

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.20318 of 2016

and

WMP Nos.17452, 17453 & 17551 of 2016

M.Malarvizhi

....

Petitioner

vs.

1.Union of India

Rep. by the Postmaster General

Southern Region (TN)

Madurai - 625 002

2.Director of Postal Services

O/o. the Postmaster General

Southern Region (TN)

Madurai - 625 002

3.Ad-hoc Disciplinary Authority &

Senior Superintendent

RMS "MA" Division

Madurai - 625 001

4.The Senior Superintendent of Post Offices

Dindigul Division

Dindigul

5.The Registrar

Central Administrative Tribunal

Chennai - 600 104

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, for a writ of certiorarified mandamus to call for the records of the 5th Respondent Tribunal pertaining to its order made in O.A.No.202 of 2012 dated 09.09.2015, quash the same, consequent to direct the respondents 1 to 4 to reinstate the petitioner into service with all attendant benefits.

For Petitioner

: Mr.R.Malaichamy

For Respondents

: Mr.V.Balasubramanian,
for R1 to R4

ORDER
(delivered by S.MANIKUMAR, J)

Challenge in this writ petition is to an order made in O.A.No.202 of 2012 dated 9.9.2015, by which, the Central Administrative Tribunal, Madras, has declined to quash the charge memorandum dated 7.2.2011 and the order of suspension dated 28.1.2009.

2. Facts leading to the writ petition are that the petitioner, a Postal Assistant, was placed under suspension on 28.1.2009 by the Superintendent, Dindigul Division, Dindigul. She was served with charge memorandum dated 7.2.2011, which contained three articles of charges. The first article relates to her negligence in preparing the payment order, in respect of part withdrawal in Recurring Deposit A/c No.262804. The second article relates to her failure in noting the name of the officials to whom payments were effected in respect of various transactions in the Treasury's Cash Book. The third article relates to her failure to obtain the initials of the Sub Postmaster before giving cash to the officials on each occasion in Treasury's Cash Book in token of authorisation of such payment.

3. Material on record discloses that in response to the charge memorandum dated 7.2.2011, the petitioner has submitted her statement of defence on 17.2.2011. A preliminary sitting was held on 30.2.2011. She submitted her representation dated 21.6.2011 to the Director of Postal Services, office of the Postmaster General, the second respondent herein, for cancellation of the charge memo stating that the same is defective. Her representation came to be disposed of on 30.9.2011. She further submitted a petition dated 17.9.2011 alleging bias against the Enquiry Officer. The said petition was rejected on 26.12.2011. Thereafter, she submitted an appeal to the Postmaster General, the first respondent herein, on 30.12.2011. It was rejected on 9.12.2013. Subsequently, there was a change of Enquiry Officer.

4. Once again, the petitioner submitted another petition dated 2.12.2014 alleging bias. The said petition was rejected. Thereafter, she filed an appeal dated 23.2.2015. In the above background, the petitioner filed O.A.No.202/2012, to call for the records of the Ad-hoc Disciplinary Authority and Senior Superintendent, RMS "MA" Division, Madurai, the third respondent herein, to quash the charge memorandum in No.SSRM/ADA-4/2010 dated 7.2.2011 and the order of suspension issued by the 4th respondent in memo No.F1/9/08-09 dated 28.1.2009 and to set aside, the same and consequently prayed for a direction to the

respondents therein to reinstate her, in service with all attendant benefits.

5. Before the Tribunal, the petitioner, has contended that she has been wantonly implicated in the disciplinary proceedings. The charge memorandum contained an expression of guilt of the petitioner and therefore, it is predetermined. Different charges have been clubbed. There is no documentary evidence in support of the allegations leveled against the petitioner. Relying on the statements of others, who had committed fraud, writ petitioner, who is a witness in the criminal case, has been charge-sheeted and that the same is not permissible. Statement of imputations, furnished along with the charge memorandum, dated 7.2.2011, are extraneous to the charge memorandum.

