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Central Administrative Tribunal, Cuttack Bench

O.A. No. 169 of 2004 with OA Nos. 177 and 827 of 2005

Cuttack this the 20th day of December, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

OA 169/2004

Prafulla Chandra Mishra
Aged about 57 years
S/o Late Somnath Mishra
Permanent resident of
Village/P.O./Ps: Sarankul District Nayagarh

At present working Special Secretary Home,
Home Department,
Government of Orissa,
Orissa Secretariat,
Bhubaneswar.

.....Applicant

By Advocate: Mr. Indrajit Ray.

Versus

1. Union of India through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. State of Orissa, represented by Principal Secretary,
Home Department,
Orissa Secretariat,
Bhubaneswar, District Khurda.

...Respondents

By Advocate: Mr.A.K. Bose and Mr. U.B. Mohapatra.

OA 177/2005

Prafulla Chandra Mishra
Aged about 57 years
S/o Late Somnath Mishra
Permanent resident of
Village/P.O./Ps: Sarankul District Nayagarh

At present working Special Secretary Home,
Home Department,
Government of Orissa,
Orissa Secretariat,
Bhubaneswar.

.....Applicant

By Advocate: Mr. Indrajit Ray.

Versus

1. Union of India through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. State of Orissa, represented by Principal Secretary,
Home Department,
Orissa Secretariat,
Bhubaneswar, District Khurda.

...Respondents

By Advocate: Mr.A.K. Bose and Mr. U.B. Mohapatra.

OA 827/2005

Prafulla Chandra Mishra
Aged about 57 years
S/o Late Somnath Mishra
Permanent resident of
Village/P.O./Ps: Sarankul District Nayagarh

At present working Special Secretary Home,
Home Department,
Government of Orissa,
Orissa Secretariat,
Bhubaneswar.

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...Respondents

By Advocate: Mr.A.K. Bose and Mr. U.B. Mohapatra.

ORDER

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

This order will decide three OAs bearing No.OA 169/2004, 177/2005 and OA No.827/2005 as common question of law and fact arise for adjudication.

2. Since the facts in these three OAs are identical, we may reproduce the allegation made by the applicant in OA No. 169/2004 in some detail. All these OAs are filed by the same applicant.

3. In OA No. 169/2004 the applicant in para 8, has prayed for the following relief:-

- “(a) Issue notice to the respondent;
- (b) Stay operation of Annexure-I.

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 © Direct the respondent to communicate the members of the Departmental Promotion Committee not to act upon the memorandum dated 5th May, 2004 under Annexure-I while considering the case of Promotion of the applicant to the rank of Director General of Police.

(d) Direct the memorandum dated 5th May, 2004 shall not stand as a bar, impediment for consideration of the case of the applicant for promotion to the rank of Director General of Police.

(e) In view of the facts mentioned in Para 4, the applicant prays to quash the memorandum of charges under Annexure-I”.

4. The allegations of the applicant in the OA are as follows.

The applicant was a senior member of Indian Police Service, Orissa State Cadre and he was working in the grade of Additional Director General of Police in Orissa State. Later he was posted as Principal Secretary Home Department in Orissa Government when he attained the age of superannuation and retired from service with effect from 30.6.2006. On 5.5.2004, he was served a memorandum, copy of which is filed as Annexure-I, by the Principal Secretary by which disciplinary proceeding for major penalty was proposed to be held against him as per Rule 8 of All India Service (Discipline and Appeal) Rules, 1968 (hereinafter referred to as Rules 1968). Enclosed there with were the Article of Charge as Annexure-I and the Statement of Imputation of misconduct and misbehaviour in support of each of the Article of Charge as Annexure-II. The list of documents and list of witnesses by whom the Articles of Charge were proposed to be sustained, were Annexure-III. The applicant was asked to submit his written statement within 30 days. The Article of Charge, Annexure-I being relevant, is produced below:-

“ Article of Charge

That Shri Prafulla Chandra Mishra, IPS, the then Additional DG of Police, Special Armed Police (SAP) Orissa, Cuttack, and now working as Special Principal Secretary to Government of Orissa, Home Department, Bhubaneswar, is charged with gross misconduct of indulging in crass favouritism in the matter of recruitment and appointment of Sepoys in as much as described below:-

Article-I

He was nominated as Chairman of the Selection Board formed for recruitment of Sepoys in the newly created OSAP 8th Bn., Chhatrapur, in the District of Gangam, during the year, 2001-02 with Shri Arbinda Nath Mishra, the then Commandant OSAP 6th Battalion, Cuttack, Additional SP., Ganjam

and the District Welfare Officer, Ganjam as Members. He acted as such from 6.2.2002 to 17.3.2002. He alone and not the Selection Board conducted 'Interview' of General (un-reserved) and SEBC (Socially and Economically Backward Class) candidates and kept all the other members out of it so that it will be easy for him to do the manipulation in awarding those marks.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3 (1) (2) of AIS (Conduct) Rules, 1968.

ARTICLES-II

That one of the components of the 'Interview' was 'extra curricular activities', which included awarding marks for Sports achievement. He awarded false marks to at least 52 candidates, all belonging to the General (un-reserved) and SEBC (Socially and Economically Backward Class) categories for 'Sports achievements', which none of them had. He gave to them all the false mark sheet for 'Sports Achievements'. All of them have admitted that neither did they possess any Sports Certificates nor produce one at the time of 'Interview'. He showed blatant favoritism to them.

Thus, he had grossly misconducted himself and failed to maintain absolute integrity and devotion to duty as enjoined under Rule-3 (1) (2) of AIS (Conduct) Rules, 1968

ARTICLE-III

That, Shri Prafulla Chandra Mishra, IPS the then Addl. DG of Police, Special Armed Police, (SAP) Orissa, Cuttack, as the Chairman of the Selection Board manipulated, with dishonest intention, the inclusion of three candidates, namely Bhanani Shankar Hota, Broad Sheet Sl.No.1507 (General); Suryanarayan Khadanga, Broad Sheet Sl.No.1838 (General); and Shri Nilamadahba Das, Board Sheet sl. No. 1228(general), in the Select List of General candidates at Sl. No. 41, 58 & 57, respectively. None of them had secured the marks equal to or above the cut-off mark of 68 (for unreserved or General category candidates) even after getting 5,5 & 8 of false marks, respectively, for 'Sports' achievements. They had no sports achievement. In the Select List they are shown to have secured total 70 marks each although they had actually secured 67 (Hota), 63 (Khadanga) & 67 (Das), (including false marks for sports achievements) and had fallen short of cut-off level by 1,5 & 1 marks, respectively. Their marks were simply inflated without even inventing a contrivance like false marks for sports achievements. In selecting them for appointment by manipulations, Sri Mishra profaned the process of recruitment.

