Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Original Application No. 177 of 2010

This the 8th day of September, 2011

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

Amitab Thakur, Aged about 42 years, S/o Sri Tapeshwar Narayan Thakur, R/o 5/426 Viram Khand, Gomti Nagar, Lucknow (presently on Extra ordinary leave at IIM Lucknow)

.....Applicant

By Advocate : In person

Versus.

1. Union of India through Secretary, Home, New Delhi.
2. State of U.P. through the Principal Secretary (Home), Civil Secretariat, Lucknow.
3. Director General of Police, U.P. DGP Headquarters, Lucknow.
4. Sri Kunwar Fateh Bahadur, Principal Secretary (Home), Civil Secretariat, Lucknow.
5. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

.....Respondents.

By Advocate :Sri Anand Vikram for R-1 and Sri A.K. Chaturvedi for R-2 to R-5

O R D E R

By S.P. Singh, Member-A

This O.A. has been filed for the following relief(s):

"(a) *issuing/passing of an order or direction to the Respondents commanding them to immediately quash the illegal DE pending against the petitioner for more than a year now.*

(b) issuing/passing, as a consequence of the above relief, of an order or direction to respondents

commanding the respondents to promote the petitioner to the rank of DIGP.

(c) Issue any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Issuing/passing of an order or direction to the concerned competent authorities to make an enquiry into the matter as to why such an exorbitant delay was made in this case and to punish the officers found responsible for this unexplained and deliberate delay.

(e) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(f) Allowing the original application with cost, this being a most fit case for allowing the cost because of the sheet callousness and partial delaying tactics of the respondents forcing the applicant to approach this Hon'ble Tribunal."

2. The applicant is an Indian Police Service (IPS) Officer of 1992 batch. He was posted as Superintendent of Police, Deoria from 29.3.1998 to 9.7.2000. The State Government issued an Office Order dated 27.10.2004 (Annexure A-1) under Rule 10 of All India Service (Discipline & Appeal) Rules, 1969 for imposing minor penalty for the alleged certain misconducts committed by him during his posting at Deoria.

3. The applicant submitted written statement of defence dated 4.4.2005 (Annexure C-1) of CA dated 6.7.2010. According to the applicant, this departmental enquiry was closed by State Government with a warning vide कार्यालय ज्ञापन Dated 25.5.2007(Annexure A-2) whereby the chargesheet issued to the applicant on 27.10.2004 mentioned above was finally closed. The contents of Office Memorandum dated 25.5.2007 is reproduced below:

"श्री अमिताभ ठाकुर, आई0पी0एस0–आर0आर0–1992 जब पुलिस अधीक्षक, देवरिया के पद पर तैनात थे तब उनके द्वारा अपने पदीय कर्तव्यों के प्रति बरती गयी लापरवाही एवं अखिल भारतीय सेवायें (आचरण) नियमावली–1968 के प्राविधानों के अनुपालन का उल्लंघन करने के मामले में उनके विरुद्ध शासन के कार्यालय–आदेश संख्या–1382/छः पु0से0–2–04–26/1(7)/98, दिनांक 27.10.04 द्वारा अखिल भारतीय सेवायें (अनुशासन एवं अपील)

नियमावली–1969 के नियम–10 के अन्तर्गत विभागीय कार्यवाही प्रारम्भ की गयी।

उक्त प्रकरण में प्राप्त श्री अमिताभ ठाकुर के लिखित अभिकथन एवं अन्य सुसंगत अभिलेखों के परीक्षणोंपरान्त शासन द्वारा श्री अमिताभ ठाकुर, आई0पी0एस0–आर0आर0–1992 को निम्नवत् चेतावनी प्रदान करने का निर्णय लिया गया है:–

> *"श्री अमिताभ ठाकुर, आई0पी0एस0–आर0आर0–1992, तत्कालीन पुलिस अधीक्षक, देवरिया द्वारा दो संस्थाओं–अनुभूति सामाजिक एवं सांस्कृतिक विकास संस्थान तथा समाधान सामाजिक एवं सांस्कृतिक विकास संस्थान का प्राधिकारी बनने उक्त संस्थाओं के लिए भूमि क्रय करने की सूचना शासन को न देने तथा जनपद देवरिया में हुई कार चोरी के मामलें में प्रक्रिया के अनुसार नीलामी न करने के लिए श्री ठाकुर को शासन स्तर से चेतावनी प्रदान की जाती है कि व भविष्य में इस प्रकार की अनियमितता/लापरवाही की पुनरावृत्ति नहीं करेगें।"*

