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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01218/2016

Date of order: 14.08.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Jayanta Ganguly,
Son of Late Phanindra Ganguly,
Aged about 61 years,
Residing at C-3, Sabujayan Abasan,
Post Office.- R.C. Thakurani,
Kolkata - 700 104.

.. Applicant

V E R S U S -

1. Union of India;
Through the Secretary to the
Government of India,
Ministry of Statistics and Programme
Implementation,
Sardar Patel Bhawan,
New Delhi - 110 001.
2. The Deputy Director and
Head of Office (FOD),
Regional Office,
Kolkata, CGO Complex,
2nd Floor,
E-Wing, Sector-1,
Block DF, Salt Lake,
Kolkata - 700 064.
3. The Inquiry Officer,
& Director NSSO (SDRD),
Kolkata,
Mahalanobis Bhavan,
164, G.L. Tagore Road,
Kolkata - 700 108.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

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ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at receipt of memorandum of charges after superannuation, the applicant has approached the Tribunal praying for the following relief:-

"Chargesheet vide memorandum No. 11018/9/2013-SSS dated 20.2.2015 (through Deputy Director General, NSSO (FOD), Regional Office, Kolkata, C.G.O. Complex, 2nd Floor, E-Wing, Sector-1, Block DF, Salt lake, Kolkata 700 064 dispatched to the applicant at his residential address on 14.5.2015, vide No. 11018/2/JG/2015WBS/10 signed by Shri V.K. Dubey, Deputy Director and Head of Office, R.O. Kolkata and received by him on 20.5.2015 cannot be sustained in the eye of law and the same may be quashed."

2. Heard both Ld. Counsel, examined pleadings and documents on record. Written notes of arguments have been filed by both Ld. Counsel. In addition, as directed by the Tribunal, the respondents have furnished orders dated 23.4.2015 in which a reference has been made to DOP&T O.M. dated 18.2.2015 and also the speed post tracker of the despatch of the memorandum of charges dated 20.2.2015.

3. The applicant's submissions, as articulated through his Ld. Counsel, is that the applicant was working as a Statistical Officer in the National Sample Survey Office (Field Operations Divisions) and that the applicant superannuated on 28.2.2015. That, the respondent authorities had proposed to hold an enquiry against the applicant under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 but the chargesheet dated 20.2.2015 was dispatched on 14.5.2015 and served upon the applicant only on 21.5.2015.

As the applicant had superannuated before the issue and service of the chargesheet on him, being aggrieved, applicant has approached the Tribunal challenging the validity of the chargesheet as the same was issued without obtaining Presidential sanction as is mandatory in case of superannuated employees.

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The applicant has advanced the following grounds in support of his claim:-

(a) That, the departmental proceedings were clearly not instituted while the applicant was in service, but only after his retirement.

(b) As the chargesheet was issued to him after his retirement without obtaining Presidential sanction, the said chargesheet cannot be sustained in the eyes of law and deserves to be dismissed.

(c) That, documents Nos. 2, 4 and 6 in list of relied upon documents were not provided to the applicant although a preliminary enquiry was started against the applicant on the basis of the chargesheet.

4. The respondents have controverted the claims of the applicant by vociferously arguing that the disciplinary proceedings were indeed started before superannuation of the applicant.

The respondents, while explaining the background of the applicant's matter, have detailed that a team consisting of Junior Statistical Officers headed by the applicant, who was then the Sr. Superintending Officer (SSO), NSSO (FOD), SRO Howrah, conducted sample surveys in September-October, 2011 during the 68th Round of Socio-Economic Survey. It was decided to conduct field verifications of three of such samples surveyed by the said team. The said field verification report revealed that the quality of data collected under the overall supervision of the applicant in the samples collected at Bally MC were poor in quality and, prima facie, the data so collected appeared to be fictitious, consequent to which, all the three samples were re-surveyed.

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That, thereafter, a show-cause notice dated 22.5.2014 was issued to all the three employees, including the applicant, and that, the applicant denied the charges vide his written reply thereupon, and, not being satisfied with the written reply to the show cause notice, the competent respondent authorities issued chargesheets to all three members of the team, including the applicant.

