Reserved
(On 18.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **04th** day of **October** 2018

Original Application No. 330/01356 of 2008

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Raju S/o Sri Pyare Lal, Telecom Mechanic, Office of Sub Divisional Engineer –III, General Manager Telecom District, Aligarh.

. . .Applicant

By Adv: Shri K.P. Singh

V E R S U S

1. Union of India through Secretary, Ministry of Telecommunication, New Delhi.

2. Director (Staff), Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi.

. . . Respondents

By Adv: Shri S.N. Chatterjee

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant has filed this OA seeking the following reliefs;-

" **(i)** ***To issue writ, order or direction in the nature of certiorari quashing the show cause notice dated 26.09.2008 issued by the Respondent No.2 as Annexure No.A-I of the Compilation No.1.***

(i) ***To issue writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the show cause notice dated 26.09.2008.***

(ii) ***To issue any order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.***

(iii) ***To award cost to the applicant***."

2. The applicant, while working as Telecom Mechanic under the respondents, got involved in a case of bribery. The applicant's case is that he was handed over an envelope by one inspector of the CBI for handing over to another employee Shri NP Singh and when he took it without knowing what was there inside the envelope, he was apprehended by the same police officers for accepting bribe. It is stated that action was taken against the applicant in spite of the complainant stating that there was no complaint against him. But the applicant alongwith Shri NP Singh, was charge-sheeted by the CBI and was convicted by the trial court. Against the conviction, the applicant has filed criminal appeal No. 3458/2003 before Hon'ble High Court and the execution of the sentence and realization of the fine were stayed in an interim order. The said criminal appeal is pending. When BSNL came to existence and the employees of the Department of Telecommunication (in short DOT) were taken over by the BSNL. But the applicant's service was not taken over due to pendency of the case. Thereafter, he was issued a show cause notice on 23.9.2005 proposing the punishment of removal from service in view of his conviction. His services were terminated from 31.1.2006 orally and the said order was challenged before the Tribunal, which stayed the termination vide order dated 21.2.2006.

3. It is further stated by the applicant that the respondents did not implement the order dated 21.2.2006, for which a contempt proceeding was started. Finally, the applicant was taken back in service w.e.f. 5.7.2006. On the same day, a fresh show cause

notice was issued by the respondents. The respondents filed a writ petition before Hon'ble High Court against the interim order dated 21.2.2006 of the Tribunal and vide order dated 29.3.2007, Hon'ble High Court stayed the operation of the order dated 21.2.2006 of the Tribunal. This order was challenged by the applicant in Hon'ble Apex Court in a S.L.P. and an interim order to maintain the status quo was passed. Thereafter, the S.L.P. was dismissed with direction to file stay vacation application before Hon'ble High Court and pending this, the interim order of status quo is to continue. Thus, the applicant continued to be in service.

4. In the meantime, another show cause notice dated 26.9.2008 was issued by the respondent no. 2 who is the superior authority above the appointing authority for the applicant. The said show cause notice is under challenge in this OA. The Tribunal on the first hearing of the OA, had stayed the operation of the impugned show cause notice vide order dated 29.12.2008.

5. The applicant's case is based on mainly on the following grounds:-

- The rule 116 of the Posts and Telegraphs Manual, Volume-III provides that in such cases, the punishment of dismissal, removal or compulsory retirement from service should not be imposed if the criminal appeal against the conviction is pending.
- Vide the judgment of Hon'ble Apex Court in the case of Ram Narang vs. Naresh Narang & others reported in (1995)2 SCC 513, it is held that disqualification on the ground of conviction for particular employee shall depend on the special provisions of the rule.

- The rule 3(1)(e) of the CCS (CCA) Rules, 1965 provides that where there are special provisions for any employees under a law or rules approved by President, then the provisions under the CCS (CCA) Rules shall not apply in matters covered by such special provisions. In view of the rule 116 of the Posts and Telecommunication Manual (in short P&TM), the provisions of CCS(CCA) Rules regarding punishment on the ground of conviction will not apply.
- The impugned show cause notice dated 26.9.2008 is mechanical in nature, illegal, arbitrary and malafide and it is violative of the principles of natural justice.