Thus, he failed to maintain absolute integrity and devotion to duty as enjoined under Rule 3 (1) (2) of AIS (Conduct) Rules, 1968.

ARTICLE – IV:-

That Sri Prafulla Chandra Mishra, IPS, the then Addl. DG of Police, Special Armed Police (SAP) Orissa, Cuttack as the Chairman of the Selection Board manipulated, with dishonest intention, the inclusion of 2 candidates, namely, Sri Bijaya Kumar Sahu, Broad Sheed S.No. 6146(SEBC) and Sri Jagannath Biswal Broad Sheet S.N. 898(SEBC) in the Select List of SEBC candidates at S.N. 109 & 147, respectively. None of them had secured the marks equal to or above the cut off mark of 66 (for socially & Economically Backward Classes candidates) even after getting 3 & 5 of false marks, respectively, for 'sports' achievements. Both had no sports achievements. In the select List they are shown to have secured 67 (Sahu) & 66(Biswal) although they had actually secured the marks of 6 and 64,

respectively(including the false marks for 'sports' achievements); and had both fallen short of the cut-off level by 1 & 2 marks, respectively. Their marks were simply inflated without even inventing a contrivance like false marks for sports achievements. In selecting them for appointment by manipulations, Sri Mishra profaned the process of recruitment.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3 (1) (2) of AIS (Conduct) Rules, 1968.

ARTICLE – V:-

That Shri P.C.Mishra, IPS dishonestly awarded marks for 'Sports achievements' to at least 63 candidates by entertaining ineligible sports achievement certificates. The list of such candidates is enclosed vide S.N. 1 to 63 in Appendix B to the Statement of Imputation. In each case, the details of the sports certificates entertained, and why were those ineligible for award of marks for this recruitment have been given. Such certificates were entertained to ensure their selection and appointment in an unfair manner.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3(1) (2) of AIS (Conduct) Rules, 1968.

ARTICLE – VI:-

That Shri P.C.Mishra, IPS, dishonestly inflated the marks for award of sports achievements at least in 7 cases listed from S.N. 64 to 70 in Appendix B to the Statement of Imputation. In each of these cases, the quantum of inflation has been indicated along with the reasons basing on which it has been held that the marks were inflated to ensure their appointment as Sepoy notwithstanding that ultimately it turned out that some of them were making to Select Lists even without such inflation.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3(1) (2) of AIS (Conduct) Rules, 1968.”

The applicant did not submit the statement of defence instead filed OA No.169/2004 in which he prayed for stay of the proposed disciplinary proceedings by way of an interim measure. The prayer made was disposed off by the Tribunal by order dated 13.5.2004 with certain observations and the applicant was allowed 30 days time to submit his written statement of defence. In another application MA No. 508/2004 the Tribunal by order dated 20.7.2004 granted interim stay of further continuance of the disciplinary proceedings which were initiated against the applicant vide memorandum dated 5.5.2004. The applicant has submitted the statement of defence but in view of the operation of the order of interim stay, the proceedings have not been continued further.

5. The contention of the applicant is that Vigilance Department had registered a case against the applicant by GR No. 40/2003 under Section 13 (2) read with Section

13 (1)(d) of Prevention of Corruption Act and under Section 420, 471 read with 120 B IPC in the court of Chief Judicial Magistrate, Cuttack, in which investigation was going on and the charge-sheet has not been submitted in the court. It is submitted that almost a year after the registration of the aforesaid case, departmental proceedings are now proposed to be initiated against him for the sole purpose of stalling his promotion to the rank of Director General of Police which is due and in view of his long service and in view of his seniority and unblemished record of the service he was sure to be selected. A mere proposal for initiation of disciplinary proceedings and initiation of enquiry in the eye of law is not a disciplinary proceeding pending against the applicant so as to stall his promotion to the next higher grade of Director General of Police. The action of the respondents by serving memorandum Annexure A-I is arbitrary, mala fide and unsustainable in law. It is also violative of fundamental rights guaranteed under the Constitution and the rule of natural justice.

6. According to the applicant, departmental proceeding is for the same allegation as in the criminal case, and both proceedings were based on the same set of facts, which are sought to be proved by the same set of witnesses. The charge in the criminal case is of a grave nature which involved complicated issue so it is desirable to stay the departmental proceeding till the criminal case is over. The applicant has prayed for stay of the departmental proceedings initiated vide Annexure-I till the disposal of the criminal case. Referring to Rule 3 (1) and (2) of the All India Service (Conduct) Rules, 1968 which, inter alia, has provided "every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing unbecoming of a member of the service", the applicant submitted that in the Article of Charge Annexure-I it is alleged that the applicant has contravened the aforesaid Rule 3. The allegations, broadly speaking, are as under:-

- (i) The petitioner as Chairman did not associate other members of the Selection Board while conducting interview of the candidates for the recruitment of Sepoys in the Orissa State Armed Police VIIIth Bn., Chatrapur.
- (ii) He had awarded inflated marks to the candidates who did not secure cut off marks.

(iii) Though candidates were not in possession of sports certificate nor did they produce such certificates at the time of interview but the marks were awarded for 'sports achievement'.

(iv) He had entertained certificate which were ineligible for award of marks and such certificates were entertained to ensure fair selection".

7. According to the applicant the aforesaid allegations did not suggest that there was dishonest intention touching upon the integrity of the applicant. The charges are vague in nature, misconceived and presumptuous. There was no allegation by any other member of the Selection Board that he was not associated during the interview of the candidates. The mark sheet/result sheet will bear it out that all the members of the Selection Board have put their signatures in token not only of their presence but also participation for conducting the interview. The applicant had filed Criminal Miscellaneous Petition No.447/2003 before the Hon'ble High Court of Orissa for quashing the criminal investigation against him which, it is submitted by the respondents, was dismissed.

