CENTRAL ADMINISTRATIVE TRIBUNAL
PRICNMIPAL BENCH
NEW DELHI

OA NO. 1826/2000

This the 7th day of February, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. N.D.DAYAL, MEMBER (A)

Sh. Hukam Chand,
(Removed Lab. Asstt.)
S/o Shri Mohan Lal Sharma,
R/o 2-B, Nathu Colony, Delhi.

(By Advocate: Sh. Ruchir Mishra proxy for Sh. S.D.Sharma)

Versus

1. Union of India
through Secretary, HRD, New Delhi.

2. Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi
Through its Dy. Commissioner.

3. Asstt. Commissioner, Kendriya Vidyalaya Sangathan,
Dehradun Region, Salwala Hathi Barkala,
Dehradun.

4. Principal, Kendriya Vidyalaya, Sikh Lines,
Meerut Cantt.

(By Advocate: Sh. S.Rajappa)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant is impugning the order of the disciplinary authority dated 6.2.1997 as affirmed by the order of the appellate authority dated 12.2.99 whereby by virtue of Rule 19(2) of CCS (CCA) Rules, 1965 (Rules, 1965 in short), he has been removed from service with all consequential benefits pre and post his retirement which has taken place on 31.8.1998.

2. The background of the case is as follows. Applicant was working as a Lab. Assistant in Kendriya Vidyalaya, Sikh Lines, Meerut Cantt. A criminal case was registered against him on 10.1.96 for committing offences under Section 324/326/I.P.C. The allegation was that he had thrown acid on some of his fellow teachers. On receipt of the enquiry report the disciplinary authority vide order dated 6.2.97 passed the order of

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removal of the applicant from service. In appeal, however, the disciplinary authority was directed to give reasons. Thereafter, the disciplinary authority invoking the powers under sub-Rule (1) of Rule 19 of Rules, 1965 imposed the penalty of removal from service on the applicant. In appeal, the appellate authority while affirming the order of the disciplinary authority on penalty, however, observed that the order is passed under sub-Rule (2) of Rule 19 of Rules, 1965.

3. Applicant had earlier challenged the order of penalty in OA-2104/98 but it was rejected by the Tribunal on 22.8.2000 holding that it had no jurisdiction to decide the service disputes of the employees of KVS on the date of the filing of the said OA as the jurisdiction of the Tribunal has been extended over Sangathan's employees on 17.12.99. Applicant then filed the present OA-1826/2000 on 31.8.2000 assailing the penalty orders imposed by the disciplinary authority. The respondents raised a preliminary objection that the OA was barred by time. Tribunal vide order dated 13.2.2001 upheld this objection and dismissed the OA as barred by time. This order was challenged by the applicant in WP (C) No.2429/2001 in the Delhi High Court and a Division Bench of the Hon'ble High Court set aside the order and remitted the proceeding back to give reasoned order with regard to the plea raised in the said OA. After the case file was received the respondent was directed to submit detailed reply but the respondent despite availing opportunity did not file the reply.

4. Earlier the respondents No.2 to 4 had filed a short affidavit in which preliminary objection was raised that the OA was not maintainable being barred by limitation. It was submitted that the applicant was impugning the order of the appellate authority dated 12.2.99 in the present OA which is filed beyond the period prescribed under Rule 21 of the Administrative Tribunals Act, 1985.

5. Though the respondent have not filed the detailed counter affidavit rebutting the allegations of the applicant made in the OA on merit yet the arguments were heard for final disposal of the OA on all the questions raised in the OA on the request of the parties. The respondents have also produced the departmental record in the matter.

6. We have heard the learned counsel for the parties and have also perused the relevant document filed on behalf of the applicant and also the departmental files produced by the respondent.

7. Counsel for respondents has primarily resisted the present application on the ground of it being barred by limitation prescribed in Rule 21 of the AT Act. The Hon'ble High Court in its order dated 4.8.2005 in CWP-2429/2001 titled Hukam Chand Sharma vs. Union of India & Others has relied on a decision of the said Court in WP (C) No.972/2001 in the case titled H.L.Sonar vs. Kendriya Vidyalaya Sangathan decided on 20.11.2003 and holding that the facts of the present case were similar to the facts of the above cited case. It was observed that Kendriya Vidyalaya Sangathan was brought under the jurisdiction of the Tribunal w.e.f. 1.1.99 thereafter in terms of Section 21 (2) of the Administrative Tribunals Act the petitioner was entitled to challenge the order passed during the period of 3 years prior to 1.1.99. So the issue raised was squarely covered. Hon'ble Court had further observed that applicant had explained the reasons for the delay in para 1, 2 & 3 which caused delay in challenging the penalty order but the Tribunal has not considered them so the proceedings were remitted back.

8. In paragraph 3 of the OA which related to the limitation, the applicnt has averred that he had earlier filed OA-2104/98 on 27.10.98 assailing the order of removal from service dated 6.2.97 which was confirmed on 22.5.98 and the appeal against which was rejected on 12.2.99. At the time of final hearing in the OA an oral objection was raised on behalf of the respondents as to the maintainability of the OA before the Tribunal for want of jurisdiction. It was pointed out that the notification extending the provisions of the Administrative Tribunals Act to KVS was issued on 17.12.98 conferring jurisdiction on the Tribunal w.e.f. 1.1.99. The Tribunal agreed with the respondents' contention and returned the OA for presentation before the competent court, so the applicant was filing the same again.

9. The Hon'ble High Court in WP (C) No.2429/2001 in which the order of this Tribunal dated 13.2.2001 was challenged has held that in terms of the provision of Section 21 (2) of the Administrative Tribunals Act, 1985, the applicant was entitled to challenge the impugned order passed within three years prior to 1.1.99. The order of the disciplinary authority stands merged with the order passed in appeal by application of Doctrine of Merger. The order is dated 12.2.99 and the present OA is filed on 31.8.2000.

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10. The facts of the case reveal that the applicant had filed the OA initially impugning the order of the disciplinary authority before 1.1.99 when the jurisdiction of the Tribunal was extended over the employees of KVS. After the pleadings were complete the respondent for the first time raised oral objection as to the jurisdiction of the Tribunal to admit the OA. In these circumstances, Tribunal returned the OA for presentation to the court of competent jurisdiction. In the meantime, the Tribunal was conferred jurisdiction to deal with the service matters of the employees of the KVS, so the applicant again filed the OA before it. In the case of H.L. Sonar (supra) relied upon by the Hon'ble High Court in the order dated 4.8.2005, has held that the applicant could have filed the OA challenging an order which was passed within three years prior to 1.1.1999 by application of Section 21 (2) of the Administrative Tribunals Act, 1985. This judgment squarely covers this case. As such the OA is filed within the time prescribed in Section 21 (2) of the Administrative Tribunals Act, 1985. Even otherwise, time prescribed in clauses (a) and (b) of sub section (1) of Section 21 of the Administrative Tribunal Act and to do substantial justice also since the matter relate to the penalty of removal of service of the applicant, we find it a fit case for condonation of delay under sub-Section (3) of Section 21 ibid. Accordingly, the delay, if any, is condoned. The preliminary objection of the respondent in this regard is devoid of merit is rejected.

11. As observed above, though the respondents have not filed any detailed counter reply for which a direction was given by the Tribunal, but they have produced the departmental record in the matter.

12. It appears that after the incident of throwing acid on some teachers allegedly by the applicant, a criminal case was registered against him and he was arrested. He was also placed under deemed suspension under sub-Rule (2) of Rule 10 of Rules, 1965. We are told that through out the period of criminal trial applicant had been in jail. The Trial Magistrate by his order dated 25.7.97 has acquitted the applicant of the charges. In fact, the injured themselves did not identify the applicant as the culprit who had thrown acid and had caused injuries to them.

13. Reverting to the facts of departmental proceeding, it appears that soon after the incident in January 1996, the disciplinary authority decided to initiate disciplinary enquiry against the applicant under Rule 14 of Rules, 1965 and appointed Sh. G.C.Nautiyal,

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Principal, Kendriya Vidyalaya, Dehradun as Enquiry Officer. From the departmental record, however, it transpired that enquiry which was a sort of preliminary enquiry was conducted by the enquiry officer in which the submission of certain witnesses was recorded and in fact the statement of the applicant was also taken in jail. The enquiry officer, thereafter, submitted a report holding that the applicant was guilty of serious misconduct of throwing acid on his fellow teachers and was also facing criminal trial for the offence. The disciplinary authority after he had received the enquiry report passed the following order on 6.2.97 (Annexure-1):-

> "Whereas a disciplinary case was contemplated against Sh. Hukam Chand Sharma, Lab. Assistant, Kendriya Vidyalaya S.L. Meerut under Rule 14 of CCS (CCA) Rules, 1965.
>
> Whereas on careful consideration of the inquiry report the undersigned agrees with the findings of the Inquiry Officer and has therefore come to the conclusion that Shri Hukum Chand Sharma, Lab. Assistant is not a fit person to be retained in the service of the Sangathan and so the undersigned impose on him the penalty of removal from the services of the Kendriya Vidyalaya Sangathan with effect from 15th Feb. 1997."

14. This order was challenged in appeal. The appellate authority exercising his power under sub-Rule (2) of Rule 27 of Rules, 1965 remitted the matter to the disciplinary authority to pass a speaking and reasoned order. The relevant extract of order of the appellate authority dated 7.1.98 (Annexure-X) reads as under:-

> "Whereas it is observed that the order passed by the Disciplinary Authority is incomplete and does not speak about the circumstances leading to the removal of the said Shri Sharma from the service of the Sangathan. Also it does not mention the reasons under which the regular enquiry has been dispensed with. In case the orders are passed under Rule 19(i) of Central Civil Service (Classification, Control and Appeal) Rules, 1965, the requirement of speaking order and reasoned order has not been followed. The certified copy of the Court's Judgment and the relevant record have not been made available to the said Shri Sharma. Further, there is no direction from the Court for re-instatement of Shri Sharma.
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> Having regard to the facts and circumstances of the case the undersigned, being the Competent Appellate Authority, therefore, remits the case to the Disciplinary Authority in terms of Rule 27 (2) (a) (ii) with direction that a clear, speaking and reasoned order be issued in the case. It will be open to the Appellant to prefer an Appeal against this order of the Disciplinary Authority in accordance with rules."

15. Thereafter the disciplinary authority passed fresh order dated 22.5.98 (Annexure-XII). It will be relevant to reproduce an extract of this order also as under:-

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"Accordingly undersigned being the disciplinary authority hereby comply with the direction of the appellate authority & pass following clear, speaking and reasoned orders:-

1. On 10.1.96 the then Principal Sh. Chaman Singh, K.V.S.L., Meerut head office of Sh. H.C.Sharma, reported to the disciplinary authority that Sh. H.C.Sharma, Lab Asstt. Has thrown acid on Mrs. N.Devi, PGT (Chem.) of the same Vidyalaya on 10.01.96 around 1.30 p.m. in examination room no.21. This was witnessed by Sh. Ansar Ali PGT (Bio.) & Mrs. Usha Rani Gupta TGT (Sans.).

2. The Principal, K.V.S.L., Meerut informed the S.H.O. Lal Kurti, Meerut telephonically as well as letter dated 10.01.96 that sh. H.C.Sharma Lab. Asstt. After throwing the acids had bolted the door of Chemistry Lab from inside. The police force came to the School and broke open the door and took Sh. H.C.Sharma to Police Station, Lal Kuri, Meerut Cantt.

3. On 18.1.96 Sh. Vinod Kumar Udania, S.I. provided the details about the arrest of Sh. H.C.Sharma and also the facts that his bail application was turned down by the session court on 17.1.96.

4. Principal, K.V.S.L., Meerut vide his letter dated 27/31.1.96 provided further facts about the incident held on 10.1.96 of throwing acids by Sh. H.C.Sharma on the face of Smt. N.Devi, PGT (Chem.). Most vital documents provided by the Principal were two photographs which shows the damage inflicted by the action of Sh. Hukam Chand Sharma of throwing acids.

5. The entire incident was further highlighted by the press i.e. Dainik Jagarn, Amar Ujala, Indian Express. The situation became more sensitive. Accordingly undersigned appointed Sh. G.C. Nautiyal, Principal, KV, IMA, Dehradun and Sh. A.K.Gupta, Principal, KV, OFD, Dehradun for further investigate the matter and the report on 23.04.96 which was examined. A detailed report was submitted to head of department i.e. Commissioner, KVS (HQ) New Delhi on 26.04.96 alongwith the report of officers i.e. two Principals.

6. The Commissioner, KVS returned the case to the undersigned for taking action as per rules vide their letter no. F.8-60/96-KVS (Vig.) dated 26.6.96. In the meantime, the KVS also received a reference from Member of Parliament about this incident.

7. Two officers were further directed to record the statements of Sh. H.C.Sharma who was in judicial custody and they accordingly recorded his statement in Jail premises and submitted another report recommended that on the basis of documentary, oral and recorded evidence adduced that Sh. H.C.Sharma is guilty of misconduct.

Keeping in view all the factors, records, statements of witnesses and seriousness of the charges undersigned decided and passed orders to remove Sh. H.C.Sharma from the services under rule 19 (1) of CCS (CCA) Rules 1965 and accordingly removed Sh. Sharma from the services of the Sangathan vide order dated 06.02.97."

16. The applicant again preferred an appeal challenging the order of the disciplinary authority. The appeal was decided by order dated 12.2.99 (Annexure-XIV). The relevant portion of the order reads as under:-

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"The undersigned has also gone through the preliminary inquiry report submitted by Shri G.C.Nautiyal, Principal, K.V., IMA Dehradun. The said report contains the version/statements of 11 teachers including statement of Shri Sharma which was recorded while he was in lock up and to that extent he was heard before levy of penalty. The said report shows that Shri Sharma threw acid on Smt. N.Devi, PGT, KV Sikh Lines, Meerut Cantt. As such the charge has been prima facie established.

The disciplinary proceedings are in conformity with Rule 19 (ii) of the CCS (CCA) Rules, 1965 and not under Rule 19 (i) as wrongly indicated by the disciplinary authority in the order dated 22/25/5/98, because the order passed by him is in terms of Rule 19 (ii) of CCS (CCA) Rules, 1965. This mistake/omission is apparent from the record and is rectifiable. Hence, the order of penalty would be construed to have been made under Rule 19 (ii) of the CCS (CCA) Rules, 1965.

Mere acquittal of Shri Sharma from criminal charge would not ipso facto lead to exoneration of misconduct on the part of the charged employee under CCS (CCA) Rules, 1965 are altogether different from criminal proceedings. It is therefore, felt that the penalty already imposed under CCS (CCA) Rules would stand regardless of acquittal ordered by the Criminal Court. The appeal preferred by said Shri Hukum Chand Sharma merits no consideration."

17. From the aforesaid order of the appellate authority it is clear that the enquiry conducted by Sh. G..Nautiyal was only a preliminary enquiry and not a disciplinary enquiry contemplated under Rule 14 of the rules, 1965. Moreover, the penalty was imposed on the applicant in accordance with the procedure prescribed by sub-Rule (ii) of Rule 19 of the Rules, 1965.

18. As noticed above, the departmental record which has been produced has clearly shown that the requirement of Rule 14 of Rules, 1965 were not observed by the disciplinary authority while directing an enquiry to be made by Sh. Nautiyal purportedly under Rule 14 and during the enquiry the procedure prescribed by the rules was also not observed. No charge memo was served on the applicant nor was he asked to make his representation/explanation to them; the enquiry was behind the back of the applicant and no attempt was made to associate him on the pretext that he was in jail. Any how since the appellate authority has not considered the said enquiry under Rule 14 which in fact could not be so considered, we need not delve deeper into the compliance of procedure rule for holding disciplinary enquiries.

19. The question now arise whether the orders of the disciplinary authority is in accordance with the procedure prescribed by Rule 19 of the CCS (CCA) Rules. It is apt to reproduce this rule here:-

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"Special Procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18 –

(i) where any penalty is imposed on a Government servant on the ground of conduct which had led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

The Disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i) :

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.]"

20. Aforesaid rule is in substance similar to the second proviso to Article 311 of the Constitution of India which has stated as under:

"[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which had leg to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; and

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

21. Three Judges bench of the Hon'ble Supreme Court in the case of Satyavir Singh and Others vs. Union of India and others 1986 SC (L&S) 1 has observed that the proviso

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to Article 311 (2) becomes applicable in three cases mentioned in clause (a) to (c) of that proviso namely:-

> "(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which had leg to his conviction on a criminal charge;
>
> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; and
>
> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

22. The second proviso to Article 311 (2) of the Constitution and sub-Rule (ii) of Rule 19 of Rules, 1965 which is a deviation from the well-established *audi alteram partem* rule namely affording an opportunity of hearing to a civil servant before imposing the penalty of dismissal or removal or reduction in rank on him under Article 311 of the Constitution and such orders as deem fit by the disciplinary authority under Rule 19 of the Rules, 1965. The Hon'ble Supreme Court in the above cited cases has also observed that service rules may reproduce the provisions of the second proviso to Article 311 (2) and authorize the disciplinary authority to dispense with the enquiry as contemplated by clause (2) of Article 311 in the three cases mentioned in the second proviso to that clause or any one or more of them, which have been reproduced above, but while the source of the authority of a particular officer to act as a disciplinary authority and dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article 311 (2) and not from any service rule. It was further observed that the omission to mention in an order of dismissal, removal or reduction in rank the relevant clause of the second proviso or the relevant service rule will not have the effect of invalidating the order imposing such penalty. As regards clause (b) of second proviso to Article 311 (2) (b) the Hon'ble Court had observed as under:-

> "(55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311 (2) can be applied. These conditions are:
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> (i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable, and
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> (ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.
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> (56) Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonable practicable to do so.

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(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be –

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail."

23. The Hon'ble Court had also observed that the situation which makes the holding of enquiry not reasonably practicable may not necessarily exist before the enquiry is instituted and such a situation could also come into existence subsequently during the course of the enquiry. Furthermore, recording of the reason for dispensing with enquiry was a condition precedent to the application of clause (b) of second proviso and if reasons were not recorded in writing the order dispensing with the enquiry and the order of penalty following thereupon would be void and unconstitutional. However, it is not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order that the reasons are not recorded in writing before passing the final order but was subsequently fabricated.

24. In the background of the aforesaid principles of law, now we may examine whether the order of penalty impugned in the OA is in accordance with the procedure prescribed by rule 19

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of Rules, 1965. The requirement of Rule 19 (ii) are substantially the same as those of Article 311 (2) (b) of the Constitution so the observation of the Hon'ble Supreme Court in the case of Satyavir Singh will hold good in respect of Rule 19 (ii) of Rules 1965. Sub-Rule (ii) empowered the disciplinary authority to dispense with the ordinary disciplinary proceeding in the manner provided under CCS (CCA) Rules, if he is "satisfied for the reason to be recorded by it in writing that it is not reasonably practicable to hold an enquiry". Such reasons though preferably be recorded or reproduced in the order of the disciplinary authority in the order which is passed under Rule 19 in order to avoid insinuation that no such reasons have been recorded at proper time. But such reason may be recorded separately. Fact remains that the disciplinary authority is not expected to dispense with the disciplinary authority lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding of an enquiry or because the department's case against the Government servant was weak and was, therefore, bound to fail.

25. The order of the disciplinary authority and the appellate authority relevant extract of which have been reproduced do not show that the disciplinary authority in the first order dated 6.2.97 applied its mind to pass an order to record his satisfaction for dispensing with the ordinary disciplinary enquiry as per Rule 19 (ii) of the Rules, 1965. The authority seemed to have taken the report of the enquiry officer appointed by him as a report submitted in an enquiry proceeding conducted under Rule 14. Any how after the appellate authority by order dated 7.1.98 (Annexure-10) remitted the matter back for recording reasons, he seemed to have become a bit wiser and in the order dated 22.5.98 (Annexure-12), he imposed the penalty invoking Rule 19(i) of Rules, 1965 which was not attracted at all. The appellate authority in his order dated 12.2.99 disagreed with the order of the disciplinary authority that the penalty was imposed as per sub-Rule (i) of Rule 19. He observed that the proceedings were in conformity with sub-rule (ii) of Rule 19. When we examine the order of the disciplinary authority in the light of the observation of the appellate authority in its order that the proceedings were in accordance with sub-rule (ii) of Rule 19, we do not find anything in the order of the disciplinary authority to justify the conclusion of the appellate authority in this regard. The appellate authority himself did not consider the question of dispensing with the ordinary mode of enquiry and rightly. Sub-Rule (ii) of Rule 19 vested power in the disciplinary authority to record reasons to be satisfied that the enquiry prescribed in the manner provided in Rules, 1965 was not reasonably

practicable. Such reasons could have been recorded by the disciplinary authority by invoking Rule 19 before or during the pendency of an enquiry which was being conducted under Rule 14.

26. As observed earlier, the satisfaction of the disciplinary authority that it was not reasonably practicable to conduct disciplinary proceeding by ordinary procedure prescribed under Rules, 1965 could also be recorded separately and not necessarily in the order of the penalty. Though it is desirable to do so. We in order to find whether such a satisfaction was recorded in writing by the disciplinary authority meticulously examined two departmental files, which were produced by the counsel for the respondents. We did not find any material on record which may show that the disciplinary authority at any time considered the question of dispensing with the ordinary mode of enquiry.

27. Perhaps after the enquiry report was received he dealt with it as if it was an enquiry report received under Rule 14/15 of Rules, 1965. When the matter was remitted by the appellate authority for recording the reasons the disciplinary authority only thereafter he purportedly invoked Rule 19 to justify the penalty. Sub-Rule (i) of Rule 19 ibid, did not apply to the case at all. Applicant had not been convicted on the criminal charge for the same misconduct rather he was acquitted. The appellate authority treated the order of the disciplinary authority to be under sub-Rule (ii) to be on the safe side. We have noticed that no order in writing, as contemplated under sub-Rule (ii) of Rule 19 ibid has been passed dispensing with the ordinary mode of disciplinary proceeding prescribed under the Rule. In the orders of the disciplinary authority, appellate authority or in the departmental record, not only that no satisfaction of the disciplinary authority has been recorded as contemplated under sub-Rule (ii) but there is no material facts and circumstances which may justify the passing of such order by the disciplinary authority. The argument of the learned counsel for the respondent that the applicant had been in jail, therefore, could not have been associated with the ordinary disciplinary proceeding is a ruse as the departmental record would show that the statement of the applicant was recorded in jail with the approval of the authorities. There is no escape from holding that the penalty order cannot be considered to have been passed in accordance with the procedure prescribed under sub-Rule (ii) of Rule 19 of Rules, 1965.

28. As a result of the above discussion, the present OA is partly allowed. The order of the disciplinary authority dated 6.2.97 (Annexure-I), order dated 7.4.94 (Annexure-X) and appellate authority dated 12.2.99 (Annexure-XIV) are set aside. Respondents shall consider the question

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of revocation of the deemed suspension order of the applicant, his reinstatement in service notionally (since he has already retired on attaining the age of superannuation), regularization of the period of his suspension from the date of the suspension order to the date of his retirement as per extant rules and for grant of the consequential pre and post retirement monetary benefits arising out of the present order. But it will not debar the disciplinary authority from initiating disciplinary proceedings against the applicant in the manner provided under Rules, 1965 within two months. If the disciplinary proceedings are decided to be started afresh, the respondents shall be under deemed suspension till the date of retirement and the question of regularization of the period from the date of deemed suspension to the date of his retirement and grant of monetary benefit for the aforesaid period will be decided soon after the fresh disciplinary proceedings are finally over.

29. The above order shall be implemented by the respondent within three months from the date on which the certified copy of this order is received by them. Parties are left to bear their own costs.

(N.D. DAYAL)
Member (A)

(M.A. KHAN)
Vice Chairman (J)

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