PRINCIPAL SECY. GOVT. OF A.P. AND ANR. A

v

M. ADINARAYANA

OCTOBER 6, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.] B

Prevention of Corruption Act, 1988—Section 13(2), 13(1)(e)—Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960—Section 4—Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989—Rule 3(1)—Misconduct—Possession of assets disproportionate to known sources of income—Held, the Tribunal for Disciplinary Proceedings has the jurisdiction to try all matters involving misconduct. C

Andhra Pradesh Disciplinary Amendment Act, 1993—Rule 2H—Andhra Pradesh Civil Services Conduct Rules, 1991—Rule 2B, Rule 9—acquisition or disposal of movable or immovable property by Government Servant—Requirement of prior information necessary—Held, non-compliance of requirement amounts to violation of conduct rules. D

Andhra Pradesh Administrative Tribunal—Jurisdiction of—Held, it cannot sit in appeal over the findings of the enquiry authority—Power of judicial review cannot extend to the re-examination of evidence. E

The Anti-Corruption Bureau registered a case against the Respondent under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 with regard to the disproportionate assets possessed by the respondent and investigated into the case. In his report to the Government, the Director General, Anti-Corruption Bureau recommended for referring the case to the Tribunal for Disciplinary Proceedings, for enquiry into the allegations of acquisition of assets disproportionate to the known sources of his income and also the violation of Andhra Pradesh Civil Services (Conduct) Rules, 1964 and to submit a report to the Government. The Tribunal submitted its report finding the respondent guilty under both the charges framed against him. The Government after considering the report of the Tribunal issued a show case notice to the respondent. F G

 H

A The respondent's challenge to the show cause notice was dismissed. The High Court granted liberty to the charged officer to raise all objections as to the jurisdiction of the Tribunal as also other issues before the Government in response to the show cause notice. Respondent submitted his explanation to the memo with regard to the jurisdiction of the Tribunal and submitted his reply on merits.
B

The Government issued orders removing the respondent herein from service. The Respondent challenged his removal on the ground that the Tribunal has no jurisdiction to enquire into Charge-I and Charge-II which was defective in nature and, accordingly, sought to quash the orders of
C the Government. The Tribunal set aside the disciplinary orders of the Government. The Government's Writ Petition was dismissed.

Before this Court, appellants, contended that the charged officer, the respondent herein, was removed from service by the Government as a disciplinary measure and that the possession of assets disproportionate to
D the known sources of income by the respondent, is a misconduct as defined under Rule 2(b) of the Conduct Rules framed under the proviso to Article 309 of the Constitution of India and, therefore, the Tribunal for Disciplinary Proceedings (in short 'TDP') had jurisdiction to enquire into the misconduct in terms of the TDP Act and the Rules made thereunder, that the opinion of the Andhra Pradesh Administrative Tribunal (APAT)
E that the TDP had no jurisdiction to enquire into the first charge which falls under the Prevention of Corruption Act and which is a graver offence than the routine misconduct under the Conduct Rules is erroneous, that the respondent has not taken the objection regarding jurisdiction at the earliest opportunity and since the charged officer generally raised such
F objections, the Tribunal was not justified in entertaining that plea. That under the TDP Act and the Rules framed thereunder, the TDP is a fact finding authority and that the findings recorded by the TDP could not have been upset by the Tribunal in as much as the Administrative Tribunal has no such power, that the Administrative Tribunal is not an appellate authority and, therefore, it could not have acted as an appellate authority
G over the findings recorded by the TDP and accepted by the Government and that the charged officer has acquired such assets which included both immovable and movable properties without prior permission as required under Rule 9 of the Conduct Rules.

H The respondent contended that the contention the appellant that the

charged officer did not take objection to the jurisdiction of the TDP to entertain Charge-I at the earliest opportunity is incorrect, that in view of the directions issued by the High Court reserving the liberty to the charged officer to take all objections including the objection as regards jurisdiction also, the contention raised by the counsel for the appellant is not entertainable, that the second charge framed against the charged officer alleges breach of Rule 9 of Conduct Rules whereas Rule 6 contemplated no prior permission at all, that under sub-rule (1) of Rule 9 of the Conduct Rules what is required is previous intimation to the Government to acquire or dispose of any immovable property and the reporting of transaction including movable property to the Government under Rule 9(2), that framing of Charge-II is defective and, therefore, the disciplinary action taken against the respondent should fall to the ground on that account itself, that there are a number of arithmetical and clerical mistakes in the order of TDP and the TDP had not correctly appreciated the entire matter on its proper perspective, that certain deductions to which respondent was entitled to was not taken into consideration while calculating the disproportionate assets and pointed out the discrepancies here and there from out of the orders passed by the TDP, and that the requirement of prior permission cannot be equated to statutory requirement of previous intimation. Allowing the Appeal, the Court.

HELD: 1. The possession of assets disproportionate to the known source of income is a misconduct under the Conduct Rules as the delinquent officer was being charge-sheeted for violation of Conduct Rules made under the provision of Article 309 of the Constitution of India. The Andhra Pradesh Civil Services Rules, 1960 defines misconduct under Rule 2(b). The finding of the Tribunal that the Tribunal for disciplinary proceedings has no jurisdiction to interfere into the charge which falls under the Prevention of Corruption Act, 1988, is not correct. The charge under the Prevention of Corruption Act is a graver offence than the routine misconduct contemplated under the Andhra Pradesh Civil Services Conduct Rules. A grave misconduct does not cease to be a misconduct because it is grave. The Tribunal for disciplinary proceedings is competent to examine the case. The TDP have examined 57 witnesses on the prosecution side and 13 defence witnesses and have marked 129 exhibits for the prosecution which were examined by the Tribunal together with 81 defence exhibits. A reading of the entire proceedings of the TDP would show that the TDP has considered the entire material placed before it and considered them in the proper perspective. [125-E, F, G, H; 126-A]

A 2. As per the amendment to sub-rule (1) of Rule 3, the Government may subject to the provisions of Rule 4 referred to cases relating to Gazetted and the non-Gazetted Officers in respect of all matter involving misconduct committed by them to the Tribunal for enquiry and report under Section 4 of the Act. It is to be noticed that when the matter was referred, this Rule alone was in force. Therefore, the TDP acquired the B right to investigate the cases that fall under Charge-I. It is not disputed that the matter was referred to TDP on 21.7.1995 when the Rules in G.O.Ms. No. 514 dated 15.10.1994 was in force. The contention of the counsel for the respondent that the TDP has no right to entertain the first charge relating to the offence has no merits and in view of the position C stated above, the TDP was competent to entertain Charge-I.

[126-E, F, G]

3. The respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal D has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule E 2H of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the above-said finding it is held that respondent is guilty of both the charges framed against him within the Rule 2(b) of the Conduct Rules of 1991 framed under amendment Act, 1993. [127-F, G, H; 128-A]

4. The APAT cannot sit as a court of appeal over a decision based F on the finding of the enquiry authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of the APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the Tribunals or of the disciplinary authorities, are G found to be perverse, which are not based on the legal evidence, then the administrative tribunal or the court is impowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive H evidence is not permissible to be interfered with. [128-B, C]

5. The Administrative Tribunal cannot ignore the findings of the disciplinary authority or the tribunals. The truth or otherwise of the charge, is a matter of the disciplinary authority to go into. The finding of the court or tribunal under judicial review cannot extend to the re-examination of all evidence to decide the correctness of the charge. The Administrative Tribunal cannot sit as a court of appeal over a decision based on finding of the enquiry authority in disciplinary proceedings. This court, time and again, categorically stated that court should not interfere with the quantum of punishment where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports, the conclusion reached by the Disciplinary Tribunal, it is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority.

[128-D, E, F]

6. The order passed by the Tribunal in original application and the judgment rendered by the High Court dismissing the Writ Petition filed by the appellant is contrary to law and erroneous. Judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. The order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court are set aside.

[125-D; 128-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2332 of 2003.

From the Judgment and Order dated 6.6.2002 of the Andhra Pradesh High Court in W.P. No. 14358 of 2001.

Mrs. D. Bharathi Reddy for the Appellant.

K.V. Satyanarayana, M. Radha Krishna and Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. The Principal Secretary to Government, Municipal Administration and Urban Development Department, A. P. Secretariat, Hyderabad, Andhra Pradesh and The Director of Town and Country Planning, Hyderabad are the appellants in this appeal. This appeal is directed against the judgment of the Division Bench of the Andhra Pradesh High Court in Writ Petition No 14358 of 2001 confirming the judgment and

A order dated 22.2.2001 of the Andhra Pradesh Administrative Tribunal at Hyderabad allowing the Original Application No. 6755 of 2000 filed by the respondent herein and setting aside the order issued by the appellant in G.O.Ms. No. 520 Municipal Administration and Urban Development Department dated 28.10.2000.

B The background facts leading to the filing of this appeal be noted briefly and they are as follows:

The respondent herein at the relevant time was working as Deputy Director, Town and Country Planning in the Municipal Administration Department at Hyderabad. The Anti-Corruption Department Bureau registered C a case on 30.9.1992 under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 with regard to the disproportionate assets possessed by the respondent herein and investigated into the case. The Director General, Anti-Corruption Bureau, Government of Andhra Pradesh, submitted a report to the Government with regard to the disproportionate assets possessed D by the respondent herein and recommended to refer the case to the Tribunal for Disciplinary Proceedings, Hyderabad for enquiry against the charged officer into the allegations of acquisition of assets disproportionate to the known sources of his income and also the violation of Andhra Pradesh Civil Services (Conduct) Rules, 1964 and to submit a report to the Government of Andhra Pradesh. The Tribunal after conducting thorough inquiry and giving full E opportunity to the parties submitted its report on 2.6.1997 finding the respondent M. Adinarayana guilty under both the charges framed against him. The Government after considering the report of the Tribunal by Memo No. 1593/82/93-6 MA & UD dated 24.9.1997 issued a show cause notice to the respondent herein calling for his explanation to the findings given by the F Tribunal.

The respondent instead of giving his explanation to the show cause notice, filed O.A. No. 7490 of 1997 before the Andhra Pradesh Administrative Tribunal challenging the show cause notice. The same was dismissed by its order dated 27.4.1998. The High Court disposed of the Writ Petition and G reserved liberty to the charged officer to raise all objections as to the jurisdiction of the Tribunal as other issues before the Government in response to the show cause notice dated 24.9.1997. The Government once again issued a Memo to the respondent herein to submit his explanation. The respondent submitted his explanation initially with regard to the jurisdiction of the Tribunal to enquire into the charge No.1 and thereafter on 31.3.1999, submitted his H

reply with respect to the report of the Tribunal for disciplinary proceedings. The Government on consideration of the entire matter and explanation given by the respondent, issued orders in G.O. Ms. No. 520-MA & UD dated 28.10.2000 removing the respondent herein from service (Annexure P/1). The respondent filed O.A. No. 6755/2000 before the A.P. Administrative Tribunal challenging the above order of the Government. He contended that the Tribunal has no jurisdiction to enquire into Charge-I and Charge-II which was defective in nature and, accordingly, sought to quash the orders of the Government. The appellant filed a detailed Counter Affidavit before the Tribunal explaining the position. The Tribunal by its order dated 22.2. 2001 set aside the disciplinary orders of the Government. The Government thereupon filed Writ Petition No. 14358 of 2001 before the High Court. The Division Bench of the High Court by order dated 6.6.2002 dismissed the Writ Petition filed by the appellant herein. Aggrieved against the said judgment, the appellants filed the above appeal.

Mrs. D. Bharathi Reddy, learned counsel appearing for the appellants, submitted that the charged officer, the respondent herein, was removed from service by the Government as a disciplinary measure and that the possession of assets disproportionate to the known sources of the income by the respondent, is a misconduct as defined under Rule 2(b) of the Conduct Rules framed under the proviso to Article 309 of the Constitution of India and, therefore, the Tribunal for Disciplinary Proceedings (in short 'TDP') had jurisdiction to enquire into the misconduct in terms of the TDP Act and the Rules made thereunder. She further submitted that the opinion of the Andhra Pradesh Administrative Tribunal (in short 'APAT') that the TDP had no jurisdiction to enquire into the first charge which falls under the Prevention of Corruption Act and which is a graver offence than the routine misconduct under the Conduct Rules is erroneous. The learned Advocate submitted that the respondent has not taken the objection regarding jurisdiction at the earliest opportunity and since the charged officer generally raised such objections, the Government refers the case to the TDP on 27.7.1995 and that having failed to take objection at the earliest point of time, the Tribunal was not justified in entertaining that plea. She also contested the correctness of the findings of the Tribunal. With regard to the jurisdiction of the Tribunal to entertain first charge framed against the charged officer in view of the amendment issued in G.O.Ms. No. 514 General Administration (Services-C) Department dated 15.10.1994 amending sub-rule (1) of Rule 3 of the TDP Rules. It is further contended that under the TDP Act and the Rules framed thereunder, the TDP is a fact finding authority and that the findings recorded

A by the TDP could not have been opposed by the Tribunal in as much as the Administrative Tribunal has no such power. She further submitted that the Administrative Tribunal is not a appellate authority and, therefore, he could not have acted as an appellate authority over the findings recorded by the TDP and accepted by the Government.

B At the time of hearing the learned counsel for the appellant, invited our attention to Section 4 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (Act No.2 of 1960) which reads thus :

> "Section 4 Cases to be referred to—Tribunal The Government may refer to the Tribunal for enquiry and report such as may be prescribed
C of allegations of misconduct on the part of the Government servants."
>
> The above section was amended by Act 6 of 1993.

Our attention was also drawn to Rule 3 of Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 [G.O.Ms. No.304, G.A.D.
D (Ser-C), dated 3.6.1989. The said Rule 3 was substituted by G.O.Ms. No. 409, G.A.D., dated 20.9.1996. The said Rule read as follows :

> "Rule 3. The Government *may*, subject to the provision of Rule 4, refer all cases of Officers, Gazetted or otherwise involving corruption, integrity, enquired into by Anti-Corruption Bureau including cases of
E misappropriation embezzlement investigated by Anti-Corruption Bureau or emanating otherwise and which are considered not appropriate for prosecution in a court of law; to the Tribunal for Disciplinary Proceedings for enquiry and report under Section 4 of the Act."

F Our attention was also drawn to G.O.Ms. No. 514 General Administration (Services-C) Department dated 15.10.1994. By the said G.O., an amendment was brought by sub-rule (1) of Rule 3 by substituting the following Rule :

> "(1) The Government may, subject to the provisions of rule 4, refer
G the cases relating to the Gazetted an Non-Gazetted Officers in respect of matters involving misconduct committed by them to the Tribunal for enquiry and report under Section 4 of the Act."

It is to be noticed that this Rule was in force at the time of referring the case to the TDP.

H

It is pertinent to notice that Section 4 prior to its amendment by A.P. Act 6 of 1993 provided as under:

> "4. Cases to be referred to Tribunal: The Government *shall* refer to the Tribunal for enquiry and report such cases as may be prescribed of allegations of misconduct on the part of government servants."

Section 4 of the Act which was in mandatory terms, was amended by A.P. Act 6 of 1993 and the word "shall" occurring in Section 4 was replaced by the word "may" which gave direction to the Government to refer or not to refer the matter to the Tribunal. Section 4A which was inserted into particular Act by the same amendment Act gave power to the Government to withdraw at any such time any case from the Tribunal before its conclusion. The section indicates that the copies to refer or not to refer the case to the Tribunal for disciplinary proceedings or withdraw any case already referred to the Tribunal became available to the Government only after the amendment of the particular Act by Act 6 of 1993.

Mr. K.V. Satyanarayana, learned counsel appearing for the respondent, while answering the contentions of the learned Advocate for the appellant submitted that the contention of the learned counsel for the appellant that the charged officer did not take objection to the jurisdiction of the TDP to entertain Charge-I at the earliest opportunity is incorrect. The learned counsel contended that in view of the directions issued by the High Court while disposing of the Writ Petition No. 8798 of 1998 on 27.4.1998 reserving the liberty to the charged officer to take all objections including the objection as regards jurisdiction also. And, therefore, he submitted that the contention raised by the learned counsel for the appellant is entertainable. The learned counsel next contended that the second charge framed against the charged officer alleges breach of Rule 9 of Conduct Rules whereas Rule 6 contemplated prior permission at all. The learned counsel submitted that under sub-rule (1) of Rule 9 of the Conduct Rules what is required is previous intimation to the Government to acquire or dispose of any immovable property and the reporting of transaction including movable property to the Government and to sub-rule (2) of Rule 9. Mr. Satyanarayana, therefore submitted that framing of Charge-II is defective and, therefore, the disciplinary action taken against the respondent should fall to the ground on that account itself. Mr. Satyanarayana further contended that there are a number of arithmetical and clerical mistakes in the order of TDP and the TDP had not correctly appreciated the entire matter in its proper perspective. At the time of hearing, he pointed out that

A certain deductions to which respondent was entitled to was not taken into consideration while calculating the disproportionate assets and pointed out the discrepancies here and there from out of the orders passed by the TDP. As it is a decision on a question of fact based evidence adduced, we are not inclined to interfere with the orders passed by the TDP at this stage.

B In the above background of facts and the contentions raised by the respective counsel, we shall now proceed to consider the rival submissions.

Before proceeding further, we shall now reproduce both the charges framed against the respondent herein :

C "*Charge No. 1* : That you, Sri Adinarayana joined in Government Service as Town Planning Assistant on 1.11.1965 in the Department of Town Planning at Kakinada and subsequently you were promoted as Assistant Director in the year 1978 and as Deputy Director in May 1985 and while working as such during the check period from D 1.11.1965 to 1.10.1993, you actuated by the corrupt motive and in abuse of your official position in order to gain pecuniary benefit for yourself acquired assets worth Rs. 10,02,674 , through your income was Rs. 10,50,024 and expenditure was Rs. 5,25,570 and therefore, you are found in possession of disproportionate assets to a tune of Rs. 4,78,220 and thereby you are guilty of misconduct within the meaning E of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1991 framed under the A.P. Civil Services (Disciplinary Proceedings Tribunal) (Amendment) Act, 1993.

Charge No.II : That you have acquired the Assets i.e. house bearing No. 12-2-717/124, Sapthagiri Colony, Hyderabad in your name worth F Rs. 2,23,000 and one Maruti Car bearing Regn. No. AHU 5355 worth Rs. 80,000 that also you were allotted 2000 shares of 225 partly convertible debentures in Nagarjuna Fertilizers and Chemicals Limited on 21.3.1991 and 1.2.1993 in all worth Rs. 23,375 and that you also purchased teak wood from Sri Venkateswara Saw Mill, G Sirpur worth Rs. 58,026 without prior permission of the Competent Authority violating Rule 9 of A.P. Civil Services (Conduct) Rules, 1964 and thereby you are guilty of misconduct within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules 1991 framed under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Amendment Act, 1993."

H

We have given our anxious consideration to the arguments advanced by the respective counsel. In the instant case, the TDP conducted an enquiry and examined all the relevant records, material papers and witnesses and submitted their report to the Government. The TDP held that the charged officer is guilty of misconduct within the meaning of Section 2(b) of Rules framed under Andhra. Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1991 from under Andhra Pradesh Civil Services Tribunal Amendment Act, 1993 for having been in possession of assets to the tune of Rs. 2,61,816 disproportionate to the known sources of income. In respect of the Charge-II, the charged officer was found guilty of misconduct as there is violation of Rule 9 of Andhra Pradesh Civil Services Conduct Rules, 1964.

The Government after examining the report of the Tribunal and after following the required procedure under the Rules, issued orders removing the respondent from service by order dated 28.10.2000.

The Administrative Tribunal already noticed allowed the original application filed by the respondent herein and set aside the orders issued by the Government removing the respondent from service. In our opinion, the order passed by the Tribunal in original application and the judgment rendered by the High Court dismissing the Writ Petition filed by the appellant herein, is contrary to law and erroneous.

The possession of assets disproportionate to the known source of income is a misconduct under the Conduct Rules as the delinquent officer was being charge-sheeted for violation of Conduct Rules made under the provision of Article 309 of the Constitution of India. We have already reproduced the Andhra Pradesh Civil Services Rules, 1960 which defined misconduct under Rule 2(b). The finding of the Administrative Tribunal that the Tribunal for disciplinary proceedings has no jurisdiction to interfere into the charge which falls under the Prevention of Corruption Act, 1988, is not correct. In our view, the charge under the Prevention of Corruption Act is a graver offence than the routine misconduct contemplated under the Andhra Pradesh Civil Services Conduct Rules. A grave misconduct does not cease to be a misconduct because it is grave. The Tribunal for disciplinary proceedings in our view is competent to examine the case. The TDP have examined 57 witnesses on the prosecution side and 13 defence witnesses and have marked 129 exhibits for the prosecution which were examined by the Tribunal together with 81 defence exhibits. A reading of the entire proceedings of the TDP would show that the TDP has considered the entire material placed before it and considered them

A in the proper perspective.

Reference was made to Article 309 of the Constitution of India by the Counsel for the respondent and it was contended that respondent could have been proceeded against, only in accordance with rule framed under Article 309. Article 309 empowers the legislature to frame rules to regulate the B recruitment and conditions of service of person appointed to public services and posts in connection with the affairs with the Union or the State. The respondent's plea does not merit for consideration as the Government have examined the entire report against him and entrusted the case to the TDP in public interest in accordance with rules framed under Article 309 of the C Constitution. The Government have clearly examined the report of the TDP and decided to impose a major penalty under Rule 9 sub-clause (IX) of the Andhra Pradesh Civil Service (Classification, Conduct and Appeal) Rules, 1991.

The first charge falls under the Prevention of Corruption Act. The D charge is that the respondent is possessing assets which are disproportionate to the known sources of his income. The contention of the learned counsel for the respondent that at the relevant time when this matter was referred to TDP and the TDP has no jurisdiction to entertain the first charge, has no force. There is no merit in the said contention. It is pointed out that there was an amendment to Andhra Pradesh Civil Services (Disciplinary Proceedings E Tribunal) Rules in G.O.Ms. 514 dated 15.10.1994. As per the above amendment to sub-rule (1) of Rule 3, the Government may subject to the provisions of Rule 4 referred to cases relating to Gazetted and the non-Gazetted Officers in respect of all matters involving misconduct committed by them to the Tribunal for enquiry and report under Section 4 of the Act. F It is to be noticed that when the matter was referred, this Rule alone was in force. Therefore, the TDP acquired the right to investigate the cases that fall under Charge-I. It is not disputed that the matter was referred to TDP on 21.7.1995 when the Rules in G.O.Ms. No. 514 dated 15.10.1994 was in force. Under these circumstances, we are of the opinion that the contention of the learned counsel for the respondent that the TDP has no right to entertain G the first charge relating to the offence has no merits and in view of the position stated above, the TDP was competent to entertain Charge-I.

As regard Charge-II, it was contended that the charged officer has acquired such an assets which included both immovable and movable H properties without prior permission as required under Rule 9 of the Conduct

Rules. Rule 9 runs as follows : A

> "Rule 9. Acquiring or disposing of movable or immovable property: (1) No Government employee shall, except after previous intimation to Government, acquire or dispose of, or permit any member of his family to acquire or dispose of, any immoveable property by exchange, purchase, sale, gift, or otherwise, either by himself or through others. B
> (2) A Government employee who enters into any transaction concerning any movable property exceeding rupees twenty thousand in value, whether by way of purchase, sale or otherwise, shall forthwith report such transaction to Government:

Provided that any such transaction conducted otherwise than through a regular C
or reputed dealer shall be with the previous sanction of Government."

Sub-rule (1) requires that before a Government employee acquires, dispose of, or permit any member of his family to acquire or dispose of, any immoveable property by exchange, purchase, sale, gift, or otherwise either D
by himself or through others he has to do so *after previous intimation.* It is contended by the learned counsel for the respondent that the requirement of prior permission cannot be equated to statutory requirement of previous intimation. It is true that intimation is intended to apprise the Government whereas the prior permission is something positive on the part of the Government without which the Government employee cannot acquire the E
assets. It was also further contended that framing of the charge is materially defective because acquisition of the property by itself does not constitute contravention of Rule 9 of the said Rules.

We have read this charge in the light of allegations in support thereof. F
In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the G
purchase of the several items. Therefore, in our view, the charged officer has violated the Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2H of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the above-said finding we hold that respondent is guilty of both the charges framed against him within the Rule 2(b) of the Conduct Rules of H

A 1991 framed under amendment Act, 1993.

The order of the Administrative Tribunal interfering with the well-considered order of the TDP is unwarranted. The APAT cannot sit as a court of appeal over a decision based on the finding of the enquiry authority in disciplinary proceedings. Where there is some relevant material which the B disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of the APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the Tribunals or of the disciplinary authorities, are found to be perverse, which are not based on the legal evidence, C then the administrative tribunal or the court is empowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive evidence is not permissible to be interfered with.

D In our opinion, the Administrative Tribunal cannot ignore the findings of the disciplinary authority or the tribunals. The truth or otherwise of the charge, is a matter of the disciplinary authority to go into. The finding of the court or tribunal under judicial review which, in our opinion, cannot extend to the re-examination of all evidence to decide the correctness of the charge. E In our view, the Administrative Tribunal cannot sit as a court of appeal over a decision based on finding of the enquiry authority in disciplinary proceedings. This court, time and again, categorically stated that court should not interfere with the quantum of punishment where there is some relevant material which the disciplinary authority has accepted and which material has reasonable supports, the conclusion reached by the Disciplinary Tribunal, it is not the F function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority.

In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the G manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stand allowed. Further, there will be no order as to costs.

H

V.M. Appeal allowed.