According to the respondents, as the show cause notice was issued on 22.5.2014 and, as the memorandum of charges was issued thereon on 20.2.2015, and, that, as the applicant was in service at the material point of time, the disciplinary proceedings had started before superannuation of the applicant. The respondents have also argued that, after receipt of the chargesheet, the applicant had requested for certain documents which was thereafter furnished to him but the charged officer refrained from inspecting the documents during the preliminary hearing.

5. The main issue to be adjudicated in the instant Original Application is whether the disciplinary proceedings were instituted against the applicant when he was in service.

6.1. At the outset, the show-cause notice dated 22.5.2014, issued to the applicant as well as the reply of the applicant thereto are examined in detail. The show-cause notice, inter-alia, as extracted, stated as follows:-

Government of India
Ministry of Statistics & Programme Implementation
National Sample Survey Office
(Field Operations Division)

Regional Office WB (South)
CGO Complex, E-Wing,
DF-Block, Salt Lake,
Kolkata - 700 064.

No. 15/PS?DDG(RO)/Kol./2011-12/58

Date: May 22, 2014

MEMORANDUM

Subject: Lack of honesty and sincerity in supervision on the part of Shri Jayanta Ganguly, Superintending Officer, SRO Howrah, resulted in poor data quality - regarding.

[Handwritten signature]

Based on the super scrutiny of filled in schedules of SRO Howrah, necessary direction was issued by the Regional Office, NSSO (FOD) Kolkata to undertake non-concurrence inspection/field verification of three samples (sample serial number 22839, 22881 & 14378) of 68th Round Socio-Economic Survey completed during September-October 2011 by the team consists of Shri Haranath Bhattacharya, ASO [now promoted as SO and posted at SRO Barhampur] and Shri Sudipta Chatterjee, ASO working under the overall supervision of Shri Jayanta Ganguly, SO, NSSO (FOD), SRO, Howrah.

The field verification report revealed that the quality of data collected by the concerned ASOs under the overall supervision of Shri Jayanta Ganguly, SO, NSSO (FOD), SRO Howrah in sample srl. No. 22881 (Bally MC), 14378 (village - Shibgachi) and 22839 (Bally MC) were poor in quality and there is also a prima facie that the data so collected were fictitious. Shri Jayanta Ganguly, SO has failed to perform his duty as supervisor due to lack of sincerity and honesty. All these three samples were subsequently re-surveyed.

The type of mistakes observed in the filled in schedules indicated that no scrutiny have been done by Shri Ganguly, SO which was a part his assigned duty. Gross mistakes were also observed from the super-scrutiny note drawn by the scrutiny cell of RO Kolkata. The quality of data largely depends upon the honesty, sincerity, effectiveness of supervision. It appears from the verification report and subsequently re-survey of all the three samples of NSS 68th Round Socio-Economic Survey that Shri Jayanta Ganguly, SO did not performed his duty satisfactorily as supervisor, the role assigned to him, as well as there was a lack of honesty and sincerity while performing his duty as a government servant.

Shri Jayanta Ganguly, SO is asked to explain within seven (7) days of receipt of this memorandum why disciplinary action should not be initiated against him for such lapses.

(V.K. Dubey)
Deputy Director
& Head of Office

The response of the applicant to the said show-cause notice is reproduced verbatim as below:-

To
The Deputy Director and Head of Office,
NSSO (FOD), Kolkata R.O.
5.6.2014

Subject: Reply to O.M. No. 15/PS/DDG(R)/Kol./2011-12 dated 22.5.2014

Sir,

I am shocked and surprised to receive a confidential memorandum No. 15/PS/DDG(R)/Kol./2011-12, dated 22.5.2014 received by me on 27.5.2014) in which my honesty and sincerity in SE field supervision work has been questioned by your good self. This is first time in my 34 years of blameless service record that I receive such type of memorandum which has shattered my spirit of work, as well as my reputation in my office to my colleagues.

Sir, without prejudice to future submission on my part regarding your above referred memorandum, it is clearly viewed that during non-concurrent inspection/field verification of all the 3 FSUs (sample serial no. 22839, 22881 and 14378) of 68th Round Socio Economic Survey, I was not associated in any stage, and as a result it is very difficult for me to comment on the lapses, as

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mentioned by you, after a gap of three years. Moreover, I was completely in dark regarding the super scrutiny of the 3 samples. I have neither been provided any feedback report of the super scrutiny, nor any report of non concurrent inspection. Above all I was completely in dark about re-survey of the 3 samples.

