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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No. 44 of 1992.

DATE OF DECISION: SEPTEMBER 24, 1993.

Jay Prakash Verma ... Applicant.

Versus

Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

24.9.93
(K. P. ACHARYA)
VICE-CHAIRMAN

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Stateof Orissa and others ... Respondents.

For the applicant ... M/s.Jayant Das,
B.S.Tripathy,
B.K.Sahoo, S.Mallik,
K.P.Mishra, Advocates.

For the respondents ... Mr.K.C.Mohanty,
Government Advocate(State).

C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

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J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act,1985, the applicant prays to quash the disciplinary proceeding initiated against him.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Police Service. It was alleged against the applicant that during his incumbency as Superintendent of Police, Bolangir he had purchased teak log to the extent of 363.15 Cft. for Rs.20,182.25 paise and thereafter sold 180.27 Cft. teak logs worth more than Rs.10,000/- to others at Bhubaneswar for which no approval was obtained from

the Government under Rule 16(4) of the All India Services (Conduct)Rules, 1968 and furthermore it was alleged that the applicant misutilised his official position and authority by engaging one of his subordinate Police Officers in participating in the auction on behalf of the applicant held by the Orissa Forest Corporation for purchase of the said teak logs which was unbecoming of a member of the Indian Police Service. In his application the applicant maintains that no misconduct hasbeen committed by him because the purchase wasmade resulting from an auction conducted by the Orissa Forest Corporation (a Government of Orissa Undertaking) and in the absence of any allegation that the subordinate Police Officer had on behalf of the applicant exercised any undue influence over the authorities, by no stretch of imagination the applicant could be held to have committed any misconduct. It is furthermore, maintained that after the bid was knocked down in favour of the auction purchaser and it was confirmed by the concerned authority and timber transit permit was obtained on 15.4.1985, intimation was given to the Government on 2.5.1985. In such circumstances, the allegation of the disciplinary authority that the applicant had violated the provisions contained in Rule 3(1) of the All India Services(Conduct)Rules, 1968 and initiation of a disciplinary proceeding on that count is unsustainable and liable to be quashed.

3. In their counter, the respondents maintained that the transaction being for more than Rs.10,000/- and the auction having taken place on 28.1.1985 and 29.1.1985, information having been given by the applicant relating to this transaction on 2.5.1985, namely after lapse of onemonth, there is violation of Rule 16(4) of the All India Services(Conduct) Rules,1968 and hence the applicant hasbeen rightly alleged to have violated Rule 3 of the All India Services(Conduct) Rules,1968. Therefore, in no circumstances, the proceeding should be quashed.

4. We have heard Mr.J.Das, learned counsel for the applicant and Mr.K.C.Mohanty, learned Government Advocate (State) for the respondents.

Before we express our opinion on several contentions advanced by counsel for both sides we deem it fit and proper to dispose of a preliminary objection raised by Mr.Jayant Das, learned counsel, appearing for the applicant. Relying on the averments finding place at paragraph 4.8 of the petition , it was submitted that before written statement of defence was filed by the applicant, the disciplinary authority had appointed an Enquiring Officer and a presenting Officer which clearly indicates that the disciplinary authority had a closed mind and had acted in violation of the provisions contained in Rule 14 of the Central Civil Services (Classification,Control & Appeal) Rules,1965. Rule 14(1),(2),(3),(4),(5)(a) &(5)(b) provide as follows:

" 14. Procedure for imposing major penalties- (1) No order imposing any of the penalties specified in clauses(v) to (ix) ofRule 11 shall be made except after an enquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants(Inquiries)Act,1850(37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any impugation of misconduct or misbehaviour against a Government servant, it may itself inquire into or appointment under this rule or under the provisions of the Public Servants(Inquiries)Act,1850, as the case may be, an authority to inquire into the truth thereof.

Explanation- Where the disciplinary authority itself holds the enquiry, any reference in sub-rule(7) to sub-rule(20) and in sub-rule(22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up :-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge ;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain;

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified , a written statement of his defence and to state whether he desires to be heard in person.

(5(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule(2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule15.