उक्त चेतावनी के साथ श्री अमिताभ ठाकुर, आई0पी0एस0 के पुलिस अधीक्षक, देवरिया कार्यकाल से संबंधित मामले में उनके विरुद्ध अखिल भारतीय सेवायें (अनुशासन एवं अपील) नियमावली–1969 के नियम–10 के अन्तर्गत चल रही विभागीय कार्यवाही को एतद्द्वारा समाप्त की जाती है।

श्री राज्यपाल की आज्ञा से,
(आर0एम0श्रीवास्तव)
सचिव, गृह"

4. Further the case of the applicant is that the State Government vide its Office Order dated 26.5.2009 on the basis of letter dated 13.7.2007 of Government of India, Ministry of Home Affairs revived the chargesheet dated 27.10.2004 after cancelling Office Memorandum dated 25.5.2007. The applicant was asked to submit his Statement of Defence within a period of 15 days. Within 05 days of getting the letter from State Government, the applicant sent a detailed representation on 15.6.2009 (Annexure A-4) followed by reminders. The applicant has come to this Tribunal on 22.4.2010 with the prayer for issuing/passing order or direction to the respondents commanding them to immediately quash the illegal DE pending against the applicant. In terms of this Tribunal's order dated 9.8.2011, the applicant while arguing his case in person stated

that he does not want to press other reliefs, lest the O.A. may be found to be hit by Rule 10 of CAT (Procedure) Rules, 1987 pertaining to multiple relief(s).

5. According to para 5 of O.A., the grounds for relief for quashing the departmental enquiry pending against the applicant are as below:

> "(A) *Because the DE against the petitioner has been reopened as against the basic provisions of law and are hence completely illegal.*
>
> *(B) Because the same DE has been kept deliberately, intentionally and maliciously pending just like that for more than a year now without having taken any decision while ideally the entire process, including the Enquiry Proceedings and the final decision shall take place within six months.*
>
> *(C) Because Sri Kunwar Fateh Bahadur, the Principal Secretary Home is personally biased in the case and is playing a most partisan role as has been exemplified from the above mentioned instances.*
>
> *(D) Because there are atleast three cases of IPS officers in U.P. cadre where warning was issued after the DE and no review was made.*
>
> *(E) Because due to this illegal DE and its completely unwarranted pendency, the petitioner is being denied his lawful rights of getting promoted to DIG.*
>
> *(F) Because this behaviour and inaction on the part of the respondents is the most unfair, arbitrary, callous, deliberate, illegal, malafide and biased and is no apparently violating of Articles 14 & 16 of Constitution of India."*

6. The applicant has also pleaded in O.A. itself that in cases of S/Sri Ajai Anand, Ram Kumar and Lav Kumar, departmental enquiry under All India Service (Discipline & Appeal) Rules, 1969 was closed by awarding warning to them after closing their departmental enquires without considering their cases in the light of above instructions given by Central Government which applies in all cases. In Rejoinder Affidavit, it has been further elaborated that they were also awarded warning after holding DE under All India Service (Discipline & Appeal) Rules, 1969 and similar rules as applied to the applicant were applied to them. He has challenged the discrimination being meted out to him in treating departmental enquiry closed in his case by

State Government by issuing a warning to him and suddenly reopening the disciplinary enquiry after a lapse of two years, which is in violation of Rule 24(1) of All India Service (Discipline & Appeal) Rules, 1969.

7. The applicant has also pleaded that model guidelines have been developed by the Ministry of Personnel which are required to be followed for adhering to model time limit for completion of various stages of disciplinary proceedings for expeditious disposal. These guidelines were circulated to all State Governments vide DP& AR letter no. 11018/7/78-AlS(III) dated 16.8.1978. Para 2.3 of the said letter dated 16.8.1978 is reproduced below:

> *"If these time limits and principles are assiduously observed the period from the date of serving a chargesheet in a disciplinary case to the submission of report by the Enquiry Officer, would ordinarily not exceed six months".*

8. The Government of India (respondent no.1) filed their Short Counter Affidavit through M.P. no. 1579 of 2010 on 29.9.2010 confirming that they had requested to the State Government, as below:

> *".....where it is considered after the conclusion of the disciplinary proceedings, that some blame attaches to the officer concerned which necessitates cognizance of such fact, the disciplinary authority should award one of the recognized statutory penalties. If the intention of the disciplinary authority is not to award the penalty of Censure, then no recordable warning or reprimand should be awarded"*

On the basis of this observation of Government of India, State Government reopened the departmental enquiry on 26.5.2009. The respondent no.1 further confirms that the applicant had objected to Government of U.P. regarding delay of two years, which has been taken by the State Government to reopen the matter. The respondent no.1 further pleaded that since the applicant has not challenged any of the orders or instructions of Government of India, but has only challenged the action of State Government, who had issued him chargesheet on 27.10.2004 and reopened the matter after

almost two years (of closing it), the respondent no.1 prayed that they may be discharged from the list of array of parties.