Based on your above mentioned memorandum, I have the honour to submit the following for your kind perusal.

Firstly, Sample Serial No. 22881 (Bally MC), was inspected by me on 24.10.2011 and 6 sample households were inspected by me (concurrent and back check). Your memorandum clearly stipulates that I visited the field on the scheduled Inspection date and out of my 6 inspected households 4 households have been found to be satisfactory by your good self. But I strongly inform you that all the 6 households were existent and present on the date of my inspection. Vacating the FSU by two sample households within this intermediate period (i.e. from the date of original inspection to the date of non-concurrent inspection/re-survey) may kindly be explored by your good self.

Secondly, for Sample Serial No. 14378 (village - Sibgachhi) you have clearly viewed that out of 10 sample households inspected by me 8 sample households were found satisfactory and 2 households were non-existent. Once again it is being confidently expressed that I inspected all 10 households who were very much existent and present on the date of my inspection.

Sir, you will definitely agree with me that instead of showing 2 non-existent households I could have easily shown 8 households as inspected ones, for there is no norm fixed by the office for number of sample households to be inspected.

Finally, for Sample Serial No. 22839 (Bally MC), so far I could recall, the entire FSU was consisting of quarters where there remains every possibility that some households may be found non-existent (due to vacating the quarters by them) during a considerable time lag. But once again I express that all the households inspected by me were existent and present on the date of my inspection.

In this regard I have to mention that while the ASOs (in a team) were working in some S.E. FSU for 5 to 9 days, I was to supervise/inspect their field work for one or two days only during the stage of canvassing the detailed schedules.

I have the honour to mention that after my inspection, I left the FSUs without keeping notes regarding the schedules, I inspected; instead, I only kept a note regarding the number of schedules inspected by me. I signed on the schedules and scrutinized all the schedules (having the parity of the days) after some days when the completed schedules were brought to me. I would assure you that in future I must sign on the schedules, I inspected on the spot of inspection, after scrutinizing the schedules.

I scrutinized all the schedules of the 3 samples very sincerely. In this regard I have the honour to let you know that till date no major scrutiny clarification has been received by me for SE work during my 34 years of service. I had been working as a scrutinizer of SE schedules (in the 2nd level scrutiny cell) of SRO Howrah for a long time by the order of DDG RO Kolkata. I was posted in the zonal office, for two years (2002 to 2007) as SO, in SE Scheme, where I was to super scrutinize so many S.E. Schedules of our different offices under Eastern Zone.

I do hope and believe that you will judiciously consider my above submission and relieve me from the mental agony that I am facing for none of my lapses, at the fag-end of my service.

Yours faithfully,

(Jayanta Ganguly)
Superintending Officer
NSSO (FOD), SRO Howrah"

[Signature]

The respondents, in their reply, have averred that, as the show-cause notice had been issued on 22.5.2014 to the applicant, it is evident that disciplinary proceedings have started before his retirement, namely, on 28.2.2015. The applicant has robustly controverted this contention in his rejoinder that it cannot be held that the disciplinary proceedings had started with the issuance of the show-cause notice. This stand of the applicant is correct. Disciplinary proceedings can be construed to be initiated only with issuance of a chargesheet. As held in **UCO Bank v. Rajendra Lal Kapoor, (2008) 5 SCC 257**, the Hon'ble Apex Court ruled that,

".....if a show cause notice was issued to the employee when he was in service and charge sheet is given when he retired from service it cannot be said that disciplinary proceedings were deemed to be pending against him when he retired."