6. Main averments of the respondents in their counter reply are as under:-

(a) It is stated that the Hon'ble High Court of Allahabad on the appeal filed by the applicnat against his conviction, only suspended his sentence and has not stayed his conviction.

(b) It is stated that staying of the execution of sentence by the Hon'ble Allahabad High Court in the Appeal filed by Shri Raju (applicant), does not amount to staying of conviction and therefore, it is not a bar on the department to proceed against him under Rule 19 of CCS (CCA) Rules, 1965 and the show cause notice dated 26.09.2008 is in order and as per Rules.

(c) It is stated that the applicant has been convicted by the trial court on serious charges of corruption.

(d) It is stated that the decision of the Hon'ble Supreme Court in Special Leave Petition No.6910 of 2007 cannot be made applicable to the applicant as he has not approached that Court for seeking relief.

(e) It is stated that the earlier show cause notice dated 05.07.2007 could not be acted upon as the applicant approached Hon'ble CAT/High Court, Allahabad for seeking stay. As the Hon'ble High Court of Allahabad in Writ Petition No.15463 of 2007 stayed the proceedings of the Hon'ble CAT in OA No.156 of 2006, filed by the applicant vide interim order dated 29.03.2007 and granted liberty to department to take action against the applicant, a fresh show cause notice dated 26.09.2008 was served on the applicant by the disciplinary authority as the earlier show cause notice dated 05.07.2007 became infructuous in view of not being served on the applicant.

(f) It is stated that the authority competent to take action against the applicant, who stands convicted is Director (Staff), Department of Telecommunication and the rules applicable to him are CCS (CCA) Rules, 1965, in view of his being a Govt. employee.

7. We have heard Shri K.P. Singh, learned counsel for the applicant who also submitted a Written Argument, reiterating the averments on the pleadings and highlighting the point that the rule 116 of the P & T Manual is applicable in this case, not the provisions under the rule 19(1) of the CCS (CCA) Rules, 1965 and as per the said rule 116 (as quoted in para 5.18 of the OA) the impugned show cause notice is not maintainable since the criminal appeal against is pending. Copy of the judgments in the following cases were also filed by Shri Singh in support of the case of the applicant:-

(i) ***OA No.544 of 2006 alongwith other OAs– Shri Brij Pal SinghVs. Govt. of NCT & ors passed by CAT Principal Bench.***

(ii) ***Writ Petition (Civil) No.1044 of 2008 – Commissioner of Police Headquarter ITO, New Delhi Vs. Shri Brij Pal Singh passed by Hon'ble Delhi High Court.***

(iii) ***Ramesh Chandra Mangalik Vs. State of U.P. – 2000 LAB I.C. 3107, passed by Hon'ble Allahabad High Court.***

(iv) ***Rama Narang Vs. Ramesh Narang and ors. – Civil Appeal No.5620 of 1994 decided on 19.01.1995, passed by Hon'ble Supreme Court.***

(v) ***Ram Narain Tyagi Vs. State of U.P. and 04 ors. – Writ A No.3981 of 2016, passed by Hon'ble Allahabad High Court.***

8. Learned counsel for the respondents was heard. He reiterated the stand taken in the counter affidavit and stressed on the point that the rule 19(1) of the CCS (CCA) Rules, 1965 is applicable in this case and the impugned show cause notice is in accordance with the rule 19(1). He also furnished a written submission citing four judgments of Hon'ble Apex Court.

9. We have considered the pleadings as well as the submissions by both the parties in the case. It is seen that this Tribunal while passing the order dated 29.12.2008 in this OA has observed the following:-

> "29.12.08 .....
> (Interim Relief)- Considering the history of the case, prima-facie impugned order/show cause dated 26/9/08 Annexure-I to the OA (said to be served upon the applicant on 1/12/08) show that the impugned order/memorandum dt 26/9/08 has been issued mechanically. In view of the above, impugned order/memorandum dt 26/9/08 is hereby stayed & the respondents are directed not to give effect the impugned order/memorandum till further orders."