9. The Counter Reply on behalf of respondent nos. 2 & 3 was filed on 7.7.2010. The State Government has conceded that Office Order dated 27.10.2004 (Annexure A-1) was served upon the applicant under Rule 10 of All India Service (Discipline & Appeal) Rules of 1969 with regard to misconduct stated therein for imposing minor penalty. The applicant submitted written statement of defence dated 4.4.2005 (Annexure C-1 to Counter Reply). The competent authority considered the material on record of Office Order dated 27.10.2004 and applicant's written statement of defence dated 4.4.2005 and took a decision that the applicant has committed misconduct for which warning was issued vide Office Memorandum dated 25.5.2007 (Annexure A-2) and disciplinary proceedings which was initiated through Office Memorandum dated 27.10.2004 (Annexure A-1) was closed. The State Government sent a copy of Office Memorandum dated 25.5.2007 (Annexure A-2) to Government of India, Ministry of Home Affairs (respondent no.1) as the applicant's Annual Confidential Report is also maintained in the office of respondent no.1. The respondent no.1 considered the Office Order dated 27.10.2004 (Annexure no.1 to the Original Application) and office memorandum dated 25.5.2007 (Annexure no.2 to the Original Application) and ultimately decided that the warning awarded to the applicant is not in accordance with Rule 6 of the All India Service (Discipline & Appeal) Rules 1969 and, therefore, the respondent no.2 should take appropriate decision. In pursuance of letter dated 13.7.2007 of respondent no.1, the State Government, respondent no.2 took a decision on 22.5.2009 to set aside the Office Memorandum dated 25.5.2007 (Annexure A-2) and the said decision was communicated to the applicant through Office Order dated 26.5.2009 (Annexure A-3) and the applicant was given an opportunity to submit written statement of defence in pursuance of Office Order dated 27.10.2004. The applicant has not challenged the respondent no.1's letter dated 13.7.2007 and Office order dated 26.5.2009, (Annexure A-3) before this Tribunal resulting which no relief contrary to the same can be

granted to the applicant, it has been pleaded. Vide Office Order dated 26.5.2009 the State Government reconsidered the entire matter and cancelled the Office Memorandum dated 25.5.2007 and reopened the disciplinary proceedings vide Office Order dated 26.5.2009. Further, it is stated that the applicant submitted Written Statement of defence dated 15.6.2009 (Annexure A-4) and reminders dated 30.6.2009, 4.8.2009, 5.10.2009, 30.10.2009, 19.12.2009, 8.1.2010, 18.2.2010 and 2.4.2010. The State Government – respondent no.2 ultimately considered and decided that the applicant be awarded punishment of censure under Rule 6 of All India Service (Discipline & Appeal) Rules, 1969 resulting which consultation with Union Public Service Commission was necessary in terms of Rule 10(1)(e) of All India Service (Discipline & Appeal) Rules, 1969 and accordingly a reference has been made through letter dated 30.6.2010 (Annexure C-3 to the Counter Reply). The applicant was considered for promotion to the post of Deputy Inspector General of Police on 1.5.2008, 4.2.2009 and 18.11.2009 by Departmental Promotion Committee. The recommendations of Departmental Promotion Committee dated 1.5.2008 and 4.2.2009 were kept in a sealed cover keeping in view the disciplinary proceedings pending against him. The State Government made a reference through letter dated 30.6.2010 (Annexure C-3 to the Counter Reply) to UPSC. A query dated 10.7.2010 made by UPSC of which a reply dated 9.3.2011 was sent by State Government and ultimately advice of UPSC dated 26.7.2011 was received by State Government. The relevant extract of advice of UPSC is reproduced below :

> *"आयोग का, ऊपर चर्चित अपने निष्कर्षो के आलोक में तथा इस मामले के अन्य सभी संगत पहलुओं को ध्यान में रखते हुए यह मत है कि चूंकि सेवा के सदस्य के विरुद्ध आरोपों में उनके द्वारा किया गया घोर कदाचार विहित है, जिसके आधार पर दीर्घ शास्ति कार्यवाही अपेक्षित है, अतः अनुशासनिक प्राधिकारी, श्री अमिताभ ठाकुर, भा.पु.से., के सदस्य के विरुद्ध अखिल भारतीय सेवा (अनुशासन एवं अपील) नियमावली, 1969 के नियम–8 के अन्तर्गत दीर्घ शास्ति की कार्यवाही प्रारंभ कर सकते है। तदनुसार, आयोग का यही परामर्श है।*

10. The respondent no.4 namely Sri Kunwar Fateh Bahadur, Principal Secretary (Home), Lucknow has also filed Counter Reply adopting the detailed Counter Reply filed by respondent nos. 2 & 3 i.e. State of U.P. and D.G. Police, U.P.