8. The applicant candidly admitted that there was absolutely no bar to the initiation of disciplinary proceeding against the applicant even if a criminal case is pending investigation against him. The disciplinary proceedings were against the alleged contravention of the Conduct Rules whereas the criminal proceedings were for the commission of criminal offences. The Government while aware of the allegations against the applicant even before the registration of the criminal case is stated to have conducted a preliminary enquiry by the State Vigilance Department. In case the Government desired in the exigency of administration it could have initiated disciplinary proceedings at that time which suggested that abrupt departmental action against the applicant is out of malice and vengeance. The applicant, as Additional Director of Police, was nominated as Chairman of the Committee for conducting interview for the appointment of Sepoys in Orissa State Special Armed Police. After the registration of vigilance case against him, he was transferred and posted as Special Secretary of the Home Department. He was within the zone of consideration for appointment to the post of Director General of Police. In the seniority list his

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position is No.1. Throughout his career he has received outstanding remarks. He had maintained absolute integrity. The Departmental Promotion Committee is meeting shortly. The paper work has started for convening DPC meeting keeping someone in view to promote him to the rank of DG of Police and since it was not possible to do so ignoring the case of the applicant, hasty, surreptitious steps have been taken in a hush hush manner to convene the DPC meeting as quickly as possible. If the DPC considers the service record of the applicant, which is unblemished, there is no doubt that they would select the applicant to the post of Director General of Police. But the DPC will not consider the case of the applicant if disciplinary proceedings were pending, thus, the future of the applicant will be sealed in the sealed cover procedure. Service of Annexure-I is in fact a camouflage to axe the applicant from due consideration for promotion. Since the disciplinary proceedings is in the stage of proposal, in the eye of law, there is no charge against the applicant since the disciplinary proceeding could not be said to have been initiated or started or the charges against the applicant have already been framed. The applicant, as such, has prayed that Memorandum Annexure-I should not be used against him at the time of consideration of his case for promotion to the next higher grade.

9. Further contention of the applicant is that the imputation in the article of charges do not disclose clearly and definitely what the allegations are, on which the charges against the applicant are found, they are vague in nature and evasive. They do not pin point any misconduct on the part of the applicant. There is no evidence to support the imputations against the applicant in the article of charges. All these charges are based on mere conjectures and surmises. They are exaggerated and unsustainable.

10. By way of amendment in the OA the applicant also referred to the allegations made by the respondents in their counter reply and it is submitted that the respondent No.2 has admitted that vigilance investigation was a time consuming process which required verification of huge volume of documents, to collect evidences, to scrutinize all the relevant record, to conduct detailed investigation all over Orissa and to examine a number of witnesses. It takes about 2 to 3 years to file the charge-sheet and 15 years to decide a case in the trial court and it is alleged that this being the

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position of a vigilance case or criminal proceeding, the disciplinary proceeding cannot be kept in abeyance for such a long period by which time the applicant would retire and would have enjoyed 15 years of pension. It means that the disciplinary proceedings probably, as stated by the respondents, would not have been initiated had the criminal investigation and the trial would have been concluded within a short span of time. From the allegation of the respondents it is evident that the disciplinary proceedings have been initiated because of long delay in trial of criminal case. Long and short of the case of the applicant in the OA is that the disciplinary action has been initiated against him with the sole purpose of stalling his promotion to the next higher post of Director General of Police.

11. The respondent No.2 State of Orissa in its counter-reply has rebutted the allegation of the applicant that the disciplinary proceedings initiated against the applicant by Memorandum Annexure-I suffer from any legal infirmity or flaw. It is stated that the applicant was senior member of Indian Police in Orissa State Cadre and was presently working as Principal Secretary in the Home Department and that it was essential on his part to maintain absolute integrity and devotion to duty as per the provision of Rule 3 (1) and (2) of AIS (Conduct) Rules, 1968. Explanation to Rule 3 (1) states "a member of the service, who habitually fails to perform a task assigned to him within the time set for the purpose and with the quality of performance expected from him shall be deemed to be lacking in devotion to duty within the meaning of sub-rule (1) of Rule 3". In the instant case, the applicant failed to maintain absolute integrity and devotion to duty and he has indulged himself in corruption and gross favoritism in the matter of recruitment and appointment of Sepoys in the 8th Bn. Of Orissa State Armed Police at Chhatarpur during the year 2001-02. A series of allegations came from the different corners of the State that the applicant had committed gross irregularities and corruption in the process of recruitment and appointment of Sepoys in the 8th Bn. Of OSAP, Chhatrapur. This was also highlighted in the local Newspapers and public media. The questions were also set and put up by the Members of the Orissa Legislative Assembly. The State Government ordered a vigilance enquiry into these allegations. The Vigilance Department conducted investigation in the matter and submitted preliminary enquiry

report to the Home Department of the State Government which after thorough examination disclosed that prima facie credible evidence was available against the applicant. So the Government after being satisfied that there was sufficient and reasonable ground to proceed against the applicant decided to initiate disciplinary proceedings against him under Rule 8 of Rules 1968. The proceedings are initiated by delivery of charge-memo initiated vide Annexure-I and the contention of the applicant that it was a mere proposal of initiating of the disciplinary proceedings was erroneous and misconceived. The State Government does not have any mala fide intention and the memorandum of charges has been served on the applicant in accordance with the rules and prepared after due application of mind. There is no arbitrariness or mala fide intention behind it. General Administration Department of the State Government is the cadre controlling authority of the applicant which deals with the promotion matter and in the said case the said department has not been made a party.

12. The respondents in the counter has further submitted that the Government, being the employer, has every right to take disciplinary action against the employees for their misconduct according to AIS (Conduct) Rules, 1968 in order to maintain discipline, honesty and probity in administration. The applicant, being senior member of Indian Police Service was required to maintain absolute integrity and devotion to duty and all fairness in public service. As Additional Director General of Police of State Armed Police Orissa, the applicant failed to maintain the same. The departmental proceedings have been initiated against the applicant for his egregious misconduct leading to blatant violation of AIS (Conduct) Rules, 1968 whereas the criminal case was registered for criminal liability of the applicant. Though both the proceedings are based on the same general allegation but actually they are separate, distinct and independent of each charge. There is no rule which prohibits simultaneous initiation and conduct of disciplinary proceedings and criminal proceedings. The charges against the applicant are to be proved against oral and documentary evidence. In the criminal case investigation is still not complete and no charge-sheet has been filed in the court. The cognizance of the offence has also not been taken by the court so the contention of the applicant that the charges in the

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departmental proceeding as also in the criminal case are sought to be proved by the same witnesses are imaginary and based on presumption only. Even if it is presumed for the sake of argument and without admitting, the witnesses will be the same to prove charges as the applicant in the departmental proceeding as well as in the criminal trial still the standard of proof required for establishing the charge in the departmental proceeding is on principle of preponderance of probability whereas the standard of proof required for establishing criminal charge is of much higher standard and based on the principles of proof beyond reasonable doubt. So the witnesses in both the proceedings will be likely to depose differently and it would be incorrect to state that the same witnesses will be relied upon in both the proceedings in an identical manner.

13. It is also stated by the respondents in the counter-reply that the law is well settled by series of decisions and there is a consensus of judicial opinion that on the departmental proceedings and a criminal case against the same person can continue. The disciplinary authority is competent to draw its own conclusion on the basis of the evidence adduced before it in support of the charge. The criminal court, on the other hand, will record its finding in respect of the applicant on the basis of the evidence adduced before it in support of the charge. Even acquittal in the criminal court does not bar a disciplinary proceeding on the same self charges. No complicated question of law and fact is involved as claimed by the applicant and the prayer of the applicant for stay of the disciplinary proceedings till the conclusion of the criminal trial is untenable in law. Investigation in the criminal case is a time consuming process which requires verification of huge volume of documents to collect evidences, to scrutinize all the recruitment records, to conduct detailed investigation all over Orissa and to examine a number of witnesses. It is seen that it takes 2 to 3 years to file a charge-sheet and 15 years or more time to decide a vigilance case in a criminal court. The disciplinary authority cannot keep mum for such a long time by which time the applicant would have retired and enjoyed pension for 15 years. The applicant had submitted statement of defence which was received by the Home Department on 26.5.2004 and is under examination. But in the meantime, by an interim order the Tribunal has stayed further continuance of the disciplinary proceedings so no action

could be taken on the written statement of defence submitted by the applicant. Other allegations were also denied and it is prayed that the OA be dismissed.

14. The applicant filed a rejoinder to the counter-reply and reiterated his own case and rebutted the claim of the respondents to which respondent No.2 also filed a counter-reply to the rejoinder reiterating their own case.

15. In OA No. 827/2005 the applicant in para 8 of the OA has claimed the following relief:-

- “(i) Issue notice to the respondent.
- (ii) Call for the entire records of the departmental proceeding.
- (iii) Quash the Memorandum of Charges Annexure A-3”.

16. In this OA the applicant has impugned the Memorandum dated 15.9.2005 served on him for initiating disciplinary proceeding on the basis of the statement of Articles of Charge Annexure-I and in the statement of imputation of gross misconduct and misbehaviour filed with it, Annexure-II. The allegations in the Articles of Charge, Annexure A-1 are similar to the Articles of Charge, Annexure-I in OA No. 169/2004 but the Articles of Charge related to the misconduct or misbehaviour of the applicant while he was working as Chairman of the Selection Board constituted for the recruitment of Sepoys in Orissa Special Armed Police, 4th Battalion Rourkela and 5th Battalion Baripada during the year 200-2002. The Articles of Charge in this case read as under:-

ARTICLE OF CHARGE

That, Sri P.C.Mishra, IPS, the then Addl DG of Police, Special Armed Police (SAP), Orissa, Cuttack and now working as Special Principal Secy to Govt. of Orissa, Home Department, Bhubaneswar is charged with gross misconduct of indulging in crass favouritism in the matter of recruitment and appointment of Sepoys in as much as described below:

ARTICLE – I:-

He was nominated as the Chairman of the Selection Board formed for recruitment of Sepoys in the Orissa Special Armed Police, 4th Battalion, Rourkela and 5th Battalion, Baripada, which was held at the 4th Battalion premises, Rourkela during the year 2001/2002. Sri T.K.Ray, the then Commandant, OSAP, 4th Battalion, Rourkela, the then Addl. SP, Rourkela and the then Addl. District Welfare Officer, Rourkela were the Members of the Selection board. Shri P.C.Mishra acted as such from 17.1.2002 to 31.3.2002. He alone and not the Selection Board conducted the ‘Interview’ of general (unreserved) and SEBC (Socially and Economically Backward Class) candidates

and kept all other Members out of it, so that it will be easy for him to do the manipulations in awarding the marks.

By not maintaining absolute integrity and devotion to duty as enjoined in Rule 3 (1) (2) of All India Services (Conduct) Rules, 1968, Shri Mishra has committed gross misconduct.

ARTICLE – II:-

That one of the components of 'Interview' was 'Extra –Curricular Activities' which included awarding marks for sports achievements. He awarded false marks to at least 3 candidates, belonging to General (Unreserved) and SEBC (Socially and economically Backward class) categories for 'sports achievements', which none of them had. The two of them have admitted that neither did they possess any Sports certificates nor produced one at the time of 'Interview'. He showed blatant favoritism to them.

Thus, he failed to maintain the absolute integrity and devotion to duty as enjoined under Rule 3 (1) (2) of All India Services (Conduct) Rules 1968, and guilty of gross misconduct.

ARTICLE – III:-

That, Shri P.C.Mishra, IPS, the then Addl. DG of Police, Special armed Police (SAP), as the Chairman of the Selection Board, dishonestly awarded marks for 'Sports achievements' to as many as 22 candidates by entertaining ineligible sports achievements certificates. Such Certificates were entertained to ensure their selection and appointment in an unfair manner.

By not maintaining absolute integrity and devotion to duty as enjoined under Rules 3 (1) (2) of All India Services (Conduct) Rules 1968, and guilty of gross misconduct.

ARTICLE – IV:-

That, Shri P.C.Mishra, IPS, the then Addl. DG of Police, Special Armed Police (SAP), dishonestly inflated the marks for award of Sports achievements at least in 4 cases. In all these cases, the marks were inflated to ensure their selection and appointment as Sepoys.

Thus, he conducted himself in a manner unbecoming of a senior All India Officer by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3 (1) (2) of All India Services (Conduct) Rules 1968, and guilty of gross misconduct".

17. In OA No. 177/2005 the applicant has claimed relief identical to the relief which has been claimed in OA 177/2005 which is as follows:-

- “(i) Issue notice to the respondent.
- (ii) Call for the entire records of the departmental proceeding.
- (iii) Quash the Memorandum of Charges Annexure A-4”.

18. In this OA the applicant has impugned the memorandum dated 8.4.2005 (Annexure-A-4) served on him for initiating disciplinary proceedings on the basis of the statement of Article of Charge Annexure A-I and in the Statement of Imputation

of gross misconduct and misbehaviour filed with it, Annexure-II. The allegations in Article of Charge, Annexure A-I are similar to the Article of Charge, Annexure-I in OA No.169/2004 but the article of charge related to the misconduct and misbehaviour of the applicant while he was working as Chairman of the Selection Board constituted for the recruitment of Sepoys in Orissa Special Armed Police Ist Battalion, Charbatia, 6th Battalion, Cuttack and 7th Battalion, Bhubaneswar during the year 2001-02. The articles of charges served by Memorandum Annexure-I, however, read as under:-

“ARTICLES OF CHARGE

That, Sri Prafulla Chandra Mishra, IPS, the then Addl, D.G. of Police, Special Armed Police (S.A.P), Orissa, Cuttack and now working as Special Principal Secretary to Government of Orissa, Home Department, Bhubaneswar is charged with gross misconduct of indulging in crass favouritism in the matter of recruitment and appointment of Sepoys in as much as described below:-

ARTICLE -I

He was nominated as Chairman of the Selection Board, formed for recruitment of Sepoys in the Orissa Special Armed Police, 1st Battalion, Charbatia, 6th Battalion, Cuttack and 7th Battalion, Bhubaneswar, which was held at the O.S.A.P, 6th Battalion premises, Cuttack during 2001-2002. Sri Arabindanath Mitra, the then Commandant, O.S.A.P, 6th Battalion, Cuttack, Addl. S.P., Cuttack and the District Welfare Officer, Cuttack were the other three Members of the Selection Board. He acted as such from 07.01.2002 to 10.03.2002. He alone and not the Selection Board conducted 'Interview' of General (un-reserved) and S.E.B.C (Socially and Economically Backward Class) candidates and kept all the other Members out of it, so that it will be easy for him to do the manipulations in awarding the marks to the candidates favoured by him.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule 3(1)(2) of A.I.S (Conduct) Rules, 1968.

ARTICLE-II

That, one of the components of "Interview" was "extracurricular activities", which included awarding marks for "sports achievements". He awarded marks to at least 20 candidates, all belonging to General (Un-reserved) and S.E.B.C. (Socially and Economically Backward Class) categories, for "sports achievements", which none of them had. He gave to them all the false marks. All of them have admitted that neither did they possess any Sports Certificates nor produce one at the time of "Interview". He showed blatant favouritism to them.

Thus, he had grossly misconducted himself and failed to maintain absolute integrity and devotion to duty as enjoined under Rule-3 (1) (2) of A.I.S. (Conduct) Rules, 1968.

ARTICLE-III

That, Sri P.C. Mishra, IPS awarded marks dishonestly for "sports achievements" to at least 30 candidates by entertaining ineligible sports achievement certificates. Such certificates were entertained to ensure their selection and appointment in an unfair manner.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule-3 (1) (2) of A.I.S. (Conduct) Rules, 1968.

ARTICLE-IV

That, Sri P.C. Mishra, IPS in connivance with Sri Arabindanath Mitra, the then Commandant, OSAP 6th BN, Cuttack, whose office was the custodian of records, dishonestly inflated the total marks in as many as 4 cases. In all these cases, belonging to U.R (unreserved), S.C. & S.T. categories, the marks were inflated to ensure their selection and appointment as Sepoys.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule-3 (1) (2) of A.I.S. (Conduct) Rules, 1968".

19. The defence of the respondents in their counter-reply is similar to the defence which has been set up by the respondent No.2 the State of Orissa in their counter-reply file in OA No.169/2004 and need not be repeated. A short counter-reply, however, has been filed on behalf of the Union of India in OA 177/2005 in which it was stated that the applicant was serving under the State Government of Orissa, which initiated disciplinary proceedings under Rule 8 of Rules 1968 against the applicant and that the State Government is empowered to initiate such proceedings as per the provisions of Rule 7 (1) (b)(i) of the said Rules. The applicant has committed misconduct in the recruitment of Sepoys. The applicant has not challenged any of the orders or instructions of the Government of India but has only challenged the action of the State Government for initiating disciplinary action against him.

20. In the rejoinders the applicant has reaffirmed his allegations in both the OAs bearing No.177/2005 and 827/2005.

21. All the three cases were listed before the Bench for hearing argument for final disposal when we heard the oral arguments of the learned counsel for the applicant partly and when the case was taken up on the following days for conclusion of the arguments, unfortunately he had fallen sick and as suggested by the parties, they were allowed to submit the written arguments. Separate but identical written arguments have been submitted on behalf of the applicant in these three cases and a common reply to these written arguments has also been filed on behalf of the respondents. The

applicant has also filed rejoinder thereto. We have given careful considered to all these arguments and also have gone through the record carefully.

22. It will be appropriate to reproduce the argument of the learned counsel for the applicant which the applicant has submitted in OA No. 169/2004 which will also cover the arguments which have been submitted in OA No, 177/2005 and OA No. 827/2005.

23. In the written arguments it is submitted by the applicant that on a perusal of the Articles of charge and statement of imputation of misconduct in support of the articles of charge framed against the applicant, there is no whisper about non-maintenance of absolute integrity. There is allegation of violation of devotion to duty or committing anything, which is unbecoming of a member of the service. There is absolutely no whisper of any allegation that the applicant was discourteous in discharge of his duties or adopted any dilatory tactics in his dealings with the public or otherwise.

24. It is further submitted that the statement of imputation of misconduct and the articles of charge framed against the applicant do not show that there was any violation of Rule 3 (1)(2) of All India Service (Conduct) Rules, 1968. The charges framed against the applicant in the memorandum of charges must fail on that score alone and the departmental proceedings are liable to be quashed on that ground alone.

25. The sum and substance of the allegations in the statement of imputation of the Departmental proceedings to be initiated and in the version of the FIR of the vigilance case is that: (i) petitioner as the Chairman did not associate other members of Selection Board while conducting interviews of the candidates for the recruitment of Sepoys in the OSAP 8th Battalion, Chatrapur, (ii) he had awarded inflated marks to candidates who did not secure cut off mark, (iii) though candidates were not in possession of sports certificate nor did they produce such certificates at the time of interview, marks were awarded under the category "Sports achievements", and (iv) he entertained certificates which were ineligible for award of marks and such certificates were entertained to ensure their selection.


26. The applicant has submitted that taking all the charges as aforesated together, no where the Department has alleged that the candidates who were not selected were

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either relatives or they were in any manner connected with the applicant. Needless to say had there been one such candidate who is even distantly related or known to the applicant, the question of favoritism creeps in. There is no allegation that the candidates were selected by unfair means either by paying bribe to the applicant directly or indirectly. In the absence of any allegation of illegal gratification or favoritism being either a relative or known for mere awarding of marks the applicant cannot be held guilty. Making a sweeping remark that the applicant awarded inflated marks or the marks were awarded under 'Sports achievements' without possessing a Sports certificate or entertained certificates which were ineligible for award of marks, there is no evidence to support such allegation. Government department referred that matter to the Vigilance Department. There is no evidence to show that the applicant has awarded marks himself. As earlier stated there was a committee consisting of other members who selected the candidates but just because the applicant was the Chairman of the committee, by pick and choose method he cannot be singled out to face the departmental proceeding.

27. According to the applicant it is well settled in law that the charges in the departmental proceedings must be definite without conjecture and surmises. If the charges are not definite, the delinquent Government servant cannot imagine to answer the charges. No document has been produced before the Hon'ble Tribunal to show that it is the applicant and applicant alone who awarded the marks. The board sheet in which marks were awarded in spite of the applicant's prayer is not been produced to show that the applicant alone had awarded marks.

28. Further more on the basis of mere memorandum of charges which is the written version identical with the FIR, the Tribunal cannot come to a conclusion that the departmental proceedings proposed against the applicant must continue solely on the one side version of the department. Had there been no challenge to the allegations in the departmental proceedings, then the proceedings would have continued. But once there has been a challenge to the very inception of the proceedings, it is incumbent on the part of the department to produce all the documents in support of their allegation before the Tribunal, which they have failed to do.



29. The applicant also submitted that along with the original application, the applicant has also filed a copy of the memorandum of charge against Sri Arabind Nath Mitra at Annexure.5. The memorandum dated 15.3.2004 would go to show that he alone with the Selection Board had conducted the interview. In one breath it is alleged against the applicant that he along with the Members of the Selection Board conducted the interview and in the next breath it is alleged that Sr. Arabind Nath Mitra, who was a Member of the Selection Board alone conducted the interview. The proceeding of the Selection Board for recruitment for the purpose of Sepoys at OSAP 8th Battalion, Chatrapur for the year 2002 has been enclosed to the memorandum of charges of the aforesaid Arabind Nath Mitra. On a bare perusal of the proceedings of the selection, it would be seen that all the Members of the Selection Board had signed in the proceedings as an insignia of their participation. The marks awarded to different candidates would be seen not to be hand written but by computer printing. If marks have been awarded by computer printing, how can it be alleged that the applicant had awarded the marks. It is, therefore, a case of no evidence. The allegations made in the statement of imputation, therefore, is based on no evidence.

30. It is submitted that the applicant is aware, conscious and cognizant of the fact that the Tribunal at this stage cannot go into the merit of the case. But when the allegations are based on no evidence and the same is only based on surmises and conjectures, the Tribunal shall look into the prayer of the applicant that basing on no evidence, a departmental proceeding is liable to be quashed.

31. Arguments further proceed to state that with the counter filed on behalf of the respondent No.2 a notification published by Orissa Gazette has been enclosed. This notification was published by the Home Department. In exercise of powers conferred by Section 2 of Police Act, 1981, orders were passed to regulate the recruitment of Sepoys in the OSAP Service Battalions. On a close reading of the notification it would be seen that there is no order as to where and how the recruitment proposed shall consist of the following, such as; normal physical standard, height, physical efficiency test, high jump, swimming, cycling, interviews, academic qualification, extra curricular activities, NCC certificate etc. Same and except the requirements as aforestated, the notification does not speak of the modalities of conducting the


interviews. It is for the Selection Board to evolve their own modalities for the recruitment strictly adhering to the different aspects as aforesaid and awarding marks on different categories. Where the interview will be conducted, it is for the Selection Board to decide.

32. Moreover in the counter to the Original Application filed on behalf of respondent No.2 it is admitted that the Vigilance Department had submitted a report along with the documentary evidence to Home Department and the Government after being satisfied that there are sufficient grounds to proceed against him. The Departmental proceedings, therefore, no doubt was initiated as per the report of the Vigilance Department.

33. In the written arguments the applicant also submitted that the Vigilance Department itself registered a criminal case against the applicant on same charges and for the very same charges they reported to the Government to take disciplinary action and at their behest the present departmental proceedings have been initiated. The substantial question of law, therefore, arises as to whether the departmental proceedings with identical charges of the case and at the best of the prosecuting authorities can be allowed to continue against the applicant. In the counter it is admitted that 'even though both the proceedings are based on the same general allegation but actually those are separate, distinct and independent of each other'.

34. It is further admitted in the counter that even – if 'it is presumed for the sake of arguments that the witnesses will be same and they will be called upon to depose in the trial court and before the Enquiring Officer in the departmental proceeding in the identical manner, the contentions of the applicant are baseless'.

35. In the counter affidavit further the respondent has disclosed the reason for clamping a disciplinary proceeding against the applicant by stating that the Vigilance Investigation is a time consuming process which requires verification of a huge volume of documents to collect evidence, to scrutinize all the records, to conduct detailed investigation all over Orissa, to examine a number of witnesses. As it is seen that it takes 2 to 3 years time to file a charge-sheet and 15 years more time to decide a Vigilance case in the trial court. This being the position of the Vigilance case or a criminal proceeding, how can disciplinary authority keep mum for such a long period



by which time the applicant would have been retired and would have enjoyed 15 years of pension.


36. That the aforesaid admission in the counter by the respondent No.2 is enough for the Hon'ble Tribunal to quash the departmental proceedings. A departmental proceeding is initiated, enquired against a delinquent Government servant for the alleged misconduct, if any. As has been pointed out earlier, Rule 3 (1)(2) of the All India Service (Conduct) Rules, 1968 is not attracted for the allegations made in the memorandum of charges. There is no whisper of any corruption or lack of integrity. There is no allegation of violence of the devotion to duty and over and above the disclosure of the department showing reasons for initiating a departmental proceeding as aforestated is enough material to quash the departmental proceedings.

37. The written arguments continue to state that in para 12 of the counter filed by respondent No.2 it is further disclosed that the disciplinary authority cannot sit idle by keeping their eyes closed where the question of corruption, scam, dishonesty, favoritism, nepotism arises in public service. It is evident from the official records that other members of the selection board have not signed in the result sheets and other immediate recruitment records as they were kept out of the process by the applicant.

38. The above allegation is completely denied from their own documents supplied to Sri Arabind Nath Mitra where the proceedings with award of marks have signed by all the members of the selection board. The above fact proves beyond any doubt or dispute that the memorandum of charges together with the imputation are based on no evidence and it is false, fabricated, based on surmises and conjectures and, therefore, the departmental proceedings is liable to be quashed.

39. That in the meantime, the Vigilance Department in Vigilance PS case No.40 dated 10.7.2003 have filed charge-sheet. The applicant also in the meantime has retired from Government service.

40. In view of the fact that the Vigilance Department has filed charge-sheet against the applicant and the applicant has to face the trial in the criminal case and the fact that he has retired from Government service, the department proceeding has become redundant and on that ground alone the departmental proceedings is liable to



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be quashed. It is pertinent to respectfully submit here, that the appointing authority and not the Chairman of the Selection Board to verify the original certificates before issuing the appointment order. If a candidate could not produce the original/genuine/eligible certificates at the time of issue of appointment order, he should not have been appointed or proceeded against for production of forged or false certificates. The appointing authority is not held guilty for such lapses/lapses, but the applicant because he was the Chairman of the Selection Board has to face a departmental proceeding.

41. The respondents in their common written reply of the applicants' argument have submitted that the applicant has retired from service. He was considered for promotion to the post of Director General and the screening Committee's recommendation about him have been kept in sealed cover as per the procedure. The applicant has not challenged the Sealed Cover Procedure adopted by the Screening Committee. The charge memo has been served with specific allegation. The allegations are grave in nature. It was refuted that the charges are vague or cannot be treated to be a charge. There is no allegation of the applicant that he has not been given an opportunity of defending the proceeding. In fact, the applicant has prematurely approached the Tribunal without exhausting the statutory remedy available to him. The disciplinary proceeding were stayed at the instance of the applicant soon after the charge-memo was issued. The Tribunal cannot entertain this OA at this stage and enter into the factual averment made as they are required to be decided by the Inquiry Officer. Section 20 of the Administrative Tribunal Act, 1985 is a bar for admitting the OAs.

42. It is further alleged that the Articles of Charges disclosed the alleged misconduct of not maintaining the integrity and devotion to duty. Referring to some judicial pronouncements it was stated that the present OAs is liable to be dismissed.

43. The applicant submitted reply to the aforesaid written arguments filed on behalf of the respondents. It will be proper to reproduce the relevant extract of these arguments so as to appreciate the precise controversy raised by the applicant for decision by the Tribunal in these cases.

44. Here it will be pertinent to mention that at the time of oral hearing of the argument we were told that the investigation in the criminal case registered as GR No.40/2003 has been concluded and a charge sheet under Section 173 of the Criminal Procedure Code has been submitted in a criminal court, a fortnight before the oral arguments of the applicant were addressed before us. This fact has been reiterated in the written argument that prosecution in the criminal case is pending against the applicant in OA 169/2004. In other two cases the criminal cases registered against the applicant are still at investigation stage and have not culminated into the filing of the charge-sheet in a court of law.

45. In the rejoinder to the written arguments submitted on behalf of the respondents, the applicants stated that the principles of law laid down by the Hon'ble Supreme Court in the case of **Kendriya Vidyalaya and Other Vs. T. Sinibas, 2004 (6) SCALE 467** and **State of Rajasthan Vs. B.K. Meena and Others, JT 1996 (8) SC 684** relied upon by the respondents for legality of the simultaneous departmental proceeding and the criminal proceeding are confined to the ground as to whether the criminal case and departmental proceeding can continue simultaneously with identical charges and identical set of witnesses. "The applicant at this stage does not argue on that point. The applicants' prayer to quash the disciplinary proceedings as to the charge framed against him under Rule 3 (1) and (2) of the AIS (Conduct) Rules, 1968 is not attracted".

46. In view of the categorical and clear submissions made on behalf of the applicants we need not discuss in detail the settled principles of law governing the validity of simultaneous departmental proceeding and criminal proceeding with identical charges on identical set of witnesses. Suffice to refer the case of Kendriya Vidyalaya and Other Vs. T. Sinibas (Supra) and State of Rajasthan Vs. B.K. Meena and Others (Supra), **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another, 1999 (3) SCC 679, Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and Others, 1997 (2) SCC 699** wherein the principles of law regarding simultaneous continuance of the disciplinary proceedings and the criminal proceeding were elaborately and succinctly discussed and laid down. The applicants in para 4.15 have stated that there was no bar on initiation of

disciplinary proceedings against the Government servant if a criminal case against him is under investigation. The question whether the delivery of charge-memo in these three cases during the pendency of the investigation in the criminal case registered by the Vigilance Department is illegal, therefore, does not survive for consideration.

47. A careful reading of the allegations of the applicants in the OA and the written submissions which have been made by him, first question which arises for determination in the present case is whether the Article of Charges served on the applicant are vague and did not convey clearly the imputations which the applicant is required to meet and defend causing prejudice to the applicant in his defence. The second question is whether the Article of Charges read with statement of Imputation disclose commission of a misconduct or misbehaviour within the purview of Rule 3 (1) and (2) of AIS (Conduct) Rules, 1968, since according to the applicant the charges made in Article of Charge delivered to him under Rule 8 of AIS (Discipline and Appeal) Rules, 1968 fail to show that the applicant had not maintained absolute integrity and devotion to duty which is required of a member of an All India Service.

Rule 3 (1) and (2) of AIS (Conduct) Rules, 1968 has provided as under:-

“3. General – (1) Every member of the service shall at all times, maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service.

(2) Every members of the service shall in the discharge of his duties act in a courteous manner and shall also adopt dilatory tactics in his dealing with the public or otherwise”.

48. The word “misconduct” came up for interpretation before the Hon’ble Supreme Court in the case of **State of Punjab and Others Vs. Ram Singh, AIR 1992 SC 2188**. In para 5 it was held as under:-

“5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression on established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

49. The applicant in the written argument vociferously argued that there is not a whisper about non maintenance of absolute integrity in the Article of Charge and the Statement of Imputation of misconduct. There is no allegation that the candidates were selected by unfair means either by recovering bribe by the applicant directly or indirectly and were shown favoritism either being a relative or known by awarding more marks. In other words, the contention of the applicant is that there is no allegation that the applicant had accepted any monetary consideration or otherwise or was guilty of any favoritism or nepotism in making selection for the post of Sepoys by the Committee of which he was the Chairman. The applicant seems to have interpreted the word "integrity" narrowly. The word "integrity" is of wide connotation and is not confined only to the taking of bribe or illegal gratification in cash or kind but will also include in its ambit a conduct which is not fair and of a prudent senior officer of All India Service. Three conducts of the officer have been mentioned in sub-clause (1) of Rule 3 of the Conduct Rules which require the member of All India Service like the applicant to maintain, at all times, absolute integrity; (ii) devotion to duty; and (iii) do nothing which is unbecoming of a member of the service. The member of an All India Service i.e. Indian Police Service, as such, is required not only to maintain absolute integrity, which means 'does not involve him in moral turpitude', 'does not have any improper or unlawful behavior' or 'breach of law' in the good conduct. He should be fair and judicious in discharging his duties and functions. For instance, in the present case, he was to do the selection of the candidates for appointment as Sepoys with absolute impartiality and refrain from manipulating the marks and also to award marks strictly in accordance with the set norms. Therefore, contention of the applicant that the Article of Charges, which have been reproduced in the foregoing paragraphs, do not reveal any misconduct as required in Rule 3 of the AIS (Conduct) Rules, 1968 is without any force. The charges, if established, during the enquiry would definitely prove that the applicant had been guilty of misconduct for which disciplinary action against him could be initiated by the appropriate authority, in this case the Government of Orissa. The articles of charges have to be read with statement of imputation of charges and they sufficiently give details of the alleged misconduct committed by the applicant.

