CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 12 / 2009

Tuesday, this the 2nd day of June, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.Suresh Kumar IAS (KL-89),
Managing Director(Under orders of suspension)
on Deputation,
Kerala State Co-operative Agricultural & Rural
Development Bank,
Opp: to Government Secretariat,
Thiruvananthapuram,
Residing at No.16, M.G.Nagar,
Peroorkkada,
Thiruvananthapuram-695 005. ....Applicant

(By Advocate Mr O.V.Radhakrishnan, Senior with Mrs K Radhamani Amma, Mr.K.V.Joy & Mr K Ramchandran)

v.

1. State of Kerala represented by
Government Secretariat,
Thiruvananthapuram-695 001.

2. Union of India represented by its
Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
New Delhi-110 001.

3. Additional Chief Secretary to Government,
Department of Co-operation,
Government Secretariat,
Thiruvananthapuram-695 001. ....Respondents

(By Advocate Mr K.K.Ravindranath, Additional DGP with Mr N Manoj Kumar, Special Government Pleader for R.1 & 3)

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R.2)

This application having been finally heard on 2.4.2009, the Tribunal on 2.6.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The challenge in this Original Application(O.A for short) under Section 19 of the Administrative Tribunals Act, 1985 is against (i) the Annexure A-7 order of the 1st respondent i.e. the Chief Secretary, State of Kerala dated 11.12.2008 placing the applicant, Shri K Suresh Kumar, an Indian Administrative Service (IAS for short) officer, working as Managing Director, Kerala State Co-operative Agricultural and Rural Development Bank (KSCARDB for short) under suspension as per Rule 3 of All India Service (Discipline & Appeal) Rules, 1969 ("1969 Rules" for short) with immediate effect pending further inquiry and (ii) the Annexure A-11 order dated 11.3.2007 issued by the same respondent stating that the Review Committee constituted under the said Rules has reviewed the suspension of the applicant on 11.3.2009 with reference to the rules and instructions in the matter and recommended to the competent authority to continue his suspension for a further period of 180 days with effect from 11.3.2009 or until revoked earlier as the disciplinary action against him was still in progress and the Government after having accepted the aforesaid recommendation ordered accordingly.

Back ground

2. When this O.A was filed before this Tribunal initially on 8.1.2009, it was only against the Annexure A-7 order which was in existence. On receipt of advance copies of the O.A. the counsel for respondents 1 & 3, namely, State of Kerala and the Additional Chief Secretary, Department of Cooperation respectively, Shri N Manoj Kumar, Special Government Pleader appeared on that date. The argument of Shri O.V.Radhakrishnan, learned Senior Counsel on behalf of the applicant was that though appeal lies against the impugned

Annexure A-7 order, it was issued by an incompetent authority in total violation of the principles of natural justice and Article 14 of the Constitution of India. Therefore, the non-exhaustion of the statutory appeal shall not operate as a bar for admitting the O.A. He has also contended that Section 20(1) of the Administrative Tribunals Act, 1985 which provides that a *"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances"* does not apply in this case and a stay of the operation of the said impugned order is necessary in the interest of justice. Shri Manoj Kumar, other other hand, sought time to take instructions from the Government before considering the question of grant of any interim stay. As we were of the view that no interim relief as prayed for by the applicant was warranted in view of the facts and circumstances of the case, we directed the counsel for the parties to complete the pleadings within the shortest possible period of time so that the O.A can be disposed of at the admission stage itself without admitting the same. Shri Manoj Kumars, therefore undertook to file a reply to the O.A within two weeks and the applicant's counsel agreed to file rejoinder, if any, within a period of one week thereafter. Shri TPM Ibrahim Khan, SCGSC on behalf of respondent No.2, namely, Union of India submitted that the 2nd respondent being a proforma party and not connected with the said impugned order, there was no need to file any reply. Accordingly, the O.A was posted for disposal on 13.2.2009 but it could not be disposed of on that date, as the counsel for the parties have not adhered to the aforesaid time frame and it was adjourned to 25.2.2009. The respondents filed on 24.2.2009 and the case was posted for final hearing on 13.3.2009. On the said date, the applicant filed M.A.215/2009 stating that the Annexure A-7 order of suspension ceased to be valid and stood revoked by operation of the first proviso to Rule 3(1) of the "1969 Rules". On its consideration on 13.3.2009 and on the request of the counsel for the 1st

respondent the case was again adjourned to 17.3.2009. Meanwhile, the applicant received the Annexure A-11 impugned order dated 11.3.2009 extending his period of suspension to a further period of 180 days or until revoked earlier. He, therefore, vide M.A.221/2009 filed on 16.3.2009 sought to challenge and incorporate the same by amending the O.A. To the amended O.A filed on 18.3.2009, the 1st respondent filed an additional reply on 23.3.2009 and the matter was heard, on 27.3.2009 and 2.4.2009. On the directions of this Tribunal the first respondent has also made available the relevant records. The learned counsel have also submitted their detailed argument notes after the hearing.

Brief Facts

3. The applicant is a member of the IAS, Kerala Cadre. While holding the post of Additional Secretary to the Government, in the office of the Chief Minister of Kerala, he was appointed as Special Officer (ex-cadre post) in the Senior Scale of the IAS to co-ordinate with various Departments and to take action for the eviction of unauthorised encroachers and to demolish unauthorised constructions in Munnar area of Idukki district as per the Annexure A-1 order dated 10.5.2007. The applicant, accordingly, took over the charge on 12.5.2007 and continued in the said capacity till 5.10.2007. From that date, he was posted as Managing Director, KSCARDB vide the Annexure A-2 order dated 5.10.2007. Later, vide the Annexure A-3 order dated 3.6.2008, he was promoted to the Super Time Scale of IAS.

4. While the applicant was working in the said capacity as Managing Director, KSCARB, Sunday Express and other dailies like Malayala Manorama, Mathrubhumi etc. carried news items on 7.12.2008 containing the alleged statements made by him before the press reporters. In the Sunday Express his statement was reported under the sub heading *"The caucus comprised former*

Munnar operation chief K Suresh Kumar, advocate Anil Kumar, IT Adviser Joseph C Mathew and one Nandakumar which the party felt had been advising Achuthanandan" and according to it, "*The crisis over poor performance and bungling of Chief Minister V.S. Achuthanandan on crucial issues has taken a strange twist with the Party State Committee coming to the conclusion that an apolitical caucus based in Cliff House, the official residence of the Chief Minister, is misleading him on decision-making process including Munnar Operation, Major Sandeep Unnikrishnan episode and the reinstatement of a tainted official in a crucial post. The caucus comprises former Munnar Operation chief K Suresh Kumar, Advocate Anil Kumar, IT Advisor Joseph C Mathew and one Nandakumar which the Party felt had been advising Achuthanandan, virtually landing him in all kinds of trouble by overlooking Party directives*". A copy of the said news item in Sunday Express is at Annexure A-4.

5. According to the applicant, while he was in the Government Guest House, Kochi on 7.12.2008, a reporter from the India Vision TV Channel approached him at about 8 A.M and requested him to grant an interview in respect of the aforesaid Annexure A-4 report alleging his involvement in advising Shri V.S.Achuthanandan which virtually landed him in all kinds of trouble overlooking party directives. Later, at around 12.30 P.M when he was in the office of an advocate at Ernakulam, a reporter from the Manorama Vision TV Channel approached him along with camera crew and put questions to him regarding his alleged involvement in the above matter. He told the reporters that it was not a vindication of any of his official act but it was only "*an attempt to disabuse the minds of the public certain misleading associations which have gathered round the canard published in the media*". He has also stated that he did not make any statement or opinion which has the effect of an adverse criticism of any current or recent policy or action of the Central or State Governments. The news

regarding th interview of the applicant also appeared in the New Indian Express dated 8.12.2008 under the captions *"C.M gets a friend in need" and "No proper direction in CM's office, says Sureshkumar"*. In the above news item, it has been stated that the applicant has accused the C.M's Political Secretary K.N. Balagopal and Private Secretary S. Rajendran of misleading the Chief Minister purposefully on several issues which put him in trouble.

6. Immediately, thereafter, the applicant was served with the Annexure A-6 show cause notice which reads as under:

"No.90080/Spl.A2/2008/GAD

General Admn.(Sl.A) Dept.
Thiruvananathapuram.
Dated 9th December, 2008.

From
The Chief Secretary to Government.

To

Sri K Sureshkumar, IAS,
Managing Director,
Kerala State Co-operative Agrl. & Rural Development Bank,
Thiruvananathapuram.

Sir,

Sub: Adverse Remarks against Government – Violation of All India Service (Conduct) Rules – reg.

It has come to the notice of the Government that, you, while working in the above mentioned capacity, have appeared before the press and the media channels on 6th December, 2008 and adversely criticised the office of the Hon'ble Chief Minister of Kerala making allegations like piling up of files, absence of support system and ignorance of Government procedures in the Chief Minister's Office and thereby caused embarrassment to the Government. By your above actions you have violated Rules 3, 7 and 17 of the All India Service (Conduct) Rules.

In the circumstances I am to request you to explain why disciplinary action as per the All India Service (Discipline & Appeal) Rules, 1969 should not be initiated against you for the above mentioned violation of AIS (Conduct) Rules, within a fortnight positively.

Yours faithfully,
Sd/
P.J.Thomas
Chief Secretary to Government."

7. According to the applicant, he was required to submit the reply to the Annexure A-6 show cause notice on or before 23.12.2008. However, he was placed under suspension under Rule 3 of "1969 Rules", immediately vide Annexure A-7 impugned order dated 11.12.2008 itself, without waiting for his reply to the aforesaid show cause notice. The said suspension order reads as under:

"GENERAL ADMINISTRATION (SPECIAL A) DEPARTMENT

G.O.(Rt) No.9528/2008/GAD Dated, 11.12.2008.
Thiruvananthapuram

ORDER

It has come to the notice of the Government that Shri K Suresh Kumar, IAS (KL 1989) on deputation as Managing Director, Kerala State Co-operative Agricultural Rural Development Bank has appeared before the press and media channels from 6.12.2008 onwards and adversely criticised the office of the Hon'ble Chief Minister of Kerala, making allegations like piling up of files, absence of support system and ignorance of Government procedures in the Chief Minister's office and thereby violated the All India Service (Conduct) Rules which caused embarrassment to the Government.

2. Government after having examined the matter in detail considers it necessary to place Shri K Suresh Kumr, IAS, Managing Director, Kerala State Co-operative Agricultural Rural Development Bank under suspension as per Rule 3 of All India Service (Discipline & Appeal) Rules, 1969 with immediate effect pending further enquiry.

3. Shri K Suresh Kumar, IAS will be eligible for subsistence allowance under Rule 4 of All India Service (Discipline & Appeal) Rules 1969.

4. Shri K Suresh Kumar, IAS will hand over charge to Shri T Thankappan, IAS (KL:1989), Secretary, Co-operation Department.

By Order of the Governor
P.J.Thomas
Chief Secretary to Government"

8. As observed elsewhere in this order, it was during the pendency of this Original Application, the respondents have issued the 2nd impugned Annexure A-11 order dated 11.3.2009 extending the period of suspension of the applicant for a further period of 180 days or until revoked earlier. The said order reads as under:

"GOVERNMENT OF KERALA
Abstract

ALL INDIA SERVICE (DISCIPLINE & APPEAL) RULES, 1969 – SRI K SURESHKUMAR (KL: 1989) – CONTINUANCE OF SUSPENSION – ORDERS ISSUED

GENERAL ADMINISTRATION (SPECIAL A) DEPARTMENT
G.O.(Rt) No.1779/2009/GAD Dated, Thiruvananathapuram 11.3.2009

Read: GO(Rt) No.9528/08/GAD dated 11.12.2008

ORDER

Sri K Suresh Kumar IAS (KL:1989) was placed under suspension as per Government order read above. The suspension of the officer was reviewed by the Review Committee constituted under the All India Service (Discipline & Appeal) Rules, 1969, as required in the rules on 11.03.2009.

2. The committee reviewed the case in detail with reference to the rules and instructions in the matter. The committee noted that the disciplinary action against the officer is still in progress. The committee therefore decided to recommend to the competent authority to continue the suspension of Sri K Suresh Kumar IAS for a further period for 180 days with effect from 11.03.2009 or until revoked earlier.

3. Government have considered the recommendations of the Review Committee and accepted it and order that the suspension of Sri K Suresh Kumar IAS is extended for a further period of 180 days or until revoked earlier.

By order of the Governor,
K.J.Mathew
Chief Secretary to Government."

Challenge against the Annexure A-7 order of suspension

9. Shri O.V.Radhakrishnan, learned Senior Counsel, on behalf of the applicant, has submitted that even though Annexure A-7 order is appealable, it is ex-facie ultra vires and it was passed palpably without authority of law and without any legal foundation. Therefore, the existence of the alternative statutory remedy provided in Rule 16 of the "1969 Rules" would not operate as a bar so as to oust him from the jurisdiction of this Tribunal. According to him, the Annexure A-7 suspension order was issued to him in total violation of the principles of natural justice. When he was served with the Annexure A-6 show cause notice dated 9-12-2008 calling upon him to explain as to why disciplinary action, as per the "1969 Rules", should not be initiated against him for the violation of AIS (Conduct) Rules within a fortnight, the respondents should not

have placed him under suspension on the second day itself without waiting for his explanation and without considering the same. The time granted as per Annexure A-6 would have expired only by 23.12.2008.

10. Moreover, non-exhaustion of alternative remedy is not a bar for entertaining an application under section 19 of the Administrative Tribunals Act, 1985 in every case, because Section 20(1) of the said Act only states that the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant has availed himself of all the remedies provided under the service rules as to redressal of grievances. It reads as under:

> "(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

The word 'ordinarily' indicates that availing of alternative remedy is not a cast-iron rule. It is flexible enough to accept those cases where the applicant has made out a strong case and there exist good grounds to invoke the jurisdiction of this Tribunal as held by a Constitution Bench of the Hon'ble Supreme Court in ***Kailash Chandra v. Union of India*** [AIR 1961 SC 1346], as under:

> "8. This intention is made even more clear and beyond doubt by the use of the word "ordinarily". "Ordinarily" means "in the large majority of cases but not invariably". This itself emphasizes the fact that the appropriate authority is not bound to retain the servant after he attains the age of 55 even if he continues to be efficient. The intention of the second clause therefore clearly is that while under the first clause the appropriate authority has the right to retire the servant who falls within cl.(a) as soon as he attains the age of 55, it will, at that stage, consider whether or not to retain him further. This option to retain for the further period of five years can only be excised if the servant continues to be efficient; but in deciding whether or not to exercise this option the authority has to consider circumstances other than the question of efficiency also; in the absence of special circumstances he "should" retain the servant; but what are special circumstances is left entirely to the authority's decision. Thus, after the age of 55 is reached by the servant the authority has to exercise its discretion whether or not to retain the servant; and there is no right in the servant to be retained, even if he continues to be efficient."

Learned Senior Counsel Shri O.V.Radhakrishnan has also also relied upon the following cases in this regard:

i) **Rt. Rev. Aldo Maria Patron v. E.C.Kesavan & others** [1964 KLT, 791 (F.B)].

ii) **Shibji Khestshi Tacker v. Commrs. of Dhanbad Municipality,** [(1978) 2 SCC 167].

iii) ***B. Parameshwara Rao v. D.E. Telecommunications*** [(1990) 13 ATC 774].

iv) ***Ram and Shyam Company's*** [(1985) 3 SCC 267].

v) **Whirlpool Corporation. v. Registrar of Trade Marks, Mumbai & others** [1998 (8) SCC 1].

vi) ***Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd.*** [(2003) 2 SCC 107].

vii)**U.P. *State Spinning Co.Ltd Vs. R.S. Pandey*** [(2005) 8 SCC 264]

viii)**Vikraman Nair v. State of Kerala** [2008 (4) KLT SN 63 = 2008 (4) ILR 395].

In **Rt. Rev. Aldo Maria Patron**'s case(supra), a Full Bench of the Kerala High Court has held as under:

> "5. According to the Director of Public Instruction the word "ordinarily" in R.44 was inserted only to enable the appointment of "a qualified hand from outside, if there is none to be promoted." This is clearly wrong. All that the rule stipulates is that when other things are equal seniority shall prevail.
>
> Xxxxxx xxxxx
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> 17. The word "ordinarily" in rule 44 gives a certain amount of elasticity to that rule. It may be possible to say that one of the "extraordinary" circumstances visualized by the rule is the appointment of headmasters in institutions like the one before us. And in view of that we do not think it necessary to strike down the rule; it should suffice if we point out, as we have done, the ambit of the right guaranteed under Article 30(1) of the Constitution, and leave it to the Government to clarify the position by an appropriate amendment or instructions in that behalf."

In **Shibji Khestshi Tacker**'s case(supra), a Division Bench of the Supreme Court held as under:

> "25. It is nobody's case that the appellants' holding was left out from the *old* assessment. So far as the revised assessment is concerned, Section 102 has to be read not in isolation but in conjunction with Section

106. The language of Section 106 is flexible enough to enable the Commissioners to leave out for some good reason, any holding from the revision of the valuation and assessment lists. The word "ordinarily", tones down the force of "shall" which immediately precedes it, and indicates that the requirements with regard to revision of the assessment in every five years and to include *all* the holdings, are not absolute but only directory and can be departed from in extraordinary circumstances, or in the case of particular holdings for good reasons. This being the correct import of the word "ordinarily", it follows therefrom that in the case of a holding which is excluded from the quinquennial revision of assessment, the old valuation and assessment lists do not lapse but continue to remain in force till they are altered or amended in accordance with the procedure laid down in the Act. This position of the law is clear from a reading of the last clause of sub-section (2) of Section 106, which provides that every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of April following the completion of a new list. The key word repeatedly occurring in the sub-section is "list" which appears to have been advisedly used in singular, in contradistinction to "lists" employed in plural, in sub-section (2). Such distinctive use of the word "list" in these sub-sections, puts it beyond doubt that in respect of a holding which, for some reason, is not included in the five-yearly revision, the old valuation or assessment list continues till a new list is completed and the 1st day of April following such completion is reached."

In **B. Parameshwara Rao's** case(supra), the Hyderabad Bench of this Tribunal has held that in extraordinary situations, the Tribunal may in its discretion entertain the application before the expiry of six months. In para. 13 to 19, the Tribunal has considered and placed emphasis on the word 'ordinarily'. In para. 21, the Tribunal has held as under:

"However, where the tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word 'ordinarily', it may be entertained and admitted subject to other provisions of the Act".

In **Ram and Shyam Company's** case(supra), the Supreme Court has held as under:

"9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in *Assistant Collector of Central Excise* v. *Jainson Hosiery Industries* rejected the writ petition observing that "the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him". We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own

wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in *State of U.P.* v. *Mohammad Nooh* it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

In **Whirlpool Corporation**'s case(supra), the Apex Court held as under:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

In ***Harbanslal Sahnia's*** case(supra), the Apex Court held that the doctrine of exhaustion of alternate remedy will not apply where there (i) violations of the

fundamental rights, (2) violation of the principles of natural justice and (3) where the order under challenge is ultravires of the power of the authority. According to the learned Senior counsel the present case attracts applicability of the above three contingencies. Firstly, impugned orders at Annexure A-7 and A-11 are challenged as violative of Articles 14, 16(1) and 21 of the Constitution of India for the enforcement of those fundamental rights. Secondly, Annexure A-7 is challenged as violative of the principles of natural justice in as much as that the applicant though given a fortnight's time to explain as to why action under the All India Services (Discipline and Appeal) Rules shall not be taken against him as per Annexure A-6 Memo dated 09-12-2008, he has been placed under suspension as per Annexure A-7 Order 11-12-2008 without waiting for his explanation and without considering his explanation that he would have offered in response to Annexure A-6. Thirdly, Annexure A-7 and A-11 are challenged as ultra vires the powers of the State Government under Rule 3(1) of the AIS (Discipline and Appeal) Rules and they have been issued wholly without jurisdiction. Para 7 of the aforesaid judgment reads as under:

> "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (*i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks*) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **U.P. *State Spinning Co.Ltd's*** case(supra), the Apex Court held that the doctrine of exhaustion of statutory remedy will not be applicable where the proceedings themselves are an abuse of process of law and the High Court, in

an appropriate case, can entertain a Writ Petition. The Annexure A-7 order of suspension was issued by way of abuse of process of law without there being any good or valid ground for suspending the applicant but he was suspended due to political pressure exerted by one of the coalition party of the Left Democratic Front. Paras 11 to 16 of the aforesaid judgment reads as under:

> "**11.** Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.
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> **12.** Constitution Benches of this Court in *K.S. Rashid and Son* v. *Income Tax Investigation Commission*, *Sangram Singh* v. *Election Tribunal, Kotah*, *Union of India* v. *T.R. Varma*, *State of U.P.* v. *Mohd. Nooh* and *K.S. Venkataraman and Co. (P) Ltd.* v. *State of Madras* held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.
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> **13.** Another Constitution Bench of this Court in *State of M.P.* v. *Bhailal Bhai* held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *N.T. Veluswami Thevar* v. *G. Raja Nainar*, *Municipal Council, Khurai* v. *Kamal Kumar*, *Siliguri Municipality* v. *Amalendu Das*, *S.T. Muthusami* v. *K. Natarajan*, *Rajasthan SRTC* v. *Krishna Kant*, *Kerala SEB* v. *Kurien E. Kalathil*, *A. Venkatasubbiah Naidu* v. *S. Chellappan*, *L.L. Sudhakar Reddy* v. *State of A.P.*, *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha* v. *State of Maharashtra*, *Pratap Singh* v. *State of Haryana* and *GKN Driveshafts (India) Ltd.* v. *ITO*.
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> **14.** In *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the

court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

15. In *G. Veerappa Pillai* v. *Raman & Raman Ltd.*, *CCE* v. *Dunlop India Ltd.*, *Ramendra Kishore Biswas* v. *State of Tripura*, *Shivgonda Anna Patil* v. *State of Maharashtra*, *C.A. Abraham* v. *ITO*, *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, *H.B. Gandhi* v. *Gopi Nath and Sons Whirlpool Corpn.* v. *Registrar of Trade Marks*, *Tin Plate Co. of India Ltd.* v. *State of Bihar*, *Sheela Devi* v. *Jaspal Singh* and *Punjab National Bank* v. *O.C. Krishnan* this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

16. If, as was noted in *Ram and Shyam Co.* v. *State of Haryana* the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in *First ITO* v. *Short Bros. (P) Ltd.* and *State of U.P.* v. *Indian Hume Pipe Co. Ltd.* That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

The ratio in **Vikraman Nair's** case(supra), decided by the Division Bench of the Hon'ble High Court of Kerala was also that the alternate remedy cannot be held to be a bar to interfere with the impugned order of suspension. The relevant part of the judgment is extracted as under:

"No doubt, this Court while exercising jurisdiction under Art.226 of the Constitution is not sitting as a court of appeal or revision so that this Court can substitute the order challenged with its own decision. But it is also the settled position of law that this Court can certainly interfere when, among other things, it is revealed that the authority concerned which took the impugned decision has reached an unreasonable decision or has abused its powers. It is also the position of law that this Court can review and evaluate question of fact for the limited purpose of scrutinizing the decision making process. While examining and scrutinizing the decision making process it may become inevitable for this Court to appreciate the facts of a given case even though for the limited purpose of ascertaining among other things, whether the authority concerned has reached an unreasonable decision or has abused its powers.

The appointing authority or the disciplinary authority while considering whether an employee should be placed under suspension pending disciplinary proceedings and departmental enquiry should certainly consider the seriousness of the misconduct sought to be enquired into or investigated and the nature of the materials placed before such authority. It must be on proper application of mind that the disciplinary authority should decide on the question of suspension. The order of suspension cannot be issued merely as an administrative routine or as automatic following the decision to initiate disciplinary proceedings. The interest of the impact of the delinquent's continuance in office while facing departmental enquiry is also a matter which the authority concerned should bear in mind while deciding whether the delinquent employee must be placed under suspension."

"it is also the settled position of law that this court can certainly interfere when among other things, it is revealed that the authority concerned which took the impugned decision has reached an unreasonable decision or has abused its powers. It is also the position of law that this court can review and evaluate question of fact for the limited purpose of scrutinizing the decision making process. While examining and scrutinizing the decision making process it may become inevitable for this court to appreciate the facts of a given case even though for the limited purpose of ascertaining among other things, whether the authority concerned has reached an unreasonable decision or has abused its powers."

11. Shri Radhakrishnan has further argued that once an application has been admitted or entertained, the same cannot be thrown out on the ground of non-exhaustion of alternative remedy. In this regard, he relied upon the order of the Jodhpur Bench of this Tribunal (1) (1987) 4 ATC 477 (All) and (1987) 4 ATC 606 (Jodh) wherein it has been held that once an application has been admitted, objection regarding non-availing of alternative remedy cannot be entertained later. (2) In ***A.N. Saxena and anr v. Chief Commissioner*** (1988) 6 ATC 320, the Principal Bench of this Tribunal held that condition laid down in Section 20

(1) of the Administrative Tribunals Act has to be considered at the admission stage only and even at that stage there is no absolute bar for admission of application without exhausting departmental remedies. (3) In ***Thakur Prasad Pandey v. Union of India*** [1988 (8) ATC 911], the Jabalpur bench of the Tribunal in para. 14 has held that Section 20 of the Administrative Tribunals act does not lay down an absolute bar to admission of an application where alternative remedy has not been exhausted. (4) In ***Braj Kishore Singh's case*** [1990 (12) ATC 501], the Patna Bench has repelled the objection that no appeal was preferred before the Central Government against the order of suspension and held that as the original application has been admitted, though the remedy of appeal was not pursued by the applicant, it will not be proper to hold at that stage that the application is not maintainable. (5) In ***S. Pandian and ors v Union of India*** [1991(16) ATC 184] the Madras Bench has held that the objection regarding non-exhaustion of alternative remedy cannot be exercised once the application is admitted by the Tribunal. (6) In ***Ved Prakash v. Union of India*** [1992 (21) ATC 358], it has been held that the objection about non-maintainability of the OA for the reason that the applicant had not exhausted the remedy of statutory appeal is not sustainable. (7) In **Kanak v. U.P. Avas Evam Vikas Parishad**,(2003) 7 SCC 693, the Hon'ble Supreme Court has noticed that the writ petition was entertained and the appellants therein filed a counter affidavit and the matter was argued on merits and in that view of the matter it is too late in the day to contend that the respondent herein should have availed the alternative remedy. In the present case also the original application was entertained and reply statements have been filed on behalf of the respondent and arguments were heard on merits. In paras 25 to 29 of the said judgment, it was held as under:

> **"25.** The writ petition for the reasons stated hereinbefore was maintainable. It is one thing to say that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India may not grant a relief inter alia on the ground of existence of alternative remedy but it is

another thing to say that the writ petition was not maintainable at all.

26. The legal position as regards intervention of a person for whose benefit the land was to be acquired who was ultimately responsible for payment of compensation was in a fluid state. There were decisions and decisions. The law was laid down by the Court in *Gyan Devi.*

27. The Tribunal, as stated hereinbefore, had made this award as far back as on 24-5-1993 and the respondent was advised to file an appeal on 7-2-1994. Presumably, having regard to the objections as regards maintainability of the appeal taken by the Registry of the High Court as also the objection raised by the appellants herein, the respondent was advised to file a writ petition.

28. Under the law based on judicial decisions as then existed, the Parishad had no locus standi to file an appeal before the High Court and therefore writ petition at the instance of the Parishad was the only remedy available.

29. Furthermore, this writ petition was entertained. The appellants herein filed a counter-affidavit. The matter was argued on merit and in that view of the matter it is too late in the day to contend that the respondent herein should have availed of the alternative remedy."

12. The applicant challenged the aforesaid Annexure A-7 suspension order dated 11.12.2008 on the ground that the reason given therein was exactly the same as the reasons shown in Annexure A-6 show cause notice dated 9.12.2008 and no other good or valid reasons have been shown why the Government to suspend him suddenly without waiting for his explanation. Annexure A-6 Notice has been issued by the Chief Secretary to the State for and on behalf of the Government who is competent to act on behalf of the Government. Annexure A-6 Show -cause Notice is dated 09-12-2008 and the applicant was given two weeks time to submit his explanation showing cause for not initiating disciplinary action as per the AIS (D & A) Rules, 1969. Therefore, the applicant had time to submit his explanation upto 23-12-2008. However, the applicant has been placed under suspension as per Annexure A-7 order dated 11-12-2008 within two days from the date of issue of Annexure A-6. It has not been alleged far less shown that in the interregnum any new development or circumstance had cropped up other than the misconduct alleged in Annexure A-6 warranting immediate suspension of the applicant. The Annexure A-7 order

came to be issued in a huff, in total breach of the principles of natural justice and it is a clear instance of the abuse of power. Hence, the Annexure A-7 order of suspension is ultra-vires of Rule 3(1) of Rules, "1969 Rules".

13. He has also submitted that the Annexure A-7 order of suspension was passed on extraneous and irrelevant considerations and is vitiated by arbitrariness, malafides and non-application of mind. He has produced the Annexure A-8 clippings from the Mathrubhumi dated 11.12.2008 wherein it was stated that the decision of the Government to immediately suspend the applicant from service was a pre-determined and politically motivated. The English translation of the said news clipping reads as under:

> "It looked like it was a predetermined decision... initiating action against Suresh Kumar was not on the Cabinet's agenda. It was during the 'small talk' after decisions on all agenda items had been taken that Sri. Kodiyeri Balakrishnan, who is also a Polit Bureau member, casually brought up the matter of Suresh Kumar's criticism of the personal staff of the Chief Minister. Just as Kodiyeri had planned, this casual talk turned into serious discussion with several Ministers demanding that Suresh be suspended forthwith. The Chief Minister pointed out the technical flaws involved in suspending Suresh Kumar before getting his explanation, but had to concur with the demand for suspension.....Earlier in the day, after the Assembly session, but prior to the Cabinet meeting, a secret meeting of CPM Ministers had been held where a decision was taken to suspend Suresh Kumar".

14. Shri Radhakrishnan argued that Rule 3(1) of "1969 Rules "does not empower the Government to place a member of the service under suspension when disciplinary proceedings are merely contemplated and before articles of charge have been drawn up. Sub-rule (1) of the said Rule 3 indicates the legislative scheme and the intention of the rule making authority to restrict its operation only to those cases where, having regard to the circumstances in any case and where articles of charge have been drawn up and not when disciplinary proceedings are merely contemplated. In this regard, he relied upon the decision of a Constitutional Bench of the Supreme Court in **P.R.Nayak v. Union**

of India [AIR 1972 SC 554] wherein it has been held that an order of suspension before the actual initiation or commencement of disciplinary proceedings is clearly outside the ambit of Rule 3 which has been extracted in para. 11 thereof. Though the Rule 3 has been later amended vide notification dated 19-7-1975, no material modifications were made to empower the Government to place a member of the service under suspension on mere contemplation of the disciplinary proceedings. The amendment only enabled to advance the stage to invoke suspension from the actual commencement of the inquiry to the drawing up of the articles of the charge. When disciplinary proceedings are contemplated having regard to the circumstance of the case, the articles of charge have to be drawn up. When articles of charge have been drawn up and the govt comes to a definite conclusion that there is prima-facie case against the member of the service and having regard to the circumstances of the case and the nature of the charges, the Government, if satisfied that it is necessary or desirable to place a member of the service under suspension, the power under Rule 3(1) can be invoked. In para 15 of **P.R Nayak's** (supra) judgments, the Supreme Court traced the history before 3(1) of the "1969 Rules". Earlier, under Rule 7(1)(b) of the AIS (D & A) Rules, 1955 a member could have been placed under suspension before charges being framed on mere contemplation. More effective safeguard against such suspension has been made in Rule 3(1) of AIS (D & A) Rules, 1969. Even after it was amended in 1975, the original position as obtained under Rule 7(1) of the AIS (D & A) Rules, 1955 was not changed except for the minor modification by advancing the stage to the drawing up of the article of charge from the commencing the disciplinary proceedings. Therefore, even according to the amended Rule 3(1), the power of suspension cannot be exercised by the Government before drawing up of the articles of charge. Secondly, it is not enough to draw up the charge but the Government have to consider the nature of the charges and the circumstance of the case and

the necessity and desirability of placing the member of the service before ordering suspension. Shri Radhakrishnan argued that the Annexure A-7 order of suspension having been issued before drawing up of the articles of charge against the applicant and thus before reaching the stage to invoke rule 3(1), the same must be held to be ultra- vires and beyond the ambit of Rule 3(1) as held in **P.R Nayak**'s case (supra) which is as under:

> "18. There is no gainsaying that there is no inherent power of suspension postulated by the Fundamental Rules or any other rule governing the appellant's conditions of service. Except for Rule 3 of the AIS(D&A) Rules, 1969 no other rule nor any inherent power authorising the impugned order of suspension was relied upon in this Court in its support. Therefore, if Rule 3, which is the only rule on which the appellant's suspension pending disciplinary proceedings can be founded, does not postulate an order of suspension before the initiation of disciplinary proceedings and the Government initiating such proceedings can only place under suspension the member of the Service against whom such proceedings are started, then, the impugned order of suspension which in clearest words merely states that disciplinary proceedings against the appellant are contemplated, without suggesting actual initiation or starting of disciplinary proceedings, must be held to be outside this rule. The impugned order of suspension, it may be pointed out, is not like an order of suspension which without adversely affecting the rights and privileges of the suspended Government servant merely prohibits or restrains him from discharging his official duties of obligations. An order of that nature may perhaps be within the general inherent competence of an appointing authority when dealing with the Government servant. The impugned order made under Rule 3 of AIS(D&A) Rules, 1969 on the other hand seriously affects some of the appellant's rights and privileges vesting in him under his conditions of service. To mention some of the disabilities resulting from his suspension, he is not entitled to get his full salary during suspension, but is only to be paid subsistence allowance and in certain circumstances some other allowances: in order to be entitled to the subsistence allowance he is prohibited from engaging in any other employment, business, profession or vocation (vide Rule 4): the appellant is not permitted to retire during the period of suspension: indeed, the impugned order specifically prohibits the appellant even from leaving New Delhi during the period of suspension, without obtaining the previous permission of the Central Government. The fact that these prejudicial consequences automatically flow from the impugned order under the rules also lends support to our view that the clear and explicit language of Rule 3 must not be so strained to the appellant's prejudice as to authorise an order of suspension on the mere ground that disciplinary proceedings against him are contemplated. The precise words of Rule 3 are unambiguous and must be construed in their ordinary sense. The draftsman must be presumed to have used the clearest language to express the legislative intention, the meaning being plain Courts cannot scan its wisdom or policy."

15. The ratio in **P.R.Nayak**'s case (supra) has been followed by the Hon'ble High Court of Kerala in **Vikraman Nair**'s case (supra) in which it has been held as under:

> "the order of suspension cannot be issued merely as an administrative routine or as automatic following the decision to initiate disciplinary proceedings. The suspension must be an step in aid to the ultimate result of the investigation or enquiry. Public interest of the impact of the delinquent's continuance in office while facing departmental enquiry is also a matter which the authority concerned should bear in mind while deciding whether the delinquent employee must be placed under suspension".

16. Further, it has been contended that there was no justification in placing the applicant under suspension and the reason stated in Annexure A-7 order of suspension is untenable. He is presently working on deputation as Managing Director, KSCARDB. The allegations made against him relate to the affairs of the Office of the Chief Minister. The applicant cannot have any access to the office of the Chief Minister and he cannot tamper with the records in the office of the Chief Minister or the Media. The question of suspension arises only when a person has to be kept away from work so that the disciplinary proceedings can be completed without any hindrance but in his case, the basic evidence is the master tapes of the telecast in the custody of the media to which he has no access or control or power to meddle with them. The continuance of the applicant, therefore, as Managing Director in the aforesaid Bank would not prejudice any inquiry proposed to be taken against him nor it would to subvert the discipline in the office in which the applicant is working or in the office of the Chief Minister. He also submitted that the Respondent No.1 has not shown that the allegation made against him, if proved, would be sufficient to reach its culmination of dismissal, removal or compulsory retirement from service. Therefore, his suspension was neither necessary or desirable such necessity or desirability will arise only when the charges against a government servant are of

a serious nature and keeping him in service will not be conducive to discipline or maintaining of the efficiency or honesty of the administration as held by the Hon'ble High Court of Kerala in ***A.K Veramani v. State of Kerala*** [1974 KLT 630] which is as under:

> "..either there should be a preliminary enquiry and a prima facie satisfaction or there must be material available which would indicate prima facie grounds for action against the member and those grounds should be established to the satisfaction of the departmental superior or any authority to whom such superior is subordinate".
>
> Xxxxx xxxxx xxxxxxx
>
> "the passing of an order of suspension on any public servant is a matter of important consequences not only so far as the public servant is concerned, but as regards the satisfactory discharge of the duties by the members of the service and therefore so far as the public interest in concerned it affects the reputation of the public servant and if unjustifiably passed, it affects his morale apart from the fact that it deprives him of his full emoluments and the right of work. It affects the efficiency of the Service as well as the security of the Service."

17. The Applicant has also alleged that the suspension order was in violation of the "guidelines for suspending a Government servant" as contained in the Annexure A-9 orders of the Government India, Ministry of Home Affairs letter No.43/56/64-AVD dated 22.10.1964 which reads as under:

> "(1) *Guiding principles for suspending a Government servant* – It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority should have the discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a disciplinary authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:
>
> (i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. Apprehended tampering with witnesses or documents);
> (ii)Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;
> (iii)Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;
> (iv)Where allegations have been made against the Government

servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

Note (a) In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case is made out.

Note (b) Certain types of misdemeanour where suspension may be desirable in the four circumstances mentioned, are indicated below;

(i) any offence or conduct involving moral turpitude;
(ii)corruption, embesslement or misappropriation of Government money, possession of disproportionate assets, misuse of official power for personal gain;
(iii)serious negligence and dereliction of duty resulting in considerable loss to Government;
(iv)desertion of duty;
(v)refusal or deliberate failure to carry out written orders of superior officers.

In respect of the type of misdemeanour specified in sub clauses (iii), (iv) and (v) discretion has to be exercised with care."

18. Shri Radhakrishnan has also argued that the impugned Annexure A-7 order has been passed by the respondents against the principles of natural justice and fair play as held by the Apex Court in **O.P. Gupta v. Union of India,** [(1987) 4 SCC 328] wherein it was held that an order of suspension, unless the departmental enquiry has concluded within a reasonable time, affects a Government servant injuriously and where there was no question of inflicting any Departmental punishment prima facie, tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play. Paras 15 and 23 of the aforesaid judgment read as under:

"15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were

not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in *Khem Chand* v. *Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter *Oxford English Dictionary*, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, an order of suspension is not to be lightly passed against the government servant. In the case of *Board of Trustees of the Port of Bombay* v. *Dilipkumar Raghavendranath Nadkarni* the court held that the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

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23. The public interest in maintaining the efficiency of the services requires that civil servants should not be unfairly dealt with. The government must view with concern that a departmental inquiry against the civil servant should have been kept alive for so long as 20 years or more and that he should have been placed under suspension without any lawful justification for as many as 11 years, without any progress being made in the departmental inquiry. It should also view with concern that a decision should have been taken by the competent authority to enforce the bar under FR 25 against the civil servant long after his retirement with a view to cause his financial loss. Such a course not only demoralises the services but virtually ruins the career of the delinquent officer as a government servant apart from subjecting him to untold hardship and humiliation. We hope and trust that the

> government in future would ensure that departmental proceedings are concluded with reasonable diligence and not allowed to be protracted unnecessarily. The government should also view with concern that there should be an attempt on the part of the competent authority to enforce the bar against a civil servant under FR 25 long after his retirement without affording him an opportunity of a hearing. It comes of ill grace from the government to have defeated the just claim of the appellant on technical pleas."

19. Shri Radhakrishnan further contended that the impugned suspension order has been issued without proper application of mind. In ***Mathew v. State of Kerala*** [2000 (1) KLT 245], the need to apply mind has been emphasised and reiterated by the High Court. It has been held that suspension cannot be issued merely as an administrative routine or as an automatic action following the decision to initiate disciplinary proceedings. Again the judgment in ***Surendran K. v. Government of Kerala*** [ILR 2008 (3) Ker 587], Division Bench of the High Court of Kerala has held that if victimisation is discernible from the facts of the case or, suspension is arbitrary or illegal, interference in exercise of the power under Art. 226 of the constitution is justified and warranted. Para 4 of the said judgment further reads as under:

> "the power to suspend an employee should be exercised with caution and care as an order of suspension pending enquiry may put the employee in to shame and humiliation..... Suspension pending enquiry though cannot be considered as a punishment, it cannot be disputed that it causes real hardship to an employee. The stigma attached cannot be ignored, the object in placing an employee under suspension pending enquiry is to enable the administration to conduct the proceedings smoothly so as to establish the allegations or charge against the employee".

20. Another argument of Shri Radhakrishnan was that the Annexure A-7 suspension order was rendered invalid for non-compliance of sub rule 6A of Rule 3 of the "1969 Rules" according to which "*Where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed reports of the case shall be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the*

Service is suspended or is deemed to have been suspended, as the case may be." In this regard he has relied upon the judgment of the Apex Court in **Smt Masuma v. State of Maharashtra & another** [(1981) 3 SCC 566] where an identical provision of the COFEPOSA Act has been considered and held the Advisory Board has to review the detention within five weeks from the date of detention. Otherwise the continuance of detention after the said period would be rendered invalid. Shri Radhakrishnan contended that the ratio of the aforesaid decision is squarely applicable in the case of the applicant also.

21. The other argument of the learned counsel for the applicant was that the suspension is a serious matter and in certain cases it would amount to punishment. According to him, there should have been a preliminary enquiry and a prima-facie satisfaction or there must be material available which would indicate prima facie grounds for action against the applicant and those grounds should be established to the satisfaction of the departmental superior. He contended that the applicant has been victimized and punished by way the suspension imposed upon him. He has relied upon the following decisions in this regard:

i) ***A.K. Veeramani vs. State of Kerala*** [1974 KLT 630].

ii) **Thomas v. State of Kerala** [1994 (2) KLT 162].

In ***A.K. Veeramani's*** case (supra), a Division Bench of the Honourable High Court has held in para. 18, 19 and 21 as under:

> "18. We think the same principle must apply. But this again is not very important for the purpose of answering the questions with which we are confronted. We have referred to this matter only for the purpose of showing that the report of the Inspector General of Police also did not attribute any misconduct, much less a serious misconduct, on the part of the petitioner. The Chief Minister was therefore left only with the solitary statement of the District Collector that the Police entered without grave provocation. He had however cautioned in his report that his was only a tentative opinion and that details will have to be determined later at a proper enquiry. And in Ext.R1 report itself the District Collector had stated that there was violence on a large scale by the students. He has mentioned that he saw evidence of profuse stone throwing on the road and on the lawns in front of the College and the

corridors of the College and the staircase. There is the further statement that the situation was serious and that he directed the Revenue Divisional Officer to go to the spot immediately. This was before noon, and the major incidents appear to have taken place in the afternoon.

The conclusion is irresistible that there was no material before the Chief Minister of any misconduct by the petitioner or for that matter by the Police force deputed for maintaining law and order on that day. Why then has the Chief Minister passed this order of suspension Ex.P7? This can also be only a matter of inference. That the incidents were of a serious nature, certainly important, and of public importance, cannot be denied. An enquiry under S.3 of the Commission of Inquiry Act, 1952 is desirable, perhaps necessary, and Ext.P6 order was passed directing the enquiry apparently because the true nature of the incidents and the exact manner in which the Police and others acted on that day must, in the public interest be ascertained. It does not however follow that before these are determined and in the absence of any material to indicate that the Police have been guilty of misconduct any member of the Police force should be kept under suspension. If there was no material pointing to any misconduct on the part of the petitioner, the order could have been passed only on the basis of the pressure that had been brought to bear on the Chief Minister by important and influential political figures and student leaders. The fact that there was pressure, as we indicated already, is admitted. The averments in the affidavit in support of the petition point, notwithstanding the argument to the contrary by the Government Pleader, that the pressure was on the Chief Minister. The Chief Minister has not filed any affidavit in answer to the averments denying that there has been any such pressure. The Home Secretary who has filed the counter affidavit in this case cannot possibly have any personal knowledge about such pressure. His affidavit commences by stating that

> "I am aware of the facts of the case as disclosed from the relevant files."

It calls therefore for no comment. There is no answer to the averment that pressure has been brought to bear on the Chief Minister.

19. We are not suggesting that the order passed by the Chief Minister is not an honest order in the sense that it was passed with good intentions. Perhaps it was felt that such an order was necessary in the circumstances of tension that prevailed then. But none the less it would be an improper order if it had been passed due to political pressure. It is clear from what we have stated that the pressure played a dominant part inducing the order Ext.P7. The rule laid down by the Supreme Court in the decision in S.Partap Singh v. State of Punjab reported in AIR 1964 SC 72, must apply. That was of course, a case which was of a very clear nature, mala fides being writ large and the intention to wreak vengeance on the Government servant being spelt out in clear terms. But the principle must apply here also and the principle has been so stated:

> "The second ground of attack on the orders might be viewed from two related aspects of ultra vires pure and simple and secondly as an infraction of the rule that every power vested in a public body or authority has to be used honestly, bona fide

and reasonably, though the two often slide into each other. When a power is exercised for a purpose or with an intention beyond the scope of or not justified by the instrument creating the power, in legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account it may even be bona fide and with the best of intentions-as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Sometimes courts are confronted with cases where the purposes sought to b achieved are mixed, some relevant and some alien to the purpose. The Courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action and where the power itself is conditioned by a purpose, have proceeded to invalidate the exercise of the power when any irrelevant purpose is proved to have entered the mind of the authority. This is on the principle that if in such a situation the dominant purpose is unlawful then the act itself is unlawful and it is not cured by saying that they had another purpose which was lawful."

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21. "The passing of an order of suspension of any public servant is a matter of important consequences not only so far as the public servant is concerned but as regards the satisfactory discharge of the duties of the member of the service and therefore so far as the public interest is concerned. It affects the reputation of the public servant and if unjustifiably passed, it affects his morale apart from the fact that it deprives him of his full emoluments and the right to work."

In **Thomas**'s case(supra), the Hon'ble High Court of Kerala held as under:

"7. This is no doubt a case of mere suspension and not termination of service. But suspension is no less injurious than termination of service, especially when the employees is accused of misbehaviour with women. Suspension of an employee on such a serious ground, if made without regard to the employee's case, is repugnant to the principles of natural justice and fairplay. It has been held in State of Kerala v. K.C.George (1984 KLT 315) that the executive has no absolute power in any administrative matters. Before a police officer is suspended under R.7 read with R.6 of the Rules, "the nature of the charges levelled against a servant and the circumstances of the case and the necessity or desirability of placing a member of the service under suspension" should be considered by the concerned authority (A.K.Veeramani v. State of Kerala – 1974 KLT 630). The words "circumstances of the case" are wide enough to include consideration of whether the gang of criminals could have falsely set up Elizabath to make the complaint. Experience shows that the Authorities wield the power to suspend their subordinates without circumspection and with total disregard to the need to suspend. In all cases where disciplinary proceedings are contemplated or pending, suspension is not a compulsory step. The authority has the duty to consider whether the efficiency or the honesty of the administration. The consideration of

> the necessity of the suspension must take into account the delinquent officers contention, where it is made that he has been falsely implicated."

Challenge against the Annexure A-11 order to continue the suspension

22. As far as the Annexure A-11 order dated 11.3.2009 extending the period of suspension of the applicant for a further period of 180 days, the basic contention of Shri Radhakrishnan was that once the Annexure A-7 order of suspension itself is invalid and ab initio void, the Annexure A-11 order extending the period of the said suspension is not tenable and would not survive. He further contended that, even otherwise, the suspension has already ceased to be valid on 10.3.2009 i.e. on expiry of 90 days from the date of issue of the Annexure A-7 Order of suspension dated on 11-12-2008 as no disciplinary proceedings were initaited against the applicant before said date as envisaged in the 2nd proviso to Rule 3(1) of the "1969 Rules". Elaborating his aforesaid contentions, Shri Radhakrishnan, argued that since the Annexure A-7 order dated 11.12.2008 placing the applicant under suspension was 'with immediate effect', it took effect from 11.12.2008 itself and 90 days from that date expires on 10.3.2009. Relying upon the judgment of the Apex Court in ***State of Punjab v. Khemi Ram*** [AIR 1970 SC 214] the expression 'with immediate effect' indicates that the order of suspension was made effective from the date of issue. In para. 16 of the said judgment the Apex Court held as under:

> "in our view, once an order is issued and it is send out to the concerned govt servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt from him that the order becomes effective".

The Apex Court has followed the same law in ***State of Punjab v. Balbir Singh*** [AIR 1977 SC 629], wherein it was held as under:

> "16. In the case of State of Punjab v. Amar singh Harika, AIR 1966 SC 1313 the order of dismissal passed on 3rd June, 1949 was actually communicated to the officer concerned on 2/3rd January, 1953. But before the said date the said officer had come to know on 28th May,

1951 about the dismissal order. This date was taken to be the date of communication. Shelat, J, has considered the earlier cases of this Court including the one in S.Pratap Singh v. State of Punjab, (1964) 4 SCR 733 =(AIR 1964 SC 52). In paragraph 16 of the judgment the law laid down is:

> "It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change is mind and modify it if it though fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it."

Applying the principles of law aforesaid we find in this case that the orders went out of the control of the authority which had passed that order on 29.10.1966 when copies of the orders were forwarded to the Accountant General and the Chief Engineer. In any event, we think that the orders were despatched from the office of the Chief Engineer on 30.10.1966 It is one thing to say that in the case of dismissal or the like the order becomes effective only after it is received by the officer concerned and a different thing to say that an order has no effect at all before it is communicated in the sense of receipt of the order by the concerned officer. In the sense we have said above the orders were communicated to all the respondents before 1.11.1966. They became effective as soon as they were sent out. And for the purposes of Section 83 of the Act the respondents must be deemed to be holding the posts to which they wre reverted on 1.11.1966."

In a recent judgment in ***MCD v. Qimat Rai Gupta*** [(2007) 7 SCC 309] also the Apex Court has reiterated its earlier judgment in **Khemi Ram** (supra) and held as under:

> "27. An order passed by a competent authority dismissing a government servant from services requires communication thereof as has been held in *State of Punjab* v. *Amar Singh Harika* but an order placing a government servant on suspension does not require communication of that order. (See *State of Punjab* v. *Khemi Ram.*) What is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated."

Therefore, the legal effect of Annexure A-7 dated 11-12-2008 is that it became effective on the date of issue and payment of salary for that day cannot have the effect of postponing the suspension. Since Rule 3(1) 1969 Rules does not use the word 'to', the last in the series of days is not liable to be excluded for the purpose of determining the period of 90 days. The word 'before' occurring in the proviso in the strict grammatical sense of priority in order of time and means 'in time, previous, earlier, before hand'. The expression 'before the expiry of 90 days from the date of suspension' means before the period which ends with 90th day and it cannot be initiated or started on the 90th day as the word 'before' signifies 'at or during a time earlier than the 90th day'. As the disciplinary proceedings were not initiated before 11-3-2009, the order of suspension ceased to be effective invalid and non-est by operation of the second proviso to Rule 3 (1) which provides that such suspension shall not be valid unless before the expiry of a period of 90 days from the date from which the member was suspended, the disciplinary proceedings were initiated against him.

23. According to the applicant, the respondents have no case that the State Government had forwarded a detailed report of the case to the Central Government as required under Sub rule 6-A of "1969 Rules" and the Central Government, after considering the special circumstances for not initiating disciplinary proceedings for reasons recorded in writing, allowed the continuance of the suspension order beyond the period of 90 days without the disciplinary proceedings being initiated. Therefore, according to the third proviso to rule 3 (1), the State Government is not competent to extend the period of suspension beyond the period of 90 days without the written permission of the Central Government which is a condition precedent for the continuance of the suspension order beyond the period of 90 days without the disciplinary proceedings being initiated. Failure to obtain written permission from the Central

Govt by itself has dis-empowered the State Government to extend the order of suspension beyond the period of 90 days without the disciplinary proceedings being initiated before the expiry of the period of 90 days from the date of suspension. Sub-rule 7 (a) of Rule 3 which merely indicates that an order of suspension issued under the Rule shall continue to remain in force until it is modified or revoked by the competent authority cannot override or out step the mandatory provisions contained in Rule 3 (1) rather it must necessarily yield to and should construe in consonance with Rule 3(1). Sub rule 8 (a) of Rule 3 provides that the initial period of suspension shall be valid only for a period not exceeding 90 days and if the order of suspension is validly extended shall remain for a further period not exceeding 180 days at a time unless revoked earlier. Sub rule 8 (d) provides that the period of suspension under sub-rule (1) may, on the recommendations, of the concerned Review Committee, be extended for a further period not exceeding 180 days at a time provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect form the date of expiry of the order being reviewed. Therefore, for invoking the power under sub-rule 8 (d) the order of suspension issued under sub-rule (1) must be subsisting and an order which has duly ceased to be valid and non est by operation of the second proviso to Rule 3 (1) cannot be extended. Therefore, Annexure A-11 order extending Annexure A-7 order which became invalid and inoperative is ex-facie illegal, ultra-vires and inoperative.

24. The 1st proviso to Rule 3(1) of the 1969 Rules, specifically provides that where a member of service against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid unless before the expiry of a period of 90 days from the date from which the member was suspended, disciplinary proceedings are initiated against him. Therefore, it is mandatory that for continuance of the suspension beyond the period of 90 days,

disciplinary proceedings shall be initiated before the expiry of the period of 90 days from the date of suspension. If no disciplinary proceedings are initiated or commenced before the expiry of 90 days from the date of suspension, the 'failing which clause' springs into action and renders such suspension invalid and the suspension would not validly subsist beyond the period of 90 days from the date of suspension. The true import and purport of the rule is that the State Government cannot keep a member of the All India Service under suspension even for a day longer than 90 days from the date of suspension in case no disciplinary proceedings are initiated before the expiry of the period of 90 days from the date of suspension. Therefore, Annexure A-7 Order came to an end on 10-03-2009 by reason of the failure on the part of the 1st respondent to commence disciplinary proceedings before the expiry of 90 days from the date of suspension and it cannot be validated or cannot be permitted to continue or subsist lawfully for a period longer than 90 days from the date of Annexure A-7 Order of suspension.

25. Annexure A-11 is patently illegal, ultra vires and is a clear instance of colourable exercise of power. Annexure A-11 Order lacks foundational fact for invocation of the 2nd proviso to Rule 3(1) of the 1969 Rules under which the Central Government alone is competent and to allow continuance of suspension Order beyond the period of 90 days without the disciplinary proceedings being initiated, empowered after considering the special circumstances for not initiating disciplinary proceedings to be recorded in writing. In Annexure A-11 Order, extending the suspension ordered as per Annexure A-11, it has not been alleged or far less shown that the Central Government have allowed the State Government to continue the suspension of the applicant beyond the period of 90 days without the disciplinary proceedings being initiated. Therefore, Annexure A-11 order dated 11-03-2009 clearly falls outside the scope of 2nd proviso to Rule

3(1) of AIS (Discipline and Appeal) Rules, 1969.

26. Annexure A-11 Order on the face of it, appears to be made on the recommendations of the Committee constituted by the State Government and for that reason Annexure A-11 Order extending the suspension for a further period of 180 days is liable to be struck down as one passed without authority of law. According to the said order, the suspension of the applicant was reviewed by the Review Committee constituted under the 1969 Rules, on 11-03-2009. On the other hand, schedule to the 1969 Rules, lays down the composition and functions of the review committees and the procedure to be followed by them. For the purpose of the 2nd proviso to Rule 3(1), the review committee shall be constituted by the State Government and the Central Government can act only upon the recommendations of the review committee constituted by it. The review committee shall consist of (i) Secretary of the Government India in the concerned Ministry as Chairman, (ii) Additional Secretary/ Joint Secretary in charge of administration of the concerned Ministry/ Department as Member (iii) any other Additional Secretary/ Joint Secretary in charge of the concerned Ministry/ Department as Member. A review committee constituted by the State Government can recommend only for revocation or modification of suspension within the period of 90 days of suspension or in case the disciplinary proceedings were commenced before the expiry of 90 days from the date of suspension during the period not exceeding 180 days at a time in terms of sub 8(d) of Rule 3 of the Rules, 1969.

27. Annexure A-11 on the face of it, is vitiated by arbitrariness. The Committee is shown to have been constituted on 11-03-2009 and the Committee reviewed the case of the applicant on 11-03-2009 and made recommendations and forwarded to the Government on 11-03-2009. The constitution and reviewing

of the case by the review committee were all done on 11-03-2009 beyond the period of 90 days from the date of suspension and the order extending the suspension also has been passed on 11-03-2009 by the State Government. The State Government has no power or authority to extend the period of suspension in a case where disciplinary proceedings were not initiated before the expiry of 90 days from the date of suspension without the permission of the Central Government. Therefore, Annexure A-11 is ultra vires, inoperative and void.

28. As regards the Annexure A-6 show cause notice was concerned, the Applicant contended that he has not violated Rule 3, 7 and 17 of All India Service (Conduct) Rules, 1968 (Conduct Rules for short) as alleged by the 1st respondent. Rule 3 of the Conduct Rules is general in nature and directs that 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. Even failure to maintain absolute integrity and devotion to duty by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rules 4 to 20 as held by the Supreme Court in **A.L. Kalra v. Project and Equipment Corporation** [1984 (3) SCC 316] which reads as under:

> **"22.** Rule 4 bears the heading "General". Rule 5 bears the heading "Misconduct". The draftsmen of the 1975 Rules made 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 Rule 4 into Rule 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 not necessary to dilate on this point in view of a recent decision of this Court in *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour* **{Start P. 331}** *Court, Meerut* 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 Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in 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 Rule 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."

Rule 7 of the "Conduct Rules" relates to criticism of Government. The applicant is not alleged to have criticised the Government either in Annexure A-6 show-cause notice or in Annexure A-7 Order of suspension. The specific and categoric allegation is that the applicant has appeared before the Press and media channels on 6th December, 2008 and adversely criticised the Office of the Hon'ble Chief Minister. Criticising the office of a Minister cannot be construed as criticising the Government as contemplated is Rule 7 of the Conduct Rules. The expression 'Government' in the said Rule 7 clearly denotes the 'executive'. In Annexure A-7 Order of suspension what has been alleged is that the applicant appeared before the Press and Media channels from 06-12-08 onwards and adversely criticised the office of the Hon'ble Chief Minister of Kerala, making allegations like piling up of files, absence of support system and ignorance of Government proceedings in the Chief Minister's office. The applicant is not alleged to have made any criticism of the Government but only shown to have criticised the non-official members of the personal staff of the Chief Minister. The non-official members of the personal staff of the Chief Minister are not

Government officials but are temporary staff appointed for advice and assistance to the Minister. They are not civil servants but are personal assistants to the Ministers who will leave the Departments when the Ministers go. Therefore, a criticism of such Personal Assistants of the Chief Minister cannot be construed as criticism of the Government as they are not part of the Government or the representatives of the Government. Therefore, criticising the non-official members of the personal staff of the Chief Minister is certainly outside the scope of Rule 7 of the Conduct Rules, 1968. Moreover, the views expressed by the applicant does not have the effect of an adverse criticism of any current or recent policy or action of the Central Government or State Government and they are not capable of embarrassing the relations between the Central Government and any State Government or they are capable of embarrassing the relations between the Central Government and any Foreign State. Therefore, if the views alleged to have been expressed by the applicant are taken to be true, they do not constitute 'misconduct' within the gamut of Rule 7 of the "Conduct Rules". Rule 17 of the "Conduct Rules" relates to vindication of official acts and character of members of the service. In Annexure-I and II, the imputations were directed against the Chief Minister and were not directed against the applicant. The sweeping allegation was that the Chief Minister was being misguided by outside forces and was under the influence of a coterie. Therefore, it cannot be said that the applicant had taken recourse to the Press for the vindication of his official act which has been the subject matter of adverse criticism and therefore, the allegations made against him even if are taken as fully correct and true, falls outside the scope of Rule 17 of the the Conduct Rules. Therefore, the entire allegations and imputations made against him in Annexure A-6 show-cause notice and Annexure A-7 Order of suspension do not constitute any misconduct warranting initiation of disciplinary proceedings. Imposition of any penalty on the basis of allegations made in Annexure A-6 Show-cause Notice and Annexure A-7

Order of suspension is very remote and distant and therefore, the Order of suspension is wholly unwarranted and unjustified.

29. Shri K.K.Ravindranath, Additional DGP on behalf of the State Government (respondent No.1) submitted at the outset that the O.A is not maintainable either in law or on facts. He raised the preliminary legal objection of non-exhaustion of Alternate Remedy and argued that the O.A was to be dismissed in-limine. He further submitted that, as per Rule 16 of the 1969 Rules, the applicant could have filed an appeal before the Central Government against the order of suspension made under Rule 3 thereof. He submitted that the applicant has not given any reasons as to why the said remedy was not effective or efficacious and why his case is exceptional or extraordinary which would warrant the interference of this Tribunal at this stage. He has also argued that the right of an applicant to make an application to the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 is subject to the twin conditions that (i) It is subject to the other provisions of the Act, and (ii) that the person concerned must be aggrieved by the order sought to be impugned. In this regard, the learned counsel relied upon Section 19, 20 and 21 of the Administrative Tribunals Act, which provide as under:

> "19. Applications to Tribunals:- (1) Subject to the other provisions of this Act ,a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressel of his grievances.
>
> EXPLANATION: For the the purposes of this sub section, "order" means an order made-
> (a) by the Government or a local or other authority within the territory of India or under the control of the government of India or by any Corporation (or Society) owned or controlled by the Government; or
> (b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation (or Society] referred to in Clause (a)."
>
> 20. **Applications not to be admitted unless other remedies exhausted**.--- (1) a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies

available to him under the relevant service Rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired".

21. **Limitation**.---- (1) a Tribunal shall not admit an application,----

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made,within one year from the date on which such final order has been made;

(b) In a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

30. Asserting that the non-exhaustion of the alternative remedy as envisaged in Section 20 of the Administrative Tribunals Act, 1985 is a bar in entertaining applications under Section 19 of the said Act, the learned counsel referred to the judgments/orders in the following cases:

i) **S.S.Rathore v. State of M.P.**[AIR 1990 SC 10]

ii) **Parmeswaran v. Divisional Engineer** in O.A.27 of 1990

iii) **G.K.Vaghela v. Union of India** [2000 (2) SLR 307]

iv) ***Tolin Rubber (P) Ltd. v. Asst. Commissioner of Income Tax*** [2003 (2) KLJ 657]

v) **K.K.Shrivastava v. Bhupendra Kumar Jain and others** [AIR 1977 SC 1703]

vi) **Tin Plate Co. of India Ltd. v. State of Bihar and others** [(1998) 8 SCC 272].

vii)**CCT, Orissa and others v. Indian Explosives Ltd.** [(2008) 3 SCC 688].

The 7 Judge-Bench of the Hon'ble Supreme Court in the case of **S.S.Rathore's** case (supra) in which it was held as under:

> "16. The Rules relating to disciplinary proceedings do provide for an appeal against the order of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of S.20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Center and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down under 8.20 of the Administrative Tribunals Act.
>
> 20. **We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made** and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.
>
> 21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub- section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals act shall continue to be governed by Article 58.
>
> 22. It is proper that the position in such cases should be uniform. **Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal** or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation".

In **Parmeswaran v. Divisional Engineer**(supra), the Tribunal held as under:

> "Section 19(1) provides that an Application may be made to the Tribunal by a person aggrieved by any order pertaining to any matter within the

jurisdiction of a Tribunal. But for the redressal of his grievance, it makes the above provision subject to other provisions of the Act. The cardinal feature of this provision is the person must be aggrieved by an order. Such an order can be passed by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government or by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to above. In other words, it means that until an order has been passed which causes a grievance to the applicant, he cannot approach the Tribunal under Section 19 of the Act. Now under Section 20(1) even if an Application is made under Section 19 of the Act, the Tribunal shall not ordinarily admit such an Application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

10. Section 20(2) of the Act provides that a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, firstly, where after filing the appeal/representation under the relevant service rules, it has been decided and he is still an agreed person. And, secondly, where the said appeal or representation has not been decided for a period of six months from the date of the filing of an appeal etc. The Tribunal will ordinarily entertain such application where any of the above two situations occur. It will be seen that in the latter event even though no order is passed by the Appellate authority, yet the statue lays down a fiction, by introducing a deeming clause in Section 20(2) of the Act – " A person shall be deemed to have availed of all the remedies available to him". The deeming clause enables an aggrieved party to approach the Tribunal immediately on the expiry of six months from the date of the filing of the appeal/representation, even though no order on such appeal etc. has been passed by the Authority concerned.

11. Where the statute itself provides for the starting point for filing of the application under Section 19 of the Act, normally no such application can be filed before that date. A person aggrieved can file an application under Section 19 of the Act when the course of action arises viz. when the impugned order is passed provided the rules do not make provision for filing of an appeal/revision/representation. Where the law requires that the applicant exhausts his statutory remedies for redressal of his grievances under the relevant service rules, it is incumbent on the applicant to file an appeal/revision/representation, whichever is permissible under the rules, to the authorities concerned and then wait for six months time for the latter to decide the matter. If he decides in favour of the applicant it may not be necessary for him to seek further relief under the Act. However, if there is an order against applicant, he may immediately approach the Tribunal under Section 19 of the Act, having exhausted all the available remedies under the relevant service rules. There may be, however, cases where the Authority concerned is not able to conclude the appeal etc. within a period of six months from the date of filing the same. In such cases aggrieved person need not wait any further and on the expiry of six months period from the date of filing an appeal etc. he can approach the Tribunal under Section 19 of the Act. This is the scheme of the Act.

12. The question now is whether it is imperative for every

applicant to exhaust the remedy of statutory appeal for redressal of service matters before he comes to the Tribunal under Section 19 of the Act ? The wordings of Section 20 of the Act uses the words : " A Tribunal shall not ordinarily admit an application ....." which means that ordinarily it will not be open to the Tribunal to admit an Application under Section 19 of the Act where the statutory provision for appeal etc. had not been availed of . It will be deemed to have been availed of if after the filing of such an appeal, a period of six months have expired and no orders have been passed by the Appellate authority. The emphasis on the word " ordinarily" means that if there be an extra ordinary situation or unusual event or circumstance , the Tribunal may exempt the above procedure being complied with and entertain the Application. Such instances are likely to be rare and unusual. That is why the expression " ordinarily " has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases.

13. The word "ordinarily" has come in for judicial consideration in a number of cases.

In re Putta Ranganayakulu and others (Full Bench), SUbha Rao, Chief Justice as he then was, explained the meaning of the word "ordinarily" in the following words:

"ordinarily" means habitually and not casually. It cannot obviously mean "always"

In the same judgment, Chandra Reddy, J. explained the meaning of "ordinarily" in the following words:

"The plain and popular meaning of the word "ordinarily" means usually, normally and not exceptionally as contrasted with extraordinarily"

14. In the case of Kailash Chandra vs.Union of India, their Lordships explained the meaning of the word "ordinarily" and held:

> "This intention is made even more clear and beyond doubt by the use of the word "ordinarily". " Ordinarily" means in the large majority of cases but not invariably."

In K.J.C. Bose Vs. Government of India and another, the Madras Bench of the Tribunal while considering the provisions of Section 20 of the Act referred to the remedy of appeal under Rule 16 of the All India Services (Discipline and Appeal) Rules, 1969 not being exhausted and held that Application was not entertainable. The Vice-Chairman ruled:

"No doubt, the expression 'ordinarily' occuring in that Section will indicate that the Tribunal has some sort of discretion in the matter. But such a discretion cannot be exercised in all the cases and that has to be exercised in extraordinary situations."

15. In Corpus Juris Vol.67, the meaning of the word "ordinarily" has been given as ; usual, common, normal, regular, conforming to general order, common in recurrence, often recurring.

16. The antonym of "ordinarily" is extraordinary, unusual or uncommon.

17. In view of the above, the power to entertain an Application under Section 19 of the Act even before exhaustion of the statutory remedy of appeal etc., in service matters is not the usual feature but an extraordinary, unusual or uncommon feature. As indicated above, this power to entertain an Application under Section 19 of the Act even before availing of the remedy provided by statute or statutory rules cannot be exercised generally or always. The statutory right of appeal has to be exhausted before the Application under Section 19 of the Act is admitted by the Tribunal in exercise of its power under Section 20 of the Act.

18. This leads to the conclusion that no Application under Section 19 of the Act should ordinarily be admitted by the Tribunal unless the applicant has exhausted the remedy as indicated above. In other words, normally, and usually, such Application will be rejected or declined as pre-mature. However, where the Tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word "ordinarily", it may be entertained and admitted against subject to other provisions of the Act."

In **G.K.Vaghela**'s case (supra), a Division Bench of the Gujarat High Court held as under:

"6. Now so far the order passed by C.A.T not entertaining the petition is concerned in our opinion, no error of law and/or of jurisdiction can be said to be committed by the C.A.T. To us Sub-Sec (1) of Sec.20 is clear and specific. It states that C.A.T shall not ordinarily admit an application where a statutory remedy is available under the relevant service rules. Looking to the Rules referred to hereinabove, any order passed by an authority under rule 11 is subject to appeal under Rule 23 of the Rules. The Rules are statutory in nature. Ordinarily, when a statutory remedy is available to the aggrieved party to approach the Appellate Authority, C.A.T would refuse to entertain an application, and by doing so, C.A.T. has not committed any error of law or of jurisdiction. In fact, CA. T has taken into account the legislative intent reflected in Sec.20 (1) it is true that the Bar is not absolute and in certain circumstances, C.A.T. may entertain an application, Mr. Patel is right in submitting that the provision is merely enabling one but taking into consideration, the phraseology used by parliament, if the C.A.T has directed the petitioner to go before an Appellate Forum, no exception can be made against such a direction."

In **Tolin Rubber**'s case (surpa), Hon'ble High Court of Kerala held as under:

"7. Normally, this Court will entertain a writ petition, if there is no other alternative efficacious remedy to the petitioner. In other words, the existence of an effective alternative remedy is normally a ground for dismissing the Original Petition in limine. No doubt, if an inferior authority commits any jurisdictional error, this Court has the power to interfere notwithstanding the existence of an alternative remedy. But, the point to be decided is whether this Court is justified in exercising the extraordinary jurisdiction under Article 226 of the constitution of India in the face of the alternative remedies available to the petitioner in the

case on hand. If this Court entertains writ petitions on the ground of jurisdictional error unmindful of the existence of an alternative remedy, I think this Court will be doing a great disservice to public interest. The efficacy of this Court has been considerably comprised owing to docket explosion. This Court's precious time should be preserved for those matters which this Court alone is competent to deal with. Even though the right to approach the Apex Court is a fundamental right under Article 32 of the Constitution of India, it was held in Kanubhai Bhahmbhatt v. State of Gujarat (1989 Suppl.(2) SCC 310) that the petitioner should first approach the High Court under Article 226 of the Constitution of India, instead of directly knocking at the doors of the Apex Court at the first instance."

In **K.K.Shrivastava**'s case (supra), the Apex Court has held as under:

"4. It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off."

In **Tin Plate Co. of India Ltd.**'s case(supra), the Apex Court has held as under:

"The argument is well substantiated. It is no doubt true that when an alternative and equally efficacious remedy isl open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the constitution. In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the appellate authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act, 1959."

In **CCT, Orissa and other**'s case (supra), the Apex Court has held as under:

"The High Court was of the view that the writ petition can be entertained even though an alternative remedy is available. Accepting the stand of the assessee the High Court held that the notice issued was to be quashed and accordingly quashed the impugned notice dated 14.1.2004.

xxxxx xxxxxxx xxxxxx

8. The High Court seems to have completed lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for Assessment Year 1997-1998 and Assessment Year 1998-1999 in respect of ICI India Ltd. In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside."

31. Shri Ravindranath, the learned counsel for respondents has also refuted all the other contentions of the applicant's counsel Shri O.V.Radhakrishnan. Shri Ravindranath has specifically denied that (i) the Annexure A-7 suspension order issued by the government on 11.12.2008 was in breach of the principles of natural justice first because it did not wait for the explanation of the applicant to the Annexure-A6 notice dated 9.12.2008 to show cause as to why disciplinary action as per the "1969 Rules" should not be initiated against him for the violation of Rules 3, 7 and 17 of the Rules, and (ii) the Annexure A-7 order has been rendered ultravires and one issued without authority of law, because under Rule 3(1) of the said Rules, drawing up of charges is a condition precedent for passing an order of suspension. According to the respondents, both the aforesaid contentions are contrary to the very provisions contained in Rule 3(1) and they also go against the well established principles of law laid down and time and again reiterated by judicial pronouncements. Shri Ravindranath has also submitted that the applicant's counsel's reliance on the judgment of the Apex Court in **P.R.Nayak v. Union of India** (supra) is totally misplaced as Rule 3(i) of the "1969 Rule" considered in that judgment was in its unamended form, which was as under:

> "3. Suspension during disciplinary proceedings-
> (1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the service against whom such proceedings are started, that Government may-
> (a) if the member of the Service is serving under it, pass an order placing him under suspension, or
> (b) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case:
>
> Provided that, in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government for its decision."

The aforesaid Rule was subsequently amended and the present form of Rule 3 is as follows:

"3. Suspension (1) If, having regard to the circumstances in any case and where articles of charge have been drawn up, the nature of the charges, Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending that Government may-

(a) if the member of the service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the service is serving under another Government, request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final final order in the case.

Provided that, in cases, where there is a difference of opinion -

(i) between two State Governments, the matter shall be referred to Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central government shall prevail.

[Provided further that, where a member of the service against whom disciplinary proceedings are contemplated in suspended, such suspension shall not be valid, unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him:

Provided also that the Central Government may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceeding, to be recorded in writing, allow continuance of the suspension order beyond the period of ninety days without the disciplinary proceedings being initiated.]

(1A) If the Government of a State or the Central Government, as the case may be, is of the opinion that a member of the Service has engaged himself in activities prejudicial to the interests of the security of the State, that Government may-

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request, that Government to place him under suspension,

till the passing of the final order in the case :

Provided that, in cases, where there is a difference of opinion-

(i) between two State Government, the matter shall be referred to the Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail.

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service in respect of, or against, whom an

investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government [ ] be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a [member of the Service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(4) A member of the Service shall be deemed to have been placed under suspension by the Government concerned with effect from the date of conviction of, in the event of conviction for a criminal offence, he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction provided that the conviction carries a sentence of imprisonment exceeding forty-eight hours.

Explanation.- The period of forty-eight hours referred to in sub-rule (4) shall be commuted from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service is set aside or declared or rendered void in consequence of or by a decision of a Court of Law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

(6A) Where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed reports of the case shall be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the Service is suspended or is deemed to have been suspended, as the case may be.

(7)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of the Service is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under

suspension may, for reasons to be recorded in writing,direct that the member of Service shall continue to be under suspension subject to sub-rule (8).

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or deemed to have made the order.

(8)(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

(c) The composition and functions of the Review Committees and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under sub rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time:

Provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

(9) Every order of suspension and every order of revocation shall be made, as nearly as practicable, in the appropriate standard form appended to these rules."

32. Relying upon an order of this Tribunal **Gopinathan v. State of Kerala & another** (O.A.No.593/2007 decided on 16.11.2007), Mr K.K.Ravindranath argued that under the following two circumstances, a Government servant may be placed under suspension:

> "23. As to the provisions of Rule 3, the same when read between lines would clearly mean that under two circumstances the Government may place a Member of the service under suspension. They are:-
>
> (a) If, having regard to the circumstances in any case, the Government is of a State or the Central Government as the case may be, is satisfied; and
>
> (b) where articles of charge have been drawn up, having regard to the nature of the charges, the Government is of a State or the Central Government as the case may be, is satisfied;

and the applicant falls under (a) above. He has also refuted the argument of

the learned Senior Counsel for the applicant Shri Radhakrishnan that the conjunction 'and' appearing in rule 3(1) of the "1969 Rules" has to be given its due regard and it would mean that both the ingredients i.e. (a) having regard to the circumstances in any case and (b) where articles of charges have been drawn up, should be concurrently available for the Government to satisfy itself before a Member of the IAS is placed under suspension. If that is so, according to the learned counsel for the respondents, the second proviso to Rule 3 of the 1969 Rules would become otiose. In other words, he contended that the first respondent was empowered to place the applicant under suspension in terms of Rule 3(1) of the "1969 rules" if the disciplinary proceedings have already been contemplated against him. He has also referred to the Chambers 21st Century Dictionary according to which the meaning of the word "contemplate" is "to think about", "to go over something mentally", "to consider something as a possibility" etc. He has also relied upon the following judgments/order of the Supreme Court, High Court of Kerala and this Tribunal in this regard:

i) **A.M.Babu Bonaventure v. State** (O.P.No.27195/2002).

ii) **Valsala Kumari v. State of Kerala** (W.P.(C) No.28804/2006)

iii) **Bhup Narayanan v. State of Bihar** [1984 LAB IC 1155]

iv) **Pratap Singh v. State of Punjb** [AIR 1964 SC 72, para 55].

In **A.M.Babu Bonaventure's** case(supra), the concept of "*disciplinary proceedings in contemplation*" has been considered by the High Court of Kerala in the following manner:

> (i) "*The term contemplate used in rule 10 of the Rules means that the Government is thinking of initiating disciplinary enquiry against the employee*". Relying on the decision of the Supreme Court in Government of India v. Tarak Nath (AIR 1971 SC 823), in the same paragraph, the Court held:
>
> "Government may rightly take the view that an officer against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at departmental proceedings. Rule 7 is aimed at taking the latter course of conduct. Ordinarily when serious imputations are made against the conduct

> of an officer the disciplinary authority cannot immediately draw up the charges. It may be that the imputations are false or concocted or gross exaggerations of trivial irregularities. A considerable time may elapse between the receipt of imputations against an officer and a definite conclusion by a superior authority that he circumstances are such that definite charges can be leveled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned". Further, in paragraph 14 of the judgment the Court held: ".. Even in the decision reported in **Partap Singh v. State of Punjab**, AIR 1964 SC 72, The Supreme Court has taken the view that an order of suspension can be passed on getting a complaint of misconduct and it is not necessary to wait till the collection of all the materials against the delinquent officer..."

In **Valsala Kumari's** case(supra), the term, "disciplinary proceedings in contemplation" was considered by the High Court of Kerala. Interpreting the word "contemplated" appeared in Section 10(1)(a) of the Kerala Civil Services (Classification, Control and Appeal) Rules dealing with suspension of Civil Servants from service, the Hon'ble Court held in paras 11 and 12 of the judgment as under:

> "Rule 10 aforesaid clothes the Government with considerable amount of power to place Government servants under suspension at any time where a disciplinary proceeding is contemplated or pending, or, where a case against him in respect of any criminal offence is under investigation or trial, or, where final orders are pending in the disciplinary proceeding. Such an order placing a Government servant under suspension can be issued if the competent authority considers that in the then prevailing circumstances it is necessary in public interest that the Government servant should be suspended from service. Suspension order can be issued when the disciplinary proceedings are contemplated or have started or when the charge sheet is given.
>
> 12. Whether the Government servant against whom disciplinary proceedings are contemplated should or should not continue in his/her office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are malafide and without there being even prima facie material connecting the Government servant with the alleged misconduct. In State of Orissa v. Bimal Kumar Mohantry [(1994) 4 SCC 126] the Apex Court held that it shall not be an administrative routine or an automatic order to suspend the Government servant. The gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee are relevant considerations. A Government servant can be placed under suspension for the smooth conduct of disciplinary

proceedings. It is not necessary that before suspending the employee he shall be found guilty. In Muhammed v. State of Kerala (1997 (2) KLT 394) this Court has held that "*when the allegations are of a serious nature, which have got considerable public interest, and those allegations are based on some relevant material, authority can always place the Government servant suspension, even till the completion of the disciplinary proceeding, investigation or trial. It depends upon the gravity of the offences, nature of the allegations as well as public interest involved. Such action of the Government would be justified so as to achieve the purity of administration.*" An order of suspension can be passed only after due application of mind. In Raj Mohan v. Secretary to Government (2001 (3) KLT 956) this Court held that the paramount consideration in placing a public servant under suspension is public interest. In Anilkumar v. State of Kerala (2002 (2) KLT 101) Balakrishnan Nair, J. expressed the view that an order of suspension can be successfully challenged under Article 226 of the Constitution of India if only the same has been issued without jurisdiction. The learned Judge further held that "Assuming everything that is stated in the suspension order is correct, still the suspension is unwarranted, this Court can interfere with it." A suspension order cannot be attacked in writ jurisdiction on the ground that the facts stated therein are not correct or the conclusions on the facts are improper. In Government of Tamil Nadu v. K.N.Ramamurthy [(1997) 7 SCC 101] the Apex Court made the following observations in paragraph 7 of the judgment:

> "In the case on hand, the finding accepted by the disciplinary authority was to the effect that by the act of negligence caused loss to the government exchequer to the extent of Rs.44,850. This finding of the disciplinary authority is not open to challenge on the facts of the case. This Court in Upendra Singh case [(1994) 3 SCC 357] has ruled that the Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. This Court, in the said case, further observed that the function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. This Court further held that in case of charges framed in a disciplinary enquiry, the tribunal or the court can interfere only if on the charges (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law."

A division bench of this Court in Mathew v. State of Kerala [2000(1) KLT 245] emphasized that there should be due application of mind before passing an order of suspension.

13. The first ground on which Ext. P10 is attacked is that the disciplinary proceedings are unwarranted against a Government officer for alleged irregularities or lapses committed in the discharge of his functions as a quasi judicial authority. It is submitted that even if misconduct can be spelled out in the discharge of the official duties of the petitioner, an order of suspension contemplating disciplinary proceedings will not have the sanction of law in as much as the petitioner was functioning as a quasi judicial authority in the matter of

approving the order of assessment passed by the Assistant Commissioner of Commercial Taxes. Reliance is sought to be placed on the judgment of the Apex Court in Zunjarrao Bhikaji Nagarkar[(1999) 7 SCC 409] where the Apex Court expressed the view that disciplinary action could be taken against an officer discharging judicial functions only when there was an element of culpability involved. But the fact is that the above decision is no more good law in the light of the decision of the Apex Court in Union of India v. Dulichand [2006 (3) KLT 939]. Nagarkar's case (supra) was held to be contrary to the view expressed in Union of India v. K.K.Dhawan [(1993) 2 SCC 56] and accordingly Nagarkar's case stands overrulled by the decision in Dulichand's case (supra). The Apex Court re-affirmed the principles laid down in Dhawan's case in which six instances were listed as relevant materials enabling the disciplinary authority to take action against officers who exercised judicial or quasi judicial powers. The Apex Court has held that disciplinary action can be taken against officers who exercise judicial or quasi-judicial powers acting negligently or recklessly. The six instances listed in Dhawan's case are the following:

> "28.(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
>
> (ii) if there is prima facie material to show reckless or misconduct in the discharge of his duty;
>
> (iii) if he has acted in a manner which is unbecoming of a government servant;
>
> (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
>
> (v) if he had acted in order to unduly favour a party;
>
> (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great."

It is pertinent to note that an officer who acts in a manner as would reflect on his reputation for integrity or good faith or devotion to duty, an officer against whom prima facie material is available to show recklessness or misconduct in the discharge of his duty, officers who act in a manner unbecoming of a government servant, officers who act negligently, those who unduly favour a party, etc. will be liable to face disciplinary action. In the light of the law laid down by the Apex Court as stated above, the protection sought for by the petitioner on the ground of exercise of quasi judicial power is no more available. Moreover, the misconduct alleged to have been committed by the petitioner does not, in my view, is not a function relatable to the exercise of quasi judicial power. The order approving the proceedings of the assessing authority is not a quasi judicial function. Therefore, he case of the petitioner does not require a special treatment when compared to that of other government employees, on the ground that she was exercising a quasi judicial function. I have, therefore, no hesitation to reject the contention urged on behalf of the petitioner on the ground of quasi judicial exercise of power."

In **Bhup Narayanan's** case(supra), a Full Bench of the Patna High Court

considered Rule 49-A of Bihar Civil Services (Classification, Control and Appeal) rule 1930 and held that the said rule being an enabling one for suspension of an employee, it does not suffer from arbitrariness and is not violation of Article 14 of the Constitution. Relevant portion of the rule reads thus:

> "8. For appraising the aforesaid contention what would perhaps call for notice at the very threshold is the fact that the impugned Rule 49A (inserted somewhat recently in 1978). is on the specific point in pari materia with Rule 10(1)(a) and (b) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which in turn had replaced the earlier identical Rule 12(1) (a) and (b) of the Central Civil Services (Classification, Control and Appeal) Rules of 1957. It would thus appear that an identical provision in the Central Rules has now held the field for nearly three decades. Mr. Basudeva Prasad was fair enough to concede before us that he could cite no authority in which the aforementioned Central Rules have either been held to be arbitrary or unconstitutional or even their validity was seriously assailed.
>
> 9. Be that as it may, the same by itself cannot be conclusive, and the compliment of a rational refutation has to be extended to the contentions pressed before us for assailing the constitutionality of Rule 49A. In this context it becomes necessary to first consider the very nature of an order of suspension made either during the pendency of a departmental proceeding or in reasonable contemplation thereof. It is well settled that suspension is of two kinds – one by way of punishment and the other by way of a procedural aid to the holding of disciplinary proceedings. Admittedly herein we are concerned with the latter category. It seems to be undisputed that the concept of suspension during departmental proceeding has only the larger objective of ensuring a free and fair conduct of the enquiry that is either pending or is to follow. In this context, the fact that the suspension order is interlocutory or interim in nature can perhaps be hardly denied. The service rules invariably, if not inflexibly, provide for a subsistence allowance during the period and the delinquent official retains his lien on the post during the continuation of the departmental proceeding. This mellows the rigour of the order of suspension and in the event of the enquiry resulting in favour of the official, he would be invariably entitled tot he revoking of the order of suspension and the re-instatement to the post with all the benefits of service and salary, (sometimes even without having worked during the said period), as may be provided in the rules. There is thus no finality or irrevocability attaching to an order of suspension, which, as already noticed, retains its character or being interim or interlocutory in nature.
>
> 10. The object and purpose of placing a public servant under suspension or in contemplation of a disciplinary proceedings may be manifold and do not call for any exhaustive enumeration. However, its salient features are well known and may call for a passing notice. Where serious allegations of misconduct are imputed against an official, the service interest renders it undesirable to allow him to continue in the post where he was functioning. In case where the authority deems a further and deeper investigation into the same as necessary, it becomes somewhat imperative to remove the official

> concerned from the spheres of the activities, as it may be necessary to find out facts from people working under him or to take into into possession documents and materials which would be in his custody. Usually, if not invariably, it would become embarrassing and inopportune both for the delinquent official concerned as well as the inquiring authority to do so, while such official was present at the spot and holding his official position as such. It was sought to be contended that such a situation may be avoided by merely transferring the official. However, it would be for the authority concerned to decide whether such an official against whom prima facie serious imputations have been levelled, should at all be allowed to function anywhere else. If it so decides, then suspension during the pendency or in contemplation of an inquiry might well become inevitable. It seems to be a fallacy to assume that suspension is necessarily and wholly related to the gravity of the charge. Indeed, it may have top be ordered to facilitate free investigation and collection of evidence. Just as criminal procedure is intended to subserve the basic cause of a free and fair trial, similarly, suspension, as an interim measure in aid of disciplinary proceeding, is directed to the larger purpose of a free and fair inquiry. It would thus seem that the power of suspension is not only necessary, but indeed a salutary power. If reasonably exercised either during the pendency or in contemplation of a disciplinary proceeding."

In **Pratap Singh**'s case(supra), a Five Judge Bench of the Supreme Court held as follows:

> "It was contended that the appellant's suspension, without calling him to explain the charges first, was bad as the proceedings to suspend him were of a quasi-judicial character and therefore necessitated the Government's obtaining his explanation to the charges of misconduct before passing the order of suspension. The order suspending the Government servant pending enquiry is partly an administrative order. What has been held to be quasi-judicial is the enquiry instituted against the Government servant on the charges of misconduct, an enquiry during which under the rules it is necessary to have an explanation of the Government servant to the charges and to have oral evidence, if any, recorded in his presence and then to come to a finding. **None of these steps is necessary before enquiry**. Such orders of suspension can be passed if the authority concerned, on getting a complaint of misconduct, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enquiry".

33. Shri Ravindranath has also argued that the Supreme Court and High Courts have consistently taken the stand that the question whether it is necessary or desirable to place a delinquent officer under suspension before charges are framed depends on the view taken by the authority or the Government as the case may be and that the Government has considerable

power to place the Government Servants under suspension at any time when disciplinary proceeding are contemplated or pending. When the allegations are of a serious nature which have got considerable public interest and those allegation are based on some relevant materials, authority can always place the Government servant under suspension. As observed by the High Court in **Balakrishnan Nair v. State of Kerala** (1996 (1) KLT 14), the authority has to keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental proceedings. The paramount consideration in placing the public servant under suspension is public interest. Again in **Abdul Gaffur v. State of Kerala** [2001 (2) KLT 31], the High Court observed as under:

> "Suspension does not prejudice an official because it is now settled that suspension does not amount to punishment. There is no requirement that the incumbent should he heard before order of suspension is passed. It is only during the course of enquiry that he need be heard and it is only at that stage that the principles of Natural Justice arise."

34. The other contention of the learned counsel for the respondents was that the Court/Tribunals are not to interfere with the orders of suspension and it is a matter to be left to the concerned authority in the Department. In this regard he relied upon the following judgments:

i) **Anil Kumar v. State of Kerala** [2002(2) KLT 101].

ii) **Balakrishnan Nair v. State of Kerala** [1996(1) KLT 14]

iii) **U.P.Rajya Krishi Utpadan Mandi Parishad and others Vs. Sanjiv Rajan** (1993 Suppl (3) SCC 483)

iv) **Raj Mohan v. Secretary to Government**, [2001(3) KLT 956]

v) **Abdul Gafoor v. State of Kerala**, [2001 (2) KLJ 31, Para 7]

vi) **S.A.Khan v. State of Haryana and others**, [(1993) 2 SCC 327]

In **Anil Kumar**'s case(supra), the High Court of Kerala held as under:

> "7. .....what is under challenge is a suspension order. It can be successfully challenged under Art.226 of the Constitution of India if only the same has been issued without jurisdiction. Assuming everything that is stated in the suspension order is correct, still the suspension is unwarranted, this court can interfere with it. A suspension order cannot

be attacked on the ground that the facts stated therein are not correct or the conclusions on the facts are improper. Such contentions are available only before the appellate authority. A court exercising the power of judicial review may interfere with a decision if on the given set of facts, no man in his senses could arrive at such a decision. The validity of the suspension order has to be tested within the above parameters.

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14. The above statement of law has been quoted with approval by our Supreme Court in G.B.Mahajan V. The Jalgoan Municipal council (AIR 1991 SC 1153). In our system of responsible Government, executive powers can be exercised only by those who are answerable to the Legislature. This Court under the guise of judicial review cannot usurp executive functions. This Court is also not concerned whether an administrative decision is wise or foolish. It is trite law that, if a decision is intra vires, this Court is not concerned whether that decision is right or wrong according to its notions, because such examination is the function of an appellate authority. In fact, this Court is concerned whether the decision is ultravires. Ultravires means (without authority or power or jurisdiction."

In **Balakrishnan Nair**'s case(supra), the Apex Court has observed as under:

"8. The suspension order, Ex.P9 may also be tested in the light of Supreme court decisions of U.P.Rajaya Krishi Utpadan Mandi Parihad v. Sanjiv Rajan, JT.1993(2) SC 550, and State of Orissa v. Bimal Kumar Mohanty, (1994 4 SCC 126. It has been laid down by the Supreme court in the former case that whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily the Court should not interfere with the orders of suspension unless they are passed malafide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the instant case, no mala fide has been alleged or proved against the respondents. On the other hand, the Government has acted on the basis of some material which imputed motives on the part of the petitioners and authorities felt that they should be kept away from service so as to facilitate an enquiry. The Supreme Court in the latter case has laid down the principle for keeping an officer under suspension. The Supreme Court has said that it will not be an administrative routine or an automatic order to suspend an employee. It would be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in this behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending

employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry, etc."

In **U.P.Rajya Krishi Utpadan Mandi Parishad**'s case(supra), the Apex Court held thus:

"whether the employee should or should not continue in their officer during the period of enquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of suspension unless they are passed malafide and without there being even a prima facie evidence or record connecting the employees with the misconduct in question".

In **Raj Mohan**'s case(supra), the Honourable High Court of Kerala held as under:

"7. The paramount consideration in placing a public servant under suspension is public interest. That is the touchstone on which a suspension has to be tested. Therefore, when public interest demands an employee to be kept out of service, there cannot be a fetter on such demand other than those provided under the statute. Clause (a) of sub-r (1) of R.l0 provides for suspension when a disciplinary proceeding against an employee is contemplated or is pending, Clause (b) provides for suspension where a case in respect of any criminal offence is under investigation or trial and Clause (c) provides that in contemplation of final orders on the disciplinary proceedings, an employee could be placed under suspension. In all these situations, suspension is Justified if the appropriate authority in the then prevailing circumstances considers the suspension necessary in public interest".

In **Abdul Gafoor**'s case(supra), the Honourable High Court of Kerala held as follows:

"7. Suspension does not prejudice an official because it is now settled that suspension does not amount to a punishment. The lien of the officer is still continued in the service. He is only kept away from discharging duty pending disciplinary action. He will get ample opportunity to defend himself, during the course of the enquiry, to be conducted against him. It is only at that stage the principles of natural justice arise. An incumbent is not entitled to be heard, in terms of the statute governing the disciplinary action before placing one under suspension. So it cannot be stated that there is violation of the principles of natural justice. Rule 10 does not require that an incumbent shall be heard before the order of suspension is passed ",

In **S.A.Khan**'s case(supra), the Apex Court held as under:

"29. From the above quick succession of events, it has been forcibly urged that though the investigation of the corruption case is not

> writ large on the face of the suspension order, in fact this order is very much connected with the investigation of the corruption case which was under the supervision and in charge of the writ petitioner, Shri Khan and therefore this Court should exercise its extraordinary jurisdiction in revoking this suspension. We are unable to accept the above argument. As we feel that any observation of ours, if made, on the submissions advanced on behalf of the petitioner as regards the alleged malafide, exercise of fraud, arbitrariness, malice etc will prejudice or be detrimental to either of the parties in any future adjudication relating to the suspension order, we refrain from expressing our views on this aspect. Further we see no force in the argument that there is a gross violation of Article 14 of the Constitution giving rise to the filing of the writ petition under Article 32 of the Constitution. Above all, we are inclined to dismiss this writ petition since it is only a suspension order and there is a statutory remedy available to the petitioner."

35. On the question of extension of the period of suspension, the learned counsel for the respondents submitted that the period of suspension ordered under Annexure A 7 was extended by the Government by Annexure A-11 order accepting the recommendation of the Review committee and it was according to Rule 3(8)(d) of the All India Services (discipline and Appeal) Rules, 1969. He denied the arguments of the learned counsel for the applicant that (1) the order of extension has been passed beyond the period of 90 days from the date of suspension and (2) the order of suspension passed in contemplation of the disciplinary proceedings will not be valid in cases where disciplinary proceedings have not been initiated before the expiry of a period of 90 days from the date of suspension unless, under the third proviso to Rule 3(1), the Central Government, before the expiry of the said period of 90 days, allow continuance of the suspension order beyond the period of 90 days. Shri Ravindranath further submitted that in the case of the applicant, the Annexure A7 order of suspension dated 11.12.2008 was served on him after office hours on that date and under law, the date of passing the order has to be excluded for the purpose of determining the period of 90 days. The applicant has been working in the KSCARDB on deputation till 11.12.08 and he has been paid salary up to and inclusive of 11.12.08. Hence the applicant can be treated to be on duty on

11.12.2008 and therefore the order of suspension has come into effect only with effect from 12.12.2008 onwards. The Annexures- A7 and the A-11 being the order of suspension and the order of extension were passed by the Government on 11.12.08 and 11.03.09 respectively, that the extension of the period of suspension as per Annexure A 11 was passed within the period of 90 days from the date of suspension after excluding 11.12.2008 i.e. the date of the order. He submitted that In **"words and Phrases'**, permanent Edition vol. 17 -A, page 379, it is stated, "in computing time 'From' a day, that day or day of date, is excluded.--- Gamer Vs. First Guardian Company. Again, at page 385 thereof, it is stated thus:

> "Exclusive as to time".
>
> "In computing the time 'from' a day, quoted word, unless contrary intention of the parties appears, is a term of exclusion which excludes the day to which it relates".

Stroud's Judicial Dictionary of words and phrases, 4th Edition, Volume 2 at page 1117, states: "*From (1) "From" is much akin to "After"; and when used in reference to the computation of time, e.g. "from" a stated date prima facie excludes the day of that date*".

Section 9 of the general clauses Act, 1897 is also to the above effect.

> "Section 9 - commencement and termination of time:- In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
>
> (2) This Section applies to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January 1887"

36. He has also relied upon the following judgments in support of his aforesaid arguments:

i) **Srinivas Silk Mills Vs. State of Mysore** (AIR 1962 Mysore 117).

ii) **Marakanda Sahu Vs. Lal Sadananda** (AIR 1952 Orissa 279).

iii) **Padma Charan Vs. Supdt of Police** (AIR 1965 Orissa 71).

iv) **S.B.Nilakhe Vs. N.B.Gholave** (AIR 1973 Bom 147).

In **Srinivas Silk Mills**'s case(supra), it has been held as follows:

> "(62) It is a well-settled principle that the word "from" is akin to "after" and that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is prima facie excluded from computation. Although on some occasions, the view has been expressed that the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word "from" occurs, it is clear to my mind that in the context in which the word "from" occurs in the notification issued on January 4, 1960, that date cannot be held to form. part of the period of six months for which period the term. of the Tribunal was extended"

In **Marakanda Sahu**'s case(supra), the Orissa High court has held as follows:

> "7. So far as the first question is conceded, there is abundant authority for the view that though Section 9 of the General clauses Act does not in terms apply to the construction of decrees or orders the equitable principle laid down therein should ordinarily be applied unless there is something repugnant in the subject or context. As pointed out in Halsbury's Laws of England, 2nd Edition, Vol.32. P.138:
>
> When a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract, and the question arises whether their computation is to be made inclusively or exclusively of the first mentioned or of the last mentioned day, regard must be had to be context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as 'from such a day' or (until such a day' are equivocal since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule however, the effect of defining a period in such a manner is to exclude the first day and to include the last day. Both days must be included if the word 'inclusive' is added."

In **Padma Charan**'s case(supra), the Orissa High Court held as under:

> "2. The question for consideration is whether the words "within 15 days from the due date of payment" occurring in S. 12A(1) of the said Act would include the day on which the tax became due or would mean 15 clear days excluding that day. This point is concluded by a Division Bench decision of this Court reported in Markanda Sahu Vs. Lal Sadananda Singh, AIR 1952 Orissa 279 where it was held that the words "within a month" should ordinarily be construed as excluding the date on which the order was passed and would mean an interval of one

clear month. The same view has been taken in Bardi Nath Vs. State of Pepsu, AIR 1957 Pepsu 14. Following these two decisions we must hold that the expression "within 15 days" in S.12A(I) of the Act means 15 clear days which would necessarily exclude the due date of payment. Here, therefore, 10.10. 1 962 must be excluded and then the payment of the tax made on 25.10.1962 would be within 15 days for the purpose of the said section."

In **S.B.Nilakhe**'s case(supra), the Bombay High Court held as under:

" Section 1 of the General Clauses Act, 1897, provides that in any General Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to". Since Section 18(1) of the Limitation Act provides that the fresh period of limitation shall be computed 'from' the time when the acknowledgment was so signed, in view of the provisions of Section 12 (1) of the Limitation Act and of Section 9 (1) of the General clauses Act, it is clear that the day on which the acknowledgment is made will have to be excluded in computing the period of limitation of three years".

37. Shri Ravindranath has also refuted the other contention of the applicant that unless the Central Government allows continuance of the suspension order beyond the period of 90 days, the same will be invalid. He submitted that the permission of the Central Government is only one of the two modes prescribed under Rule 3 for such continuance, the other being the recommendation of the concerned Review Committee as contemplated under Sub Rule 8(d) of Rule 3, acting on which the government can extend the period of suspension for a further period not exceeding 180 days at a time. Thus, there are two authorities visualised under the Rules who can allow or recommend the continuance of the period of suspension beyond the period of 90 days in cases where disciplinary proceedings have not been initiated within the period of 90 days. According to him, the words, *"the period of suspension under Sub Rule(1)"* as mentioned in the opening part of Sub Rule 8(d) of Rule 3 also takes in and includes an order of suspension passed against a member of the service in contemplation of disciplinary proceedings as well, and therefore falls squarely within the power and domain of the Review Committee, to recommend extension thereof. He has

also argued that just because the 3rd proviso to Rule 3(1) enacts an enabling provision by clothing the Central Government also with the authority to allow continuance of the suspension in such cases, it will in no way divest the powers of the review committee by virtue of the inherent and inbuilt nature of the functions of such a body which is empowered and vested with the authority to go into the details for reviewing all orders of suspension, or recommending the extension of the order of suspension passed against a member of the service in contemplation of the disciplinary proceedings. Had the intention of the Rule making authority been otherwise, such a restriction would have been specifically enacted in Sub Clause (d) of rule 3(8). Moreover, by virtue of the provisions contained in Sub-Rule 7(a) of Rule 3, an order of suspension made or deemed to have been made under the Rule shall remain in force until it is modified or revoked by the authority competent to do so and as such a suspension order pending disciplinary proceedings made under the Rule need not be extended by the authority on the recommendation of the Review Committee. But under sub-Rule 8(b) of Rule 3, an order of suspension made or deemed to have been made or continued shall be reviewed by the competent authority on the recommendation of the concerned Review Committee. According to him, the words, "order of suspension made or deemed to have been made or continued" appearing in Sub-Rule 8(b) of Rule 3 refers to order of suspension made in contemplation of disciplinary proceedings which will remain in force for 90 days as also an order of suspension thus made and continued beyond a period of 90 days in the absence of initiation of disciplinary proceedings, as allowed by the Central Government under the third proviso, beyond the period of 90 days. Under Sub-Rule 8(d) of Rule 3, suspension order of the said two types can be extended for a further period of 180 days at a time on the recommendation of the Review Committee. The only difference is that in the case of such a suspension made in contemplation of the disciplinary proceedings and not

continued as allowed by the Central Government, the same should be reviewed by the Review Committee before the expiry of a period of 90 days, failing which it will case to be valid. Annexure A 7 order of suspension was reviewed by the Review Committee constituted under the All India Service (Discipline and Appeal) Rules as required under the Rules on 11.03.09 and recommended to the competent authority to continue the suspension of the applicant for a further period of 180 days from 11.03.09.

38. The other argument of the learned counsel for the respondents was that compliance of the Provisions contained in Rule 3 of the "1969 Rules" as to time is only directory and it is not mandatory. Sub-Rule (6-A) of the said Rules provides that, " where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed report of the case shall be forwarded to the Government Ordinarily within a period of fifteen days of the date on which the member of the service is suspended or is deemed to have been suspended, as the case may be". In the case of the applicant in the present O.A., the Government have forwarded a copy of Annexure A 7 order of suspension to the Central Government within the time limit prescribed in Sub-Rule (6-A). Subsequently, a report of the case has also been sent to the Central Government. In the nature of the provisions contained in Sub-Rule (6-A), they are sufficient compliance with the requirement of the Rule. Sub-Rule 6A of Rules 3, says that a report of the case ordinarily be forwarded to the Central Government by the State Government within a period of 15 days of the date of suspension. Such stipulation as to time is not a requirement mandatory in nature but only directory and therefore the non-compliance of it strictly will not vitiate the Suspension Order. It is an established cannon of statutory interpretation that unlike in the case of mandatory provisions in an enactment which calls for strict compliance, the directory provisions need only be obeyed substantially. One of

the tests for deciding whether a provision in a statute is Mandatory or Directory is to see whether the statute provides for a contingency of the non-compliance with the provision, or the non-compliance of the provision is visited by some penalty prescribed by the statute. A comparison of the provision contained in the second provisio to Rule 3 (1) and the provision contained in Sub-Rule (6-A) of Rule 3, will make this clear. In the case of the former, the non-compliance of the condition namely the non-initiation of disciplinary proceedings within a period of 90 days will have the consequence of invalidating the very suspension, whereas, in the latter case, failure to forward the report by the State Government to the Central Government within the prescribed period of 15 days is not subjected to any consequence or contingency provided by the statute.

39. Rule 3 (6-A) of the 1969 Rules does not provide for any consequence for not forwarding the report by the State Government to the Central Government within a period of fifteen days of the date of suspension of the officer concerned. Moreover, it is a public authority that is required to perform the act namely, the forwarding of the report within a specified period. Both the above are factors which according to the principles of statutory interpretation, approved and followed by judicial decisions, will go to show that provision as to the stipulation of time of 15 days for forwarding the report is only directory. In fact, in the applicant's case, within the stipulated period of 15 days itself the order of suspension was forwarded to the Central Government and later, a report, also has been sent to the Central Government. Thus, there is substantial compliance of the provision and therefore the suspension order will not be vitiated for the alleged non-compliance of the provisions contained in Sub-Rule (6-A) of Rule 3.

40. In this regard, the learned counsel for the respondents relied upon the following judgments:

i) **Ram Autar Vs. Ram Gopal** (AIR 1975 SC2182).

ii) **L. Hazan Mal v, I. T. Officer**, [AIR 1961 SC 200].

iii) **T. V. Usman Vs. Food Inspector, Tellichery Municipality**, [JT 1994 (1) SC 260].

iv) **Topline Shoes Ltd. Vs. Corporation Bank**, [(2002) 6 SCC 33].

v) **Nasiruddin Vs. Sitaram Agarwal** [AIR 2003 Supreme Court 1543].

In **Ram Autar**'s case(supra), Supreme Court held as under:

> "The practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is substantially complied with".

In **L. Hazan Mal**'s case(supra), Supreme Court held as follows:

> "...The essence of the Rule is that where consultation has to be made during the performance of a public duty and an omission to do so occurs) the action cannot be regarded as altogether void) and the direction for consultation may be treated as directory and its neglect) as of no consequence to the result. In view of what has been said in these cases) the failure to consult the Central Board of Revenue does not destroy the effectiveness of the order passed by the Commissioner) however wrong it might be from the administrative point of view. The power which the Commissioner had was entrusted to him, and there was only a duty to consult the Central Board of Revenue. The failure to conform to the duty did not rob the Commissioner of the power which he exercised, and the exercise of the power cannot, therefore, be questioned by the assesee on the ground of failure to consult the Central Board of Revenue, provision regarding which must be regarded as laying down administrative control and as being directory."

In **T. V. Usman**'s case(supra), the time prescribed by Rule 7 (3) of the Food Adulteration Rules, which requires that the public analyst "Shall within a period of forty five days" deliver to the local (Health) Authority a report of the result of his analysis has been held to be directory unless the delay has prejudiced the right of the accused to have the samples of food analyzed by the Central Food Laboratory, for example when the samples become unfit for analysis because of the delay.

In **Topline Shoes Ltd.**'s case(supra), the requirement in section 13 (2) of the consumer protection Act 1986 that the opposite party is to file its reply within 30 days on such extended period not exceeding 50 days as may be granted by the District Forum has been held to be directory and the forum cannot be said to be debarred from taking or record a reply filed beyond 45 days. In holding so, the fact "No penal consequences have been provided in case extension of time exceeds 15 days", has been taken into consideration by the court as an aspect for holding that the provision of law is directory.

In **Nasiruddin**'s case(supra), it has been held as follows:

> "Yet there is another aspect of the matter which cannot be lost sight of It is a well-settled principle that if an act is required to be performed by a private person within a specified time, 'the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences therefore are specified. In Sutherland, Statutory Construction, 3rd edition Vol.3 at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. "

41. Shri Ravindranath has also argued that the decision in **Masuma Vs State of Maharashtra** [(1981) 3 SCC 566] cited on behalf of the applicant to content that period of time provided in Sub-Rule (6-A) for forwarding the report has to be strictly complied with, was rendered rendered under the Preventive Detention laws, namely, COFEPOSA and the Supreme Court and the High Courts in India have uniformly held that when construing the Preventive Detention laws, different considerations apply as mandated under Article 22(5) of the constitution of India. In Preventive Detention, the detenue is detained not for any offence or crime he has committed, but for preventing him from committing crimes. He is not an offender, and is not tried in a court of law for any offence he has committed. The only safeguard he has, is the stringent procedures prescribed by the preventive

detention laws and therefore those procedures should be strictly complied with. This is the position of law laid down in the following cases:

i) **State Punjab Vs Sukhpal Singh** [AIR 1990 Sc 231].

ii) **Ram Krishnan Vs. State of Delhi** [AIR 1953 SC 318].

iii) **Kanak(Smt) & another v. U.P. Avas Evam Vikas Parishad & others,** [(2003) 7 SCC 693] .

iv) **L.K. Verma v. HMT Ltd., and another** [(2006) 2 SCC 269].

In **State Punjab**'s case(supra), in Para 23 Supreme Court observed:

> "The protection of personal liberty is largely through insistence on observance of mandatory procedure. In cases of preventive detention observance of procedure has been the bastion against wanton assaults on personal liberty over the years..... It is the court's duty to see that procedure is strictly observed."

In **Ram Krishnan**'s case(supra), the Supreme Court held:

> "Preventive detention is a serious invasion of personal liberty and such megre safeguards as the constitution has provided against the improper exercise of power must be jealously watched and enforced by the court."

In **Kanak(Smt) & another**'s case(supra), the Supreme Court held as under:

> "21. It is not in dispute that on or about 31-5-1968, merely the execution of the Scheme alone was transferred. Thus, the entire Scheme was not transferred in favour of the Parishad by the Nagar Mahapalika. In that view of the matter the procedures contained in the Mahapalika Adhiniyam for the purpose of acquisition of land indisputably were to be followed. Section 381 of the Mahapalika Adhiniyam reads thus:
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> "381. *Appeals.*—(1) An appeal to the High Court shall lie from a decision of the Tribunal, if—
>
> (*a*) the Tribunal grants a certificate that the case is a fit one for appeal, or
>
> (*b*) the High Court grants special leave to appeal, provided that the High Court shall not grant such special leave unless the Tribunal has refused to grant a certificate under clause *(a)*.
>
> (2) An appeal under sub-section (1) shall lie only on one or more of the following grounds, namely—
>
> (*a*) the decision being contrary to law or to some usage having the force of law;
>
> (*b*) the decision having failed to determine some material issue of law

or usage having the force of law;

(*c*) a substantial error or defect which may have produced an error or defect in the decision of the case upon merits either on a point of fact or of law."

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28. Under the law based on judicial decisions as then existed, the Parishad had no locus standi to file an appeal before the High Court and therefore writ petition at the instance of the Parishad was the only remedy available.

29. Furthermore, this writ petition was entertained. The appellants herein filed a counter-affidavit. The matter was argued on merit and in that view of the matter it is too late in the day to contend that the respondent herein should have availed of the alternative remedy."

In **L.K. Verma v. HMT Ltd.**'s case(supra), the Supreme Court held as under:

"**13.** It is true that in terms of sub-rule (3) of Rule 14 of the Rules an appeal was maintainable before the State Government. But it is well settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised.

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16. Once the appellant accepted that he made utterances which admittedly lacked civility and he also threatened a superior officer, it was for him to show that he later on felt remorse therefor. If he was under tension, he, at a later stage, could have at least tendered an apology. He did not do so. Furthermore, before the enquiry officer, the witnesses were examined for proving the said charges. The officer concerned, namely, Shri Sinha had also submitted a report mentioning the incident of misbehaviour of the appellant on 18-5-1996. The enquiry officer came to the conclusion that both the management and the witnesses corroborated each other's statements and although they had been cross-examined thoroughly, no contradiction was found in their statements in regard to the said charge.

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20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks, Sanjana M. Wig* v. *Hindustan Petroleum Corpn. Ltd* and *State of H.P.* v. *Gujarat Ambuja Cement Ltd.*)

21. In any event, once a writ petition has been entertained and

> determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. (See *Kanak* v. *U.P. Avas Evam Vikas Parishad.*) We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent."

42. As the regards the reasons for issuing the Annexure A-6 show cause notice, the respondent has contended that the applicant appeared in interview with media channels without the permission from the Government and he adversely criticized the office of the Chief Minister of Kerala and accordingly violated Rule 17 of the said Rules. When the matter came up to the notice of the Government, immediately an explanation was sought from him vide Annexure A-6 letter dated 9.12.2008. Thereafter, taking into account the embarrassment caused to the Government, the Cabinet decided to suspend him from service on 10.12.2008 and accordingly the applicant was suspended vide Annexure A-7 order dated 11.12.2008. Subsequently, in response to the Annexure A-6, the applicant submitted his explanation and the same is under examination of the respondents. They have also stated that from the averments made in the O.A as well as from his explanation, it is seen that he has been trying to justify his act of criticizing the office of the Chief Minister and thereby the Hon'ble Chief Minister himself and making allegations like piling of files, absence of support system and ignorance of Government procedures in the Chief Minister's office. He has not denied such statements which is in violation of Rule 17 of the said Rules. According to the respondents, criticizing the Chief Minister and office of the Chief Minister has nothing to do with the vindication of his private character. He being an integral part of the Government, it has been his duty to take measures to strengthen the weak areas and to give proper guidance for the smooth functioning of the Government. Instead, his statements before the media channels is prima facie viewed as a deliberate attempt to diminish the image and devalue the sanctity of the Government. Being a senior responsible officer, the applicant has to maintain absolute integrity and devotion

to duty, but his comments were untimely and unbecoming of an IAS office.

43. We have extensively heard Shri O.V.Radhakrishnan, Senior Counsel with Mr.K.V.Joy & Mr K Ramchandran appearing on behalf of the applicant, Shri K.K.Ravindranath, Additional DGP with Shri Manoj Kumar, Advocate appearing on behalf of respondents 1 & 3 and Shri TPM Ibrahim Khan, SCGSC for respondent No.2. Both the learned counsel for the applicant and the respondent-State were very generous in profusely referring to the various judgments/orders of the Apex Court, High Courts and this Tribunal in support of every points of their arguments. As already observed earlier in this order, the legality of the Annexure A-7 order dated 11.12.2008 placing the applicant under suspension and the Annexure A-11 order dated 11.3.2007 continuing his suspension for a further period of 180 days with effect from 11.3.2009 or until revoked earlier, in terms of Rule 3 of the "1969 Rules", is the basic issue raised by the applicant in this O.A. We have considered the contentions of Shri Radhakrishnan that since (a) the Annexure A-7 order of suspension is ultra vires of Rule 3 of "1969 Rules", (b) it was issued in total violation of the principles of natural justice without waiting for his explanation to the Annexure A-6 notice dated 9.12.2008 issued to him to show cause as to why disciplinary action should not be initiated against him, (c) the reasons given in both the Annexure A-6 show cause notice and the Annexure A-7 suspension order are exactly the same and (d) no new developments or circumstances have cropped up during the interregnum, the applicant is entitled to challenge it immediately before this Tribunal without exhausting the statutory remedy available to him under Rule 16 of the said Rules and this Tribunal may admit it under the provisions contained in Section 20(1) of Central Administrative Tribunal Act, 1985, (ii) a member of IAS cannot be suspended at the stage when the competent authority was merely contemplating to take disciplinary proceedings against him for his alleged misconduct, or in words, the power of suspension cannot be exercised by the

Government before drawing up the Article of Charge against a member of IAS, (iii) the Annexure A-7 order of suspension was politically motivated, unnecessary and it was passed without proper application of mind in as much as that the allegations made against him relate to the affairs of the office of the Chief Minister where he was working before on deputation and his continuance in the present position as Managing Director of Kerala State Cooperative Agricultural and Rural Development Bank will no way prejudice the departmental proceedings contemplated against him and (iv) it was issued in violation of the Government's own "Guiding principles for suspending a Government servant", issued vide Annexure A-9 order dated 20.10.1964. He has also denied the allegation of the 1st respondent contained in Annexure A-6 show cause notice that the applicant has violated Rule 3, 7 and 17 of the All India Service(Conduct) Rules. As regards impugned Annexure A-11 order dated 11.3.2009 is concerned, we have considered Shri.Radhakrishnan's submission that (i) it is invalid and ab-initio void as the Annexure A-7 order itself was not sustainable for the aforesaid reasons and (ii) even otherwise, the Annexure A-7 order of suspension, in terms of the third proviso to Rule 3(1) of the "1969 Rules", ceased to exist on 10.3.2009 ie, on expiry of 90 days from the date of its issue on 11.12.2008 and (iii) the State Government is not competent to extend the period of suspension beyond the period of 90 days without the disciplinary proceedings being initiated and without the permission of the Central Government in terms of the 2nd proviso and 3rd proviso respectively of Rule 3(1) of "1969 Rules".

44. We have also considered the arguments of Shri.K.K.Ravindranath, the learned Additional DGP on behalf of the 1st respondent that (i) this O.A cannot be entertained on the preliminary ground that the applicant has not exhausted the alternate remedy of statutory appeal before approaching this Tribunal, (ii) under Rule 3(1) of the "1969 Rules", drawing up of charges is not a condition precedent for passing an order of suspension, (iii) the question whether a

delinquent officer has to be placed under suspension before the charge are framed against him would depend upon the circumstances of each case and when the allegations are of a serious nature which have got considerable public interest and those allegations are based on some relevant materials, the competent authority can always place a Government servant under suspension, (iv) the Annexure A-6 show notice was issued to the applicant to show cause why disciplinary proceedings should not be initiated against him for the alleged misconduct on his part, when his interview with the media channels adversely criticising the office of the Chief Minister of Kerala came to the notice of the Government but the Annexure A-7 suspension order was issued independent of the Annexure A-6 show cause notice when the embarrassment caused to the Government came to the notice of the Cabinet and it was done after considering the circumstances of the case, (v) the Annexure A-11 order was passed within the stipulated period of 90 days and (vi) prior approval of the Central Government was not necessary for extending the period of suspension in the facts and circumstances of the case.

45. Before we enter into the merits of the case, let us first of all deal with the preliminary submission of the Learned Senior Counsel Shri.Radhakrishnan that this case is an exception to the provision contained in Section 20(1) of the Central Administrative Tribunal Act 1985 wherein it has been prescribed that "*a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service Rules as to redressal of grievances*" because it does not fall within the scope of the word "ordinarily" and the assertion of Shri.Ravindranath, Learned Additional DGP that non exhaustion of the alternate remedy of statutory appeal as provided in Rule 16 of the "1969 Rules" would operate as a clear bar and, therefore, there is no jurisdiction for this Tribunal to entertain the present OA. It

is necessary at this juncture to once again go back to the background of this case stated elsewhere in this order. When the applicant has allegedly met the press and the media channels on 6.12.2008 and adversely criticised the office of the Chief Minister of Kerala, the respondent State has taken cognizance of the same and proposed to take disciplinary action against him as per the relevant provisions contained in "1969 Rules". No doubt, the said course of action was in accordance with the procedure for imposing penalties as laid down in the said Rules. However, suddenly on 11.12.2008, the very same respondent for the very same reasons, vide the impugned Annexure A-7 order, placed the applicant under suspension. Ordinarily, in terms of Rule 3(1) of the "1969 Rules", if there is a serious allegation of misconduct against a Government servant, "having regard to the circumstances" of the case, and on "satisfaction" by the Government concerned that "it is necessary or desirable to place (him) under suspension". In terms of Rule 3(7) (c), the order of suspension can be revoked at any time, whether any disciplinary proceedings have been initiated against the Government servant or not. Therefore, suspension of a Government servant is not a pre condition for initiating disciplinary proceedings against a Government servant, it may "pass an order placing him under suspension". In terms of the first proviso to Rule 3(1), the maximum period of time a Government servant can be kept under suspension is 90 days subject to the provision contained in the second proviso of the said Rule. In this case, when the suspension order was issued immediately after taking steps to initiate the contemplated enquiry proceedings, namely, issuing show cause notice as to why such proceedings should not be initiated against the applicant, the prima facie view was that the said suspension order was not bonafide and it was vitiated by extraneous and irrelevant consideration and hence malafide as argued by the learned Senior Counsel for the applicant. That was the reason why the respondents were directed to file their reply within the shortest possible period so that this Tribunal

may get satisfied whether this OA was fit for adjudication on merits after admitting the same or to reject it summarily in terms of Rule 19(3) of the Central Administrative Tribunal Act, 1985 which reads as under:

> "(3) On receipt of an application under sub section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons."

However, before such a stage was reached, applicant has filed M.A.215/2009 stating that the Annexure A-7 order of suspension ceased to be valid and stood revoked by the operation of the first proviso to Rule 3(1) of the "1969 Rules" . Before the said M.A could be considered and decided, the first respondent has issued the Annexure A-11 order dated 11.12.2008 extending the period of suspension of the applicant for a further period for 180 days which has also been impugned in this O.A by way of an amendment. In these circumstances the question of "exhaustion of alternate" remedy has become irrelevant as it was necessary for us to adjudicate the legality of both the impugned orders on merits.

46. We shall, now consider the legality of the Annexure A-7 order of the first respondent. We do not find any merit in the contention of the learned Senior Counsel Shri O.V.Radhakrishnan on behalf of the applicant that a member of IAS cannot be suspended at the stage of contemplation of initiating disciplinary proceedings against him and it can be done only after drawing up the Articles of Charges against him. He relied upon the judgment of the Apex Court in **P.R.Nayak**'s case (supra) in support of his aforesaid contention. Both the unamended and the amended provisions of Rule 3 of the "1969 Rules" has been extracted by the Apex Court in the said case. The title of the unamended Rule was "Suspension during disciplinary proceedings" indicating that the suspension

could be made only after disciplinary proceedings have been initiated against a member of IAS. According to the text of the unamended sub rules 3(1) also before a member of IAS could be placed under suspension, the "nature of the charges" and "the circumstances in any case" had to be considered by "the Government which initiated disciplinary proceedings" against him and to satisfy itself that it was necessary or desirable to place him under suspension. Obviously, under the said unamended Rule, a member of IAS could not be placed under suspension at the stage at which the Government was contemplating to take proceedings against him or, in other words, initiation of disciplinary proceedings was a condition precedent for placing him under suspension. The said rule also implied that in all cases where articles of charge has been issued, a member of IAS need not be suspended. The "nature of charges" and "the circumstances in any case" were the guiding factors for the Government to come to a conclusion whether it was necessary or desirable to place a member of the IAS under suspension. This was the position till the year 1975 when the aforesaid Rule 3(1) of the "1969 Rules" was amended. That was the reason why the Constitution Bench of the Apex Court in **P.R.Nayak**'s case decided in the year 1972 held that "*if Rule 3, which is the only rule on which the appellant's suspension pending disciplinary proceedings can be founded, does not postulate an order of suspension before the initiation of disciplinary proceedings and the Government initiating such proceedings can only place under suspension the member of the Service against whom such proceedings are started, then, the impugned order of suspension which in clearest words merely states that disciplinary proceedings against the appellant are contemplated, without suggesting actual initiation or starting of disciplinary proceedings, must be held to be outside this rule.*" Later, with the amendment carried out in Rule 3(i), vide the DA & AR notification No.6/9/72-AIS(iii) dated 5.7.1975 notified on 5.7.1975, the words "during disciplinary proceedings" along

with word "suspension" appearing in the title of the Rule 3 have been omitted and the government has been vested with the power to suspend a member of the IAS irrespective of the fact whether the article of charge have been drawn up or not. In cases where article of charges have not been drawn up, what is to be considered is whether a member of the IAS has to be suspended or not, in a given circumstance. If a member of the IAS has not already been suspended taking into consideration of the circumstances of the case, he can be suspended after the articles of charges have been drawn up, taking into consideration of the "nature of charges". Further, this position is clear from the 2nd proviso of Rule 3 (i) which takes into consideration of suspension of a "member of a service against which disciplinary proceedings are contemplated". Again, in the same proviso it has been stated that initiation of disciplinary proceedings against such member can wait upto 90 days from the date of suspension. If Shri Radhakrishnan's arguments in this regard has to be accepted, the aforesaid proviso to Rule 3(i) would become redundant but he has no such case. Rather, while the question of legality of Annexure A-11 order was argued, Shri Radhakrishnan himself has relied upon the aforesaid proviso. Further, it is not necessary in every case that the suspension should precede initiating of disciplinary proceedings against a member of the IAS. As in the present case, the competent authority has not considered it necessary to place the applicant under suspension when it has contemplated to take disciplinary proceedings against him vide the Annexure A-6 show cause notice dated 9.12.2008. However, as submitted by the respondents, the Cabinet considered the embarrassment caused to the Government by the alleged interview of the applicant with the press and media channels and immediately decided to place the applicant under suspension and the competent authority has issued the Annexure A-7 order dated 11.12.2008 placing him under suspension. Therefore, by the amended Rule 3 of the "1969 Rules", the concerned

Government can place a member of the IAS under suspension on the following two circumstances:

i) having regard to the circumstances in any case, and

ii) having regard to the nature of the charge where articles of charge have been drawn up.

This position has been affirmed by a coordinate Bench of this Tribunal also in the case of **Gopinathan v. State of Kerala** (supra). The first respondent has placed, the applicant in this case, under suspension in terms of the first circumstance above. Therefore, Shri Radhakrishnan's reliance on the judgment of the Apex Court in **P.R.Nayak's** case (supra) is absolutely misplaced.

47. We also do not find any merit in the contention of the applicant that the suspension order was issued in violation of the "guidelines for suspending a Government servant" as contained in the Annexure A-9 orders of the Government India, Ministry of Home Affairs letter No.43/56/64-AVD dated 22.10.1964. According to the said guidelines, suspension of a government servant is justified not only in cases where the continuance of the Government servant in office will prejudice investigation of the disciplinary proceedings initiated against him but also where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working and where the continuance in office of the Government servant will be against the wider public interest. For example, where there is a public scandal and it is necessary to place him under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals or where there is a case of corruption allegedly involving a Government servant. The Government can resort to suspension of its employee. Though there was no allegation of corruption against the applicant in this case, according to the respondent-Government, there was a scandal that followed the alleged

interview of the applicant with the media channels and press interview that the files are piling up in the Chief Minister's office, there was absence of support and ignorance government procedures in his office, causing embarrassment to the government.

48. Again, we do not find any merit in the learned Senior Counsel Shri Radhakrishnan's contention that the suspension of the applicant was neither necessary nor desirable. In our considered view, it is the Government concerned to satisfy itself having regard to the circumstances of the case that it is necessary or desirable to place a member of the service under suspension. As held by the Apex Court in **L.K.Verma v. HMT Ltd and another** [2006 SCC (L&S) 278], an order of suspension can be passed by the employer in exercise of its inherent power that it may not take work from the delinquent officer, paying him subsistence allowance as per the provision which exists in the rule. There is also no merit in his contention that the suspension would amount to punishment and it was passed without following the principles of natural justice. The law is well settled that suspension is only an executive action whereby a Government servant is kept out of duty temporarily pending final action being taken against him for acts of indiscipline, delinquency, misdemeanor etc. An order of suspension of a Government servant does not put an end his service under the government. It is also a well settled position of law that suspension pending departmental enquiry against a government servant is not a punishment and Article 311 of the Constitution is not applicable and, therefore, and no prior opportunity need be afforded to him to explain the circumstances on the basis of which he is sought to be suspended.

49. We shall now examine the arguments, for and against, in respect of the impugned Annexure A-11 order dated 11.3.2009 passed in review of the

Annexure A-7 suspension order dated 11.12.2008 extending the period of suspension of the applicant for 180 days with effect from 11.3.2009 or until revoked earlier. Ordinarily, the life of an order of suspension is only 90 days as provided in the 2nd proviso to Rule 3(i) of the "1969 Rules". It says that the suspension of a member of the service "shall not be valid unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are "initiated" against him. The emphasis is on the word "initiated". Here, the order of suspension is dated 11.12.2008 which came into existence with immediate effect. The period of 90 days has expired on 10.3.2009, as per the contention of the applicant's counsel. However, going by the respondents' contention that in computing the time the day from the order has been issued is to be ignored, the period of 90 days would expire on 11.3.2009. If no disciplinary proceedings were initiated against the applicant on or before 11.3.2009 the order of suspension will lapse unless the provisions contained in the 2nd and 3rd proviso to Rule 3(1) of the "1969 Rules" are complied with. The 2nd proviso envisages that "*where a member of the service against whom disciplinary proceedings are contemplated in suspended, such suspension shall not be valid, unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him*". The 3rd proviso envisages that even after the expiry of 90 days, as aforestated, without having the disciplinary proceedings initiated, the suspension order will continue, provided "the Central Government may at any time before the expiry of the said period of 90 days and after considering the special circumstances for not initiating disciplinary proceedings records in writing. It is obvious that in order to allow the continuance of the suspension order, the State Government which has issued the suspension order has to seek for such continuance. According to the applicant, the Annexure A-11 order was passed on 11.3.2009 without neither having the disciplinary proceedings initiated nor having

the permission of the Central Government obtained to allow the suspension to be continued. In fact the charge memo was issued to the applicant only on 13.3.2009. In such a situation, the question is whether the Annexure A-11 order is sustainable or not.

50. We have carefully considered the argument of Shri Radhakrishnan, on behalf of the applicant that (i) the Annexure A-11 order extending the period of suspension has already ceased to be valid on 10.3.2009 i.e. on the date of expiry of 90 days from the issue of Annexure A-7 suspension order as no disciplinary proceedings were initiated against him before the said date, (ii) the respondent-State has no case that in terms of the 3rd proviso to Rule (3) 1 of the "1969 Rules" the Central Government has allowed the continuance of the suspension order beyond the period of 90 days without the disciplinary proceedings having been initiated, (iii) the respondent-State has not complied with the provisions contained in sub rule 6(A) of the said rule which require that "*where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed reports of the case shall be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the Service is suspended or is deemed to have been suspended, as the case may be*". We have also considered the counter arguments of Shri Ravindranath, learned Additional DGP on behalf of the 1st respondent that the Annexure A-11 order extending the period of suspension of the applicant was issued in terms of sub rule 3(8)(d) of the "1969 Rules" according to which "*The period of suspension under sub rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time: Provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being*

reviewed." He has also denied that the Annexure A-11 order was passed beyond the period of 90 days from the date of suspension and the order of suspension passed in contemplation of the disciplinary proceedings will not be valid if the disciplinary proceedings are not initiated within the period of 90 days from the date of suspension. It is not necessary for us to go into the various other arguments, for and against the legality and validity of the Annexure A-11 order advanced by the learned counsel for the applicant and the 1st respondent respectively. The relevant question that is to be considered is whether the Annexure A-11 order should be declared as illegal and to be set aside, as prayed for by the applicant just because the respondents have issued the charge memo only on 13.3.2009, which is obviously beyond the period of 90 days, by two days according to the applicant who contended that the said period expired on 10.3.2009 and by one day according to the 1st respondent which contended that the period expired only on 11.3.2009,

51. In order to ascertain the factual position, we have called for the relevant file from the State Government and perused the same. The relevant notings are extracted below:

"No.90080/SplA2/08/GAD GA(Spl A) Dept.

NOTES

Sub: Sri K Sureshkumar's adverse remarks on Govt. reg.

Kind attention is invited to the paper cuttings and CD at A-31cf which includes, Sri K Suresh Kumar's adverse remarks on Govt. As per AIS Conduct Rules,

"No member of the service shall, except with the previous sanction of the Govt. have recourse to any court or to the press for the vindication of official act which has been the subject matter of adverse criticism or attack of a defamatory character". In this case Sri K Suresh Kumar, IAS has n't sought previous sanction from Govt. In this context, he may be requested to furnish explanation for violating the Conduct Rules.

Sd/-
9.12.08

No.90080/SplA2/08/GAD GA(Spl A) Dept.

Subject to orders, draft lr. To Sri K Suresh Kumar, IAS is put up for approval.

Sd/-
9.12.08
O Babu
Joint Secretary to Govt.
General Admn (Special A&C) Dept.
Govt. Secretariat, Tvpm.

The explanation of Sri Suresh Kumar may be called for. I have already brought the matter to the notice of the Hon'ble C.M.

For information of the C.M.

Sd/-
9.12.08
P.J.Thomas Chief Secretary.

Sd/-
9.12.08
V.S.Achuthanandan
Chief Minister

No.90080/SplA2/08/GAD

The Council of Ministers has decided today (10.12.08) to place Sri Suresh Kumar under suspension. Draft orders are put up. CM may see for approval of the suspension.

Sd/-
10.12.08
P.J.Thomas Chief Secretary.

Sd/-
10.12.08
V.S.Achuthanandan
Chief Minister

Draft lr. to Secretary DoPT is put up for approval.

Sd/-2.2.09

Law Secy may see wrt the views of the officer as indicated in para 10 nt and also his explanation regarding Rules 3, 7 and 17 of AIS Conduct Rules.

Sd/-
5.1.09
P.J.Thomas Chief Secretary.

No.90080/SplA2/08/GAD GA(Spl A) Dept.

Vide orders at pre.page draft Articles of Charge against Sri K Suresh Kumar, IAS is put up for approval.

Sd/-
26.2.09
O Babu
Joint Secretary to Govt.
General Admn (Special A&C) Dept.
Govt. Secretariat, Tvpm.

File taken back on 11.3.09
Sd/-
J.S

No.90080/SplA2/08/GAD GA(Spl A) Dept.

As per G.O.(Rt) No.9528/08/GAD dt 11.12.08 Sri K Suresh Kumar IAS was placed under suspension. As per rule 8 (a) of AIS (D&A) Rules 1969, the suspension is valid for 90 days unless reviewed by the Review Committee within this period.

12. File may be submitted for the suspension Review Committee Meeting.

Sd/-
11.3.09
J.S

Meeting held. Minutes at P 69 cf. Pl put up.

Sd/-
11.3.09
J.S

No.90080/SplA2/08/GAD GA(Spl A) Dept.

Sri K Suresh Kumar, IAS was placed under suspension vide GO(Rt) No.9528/08/GAD dt. 11.12.08. As per Rule 8(a) of AIS (D&A) Rules 1969, his suspension has to be reviewed on completion of 90 days. Accordingly a suspension Review Committee was held on 11.3.2009 and reviewed the suspension. The Committee has recommended to continue the suspension of Sri K Suresh Kumar for a further period of 190 days or till revoked from 11.3.2009. May be circulated to CM for approval of the recommendation of the Suspension Review Committee.

Sd/-
11.3.09
Joint Secretary
GA(Sol.ARC) Dept.
Sd/-
11.3.09
K.J.Mathew
Chief Secretary.

Sd/-
11.13.09
V.S.Achuthanandan
Chief Minister

Vide orders at pre page draft G.O is put up for approval.

Sd/-
11.3.09
O Babu

Joint Secretary to Govt.
General Admn (Special A&C) Dept.
Govt. Secretariat, Tvpm.

Vide orders at page 13 Nf draft Articles of charge against Sri K Suresh Kumar, IAS is put up for approval.

The Articles of charges put up on 19.2.09 is seen missing from the file vide para 9 Nf.
Sd/-
13.3.09
J.S.

C.S.

Sd/-
13.3.09
O Babu
Joint Secretary to Govt.
General Admn (Special A&C) Dept.
Govt. Secretariat, Tvpm."

52. From the above notings on the State Government's file, it is seen that the notice to show cause as to why disciplinary action as per the AIS(D&A) Rules, should not be taken against the applicant was issued on 9.12.2008 by the Annexure A-6 notice. The decision to place him under suspension was taken by the State Government on 10.12.2008 and the necessary order was issued on 11.12.2008 vide the Annexure A-7 impugned order. The period of 90 days has expired on 10.3.2009, going by the argument of the applicant's counsel and on 11.3.2009 , going by the argument of the respondents' counsel. Prima facie, it would appear that the disciplinary proceedings were "initiated" against the applicant after the prescribed period of 90 days as the articles of charges were issued to him only on 13.3.2009. It is also the settled position of law that the disciplinary proceedings are said to be "initiated" against a government servant not merely by the issuance of a show cause notice but since it is only with the issuance of the charge memo as held by the Apex Court in **Union of India and others v. K.V.Jankiraman and others** [(1991) 4 SCC 109], **Coal India Ltd. v. Saroj Kumar Mishra** [(2007) 9 SCC 625], **Union of India v. Sangram Keshari Nayak** [(2007) 6 SCC 704], **Uco Bank and another v. Rajinder Lal Capoor** [2007(6) SCC 694] etc.

53. However, the Apex Court in **Delhi Development Authority v. H.C.Khurana** [(1993) 3 SCC 196] once again considered the position that was prevailing before Janakiraman's case (supra) and held that merely because the charge sheet framed and issued earlier but could not be effected on the government servant before the relevant date cannot be held against the Government. The guidelines applicable before the decision in **Jankiraman**"s case(supra) was in terms of clause (ii) of para 2 of O.M.No.22011/12/86-ESTT (A) dated 12.1.1988 of the Department of Personnel & Training, Government of India, according to which :

> "(ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings".

After the **Jankiraman**'s judgment (supra) decided on 27.8.1991, the Department of Personnel & Training substituted aforesaid clause (ii) as under:

> "(ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and "

The Apex Court has also held in **Khurana**'s case (supra) as under:

> "16. In view of the above, we are unable to accept the respondent's contention, which found favour with the High Court, that the decision in Jankiraman on the facts in the present case, supports the view that the decision to initiate the disciplinary proceedings had not been taken or the charge sheet had not been issued to the respondent prior to November 28, 1990, when the DPC adopted the sealed cover procedure, merely because service of the charge sheet framed and issued earlier could be effected on the respondent after November 28, 1990, on account of his absence."

54. Similarly, in **Union of India v. Kewal Kumar** [(1993) 3 SCC 204], the question considered by the Apex Court was whether the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the relevant date or not and if the competent authority has taken the decision to initiate disciplinary proceedings, the Government servant cannot be given promotion. The relevant portion of the said judgment reads as under:

> "**2.** The question in the present case, is : Whether the decision in *Jankiraman* was correctly applied in the present situation? In *Jankiraman* itself, it has been pointed out that the sealed cover

procedure is to be followed where a Government servant is recommended for promotion by the DPC, but before he is actually promoted if 'he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken'. Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, or 'decision to accord sanction for prosecution is taken' or 'criminal prosecution is launched or ... decision to accord sanction for prosecution is taken'. The object of following the sealed cover procedure has been indicated recently in the decision in Civil Appeal No. 1240 of 1993 — *Delhi Development Authority* v. *H.C. Khurana* pronounced on April 7, 1993, and need not be reiterated.

3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.

4. The question to examine in each case, is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongrous to hold that, in a case like the present, where the CBI had recorded the FIR; sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be

faulted."

55. Of course, the above judgments are in the context of application of what in service jurisprudence is called "sealed cover" procedure in cases of promotion where the "disciplinary proceedings are pending" but the ratio of the decision would apply to this case also.

56. In the present case, the show cause notice was issued to the applicant on 9.12.2008. The applicant submitted his explanation on 22.12.2008. Having not satisfied by the explanation, the Chief Secretary decided to initiate disciplinary proceedings against the applicant on 5.1.2009 and Joint Secretary has drawn the draft Article of Charges against the applicant on 26.2.2009 and submitted again to the Chief Secretary for his approval. The Chief Secretary happened to approve the draft article of charge only on 13.3.2009 and it was issued on the same date. Going by the judgment of the Apex Court in **Kewal Kumar**'s case (supra), when the Chief Secretary who is the competent authority in this case has decided to initiate disciplinary proceeding against the applicant well before the expiry of 90 days from the date of issuance of the order of suspension, it cannot be said that the order of suspension has become invalid in terms of the second proviso of Rule 3(1) of the "1969 Rules". The respondents have, thereafter, reviewed the case on 11.3.2009 and decided to extend the period of suspension for another 180 days or till the suspension is revoked. As held in **Kewal Kumar**'s case (supra), a distinction has to be made between a case where a Government servant has been suspended from service and no action has been taken to initiate disciplinary proceedings within the initial period of 90 days from the date of suspension and a case where the respondents have already taken the decision to initiate the disciplinary proceedings after duly considering explanation submitted by the government servant pursuant to the show cause notice issued to him well within the time but issued the charge sheet

late. In **Jankiraman's** case(supra), the Apex Court accepted the argument of the respondents as upheld by the Full Bench of the Tribunal that "it is only when a charge memo in a disciplinary proceedings" is issued to the employee, it can be said that the departmental proceedings "is initiated against the employee" only because the contention of the petitioner (Union of India) was that "*when here are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge sheet, it would not be in the interest of the purity of administration to reward the employee*" would result in injustice to the employees in many cases. The Apex Court observed that from the experience, "*the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge sheet*". However, the position in the case is totally different. The records speak by itself. The show cause notice was issued to the applicant indicating the intention of the respondent-State to initiate disciplinary proceedings on 9.12.2008. Thereafter, the Chief Secretary who is the disciplinary authority in the matter has decided to initiate disciplinary action against the applicant on 5.1.2009. The draft Article of charge was put upto to the Chief Secretary on 26.2.2009 and the charge memo was issued on 13.3.2009. In view of the above factual position, it cannot be held that the disciplinary proceedings have not been initiated within the prescribed period of 90 days. Any view contrary to it is purely technical and it cannot be accepted. In our view, the case of the applicant is fully covered by the judgment of the Apex Court in **Kewal Kumar's** case(supra) and therefore the Annexure A-11 order cannot be held as illegal. It is, therefore, not necessary for us to go into the other justification given by the respondents in support of the said order.

57. We do not intend embark on the area whether the applicant has violated rules 3, 7 and 17 of the AIS(Conduct) Rule 1968 as alleged by the 1st respondent

in its Annexure A-6 show cause notice dated 9.12.2008. The Learned Senior Counsel Shri Radhakrishnan has contended that the allegations made against the applicant in the said notice are outside the scope of Rules 4 to 20 of the said Conduct Rules and therefore they do not constitute any misconduct. Shri Ravindranath's arguments were to the contrary. In our considered view, it is for the Inquiry Authority, Disciplinary Authority and the Appellate Authority to go into this aspect under the provisions of the aforesaid Conduct Rules and it is premature for this Tribunal to express any opinion on it.

57. In view of the above position, we dismiss the Original Application. There shall be no order as to costs.

K NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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