6.2. Next, we examine the memorandum of charges dated 20.2.2015 (Annexure A-1 to the O.A.), including the statement of Articles of Charges and statement of imputation of misconduct at Annexures I & II, the list of documents relied upon while framing the Article of Charge at Annexure III as well as the list of witnesses at Annexure IV. The memorandum of charges dated 20.2.2015 is reproduced below:-

No. 11018/9/2013-SSS
Government of India
Ministry of Statistics and Programme Implementation

Sardar Patel Bhawan
Sansad Marg, New Delhi
Dated 20th February, 2015

MEMORANDUM

The competent authority proposed to hold an inquiry against Shri Jayanta Ganguly, Statistical Investigator Grade I, SRO, Howrah under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct for maintaining absolute integrity/devotion to duty and cheating the Government with ulterior motive in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom,

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the articles of charge is proposed to be sustained are also enclosed (Annexure III & IV)

2. Shri Jayanta Ganguly, Statistical Investigator Grade I is directed to submit a written statement of his defence within 10 days of the receipt of this memorandum and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held in respect of the article of charge if the charged officer denies the charge, he should, therefore specifically admit or deny article of charge.

4. Shri Jayanta Ganguly, Statistical Investigator Grade I is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the authority may hold the inquiry against him ex-parte.

5. Attention of Shri Jayanta Ganguly, Statistical Investigator Grade I is invited to Rule 20 of the Central Civil Services (conduct) Rules, 1964, under which no government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Jayanta Ganguly is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules 1964.

6. This issues with the approval of Competent Authority.

(K. Saraswathy)
Under Secretary to the Govt. of India

To,
Shri Jayanta Ganguly
Statistical Investigator Grade I,
NSSO (FOD), Sub Regional Office Howrah
Through Deputy Director General, NSSO (FOD), Sub Regional Office, Kolkata, C.G.O.
Complex, 2nd Floor, E-Wing, Sector -1, Block DF, Salt Lake, Kolkata-64.

Copy for Information to:

1. Director (Vigilance), NSSO (FOD) Hqrs, New Delhi.

The following is inferred from the said memorandum of charges:

- (a) That, the competent authority proposed to hold an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant.
- (b) That, the substance and motive of misconduct for failing to maintain absolute integrity/devotion to duty and for cheating the government with ulterior motive in respect of which the enquiry was proposed to be held was detailed in Annexure I of the enclosed statement of Articles of Charges.

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(c) That, the statement of imputation of misconduct in support of the Article of Charge was enclosed as Annexure II and that the list of documents relied upon and the list of witnesses by whom the articles of charge were proposed to be sustained were annexed as Annexures III and IV respectively.

(d) That the applicant/CO was directed to submit his written statement of his defence within 10 days of the receipt of the memorandum specifically admitting or denying articles of charge, failing which the enquiry may be held against him exparte and that his attention was drawn to Rule 20 of the CCS (Conduct) Rules, 1964.

(e) It is noteworthy here that the said memorandum was addressed to the applicant concerned through the field office.

6.3. The respondents have produced the speed post tracker to substantiate as to when the said memorandum of charges was actually issued by speed post to the applicant/charged official concerned through the field office. The speed post tracker reveals that the item containing the memorandum of charges and its enclosures were delivered to the addressee on 23.2.2015. This has not been controverted either by applicant or by the field office in their reply on 28.11.2016 to the O.A.

23.2.2015 was a Monday. Hence, the Field Office, with whom the applicant was engaged, was absolutely capable of and responsible for delivering the memorandum of charges to the applicant on any one of the following dates:-

23.2.2015	(Monday)
24.2.2015	(Tuesday)
25.2.2015	(Wednesday)
26.2.2015	(Thursday)

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27.2.2015 (Friday)

The applicant superannuated only on 28.2.2015 and there were five intervening working days during which the Field Office should have delivered the memorandum of charges to the applicant /charged official. Instead, it appears from the reply furnished by the Field Office that, for some inexplicable reasons, the field office waited till 3.3.2015 (the next Tuesday and immediately after the superannuation of the applicant/charged official) to refer the matter back to the Ministry for clarity as to how to serve the charge memorandum to the superannuated employee. In their reply, the respondents have ascribed the delay between 20.2.2015 to 14.5.2015 to procedural constraints. Practically speaking, there could not have been any procedural constraints which prevented the Field Office from serving the charge memorandum to the applicant immediately upon receiving the same on 23.2.2015 from the Ministry. The field office has failed to advance any convincing arguments for the delay.

