

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.35099 of 2016
W.M.P.Nos.30251 and 30252 of 2016

Rahul Kaushik

.. Petitioner

versus

1. The Secretary,
Union of India,
Ministry of Communications & IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
 2. The Assistant Director General (Vig-I),
Ministry of Communications & IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
 3. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
 4. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent Tribunal pertaining to its order, which is made in O.A.No.310/01255/2016, dated 05.08.2016, quash the same and consequently, direct the 1st respondent to conduct denova inquiry by appointing the competent Inquiry Officer and Presenting Officer.

For Petitioner : Mr.R.Malaichamy
For Respondents 1 to 3 : Mr.V.Balasubramanian

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

The petitioner belongs to Indian Postal Service. Placing reliance on a decision of the Hon'ble Supreme Court in Union of India v. B.V.Gopinath reported in 2014 (1) SCC 351, Mr.R.Malaichamy, learned counsel for the petitioner submitted that as initiation of disciplinary proceedings and issuance of Charge Memorandum No.11-02/2011-Vig.(P.11), dated 16.07.2013, were not approved by the Hon'ble Minister, a mandatory requirement under Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Tribunal ought to have granted the reliefs, sought for in the Original Application. He raised further grounds that the petitioner was not supplied with additional documents; though the names of certain witnesses were mentioned in the charge memo, they were not examined; the inquiry officer, hastily short-circuited the procedure; and his report has not been authenticated by the competent authority, as per the CCS (CCA) Rules.

2. The Assistant Director (Vig & Inv), Office of the Chief Postmaster General, Tamil Nadu Circle, Chennai has filed a detailed counter affidavit. Based on the same, Mr.V.Balasubramanian, learned standing counsel for the respondents 1 to 3 submitted that as per Rule 3 of the Government of India (Transaction of Business) Rules, subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules 1961, shall be disposed of by, or under the general or special directions of the Minister-in-charge. He further submitted that a decision to place the petitioner under suspension with immediate effect, consulting CVC, for initiating major penalty proceedings against the petitioner, was taken by the Hon'ble Minister of State (C & IT) on 24.04.2012 itself, and accordingly, the petitioner was placed under suspension, vide order, dated 27.4.2012.

3. Learned counsel for the respondents further submitted that the Central Vigilance Commission, vide O.M.No.011/P&T/035-192093, dated 26.10.2012, has advised initiation of major penalty proceedings against the petitioner. Thereafter, a draft charge memo, under Rule 14 of CCS(CCA) Rules, 1965, was put up to the disciplinary authority viz., the Hon'ble Minister of State (C & IT), on 24.6.2013, which has been specifically mentioned in column 8 of the proforma, submitted to the Hon'ble Minister and that he has approved the said draft charge memo on 8.7.2013. Accordingly, charge memo under Rule 14 of CCS(CCA) Rules, 1965, was issued against the petitioner on 16.7.2013. After completion of the inquiry, the inquiry officer submitted his report on 7.1.2016, holding both the articles of charge leveled against the petitioner, as proved. The inquiry officer's report was put up to the disciplinary authority viz., Hon'ble Minister of State (C & IT), vide notings on 30.3.2016, with the proposals, viz., (i) to agree with the findings of the inquiry report (ii) forwarding Inquiry Officer's report to the charged officer for submitting his written representation within 15 days and (iii) further ancillary action. The Hon'ble Minister of State (C & IT), has approved the above proposals on 7.5.2016 and accordingly, the Inquiry Officer's report was forwarded to the petitioner on 21.6.2016 and again on 21.7.2016. To substantiate the abovesaid contentions, files have been produced.