6. Reading of the order impugned before us shows that in O.A.No.202/2012, the Tribunal has issued notice on admission, and the respondents have filed a counter affidavit, wherein, they have contended that a major fraud has been committed in Vedsandhur Sub Post office, Dindigul HPO, Dindigul Division in respect of recurring deposits, to the tune of Rs.1,44,27,844/-. The respondents have contended that during the period between May 2008 and 28.01.2009, the writ petitioner was working as a Treasurer in Vedasanthur Sub Post Office. They have also contended that verification of the records disclosed that the writ petitioner had assisted one Shri.G.Varadharajan, the Sub Postmaster, Vedasanthur Post office, in dealing with Savings Bank accounts. On 13.05.2008, a part withdrawal transaction of Rs.97,660/- has been fraudulently made in R.D. Account No.262804, in the name of one Tamilarasi, a minor depositor, by raising original denomination of Rs.140 to 1140. As per Dindigul Head Office records, the balance in that account, as on 13.05.2008, was Rs.1120/-. The balance in the pass book of the above said account should be Rs.1120/- only. But the applicant had written the amount of withdrawal of Rs.97,660/-, the fraudulent amount, in her own handwriting in the portion of order of payment in SB-7, the withdrawal voucher, dated 13.05.2008.

7. It is also the case of the department that while assisting the Postal Assistant (Savings Bank Counter), the petitioner should have followed the rules prescribed for PA (SB). The petitioner has wantonly avoided verification of the account particulars to facilitate, fraudulent withdrawal of Rs.97,660/- in RD Account No.262804. The petitioner has paid advance to the Savings Bank Counter Postal Assistants, on various occasions without noting the name of the SB Counter PA, in Treasurer Cash Book, and without obtaining the signature of SB counter PA, in token of having received of the amount as laid

down, in Rule 32 of Financial Hand Book Volume-II. The inquiry initiated against the applicant is under process.

8. The petitioner submitted representation on 18.11.2009 to the Superintendent of Post Office, Dindigul Division to reinstate her in service. Her representation was considered and she was informed that reinstatement was not possible, pending enquiry into Vendasandur fraud case. According to the respondents, the involvement of the petitioner in R.D. frauds in Vendasandur SO, is serious and grave in nature. The fraud has taken place during the period the petitioner worked as a Treasurer. They also submitted that Rules 32 and 38 of Financial Hand Book-II are applicable for the Treasurer, whether an office is computerised or not.

9. The respondents have submitted that a preliminary sitting was held on 3.6.2011 and the petitioner was permitted to peruse the documents. When the inquiry proceedings were in progress, the petitioner filed O.A.No.202 of 2012 before the Central Administrative Tribunal, Chennai, instead of defending the charges leveled against her.

10. Respondents have filed a detailed counter affidavit before the Tribunal. Details of events are set out in the latter paragraph of this judgment. Having regard to the nature of charges and the progress made in the enquiry, they submitted that there is no illegality or irregularity in the charge memorandum. They also prayed to sustain the order of suspension.

11. The writ petitioner has filed a rejoinder and also filed written submissions, wherein, she has contended that copies of certain documents were not given and non-furnishing of the same, incapacitated her defence in the enquiry. A further contention has been advanced that petitioner has been cited as a witness in the criminal case, registered against Varadarajan, Thimmaraya Perumal, S.Murugesan, Arumugam, Ms.Karthika, A.Kohilam, Ms.Poorniam in respect of misappropriation of R.D. Amounts and whereas, some of the accused are sought to be examined as witnesses against the petitioner, in the departmental enquiry and that itself is sufficient to quash the charge memo framed against the petitioner. Learned counsel would also contend that Vendasandur Post office has been computerised and manual verification has been dispensed with, in which case, the petitioner cannot be charged for not making manual verification of R.D. accounts when the depositor had submitted withdrawal forms. Learned counsel has submitted that continuance of the petitioner under suspension for more than two years, without conclusion of inquiry proceedings, has tarnished the image of the petitioner and instead the petitioner could be shifted to some other place, on reinstatement, so as to not to have access

to the records under scrutiny.

12. Per contra, the learned counsel for the respondents has submitted that the image of the department is at stake, because of misappropriation of amounts from R.D. accounts and the total amount involved is of more than a crore. Despite computerization of the post office, instructions have been issued to the employees, with regard to the manual verification of the accounts and the same have not been withdrawn.

13. Having regard to the rival submissions and considering the material on record, the Tribunal in O.A.No.202/2012 dated 9.9.2015, at paragraph Nos.9 and 10, ordered as hereunder:

"9. It is not in dispute that the applicant worked in the concerned section wherein misappropriation of more than a crore has occurred. The charge memo issued to her details the instances wherein she has not acted diligently and violated the instructions. She resorted to filing bias petitions against the inquiry officer. One bias petition was filed on 21.6.2011 against K.Lakshmanan and the said bias petition ended in dismissal on 13.9.2011 and her appeal also ended in rejection on 26.12.2011. Thereafter, she presented another bias petition on 12.12.2014 against M.Ponnaiah who is the present inquiry officer and that application also ended in dismissal. Her grievance appears to be non furnishing copies of certain documents. It is evident from the record that originals of certain documents have been ceased by the C.B.I. in connection with the case registered against Varadarajan & Ors. Therefore, producing the original documents before the inquiry officer in the given facts and circumstances may not be possible. The inquiry is pending for last more than three years.

10. Since the inquiry is pending, we are of the view that the prayer of the applicant to quash the charge memo as well as suspension order cannot be entertained. Accordingly, the O.A. is dismissed at the admission stage. There shall be no order as to costs."

14. Being aggrieved by the same, the instant writ petition has been filed by the employee.

15. Mr.Malaichamy, learned counsel for the petitioner, made submissions on the merits of the charges and prayed to set aside, both the suspension, as well as, the charge memorandum. In this regard, he narrated the events as hereunder:

Date	Events
29.11.2006	Certificate issued by the 2nd Respondent that the petitioner, a Postal Assistant, was a sincere worker in the Department. She always obeyed the orders of higher authorities, in performing her duties. She never committed any misconduct. The certificate issued by the 2nd respondent, regarding her best performance on business target, is the evidence for the same.
28.01.2009	Without identifying the real culprits, who have committed misappropriation of funds of the depositors at Vendasandur S.O., and the petitioner was placed under suspension with immediate effect by the 4th Respondent.
29.01.2009	The 4th Respondent has issued a letter for payment of subsistence allowance to the petitioner.
24.02.2009	While the petitioner was working as Postal Assistant (Treasurer) at Vendasandhur S.O., one Ms.Karthika, MPKBY Agent of the Vendasandur Post Office, others have committed misappropriation of the deposits of the public. Therefore, FIR was lodged against them, by CBI, Shastri Bhavan, Chennai - 600 006 on 24.02.2009 before the Court of Special Judge for CBI cases, Madurai in R.C.8 of 2009. The petitioner has been cited only a witness in the above CBI case. She has not been arrayed, as an accused, either in the FIR or in the charge sheet filed by the CBI.
18.11.2009	The petitioner did not commit any misconduct, during her service, about 9 years, as on 18.11.2009. She is in no way connected with the case filed by CBI against Ms.Karthika and others, but, without ascertaining the real facts, she has been placed under suspension, w.e.f. 28.01.2009, and therefore, she requested to revoke the order of suspension and to reinstate her into service.
23.12.2009	The request of the petitioner for reinstatement has been rejected by the Senior Superintendent of Post Offices, Dindigul, 4th respondent, vide his order dated 23.12.2009

Date	Events
21.01.2010	The petitioner made a representation to the 2nd respondent, against the order of Senior Superintendent of Post Offices, Dindigul, 4th respondent, dated 23.12.2009 and requested for reinstatement in service
07.02.2011	The Senior Superintendent, Madurai, 3rd respondent has been appointed as Ad-hoc disciplinary authority to the Petitioner. He has issued a charge sheet dated 07.02.2011 to the petitioner, under Rule 14 of CCS (CCA) Rules, 1965, making false and incorrect allegations, against her.
17.02.2011	The petitioner has sent a reply, dated 17.02.2011, and denied the allegations made against her. FIR and charge sheet filed by the CBI and the recommendation of the Director of Postal Services, Madurai, 2nd respondent with regard to the criminal case is the evidence, that the petitioner is in no way connected with the allegations made against her.
21.06.2011	The petitioner has made a representation dated 21.06.2011, to the Director of Postal Services, Madurai, 2nd respondent, requesting to cancel the defective charge sheet, and to reinstate her into service.
07.07.2011	The representation, dated 21.06.2011 made to the 2nd respondent was replied by the APMG (Staff) stating that there is no provision in the Rule to prefer an appeal to the appellate authority for cancellation of charge sheet.
16.07.2011	The petitioner again made a representation dated 16.07.2011 to the 2nd respondent requesting to cancel the Rule 14 charge sheet issued to her and raised several points in support of her claim
13.09.2011	The CBI has filed case against Ms.Karthika and others after through investigation with regard to the incident that took place at Vedasandur S.O. The CBI has not made the petitioner as accused, but cited her as a witness. Without considering this facts, the 3rd respondent rejected the bias petitions and other petitions preferred by her to cancel the Rule 14 charge memo, vide order, dated 13.09.2011
17.09.2011	The petitioner made a bias petition dated 17.09.2011 against the 3rd respondent.

Date	Events
26.12.2011	The bias petition dated 17.09.2011 of the petitioner was rejected by the 2nd respondent vide his order dated 26.12.2011
09.01.2012	Since, the 2nd respondent delayed to pass an order on the representations of the petitioner, she brought the same to the notice of 1st respondent and requested to stay the Rule 14 inquiry till disposal of her representations by the 2nd respondent.
16.02.2012	The petitioner has challenged the Rule 14 charge memo, dated 07.02.2011 and the order of suspension dated 28.01.2009 before the Hon'ble 5th respondent Tribunal (CAT)
May 2012	Without referring to the CBI case, particularly the FIR and the charge sheet filed by CBI in the Court and the recommendation of the 2nd respondent to the CBI with regard to the incident took place at Vedasandur S.O., official Respondents herein made false allegations against the petitioner in their reply statement.
30.11.2012	The petitioner made a representation dated 30.11.2012 through the Inquiry Officer to the Chief Postmaster General, Tamil Nadu Circle, Chennai - 600 002 requesting to furnish about 24 additional documents vital to support her claim during inquiry, they were not supplied to her.
23.07.2013	Since, the documents requested by the petitioner were not supplied by the Inquiry Officer, she made a bias petition dated 23.07.2013 to the 2nd Respondent.
05.10.2014	The Petitioner has filed a detailed rejoinder to the reply filed by the respondents in O.A.No.202 of 2012
23.02.2015	The petitioner again insisted for 7 vital documents from the Inquiry Officer. But, her request has been turned down. Therefore, she made a bias petition to the 2nd Respondent.
10.03.2015	The petitioner made again a bias petition dated 10.3.2015 against the I.O. and the 3rd Respondent to the 2nd Respondent

Date	Events
13.07.2015	The petitioner's request to supply of additional documents has been rejected by the I.O. and the 3rd respondent. Therefore, she again made representations and lastly on 13.07.2015 to the 2nd respondent requesting to direct the authorities to supply the documents and further requested to stay the Rule 14 inquiry, till the documents are furnished.
19.08.2015	Since, the I.O. failed to furnish the additional documents particularly CD Backup, Computer Softwares of SB cash, Treasury, Sanjay Post, work allocation and SPM's order book, the petitioner made a bias petition against the I.O. to the 3rd respondent and requested to defer Rule 14 enquiry till the said documents are supplied.
23.08.2015	The petitioner filed a written submission in O.A.No.202 of 2012 dated 23.08.2015
09.09.2015	The petitioner all along requested for supply of some vital documents in support of her claim to establish her innocence. Had the authority supplied the same the Petitioner would have co-operated in Rule 14 enquiry. This issue has not been considered by the Hon'ble Tribunal. But, the Hon'ble Tribunal dismissed the O.A. by an order dated 09.09.2015. The Hon'ble Tribunal held that the grievance of the petitioner appears to be non-furnishing of copies of certain documents. It also held that the originals of certain documents have been ceased by CBI in connection with the case registered against Varadharajan and others. Therefore, it is evident that without such documents, the Rule 14 enquiry should not be proceeded, till the outcome of the case pending before CBI Court.

16. Per contra, based on the counter affidavit, filed by Senior Superintendent of Post Offices, Dindigul Division, Dindigul, Mr.V.Balasubramaniam, learned counsel for the respondents contended that the petitioner was appointed by the Senior Superintendent of Post Offices, Dindigul Division. She was placed under suspension with effect from 28.1.2009. Charge-Sheet was issued on 7.2.2011. Mr.K.Lekshmanan Pillai, ASP (HQ), Kovilpatti Division was appointed as the inquiry officer on 23.3.2001 and Mr.S.Subramaniam Pandian, now ASP (OD), Dindigul Division was appointed as the Presiding Officer. Preliminary enquiry was held on 7.6.2011. The petitioner attended the

sitting and denied the charges.

17. It is the further contention of the learned counsel for the respondents that the next sitting for perusal of documents was held on 21.6.2011. During the sitting the petitioner produced a representation to DPS, SR for dropping the defective charge memo and requested IO to defer the enquiry. As IO has proceeded for enquiry, she filed a bias petition dated 21.6.2011 against the inquiry officer. Bias petition was disposed on 13.9.2011. Against which the petitioner filed an appeal to DPS, praying to setting aside the order dated 13.9.2011 and to cancel the defective charge memo. The bias petition was disposed on 26.12.2011.

18. Learned counsel for the respondents further contended that one more sitting for perusal of documents was fixed on 19.1.2012 and the petitioner produced MC. The petitioner again filed a bias petition with a request to change the inquiry officer. The said petition was disposed on 14.08.2012 and the inquiry officer was directed to continue the inquiry. Since Mr.Lekshmanan Pillai, inquiry officer, was promoted and one Mr.K.Sivanathan, ASP, Nilakottai Sub Division was appointed as the inquiry officer. Thereafter, she has given a representation for perusal of some documents. Since the petitioner was not cooperating with the inquiry and in the habit of filing bias petition and appeal, subsistence allowance was reduced from 50% to 25% on 30.12.2014.

19. The sum and substance of the contentions of the Learned counsel for the respondents is that the charges against the petitioner are grave in nature and justified for placing her under suspension. Instead of defending the charges, from the very beginning, the petitioner has been prolonging the inquiry by filing bias petitions and appeals, continuously, on one or other issues. The petitioner has filed seven bias petitions and four appeals against the same and thus protracted the enquiry. He has also made submissions on the merits of the charge. According to him 3/4th of the enquiry is already over. In the light of the above, he prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials on record.

20. Order of suspension of the petitioner dated 28.1.2009, reads as follows:

DEPARTMENT OF POSTS, INDIA
O/o the Supdt. of POs, Dindigul Division, Dindigul -
624 001.

Memo No.F1/9/08-09 dated at Dindigul - 624 001, the 28.01.2009.

WHEREAS a disciplinary proceedings against Smt.M.Malarvizhi, Postal Assistant, Vendasandur LSG SO is contemplated.

Now, THEREFORE, the undersigned in exercise of the powers conferred by Sub Rule (1) of Rule 10 of CCS (CCA) Rules, 1965 hereby places the said Smt.M.Malarvizhi, under suspension with immediate effect.

It is further ordered that during the period that, this order shall remain in force, the Headquarters of Smt.M.Malarvizhi should be Vendasandur and the said Smt.M.Malarvizhi shall not leave the Headquarters without the prior permission of the undersigned.

Superintendent.

To:-

Smt.M.Malarvizhi, Postal Assistant, Vendasandur LSG
SO. 624 710

21. Charges leveled against the petitioner vide Memorandum dated 7.2.2011 of the Ad hoc Disciplinary Authority & Senior Superintendent, RMA "MA" Division, Madurai - 625 001, are as follows:

Memo No.SSRM/ADA-4/2010 dated at Madurai-625001, the 07.02.2011

MEMORANDUM

Whereas the undersigned is empowered to function as Disciplinary Authority of Smt M.Malarvizhi, Treasurer (u/s) Vendasandur SO with powers to impose all the penalties specified in Rule 11 of CCS (CCA) Rules 1965 by the competent authority vide Order No C-14015/30/2010/VP dated 02.12.10 which was communicated in Postmaster general Southern Region, Tamilnadu, Madurai 625 002 letter No VIG/6-2/10 dated 14.12.10.

Therefore, the undersigned proposes to hold an inquiry against Smt M.Malarvizhi, Treasurer (u/s) Vendasandur SO under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed

statement of articles of charge (Annexure-1). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure - III & IV). Copies of those documents mentioned in Annexure III are also enclosed.

2. Smt M.Malarvizhi is directed to submit within 10 days of the receipt of this memorandum a written statement of her defence and also to state whether she desires to be heard in person.

3. She is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. She should therefore specifically admit or deny each article of charge.

4. Smt. M.Malarvizhi is further informed that if she does not her 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 inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Smt M.Malarvizhi 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 her service under the Government. If any representation is received on her behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Smt.M.Malarvizhi is aware of such 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. The receipt of the memo may be acknowledged."

22. Considering the sequence of events and having regard to the nature of charges, this court is not inclined to quash the charge memorandum, for the reason that at one stage, the petitioner has attended the enquiry, perused the documents, requested for change of enquiry officer and at the same time, questioned the very formulation of charges. The petitioner cannot be permitted to blow hot and cold. All the contentions on the merits of the charge, can be gone into, during enquiry and

if the petitioner is aggrieved over any findings, the same can be adverted to, before the disciplinary authority. However, having regard to the fact that the petitioner has not been implicated in the criminal case, as an accused and on the other hand cited only as a witness, but alleged to have committed irregularities, warranting departmental action, for her alleged failure to maintain absolute integrity and devotion to duty, as required under Rule 3(1)(i)(ii) of CCS (Conduct) Rules, 1964, warranting action Rule 14 of CCS (CCA) Rules, 1965, this court deems it fit to consider as to whether respondents have exercised their powers of review, under sub-Rule (6) of Rule 10 of CCS (CCA) Rules, 1965, to the facts and circumstances of the case, for continued suspension of nearly seven years and eight months from 28.1.2009 and as to whether there was any subjective and satisfaction by the competent authorities.

23. In this regard, to ascertain the same, we directed Mr.V.Balasubramaniam, learned counsel for the respondents, to produce the records. On the above said aspect, it is also relevant to extract Rule 10 of CCS Rules, 1965.

10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor - General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

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

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

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

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on

technical grounds without going into the merits of the case.

"(5)(a) Subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so."

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

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

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his

release from detention is intimated to his appointing authority, whichever is later."

24. Perusal of the records produced before this court, shows that there has been a mechanical extension of suspension by the authorities. As stated supra, the petitioner has been alleged to have involved in acts warranting disciplinary action and accordingly, action under Section 14 of CCS (CCA) Rules, 1965, has been taken. Perusal of the files makes it clear that without arriving at the satisfaction, on the principles of fairness, reasonableness and as to whether, prolonged suspension is required or not, and setting out clear reasons, as to why, extension of suspension was required, the petitioner has been kept under prolonged suspension, for a period of seven years and eight months. Review Committee constituted under the provisions of Rule 10 of CCS (CCA) Rules, 1965, the Postmaster General, Southern Region (TN), Madurai, has mechanically reproduced the very same expression that the Committee has recommended for extension of suspension, for a further period of 180 days on the expiry of the period already undergone and thus, the power under Sub Rule 10 of CCS (CCA) Rules, 1965 has been exercised. Reasons are heart beat of any decision, either judicial or administrative. Going through the files, we do not find any speaking order, setting out the reasons, for extension of suspension. We deem it fit to consider a judgment of the Hon'ble Apex Court in *Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others* reported in (2010) 9 SCC 496, wherein, the Supreme Court has considered a catena of decisions, which are extracted hereunder:

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262].

13. In *Keshav Mills Co. Ltd. v. Union of India* [(1973) 1 SCC 380], this Court approvingly referred to the opinion of Lord Denning in *R. v. Gaming Board for Great Britain, ex p Benaim* [(1970) 2 QB 417] and quoted him as saying "that heresy was scotched in *Ridge v. Baldwin* [1974 AC 40]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out

that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* [AIR 1961 SC 1669], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in *Harinagar* was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in *Harinagar* the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in *Bhagat Raja v. Union of India* [AIR 1967 SC 1606] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having

regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar v. State of U.P.* [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd. v. Union of India* [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd. v. Workers Union* [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness

or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on

fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39; AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service matter, relying on the ratio in *Capoor*, held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor* to the extent that: (*Capoor* case, SCC p. 854, para 28)

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.* [(1979) 4 SCC 642]. while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

"Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that: (*H.H. Shri Swamiji* case, SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the

law itself'." (See AIR p. 11, para 29.)

31. In *Bombay Oil Industries (P) Ltd. v. Union of India* [(1984) 1 SCC 141], this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor* and *Siemens Engg.* discussed above.

32. In *Ram Chander v. Union of India* [(1986) 3 SCC 103], this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716], this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of

the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi v. MTNL* [(1996) 3 SCC 119], this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In *Charan Singh v. Healing Touch Hospital* [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in *Som Datt Datta v. Union of India* [AIR 1969 SC 414] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in *Som Datt* in *S.N. Mukherjee* case, SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the

finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in Military Law and Precedents are very pertinent and are extracted hereinbelow:

"Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan v. General Medical Council* [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R. v. Civil Service Appeal Board, ex p Cunningham* [(1991) 4 All ER 310 (CA)], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for

the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).’ ”

43. The learned Master of Rolls further clarified by saying: (Civil Service Appeal Board case [(1991) 4 All. ER 310 (Ca), All ER p. 317)

“... ‘... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.’ ”

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see *North Range Shipping Ltd. v. Seatrans Shipping Corpn.* [(2002) 1 WLR 2397]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English v. Emery Reimbold and Strick Ltd.* [(2002) 1 WLR 2409]. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen v. Chief Constable of the Royal Ulster Constabulary* [(2003) 1 WLR 1763], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

“7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched.”

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee* in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as “the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review”. In *S.N. Mukherjee*

this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L Ed. 626] and Dunlop v. Bachowski [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

25. Facts and circumstances of the case, though, may warrant interim suspension of a Government servant, followed by initiation of disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965, and even if the petitioner, has made attempts to delay or stall the disciplinary proceedings by making representations one after another, on the grounds of non-supply of documents, alleging bias against the inquiry officer or violation of the principles of natural justice or for some other reasons, one or the other, that would have absolve the competent authorities of their legal duty to examine the facts and circumstances of the case, right of the employer to keep a government servant under continued suspension vis-a-vis reinstatement in service pending enquiry.

26. Even the last of the recommendations of the Review Committee enclosed in the counter affidavit shows that no reason has been assigned for extension of suspension. Recommendations of the Review Committee are extracted.

"Recommendations of the Review Committee

The Review Committee constituted under the provisions of sub rule (6) of Rule 10 of CCS (CCA)

Rules, 1965, by the Postmaster General, Southern Region (TN) Madurai-2 having carefully considered suspension of Smt.M.Malarvizhi, PA, Vendasandur ordered by the Superintendent of POs, Dindigul Dn from 28.01.09 A/N vide Memo No F1/9/08-09 dated 28.01.09 and keeping in view the facts and circumstances of the case:

1. Recommends extension of suspension of the above mentioned official for a further period of 180 days from 21.06.2016 to 17.12.2016.

2. Does not recommend the continued suspension of the above mentioned official beyond 20.06.2016 and recommends revocation of the order of suspension."

27. From the files and extract, it is abundantly clear that power of review and discretion, conferred on the Committee, under sub rule (6) of Rule 10 of CCS (CCA) Rules, 1965 has been done mechanically exercised, without assigning any valid reasons. At this juncture, this Court deems it fit to consider few decisions, on the aspect of discretion,

(i) In Suman Gupta and others v. State of Jammu and Kashmir and others reported in (1983) 4 SCC 339, the Supreme Court while explaining as to how administrative discretion should be exercised, at paragraph No.6, held as follows:

"The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India reported in (1978) 1 SCC 248 has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.

In the above reported judgement, the Apex Court further held that,

"We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether."

(ii) Reiterating as to how the discretionary power has to be exercised, the Supreme Court in *Sant Raj and another v. O.P.Singla and others* reported in (1985)2 SCC 349, held that "whenever, it is said that something has to be done, within the discretion of the authority, then that something has to be done, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful.

(iii) In *Fasih Chaudhary v. Director General, Doordarshan and others* reported in 1989 1 SCC 89, the Supreme Court held that exercise of discretion should be legitimate, fair and without any aversion, malice or affection. Nothing should be done which may give the impression of favouritism or nepotism. While fair play in action in such matters is an essential requirement, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one.

(iv) While considering, a litigation arising out of Bangalore Development Authority Act, 1976, the Supreme Court in *Bangalore Medical Trust v. B.S.Muddappa and others* reported in (1991) 4 SCC 54, held that "discretion is an effective tool in administration. It provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never

intends its authority to abuse the law or use it unfairly. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. In a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra virus and bad in law.

(v) In *Rakesh Kumar v. Sunil Kumar* reported in (1999) 2 SCC 489, the Supreme Court has held that administrative action/quasi-judicial function is the duty of the authority to give reasons/record reasons/and it should be a speaking order.

(vi) In *A.P. Aggarwal v. Govt. of NCT of Delhi* reported in (2000) 1 SCC 600, the Supreme Court held as under:

"The conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual."

(vii) In *State of NCT of Delhi v. Sanjeev*, reported in (2005) 5 SCC 181, the Supreme Court explaining the scope of judicial review of executive action has held as follows:

"15. One of the points that falls for

determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside, if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (see *State of U.P. v. Renuagar Power Co.*). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classical work *Judicial Review of Administrative Action*, 4th Edn. at pp.285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows:

The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

(viii) In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* reported in (2003) 4 SCC 579, at paragraphs No.13 to 15,

the Supreme Court explained the manner in which discretionary power has to be exercised, while discharging an administrative function. In the above judgment, the Supreme Court held that in matters relating to administrative functions, if a decision is tainted by any vulnerability as such illegality, irrationality and procedural impropriety, Courts should not hesitate to interfere, if the action falls within any of the categories stated supra.

"14. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT v. Mahindra and Mahindra Ltd.) The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:

"There is a general presumption against ousting the jurisdiction of the courts so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal

Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Civil Service Unions v. Minister for the Civil Service* this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney-General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

(Also see *Padfield v. Minister of Agriculture, Fisheries and Food*)

15. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

17. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* (KB at p.229 : All ER pp.682 H-683 A). It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those

rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed: (KB p.230 : All ER p.683 F-G)

"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another." (emphasis supplied)

18. Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

(ix) In *Akil Bhartiya Upbhokta Congress v. State of M.P.*, reported in 2011 (5) SCC 29, the supreme Court held that,

"19. In his work 'Administrative Law' (6th Edition, Prof. H.W.R. Wade, highlighted distinction between powers of public authorities and those of private persons in the following words:

"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers

unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms."

Prof. Wade went on to say:

"..... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere." (emphasis supplied)

20. *Padfield v. Minister of Agriculture, Fishery and Food* (1968) A.C. 997, is an important decision in the area of administrative law. In that case the Minister had refused to appoint a committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way that was unduly unfavourable to the complainants. The Minister's decision was founded on the reason that it would be politically embarrassing for him if he decided not to implement the committee's decision. While rejecting the theory of absolute discretion, Lord Reid observed:

"Parliament must have conferred the discretion with the intention that it should be

used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reasons, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."

21. In *Breen v. Amalgamated Engineering Union* (1971) 2 QB 175, Lord Denning MR said:

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevantly. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in modern administrative law."

23. This Court has long ago discarded the theory of unfettered discretion. In *S.G. Jaisinghani v. Union of India* AIR 1967 SC 1427, Ramaswami, J. emphasised that absence of arbitrary power is the foundation of a system governed by rule of law and observed:

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-*Law of the Constitution*; - Tenth Edn., Introduction

ex.). 'Law has reached its finest moments', stated Douglas, J. in *United States v. Underlick* (1951 342 US 98:96 Law Ed 113), "when it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute, man has always suffered'. It is in this sense that the rule of law maybe said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770 98 ER 327), 'means sound discretion guided by law. It must be governed by rule, not humour it must not be arbitrary, vague and fanciful"

.....
28. In *Shrilekha Vidyarthi v. State of U.P.* (1991) 1 SCC 212, the Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed:

.... We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.....

Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

It can no longer be doubted at this point of

time that Article of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty v. The International Airport Authority of India [(1979) 3 SCR 1014: AIR 1979 SC 1628] and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir [(1980) 3 SCR 1338: AIR 1980 SC 1992]. In Col.A.S.Sangwan v. Union of India [(1980 (Supp) SCC 559 : AIR 1981 SC 1545], while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose."

28. Having regard to the nature of charges and the fact that 3/4th of the disciplinary proceedings is already stated to be over, this Court is not inclined to quash the disciplinary proceedings initiated, vide charge memorandum, dated 07.02.2011 of the third respondent/competent authority. Therefore, while declining to quash the charge memo, we direct the third respondent/Ad-hoc Disciplinary Authority & Senior Superintendent, RMS "MA" Division, Madurai, to complete the disciplinary proceedings, within four months from the date of receipt of a copy of this order.

29. The writ petitioner, who is alleged to have protracted the disciplinary proceedings, shall extend her cooperation, and shall not make any attempt to protract the same, except for bona fide and genuine cause. We also make it clear, the expression genuine and bona fide cause, should not be construed as a leverage to make untenable grounds, to procrastinate the disciplinary proceedings.

30. In the light of the above discussion and decisions, this court is of the view that continued suspension is not valid. Having regard to the nature of the charges, the respondents are

directed to reinstate the petitioner in any, non-sensitive or insignificant post and complete the enquiry and pass orders, in accordance with law, within the time stipulated by this court.

The writ petition is allowed to the limited extent, as indicated. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

1. The Postmaster General
Union of India
Southern Region (TN)
Madurai - 625 002
2. The Postmaster General
Director of Postal Services
Southern Region (TN)
Madurai - 625 002
3. Ad-hoc Disciplinary Authority &
Senior Superintendent
RMS "MA" Division
Madurai - 625 001
4. The Senior Superintendent of Post Offices
Dindigul Division
Dindigul
5. The Registrar
Central Administrative Tribunal
Chennai - 600 104

+1cc to Mr.R. malaichamy, Advocate, S.R.No.58908
+2cc to Mr.V. balasubramanian, Advocate, S.R.No.58472

ctk (CO)
md (9/11/2016)

W.P.No.20318 of 2016