(b) If no written statement of defence is submitted by the Government servant the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule(2), an inquiring authority for the purpose. "

From the above quoted provisions contained in Rule 14 of the C.C.S.(C.C.A)Rules,1965, it is found that undoubtedly opportunity has to be given to the delinquent officer to submit his written statement within a stipulated period. In respect of those charges admitted by the delinquent officer, the disciplinary authority has a right to punish him according to law without probing into the matter, and in respect of the charges which are denied , if the disciplinary authority if feels that there are grounds to further probe into the matter ,may appoint an enquiring officer. Therefore, appointment of an enquiring Officer prior to filing of the charge sheet and consequently without further probing into the matter, it is undisputedly an illegality committed by the disciplinary authority to appoint an enquiring Officer without the written statement of defence if filed within the stipulated period fixed by the disciplinary authority. In the present case, in paragraph 4.8 of the petition , it is admitted by the

applicant that he had filed the written statement of defence on 6.1.1992. It is further admitted in para 4.3 of the petition that in the month of March, 1991 the applicant had received the letter bearing No. 2401 dated 11.1.1991 enclosing thereto articles charge. In paragraph 14 of the counter, it is stated that though the articles of charges were delivered to the applicant in January, 1991 and he had submitted his written statement of defence on 6.1.1992. From Annexure-1 it is clear that the disciplinary authority had called upon the petitioner to submit his written statement of defence within thirty days from the date of receipt of this notice and it is further stated therein that if no written statement of defence is received from the applicant within stipulated time it would be presumed that he has no defence to offer and the proceeding would be disposed of exparte on the basis of the facts and materials available to the Government. The applicant having remained silent and not having taken effective steps from the date of receipt of the articles of charges, the disciplinary authority had no other option but to appoint an enquiring officer to probe into the allegations. Therefore, in such circumstances, we find no illegality to havebeen committed by the disciplinary authority in appointing an enquiring Officer before the filing of the written statement and therefore, the aforesaid contention of Mr.Das is devoid of merit.

5. Law is well settled that normally disciplinary proceeding should not be quashed where guilt or otherwise of the delinquent officer can be tested on the basis of the oral and documentary evidence placed before the enquiring Officer/disciplinary authority. But, if the allegations levelled against a delinquent officer are presumed to be true and correct then the Court is required to address itself as to whether according to law and facts and circumstances of thecase a case is made out/against the delinquent officer to make himself liable for punishment. This settled position of law was rightly and fairly not disputed at the Bar.

It would be profitable to quote the provisions contained in Rule 16(3), (4) &(5) of All India Services (Conduct)Rules,1968, which run thus :

> " (3) No member of theService shall, except with the previous knowledge of the Government,-
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> (a) acquire any immovable property by lease, mortgage,purchase, gift or otherwise, either in his name or in the name of any member of his family; or
>
> (b) dispose of by lease, mortgage,sale, gift or otherwise any immovable property owned by him or held by him either in his own name or in thename of any member of his family:
>
> Provided that the previous sanction of the Government shall be obtained if any such transaction is with a person having official dealings with themember of the Service.
>
> (4) A member of the Service shall report tothe Government within one month from the date of every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property if the value of such property exceeds ten thousand rupees.
>
> Provided that the previous sanction

of the Government shall be obtained if any such transaction is-

(i) with a person having official dealings with the member of the Service.

(5) The Government or any authority empowered by it in this behalf may, at any time, by general or special order, require a member of the Service to furnish within a period specified in the order a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order and such statement shall if so required by the Government or by the authority so empowered, include details of the means by which, or the source from which, such property was acquired.

Explanation I. For the purpose of this rule, the expression movable property includes inter alia the following property, namely :-

(a) jewellery, insruance policies, the annual premia of which exceeds ten thousand rupees or one sixth of the total annual emoluments received by the member of theService from the Government, whichever is less, shares, securities and debentures ;

(b) loans advanced by or to such member of the Service, whether secured or not ;

(c) motor cars, motor cycles horses, or any other means of conveyance; and

(d) refrigerators, radios, (radiograms and television sets).