4. Learned counsel for the respondents 1 to 3 further submitted that as per Rule 15(2) of CCS(CCA) Rules, 1965, the disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

5. Learned counsel for the respondents 1 to 3 further submitted that as per Rules 2 and 15 of the Authentication (Orders and other instruments) Rules, 2002, all orders and other instruments relating to the Department of Posts made and executed in the name of the President shall be authenticated by a Senior Deputy Director General, a Deputy Director General, a Director, an Assistant Director General, a Chief Engineer, or

the Secretary Postal Services Board. According to him, the Inquiry Officer's report, approved by the Hon'ble Minister, was forwarded by the Assistant Director General (Vig.I), who is lawfully, authorized to authenticate the said communication.

6. Learned counsel for the respondents 1 to 3 further contended that O.M.No.11012/13/85-Estt(A), dated 26.6.1989, has already been modified, fifteen years' back, vide Government of India's Notification No.11012/20/1998-Estt(A), dated 21.8.2000 and as per the revised Sub-Rule (2) under Rule 15 of CCS(CCA) Rules, 1965, the disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant. He therefore submitted that in the present case, the Inquiry Officer's report was caused to be forwarded to the petitioner on 21.6.2016 and again on 21.7.2016, by the competent authority, authorised to do so.

7. He further contended that the need for supplying a copy of the Inquiry Officer's report to the charged officer, was only insisted, under the caption "supply of copy of inquiry report to the accused Government servant before final orders are passed by the Disciplinary Authority", vide Department of Postal Department O.M.No.11012/22/94-Estt(A), dated 27.11.1995, wherein reference was invited to the earlier O.M., dated 26.6.1989. He therefore submitted that as per the revised Rule 15(2) of the CCS (CCA) Rules, there is no need that the Inquiry Officer's report should be forwarded only by the disciplinary authority, viz., the Hon'ble Minister for the State.

8. Learned counsel for respondents 1 to 3 submitted that for initiation of disciplinary proceedings, the Hon'ble Minister has granted his approval and as per the Authentication (Orders and other instruments) Rules, 2002, in case of orders and other instruments, made and executed in the name of the President, it shall be authenticated by a Senior Deputy Director General, a Deputy Director General, a Director, an Assistant Director General, a Chief Engineer or the Secretary, Postal Services Board in that Department.

9. Referring to Rule 3 of the Government of India (Transaction of Business) Rules, learned counsel for respondents 1 to 3 further submitted that after the approval for initiation of disciplinary proceedings and charge memorandum, by the Hon'ble Minister, appropriate orders were issued. He therefore submitted that Rule 14(2) of the CCS (CCA) Rules 1965 has been complied, with letter and spirit.

10. Learned counsel for respondents 1 to 3 further submitted that in the light of the abovesaid procedure, followed in the matter of initiation of departmental action, approval of charge and furnishing of the copy of the Inquiry Report, charge memo, dated 16.07.2013, under Rule 14(2) of the CCS (CCA) Rules 1965, does not warrant quashing. On the procedural irregularity, alleging that the petitioner was not permitted to examine the witnesses, he submitted that despite written summons, the witnesses have not turned up, and therefore, the examination of the said witnesses was dispensed with.

11. He further submitted that inquiry was conducted in sixteen sittings and even re-examination of one state witness, Mr.Dhoundiyal, SW.7, was permitted by the inquiry officer, at the request of the petitioner. In the inquiry, fourteen defence documents were permitted by the inquiry officer and eleven documents were filed, on behalf of the petitioner. He further submitted that though the petitioner requested twenty one additional documents, he was supplied only fourteen documents and seven documents could not be supplied, as they did not exist.

12. Learned counsel for respondents 1 to 3 further submitted that the request of the petitioner, recalling the state witness, Shri.Adnan Ahmed, was rejected by the inquiry officer, as it was found to be a request to fill up of a gap in the evidence. He further submitted that there is no procedural irregularity in the conduct of the enquiry. For the abovesaid reasons, the respondents have prayed for dismissal of the writ petition.