It is further seen that for modification or vacation of this interim order, no application was filed by the respondents, even alongwith

the counter affidavit, although a Miscellaneous Application for dismissal of the OA was filed with the counter affidavit.

10. It is further seen that the respondents had earlier issued the show cause notice to the applicant for removal from service, which was challenged by the applicant in the OA No. 156/2006 and the Tribunal passed the interim order dated 21.2.2006 (Annexure A-XI to the OA) directing the respondents not to interfere in functioning of the applicant as Telecom Mechanic on the ground that the show cause notice was issued by the BSNL authority, who was incompetent for issue of such order, since the applicant was not an employee of BSNL as no notification was issued by Government transferring services of the applicant to BSNL. Thus the first show cause notice dated 23.9.2005 was rendered non-operative due to interim order dated 21.2.2006. The respondents challenged the order dated 21.2.2006 and Hon'ble High Court stayed further proceedings of the OA No. 156/2006 before the Tribunal vide order dated 29.3.2007 (Annexure A-XIV to the OA).

11. As stated in the order dated 26.9.2008, the respondents issued another show cause notice dated 5.7.2006 was issued by Director (Staff) of the DOT as stated in para 10 of the counter affidavit, which could not be served on the applicant. Now again the fresh show cause notice dated 26.9.2008 has been issued by the respondent no. 2, which has been stayed by the Tribunal vide order dated 29.12.2008 on the ground that it was mechanically

issued by the respondents. But no order regarding the fate of the show cause notice dated 5.7.2006, has either been passed by the respondents or if passed, copy of that order has not been placed before us by the respondents.

12. Before we proceed further, it is necessary to decide the question whether the rule 116 of the P & T Manual as quoted in para 4.10 of the OA, which has not been denied by the respondents vide para 4 of the counter affidavit filed by the respondents is applicable in this case. The respondents have not placed before us if the rule 116 as stated in para 4.10 of the OA was the version that was applicable at the time of issue of the show cause notice dated 26.09.2008. Further, the respondents have taken a stand in the counter affidavit that the provision of the rule 19(1) of the CCS (CCA) Rules, 1965 will have overriding effect over the rule 116 of P & T Manual, but the reasons for the same have not been furnished by the respondents. The CCS (CCA) Rules, 1965 is a rule approved by the President under Article 309 of the Constitution of India. No where the applicant has claimed that the P & T Manual has been approved by the President of India so that its provisions will have an overriding effect vis-a-vis the provisions of the CCS (CCA) Rules, 1965 as specified in the rule 3(1)(e) of the CCS (CCA) Rules, 1965. Further, this ground of the rule 116 was not advanced or considered by the Tribunal while passing the interim order in this OA or the order dated 21.2.2006 in OA No. 156/2006 filed by the applicant as discussed in para 9 and 10 of this order. For these reasons, we are unable to accept the

argument of the learned counsel for the applicant that the rule 116 of the P & T Manual will have overriding effect on the provisions of the CCS (CCA) Rules, 1965.

13. Learned counsel for the applicant has cited 05 judgments in support of his case. In the case is Shri Brij Pal Singh (supra), the Principal Bench of this Tribunal while examining the Rule 11 (1) of the Delhi Police (Punishment & Appeal) Rule, 1980 alongwith the Circular dated 09.12.2005 issued by the Commissioner of Police, held that provisions under Rule 11 (1) will have overriding effect over the Circular dated 09.12.2005. The provisions the Circule of the Rule are applicable in the case of disciplinary proceedings against a Govt. servant. It is held that since the rule 11(1) provides that no removal or dism,issal from service will be ordered till the result of first appeal filed by convicted employee is known and the applicant is entitled to the relief stipulated under the rules. This matter was challenged by the Government before Hon'ble High Court of Delhi and it was held as under :-

> ***"14. On a plain reading of the proviso to Rule 11 (1) of the Rules, it is quite clear that it puts a fetter, for the benefit of a convicted police officer, on the exercise of the constitutional power of dismissal or removal without an inquiry. However, the restriction is limited to a situation where a first appeal is filed by the police officer against his conviction and sentence. In such an event, a reasonable restriction is statutorily placed upon the exercise of its constitutional power by the Petitioner to dismiss or remove without an inquiry. Consequently, the Petitioner will have to await the result of the first appeal. On a plain reading of the proviso, we see no reason to deny to a convicted police officer the full amplitude of the benefit statutorily conferred upon him."***

In the case of Ramesh Chandra Mangalik (supra), the issue before Hon'ble Allahabad High Court was whether the punishment in the disciplinary proceeding started on the same charges as criminal charges, will be in force after acquittal of the concerned employee from the criminal charges. Since, no formal disciplinary proceeding under Rule 14 of the CCS (CCA) Rule has been initiated in this case, the case cited by the applicant is distinguishable and is not applicable to the present OA. In the case of Ramesh Narang (supra), it was held Hon'ble Apex Court as under :-

> " ***20. For the above reasons we are of the opinion that since the interim order of stay did not specifically extend to the stay of conviction for the purpose of avoiding the disqualification under Section 267 of the Companies Act, there is no substance in the appeal and the appeal and the appeal is, therefore, dismissed. The appellate will pay the costs of this appeal which is quantified at Rs.25,000/-."***

The facts in the cited case were different, hence the case is distinguishable.

Lastly, in the case of Ram Narain Tyagi (supra), it was held by Hon'ble Allahabad High Court as under :-

> "***The provisions of Article 311 of the Constitution of India have been considered in the decision of the Supreme Court in the case of Shankar Dass Vs. Union of India and another, (1985) 2 SCC 358, wherein the Apex Court has held as follows :***
>
> ***It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to be penalty which could appropriately be imposed upon him in so far as his service career was concerned Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a persons from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power, like every other power, has to be exercised fairly, justly and reasonably. Surely the Constitution does not***

contemplate that a Government servant who is convicted for parking his scooer in a no parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article in applicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts to this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

.....

.....

In the present case the appointing authority has not applied his mind, after reading the judgment of conviction and punishment, in forming an opinion, that the conduct of the petitioner was such which did not require to provide to him an opportunity of hearing before the petitioner was dismissed from service.

In view of the settled proposition of law, as discussed above, a government employee can not be dismissed, removed or reduced in rank merely on the ground that he has been convicted by a Court of law. Thus, conviction alone is not enough to punish a government employee, but it is conduct of the employee concerned, which had led to his conviction on the basis of which, the government employee can be punished. Hence, it is necessary for disciplinary authorities to consider the conduct of convict government servant, which had led to his conviction. In the absence of the same, the order of the punishment would be bad. Further the consideration by the disciplinary authority is required to be recorded in writing."

14. The respondents' counsel in his written submission has cited the following five judgments. In the case of Deputy Director of Collegiate Education (Admn) Madras Vs. S. Nagoor Meera – 1995 Law Suit (SC) 271, it was held that a government service is liable for action under second proviso to Article 311 (2), if he is convicted in a criminal case, against which the criminal appeal has been filed, provided the conduct which led to his conviction warrants such a punishment. In the case of Union of India Vs. V.K. Bhaskar, (1997) 11 SC 383, it was held by the Hon'ble Apex Court

that decision of the Tribunal that Government cannot remove or dismiss the government servant convicted of criminal charge during pendency of the criminal appeal, is not correct, since for the purpose of taking action under the Rule 19(1) of the CCS (CCA) Rules, 1965, the relevant fact in the rule is conduct which has led to his conviction on a criminal charge. In the case of State of Punjab and other Vs. Bakshish Singh (1997) 6 SCC 381, the Hon'ble Apex Court has held as under :

> ***"It is settled legal position that it is for the disciplinary authority to p[ass appropriate punishment, the civil Court cannot substitute its own view to that of the disciplinary as well as appellate authority on the nature of the punishment to be imposed upon the delinquent officer. In view of the finding of the appellate Court that it is a grave misconduct, the appellate Court ought not to have interfered with the decree of the trial Court. The High Court dismissed it without application of the mind and ignoring the settled legal principles."***

In the case of Govind Das Vs. State of Bihar and others – (1997) 11 SCC 361, it was held by Hon'ble Apex Court that even if an employee is acquitted from criminal charges, he can still be punished in departmental proceedings for same charges, since the standard of proof required in a department proceedings is not same as then required to prove criminal charge. This case is not applicable to the present OA, no charges for departmental proceeding has been framed against the employee. To sum up, the legal principle decided by Hon'ble Apex Court for action under the rule 19(1) of the CCS (CCA) Rules, 1965 is that it should be based on the conduct that led to conviction of the applicant and such action can be taken even when the appeal against criminal charges is pending.

15. We also notice in the Writ Petition No. 16463 of 2007 filed by the respondents against the interim order dated 21.02.2006 passed by this Tribunal in OA No.156/2006 filed by the applicant, Hon'ble High Court passed the order dated 29.03.2007 staying the OA No. 156/2006. The order dated 29.3.2007 passed by Hon'ble High Court states as under:-

> "0;; idh.k ;kfpdk l- 16463 0k'k 2007
> ekuuh; ;rhUn flg] U;k; efr
> ekuuh; fot ; dekj oek] U;k; efr
>
> ;kph d fo}ku vf/koDrk dk dFku g fd ;kph d fo:) lok lekflr dk vkn"k fnukd 31-01-06 dk vkKk fnukd 05-06-06 }kjk okil y fy;k x;k g blfy; foi{k i{k 1 dk vkonu i= pyu ;kX; ugh gA
>
> foi{k i{k dk ukfVl tkjh fd tk;A foi{k i{k 3 dk ukfVl Hktu dh vko";drk ugh gA
>
> bl chp vkKk fnukd 07-3-2006 tk vyx&vyx rkfj[kk e c<k;h x;h g] dk fd;kU;o;u LFkfxr jgxkA foi{k i{k 2 d le{k yfEcr vkonu i= l[;k 156 o'k 2006 dh vfxe dk;okgh Hkh LFkfxr jgxh vkj ;kph dk foi{k i{k 1 d fo:) dkuuh dk;okgh dju dh Lor=rk jgxhA"

16. In pursuance of the order dated 29.3.2007, the respondent no. 2 had issued the order dated 26.9.2008 (Annexure A-I to the OA). Vide order dated 29.12.2008, this Tribunal observed that the order dated 26.09.2008 has been issued mechanically. As discussed in paragraph 12 of this order, the provisions of the rule 19(1) of the CCS (CCA) Rules, 1965 will apply to the case of the applicant, since there is no bar in that rule for taking action under the rule 19(1) during pendency of the criminal appeal. But the disciplinary authority cannot pass any order proposing or imposing

the punishment without proper application of mind and after considering other factors as stated in the order of Government of India mentioned after the rule 19 of the CCS (CCA) Rules, 1965. The said order of the Government of India incorporates the directions of Hon'ble Apex Court in different judgments and it is quoted at serial no 1 after the rule 19 of the CCS (CCA) Rules, 1965 which states as under:-

> **"(1) Scope of second proviso to Article 311 (2) of the Constitution** :-
>
> The judgment delivered by the Supreme Court on 11.07.85 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the judgment is merely due to an inadequate appreciation of the point clarified in this judgment and in the subsequent judgement of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.
>
> 2. In the first place it may be understood that the Supreme Court in its judgment has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Article 311 (2) of the Constitution. In other words, the judgment does not take away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Article 311 (2) that the requirement of holding such an inquiry may be dispensed with.
>
> 3. Even under these three exceptional circumstances, the judgment does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Article 311 (2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Article 311 (2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.
>
> 4. When action is taken under clause (a) of the second proviso to Article 311 (2) of the Constitution or rule 19 (1) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a Government servant has been convicted on criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a Government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the government servant's

conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. (The position has been undergone a change with incorporation of first proviso to Rule 19, which may be kept in view). This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a court) will go into the question whether impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

.....