Explanation II.- For the purposes of this rule, 'lease' means, except where it is obtained from, or granted to, a foreign national or foreign mission or a foreign organisation controlled by or assessed with foreign missions, or a person having official dealings with the member of the Service, a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent. "

The provisions contained inRule 16(3) are not applicable to the present case because the provisions deal with immovable properties. So far as sub-rule(4) is concerned, a Member of the Service shall report to

the Government within one month from the date of transaction if the value of such property exceeds Rs.10,000/-(Rupees ten thousand) only and in addition to the above previous sanctionof the Government is necessary if the member of the Service has official dealings with a person with whom the transaction has taken place. At the cost of repetition, it may be stated that neither Orissa Forest Corporation is a ' person' nor can it be said that organisation had any official dealings with the present applicant except the transaction in question. Therefore, inour opinion sanction of the Government was not necessary. The onlyquestion that now needs to be determined is as to whether the applicant had reported to the Government within one month from the date of the transaction in question and whether the movable property acquired by him exceeds Rs.10,000/-. According to the facts stated in the imputation annexed to the article of charge it is found that Shri Verma (the present applicant) paid Rs.8,112,60 on 13.2.1985/20.3.1985 and Rs.12,069.65 on 14.4.1985. Since according to the prosecution, the applicant's transaction on 13.2.1985/20.3.1985 was to the extent of Rs.8,112.60,only according to the provisions contained in Rule 16(4) quoted above the applicant had no duty cast on him to give any information to the Government. So far as the transaction of Rs.12,069.65 on 14.4.1985 is concerned, (as appears from the same memo of imputations) and in the article of charges it is stated that out of total logs

measuring 363.15 Cft., 180.27 Cft. teak logs worth more than Rs.10,000/-was sent to Bhubaneswar and itwas disposed of at Bhubaneswar. The pertinent question which requires to be answered is as to whom it was sold. The case of the applicant as unfolded in different correspondence made by the applicant and as stated in the petition, is that teak logs to the extent of 180.27 Cft. was sold by the applicant to one of his colleagues Shri B.B.Singh, I.P.S. who was constructing a house at Bhubaneswar. Sri Singh had requested the applicant to arrange some teak logs for his house at Bhubaneswar and therefore a part of the logs in the auction purchase was meant for Shri B.B.Singh I.P.S. who had paid Rs.6,000/-in different instalments namely, Rs.2,000/-in each instament. This fact has not been denied at any stage by the respondents. Therefore, it can be safely concluded that out of the total amount of Rs.12,069.65 the applicant having entered into a transaction in the matter of purchase of teak logs from the Orissa Forest Corporation for his own use being Rs.6,069.65 paise, no duty was cast upon the applicant under the relevant rules to report thisfact to the Government. But as an abundant precautionary measure, vide letter No.280 dated 2.5.1985, the applicant informed the Deputy Inspector General of Police, Administration, Orissa Cuttack that he had purchased 363.15 Cft. of round logs of teak at a total cost of Rs.20,182.25 during auction conducted by the Forest Department at Kantabanji and Lathor on 28.1.1985 and 29.1.1985 respectively. The applicant has no other option but to communicate with the Government through proper channel. This information given to the Deputy Inspector General of Police, Administration, Orissa, Cuttack (in otherwords to the State Police Headquarters) was with the intention of

transmitting this information to the Government. Instead of transmitting this information to the Government, Asst. Inspector General of Police, Vigilance, Cuttack vide his letter No.1590 dated 18.5.1985 referring to the letter dated 2.5.1985 sent by the applicant to the Deputy Inspector General of Police, Administration, Orissa, Cuttack, contained in Annexure-3 asked the applicant as to whether in compliance with the Police Manual Rule 706(c), previous sanction of the Inspector General of Police, Orissa, had been taken or not. In case, not taken, the applicant was advised to seek necessary permission from the Director General of Police and in response thereto vide Annexure-4 dated 29.7.1985 the applicant sought ex-post facto permission from the Director General of Police. The applicant in his correspondence with the Director General of Police in Annexure-5 states that through inadvertance he could not give an information earlier. Vide D.O. letter No.5063 dated 19.12.1990 addressed to the Secretary to the Government of Orissa in Home Department, Director General of Police, recommended to the Government for ex-post facto sanction. In view of the peculiar facts and circumstances of the case, it is worthwhile to quote the enti-re letter which runs thus :

" SHRI D.N.SINGH, I.P.S.,
DIRECTOR GENERAL OF POLICE &
INSPECTOR GENERAL OF POLICE,
ORISSA:CUTTACK

ORISSA POLICE
STATE HEADQUARTERS : CUTTACK

D.O.No.5063/OP.,
OPN-15-81

THE DATED 19TH DEC'90.