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

13. Rules 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which deal with the procedure for imposing major penalties and action on the inquiry report, are extracted hereunder:

"14. Procedure for imposing major penalties:

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

EXPLANATION - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of

witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the

documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note: The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of

charge to which the government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

NOTE-

If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE-

The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to

fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) 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 in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clause (i) to (iv) of rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to

its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

EXPLANATION- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include:- (a) the report prepared by it under clause (i).

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

15. Action on inquiry report:

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be. (2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed : Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

14. In exercise of the powers conferred by clause (3) of Article 77 of the Constitution and in supersession of all previous rules and orders on the subject, the President has made rules, for more convenient transaction of the business of the Government of India and that the rules are called as, "the Government of India (Transaction of Business) Rules, 1961". As per the definition to the said rules, "department" means, any of the Ministries, Departments, Secretariats and Officers, specified in the First Schedule to the Government of India (Allocation of Business) Rules, 1961. Rule 3 of the said rules, deals with disposal of business by Ministries and the said rule is extracted hereunder:

"Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases, to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall

be disposed of by, or under the general or special directions of the Minister-in-charge."

15. Rules 2 and 15 of the Authentication (Orders and other instruments) Rules, 2002, state that all orders and other instruments relating to the Department of Posts made and executed in the name of the President shall be authenticated by a Senior Deputy Director General, a Deputy Director General, a Director, an Assistant Director General, a Chief Engineer, or the Secretary Postal Services Board.

16. Articles of charges, issued against the petitioner, in charge memo, under Rule 14 of CCS (CCA) Rules, 1965, vide Postal Directorate Memo No.11-02/2011-Vig.(P.II), dated 16.7.2013, are as follows:

"Charge I:

That the said Shri.Rahul Kaushik, while functioning as Senior Superintendent of Post Offices, West Division, New Delhi during the period from 04.10.2010 to 28.12.2010 was appointed as an examiner for evaluating answer scripts of candidate: (pertaining to Delhi East Division), relating to the Aptitude Test for Direct Recruitmen to Postal Assistants/Sorting Assistants (PAs/SAs) for the year 2010, vide Memo No Direct Rectt./R-I/Con/Gen/2010, dated 12.11.2010, from Director Postal Services (O), Office of Chief PMG, Delhi Circle, New Delhi. The test was held on 14.11.2010 at New Delhi and evaluation of answer books took place on 15.11.2010. The said Shri.Rahu Kaushik instead of evaluating the answer sheets carefully & awarding correct marks has allegedly manipulated and awarded higher marks, (84) to each of these two candidates viz. S.Sonia and Kuldeep Kumar who had appeared in the test from Delhi East Division under Roll No.DE-178/DR/PA/2 10 and DE-181/DR/PA/2010, against their correct marks, 28 & 30 marks respectively. By awarding more marks intentionally, the said Shri Rahul Kaushik facilitated their irregular selection in PA/SA cadre, violating Rule 4, Part IV of Appendix No.37 of Postal Manual Volume IV.

By doing so, Shri. Rahul Kaushik is alleged to have failed to maintain absolute integrity, devotion to duty and thereby has acted in a manner unbecoming of a Govt Servant. He is therefore, alleged to have violated the provisions of Rule 3(I)(i), Rule 3(1)(ii) and Rule 3 (1)(iii) of CCS(Conduct) Rules 1964.

Charge II

That the said Shri Rahul Kaushik while functioning as Senior Superintendent of Post Offices, New Delhi West Division, New Delhi 110028 during the period from 04.10.2010 to 28.12.2010 was appointed as an examiner for evaluating answer scripts of candidates (pertaining to Delhi North Division), relating to the Aptitude Test for Direct Recruitment to Postal Assistants/Sorting Assistants (PAs/SAs) for the year 2010 vide memo No.Direct Rectt/R-1/Con/Gen/2010 dated 12.11.2010 from Director Postal Services (O), Office of Chief PMG, Delhi Circle, New Delhi. The test was held on 14.11.2010 at New Delhi and evaluation of answer books took place on 15.11.2010. The said Shri.Rahul Kaushik instead of evaluating the answer sheets carefully & awarding correct marks, has allegedly manipulated and awarded higher marks 80 & 82 respectively to two candidates namely, Shri.Rahul and Ms.Versha who had appeared in the test from Postal Division Delhi North under Roll No.DN/DR-047/PA/2010 and DN/DR-306/PA/2010 against the correct marks of 40 & 24 respectively. By awarding more marks wrongly, the said Shri.Rahul Kaushik facilitated their irregular selection of a non deserving candidate in PAISA cadre violating Rule 4, Part IV of Appendix No.37 of Postal Manual Volume IV.

By doing so, Shri. Rahul Kaushik is alleged to have failed to maintain absolute integrity, devotion to duty and thereby has acted in a manner unbecoming of a Govt. Servant. He is, therefore, alleged to have violated the provisions of Rule 3(I)(i), Rule 3(I)(ii) and Rule 3(I)(iii) of CCS(Conduct), Rules 1964."

17. We have pursued the files submitted to substantiate that the decision to proceed against the writ petitioner under Rule 14 of CCA (CCS) Rules, ie., initiation stage, has been approved by the Hon'ble Minister of State (C & IT), on 24.04.2012. Draft charge memo has been put up on 24.06.2013 and approved by the Hon'ble Minister on 08.07.2013. Thereafter, charge memo, under Rule 14 of CCS (CCA) Rules, 1965, has been issued against the petitioner on 16.7.2013. The inquiry officer's report has been put up to the disciplinary authority viz., Hon'ble Minister of State (C & IT), on 30.3.2016, with the proposals, viz.,

- (i) to agree with the findings of the inquiry report,
- (ii) forwarding Inquiry Officer's report to the charged officer for submitting his written representation within 15 days, and
- (iii) further ancillary action.

The Hon'ble Minister of State (C & IT), has approved the above proposals on 7.5.2016 and accordingly, the Inquiry Officer's report has been forwarded to the petitioner on 21.6.2016 and again on 21.7.2016, respectively.

18. Files disclose compliance of Rule 14 of the abovesaid Rules and the judgment of the Hon'ble Apex Court in Union of India v. B.V.Gopinath reported in 2014 (1) SCC 351. Contentions relating to the alleged procedural irregularities in the conduct of the inquiry, have been refuted. As per Rule 15(2) of the CCS (CCA) Rule, on receipt of the Inquiry Officer's report, it is for the writ petitioner to submit his written representation or submission to the Disciplinary Authority, within fifteen days, irrespective of whether the report is favourable or not to the Government servant and thereafter, the Disciplinary Authority would consider the representation and pass appropriate orders, as per Rules 15(2A), (3) and (4) of the said Rules.

19. Disciplinary proceedings have been commenced, vide charge memo, dated 16.07.2013 and as rightly observed by the Tribunal that the proceedings have reached the stage of submission of written representation or submission, to the inquiry report and at the fag end of the disciplinary proceedings, the petitioner has chosen to challenge the charge memo. Procedural irregularity, if any, in the conduct of inquiry, has to be raised before the concerned authority, under Rule 15(2) of the CCS (CCA) Rules.

20. In Union of India v. Upendra Singh reported in 1994 (3) SCC 357, the Central Administrative Tribunal examined the correctness of the charges against the respondent therein, on the basis of the material produced by him and quashed the same. Union of India preferred an appeal. The Hon'ble Supreme Court, after considering the decisions in T.C.Basappa v. T.Nagappa reported in AIR 1954 SC 440, which was followed in Ujjam Bai v. State of U.P., reported in AIR 1962 SC 1621 and V.D.Trivedi v. Union of India reported in 1993 (2) SCC 55, at Paragraphs 4 and 6 of the judgment in Upendra Singh's case, held as follows:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the

disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, property speaking, as a Writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view."

21. In *Union of India v. K.K.Dhawan* reported in 1993 (2) SCC 56, it was contended by the delinquent therein that his conduct cannot be the subject matter of disciplinary proceedings, as it was not in the course of discharge of duties as a servant of the Government. The Hon'ble Supreme Court, following the ratio decidendi in *S.Govinda Menon v. Union of India* reported in AIR 1967 SC 1274, repelled such contention and at Paragraph 28, held that disciplinary action can be taken in the following cases, though instances, are not exhaustive,

"i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii) if he has acted in a manner which is unbecoming of the government servant;

iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

v) if he had acted in order to unduly favour a party;

vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

It is useful to extract the ratio decidendi in *S.Govinda Menon v. Union of India* reported in AIR 1967 SC 1274, and it reads as

follows:

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service." In this context reference may be made to the following observations of Lopes, L.J. in *Pearce v. Foster* (1866) 17 QBD 536, p. 542.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

22. In *Union of India v. Kunisetty Satyanarayana* reported in AIR 2007 SC 906, the respondent therein was issued with a charge memo for availing reservation against the post earmarked for ST, though he did not belong to the said category. Instead

of submitting a reply to the charge memo, he preferred Original Application before the Central Administrative Tribunal, which disposed of the same with a direction to him to submit an explanation to the charge memo and on such reply, the disciplinary authority was directed to proceed further. Instead of filing the reply, the respondent therein filed a Writ Petition, which was allowed. Testing the correctness of the order of the Andhra Pradesh High Court, the Supreme Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors.* [JT 1995 (8) SC 33], *Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr.* [AIR 2004 SC 1467], *Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors.* [2001(10) SCC 639], *State of U.P. v. Brahm Datt Sharma and Anr.* [AIR 1987 SC 943] etc.

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

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

(emphasis supplied)

23. Going through the materials on record and files, produced before this Court, we are of the view that the petitioner has not made out a case, to quash the charge memo. Order made in O.A.No.310/01255/2016, dated 05.08.2016, is sustained.

24. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

25. After the pronouncement of the order, on the averments made in the counter affidavit, Mr.R.Malaichamy, learned counsel appearing for the petitioner submitted that only a draft charge memo has been approved by the Hon'ble Minister and that therefore, it cannot be construed as approval of the final charge memo, required under Rule 14(2) of the abovesaid Rules. He further submitted that when the powers of the President, the Appointing Authority, is delegated to the Hon'ble Minister, there cannot be a further delegation to the subordinate officers to authenticate issuance of charge memo or cause to serve the Inquiry Officer's report.

26. Sum and substance of the submission of the Mr.R.Malaichamy, learned counsel for the writ petitioner is that the Hon'ble Minister has to frame the charge, issue the same and after the completion of the inquiry, the Inquiry Officer's report has to be sent and all the proceedings should be issued in the name of the Hon'ble Minister, and that there cannot be any sub-delegation to other authorities.

27. We have already extracted the Government of India (Transaction of Business) Rules, in the foregoing paragraphs and in the light of the above, submissions to the contra, are not countenanced. Contention of the petitioner, if to be accepted, then in every case, covered under the Government of India (Transaction of Business) Rules and Government of India (Allocation of Business) Rules 1961, the concerned Minister will have to issue all the consequential orders. Submission, contrary to Government of India (Transaction of Business) Rules, is untenable and liable to be rejected.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

1. The Secretary,
Union of India,
Ministry of Communications & IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
2. The Assistant Director General (Vig-I),
Ministry of Communications & IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
3. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
4. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

+1 cc to Mr.R.Malaichamy Advocate sr 67230
+1 cc to Mr.V.Balasubramanian Senior panel counsel
(Govt of India) vide sr 66808

W.P.No.35099 of 2016

gj(co)
aa19/12/2016

सत्यमेव जयते

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