6.4. In response to the strategically delayed reference made by the Field Office to the Ministry, the Ministry responded with reference to DOP&T O.M. dated 18.2.2015 that reads as under:-

F.No. 11012/3/2015-Estt.A-III
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated February 18, 2015

OFFICE MEMORANDUM

Subject: Importance of following the due process in disciplinary proceedings - regarding.

This Department has been emphasizing the necessity of conforming with the procedures prescribed in the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [CCS (CCA) Rules, 1965] while dealing with the disciplinary proceedings conducted in Ministries/Departments. Many a times the Hon'ble Administrative Tribunals and Courts have held the proceedings non-est for non-conformity of the procedure, without even going into the merits of the case.

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This issue was highlighted recently in the judgment of the Hon'ble Supreme Court in the B. V. Gopinath case in SLP No. 6348/2011.

2. Procedural lapses have also been noticed in a few cases referred to this Department for advice. Two areas where procedural lapses are frequently noticed are (i) not following the procedure prescribed in Rule 14(18) of CCS (CCA) Rules, 1965 while conducting the disciplinary inquiry; and (ii) not following the procedures laid down in Rule 9 of CCS (Pension) Rules, 1972 in the case of proceedings against retired Government servants.

3. Rule 14(18) of CCS (CCA) Rules, 1965, provides that, "the inquiring authority may, after the Government servant, closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him I the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him." This is a formal action required to be taken by the inquiry officer before closing the inquiry. It has been seen that many a times this is not formally recorded and the inquiry gets vitiated. It is imperative that the inquiry is conducted strictly in accordance with the procedures prescribed.

4. Attention is also invited to Rule 9 of the Central Civil Services (Pension) Rules, 1972, while lays down that the departmental proceedings, if instituted while the Government servant was in service, whether before his/her retirement or during his re-employment, shall, after his/her final retirement, be deemed to be proceedings under the rule and shall be continued and concluded by the authority which commenced them, in the same manner as if the Government servant had continued in service. This rule also stipulates that where the departmental proceeding is instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

5. All Ministries/Departments are requested to please bring to the attention of all concerned the necessity of conforming to the procedures prescribed for conducting departmental proceedings.

6. In this regard, attention is also invited to the ISTM publication 'Handbook for Inquiry Officers & Disciplinary Authorities, 2013', which can be used as a reference guide in such matters. The Handbook may be accessed under 'Publications/Reports' on this Department's website: <http://persnmin.nic.in/DOPT.asp>.

(J.A. Vaidyanathan)
Director (E)
Telefax: 23093179"

In the said O.M., DOP&T, in context of Rule 9 of the CCS (Pension) Rules, 1972, has clarified if the departmental proceedings has been instituted while the Government servant was in service, the same shall be deemed to be proceedings under the Rule and shall be continued and concluded by the authority which commenced them, in the same manner as if the Government servant had continued his service. This was duly conveyed by the concerned Ministry to the Field Office vide their communication dated 23.4.2015.

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6.5. The key terminology in DOP&T's O.M. in this context is "institution of departmental proceedings".

It is necessary therefore, to examine the implications of the word "institute" according to lexicons.

Concise Oxford English Dictionary, defines 'institute' as to 'set in motion or establish'.

In **Black's Law Dictionary (Ninth Edition)** the word 'institution' means 'The commencement of something, such as a civil or criminal action.'

Roget's International Thesaurus (Third Edition), lists "initiate" as one of the synonyms of the word "institute".

And, once again reverting to **Concise Oxford English Dictionary**, "initiate" is defined as "cause to begin".

6.6. From the above dictionary definitions and also as legally defined, 'institution' is synonymous to "initiation" and this leads us to obtain guidance from the ratio decided upon in various judicial pronouncements as to when a departmental proceedings can be stated to be initiated.

Disciplinary proceedings are initiated by issuance of a chargesheet. In **Delhi Development Authority v. H.C. Khurana 1993 SCC (L&S) 736** relied upon by the applicant, the Hon'ble Apex Court held as follows:-

"10. This plain meaning of the expression used in clause (ii) of para 2 of O.M. dated January 12, 1988, also promotes the object of the provision. The expression refers merely to the decision of the authority, and knowledge of the government servant, thereof, does not form a part of that decision. The change made in clause (ii) of para 2 in O.M. dated September 14, 1992, merely clarifies this position by using the expression 'chargesheet has been issued' to indicate that service of charge-sheet is not necessary; and issue of the charge-sheet by its dispatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken. In our opinion, Jankiraman takes the same view, and it is not possible to read that decision otherwise, in the manner suggested by learned counsel for the respondent.