Dear Shri

Shri J.P.Verma, IPS, Ex-S.P.,Bolangir presently serving under deputation, had purchased 363.15 cft. of round logs from Forest Department in an auction sometime inApril,1985 by engaging a Subordinate Police Officer in the auction without obtaining previous sanction of the I.G. of Police,as laid down under P.M.R.706(c). Subsequently, he had sold 180 cft. of logs to a colleague of his namely,Shri B.B.Singh,IPS in four separate instalments for which he had received a sum of Rs.6000/- approximately.

Before according sanction to Shri Verma under P.M.R.706(c), he hadbeen asked to clarify certain issues. Shri Verma had offered compliance vide his D.O.letter addressed to then D.G. of Police dt.20.10.88 and subsequently reminded this office vide his letter nil,dt.2.12.90.

I have carefully gone through his clarification. In so far as question of his having engaged a Subordinate Police Officer in an auction for purchase of teak is concerned, I am rather satisfied with his explanation and accordingly ex-post-facto permission under PMR 706(c) is being granted.

The other issue is disposal of a part of round logs of teak to a colleague of his namely, Shri B.B.Singh,IPS. Since the teak had been sold to a colleague of his and no monetary benefit had accrued tohim, and those were sold at the actual cost, the transaction may please be treated as one having been done in good faith. It would appear that these transactions were in three different instalments each within a limit of Rs.2000/-or less.

The transaction, therefore, may not come strictly within the meaning of " with the persons having personal dealing" and intimation to the Govt. would have sufficed. However, if this requires permission from the competent authority, I recommend that he may be granted ex-post-facto permission on this account as well.

Copies of D.O.letters of Shri Verma dated 20.10.88 and 3.12.90 are enclosed. I feel that this is a fit case for according ex-post-fact

Yours sincerely
Sd.
(D.N.SINGH)

SHRI SAHADEV SAHOO,IAS,
SECRETARY TO GOVT. OF ORISSA
HOME DEPARTMENT; BHUBANESWAR. "

The superior authority of the applicant and no less thanthe Director General of Police is of opinion that 180.27 Cft.

logs was sold to Shri B.B.Singh and Director General of Police is of further opinion that the explanation offered by the applicant for ex-post facto permission is satisfactory and that transaction was bonafide and done in good faith. Since the Director General of Police is of this view, we fail to understand as to how, the applicant comes within themischief of Rule 3 of the All India Services(Conduct)Rules,1968 and we further fail to comprehend as to how the applicant has misconducted himself exhibiting lack of integrity and devotion to duty. Further admitted case of the parties before us is that without disposing of the information given by the applicant to the Deputy Inspector General of Police, Administration,Orissa, Cuttack, contained in Annexure-2 and without disposing of the recommendation made by the Director General of Police contained in Annexure-9, charges havebeen framed against the applicant. Though we have grave doubts regarding the applicability of the provisions contained in the Police Manual to a member of the Indian Police Service yet information havingbeen given by the applicant to the Government, through the Deputy Inspector General of Police(Administration),Orissa, Cuttack on behalf of the Director General of Police and in view of the fact that sanction was sought for by the applicant through the Director General of Police keeping in view Rule 706 of the Police Manual(which according to us hasno applicability to the applicant) we are in fullest agreement with the views of the Director General of

Police that the entire transaction was a bonafide transaction and in good faith entered upon by the applicant. Incidentally it may be mentioned that if the applicant would not have stated the facts of purchase of teak logs contained in Annexure-2 dated 2.5.1985 in his letter addressed to the Deputy Inspector General of Police (Administration), and had not the DirectorGeneral of Police recommended to the Government for post facto sanction there might not have been any scope for the Government to initiate disciplinary proceeding. The voluntary act of the applicant in seeking post facto sanction has led to initiation of a proceeding though because Government does not take exception to the purchases of teak wood from the Orissa Forest Corporation by Shri B.B.Nanda, I.P.S., the then Deputy Inspector General of Police, Sambalpur functioning as the immediate superior authority of the applicant and Shri B.B.Singh which is admitted in the counter.