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The Articles of Charge, by no stretch of reasoning, could be said to be vague or indefinite or not sufficient to give an idea to the applicant as to what misconduct is imputed which he is to meet and defend in the proceeding. We, therefore, repel the first contention of the applicant that the articles of charges are vague and do not disclose commission of any misconduct by the applicant within the purview of Rule 3 of AIS (Conduct) Rules, 1968.


50. The second contention of the applicant is that the memos, which are impugned in these three OAs, are only indicative of a proposal to initiate disciplinary proceedings against the applicant and that the disciplinary proceedings would have been started only after the statement of defence was submitted by the applicant and only after consideration thereon, a decision was taken by the competent authority by applying its mind. It is, therefore, submitted that a mere proposal to take departmental action against the applicant is not a pending disciplinary enquiry against the applicant so the DPC while considering the case of the applicant for promotion to the next higher post of Director General of Police, could not have taken it into consideration and resort to sealed cover procedure. To our view, this argument is devoid of any merit. The disciplinary action is initiated in accordance with Rule 8 of Rules 1969. Sub-rule (1) to (6) reads as follows:-

(1) No order imposing any of the major penalties specified in Rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and Rule 10, or, provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such enquiry 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 imputation of misconduct or misbehaviour against a member of the Service, it may appoint 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.

(3) Where a Board is appointed as the inquiring authority is shall consist of not less than two senior officers provided that at least one member of such a board shall be an officer of the service to which the member of the service belongs.

(4) Where it is proposed to hold an enquiry against a member of the Service under this rule and/or Rule 10, the disciplinary authority shall draw up or caused to be drawn up -

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
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(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 member of the Service;
- (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

(5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service 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 charge is proposed to be sustained and shall require the member of the service 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.

(6) (a) On receipt of the written statement of defence the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and, where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall do so in the manner laid down in Rule 9.

(b) If no written statement of defence is submitted by the member of the Service, the disciplinary authority may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

© Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such it may be an order, appoint a Government servant or a legal practitioner, to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge".

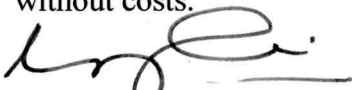
51. It would be seen from the above rule that the first step to be taken by the disciplinary authority, after it forms an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the member of All India Service, is to appoint an authority to enquire into the truth of allegation and when it proposes to hold an enquiry against a member of All India Service, the disciplinary authority shall draw up or caused to be drawn up the articles of charges, the substance of imputations of misconduct or misbehaviour etc., as required by sub-rule (4) aforesaid. As such, after the disciplinary authority proposes to hold an enquiry against the member of All India Service, the first step is to draw up the substance of imputations of misconduct or misbehaviour, i.e., the articles of charges and the statement of imputations along with the statement of relevant facts including


any admission or confession made by the delinquent and the list of documents and witnesses by whom the articles of charges are proposed to be sustained. These documents including articles of charges and the statement of imputations and the list cited documents and witnesses, the confession/admission of the delinquent, are to be delivered to the delinquent official as per sub-rule (5). It is, thus, clear that delivery of the article of charge, statement of imputation of misconduct etc., the statement of admission, the list of cited documents and the witnesses, is a step in the inquiry proceeding. It is not a prelude to the enquiry but it forms an integral part of the enquiry proceeding after the written statement of defence is submitted by the delinquent member of All India Service, the disciplinary authority, in case the articles of charge are admitted, record his finding on each charge and thereafter act in accordance with Rule 9. Rule 9 of Rule 1969, which is similar to Rule 15 of CCS (CCA) Rules, 1965, empowers the disciplinary authority either to remit the case to the enquiring authority for further enquiry and report by recoding reasons therefor or if it disagrees with the finding of the enquiry authority, record its reason for disagreement and record its own finding and in case he is of the opinion that some prescribed penalty may be imposed on the delinquent, will make the order imposing such penalty etc. The argument that the memorandums, which are impugned in these OAs is only a proposal and is not a part of the enquiry proceedings for initiation of the disciplinary proceeding against the applicant is, therefore, fallacious. The delivery of the articles of charge etc. by impugned memorandum, as observed above, is part of the enquiry proceeding and in case in the written statement of defence the delinquent admitted all the articles of charges, the disciplinary authority may make an order of penalty prescribed for the misconduct under these rules. Otherwise enquiry will be held only in respect of the charges, which are not admitted. Therefore, we reject the second argument of the applicant that no enquiry proceedings shall be deemed to be pending against the applicant by virtue of service of memorandums, which are challenged by the applicant in these three OAs.

52. In view of the above discussion, we are constrained to hold that the disciplinary enquiry proceedings were initiated against the applicant by service of the memos, which have been impugned in these three OAs. It cannot be held that no

disciplinary proceedings were pending against the applicant when the DPC was convened for consideration of promotion of the eligible officers including the applicant for promotion to the post of Director General of Police. Needless to state that the contention of the applicant that he was not considered for promotion is factually incorrect. It has been clearly stated on behalf of the respondents that the DPC has taken recourse to sealed cover procedure in respect of the recommendation about the applicant since departmental proceedings were pending against him. The relief claimed by the applicant that the memorandum should not be taken into consideration by the DPC as per the existing DOP&T's instructions on DPCs, therefore, is without any merit. This view is fortified by the decision of the Hon'ble Supreme Court in Union of India Etc. Etc. Vs. K.V. Jankiraman Etc. Etc., 1991 (2) SCALE SC 423 and Union of India Vs. Kewal Kumar, JT 1993 (2) SC 705.

53. Having regard to the above, all the three OAs fail and they are dismissed but without costs.


(V.K. Agnihotri)
Member (A)


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

Rakesh