11. The applicant in his Rejoinder has pleaded that the State Government having closed the case and departmental enquiry once and has now decided to reopen his case suddenly after a huge delay of nearly two years. He has, therefore, challenged the action of the respondents of recommending awarding him punishment of 'Censure' under Rule 6 of All India Service (Discipline & Appeal) Rules 1969 which according to him, is in violation of the powers of State Government to review its decision under Rule 24(1). Rule 24(1) of All India Service (Discipline & Appeal) Rules 1969 clearly states that in case no appeal has been preferred (as in the present case) it needs to be done within one year of the original order. Thus, the State Government has simply no power to recommend/award such punishment by reviewing its decision in violation of statutory rule 24(1) All India Service (Discipline & Appeal) Rules, 1969 mentioned above and is prima-facie an illegal act. It is also pleaded that the State Government talks about the applicability of Rule 20(4) of All India Service (Discipline & Appeal) Rules, 1969. Rule 20 of All India Service (Discipline & Appeal) Rules, 1969 has no sub-section under it.

12. The respondent nos. 2 & 3 also filed Supplementary Counter Reply at a belated stage saying that although the Supplementary Counter Reply was drafted on 26.6.2010, but the same was sent for necessary action on 1.11.2010 and could not be received back from the State Government till 17.6.2011. Even at that time, it could not be filed. It was filed only after the arguments were finally heard and the judgment was reserved for orders. It is contended that this Suppl. Counter Reply was not filed on the ground of its being misplaced in the file of learned counsel for the respondent nos. 2 & 3. Its filing was vehemently opposed by the applicant on the ground of delay of about seven months, which was consumed by State Government in giving approval of Supplementary Counter

Reply. However, in the interest of justice, it was taken on record vide order dated 18.8.2011 subject to payment of Rs. 500/- as token costs. In this Supplementary Counter Reply, it has been said that at a subsequent stage, the respondent no.2 considered and decided that the applicant be awarded punishment of 'Censure' under the relevant rules on account of which consultation of Union Public Service Commission was necessary and accordingly a reference was made through letter dated 30.6.2010. It has been further said that the applicant cannot draw any comparison with the cases of S/Sri Ajai Anand, Ram Kumar and Lav Kumar.

13. We have heard the applicant who was present in person and the learned counsel for the respondents and perused the material on record.

14. This O.A. was filed on 22.4.2010 impugning departmental enquiry which has been reopened. Thereafter, a decision was made for imposing the penalty of 'Censure' under Rule 6 of All India Service (Discipline & Appeal) Rules, 1969. The State Government has also sent its decision to UPSC to seek its advice. Therefore, the applicant at that stage filed M.P. no. 1060 of 2010 for impleading UPSC which was allowed by the Tribunal vide its order dated 24.11.2010. But the UPSC did not file any Counter Reply.

15. The applicant submitted that the entire matter began in the year 2000 when two complaints were made against the applicant during his posting as Superintendent of Police, Deoria in the year 1998-2000. One of these was by Sri Brahma Shankar Tripathi, the Ex-MLA, Kasaya, Deorai which made many allegations against the applicant. Enquires were made at different stages by different authorities and one accusation about the applicant having got registered a Society by the name of "Anubhuti Sewa Sansthan" and having brought a piece of about 21 decimal of land in the name of his wife as Secretary of that Society without informing the Government was alleged to have been substantiated. The applicant was asked to explain his conduct and he replied that he was indeed the President of the society registered under the Societies Registration Act which

he had informed the State Government and that the land did not belong to him or his wife, but to the society and hence there was no reason to intimate its purchase to the Government. The second accusation was made by one Sri Awadesh Chaubey which alleged that the applicant had got his Maruti Car auctioned for himself in a fraudulent manner through misuse of his position as Superintendent of Police, Deoria. Both these cases were referred for Vigilance enquiry by DGP office where a proper open enquiry was conducted by U.P. Vigilance department. Finally, enquiry report made only one recommendation about the applicant "Sri Amitab Thakur, the then Superintendent of Police, Deoria shall be warned for future." Thereafter, State Government issued a show cause notice of Office Memorandum dated 27.10.2004 (Annexure A-1) with almost the same charges as were initially made against the applicant. The applicant represented on 4.4.2005 against it after which the matter was kept pending, once more for two years before it was finally decided by State Government to close the DE and to issue a warning to the applicant through order dated 25.5.2007 and thereafter the matter of DE was reopened after two years of its having been closed on that date totally ignoring the relevant provisions of All India Service (Discipline & Appeal) Rules, 1969.