6. So far as the allegation made against the applicant that he had not reported to the Government within one month from the date of transaction, it was submitted by Mr.Das and not

controverted (rather admitted) in the memo of imputation that the Timber Transit permit was obtained on 15.4.1985. Unless the sale is confirmed and T.T.permit is obtained transaction cannot be held to have reached its finality. T.T. permit havingbeen admittedly obtained on 15.4.1985 the applicant had reported in time to the Deputy Inspector General of Police, Administration, Orissa,Cuttack , as contained in Annexure-2 on 2.5.1985 i.e. within one month from the date on which the transaction was made final. Even if it is conceded for the sake of argument that the payment was made on 13.2.1985/20.3.1985 and 14.4.1985 still then a delay of two months in giving necessary intimation has been caused is not very much material tomake a member of the Indian Police Service to face a departmental proceeding especially when the head of the State Police organisation namely the DirectorGeneral of Police is of opinion that theentire transaction was free from any blemishes and it was bonafide and had been done in good faith. The opinion of the Director General of Police certainly carries very great weightage while judging the guilt or otherwise of a member of the Indian Police Service

7. As regards charge No.2 that the applicant had misutilised his official position and authority by engaging a subordinate police Officer in purchasing teak logs on auction, we cannot but say that one does not lack in experience that highly placed officers do normally feel reluctant to stand amidst the crowd to be one of the competitors in an auction. They normally engage somebody to bid on their behalf. Our view stands reinforced by the facts stated in the memo of imputation that the subordinate Police Officer to the applicant, Shri L.M.Panigrahi had applied for T.T.permit in the name of and on behalf of the applicant Shri Verma. If the applicant would have mis-utilised his position as a superior officer then the applicant would not have advised his subordinate to make an application in his own name namely the applicant. If the transaction was of a clandestine nature or shrouded with ulterior motives to gain illegal pecuniary advantage then the applicant would have chosen to remain behind the screen instead of being an applicant for the T.T.permit. On the contrary the applicant states that though the application was made by his subordinate, Shri L.M.Panigrahi, yet the entire transaction was done in good faith as would be evident from Annexure-9. As such the charge No.2 is not only vague but frivolous and baseless. Nowhere, it appears from the record that the applicant had gained any

undue pecuniary advantage by engaging his subordinate to act on his behalf or obtain the T.T.permit on his behalf.

8. At this stage, we feel tempted to quote the observations of Their Lordships of the Supreme Court in the case of A.L.Kalra vrs. The Project and Equipment Corporationof India Ltd. reported in AIR 1984 SC 1361 quoting with approval the observations made by Their Lordships in the case of Managing Director, Uttar Pradesh Warehousing Corpoation v. Nivay Narayan Vajpayee reported in AIR 1980 SC 840. At paragraph 20 of the judgment Their Lordships observed as follows:

> " It must be conceded in fairness to Mr.Sinha that he is right in submitting that even if the respondent-Corporation is an instrumentality of the State as comprehended in Art. 12, yet the employees of the Corporation are not governed by Part XIV of the Constitution. Could it however be said that a protection conferred by Part III on public servant is comparatively less effective than the one conferred by Part XIV ? This aspect was examined by this Court in Managing Director, Uttar Pradesh Warehousing Corporation v. Vinay Narayan Vajpayee, (1980)2 SCR 773 at p. 784 : (AIR 1980 SC 840 at pp.845-46), where O.Chinnappa Reddy,J. in a concurring judgment has spoken so eloquently about it that it deserves quotation :
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> " I find it veryhard indeed to discover any distinction, on principle, between a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government. It is self-evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of theState to secure 'social, economic and

