in *Ramzan Khan's* case was pronounced on November 20, 1990. [653-B]

F *Managing Director ECIL. Hyderabad* v. *B. Karunakar & Ors.*, JT (1993) 6 SC 1, relied on.

Union of India v. *Mohd. Ramzan Khan*, [1991] 1 SCC 588, referred to.

G

7. The disciplinary authority, and on an appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the mag-
H nitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own

conclusion or penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. [658-G-H, 659-A]

State of Orissa & Ors. v. *Bidyabhusan Mohapatra*, [1963] Supp. 1 SCR 648, *Union of India* v. *Sardar Bahadur*, [1972] 2 SCR 218 *Rangaswami* v. *State of Tamil Nadu*, [1989] Supp 1 SCC 686, and *State Bank of India & Ors.* v. *Samrendra Kishore Endow & Anr.*, [1994] 2 SCC 537, referred to and relied on.

Bhagat Ram v. *State of Himachal Pradesh & Ors.*, [1983] 2 SCC 442, distinguished.

7.2 In view of the gravity of the misconduct, namely appellant having been found to be in possession of assets disproportionate to known source of his income, the interference with the imposition of punishment was wholly unwarranted. [659-D]

Per Hansaria, J. (concurring)

1. Although Article 142 of the Constitution of India has specifically conferred the power of doing complete justice on the Supreme Court, to achieve that result it may pass such decree or order as deemed necessary; it would be wrong to think that other Courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to the Supreme Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach the Supreme Court, which may *inter alia*, because of the poverty of the concerned persons. The mere fact that there is no provision parallel to Article 142 relating to the High Court, can be no ground to think that they have not to do complete justice, and if the moulding of relief would do complete justice between the parties, the same cannot be ordered. A High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief in cases of the present nature when the punishment/penalty award shocks the judicial conscience. [659-F-G, 660-E-D]

A *Shiv Deo Singh* v. *State of Punjab*, **AIR (1963) SC 1901, referred to and relied on.**

Krishna Chandra v. *Union of India*, **AIR (1992) Orissa 261 (FB), approved.**

B **2. In view of the inter dependence of fundamental rights, which concept was first accepted in the *Bank Nationalisation* case which thinking was extended to cases attracting Article 21 of the Constitution of *Maneka Gandhi* v. *Union of India* the punishment/penalty awarded has to be reasonable, and if it be unreasonable, Article 14 of the Constitution of**
C **India would be violated. If Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it. However, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. [661-A-C]**

D *Rustom Cavasjee Cooper* v. *Union of India*, **[1970] 3 SCR 530,** *Maneka Gandhi* v *Union of India*, **[1978] 2 SCR 621 and** *Bhagat Ram* v. *State of Himachal Pradesh*, **[1983] 2 SCC 442, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9830 of
E 1995 Etc.

From the Judgment and Order dated 14-3-88 of the Central Administrative Tribunal in Calcutta in O.A. No. 609 of 1986.

M.N. Krishnamani, Devendra Singh, S.N. Terdol, Ms. Binu Tamta,
F P. Parmeshwaran and Sudarsh Menon for the Appearing parties.

The Judgments of the Court were delivered by.

K. RAMASWAMY, J. Leave granted.

G This appeal and the companion appeal filed by the Union of India arise from the order of the Administrative Tribunal in O.A. No. 609 of 1986 dated March 14, 1989. Appellant's integrity, while he was working as Income-tax Officer, had come under cloud. On an investigation made by the C.B.I., it had stated to the respondent that though the evidence
H collected during investigation disclosed that the appellant had assets dis-

proportionate to his known source of income, as the evidence was not strong enough to lay prosecution under Section 5 (1)(e) of the Prevention of Corruption Act, 1947 (for short, 'the Act'), the competent authority might proceed against the appellant in a departmental inquiry.

In furtherance thereof on March 2, 1982, the appellant was served with the charge-sheet containing four specific charges for violating different conduct rules and misconduct of being in possession of property disproportionate to his known source of income. After giving reasonable opportunity and conducting inquiry, the Inquiry Officer submitted his report on January 28, 1984 holding the charges to have been proved. After consultation which the Union Public Service Commission on March 11, 1985, the appellant was dismissed from service by order dated October 29, 1986. The Tribunal after appreciating the evidence upheld all the charges having been proved but converted the order of dismissal into one of compulsory retirement. The appeal was filed by the delinquent officer challenging the findings on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it.

Shri Krishnamani, learned senior counsel for the appellant, raised three-fold contention. It is firstly urged that a public servant's possession of assets disproportionate to the known source of his income is not defined to be a 'misconduct' under the Civil Services (Classification & Control) Appeal Rules. There is abnormal delay in laying the charges. Despite the pendency of inquiry, the appellant was promoted as Asstt. Commissioner of Income-tax. In consequence, no departmental action could be taken to dismiss him from service. It is also submitted that he was an intervener when all the cases including the appeal filed against *Union of India & Ors.* v. *Mohd. Ramzan Khan*, JT [1990] 4 SCC 456 were argued before three-Judge Bench. All of them had been given the benefit of the judgment. Misfortune of the appellant that his appeal was directed to be posted after the decision in *Ramzan Khan's* case. Since the appellant was admittedly not supplied with the inquiry report, the order of dismissal is invalid in law. This Court in *Krishnanand* v. *State of M.P.*, [1977] 1 SCC 816 had held that 10% of the disproportionate assets need to be deducted in arriving at the finding that the appellant had disproportionate assets. The appellant was found to be in possession of Rs. 1,04,585 while his income from known

A sources was Rs. 73,270. The disproportionate assets were only to the tune of about Rs. 30,000. It would not be axiomatic that 10% would be a cut-off deduction. In an appropriate case deduction could be extended upto 15% and if so extended, the appellant must be held to be not in possession of any disproportionate assets. The gifts made to his wife at the time of their B marriage and to his children at the time of their birthdays are not his assets. If these amounts are excluded, which indeed must be excluded, he is not in possession of disproportionate assets. The wife of the appellant is a teacher. The income from her salary and her gifts of the extent of Rs. 21,000 require to be excluded from his assets. Therefore, the findings of the Tribunal on merits were not valid in law.

C

While resisting the contention, the learned counsel for the Union argued that the Tribunal was not empowered to appreciate the evidence nor to consider the evidence on merits to reach a finding whether the appellant was in possession of disproportionate assets. The Tribunal went D wrong in appreciating the evidence. The disciplinary authority had undoubted power and authority to impose punishment. On the facts found by the Inquiry Officer and disciplinary authority that the appellant was in possession of the assets disproportionate to the known source of his income, the Tribunal was unjustified in interfering with the punishment of dismissal from service, and ordering for compulsory retirement, instead.

E

Having regard to the respective contentions, the first question that arises for consideration is whether the order dismissing the appellant from service is invalid in law for non-supply of the inquiry report. True, in *Ramzan Khan's* case a Bench of three Judges to which one of us (K. F Ramaswami, J.) was a member, had held that the delinquent is entitled to the supply of the inquiry report. It was contended for the appellant therein that after Amendment to Article 311(2) of the Constitution by Constitution (42nd Amendment) Act, 1976, the need to supply the inquiry report was obviated. Rejecting the contention, it was held that the supply of the copy of the inquiry report is inconsistent with fair procedure and non-supply G thereof violates the principles of natural justice. Therefore, copy of the inquiry report is required to be supplied to the delinquent officer. However, it was held that the said ratio was prospective in operation. The judgment therein was rendered on November 20, 1990.

H A question thereafter had arisen whether the ratio would be ap-

plicable to the order passed earlier to the judgment. On reference to the Constitution Bench, to which two of us (K. Ramaswamy & B.P. Jeevan Reddy, JJ.) were members, it was held in *Managing Director, ECIL, Hyderabad* v. *B. Karunakar & Ors.*, JT (1993) 6 SC 1 that the relief granted in *Ramzan Khan's* case was erroneous and that the ratio in *Ramzan Khan's* case would apply to the punishment imposed by the disciplinary authority after the date of the judgment. Since the controversy is no longer *res integra*, the appellant is not entitled to the benefit of *Ramzan Khan's* ratio as admittedly he was dismissed from service on October 29, 1986 and the order of dismissal from service is valid.

It is true that pending disciplinary proceeding, the appellant was promoted as Asstt. Commissioner of Income-tax. Two courses in this behalf are open to competent authority, viz. sealed cover procedure which is usually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the latter course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision and to pass an order consistent with the finding of proved misconduct.

The next question is whether the charge of being in possession of assets disproportionate to his known source of income is a misconduct. Section 5(1)(e) of the Act (which is equivalent to Section 13(1)(e) of the Prevention of Corruption Act, 1988) defines "criminal misconduct". A public servant is said to commit the offences of criminal misconduct if he 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 for. Thus, pecuniary resources or property disproportionate to his known source of income is a criminal misconduct. In the 1988 Act an explanation has been added to Section 13(1)(e) to explain that "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. The charged officer must be a public servant. He must be found to be in possession of, by himself, or through any person on his behalf, at any time during the period of his office, pecuniary resources or property dispropor-

A tionate to his known source of income. If he cannot satisfactorily account thereof, he is said to have committed criminal misconduct. No doubt it is a presumptive finding but that finding is based on three facts. 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, B of pecuniary resources or property disproportionate to his known source 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 laid under Section 5(1)(e) of the Act (equivalent to Section 13(1)(e) of 1988 Act), a public servant is liable to punishment. The need to make this misconduct expressly a part of enumerated items of misconduct under C Central Civil Services, CCA Rules is obviated.

The ratio in *A.L. Kalra* v. *Project & District Equipment Corpn.* [1984] 3 SCC 316 has no application to the facts in this case. Therein, the misconduct alleged was failure of the appellant to refund the advance taken D from the Corporation. His omission was charged to be a misconduct. The question therein was that when Rule 5 of the PEC Employees (Conduct, Discipline and Appeal) Rules, 1975, defined "specific misconduct", whether in the general norm of behaviour the omission to return advance amount, which was not specifically defined, would constitute a misconduct. This E Court held that in the gray area it is not amenable to disciplinary action unless the act is constituted to be misconduct under Rule 5 of the said Rules. We, therefore, hold that a public servant in possession of assets disproportionate to his known source of income, when he had not satisfactorily accounted for, commits a misconduct amenable to disciplinary action F under the CSCCA Rules and the Conduct Rules.

The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have G evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious H journey, as the Government has to do a lot to collect necessary material in

this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution.

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, 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 fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that 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 or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never 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 each case.

A The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate 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 B canvased before the Court/Tribunal. In *Union of India* v. *H.C. Goel*, [1964] 4 SCR 718, 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.

C In *Union of India & Ors.* v. *S.L. Abbas*, [1993] 4 SCC 357, when the order of transfer was interfered by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that *bona fide* order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government D servant. *In Administrator of Dadra & Nagar Haveli* v. *H.P. Vora*, [1993] Supp. 1 SCC 551, it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant, Recently, in *State Bank of India & Ors.* v. *Samarendra Kishore Endow & Anr.*, JT (1994) 1 SC 217, a Bench E of this Court to which two of us (B.P. Jeevan Reddy & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate F the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

It is, therefore, difficult to go into the question whether the appellant G was in possession of property disproportionate to the known source of his income. The findings of the disciplinary authority and that of Inquiry Officer are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs. 30,000 in excess of his satisfactorily accounted for assets from his known source of income. H The alleged gifts to his wife as stridhana and to his children on their

birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf. A

It is true that a three-Judge Bench of this Court in *Krishnanand's* case (supra) held in para 33, 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. It is to be remembered that the said principle was evolved by this 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 salary of his wife was not include in the assets of the appellant. The alleged stridhana of his wife and fixed deposits or gifts of his daughter, in appreciation of evidence, were held to be the property of the appellant. It is in the domain of appreciation of evidence. The Court/Tribunal has no power to appreciate the evidence and reach its own contra conclusions. B C D E

The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa & Ors.* v. *Bidyabhushan Mohapatra*, AIR (1963) SC 779 held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. It the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review that penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the finding *prima facie* made out a case of misconduct, to direct the Governor F G H

A to reconsider the order of penalty. This view was reiterated in *Union of India* v. *Sardar Bahadur,* [1972] 2 SCR 218. It is true that in *Bhagat Ram* v. *State of Himachal Pradesh & Ors.*, AIR (1983) SC 454, a Bench of two Judges of this Court, while holding that the High Court did not function as a Court of appeal, concluded that when the finding was utterly perverse, B the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and C unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami v. State of Tamil Nadu,* AIR (1989) SC 1137, a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under D Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate E authority. The controversy was again canvassed in *State Bank of India's* case (supra), where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the F appellate authority to impose appropriate punishment.

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose ap- G propriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High H Court/Tribunal, it would appropriately mould the relief, either directing

the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. A

The Tribunal in this case held that the appellant had put in 30 years of service. He had brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he is "no longer fit to continue in government service". Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. We find that the reasoning is wholly unsupportable. The reasons are not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted. We find no merit in the main appeal which is accordingly dismissed with no order as to costs. B C D

C.A. No. 3604 of 1988

Consequently, the appeal of the Union of India is allowed. The order of the Tribunal modifying the punishment is set aside and that of the disciplinary authority is maintained. In the circumstances parties to bear their own costs. E

HANSARIA, J. I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other Courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large F G H

A percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, *inter alia*, be because of the poverty of the concerned person. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a Parliamentary enactment, on such a case being made out, B and we have hesitated to concede the power of even substituting a punishment/penalty, on such case being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

2. The aforesaid has, therefore, to be avoided and I have no doubt C that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decision of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be D invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

3. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no E ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of F review on the High Court, this Court held as early as 1961 in *Shivdeo Singh's* case, AIR (1963) SC 1909, that the High Courts too can exercise power of review, which inheres in every Court of plenary jurisdiction. I would say that power to do complete justice also inheres in every Court, not to speak of a Court of plenary jurisdiction like a High Court. Of course, this power is not as wide which this Court has under Article 142. That, G however, is a different matter.

4. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of dismissal, Article 21 gets attracted. And, in view of the inter-dependence of fundamental H rights, which concept was first accepted in the case commonly known as

Bank Nationalisation case, [1970] 3 SCR 530, which thinking was extended to cases attracting Article 21 in *Maneka Gandhi* v. *Union of India*, AIR (1978) SC 597, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in *Bhagat Ram* v. *State of Himachal Pradesh*, [1983] 2 SCC 442 also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

5. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.

6. I had expressed my unhappiness qua the first facet of the case, as

A Chief Justice of the Orissa High Court in paras 20 and 21 of *Krishna Chandra* v. *Union of India*, AIR (1992) Orissa 261 (FB), by asking why the power of doing complete justice has been denied to the High Courts? I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result
B of what has been held in the leading judgment.

B.K.M. Appellant's appeal dismissed and Appeal of U.O.I. allowed.