16. Sri A.K. Chaturvedi, learned counsel for respondent nos. 2 to 5 submitted that no specific relief has been sought by the applicant in respect of subsequent Office Order dated 26.5.2009. As against this, the applicant submitted that he has sought comprehensive relief for quashing of departmental enquiry, which was initiated in 2004 and was finally closed vide Office order dated 25.5.2007 and then after a gap of two years, it was reopened in utter violation of the relevant rules which provides only one year for reopening the enquiry. He further submitted that the applicant has, therefore, a right to challenge the order dated 26.5.2009 which comes within the relief as sought i.e. quashing of departmental enquiry. Further the applicant argued that the charge sheet issued against the petitioner in this DE on 27.10.2004 (Annexure 1) was duly and finally concluded on 25.5.2007 when the State Government

closed it after considering the applicant's representation to the charge sheet furnished to the State Government on 4.4.2005. The State Government decided to close the departmental enquiry as clearly mentioned in the Office Memorandum dated 25.5.2007 (Annexure-2) after issuing warning to the petitioner. Hence, the applicant argued that it cannot be called premature to challenge the order dated 26th May 2009 to the State Government whereby, it has decided to reopen disciplinary case once again in violation of Rule 24 of the Rules of 1969. This action of the State Government has proved fatal to the applicant as his case for promotion is still kept in sealed cover even after closing of his departmental enquiry vide Annexure-2 dated 25.5.2007.

17. The learned counsel for the respondents referred to 5 case laws in his support as mentioned in the order of the Tribunal dated 18.8.2011. However, he filed a compilation of 7 cases in support of his contention.

(i) Union of India and Another Vs. Ashok Kacker, 1995 Supp(1) SCC 180. In this case, the respondents rushed to the Central Administrative Tribunal merely on the information that a charge sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge sheet. The Apex Court ruled that this was not the stage at which the Tribunal ought to have entertained such application for quashing the charge sheet and the appropriate course for the respondent to adopt is to file his reply to the charge sheet and invite the decision of the disciplinary authority thereon. The facts in present case are quite distinguishable from the facts mentioned in the case cited above because on the basis of chargesheet dated 27.10.2004 the enquiry was already completed and closed on 25.5.2007 which is being reopened after two years in violation of Rule 24 of All India Service (Discipline & Appeal) Rules, 1969. Therefore, this case law may not be applicable in this case.

(ii) ***State of Punjab & Others Vs. Ajit Singh-(1997) II SCC 368***. According to the facts, the respondent submitted his representation against the order of suspension, which was rejected by the State Government. The respondent filed a Writ Petition in the High Court of Punjab and Haryana challenging the order of suspension, the charge and the order rejecting the representation against the order of suspension. The Writ Petition was allowed by a learned Single Judge of the High Court and Letters patent appeal (LPA No. 1631/1989) filed by the appellants against the said judgment of the Single Judge was dismissed by the Hon'ble High Court of Punjab and Haryana.

Apex Court ruled as below:-

> ***"We are, however, of the view that the High Court was in error in setting aside the charge sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge sheet was based and even thought the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondent. We are unable to uphold this approach of the High Court. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge sheet were without any basis whatsoever."***

Here again, in the present case after conducting the preliminary enquiry by the vigilance department, a charge sheet issued under Rule 10 of All India Service

(Discipline & Appeal) Rules, 1969 was closed by the State Government after considering the submission or representation of the applicant as mentioned above. All relevant documents and all the relevant evidence gathered by the vigilance department was forwarded to the State Government recommending only issue of warning, if considered necessary. The State Government thereafter issued the charge sheet dated 24.10.2004. The facts of present case are also distinguishable on the basis of the facts of this case law. Moreover, in this case, provisions as contained in vigilance manual and All India Services Discipline and Appeal Rules), 1969 were followed before closing the disciplinary enquiry on 25.5.2007 but then it was reopened after two years in violation of the relevant rules.

(iii) ***Dy. Inspector General of Police Vs. K. S. Swaminathan (1996) 11 SCC 498.*** The Apex Court set-aside the order of the Tribunal dated 15.4.1994 which set aside the charge memo on the ground that the charges were vague. The Apex Court ruled that at the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. In present case, the charge sheet dated 27.10.2004 was closed by the State Government after considering the relevant aspects regarding statement of facts and all the relevant material in support of the allegations of misconduct. The facts are therefore distinguishable from the case cited. No point of vagueness is involved in the case in hand.

(iv) Union of India and Another Vs. Kunisetty Satyanarayana (2006) 12 Supreme Court Cases 28.
The relevant Paras of the case cited are reproduced below:-

"14.The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and /or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such a discretion under article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High court should not interfere in such a matter."

In the case in hand as said before, after closing the Departmental Enquiry it has been reopened in violation of

the Rules. Therefore, it is distinguishable. On the other hand, in this case law, Hon'ble Apex Court has also provided that in case, the charge sheet or show cause notice is found to be wholly illegal, there is no bar on Tribunals or the Courts to exercise discretionary jurisdiction to safeguard the right of the applicant.

(v) ***State of Uttar Pradesh Vs. Brahm Datt Sharma and Another-(1987) 2 SCC 179.*** In this case, departmental enquiry which was going on against the Government servant was revived after his retirement under Article 470 of Civil Services Regulations. The Regulations also vested power in the appointing authority to take action for imposing deduction in pension as State Government is competent authority. Therefore, it was observed that the State Government was competent to issue show cause notice to the respondent. The Apex Court held that the High Court was not justified in quashing the show cause notice. When a show cause notice issued to a Government servant under statutory provisions calling him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference of the Court before that stage would be pre-mature.

In the case, in hand, after issuance of initial chargesheet dated 24.10.2004, the enquiry was concluded and case was closed after issuance of warning. In a routine manner, a copy of this order was sent to Ministry of Home Affairs. The Ministry of Home Affairs sent a letter to the

State Government saying that if some blame attached to the officer concerned which necessities awarding one of the recognized statutory penalties, then why the State Government has awarded warning which is not one of the recognized statutory penalties. That if the intention of the disciplinary authority is not to award the penalty of 'Censure' then no recordable warning or reprimand should be awarded. On the basis of this letter, the State of U.P. kept the matter pending for about two years for its consideration and then only reopened the enquiry and proposed 'Censure' entry which necessitated the consultation of UPSC also and therefore, this time advice of UPSC was also sought vide letter vide letter dated 30.6.2010. But the confusion became worse compounded when the UPSC opined vide reply dated 26.7.2011 that it is a case for recommending for imposition of major penalty under Rule 8 (instead of minor penalty under Rule 10 of All India Service (Discipline & Appeal) Rules, 1969). Coming back to the preposition of law laid down in the aforesaid case of Brahm Dutt Sharma (supra) since in the present matter, it was a case of reopening of the enquiry in violation of the relevant Rules, there is no question of its being pre-mature. It is also relevant to mention here that after the aforesaid advice of UPSC, there does not seem to be any latest action on the part of State Government. But after all a matter should come to an end. It cannot be an unending process for no fault of the applicant and a sword of democles cannot be permitted to hang over the neck of an officer of All India Service for an indefinite period on the whims of the State Government and that too in violation of the Rules. This matter is of the year 2000 which the respondents have kept pending for the last about more than 10 years and nowhere this delay is attributable to the applicant. Therefore, this case law does not give any strength to the respondents because it is distinguishable.

In addition to five cases laws as mentioned in the order of the Tribunal dated 18.8.2011, learned counsel for the

respondents have included two more case laws while filing compilation of cases. These are being analyzed below:

(vi) **Paritosh Singh & Others Vs. State of U.P. & Others reported in 2011 (29) LCD 610**. In the cited case the consequential order alone was challenged and the original decision of the State Government dated 27.8.2007 had not been challenged. In the case of Government of Maharashtra Vs. Deokar's Distillery, reported in (2003) 5 SCC 669 the Hon'ble Supreme Court has held that when writ petitions are filed challenging only consequential orders without challenging the original orders by which the cause of action arose such writ petitions deserve to be dismissed as not maintainable. The present case is regarding a disciplinary case covered by All India Service Act and the Rules framed there-under and the main relief which has been sought by the applicant is to quash the departmental enquiry, which has been reopened in violation of the Rules.

(vii) **Government of Maharastra & Others Vs. Deokar's Distillery reported in (2003) 5 SCC 669 (Para 38)**. In this case, it was found that the High Court has failed to notice another important factor that the statutory provision under Article 309, namely the notification dated 10.12.1998 and the consequential administrative instructions/orders issued for carrying out the executive function under Section 58-A of the Prohibition Act and Article 162, namely, the circular letter dated 30.7.1999 had not been challenged by the respondents herein and, therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, was not right in quashing the demand notice issued by Appellant no.4, namely, the Sub-Inspector of State Excise, in charge of the manufacturing factory of the respondent, without examining the validity of or quashing the Rules of 1998 and the consequential circular dated 30.7.1999 issued by Appellant 2 namely, the Commissioner, since the demand

notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular letter dated 30.7.1999." But for the reasons stated in respect of the aforesaid case laws (supra), this case law also does not give any strength to the respondents.

18. Thus, none of the aforesaid case laws give any strength to respondent nos. 2 & 3. On the converse, in para 16 of Union of India & Another Vs. Kunisetty Satyanarayana (supra) the Hon'ble Apex Court has laid down that in exceptional cases the High Court can even quash a chargesheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. Here, we do not intend to quash the chargesheet or any show cause notice. In the case in hand challenge has been made only against reopening of departmental enquiry in utter violation of Rule 24(1) of All India Service (Discipline & Appeal) Rules, 1969 which provides stipulated period of one year for reopening of an enquiry; whereas respondent nos.2 and 3 have traveled beyond that period. It is also worthwhile to mention here that as would be evident from the tone and tenor of the entire O.A. as also relief no.8(a), the applicant has not challenged either the chargesheet dated 27.10.2004 or conclusion of the initial enquiry giving 'warning' only vide order dated 25.5.2007. He has only assailed reopening of enquiry by the State Government after expiry of stipulated period in utter violation of the aforesaid Rules. It is also worth while to mention here that it is only after reopening of disciplinary enquiry vide order dated 26.5.2009 by the State Government, the applicant rushed to this Tribunal on 22.4.2010 to file this O.A. to challenge it. He may not have mentioned the word 'reopening' in relief clause 8(a) but that is the only meaning which can be construed on the basis of his pleadings. The applicant appears to have drafted these pleadings himself and he also appeared and argued personally. He may not be well versed with legal terminologies and nuances In this regard, further it may be mentioned that according to the procedure laid down under Rule 10 of All India Service (Discipline & Appeal) Rules, 1969 consultation with Union Public Service Commission under Rule 10 (1) (e) of the said

Rules is necessary. Rule 10(2) of the said Rules provides the list of documents to be enclosed by State Government while sending the complete case to Union Public Service Commission. In the present case as discussed above the initial enquiry was closed by giving a warning without consulting with the Central Government/Union Public Service Commission. The State Government merely sent its information to the Ministry of Home Affairs. But the Ministry of Affairs opined since recordable 'warning' had all the attributes of 'Censure', the Government of U.P. should reconsider the matter in light of Government of India's decisions under Rule 6 of the Rules of 1969. As per the said decision, where it is considered after the conclusion of the disciplinary proceedings that some blame attaches to the officer concerned which necessities cognizance of such fact, the disciplinary authority should award one of the recognized statutory penalties. If the intention of the disciplinary authority is not to award the penalty of Censure, then no recordable warning or reprimand should be awarded as has been done in the case of the applicant. This advice came vide letter dated 13.7.2007 (Annexure CA-2). Rule 24(1) of All India Service (Discipline & Appeal) Rules, 1969 is as under:

> *"24 (Revision) (1) Notwithstanding anything contained in these rules, the Central Government or the State Government concerned, as the case may be may at any time exceeding 6 months from the date of the order passed in appeal if an appeal has been preferred, and where no such appeal had been preferred,* ***within one year*** *of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension of any inquiry and [revise] any order made under these rules or under the rules repealed by Rule 30 from which an appeal is allowed. But from which, no appeal has been preferred or from which no appeal is allowed (***) any may:*
>
> *(a) confirm modify or set aside the order; or*
>
> *(b) confirm reduce enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*
>
> *(c) remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
>
> *(d) pass such orders as it may deem fit.*

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or enhance the penalty imposed by the order sought to be [revised] to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and [***] except after consultation with the Commission.

Provided further that where the original order was passed by the Central Government or State Government concerned, as the case may be, after consultation with the Commission, it shall not be revised except after consultation with the Commission.

(2) No proceeding for [revisional] shall be commenced until after-
(i) the expiry of the period of limitation for an appeal or
(ii) the disposal of the appeal where any such appeal has been preferred.

19. But in the present case, the State Government permitted this limitation to expire and kept the matter pending for about two years. Then only took a decision on 2.5.2009 to set-aside the earlier O.M. dated 26.6.2007 and this decision was communicated to the applicant through letter dated 26.5.2009. Then on 30.6. 2010 the advice of UPSC was sought for the first time in respect of proposed punishment of 'Censure'. Since the complete papers were still not forwarded to Union Public Service Commission as required under rule 10(2), there was no response from Union Public Service Commission even after lapse of 10 months. Ultimately, the Union Public Service Commission could send its advice only in the next year i.e. on 26.7.2011.

20. A belated effort has been made by the State Government to explain this delay of about two years by filing Supplementary Counter Reply dated 16.8.2011. It has been tried to explain that on receipt of advice from the respondent no.1 vide their letter dated 13.7.2007 the matter was considered at various levels in the Department of Home, Government of U.P. This matter was also referred to Department of Law six times for further opinion and in addition thereto, three times for discussion. We are not

supposed to go into those details. The statutory provision contained in Rule 24(1) of the aforesaid Rules specifically provides limitation of one year and we are concerned only with that period. If any act has been performed in utter violation of this provision, then we are bound to decide it against the State Government. They were required to ensure compliance of the statutory provision within stipulated period, which they failed to do. Whether the matter was referred six times to the Department of Law or whether discussions were made three times, we are not concerned with that. After all, on such flimsy pretext, a government servant cannot be made to suffer because such delay has proved fatal to him. A clear procedure has been prescribed under the relevant Rules and even the DOP&T has provided model time limit for completion of departmental enquiry within six months. As said earlier this matter is of the year 2000 which the Government has kept pending for the last about more than ten years without attributing any delay on the part of the applicant. There cannot be any justification to act in utter violation of the statutory provision.

21. Learned counsel for the respondents contested the arguments of the applicant regarding applicability of Rule 24 of the said Rules. From the perusal of Counter Reply filed by respondent no.2 i.e. State Government it is observed that the State Government talks about applicability of Rule 20(4) of the said Rules, which is infact not existent in the said Rules. As Rule 20 under the said Rules has no sub-rule under it. It only shows callous and cavalier manner in which the State Government is treating processing of the entire matter without application of mind. They have just mentioned Rule 20(4) to make out their case even without having looked at statute book. Further, since the State Government closed the departmental enquiry on 25.5.2007 and reopened it on 26.5.2009 after lapse of two years, this revision is clearly in violation of under Rule 24 (1) of the said Rules as already discussed.

22. The other issue is regarding discrimination being meted out to the applicant affecting his right to receive fair trial and

equal treatment in applying All India Service (Discipline & Appeal) Rules, 1969.

23. As stated earlier, there are atleast three IPS Officers in whose cases departmental enquiry under rule 10 were closed by issuing warning by the State Government without consulting Union Public Service Commission as enjoyed under Rule 10 (1) (e) of All India Service (Discipline & Appeal) Rules, 1969. In Counter Reply and Supplementary Counter Reply field by State Government, there is no specific denial on this point. There is almost complete silence of State Government on the point of procedure followed in closing of departmental enquiries of these three IPS Officers whose names have been mentioned before. It is, therefore, difficult to understand that under what circumstances different yardsticks are being applied for closing of disciplinary cases against the aforesaid three IPS officers without consultation with Union Public Service Commission vis-a- vis the applicant in whose case after closure of departmental enquiry, it has been reopened after expiry of stipulated period of one year in utter violation of Rule 24(1) of All India Service (Discipline & Appeal) Rules, 1969. It only leads to the conclusion that the State Government while proceeding under this Rule 10 is either not following the prescribed procedure under this Rule or is applying these yardsticks selectively rendering the applicant to unfair trial. It is also noteworthy that the Central Government maintains A.C.Rs reflecting the work, performance and conduct of All India Service Officers. In the case of IPS officers, Ministry of Home Affairs is designated Ministry. Surprisingly, the Central Government has also kept silence on the issue of closing disciplinary proceedings against the three aforesaid IPS officers other than in the manner prescribed under Rule 10 by the State Government while permitting different yardstick to be applied in the case of the applicant. The Central Government has preferred to file only a Short Counter Reply with the request to discharge Union of India from the array of the parties on the ground that the applicant has only challenged the action of State Government and he has not challenged any of the orders or instructions of Government of India.

24. Finally, in view of the above discussion, we partly allow this O.A. Since the departmental enquiry has been reopened against the applicant vide order dated 26.5.2009 in utter violation of Rule 24(1) of All India Service (Discipline & Appeal) Rules, 1969, we hereby quash the reopening of departmental enquiry. In view of the statement given by the applicant himself on 9.8.2011 in respect of remaining relief(s), we refrain ourselves from passing any order pertaining to those relief(s). No order as to costs.

8.9.11

(S.P. Singh)
Member-A

Alok Kumar Singh 8.9.11

(Justice Alok K Singh)
Member-J

Girish/-