[Department of Personnel & Training OM No. 11012/11/85-Estt. Dated the 11th November, 1985]."

17. The impugned order dated 26.09.2008 states as under :

"whereas, Shri Raju, Phone Mechanic (Staff No.4263), O/o GMTD, Aligarh, was convicted by the Hon'ble Court of Special Judge, Anti-Corruption, UP(E), Ghaziabad, vide Order dated 22nd July, 2003 on a criminal charge under Section 120(B), IPC, Section 7 of Prevention of Corruption Act, 1988 and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for six months and fine of Rs.5,000/-, Rigorous Imprisonment for six months and a fine of Rs.500/- and Rigorous Imprisonment for one year and a fine of Rs.1,000/- respectively, on each count and in default of payment of fine to undergo one month Simple Imprisonment for the sentence awarded under Section 120(B) IPC and Section 7 of Corruption Act, 1988 and three months Simple Imprisonment for the sentence awarded under Section 13(2) of Prevention of Corruption Act, 1988;

AND WHEREAS, consequent upon his conviction, Show Cause Notice, under Rule 19 of CCS (CCA) Rules, 1965, was served on Shri Raju, Phone Mechanic, by his disciplinary authority in the Circle and after examination of reply submitted by him, he was removed from service vide Order No.GMTD/ALG/Estt/Raju/16 dated 31/01/2006;

AND WHEREAS, Shri Raju, Phone Mechanic, refused to receive the Order dated 31/01/06 and filed an Original Application No.156/2006 in CAT Allahabad in February, 2006, challenging the Order of his removal service.

AND WHEREAS, the undersigned being the disciplinary authority of Shri Raju, Phone Mechanic, has

provisionally come to the conclusion that Shri Raju, Phone Mechanic, is not a fit person to be retained in service and accordingly proposes to impose on him the penalty of Removal from Service;
NOW THEREFORE, Shri Raju, Phone Mechanic, is hereby given an opportunity of making representation on the proposed penal action. Any representation which he may wish to make against the proposed penal action will be considered by the undersigned. Such a representation, if any, should be submitted in writing so as to reach the undersigned not later than 15 days from the date of receipt of this Memorandum by Shri Raju, failing which further action will be taken as per rules."

18. From the order of Government of India, the disciplinary authority while passing the order dated 26.9.2008 proposing the quantum of punishment, is required to examine the points as indicated in the paragraph 04 of the Government order quoted above before deciding the quantum of proposed punishment. Perusal of the show cause notice dated 26.9.2008 issued by the disciplinary authority shows that these instructions of Government of India have not been followed while deciding the quantum of the punishment proposed to be imposed on the applicant. Hence, we are of the considered view that the order dated 26.9.2008 has been passed mechanically without proper application of mind in violation of the above order of Government of India, due to which there is violation of the principles of natural justice as stated by the applicant in para 4.46 and 5.28 of the OA. Therefore, the impugned order dated 26.9.2008 cannot be considered to be a lawful action initiated against the applicant in pursuance to the order dated 29.3.2007 of Hon'ble High Court. Accordingly, the impugned order dated 26.09.2008 is liable to be set aside and hence, it is set aside and the matter is remitted to the respondent

no. 2 with a direction to reconsider the matter and pass a fresh order as per the provisions of law, taking into account the discussions in this order and take action as deemed appropriate under law within two months from the date of receipt of a certified copy of this order.

19. Before parting with the case, we note with concern the failure of the respondents to get the orders passed by the authorities served on the applicant, particularly when he is continuing in service and in spite of the provisions under the law specifying various modes of service of the order/notice. The respondent no. 2 will do well to examine if there is any lapse on the part of the concerned officer/authority and take action against such officer/authority as per rules and to ensure proper service of the orders to be passed by the respondents in future, on the applicant as per the provisions of law.

20. The OA is allowed in terms of the directions in paragraphs 15 and 16 above. There will be no order as to costs.

(Rakesh Sagar Jain)
Member-J

(Gokul Chandra Pati)
Member-A

RKM/-