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14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to dispatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations.....

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include: 'to give exit to; to send forth, or allow to pass out; to let out; ... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a charge-sheet, therefore, means its dispatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and dispatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee' in para 17 of the decision in *Jankiraman*.

Hence, in *Khurana (supra)*, the Hon'ble Apex Court ruled that issue of charge sheet by its dispatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken.

The respondents have relied on *State of M.P. v. Onkar Chand Sharma 2002 SCC (L&S) 183* in which the Hon'ble Apex Court held as follows:-

"6.....In our opinion, disciplinary proceedings can be held to have been initiated by framing of the charge-sheet or only after the charge-sheet has been served on the delinquent employee. In our opinion, disciplinary proceedings can be held to have been initiated on the day the charge-sheet has been prepared and signed by the competent authority. In the present case, the charge-sheet had been prepared on 5.5.1983 inasmuch as it was appended to the order dated 5.5.1983 whereby the respondent was required to submit his written statement of defence to the charges. It can, therefore, be said that disciplinary proceedings had been initiated against the respondent on 5.5.1983."

In the instant case, in the O.A. before us, the Memorandum of Charges along with the annexures has been undisputedly been initiated against the applicant on 20.2.2015 because it was on that day that the competent authority, after his conscious decision to initiate disciplinary

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proceedings, had issued the memorandum of charges to the applicant / charged officer.

It is also undisputed that the applicant/charged officer was on service on 20.2.2015, the date on which the said Memorandum of Charges was put into dispatch through the speed post as evidenced by the Speed Post Tracker.

Ld. Counsel for the applicant has also relied on **Union of India & others v. Dinanath Shantaram Karekar & ors. Civil Appeal No. 1477 of 1993. Karekar**, however, fails to come to the aid of the applicant as it was decided in the context of the petitioner/charged officer wherein the registered cover was returned to the sender with the endorsement "not found". In this case, it is not the applicant's averment that the Registered Post had remained undelivered. Rather the speed post tracker establishes delivery to the FOD on 23.2.2015, a Monday and a working day, when the applicant was very much in service.

6.7. As it has been established that the said proceedings were initiated during the service of the applicant, Para 2.1 of the Vigilance Manual (page 267, Chapter XV with the title 'Action in cases in which departmental proceedings had been initiated before retirement') will apply. The contents of para 2.1 states as follows:-

"2.1 If departmental proceedings had been initiated against a Government servant under the C.C.A Rules while he was in service, including reemployment, the proceedings will be deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972 and will be continued and concluded by the authority by which the proceedings were commenced in the same manner as if the Government servant had continued in service."

The said provisions have been reiterated by DOP&T in their Office Memorandum dated 18.2.2015 and confirmed by the respondent Ministry in their communication dated 23.4.2015.

6.8. The departmental proceedings against the applicant had been kept in abeyance till the next date of hearing by Tribunal's order dated

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22.8.2016. As the interim order was continued, the departmental proceedings also continued to remain stayed. Such interim order, stands vacated with the passing of this order and the respondents are at liberty to continue with the departmental proceedings from the stage at which they were kept in abeyance and to conclude the same within a period of four months from the date of receipt of a copy of this order. The applicant will cooperate in the proceedings.

The respondents shall, however, refer to the applicant's prayer for furnishing him the listed documents, and, if not supplied earlier, arrange to supply him with documents relied upon, and, additional documents, if prayed for, decided as relevant for the purpose of the enquiry.

In case the departmental proceedings are not concluded within four months from the date of receipt of a copy of this order, the respondents will be responsible for release of such retirement benefits as are due to the applicant.

7. The O.A. is disposed of with the above directions. There will be no orders on costs.

8. M.A. bearing No. 350/00871/2017, praying for restoration of interim relief granted on 22.08.2016, is accordingly disposed of with these final orders on the O.A.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP