CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 239 / 2007

Wednesday, this the 17th day of June, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

M.P.Joseph,
Presently working as Chief Technical Advisor,
International Programme on the
Elimination of Child Labour,
International Labour Organisation,
2nd Floor, Building F, Phonom Penh Centre,
Corner Sihanouk and Southearos Boulevards,
Phnom Penh, Cambodia,
permanently residing at
House No.A-40, Choice Village,
Near Choice School,Irimpanam.P.O.
Kochi-682 036. ....Applicant

(By Advocate Mr OV Radhakrishnan, Senior with Antony Mukkath)

v.

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

2. State of Kerala,
represented by its Chief Secretary,
Government of Kerala,
Government Secretariat,
Thiruvananthapuram. ....Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R.1)

(By Advocate Mr R Prem Sankar, G.P. For R-2)

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant in this O.A was an officer belonging to the Indian Administrative Service (IAS for short)appointed with effect from 12.7.1978 and allocated to the Kerala cadre (Annexure A-1 notification dated 4.9.1978). In the Annexure A-2 Gradation List of IAS (Kerala Cadre) as on 1.7.1998, he has been assigned rank and seniority at Serial No.43. His grievances are against (i) the Annexure A-15 Article of Charges issued to him by the 2nd respondent, namely, the Chief Secretary, Government of Kerala dated 4.10.1999, (ii) the Enquiry Report dated 11.9.2003 and the Annexure A-17 letter dated 30.12.2003 by which the 2nd respondent has forwarded the same to him, (iii) the Annexure A-19 Office Memorandum dated 29/30.12.2003 by which the Department of Personnel & Training (DoPT for short), Government of India has called upon him to show cause why he should not be deemed to have resigned from Indian Administrative Service (IAS for short), (iv) the notification dated 23.3.2004 issued by the DoPT stating that he deemed to have resigned from the IAS and the Annexure A-21 letter of the 2nd respondent dated 19/24.4.2004 forwarding the same, (v) the Annexure A-25 letter dated 21/22.3.2005 issued to him by the DoPT rejecting his Annexure A-24 representation dated 14.2.2005 made against the Annexure A-21 notification and (vi) the Annexure A-27 All Indian Services (Leave) Amendment Rules, 1992 notified on 2.9.1992.

2. The relevant facts in detail are as under: While the applicant was in service in Kerala Cadre, he applied for the posts of Project Co-ordinator etc. in the International Labour Organization circulated by the Ministry of Labour, Government of India, vide their letter dated 26.7.1991. The 2nd respondent, forwarded those applications vide Annexure A-3 letter dated 30.8.1991 to the 1st

respondent who is his cadre controlling authority, namely, the Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, for onward transmission to the Ministry of Labour. On the basis of the aforesaid applications, the applicant was selected for the assignment of Project Co-ordinator on the "International Programme on the Elimination of Child Labour" and it was conveyed to him by the first respondent, vide Annexure A-4 letter dated 1.4.1992. Thereafter, the 2nd respondent, vide Annexure A-5 order dated 31.7.1992, relieved him from the State service with effect from 1.8.1992 to enable him to join the ILO Office at New Delhi on 3.8.1992. His assignment with the ILO was on deputation/foreign assignment basis and it was initially for a period of 3 years. On his requests, the competent authority accorded cadre clearance for further extension of his deputation period from time to time and lastly it was extended upto 31.8.1998 (Annexure A-6 letter dated 24.7.1997). Before the expiry of the said extended period, vide Annexure A-7 letter dated 10.8.1999, his cadre controlling authority directed the Ministry of Labour, Government of India, under intimation to him to direct him to revert to his cadre on completion of his assignment on 31.8.1998 for which cadre clearance has already been granted to him. Accordingly, he reported back to the cadre on 1.9.1998. But after submitting the Annexure A-8 letter dated 2.9.1998 to the 2nd respondent, requesting him to grant him Extra Ordinary Leave for 4 years to enable him to complete the project, he immediately went back to ILO Office and continued with his work there. Later, Ministry of Labour, Government of India enquired about the applicant from ILO and the latter, vide their Annexure A-9 letter dated 21.10.1998 confirmed that the applicant has been continuing to work with them and they have extended his contract beyond 1.9.1998 and would like him to continue with IPEC in the future as well. When the 1st respondent came to know about the aforesaid position much later, vide Annexure A-10 D.O.letter dated 17.11.1998, it informed the 2nd respondent that

the applicant had already exceeded the maximum time limit an officer could remain on foreign assignment and the last extension of his deputation period was granted in relaxation of the policy with the approval of the then Prime Minister for a period of one year with effect from August 1997 or till the programme was completed whichever event happened earlier and his further continuance with the foreign assignment without cadre clearance was in violation of the "Consolidated instructions relating to Foreign Assignment of Indian Experts" issued by the 1st respondent (Annexure A-11) on 20.6.1991 which contains the following provisions regarding deputation on foreign assignment:

> "Deputation of India Experts on assignments abroad will be classified into the following categories:
>
> (a) Foreign posts of the Government of India (GOI) under the various Ministries of the Government.
> (b) Bilateral assignments to one developing countries of Asia, Africa and Latin America.
> (c) Captive posts of GOI in the international organizations where recruitment is limited to the Indian officials.
> (d) International assignments covering assignments to the UN and its agencies, other multinational organizations, the governments and public institutes in the oil rich and developed countries."

The 1st respondent has also informed the 2nd respondent that it was illogical to permit the applicant to take up a foreign assignment or a foreign consultancy during a spell of Extra Ordinary Leave. When the said letter was received from the 1st respondent, the 2nd respondent also asked the applicant, vide Annexure A-12 letter dated 11.6.1999, to report for duty to State Government terminating his assignment with the ILO within 2 weeks and on his failure to do so, he was informed that disciplinary action will be initiated against him. In reply to the said letter, the applicant, vide the Annexure A-13 letter dated 25.6.1999 stated that the cadre clearance was necessary only if he had sought deputation to ILO and, since his request was only to grant him leave to work for the same assignment with ILO, no cadre clearance was not required. According to him, the State Government has erred in understanding his request to be a request for

deputation for which only cadre clearance is necessary under the All India Services (Leave) Rules. He has also repeated his request to grant him 4 years leave without pay. The Chief Secretary, vide his Annexure A-14 letter, dated 3.8.1999 informed the applicant that his argument that he was not seeking deputation to ILO but only seeking Extra Ordinary Leave to work on a domestic national assignment in the ILO for which cadre clearance from the Government of India was not required and that the State Government was competent to grant him leave and permit to take assignments under Rule 21 of the All India Services (Leave) Rules, 1955 ("1995 Rules" for short) are not tenable. He was, therefore, again directed to report to the State Government for duty within a fortnight. He was also once again informed that if he fails to do so, disciplinary action will be initiated against him.

3. As the applicant did not comply with the aforesaid direction of the Chief Secretary, he was served with the Annexure A-15 notice dated 4.10.1999 with the article of charge that he had unauthorizedly took up the remunerative assignment with ILO in Delhi and failed to report for duty to the State Government terminating the said appointment despite the repeated directions from the State Government. He was also directed to show cause as to why disciplinary action as envisaged under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 ("1969 Rules" for short) should not be taken against him. The following charge was also issued to him:

> "Sri M.P.Joseph IAS (KL.1978), an officer borne on the IAS cadre of Kerala was on a UN assignment with the International Labour Organisation from August 1992 onwards. The clearance given by the Government of India for his assignment in the ILO was initially for a period of 3 years which was thereafter extended till August, 1997. Later, the Government of India in their letter dated 6.5.91 FA(UN) dated 24.7.1997 has accorded cadre clearance to the further extension of the period of deputation of Sri M.P.Joseph IAS in the ILO for a period of 1 year beyond August 1997 or till International Programme on elimination of child labour in India undertaken by the ILO is completed, whichever is earlier. According to para 9 of the

'Consolidated instructions on foreign assignment of India experts' an Officer may be permitted tor remain on long term assignment upto a maximum of 5 years during the first 25 years of his service. Sri M.P.Joseph belongs to 1978 batch of the IAS and as such he had not completed 25 years of service as on the date of his proceeding on foreign assignment, i.e. August, 1992. So, normally, he could remain on foreign assignment only upto August, 1997. The Government of India in their letter dated 10.8.1998 has further directed that Sri M.P.Joseph is to report back to the cadre on completion of the extended tenure of foreign assignment. The extension of one year granted beyond August 1997, was a special case, in relaxation of the policy of the Government of India.

2. On expiry of deputation Sri Joseph reported to the cadre on 1.9.1998. Thereafter he applied for Extra Ordinary Leave for 4 years to continue the assignment in the ILO. (Later in his letter dated 29.9.1998 he has clarified that his intention in applying the leave is to continue his remunerative assignment in the ILO). Immediately after applying for leave, he left the station without getting the leave sanctioned and joined the ILO without sanction from Government.

3. The matters relating to service conditions of All India Services are governed by the AIS rules/regulations and also the executive orders/instructions issued by the Government of India from time to time. Rule 13 of the AIS (Conduct) Rules, specifically provides that no member of the service shall except with the previous sanction of the government negotiate or undertake any other employment. Sri M.P.Joseph after applying for leave for four years with effect from 2.9.1998 for taking up remunerative assignment with the ILO has taken up the assignment without the sanction of the government in violation of the instructions in this rule.

4. The assignment undertaken by Sri M.P.Joseph is with the ILO, an International Organization and instructions governing acceptance of such assignment are issued in the 'Consolidated instructions of foreign assignment of Indian expert' issued by the Department of Personnel & Training, Government of India. As per para 8.10 of the above instructions, in case of an offer of assignment by an International agency or friendly foreign Government directly to a Government employee due to his past expertise, the expert has to take clearance from the cadre controlling authority as well as from the Department of Personnel & Training before accepting the offer. In this case, Sri M.P.Joseph has accepted the assignment without clearance from the competent authority as well as from the Department of Personnel & Training.

5. Ceiling of five years in the first twenty five years of service for such assignment is also prescribed. Sri M.P.Joseph was in the ILO from 1992 onwards to August 1998. Then he was on deputation. He wanted to continue the assignment in the ILO on entering Extra Ordinary Leave. It was felt that this is to circumvent the relevant Government of India orders/guidelines and amounts to continuation of the deputation in effect exceeding the ceiling, which is not permissible. Hence, the leave applied for by the officer was not sanctioned.

> 6. Though the leave applied by Sri M.P.Joseph was refused and he was requested to rejoin duty terminating his assignment with the ILO, the officer did not join the State cadre as directed. Instead he filed an appeal petition before the Government which was also declined directing him to rejoin duty within a fortnight. He was also intimated that in case of failure, disciplinary action would be initiated against him vide letter No.73519/Spl.A2/99/GAD dated 3.8.1999. Sri M.P.Joseph has not complied with the directions of the Government which amounts to serious misconduct on the part of the officer. Hence the charge."

4. As the applicant denied the charge, the inquiry was held against him. Annexure A-16 is the "Brief by the Presenting Officer". The inquiry officer submitted the Annexure A-17 report dated 11.9.2003 and the respondents forwarded a copy of the same to the applicant vide Annexure A-17 letter dated 30.12.2003. According to the said report, the charge framed against the applicant was proved and the conclusion of the inquiry officer was as under:

> "28. Thus, the evidence as above, most of which is well documented, shows that Shri M.P.Joseph, IAS (Kerala Cadre 78) absented from service unauthorizedly to continue his remunerative foreign assignment with ILO from 2.9.1998, after applying for extra ordinary leave for 4 years, without obtaining cadre clearance from Government of India as required in para 8.10 of the consolidated instructions of foreign assignment of Indian expert – issued by the Department of Personnel & Training, Government of India. He disobeyed the repeated instructions from the Chief Secretary, Government of Kerala to join back the service after terminating his foreign assignment.
>
> 29. Thus, the charges framed against Shri M.P.Joseph are proved."

The applicant made Annexure A-18 submissions dated nil on the said inquiry report. According to him, the inquiry was not conducted as per Rule 8 of the "1969 Rules". He has, therefore, requested the disciplinary authority "to drop the charges framed against" him "and to drop all further action in the disciplinary proceedings". Thereafter, the respondents have not proceeded further with the aforesaid disciplinary proceedings and the applicant continued with the assignment with the ILO.

5. However, on 30.12.2003 itself, the 1st respondent had issued the Annexure A-19 OM to the applicant stating that he was granted cadre clearance for foreign assignment with ILO for a period from August 1992 and the said period was extended for another 2 years upto August 1997 followed by another one year upto 31.8.1998. He had reported for duty on 1.9.1998 and immediately resumed his assignment with ILO after taking Extra Ordinary Leave from the State Government. Since the State Government was not authorised to grant him Extra Ordinary Leave, he was unauthorizedly absenting himself with effect from 1.9.1998 onwards and did not report back to his cadre as on date. Thus, he has absented himself from duty for a period exceeding 5 years since 1.9.1998. It has also been stated that since he was in continuous absence from duty for more than 5 years, it attracted the provisions of Rule 7(2) of the "1955 Rules" which provides as under:

> "(1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.
>
> 2. Unless the Central Government, in view of the special circumstances of the case, determines otherwise, a member of the service who remains absent from duty for a continuous period exceeding five years other than on foreign service whether with or without leave, shall be deemed to have resigned from the service.
>
> Note: Provided that a reasonable opportunity to explain the reason for such absence shall be given to the member of service before the provision of sub rule (2) are invoked."

The applicant was also called upon to show cause why he should not be deemed to have resigned from IAS in terms of the provisions of Rule 7(2) of "1955 Rules". The applicant in his Annexure A-20 reply dated 27.1.2004 stated that the said Rule 7(2) has already been omitted from the "1955 Rules" vide notification No.14/2/68-AIS(III) dated 5.9.1978 but at the same time asked the respondent-Government to confirm whether the aforesaid rule 7(2) still exist or not. If Rule 7(2) does not exist any longer, he informed them that the show

cause notice has become redundant and if it still exist, he wanted to confirm and reiterate that he had not resigned from service and not to invoke the provisions of the said rule against him and grant him time to explain his reasons. Thereafter, the 1st respondent, vide Annexure A-21(2) notification dated 23.3.2004, notified in the official gazette of India that the applicant was deemed to have resigned from IAS with immediate effect in terms of Rule 7(2) of the "1955 Rules" endorsing copies of the same to the respondent No.2 as well as to the applicant. The respondent No.2 has also separately forwarded a copy of the aforesaid Annexure A-21(2) notification to the applicant vide Annexure A-21(1) letter dated 19/24.4.2004 In response to the aforesaid Annexure A-21 notification, the applicant submitted the Annexure A-22 letter dated 24.7.2004 to the 1st respondent stating that he was stunned and shocked to receive the said Annexure A-21(1) notification and it left him dazed and traumatized not knowing how to respond to it. According to him, even in his most wildest nightmares, he had not thought that the Government would be so unfair and unjust to him as to finalize a matter which imposes the maximum possible penalty on him without giving him an opportunity to present his case before Government and even without hearing him on the matter. He contended that the said notification was illegal, inoperative and void for non-compliance of rules and principles of natural justice as the same issued without hearing him or without giving him an opportunity to present his case. He has further submitted that even if Rule 7(2) exists, the proviso to the said rule clearly specifies that he should be given an opportunity to present his case and should be heard. By violating even the provisions of the very rule that the Government claims to have invoked against him, he has not been able to present the many circumstances and particularly the extenuating circumstances that would have convinced Government why the said rule should not have been invoked against him. He has, therefore, requested the 1st respondent to re-consider the matter and withdraw the said notification and

permit him to rejoin the parent post of Kerala Cadre. It was followed by the Annexure A-23 representation dated 2.2.2004 to the Prime Minister of India and Annexure A-24 representation dated 14.2.2005, again to the respondent No.1. Thereafter, he filed the present O.A on 4.4.2007 before this Tribunal seeking the following reliefs:

i) To declare that Annexure A-27 All India Service Leave (Amendment) Rules, 1992 notified under GSR 422 dated 2.9.1992 and published in the Gazette of India dated 26.9.1992 is unconstitutional, ultra vires and void;

ii) To declare that Annexure A-21 notification dated 19/24.4.2004 as affirmed in Annexure A-25 letter dated 21/22.3.2005 having been made in violation of Article 311(2) of the Constitution of India is totally invalid, void and inoperative.

Iii) To call for the records leading to Annexure A-15 dated 4.10.1999, Annexure A-17 dated 11.9.2003, Annexure A-19 O.M show cause notice dated 29/30.12.2003, Annexure A-21 notification dated 19/24.4.2004, Annexure A-25 letter dated 21/22.3.2005 and Annexure A-27 notification dated 26.9.1992 and to set aside the same.

iv) To issue appropriate direction or order directing the respondents to treat the applicant as continuing in the Indian Administrative Service without regard to Annexure A-21 for all purposes and to grant him full service benefits on that basis.

6. Shri O.V.Radhakrishnan, Senior counsel appearing for the applicant has urged the following legal propositions during the hearing of this case:

(A) Annexure A-15 Articles of Charge on the face of it does not disclose any misconduct on the part of the applicant warranting action under the "1969 Rules". The specific charge alleged against the applicant is that he "unauthorisedly took up a remunerative assignment with the International Labour Organisation in Delhi and failed to report for duty to the State Government terminating the said assignment despite

repeated directions from the State Government". In the statement of imputations it has been alleged that the applicant was on UN assignment with the ILO from August, 1992 and the cadre clearance given by the Government of India was for a period of three years which was thereafter extended till August, 1997. The consolidated instructions on foreign assignment of Indian Experts do not permit an officer to remain on long term assignment beyond five years during the first 25 years of service and that the applicant belong to 1978 batch of the IAS and he had not completed 25 years as on the date of his foreign assignment in August, 1992. The applicant on completion of the extended period of tenure reported back to the cadre on 01-09-1998 and applied for extraordinary leave for four years to continue the assignment in the ILO and he was duly relieved by the State Government and he continued on foreign assignment. He did not "seek deputation to ILO but sought extraordinary leave for four years to work on a domestic national assignment in the ILO for which cadre clearance from the Government of India is not required and that the State Government is competent to grant leave as specifically admitted in the reply statement of the 1st respondent. Annexure A-11 consolidated Instructions is not applicable to foreign assignments in domestic national assignments as paragraph 2 of the same provides that deputation of Indian experts abroad (emphasis supplied) will be classified into (a), (b), (c) and (d) categories. Therefore, Annexure A-I1 consolidated instructions relate to foreign assignments abroad of Indian Experts and foreign assignments with the ILO to domestic projects (within India) are clearly outside its gamut it cannot be interpreted and say that the cadre clearance from the Government of India is required for granting extraordinary leave for four. Therefore, the Government of India clearly misdirected itself in point of law and on facts

in instructing the state Government that the extraordinary leave applied for cannot be granted without the cadre clearance from the Government of India. The leave applied for by the applicant came to be rejected by Annexure A-14 not because the Government of Kerala was not inclined to grant the leave applied for the applicant but for the reason that cadre clearance was not given by the Government of India. Therefore, Annexure A-15 Articles of charge do not have any reasonable basis and is totally misconceived and any proceedings taken against the applicant on the basis of them are liable to be branded as illegal, arbitrary and wholly unsustainable. The requirement of obtaining cadre clearance from the Government of India arises only in case Annexure A-11 consolidated instructions are applicable and International assignment of the expert is in respect of a project abroad. The Learned Senior Counsel for the applicant, relied upon the judgment of the Apex Court in **Y.P. Sarabai Vs. Union of India** [AIR 2006 SC 2304] wherein it has been held that "*when the statutory authority exercise its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefore, he misdirects himself in law in such an event, an Order of the statutory authority must be held to be vitiated in law. It suffers from an error of law.*"

(B) Disciplinary proceedings once initiated must be allowed to reach its logical conclusion and the disciplinary authority is not competent to shift over from one procedure to other at the stage of passing the final Order. Rule 8 of the "1969 Rules" also does not permit setting aside the inquiry proceedings commenced by service of Articles of charges for switching over to or to take recourse to rule 7 of the "1955 Rules" Therefore, Annexure A-19 and A-21 are clearly ultra vires,

unconstitutional and void. Annexure A-25 appellate Order is also consequently illegal and invalid for the reason that it affirms Annexure A-21 which has been passed wholly without jurisdiction and hence is a nullity. He relied upon the decision in **Narayanan Nair v. State of Kerala and another** [1970 KU 1069] in support the above legal proposition. In paragraph 10 of the above judgment a similar judgment in O.P No. 2610 of 1996 has also been relied upon. Another decision of the Rajasthan High Court in **Kishan Singh Vs. State of Rajastan** [1965 (2) LU 335] has also been followed with approval. Shri Radhakrishnan has, therefore, argued that the disciplinary authority has committed grave illegality in not concluding and passing final orders on the Annexure A-17 Inquiry Report and Annexure A-18 representation made by the applicant. He further relied upon the judgment of the Apex Court in **Kanailal Beera vs. Union of India and others** [(2007) XI SCC 517] wherein it has been held that once the disciplinary proceedings have been initiated the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In paragraph 7 of the said judgment, the Supreme Court relied upon its earlier decision in **K.R. Dev Vs. CCE** (1971) 2 SCC 102 wherein it has been held that Rule 15 of CCS (CCA) Rules, on the face of it, provides only for one inquiry and there is no provision in said rule for completely setting aside the previous inquiry on the ground that the report of the Inquiry Officer does not appeal to the disciplinary authority.

(C) Rule 7 of the "1955 Rules" is not applicable in the case against the applicant as sub rule (1) thereof, relates to maximum period of absence from duty and sub rule (2) thereof which was omitted by Ministry of Home Affairs vide Notification dated 05-09-1978 and reintroduced vide

Annexure A-27 Notification dated 02-09-1992 excludes the application of the same to a member of the service who is on foreign service. He was admittedly on foreign service with the ILO on a domestic project within India and the mere fact that he, on expiry of the sanctioned leave reported back to his cadre on 01-09-1998 does not change the character of his assignment of foreign service with the ILO. Moreover, Annexure A-17 Inquiry Report also found that he served the ILO on the same job but without obtaining cadre clearance and the Annexure A-10 letter also it has been candidly stated that "Our inquiry with ILO and Ministry of Labour have confirmed that Sri. Joseph is continuing to work with ILO in the same capacity while on leave from the Government of Kerala and the ILO has extended Sri. Joseph's contract beyond 1st September, 1998." Therefore, it cannot be disputed or controverted that the applicant was continuing on foreign service and the mere fact that cadre clearance was not obtained does not alter the character of his assignment on foreign service. 'Foreign service' as defined in Rule 2 (f) of the "1955 Rules" means service where a member of the service receives his pay with the sanction of the Government from any source other than the Consolidated Fund of India or the Consolidated Fund of any State. The respondents have no case that during the relevant period the applicant has been receiving the pay either from Consolidated Fund of India or from the Consolidated Fund of the State. Therefore, the fact that the applicant was continuing to work with the ILO in the same capacity even after 01-09-1998 is conceded in Annexure A-l0 and want of cadre clearance alone would not change his continuance in foreign service to one outside the definition of foreign service. Therefore, the 1st respondent misdirected itself in law in issuing Annexure A-19 OM dated 30-10-2003 and Annexure A-21 Order directing that the applicant be

deemed to have resigned from IAS with immediate effect in terms of Rule 7(2) of the "1955 Rules" and they are liable to be struck down as one issued ultra vires and without authority of law.

(D) Assuming without conceding that the "1955 Rules", are applicable, the same is unconstitutional and void for being violative of Articles 14, 21 and 311(2) of the Constitution of India. In this regard, the applicant's counsel has relied upon the judgments in the following cases:

(a) **Jai Shankar v State of Rajasthan** [AIR 1966 SC 492]. In para 6 of the said judgment, the Apex Court has held as under:

> "6. It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulations all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in the manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blameable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate-General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person

to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here."

(emphasis supplied)

(b) **Deokinandan Prasad v. State of Bihar and others** [AIR 1971 SC 1409] paragraphs 23, 24 and 25, the Apex Court has held as under:

"23. It was contended on behalf of the State of Rajasthan that the above regulation operated automatically and there was no question of removal from service because the officer ceased to be in the service after the period mentioned in the regulation. This Court rejected the said contention and held that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation described it. It was further held to give no opportunity is to go against Article 311 and this is what has happened here.

24. In the case before us even according to the respondents a continuous absence from duty for over five years, apart from resulting in the forfeiture of the office also amounts to misconduct under Rule 46 of the Pension Rules disentitling the said officer to receive pension. It is admitted by the respondents that no opportunity was given to the petitioner to show-cause against the order proposed. Hence there is a clear violation of Article 311. Therefore, it follows even on this ground the order has to be quashed.

24-A. The further question is about the legality of the order, dated June 12, 1968, purporting to be passed under Rule 46 of the Pension Rules. The petitioners wrote a letter, dated July 16, 1967, requesting the Director of Public Instructions to arrange for payment of his pension as he had attained the age of superannuation. The order, dated June 12, 1968, was passed in reply to the said request of the petitioner. In this order it is stated that under Rule 46 of the Pension Rules, the Department is unable to grant pension to the petitioner. Rule 46 of the Pension Rules is as follows:

"46. No pension may be granted to a government servant dismissed or removed, for misconduct, insolvency or inefficiency, but to government servants so dismissed or removed compassionate allowance may be granted when they are deserving of special consideration, provided that the allowance granted to any government servant shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on

medical certificate."

25. It will be seen that under the said rule a government servant who has been dismissed, or removed for misconduct, insolvency or inefficiency is not eligible for pension. The respondents have admitted in their counter-affidavit that the order, dated August 5, 1966, purporting to be under Rule 76 of the Service Code is an order of removal and it is further pleaded by them that the petitioner's absence for over five years itself amounts to misconduct and inefficiency in service. We have already held that the order, dated August 5, 1966, is illegal. If that is so, it follows that the petitioner has not been continuously absent from duty for over five years and he is not guilty of any misconduct or inefficiency in service. Therefore, it will further follow that withholding of pension under the order, dated June 12, 1968, on the basis of Rule 46 of the Pension Rules, is illegal."

(c) **Motiram Deka v. General Mamanager, North East Frontier Railway** [AIR 1964 SC 600] In Paragraphs 26, 27 &31 the Apex Court has held as under:

"26. Reverting, then to the nature of the right which a permanent servant has under the relevant Railway Rules, what is the true position? A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal, and so, if by Rule 148(3) or Rule 149(3) such a termination is brought about, the Rule clearly contravenes Article 311(2) and must be held to be invalid. It is common ground that neither of the two Rules contemplates an enquiry and in none of the cases before us has the procedure prescribed by Article 311(2) been followed. We appreciate the argument urged by the learned Additional Solicitor-General about the pleasure of the President and its significance; but since the pleasure has to be exercised subject to the provisions of Article 311, there would be no escape from the conclusion that in respect of cases falling under Article 311(2), the procedure prescribed by the said article must be complied with and the exercise of pleasure regulated accordingly.

27. In this connection, it is necessary to emphasise that the rule-making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311(2). Article 311(2) is intended to afford a sense of security to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by Rules framed under Article 309 so as to make the said right either ineffective or illusory. Once the scope of Article 311(1) and (2) is duly determined, it must be held that no rule framed under Article 309 can trespass on the rights guaranteed by Article 311. This position is of basic

importance and must be borne in mind in dealing with the controversy in the present appeals.

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31. It has, however, been urged that the railway servants who entered service with the full knowledge of these Rules cannot be allowed to complain that Rules contravene Article 311 and are, therefore, invalid. It appears that under Rule 144 (which was originally Rule 143), it was obligatory on railway servants to execute a contract in terms of the relevant Railway Rules. That is how the agrument based on the contract and its binding character arises. If a person while entering service executes a contract containing the relevant Rule in that behalf with open eyes, how can he be heard to challenge the validity of the said Rule, or the said contract? In our opinion, this approach may be relevant in dealing with purely commercial cases governed by rules of contract; but it is wholly inappropriate in dealing with a case where the contract or the Rule is alleged to violate a Constitutional guarantee afforded by Article 311(2); and even as to commercial transactions, it is well-known that if the contract is void, as for instance, under Section 23 of the Indian Contract Act, the plea that it was executed by the party would be of no avail. In any case, we do not think that the argument of contract and its binding character can have validity in dealing with the question about the constitutionality of the impugned Rules."

(d) **Shobhana Das Gupta v. State of Bihar** [AIR 1973 Patna 431] In Paragraphs 4 to 11, it was held as follows:

"4. Rule 76 of the Bihar Service Code is as follows:

"Unless the State Government, in view of the special circumstances ,of the case, shall otherwise determine a Government servant, after five years' continuous absence from duty, elsewhere than a foreign service in India, whether with or without leave ceases to be in Government employ."

5. The first question for consideration, therefore, is: Does it amount to removal of a Government servant from service within the meaning of Art. 311 of the Constitution where a Government servant is continuously absent from duty for five years and as a consequence thereof is treated no longer to be under Government employment.

6. I may first refer to the decision of the Supreme Court in the case of Jai Shanker v. State of Rajasthan (AIR 1966 SC 492). Regulation 13 of the Jodhpur Service Regulation fell to be considered in that case. The aforesaid regulation was:

"An individual who absents himself without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority."

Considering this Regulation Hidayatullah,J observed:

"Whichever way one looks at the matter, the order of the

Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement sill arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority that the removal is automatic and outside the protection of Art.311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here."

It may be mentioned that this case arose out of a suit where a declaration was sought that the termination of the service of the plaintiff was illegal.

7. In the case of **Deokinandan Prasad v. State of Bihar**, AIR 1971 SC 1409 the true effect of the decision in Jai Shanker's case was considered. A reference was also made to Rule 76 of the Bihar Service Code. In this context it was observed:

"A contention has been taken by the petitioner that the order dated August 5, 1966 is an order removing him from service and it has been passed in violation of Art.311 of the Constitution. According to the respondents there is no violation of Art.311. On the other hand, there is an automatic termination of the petitioner's employment under Rule 76 of the Service Code. It may not be necessary to investigate this aspect further because on facts we have found that Rule 76 of the Service Code has no application. Even if it is a question of automatic termination of service for being continuously absent for over a period of five years, Art. 311 applies to such cases as is laid down by this Court in (1966) 1 SCR 825 = (AIR 1966 SC 492). In that decision this Court had to consider Regulation No.13 of the Jodhpur Service Regulations which is as follows:

"13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority."

It was contended on behalf of the State of Rajasthan that the above regulation operated automatically and there was no question of removal from service because the officer ceased to be in the service after the period mentioned in the regulation. This Court

rejected the said contention and held that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation prescribed it. It was further held to give no opportunity is to go against Art. 311 and this is what has happened here."

8. The consideration on these two cases makes it clear that in the circumstance as in the present case, treating the petitioner to have ceased to be in Government employ amounts to her removal, and further that the said removal without giving her an opportunity is to go against Article 311 of the Constitution. In the circumstances of the present case, violation of Article 311 of the Constitution is writ large. There can, therefore be no doubt that the order under Annexure 2 is illegal and the petitioner cannot be deemed to have ceased to be in Government employ on the basis of the said order or on the basis of Rule 76 of the Service Code.

9. The next important question is, as to whether Rule 76, in so far as it treats a person who has been continuously absent from duty for five years to have ceased to be in Government employ, is valid. It may be pointed out that it is not necessary to consider in this case that part of the Rule which says that if a person is absent for five years even with leave he will be ceased to be in Government employ.

10. In my view, full and complete guidance is afforded by the decision of the Supreme Court in Moti Ram Deka's case. AIR 1964 SC 600 in answering the question under consideration. One of the questions considered in that case related to the validity of Rules 148(3) and 149(3) of the Railway Establishment Code (1951). The rules aforesaid permitted the termination of the service of a Rialway employee by notice on either side, the period of notice being different in different circumstance. The question, therefore, which was considered was whether the termination of services of a permanent railway servant under the aforesaid rules amounted to his removal under article 311(2) of the Constitution, and further whether the rules aforesaid were invalid. It was held that the rules framed under Art.309 cannot trespass on the rights guaranteed under Article 311 (Paragraph 27). After an analysis of the rules, this is what was observed by Gajendragadkar.J.:

"There is no doubt that on a fair construction, the impugned Rules authorise the Railway Administration to terminate the services of all the permanent servants to whom the Rules apply merely on giving notice for the specified period or on payment of salary in lieu thereof and that clearly amounts to the removal of the servant in question. Therefore we are satisfied that the impugned Rules are invalid inasmuch as they are inconsistent with the provisions contained in Art.311(2). The termination of the permanent servant's tenure which is authorised by the said Rules is no more and no less than their removal from service, and so Art. 311(2) must come into play in respect of such cases. That being so the rule which does not require compliance with the procedure prescribed by Art. 311 (2) must be struck down as invalid."

11. In my view, in order to determine whether the impugned Rule is invalid, the proper test would be to see whether the rule, either expressly or by necessary implication, excludes the applicability of Article 311 of the constitution. If it does, the rule must be held to be invalid. On the other hand if the impugned Service Rule does not have this effect, the rule itself may not be invalid, but the rode without complying with provision of Article 311 would be invalid and incapable of being given effect to. Thus it is only when the rule is to be read in conjunction with or supplemental to Article 311 of the Constitution that it can be held to be valid. Testing it from this point of view, that part of Rule 76 which is under consideration in this case has to be struck down as invalid. The rule lays down that absence from duty, without leave for a period of five years results in the employment of a Government servant coming to an end. The rule does not envisage passing of any order. The cessation of the service is automatic, and is a consequence of the applicability of the rule. Any Government order that is or may be passed is only for the purpose of deciding whether the rule applies to a particular Government servant in the facts and circumstances of a given case. Clearly, therefore, the applicability if Article 311 of the Constitution is excluded by necessary implication by the very language and wordings of the rule. Under the rules nothing more is required, nothing more is to be done, once the conditions laid down in the rules are fulfilled. The fulfilment of those conditions cause automatic cessation of Government employment. I am, therefore, clearly of the view that Rule 76 in so far as it lays down that a Government servant ceases to be in Government employ if he is absent from duty for five years without leave is invalid and must be struck down. It is further manifest that the Government order contained in Annexure 2 is also invalid and cannot be given effect to."

(e) **State of Assam v. Akshaya Kumar** [AIR 1976 SC 37]. In Paragraphs 15 to 23, the Apex Court has held as under:

15. It is difficult to accept the contention that the "removal" under F.R. 18 does not visit the employee with any evil consequences. True, that "removal" unlike "dismissal", may not under the service rules disqualify the person "removed" from re-employment under the Government. Further, from the standpoint of the service rules there may be a difference between "removal" and "dismissal" as to the extent of consequences that respectively flow therefrom. But for the purpose of Article 311(2) both stand on an equal footing, as major penalties. Both entail penal consequences. Nor is it correct to say that the removal under F.R. 18 is analogous to compulsory or premature retirement. Our attention has not been drawn to any service rule or provision to support the contention that the impugned order will not result in forfeiture of the benefits already earned by the employee. On the other hand, according to most service rules, "removal" or "dismissal" does cause forfeiture of the right to pay, allowances and pension already acquired for past services.

16. The distinction between "removal" and "compulsory retirement"

was pointed out by this Court in *Shyam Lal* v. *State of U.P.* thus:

"... There can be no doubt that removal ... generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer. There is no such element of charge or imputation in the case of compulsory retirement ... compulsory retirement has no stigma or implication of misbehaviour or incapacity.

* * *

... dismissal or removal is a punishment. This is imposed on an officer as a penalty. It involves loss of benefit already earned.

* * *

... an officer who is compulsorily retired does not lose any part of the benefit that he has earned."

17. Even if it is assumed that termination under F.R. 18 does not cause forfeiture of benefits already earned such as pension, etc., then also that will not, by itself, take it out of the category of 'removal' as envisaged by Article 311(2). The respondent was a permanent government servant. He had a right to his substantive rank. According to the test laid down by this Court in *Parshotam Lal Dhingra*, the mere termination of service, without more, of such an employee would constitute his "removal" or "dismissal" from service, attracting Article 311(2). From the constitutional standpoint, therefore, the impugned termination of service will not cease to be "removal" from service merely because it is described or declared in the phraseology of F.R. 18 as a "cessation" of service. The constitutional protection guaranteed by Article 311(2) cannot be taken away "in this manner by a side wind".

18. The above view is fortified by the *ratio* of this Court's decision in *Jai Shanker* v. *State of Rajasthan*. The appellant therein was Head Warder in the permanent service of Rajasthan State. On April 14, 1950, he proceeded on two months' leave. He later asked for extensions of the leave on medical grounds. He was due to join on August 13, 1950, his request beyond that date was refused. Thereafter he made further applications for leave, the last of them supported by a medical ertificate. To his last and some of the earlier applications he received no reply, but on November 8, 1950, he received a communication from the Deputy Inspector General of Prisons that he was discharged from service from August 13, 1950. Departmental remedies having failed, he filed a suit challenging his removal from service. The trial court dismissed his suit. The first appellate court accepted his appeal. In second appeal by the State, the High Court restored the trial court's order. The employee came to this Court in appeal by special leave. The State relied on Regulation 13 of the Jodhpur Service Regulations which provided:

"An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note: The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission."

19. It was contended by the State that this regulation operated automatically and no question of removal from service could arise because the servant must be considered to have sacrificed his appointment. It was maintained that under the regulation, the employee could only be reinstated with the sanction of the competent authority.

20. As before us in the instant case, the question that fell there for consideration was, whether the regulation was sufficient to enable the Government to remove a person from service without giving him an opportunity of showing cause against that punishment, if any. Answering this question in the negative, the Court, speaking through Hidayatullah, J. (as he then was) illumined the position thus:

"The regulation, no doubt, speaks of reinstatement if (the employee) is to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter the order of the Government involves a termination of the service when the incumbent is willing to serve. The regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but we do not think that the Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here."

21. The above enunciation applies to the facts of the present case. Excepting the length of the period of absence, the basic features of Regulation 13 in *Jai Shanker case*, were very similar to those of F.R. 18 now under consideration. The words "should be considered to have sacrificed his appointment" in Regulation 13, substantially correspond to the words "servant ceases to be in Government

employ" in F.R. 18. Further, the import and effect of the phrase "may only be reinstated with the sanction of the competent authority" in the regulation, is largely the same as that of the opening clause "unless the Provincial Government, in view of the special circumstances of the case shall otherwise determine" in F.R. 18. The difference between the regulation and F.R. 18 as to the length of absence from duty prescribed as a condition precedent for the attraction of the respective provision, is a distinction without a difference in principle. The consequence of absence, though for different periods, envisaged by both the provisions, is the same viz. "sacrifice" or "cessation" of the absentee's service. The present case will thus be governed by the *ratio* of *Jai Shanker case.*

22. Recently, in *Deokinandan Prasad* v. *State of Bihar* a Bench of five learned Judges of this Court held that an order of termination of service passed under Rule 76 of the Bihar Service Code (which is identical in all respects with F.R. 18 in the present case) on account of the servant's continuous absence for five years without giving an opportunity to the servant under Article 311(2) would be invalid.

23. In the light of the above decisions, there can be no escape from the conclusion, that the impugned order dated February 13, 1963 was violative of Article 311(2) of the Constitution and, as such, illegal. It was imperatively necessary to give the servant an opportunity to show cause against the proposed action, particularly when he was persistently contending that his failure to join duty or absence was involuntary and due to circumstances beyond his control."

(f) **K. Ravikumar v. Inspector of RMS** [1991 (15) ATC 603]. In para 8 to 10 of this judgment, it was held as under:

"8. Further, we feel that Government of India's instructions below Rule 5 of P&T ED Agents (Conduct & Service) Rules, 1964 referred to in the first article of the charge whereby an EDA who remains absent on leave in excess of 180 days automatically ceases to be an ED Agent is not constitutional. It was held by the supreme Court in L.Robert D'Souza v. Executive Engineer, Southern Railway that absence without leave constitutes misconduct and it is not open to the employer to terminate the service without notice and inquiry or at any rate complying with the minimum principles of natural justice. It is admitted by the respondents that the applicant had met with an accident and he had taken several spells of leave on medical grounds and on certain occasions on personal reasons. The leave sanctioning authority had sanctioned all applications for leave of the applicant and had not taken any disciplinary action against the official. In the circumstances, the question of automatic termination of his service did not arise. Even in cases where an official overstays one's leave without sanction, the Supreme Court in Jai Shanker v. State of Rajasthan held that government cannot order a person to be discharged from service without giving an opportunity of showing cause why he should not be removed. Applying this principle, the Supreme Court set aside provisions in the various rules in Bihar Civil Service Code. FR 18 of Assam Fundamental and Subsidiary rules, and the Mysore High Court set aside Mysore Civil Service Rules,

which provided for automatic termination of service on overstayal of leave, as violative of Article 311 of the Constitution."

9. Accordingly, we declare that the DG, P&T's instructions at Exbt.A-17 to the extent it states that "if an EDA remains on leave for more than 180 days at a stretch, he shall cease to be an EDA", is unconstitutional and void being in violation of Article 311 of the Constitution.

10. In the conspectus of facts and circumstances, we allow this application, set aside the impugned proceedings and orders at Exbts. A-7, A-11, A-12, A-14 and A-16 and also that part of the DG's circular at Exbt.A-17 which states that "if an EDA remains on leave for more than 180 days at a stretch, he shall cease to be an EDA" and direct that the applicant be reinstated as EDA with immediate effect. He will be entitled to such arrears of pay and allowances during the period lof his removal from service as are admissible under the law."

(g) **V.C.Banaras Hindu University vs, Sreekath** [AIR 2006 SC 2304]. In paragraph 22 and 37 of the judgment, the Apex Court has held as under:

"22. Where a matter is covered by one or other clauses contained in Section 17 or 18 of the Act any modification/amendment/substitution thereof was required to be carried out strictly in the manner laid down thereunder. We have noticed hereinbefore that the Statute and the Ordinance not only deal with the manner in which the recruitment of a faculty member is to be carried out, but also lay down the terms and conditions of services, the manner in which the proceeding for commission of misconduct by a delinquent officer was to be initiated and the punishments imposed. It was,therefore, improper on the part of the authorities including the Executive Council to create a new punishment or create a new exit door for the employees to throw them out of the services of the University. It is in that sense that the purported circulars issued by the Registrar in terms of the purported resolutions adopted in the meetings of the Executive Council or otherwise must be held to be *ultra vires*. It will bear repetition to state what can be the subject-matters of the executive instructions issued under Section 10 of the Act must be those in respect whereof no specific provision exists in the Act e.g. Sections 17 and 18 of the Act."

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37. .....If he had committed misconduct, indisputably, a disciplinary proceeding should have been initiated against him. If no disciplinary proceeding was initiated against him, the question of imposition of any punishment would not arise. The Vice Chancellor was also not authorised therefor as it was the Executive council alone who could initiate a departmental proceeding."

(h) **D.K.Yadav vs. JMA Industries Ltd.** [(1993) 3 SCC 259] wherein It has been emphasised the requirements to comply with the principles of natural justice while terminating the services of the employees on the touchstone of Article 21 of the Constitution of India. It was held that not only the procedure prescribed for depriving a person of his livelihood must meet the challenge of Article 14 but also the law which will liable to be decided on the anvil thereof.

(E) The Note under Rule 7(2) adding the proviso requiring to afford reasonable opportunity to explain the reasons for such absence does not amount to providing adequate safeguard provided under Article 311(2). Opportunity to explain the reason for absence is a limited and narrow protection and is totally inadequate to meet the requirements of Article 311(2). Article 311(2) contemplates a confronted inquiry giving the delinquent officer to defend his case and to establish his innocence. The scope of reasonable opportunity contemplated by Article 311(2) has been laid down in various decisions of the Hon'ble Supreme Court which are (a) opportunity to deny the charges and to establish innocence, (b) opportunity to defend himself by examining witnesses and cross-examining the witnesses produced against him. As regards charges are concerned, (a) they must be specific with a statement of allegations on which they are based, with such particulars and details as are necessary to give a reasonable opportunity of defense(b) they must be intimated to the delinquent and (c) the delinquent must be given a reasonable time and opportunity to meet the allegations contained in the charge sheet. In this regard, the learned counsel for the applicant has relied upon the following judgments:

(i) **Surath Chandra Chakravarty v. The State of West Bengal** [AIR 1971 SC 752]

(ii) **Jagdish Prasad Saxena v. State of Madhya Bharat** (now Madhya Pradesh [AIR 1961 SC 1070].

(iii) **State of Uttar Pradesh v. Mohd. Sheriff** [AIR 1982 SC 937].

(iv) **State of Punjab v. Amar Singh Harika** [AIR 1966 SC 1313].

Kuldip Singh v. Commissioner of Police & others [(1999) 2 SCC 10].

(F) Deemed resignation is not one of the penalties provided in Rule 6 of the AIS (Discipline & Appeal) Rules, 1969. AIS (Discipline & Appeal) Rules, 1969 is a comprehensive Rules to deal with the discipline and appeal in respect of members of the All India Service. Therefore, it is a complete code in regard to discipline and no provision can be made outside the said rules providing a new head of punishment or creating a new exit door. AIS (Leave) Rules, are made to regulate the leave and the payment of allowances during the period of leave. AIS (Discipline & Appeal) Rules, and AIS (Leave) Rules, operate on different fields and are mutually exclusive. Therefore, Rule 7(2) virtually collides with the disciplinary rules and to that extend it must be held to be incompetent and invalid.

(G) The penalty of deemed resignation provided in Rule 7(2) of the AIS (Leave) Rules, 1955 is unconstitutional and violative of Article 311(2) as also Articles 14 and 21 of the Constitution of India as it (i) brings about automatic and instantaneous termination of service for remaining absent from service beyond a period of five years; (ii) provides a new penalty not contemplated by the discipline and appeal rules; (iii) operates as an exit door to throw out from the service; (iv) is against the right guaranteed to the member of the service to continue in service until superannuation; (v) cannot be passed off as a leave regulatory measure but in truth and effect a penalty imposed outside the AIS (Discipline & Appeal) Rules, 1969 and (vi) forfeits pension and other service/retiral benefits to the employee. In this regard, he placed reliance on the judgments of the Apex Court in (i) **Moti Ram v. Param Dev** (1993) 2 SCC 725 and (ii) **Prabha Atri v. State of U.P** [(2003) 1 SCC 701] and (iii) **Satyavati Gupta v. Union of India** [2004(2) ATJ 44 (PB)]. According to the judgment in **Moti Ram**'s case (supra) resignation means spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing

the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the non-commitant act of his relinquishment. Para 16 reads as under:

> "16. As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [See: *Union of India* v. *Gopal Chandra Misra* If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

Again in **Prabha Atri**'s case (supra) it was held as under:

> "7. The only question that mainly requires to be considered is as to whether the letter dated 9-1-1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably. Rule 9 of the Hospital Service Rules provided for resignation or abandonment of service by an employee. It is stated therein that a permanent employee is required to give three months' notice of resignation in writing to the appointing authority or three months' salary in lieu of notice and that he/she may be required to serve the period for such notice. In case of non-compliance with the above, the employee concerned is not only liable to pay an amount equal to three months' salary but such amount shall be realizable from the dues, if any, of the employee lying with the hospital. In *Words and Phrases* (Permanent Edn.) Vol. 37, at p. 476, it is found stated that:
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> "To constitute a 'resignation', it must be unconditional and with an intent to operate as such. There must be an intention to relinquish a

portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office."

At p.474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignations." It is also stated therein that "A 'resignation' of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment." In the ordinary dictionary sense, the word "resignation" was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim: *Resignatio est juris proprii spontanea refutatio* (*Black's Law Dictionary*, 6th Edn.). In *Corpus Juris Secundum*, Vol. 77, p. 311, it is found stated:

> "It has been said that 'resignation' is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position."

8. In *P.K. Ramachandra Iyer* v. *Union of India* this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and "as such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates". (SCC p. 172, para 34) In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer (SCC p. 173, para 34).

Further, in **Satyavati Gupta**'s case (supra), the Principal Bench of this Tribunal held as under:

> "23. Unauthorised absence alone cannot entail a punishment of removal unless the absence is established to be wilful. What has been alleged against applicant is his unauthorised absence. In a disciplinary proceeding for misconduct of remaining absent from duty though Indian Railway Medical Manual prescribes sickness certificate from the Railway Doctor but private Doctor's certificate is not barred if it is duly authenticated subsequently by the concerned Railway Medical Authority. It is not denied that applicant on joining duty was subjected to the Railway Doctor on 2.5.2000 and was declared fit and his medical record was authenticated. Accordingly, absence cannot be treated as wilful and is on account of genuine sickness of applicant. The aforesaid conclusion is strengthened by a decision of the Tribunal in C.K.Makwana v. Paschim Railway, 1991 (17) ATC 38 (AAT)."

7. The respondent No.1 in its reply has stated that the applicant has violated:

(i) Rule 3(1) of the "1955 Rules" in asmuch as, he left the station and went back and continued with his work with ILO after reporting for duty in Trivandrum on 1.9.1998, and leaving an application for Extra Ordinary Leave for 4 years, without waiting for any order on his leave application. The said rule reads as under:

> "3. Right to leave – 3(1) Leave cannot be claimed as of right and when the exigencies of public service so demand, leave of any description may be refused or revoked by the Government."

(ii) Rule 13 of the All India Services (Conduct) Rules, 1968 in so far as he had undertaken the employment with ILO after 1.1.1998 without the previous sanction of the Government and without obtaining cadre clearance from the competent authority as well as from the DoPT. The said rule reads as under:

> "13. Private trade or employment – (1) Subject to the provisions of sub rule (2), no member of the service shall except, with the previous sanction of the Government -
> (a) engage directly or indirectly in any trade or business, or
> (b) negotiate for, or undertake, any other employment, or"

(iii) Para 8.10 of the Annexure R-5 Consolidated Instructions of Foreign Assignment according to which *"in case of an offer of assignment by an international agency or friendly foreign government directly to a Government employee due to his past work or expertise, the expert has to take cadre clearance from the cadre controlling authority as well as from the Department of Personnel & Training before accepting the offer"*, and

(iv) Rule 7(i) of the "1955 Rules", which provides that no member of the service shall be granted leave for a continuous period exceeding 5 years,

8. The 1st respondent has also refuted the contention of the applicant that principles of natural justice was denied to him as he already was served with the Annexure A-8 show cause notice dated 30.12.2003. But the applicant's

response, through his Annexure A-20 explanation dated 27.1.2004 was that the provision of Rule 7(2) of the "1955 Rules" was no longer in existence whereas the factual position was that by Annexure R-11 notification No.11019/3/91-AIS-III dated 2.9.1992, provisions of the said Rule 7(2) was restored and it was duly incorporated in the latest All India Service Manual published in June, 2002. The 1st respondent has also submitted that it was only after a due consideration of his representation, the competent authority has issued the order of his deemed resignation from the service. Further, the applicant was purposely trying to misinterpret para.2 of the "Consolidated Instructions relating to Foreign Assignment of Indian Experts" to support his contention that no cadre clearance was required for an officer belonging to the All India Service, if he is serving the International Organisation during the period of extra ordinary leave and the State Government is competent to grant such leave. It has clarified that out of the 4 categories of assignments stated in the aforesaid instructions, Category (b) is regarding deputation to international Organisations like the United Nations, its agencies, other multinational organizations and the governments and public institutions in the oil-rich and developed countries and the applicant comes under the said category and it is immaterial whether at the relevant time he was working with the ILO at his headquarters or in its office in India. They have also submitted that the disciplinary proceedings initiated against the applicant by issuing the Article of Charge against him for continuing with the assignment in ILO beyond the permitted period of 5 years in violation of para 9 of the "Consolidated Instructions of Foreign Assignment" without getting leave sanctioned from the State Government and without obtaining cadre clearance from the cadre controlling authority as well as the Department of Personnel & Training in terms of Para 8.10 of the said instruction and the proceedings initiated against him for deemed resignation under Rule 7 of the All India Services (Leave) 1955 Rules were independent proceedings and the latter

proceedings were initiated against him only after discontinuing with the former proceedings. They have also denied the contention of the applicant that the notification dated 23.3.2004 relating to his deemed resignation and the order dated 21/23.3.2005 rejecting his appeal are illegal, ultra vires, inoperative and not binding on him. They have also denied his contention that Rule 7(2) of the 1955 Rules, is ultra vires and unconstitutional. According to them, he was on unauthorised absence from duty and his contention that "he does not cease to be on foreign service for want of approval of the controlling authority" is absolutely baseless and incorrect.

9. The 1st respondent has submitted further that the selection to All India Services is made on the basis of competitive examinations of a high standard conducted by the UPSC in which only very few candidates eventually succeed. The selected candidates are initially taken on probation and they are put through very rigorous course of training. On allocation to a State cadre, they are posted to a variety of posts to give them adequate opportunities to develop administrative, leadership and other skills required to adjust in any circumstances. Ample opportunities are available to them while in service itself for study, acquiring new skills and for continuing education. The Government have reposed great faith in the All India Services and expects that the members of the All India Services should not only maintain a high standard but also should be disciplined. Wilful absence of duty by a member of an All India Service, continuing with another assignment which is more remunerative, not obtaining approval of the Government for taking up assignment during leave and disobeying the directions of the government etc. clearly speak that he is not interested in the Government job.

10. Shri T.P.M.Ibrahim Khan, learned Senior Central Government Standing Counsel has argued on behalf of the 1st respondent that the provision for affording reasonable opportunity to the employee concerned is already provided in Rule 7(2) of the 1955 Rules itself and the applicant was given sufficient and reasonable opportunity to make a representation against the proposed action of the Government and therefore, there is no question of any violation of Article 311 of the Constitution of India as alleged by the applicant. The applicant, on the other hand, deliberately violated those rules thereby indicated his intention to relinquish the post voluntarily. He submitted that all Government servants are expected to obey the rules and regulations of the Government and Rule 7(2) of the "1955 Rules", provides for administrative action against the employees for their absence from cadre for a period exceeding five years, whether with or without leave and for the smooth functioning of the government machinery. Further, exemplary action against such erring officials is required to ensure that the members of service maintain proper decorum and discipline. He has also submitted that when there is a specific rule containing adequate provision for following the principles of natural justice to regulate the conditions of the service, it is not necessary to follow another procedure prescribed for the implementation of other rules and the provision of deemed resignation is a specific one to be invoked by the competent authority to deal with cases where employees remain unauthorizedly absent for a period exceeding five years under the "1955 Rules". In the case of the applicant, he wanted to continue with the ILO somehow or other as the employment with it was more remunerative for him and his arguments are mere excuses for not reporting back to his cadre. He has also argued that Section 3(1) of the AIS Act, 1951 empowers the Central Government to frame rules/regulations regulating the conditions of the service of members of All India services in consultation with the State Government and it reads as under:

> "Every rule made by the Central Government under this Section and every regulation made under or in pursuance of any such rule, shall be laid, as soon as may be after such rule or regulation is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session, immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in such rule or regulation or both Houses agree that such rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of the any thing previously done under the rule or regulations."

The amendment of Rule 7(2) of the 1955 Rules, was also made in exercise of the aforesaid power contained in the aforesaid section and the relevant notification was published in the Gazette of India. He has, therefore, denied the contention of the applicant that the order of deemed resignation is illegal, unconstitutional, void and inoperative.

11. Advocate Shri R Prem Shanker, Government Pleader on behalf of the 2nd respondent. i.e. the State of Kerala has submitted that the applicant was given sanction to go on foreign assignment with the ILO only for a period of 5 years from 1992 to 1997 and the extension for the 6th year was given as a special case. After the expiry of the extended period, he was directed to report for duty. However, for name sake, he reported for duty for a day, applied for Extra Ordinary Leave for 4 years anticipating sanction and returned to same assignment with the ILO. His request for leave was not sanctioned by the State Government and he was directed to return to his cadre several times but he refused to do so. He has also submitted that there are no rules or guidelines or precedence where the Government have sanctioned Extra Ordinary Leave to any All India Service officers for taking up other employments as alleged by the applicant. According to him, the disciplinary proceedings initiated against the applicant were discontinued as per his own request to avoid any stigma on his career as he was serving the ILO at the relevant time. The 2nd respondent has

also justified the action taken against the applicant under Rule 7(2) of the Leave Rules as he remained on unauthorised absence for more than 5 years and he had no intention to return to his cadre.

12. We have extensively heard Shri O.V.Radhkrishnan, Senior counsel appearing for the applicant and Shri T.P.Ibrahimkhan, SCGSC for Respondent No.1 and Shri R Premshankar, G.P. for respondent No.2. We have also perused the records produced by the respondents. The applicant has, in fact, challenged two sets of orders, Office Memoranda, letters and notifications prescribing different types procedures. The Annexure A-15 Articles of Charge and Annexure A-17 Enquiry Report belong to the first type. They are under the "1969 Rules" for unauthorizedly taking up remunerative assignment with the ILO in Delhi and for the failure on his part to report for duty to the cadre terminating the said assignment, despite repeated directions to him by the State Government. The allegation against him was that even after his deputation on foreign assignment with ILO from August 1992 expired on 31.8.1998, he reported to the cadre on 1.9.1998, he applied for Extra Ordinary Leave for 4 years to continue the assignment in the ILO and immediately left the station without getting the leave sanctioned and joined the ILO in violation of Rule 13 of the said rules according to which "*no member of the service shall except with the previous sanction of the Government, negotiate or undertake any other employment*" and in violation of para 8.10 of the "Consolidated instructions of foreign assignment of Indian Expert" issued by the Department of Personnel & Training, Government of India according to which, "*in case of an offer of assignment by an International agency or friendly foreign Government directly to a Government employee due to his past expertise, the expert has to take clearance from the cadre controlling authority as well as from the Department of Personnel & Training before accepting the offer*". Again, according to the 1st

respondent, the action of the applicant was to circumvent the relevant Government of India orders/guidelines and to continue with ILO, one way or the other. Further, though the leave applied for, by him was refused and he was specifically directed to rejoin duty terminating his assignment with the ILO, he did not do so. Instead, he engaged himself in correspondence by filing an appeal against the decision of the competent authority before the Government. Even after his appeal was rejected, he refused to rejoin duty, as directed. He was again warned vide letter No.73519/Spl.A2/99/GAD dated 3.8.1999 that in case of his failure to resume duty, disciplinary action would be initiated against him but he continued to defy the directions of the Government showing his preparedness to face any consequences. The said procedure was initiated with the issuance of the Annexure A-15 charge memo and ended with the Annexure A-17 Enquiry Report. The second type of procedure was under Rule 7(2) of the "1955 Rules" which was inserted by way of amendment of rules made vide Annexure A-27 Gazette notification dated 2.9.1992. The first respondent vide Annexure A-19 O.M dated 30.12.2003, called upon the applicant to show cause as to why he should not be deemed to have resigned from the IAS in terms of the aforesaid rules and after considering his Annexure R-IX reply dated 27.1.2004 it declared vide Annexure A-21 notification dated 23.3.2004, that he deemed to have resigned from the IAS with immediate effect. Again, vide Annexure A-25 letter dated 21/22.3.2005 his Annexure A-24 representation dated 14.2.2005 against his deemed resignation from service has been considered and rejected. Annexure A-27 is the Gazette notification dated 26.9.1992 by which the amended provision of Rule 7(2) has been inserted in the "1955 Rules". Both are entirely different sets of procedures.

13. One of the arguments of Shri O.V.Radhakrishnan, Senior Counsel on behalf of the applicant was that the disciplinary proceedings once initiated under the "1969 Rules" must have been allowed to reach its logical conclusion and the Disciplinary Authority was not competent to shift over from that procedure to another under the "1955 Rules". In support of the aforesaid argument he has relied upon the judgment of the High Court of Kerala in the case of **Narayanan Nair** (supra) and the judgment of the Apex Court in **Kanailal Beera v. Union of India and other** and **K.R.Dev v. CCE** (supra). Further arguing on this point, Shri Radhakrishnan has stated that the Annexure A-15 Article of Charge on the face of it does not disclose any misconduct on the part of the applicant warranting action under the "1969 Rules". Therefore, the disciplinary authority committed grave illegality in not concluding and passing final orders on the basis of Annexure A-17 Inquiry Report and Annexure A-18 representation made by the applicant. We cannot agree with the aforesaid contention of Shri Radhakrishnan, as the facts are otherwise. As per the records produced by the 2nd respondent, when it issued the Annexure A-12 letter dated 11.6.1999 to applicant informing him that he cannot continue with his assignment with ILO without the cadre clearance of the Government of India and should return to his cadre within two weeks, he challenged it before this Tribunal vide O.A.917/1999. The Tribunal vide its order dated 10.11.1999, dismissed the said O.A finding the stand taken by the respondents in his case was perfectly valid and justified. The operative part of the said order is reproduced here as under:

> "4. We have gone through the materials placed on record and have heard Shri M.R.Rajendran Nair, learned counsel for the applicant, Shri C.A.Joy, Government Pleader for the 1st respondent and Shri M.R.Suresh, Addl. Central Govt. Standing Counsel for the second respondent. The basic issue in this case is whether the applicant is entitled to leave as of right. The grant of leave to a member of the All India Services is governed by All India Services (Leave) Rules. As per sub rule(1) of Rule 3 of the All India Services (Leave) Rules leave cannot be claimed as of right, it has to be granted. The Extra Ordinary Leave as sought for in the A4 leave application has been refused on the ground that the clearance of the cadre controlling authority is required as the appointment to take up which the applicant has applied for leave

is under an International Organization. Learned counsel of the applicant with considerable tenacity argued that the rules do not prescribe that the State Government should get the concurrence or clearance of the cadre controlling authority for grant of Extra Ordinary Leave for a period not exceeding five years. As the assignment under the ILO is a project within the country the State Government is competent to grant leave without obtaining clearance of the Central Government, argued Shri Rajendran Nair. We are not persuaded to agree with this argument of the learned counsel.

5. In the reply statement on behalf of the second respondent, it has been stated that under sub rule (2) of Rule 31 of the All India Services (Leave) Rules the State Government can prescribe its procedure subject to instructions issued by the Central Government in regard to grant of leave and that the Central Government has clarified to the Chief Secretaries of all States that before granting a member of the service leave for going abroad for personal purpose, clearance of the cadre controlling authority has to be obtained. It has also been stated in the statement that according to the consolidated instructions in regard to foreign assignment if the State Government proposes to send an officer for assignment under an international organization or a friendly government, the clearance of the Department of Personnel is required. According to the second respondent, the assignment which the applicant has accepted being under the International Labour Organisation (ILO) it can be treated as a foreign assignment and without the clearance of the cadre controlling authority the State Government is not empowered to grant leave. It has further been contended that the refusal to grant leave to the applicant as sought for in the application by the State Government under the circumstances was perfectly justifiable. We find that the stand taken by the respondent in support of the impugned orders is perfectly valid and justified. The applicant who is a Member of the Indian Administrative Service has been outside the cadre for a long period of six years on deputation. Now without obtaining permission from the appropriate government the applicant has accepted an assignment with the ILO and it is for that purpose the applicant has sought leave. The State Government having considered the request of the applicant for grant of Extra Ordinary Leave for a period of four years for the purpose of taking up assignment under the ILO found that it was not feasible to grant the leave. In the A.1 order it has been very clearly stated that the applicant had joined back after six years deputation only on 1st of September and has left the State without the leave being granted taking up the assignment with the ILO without the concurrence or approval of the State Government, the next day itself. The State Government declined to grant leave applied for under these circumstances especially when the Central Government, the cadre controlling authority did not give its clearance. As stated, supra the applicant cannot claim Extra Ordinary Leave for four years as of right. As the applicant had been on deputation with ILO from July, 1992 onwards and has left the State for joining ILO the next day after joining back without the approval of the State Government as also the Cadre Controlling Authority we find that the action of the first respondent in refusing to grant the leave sought for cannot be faulted.

6. In the light of what is stated above, the application fails and the same is dismissed leaving the parties to bear their own costs."

Being not satisfied by the aforesaid order, the applicant challenged it before the Hon'ble High Court vide O.P.No.32601/1999-S. During the pendency of the said O.P., the applicant made another representation dated 20.12.1999 to the Government of Kerala to review its decision about his leave. The High Court dismissed the O.P vide judgment dated 21.12.2000 but stating that the aforesaid order of this Tribunal may not stand in the way of consideration of the aforesaid representation. The said judgment reads as under:

> "It is stated that subsequent to the disposal of the matter by the Central Administrative Tribunal, petitioner has made a fresh representation on 20.12.1999 to the 1st respondent State. Copy of the representation has been filed for our records. Disposal by the Central Administrative Tribunal may not stand in the way of consideration of the representation stated to have been made on 20.12.1999 in its proper perspective. We express no opinion on the merits.
>
> Original Petition is dismissed."

The State Government vide its letter dated 20.1.2000 informed him in clear terms that it was not prepared to re-consider his request again and he was asked to furnish his statement of defence, if any, on the articles of charges already served on him. As a responsible government servant, the applicant should have accepted the court verdict and reported back to his cadre as ordered by the respondents. Instead, he has challenged enquiry proceedings initiated against him. However, on conclusion of the enquiry, the Inquiry Officer vide its Annexure A-17 report dated 11.9.2003 held that the charges against the applicant were proved. The conclusion of the Inquiry Officer was as under:

> "28. Thus, the evidence as above, most of which is well documented, shows that Shri M.P.Joseph, IAS (Kerala Cadre 78) absented from service unauthorisedly to continue his remunerative foreign assignment with ILO from 2.9.1998, after applying for extraordinary leave for 4 years, without obtaining cadre clearance from Government of India as required in para 8.10 of the consolidated instructions of foreign assignment of Indian expert – issued by the Department of Personnel & Training, Government of India. He disobeyed the repeated instructions from the Chief Secretary, Government of Kerala to join back the service after terminating his foreign assignment.
>
> 29. Thus, the charges framed against Shri M.P.Joseph are proved."

14. On receipt of the aforesaid enquiry report, his submission to the Disciplinary Authority made vide Annexure A-18 was to drop the charges framed against" him and also to "drop all further action on the disciplinary proceedings started against" him. The 2nd respondent has submitted that the disciplinary proceedings initiated against him was dropped on his own request to avoid any stigma on his career as he was serving the ILO at the relevant time. In any case, the 1st respondent has not proceeded any further with the disciplinary proceedings against the applicant on receipt of his aforesaid Annexure A-18 representation from the stage of the Enquiry Report. Thus, the Annexure A-15 Article of charge and the Annexure A-17 letter dated 30.12.2003 by which the 2nd respondent had forwarded those charges to the Applicant have become infructuous and they have to be ignored. Therefore, the argument to the contrary at this stage that the disciplinary authority should have allowed the disciplinary proceedings to reach its logical conclusion is quite illogical and unacceptable. We, therefore, do not find it necessary to go into the legality of otherwise of those impugned documents.

15. Shri Radhakrishnan has again very vehemently argued that sub rule 7(1) and (2) of Rule 7 of the AIS (Leave) Rules do not apply in the case of the applicant because he was still in his "foreign service" even after he reported back to duty with his cadre on 1.9.1998. No doubt the applicant was on "foreign service" with ILO in terms of the Annexure R-V "Consolidated Instructions on Foreign Assignment of Indian Experts". Once he reported back to his cadre, his assignment with ILO on "foreign service" came to an end and nothing else. His Annexure A-8 request to the Chief Secretary dated 2.9.1998 was also not to permit him to continue with ILO on "foreign service" terms but on "extraordinary leave". We do not think that the applicant, being a senior IAS officer, himself

was unaware of the meaning of the terms "foreign service" and "extraordinary leave". When the normal period of deputation was only 4 years, he got his tenure of deputation extended upto 31.8.1998 in relaxation of policy made in his favour by the Government. However, well before the expiry of the extended term, the Department of Personnel & Training has clearly directed the applicant to report for duty back to his cadre. As he realised that he could not continue any more with ILO on "foreign service" terms, he thought he would be able to circumvent the rules by the innovative method of reporting for duty for one day and disappear from the station on the next day itself by simply leaving an application for Extra Ordinary Leave for 4 years to the then Chief Secretary of the State of Kerala. Clearly, his intention was not to return to his cadre as ordered by his Cadre Controlling Authority as well as the Cadre Authority but to continue with his attractive and lucrative assignment with the ILO at whatever cost. The period of 4 years of extraordinary leave sought by him from 2.9.1998 expired way back on 1.9.2002. If his intention was clear, he should have reported for duty on 2.9.2002 itself. Even when the Annexure A-19 show cause notice dated 30.12.2003 under sub rule 7(2) of "1955 Rules" was issued to him, he did not show his intention to return to his cadre. Therefore, he was making unreasonable arguments and giving his own interpretation to the rules to suit his convenience so that he could engage the respondents in endless correspondence till he decided his future course of action. He found his own self justification for his continuance with the ILO, as given his Annexure A-8 letter that it was a "rare honour and a privilege" for the State and if he had to leave the ILO, the "opportunity for the State to have one of its officers working in the International Labour Organisation would be lost for ever". He tried to give an impression that he was making a great sacrifice for the sake of his "State" at the cost of his service in his cadre. When he was issued with the notice dated 29.12.2003 to show cause as to why he should not be deemed to have resigned

from Indian Administrative Service in terms of provisions of Rule 7(2) of the All India Services (Leave) Rules, 1965, his response was again not befitting to a responsible government servant. Instead of giving proper explanation to the show cause notice issued to him, his response was that Rule 7(2) ibid was no more in existence. Further, he asked the author of the rule, i.e. the Government itself to find out whether the said sub rule(2) was in existence or not and if so, to inform him. His explanation in his letter dated 27.1.2004 reads as under:

> "I received the said Office Memorandum only late last week, since it was sent to my former residence: S 52 Greater Kailash, Part I, New Delhi 48 and not to the present one shown above.
>
> The Office Memorandum states that Rule 7(2) of the AIS(Leave) Rules, 1955 provides that "unless the Central Government, in view of the special circumstances of the case, determines otherwise, a member of the service who remains absent from duty for a continuous period exceeding five years .. shall be deemed to have resigned from the service....
>
> As per the All India Services Manual, Part I, issued by the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievance & Pension, (the photocopy of the relevant pages of which I am herewith attaching) Rule 7(2) was omitted from the AIS (Leave) Rules, 1955 vide MHA Notification No.14/2/68-AIS(III), dated 5.9.1978. I therefore request Government to kindly confirm that the said Rule 7(2) still exists. In case Rule 7(2) does not exist any longer, the show cause notice issued to me is redundant.
>
> On the other hand, in case the Manual referred above is erroneous, and the Rule 7(2) still exists, I would like to state, confirm and reiterate to Government that I have not resigned from service and request government kindly not to invoke the provisions of 7(2) against me in case Rule 7(2) exists as quoted in the Office Memorandum, I request Government to kindly give me time to explain my reasons, and reasonable opportunity to show to Government the special circumstances of my case that would satisfy Government against invoking Rule 7(2) in my case."

16. It is quite clear that the show cause notice issued to the applicant has not made any difference to him as he had no intention to return to his cadre in the near future. The judgments of the Apex Court in (i) **S.L.Kapoor v. Jagmohan & others** [(1980) 4 SCC 379], (ii) **M.C.Mehta v. Union of India & others** [(1999) 6 SCC 237], and (iii) **Aligarh Muslim University v. Mansoor Ali Khan** [(2000) 7 SCC 529] are relevant here.

In **S.L.Kapoor**'s case, the Apex Court held as under:

> "17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs."

The Apex Court in **M.C.Mehta**'s case held as under:

> "21. It is, therefore, clear that if on the *admitted or indisputable* position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice."

According to the Apex Court in **Mansoor Ali Khan**'s case, in certain situations, the principle of natural justice has no application and it was held as under:

> **25.** The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.
>
> **26.** It will be sufficient, for the purpose of the case of Mr Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in *S.L. Kapoor* v. *Jagmohan*, namely, that on the admitted or indisputable facts, only one view is possible. In that event no prejudice can be said to have been caused to Mr Mansoor Ali Khan though notice has not been issued.
>
> **27.** Our reasons for saying that the case of Mr Mansoor Ali Khan falls within the exception can be stated as follows:
>
> Admittedly, leave was sanctioned only for 2 years from 18-4-1979. When before the expiry of the period, Mr Mansoor Ali Khan applied on 18-4-1981 for extension of leave by 3 more years, the University wrote to him on 17-9-1981/23-9-1981 granting extension only for one year from 18-4-1981 and also stated that he was required to resume duties by 18-4-1982. It did not stop there. It further *forewarned* Mr Khan as follows:

"Please note that no further extension in the period of your leave will be possible and you are advised to make preparation for resuming duty positively by 18-4-1982."

In other words, he was put on advance notice that it would not be possible to give any further extension i.e. beyond one year on the ground of continuance in the job at Libya and he was to resume duty by 18-4-1982. In fact, thereafter some special consideration was still shown in his favour by way of granting him joining time up to 1-7-1982. It was clearly said that otherwise he would be deemed to have vacated the post. If he had, in spite of this warning, gone ahead by accepting a further contract in Libya, it was, in our view, his own unilateral act in the teeth of the advance warning given. That conduct, the learned Single Judge thought and in our view rightly to be sufficient to deny relief under Article 226.

28. We may state that the University has not acted unreasonably in informing him in advance — while granting one year extension, in addition to the initial absence of 2 years — that no further extension will be given. We have noticed that when the extension is sought for three years, the Department has given him extension only for one year as he had already availed 2 years' extraordinary leave by that time. It has to be noticed that when employees go on foreign assignments which are secured by them at their own instance, in case they do not come back within the original period stipulated or before the expiration of the extended period, the employer in the parent country would be put to serious inconvenience and will find it difficult to make temporary alternative appointments to fill up the post during the period of absence of those who have gone abroad. However, when rules permit and provide for an employee to go abroad discretion must be exercised reasonably while refusing extension. In this case, giving of further extension only for one year out of the further period of three years sought for is not unreasonable. In such a situation, if the employee has entangled himself into further commitments abroad, he has to blame himself.

29. On the above facts, the absence of a notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job in Libya, it is bound to be refused."

17. The applicant being a senior officer belonging to the Indian Administrative Service has forgotten that his primary commitment was for his own service and the cadre and not to the International Organization under which he could serve only because of the opportunity provided to him by his cadre controlling authority which deputed him for that assignment. When his own cadre controlling authority and the Government of Kerala themselves have asked him to return to his cadre and perform his normal duties, it was not for the Applicant to take the

great burden on himself to serve the ILO further. The Applicant in his various representations have projected himself as the most indispensable person to the ILO and no one else could perform the job assigned to him. When we have the good examples of at least some of the officers who were offered highly lucrative jobs with hefty pay packets in multi national organizations and International bodies considering their expertise and vast experience in specialised areas within our country, they decline those offers without any hesitation and continue to serve the nation with whatever financial benefits they were getting from their cadres/service. The attitude of the Applicant to continue with his assignment in ILO at the cost of his cadre cannot be appreciated in any manner. It is matter of common knowledge that the employment with the UN and its organization is very lucrative because of the financial benefits and other facilities being offered. The period of deputation of the applicant was for 5 years which expired on 02.08.1997. He did not return to the Government of Kerala on whose cadre he was borne. However, on his request his cadre controlling Authority, namely, the Department of Personnel and Training extended his period of deputation upto 31.08.1998 and directed him to report to his cadre immediately after the said date. The Applicant, for namesake, reported for duty to Government of Kerala at Trivandrum and submitted an application for grant of extra ordinary leave for four years and left the place immediately and resumed the work with the ILO which he was working during his deputation with them. The Applicant did bother to wait for the decision of the competent authority on his application. He had taken the 2nd respondent for granted and justified himself by stating in his Annexure A-18 representation as under:

> "I gave my formal application for extra-ordinary leave, briefed government on the full circumstances of the case. In informed government that I needed extra-ordinary leave for taking up the domestic assignment with the ILO in India, which did not require cadre. I informed that would take up the assignment from 3 September, 1998."

18. Again, it cannot be accepted that the Applicant was ignorant of the rules governing him and his service. When the Government of Kerala by its letter dated 11.06.1999 has rejected his request for extra ordinary leave made vide his representation dated 02.09.1998 and directed him to report for duty to the State Government terminating his assignment with the ILO, his attitude was not that of obedience. Rather, he was highlighting the ignorance of the State Government which insisted that since the assignment was under an International Organisation, cadre clearance of the Government of India was required. The Applicant was advising the Government of Kerala to grant him Extra ordinary leave without any approval of his cadre controlling authority so that his assignment with the ILO could be continued even after her deputation period was over. In other words, he was advising the State Government that if the period of his deputation could not be extended by the Central Government and his cadre controlling authority, it could be done by the State Government by circumventing the rule by granting him extra ordinary leave. What the Central Government has declined in his case, he was hoping that he could achieve it through the State Government. His response was as under:-

> " I beg to state that this decision of the State Government is based on a wrong understanding of both the facts and the law in this case. The granting of leave for officers of the All India Services with permission to take up employment is governed only by the All India Service (Leave) Rules. The All India Services (Leave) Rules does not anywhere require cadre clearance to be obtained from the Government of India, either for granting of Extraordinary leave or for taking up any employment including employment with the International Labour Organization. Cadre clearance for these purposes is nowhere even mentioned in the All India Services (Leave) Rules. The All India Services (Leave) Rules have been framed by the Central Government in exercise of the powers conferred on it by subsection 1 of section 3 of the All India Services Act 1951. These rules have been placed on the table of both the Houses of Parliament and therefore has the legal force of a law enacted by Parliament. These rules cannot be superseded by any direction contained in a letter of Memorandum of the Government of India or by any other such communication issued by the Central Government or by a Ministry or Department of the Central Government. The All India Services (Leave) Rules is categorically clear that both the granting of the leave and the granting of permission to take up employment or service while on leave rests

> solely on the State Government. These rules do not anywhere require the State Government to take cadre clearance from the Center either to grant of Extraordinary leave or for granting permission to take up employment while on leave with any Organisation whether public, private or a UN agency. No such requirement or need has been either directly or indirectly mentioned or indicated anywhere under the All India Services (Leave) Rules. These rules also do not speak of any requirement or need for the State Government to consult the central Government or even inform the Central Government while granting such permission."

19. The next argument on behalf of the applicant was that Rule 7(2) of the "1955 Rules" is not applicable in his case and even if it is applicable, it is unconstitutional and void for having violative of Articles 14, 21 and 311(2) of the Constitution of India. Further, the Note under Rule 7(2) adding the proviso requiring to afford reasonable opportunity to explain the reasons for such absence does not amount to providing adequate safeguard provided under Article 311(2). We have examined the provisions contained in Rule 7 of the All India Service (Leave) Rules, 1955 which has been quoted elsewhere in this order. It is the policy of the Government of India not to grant leave of any kind to its employees for a continuous period exceeding five years. The said policy has been given the statutory status by enacting as Rule as contained in sub Rule 1 of Rule 7 of the aforesaid rules. It is very clear and absolutely unambiguous. Sub Rule (2) deals with situations where the employee concerned remain absent from duty for a continuous period exceeding 5 years in violation of the aforesaid sub rule 7(1). Such absence from duty may be with leave for the first 5 years and thereafter without any leave or the entire period i.e. the first 5 years period and the period exceeding thereof are without any sanction. In both the circumstances, the employee concerned shall be deemed to have resigned from service after the expiry of the first five years.

19. The other side of Shri Radhakrishnan's argument with the support of the Apex Courts judgment in **Jai Shanker** (supra), **Deokinandan Prasad** (supra)

and **D.K.Yadav's** case (supra) was that while issuing the Annexure A-21(2) notification dated 23.3.2004 directing that the applicant deemed to have resigned from service in terms of Rule 7(2) of the AIS(Leave) Rules, 1955, the respondents have not observed the principles of natural justice. In our considered view, we cannot agree with aforesaid line of argument of Shri Radhakrishnan. The procedure prescribed in Article 311(2) of the Constitution need not be exactly same in all other statutory rules. The issue to be considered is whether the Government servant has been given reasonable opportunity to explain his position before he was visited by any adverse order including deemed resignation from service. In other words, the statutory rules must be in consonance with the constitution as held by the Apex Court in **A.Satyanarayana and other v. S.Purushotham and others** [(2008) 2 SCC L&S 279]. It is with this specific purpose that in Not' below sub Rule (2), the Legislative has ensured that the action under sub rule(2) shall not be arbitrary. It provides that reasonable opportunity to explain reasons for such absence beyond permissible period of 5 years shall be given to the member before the provisions of sub rule (2) are invoked. In other words, principles of natural justice has to be observed by the State before the service of a member of the IAS brought to an end. It is an undisputed fact that the Applicant was on deputation with ILO in New Delhi with effect from 03.08.1992. Moreover, before the Annexure A-21 notification was issued the applicant was served with show cause notice in terms of sub rule 7(2) of the AIS(Leave) Rules vide Annexure A-19 OM dated 29/30.12.2003. He responded to it vide his Annexure A-20 letter dated 27.1.2004. Instead of giving proper cause, if any, for his unauthorized absence, he only expressed his doubt whether the said Rule 7(2) was existing or not. The respondents waited for his explanation for nearly 2 months and only thereafter the Annexure A-21 notification was issued. It only shows the scant regard with which the applicant has treated the show cause notice issued by the respondents. The applicant

has not shown any interest to return to his cadre except stating that he "have not resigned from service." It is in this context that the allegation of the applicant that the respondents have not observed the principles of natural justice in his case has to be rejected. Adequate provision is inbuilt in this rule itself to prevent the respondents from taking any unilateral or arbitrary decision that an employee has deemed to have resigned from service. There may be reasons beyond the control of an employee which compells him to remain absent continuously from duty for more than 5 years. For example, an employee may be suffering from certain diseases which needs more than 5 years for him to be cured, or he may be abducted by a terrorist outfit and he has not been set free for more than 5 years. In such circumstances, the employee concerned gets an opportunity to explain the reasons for such long absence under the provisions of the Note under sub rule 7(2). This is in consonance with the principles enunciated in Article 311(2) of the Constitution that before an employee is dismissed or removed from service, he shall be given a reasonable opportunity of being heard in respect of the charge levelled against him. There is no denial of the fact that the applicant was given opportunity to make a representation against the proposed action under Rule 7(2) of the AIS(Leave) Rules, 1965. The learned Senior counsel Shri Radhakrishnan, however, argued that the Note under Rule 7(2) requiring to afford reasonable opportunity does not amount to providing adequate safeguards as provided under Rule 311(2) of the Constitution. Shri Radhakrishnan relied upon a number of judgments in this regard. In the case of **Jai Shanker** (supra) relied upon by Shri Radhakrishnan the respondents have never given an opportunity to the petitioner why he should not be removed from service before he was actually removed from service. It was in that context the Apex Court has held that "*even if a regulation is made, it is necessary that the government should give the person an opportunity of showing cause why he should not be removed*". There is no case for the

applicant that he has denied the opportunity to show cause before the impugned order of deemed resignation was passed against him. Same is the position in **Deokinandan**'s case, (supra) also. No opportunity given to the petitioner therein to show cause against the proposed order of removal from service. In **Shobana Das Gupta**'s case (supra), the Supreme Court followed its judgment in **Deokinandan**'s case (supra). In **Akshay Kumar**'s case also the question for consideration was whether the regulation was sufficient to enable the Government to remove a person from service without giving him an opportunity of showing cause against that punishment, if any. Obviously, the answer was in the negative. The other cases, namely, **Motiram Deka, K.Ravi Kumar, V.C. Banaras Hindu University, D.K.Yadav, Surath Chandra Chakravarty, Jagdish Prasad Saxena, Mohd. Sheriff, Amar Singh Harika** and **Kuldip Singh** also belong to this category of cases where no opportunity to show cause notice has been given to the employee concerned.

20. In the case of **A.K.Kraipak v. Union of India** [AIR 1970 SC 150], the Apex Court has held very clearly that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Again in **Karnataka SRTC Vs. S.G. Kotturappa** [(2005) 3 SCC 409] considered the question as to what extend the principles of natural justice is required to be complied with and held that it would depend upon the facts of the selection obtaining in each cases and it cannot be applied in vacuum.

21. In **Syndicate Bank v. Venkatesh Gururao Kurati** [(2006) 3 SCC 150], the Apex Court held as under:

> "It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

22. In **P.D.Agrawal v. State Bank of India and others** [(2006) 8 SCC 776] it was held by the Apex Court as under:

> "The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

23. Again in **Secretary, A.P Social Welfare Residential Educational Institutions v. Sri Pindiga Sridhar & others** [2008(3) SLJ 169], the Apex Court held as under:

> "By now, it is well settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Its application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice."

24. The words "reasonable opportunity" has been considered by the Apex Court in **Uttar Pradesh Government v. Sabir Hussain** [(1975) 4 SCC 703] as under:

> "13. It is to be noted that the section requires not only the giving of an opportunity to show cause, but further enjoins that the opportunity should be "reasonable". What then is "reasonable opportunity" within the contemplation of Section 240(3)? How is it distinguished from an opportunity which is not reasonable? The question has to be answered in the context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it."
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> xxxxx xxxxxxx xxxxxx
>
> Thus the broad test of "reasonable opportunity" is, whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt.."

25. The Apex Court in **Karnataka SRTC v. S.G.Kotturappa and another** [2005 3 SCC 409] the Apex Court held that the principles of natural justice cannot be applied in vacuum. The relevant part of the said judgment reads as under:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The

> principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given."

26. Applicant never expected that the respondents would act firmly in his case. That is the reason why he has stated in his letter dated 22.7.2004 as under:

> "Even in my most wildest nightmares I had not thought that the government would be so unfair and unjust to me as to finalise a matter that imposes the maximum possible penalty on me without giving me an opportunity to present my case before government and even without hearing me on the matter. I was therefore aghast and horrified to receive instead the notification declaring that I have deemed to have resigned from service."

No wonder, there is an increasing tendency among the Government servants to think that they will not be caught for any violation of rules, if caught, they will not be subjected to any adverse civil consequences and if at all there are any consequence, they can get away with some mild warning which would not affect their future career. The authorities who are required to maintain the rules strictly and to prevent any such violations have contributed a great deal to their way of thinking.

27. In the result the O.A is dismissed. There shall be no order as to costs.

K NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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