political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity'. That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Governmental activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporations, set up by it or owned by it, now owns or manages, a large number of industries and institutions. It is the biggest builder in the country. Mammoth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the Government. The Governmentis also the biggest trader in the country. The State and themultitudinous agencies and Corporations set up by it are the principal purchasers of the produce and the products of our country and they control a vast and complex machinery of distribution. The Government, its agencies and instrumentalities, Corporations set up by the Government under statutes and Corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if Government is bound to observe the equality clauses of the Constitution in thematter of employment and in its dealings with the employees, theCorporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confirm the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court so enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector hasgrown to vast dimensions and employees in duties as civil servants and participate in activities vital to our country's economy.

> In growing realization of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, Government companies and statutory Corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is ,therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants.""

Our intention in quoting the observations of Their Lordships in the case of Managing Director, Uttar Pradesh Warehousing Corporation is to show that there is no distinction now made between the Government servant anddan employee in a Corporation so far as misconduct is concerned. Therefore, the observations of Their Lordships in paragraph 22 of the judgment in the case of A.L.Kalra(supra) would apply in full force to the facts of the present case. At paragraph 22 of the judgment, Their Lordships were pleased to observe as follows:

> " Rule 4 bears the heading'General'. Rule 5 bears the heading'misconduct'. The draftsmen of the 1975 Rulesmade a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope R.4 into R.5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is

unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct . It is notnecessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories(I) Ltd. v. Presiding Officer, Labour Court, Meerut, (1984) 1 SCC 1: (AIR 1984 SC 505)where this Court held that 'everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of R.5which specifies misconduct. It would therefore appear that even if the facts alleged in the two heads, of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that R.25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct. "

Similar is the position so far as the present case is concerned. Applying the observationsmade by Their Lordships to the facts of the present case, we would hold that Charge No.2 is vague and if the facts relating to both the charges are accepted to be true and correct there is no escape from the conclusion

that the applicant has not misconductedhimself in any manner whatsoever and that he has not violated the provisions contained in Rule 3(1) of the All India Services(Conduct)Rules,1968.

9. It was next contended by Mr.Das that the Home Department has drawn up the charges against the applicant. The Political and Services Department (nor redesignated as General Administration Department), was the only department which was competent to draw up the charges against the applicant. Mr.Das submitted that under the Rules of Business which has been framed under Article 166 of the Constitution the General Administration Department was competent to draw up the charges. Therefore, it was contended by Mr.Das that an incompetent authority having drawn up the charges,it is liable to be quashed. On the other hand, Mr.Mohanty,learned Government Advocate(State) submitted that vide Resolution No.3483/Gen. dated 3.3.1970 of Political and Services Department, Government had resolved thatmmatters relating to disciplinary cases may be dealt with by Political and Services (Vigilance) and/or Home Department in consultation with the Political and Services Department and therefore, the Home Department having framed the charges after consulting the Political and Services Department(now redesignated as General Administration Department) no illegality has been committed relating to

framing of the charges by the Home Department. Undisputedly, Rules of Business havebeen framed under Article 166 of the Constitution of India and therefore, it has a statutory force. Furthermore, undisputedly, under First Schedule, 'Allocation of business amongst Departments', all matters affecting the India Services and Posts are tobe dealt with by the General Administration Department. It now remains to be considered as to whether the action of the Home Department to deal with disciplinary cases and passing of orders by the Home Department in consultation with the Political and Services Department by virtue of the Administrative instructions contained in Resolution No.3483 dated 3.3.1970 can be sustainable. There have been beadroll of judicial pronouncements on this subject, the earliest being the case of Sant Ram Sharma v. State of Rajasthan and others reported in A.I.R.1967 SC 1910. In this case, the petitioner was superceded by an order of the State of Rajasthan, while promoting Shri Hanuman Sharma to the post of Inspector General of Police, Rajasthan. The petitioner before Their Lordships prayed for issue of a writ in thenature of Mandamus to consider the petitioner's claim as seniormost Officer in Rajasthan to be promoted to the post of Inspector General of Police. Their Lordships in the said judgment were pleased tohold that a post of Inspector General of Police was a selection post and seniority was not the

only criteria to be taken into consideration. Merit has to be first considered. In the said case Their Lordships were also considering different administrative instructions issued by the Government of India in regard to promotions to the selection posts. At paragraph 7 of the judgment, Their Lordships were pleased to observe as follows:

> " We proceed to consider the next contention of Mr. N.C.Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in theRules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts.It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

This view of the Hon'ble Supreme Court was followed by this Bench in the case of K.C.Pattanayak versus State of Orissa and others reported in ATR 1987(2)CAT401. Later in the case of A.N.Banerjee v. State of Maharashtra reported in 1988(2) SLJ 231(CAT), disposed of by New Bombay Bench it was held that any administrative instruction issued imposing restrictions and/or limitations on the provision of rules framed under Article 309 of the Constitution is not sustainable. Cuttack Bench while disposing of the case of K.C.

Pattanayak came to the conclusion that administrative instructions issuedby the Government in regard to promotions of officers of the Indian Police Service prescribing 4 years of experience as Inspector General of Police and 30 years of experience in Police Service did not offend any of the statutory Rules. Ofcourse Cuttack Bench had not taken note of the provisions contained in I.P.S(Pay)Rules which was taken note of by the New Bombay Bench. A case of supercession of Inspector General of Police to the rank of Director General of Police came up for consideration by the Guwahati Bench. The Division Bench of Guwahati referred the matter to a larger Bench and the Full Bench (in which one of us, Acharya, J. was a member of the Full Bench) after considering the principles laid down in the cases of Sant Ram Sharma(supra) and in the case of State of Haryana vr. Shamsher Jang reported in AIR 1972 SC 1546, Gurnam Singh v. State of Rajasthan, reported in 1971(2) SLR 799(SC); S.L.Sachdev v. Unionof India reported in 1980(3)SLR 503(SC); District Registrar Palghat v. M.V. Koyyakutty reported in AIR 1979 SC 1060, finally held that proviso to Rule 3(2A) of the IPS(Pay)Rules, 1954 lays down the criteria for promotion to the post of Director General of Police and the guidelines/ administrative instructions issued by the Government of India either in the year 1986 or in the year 1988 prescribing 4 years' experience as Inspector General of Police and 30 years of service in the Police Force for being eligible for promotion to the post of Director

General of Police overrides the provision contained in the above rules and therefore such administrative instructions are not valid. This view of the Full Bench in the case of Dr.Bhupinder Singh,IPS v. Union of India and others is reported in CAT (F.B.)Vol.II 309. The ratio decidendi of the judgments of the Supreme Court referred to by the Division Bench and that of the Full Bench is that an administrative instruction cannot override or place any restrictions on the rules framed under Article 309 of the Constitution. Administrative instructions/guidelines can only fill up the gap or may be clarificatory in nature. Therefore, applying the principles laid down by Their Lordships of the Supreme Court and the view taken by the Full Bench it is now required of this Bench to find out whether the administrative instructions contained in the aforesaid resolution overrides the statutory rules or it is only by way of filling up of the gap. At the cost of repetition, it may be stated that all matters affecting the India Services and posts had been allocated to the General Administration Department by the Rules of Business framed under Article 166 of the Constitution. By issuing an administrative instruction stating that the Home Department would be competent to draw up charges against All India Officers in consultation with the Political and Services Department(redesignated as General Administration Department) amounts to new restrictions and limitations having been put on the provision of the Rules framed under Article 166 of the Constitution

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and since such administrative instructions override the provisions contained in the said rules, such administrative instructionis not sustainable. Therefore, we find that there is substantial force in the contention of Mr.J.Das, learned counsel for the applicant that the General Administration Department was alone competent to draw up the charges and not the Home Department.

10. In view of the aforesaid facts and circumstances and in view of the discussions made above, we do hereby quash the chargesheet submitted against the applicant, Shri J.P.Verma and consequently, the disciplinary proceeding initiated against him is hereby quashed.

11. Thus, this application stands allowed leaving the parties to bear their own costs.

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MEMBER(ADMN.) 24 SEP 93

24.9.93
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 24, 1993/Sarangi.

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH