IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5871 of 2018

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Md. Kamal Ashraf, S/o Late Md. Naeem Ashraf @ Syed Abdul Nayeem, R/o A/8, Ali Nagar, Anisabad, P.S. Gardanibagh, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Excise, Prohibition and Registration, Government of Bihar, Patna.
4. The Inspector General, Department of Excise, Prohibition and Registration, Government of Bihar, Patna
5. The Special Secretary of the Department of Excise, Prohibition and Registration, Government of Bihar, Patna.
6. The Deputy Secretary, Department of Registration, Excise and Prohibition Department, Government of Bihar, Patna.
7. Departmental Enquiry Commissioner, Government of Bihar, Patna.
8. Assistant Inspector General of Registration (Headquarter), Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr.Bishnu Kant Dubey, Advocate
Mr. Shankar Kumar Thakur, Advocate
Mr. Pyush Lall, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-11-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is challenging the Notification contained in Memo No.491 dated 08.02.2018 (Annexure-15) by which the petitioner has been put under suspension in exercise of powers under Rule 9 (i) (a) & (c) of

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules, 2005) and also challenging the order contained in Memo No.627 dated 22.02.2018 (Annexure-16) by which the departmental proceeding has again been initiated against the petitioner and has been given liberty to take his defence before the enquiry officer.

3. It is the second round of litigation triggered by the petitioner, who was posted as District Sub-Registrar, Bhagalpur. While he was discharging the duty as Sub Registrar at Bhagalpur, an Economic Offence P.S. Case No.23 of 2013 dated 18.06.2013 was registered under Section 13 (2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act) as it was found that he has acquired the property disproportionate to known sources of income and the Police Inspector General, Economic Offences Unit on the next date of lodging of an FIR passed information to the Secretary, Department of Registration and Excise Prohibition, who in exercise of power under Section 9 (1) (g) of C.C.A. Rules, 2005 vide Memo No. 4245 dated 21.06.2013 placed this petitioner under suspension with immediate effect, whereafter Special Executive Officer, Bihar, Patna vide letter

no.4353 dated 28.06.2016 served the charge sheet in Praptra 'K' and asked the petitioner to file its reply to the Special Executive Officer, Bihar, Patna and if no explanation is filed, then it will be presumed that he has nothing to say against the proposed charges mentioned in Praptra 'K' and, in turn, proper action would be taken in accordance with law.

4. The petitioner filed his reply in which he denied the charges. Thereafter, the Additional Secretary to the Government of Bihar vide Memo No.1071 dated 9.03.2014 (Annexure-4) communicated the initiation of the proceeding in view of the lodging of the criminal case as mentioned above, registered under Section 13 (2) read with Section 13 (1) (e) of the P.C. Act and also violates the provision of Bihar Government Servant Conduct Rules, 1976 and, accordingly, Sri Shailendra Nath Sinha, Assistant Inspector General of Registration (Headquarter) was appointed as Enquiry Officer. The Inspector General of Police, Economic Offences Division vide letter no.398 dated 20.06.2013 gave details of the property acquired by the petitioner mentioned in the FIR. The enquiry was conducted and concluded on 06.05.2014 and after that the enquiry report was submitted on 20.05.2014 and on that basis vide letter no. 2177 dated 28.05.2014 (Annexure-6) the

petitioner was served the second show cause. The petitioner was asked to give comment on the report of the Enquiry Officer.

5. As it appears from the records of the writ application that the petitioner filed a reply to the second show cause, but did not attach the same on account of being voluminous and, thereafter, the petitioner was dismissed from service vide Memo No.4391 dated 10.10.2014.

6. The order of dismissal which was served upon was challenged by the petitioner in a writ jurisdiction in CWJC No.22076/14. This Court found that the departmental enquiry has not been conducted properly, in such view of the matter, the order of dismissal dated 10.10.2014 and the order dated 30.09.2015 were set aside. Accordingly, the writ petition was allowed, the matter was remitted to the Disciplinary Authority to proceed afresh in accordance with law. Operative portion of the order passed in the writ petition are as follows :

> ***"Having considered the facts aforesaid, the order dated 10.10.2014, as contained in Annexure-1, and the order dated 30.09.2015, as contained in Annexure-9, are set aside. The writ petition is, accordingly, allowed. The matter is remitted to the disciplinary authority to proceed afresh in accordance with law".***

7. The petitioner after getting the order, has filed an application before the Secretary, Excise, Prohibition and Registration Department, Bihar, Patna seeking a relief to allow him to join the service in view of order of this Court whereby set aside the order of dismissal.

8. In view of the order passed by this Court, the Government vide Memo No.258 dated 18.01.2018 reinstated the petitioner but the Government of Bihar in exercise of power under Rule 9 (1) (a) & (c) of the CCA Rules, 2005 vide Memo No.491 dated 08.02.2018 again placed the petitioner under suspension and vide Memo No.627 dated 22.02.2018 informed him that he was at liberty to take his defense in his support as permitted by the enquiry officer. Both the orders i.e. order of suspension as well as commencement of the enquiry are under challenge.

9. The point has been taken by the petitioner that as per the order of this Court passed in the writ application, the competent authority was obliged to start *de novo* proceeding, if any, from the initial stage i.e. from the stage of issuance of charge sheet in Prapatra 'K', but instead of following the mandatory procedure prescribed under Rule 17 (3) and 17 (5) of the CCA Rules, 2005, straight-way directed the petitioner to

submit his defence statement before the Inquiry Officer, further submitted that the petitioner is under suspension for last six years without payment of any subsistence allowance inasmuch as before placing the petitioner under suspension they have not examined as to whether the suspension was required and without considering this fact the petitioner has been placed under suspension again. It has been submitted, there is no any purpose and reasonability to continue the petitioner under suspension for last six years that too without any subsistence allowance. The departmental proceeding is suffering from illegality at the root, on account of failure to follow the procedure, the disciplinary authority is jurisdictionally wrong to straight-way appoint the Enquiry Officer and asked the petitioner to file his defence statement. It has further been said that as the order of dismissal has been set aside by the writ Court, in such circumstances, the Enquiry Officer would be appointed only after following the procedure mentioned in Rules 17 (1) to 17 (6) and in absence of that the initiation of the proceeding and issuance of Praptra 'K' is vitiated and further submitted that after serving the Article of Charges and attaching the memo of evidences in support of the charges, the disciplinary authority is required to invite his defence statement, whereupon the disciplinary authority will examine the defence statement of the petitioner, if he is not satisfied with the explanation, then only he will proceed to conduct formal departmental enquiry. This part of procedure has not been followed and, as such, enquiry proceeding is illegal from the initial stage and further submitted that as the petitioner is facing the criminal case in which charges are identical in nature as that of disciplinary proceeding. In view of the decision of Hon'ble Supreme Court that the allegation made in the criminal case *vis-a-vis* in the departmental proceeding is of the same and identical, the departmental proceeding should not proceed till the disposal of the criminal case. There is no difference in the statement of the allegation made in the criminal case as well as in the charge sheet of departmental enquiry, so probity lies with competent authority, till the criminal case is decided, the department should not proceed.

10. It has further been submitted that neither the charge sheet has been issued by the competent authority nor the competent authority has followed the mandatory provision enshrined in Rule 17 (1) to 17 (6) in view of order setting aside the order of dismissal passed against the petitioner in CWJC No.22076 of 2014, in such view of the matter, the disciplinary

authority was required to first ask the explanation on the proposed charge sheet and if he would not be satisfied with the explanation then the regular proceeding could be initiated by the disciplinary authority by appointment of enquiry officer as well as presenting officer along with supply of material upon which the prosecution is placing reliance in order to prove the charges. In support of submission, he has placed reliance on the following judgments :-

(i) 2018 (1) PLJR 91 (Rama Shankar Chaudhary Vs. State of Bihar & Ors. Paragraphs 7 to 10)

(ii) 1996 (2) PLJR 95 (Ravindra Nath Singh Vs. Bihar State Road Transport Corporation & Ors. Paragraphs 3 & 7).

(iii) (2001) 2 SCC 330 (State of Punjab Vs. V.K. Khanna, paragraphs 20, 21 & 34)

(iv) 2015 (1) PLJR 960 (Chandrakant Anil Vs. Union of India and Ors.)

(v) AIR 2018 SC 4060 (State of Tamil Nadu Vs. Pramod Kumar, IPS, Paragraphs 14 to 18).

(vi) 2015 (2) PLJR 250 (SC) (Ajay Kumar Choudhary Vs. Union of India, Paragraphs 7, 8 & 9)

11. The second point has been raised by the petitioner that as the departmental proceeding has been initiated and charge sheet has been served on account of lodging of

Economic Offence P.S. Case No.23 of 2013. The departmental proceeding is wholly and solely based on material and evidence discloses in the criminal case and it is not based on any independent or additional material and, as such, the departmental proceeding against the petitioner is bad in law and is fit to be quashed. In support of this submission, the petitioner has placed reliance on the judgment of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. Reported in (1999) 3 SCC 679***.

12. Further, another point has been taken that as the petitioner has challenged the initiation of criminal case filed against him by the Economic Offence Unit in Cr.W.J.C. No.231 of 2016, which was heard along with Cr.W.J.C. No.563 of 2013 filed by one Md. Yunus, this Court by a common order dated 27.09.2016 and 08.03.2017 dismissed the writ applications upheld the proceeding of criminal case. Against that, Mr. Yunus moved before the Hon'ble Supreme Court in S.L.A. (Crl.) No.5469-5470 of 2017, in which, the Hon'ble Supreme Court stayed the operation of the judgment passed in Cr.W.J.C.No.563 of 2013 till further orders. Similarly, the petitioner has also filed S.L.A (Crl) No.4934-4935 of 2017 against the order passed in Cr.W.J.C. No.231 of 2016 and the Hon'ble Supreme Court vide

order dated 2.04.2018 has also stayed the proceeding of the criminal case. As the departmental proceeding is based on only material which is available which is subject matter of criminal proceeding and, as such, the continuance of departmental proceeding is per say illegal.

13. Counsel for the petitioner has placed reliance upon the decision reported in ***(2009) 2 SCC 570 (Roop Singh Negi Vs. Punjab National Bank & Ors.)*** for the submission that charges in the departmental proceeding has to be proved by documentary evidence as well as oral evidence. Counsel for the petitioner asserts that the entire proceeding is vitiated as they have not followed the mandatory provision of Rule 17 (1) to 17 (6) of the CCA Rules, 2005.

14. On the question of passing the order of suspension, it has been submitted that the petitioner has been kept in suspension for last six years. Earlier the order of suspension was passed in exercise of power under Rule 9 (1) (c), but this time, the suspension order has been passed in exercise of power under Rule 9 (1) (a) and 9 (1) (c) of the CCA Rules, 2005. It has been submitted that the essence of placing the person under suspension is essentially transitory and temporary in nature and should be for short duration in order to

achieve its purpose. It has further been said that if the order of suspension is passed for indefinite period without showing any reason, its purpose itself is defeated and the order of suspension becomes punitive in nature as the object behind suspension is to ensure that the employee suspended may not influence or obstruct in the fair conduct of departmental proceeding. In support of its submission, he has placed reliance on the judgment reported in ***2015 (2) PLJR 250 (SC) (Ajay Kumar Choudhary Vs. Union of India)*** and another judgment reported in ***AIR 2018 SC 4060 (State of Tamil Nadu Vs. Pramod Kumar, IPS)***. Placing heavily on those judgments, it has been submitted that the entire purpose for keeping a person under suspension itself gives the colour of victimization when other persons, who were put under suspension, on their application, their suspension has been revoked, but in the case of the petitioner, the Authority has adopted a selective consideration in keeping the petitioner under suspension for long six years without making any payment of subsistence allowance.

15. Counsel for the State has submitted that the claim of the petitioner that he has remained under suspension for six years is completely misconceived, misdirected and incorrect in view of the fact that the FIR was lodged against the

petitioner on 18.06.2013, he was put under suspension on 21.06.2013, the FIR was communicated to the Department on 20.06.2013 and on that account, the petitioner was put under suspension, followed by calling of statement of defence from the petitioner on 28.06.2013 and, thereafter, his statement of defence was not found satisfied by the disciplinary authority and vide order dated 09.03.2014, the petitioner was asked to face enquiry and, accordingly, the departmental enquiry was initiated against the petitioner. On 20.05.2014, all documents were provided to the enquiry officer as well as documents were given to the petitioner. The petitioner never cooperated in early conclusion of the enquiry proceeding and on account of non-cooperation, the enquiry officer having no other way out, conducted the enquiry ex parte and found the charges proved against the petitioner. The petitioner was served the second show cause on 26.05.2014 which was replied by the petitioner and followed by the order of dismissal dated 10.10.2014. The appeal was filed by the petitioner, but during pendency of appeal, he has challenged the order of dismissal vide CWJC No.22076 of 2014, ultimately, the Appellate Authority rejected the appeal, which was challenged by the petitioner by way of filing an amendment petition. The writ petition was allowed vide order dated 08.11.2017 and the petitioner has been reinstated and further again he was put under suspension on 8.02.2018.

16. Counsel for the State submits that dismissal period of the petitioner cannot be treated to be under suspension, but in fact he was under dismissal and the enquiry was conducted swiftly without wasting any time, but it is the petitioner, who did not cooperate in smooth functioning of the enquiry proceeding compelled the enquiry officer to pass an ex parte order. So, the submission of the petitioner that he has remained under suspension for six years is completely incorrect and further he has submitted that as the formality of seeking explanation was already completed and, as such, there was no need to again restart the proceeding from the initial stage and to start the proceeding *de novo* in view of the fact that the order passed by this Court in writ jurisdiction has only quashed the order of dismissal as well as the order passed by the Appellate Authority. The Court has not quashed the Praptra 'K' and Praptra 'K' has been issued after receipt of the defence statement of the petitioner, so there was no need to again restart the same which has already been completed and further submitted that if the petitioner has any grievance with regard to

any irregularity committed in the enquiry proceeding as per Rule 23, he can file an appeal before the Appellate Authority bringing to the notice the irregularity in the departmental proceeding, but the petitioner did not raise any grievance before the Appellate Authority, straight-way has challenged the continuance of departmental proceeding in the present writ application.

17. It has further been submitted that the charges pertaining to departmental proceeding is quite different from the charges leveled against the petitioner in the criminal case and, as such, the judgment cited by the petitioner has no applicability in the present case, and further submitted that as the criminal proceeding has been stayed, but there is no such order in connection with departmental proceeding and, as such, he should have cooperated in the early disposal instead of challenging the initiation of the proceeding.

18. It has further been submitted that submission of the petitioner that the entire proceeding is vitiated and the Enquiry Officer does not have any jurisdiction to proceed in the matter is completely misconceived and having no such basis for such submission as has been raised by the petitioner.

19. In reply, counsel for the petitioner submitted

that order of suspension has been passed on 8.02.2017 and it is wrong to say that the suspension order is not of six years old. Submission of the petitioner that he was not under suspension, but in view of the Rule 9 (5), the moment the order of termination is set aside on technical ground, the person will be treated to be under suspension from the initial stage itself, as this Court in the writ application has found the proceeding suffers from technical error on account of failure to follow mandatory provision mentioned in the rules, so in view of Rule 9 (5) it can be safely said that the petitioner is under suspension from the initial stage that too is coming from six years.

20. Counsel for the petitioner has again submitted that entire proceeding suffers from illegality in view of not following the mandatory provision mentioned in Rule 17 and has placed reliance on the following judgments :-

(I) (2001) 2 SCC 330 (State of Punjab Vs. V.K. Khanna, paragraphs 20, 21 & 34).

(II) (2008) 1 SCC 350 (Chief Engineer, Hydel Project and Ors. Vs. Ravindra Nath & Ors, in paragraphs 24 to 26).

(III) 2013 (10) SCC 136 (Jagmittar Sain Bhagat & Ors. Vs. Director, Health Services, Haryana and Ors., paragraphs 9, 10 & 11).

(IV) 2012 (12) SCC 573 (Cantonment Board & Anr. Vs. Church of North India).

21. Basically the point has been raised by the

petitioner that the proceeding suffers from illegality on the point that the procedure prescribed under Rule 17 (1) to (6) of the CCA Rules, 2005 are mandatory provisions which prescribes the procedure in the following manner; in a first step, the disciplinary authority is to frame or get framed definite and distinct articles of charge containing the substance of the imputations of misconduct or misbehaviour as also statement of allegation containing all the relevant facts in support of article of charges as also the list of witnesses and list of documents. In the second step, the disciplinary authority is to serve the article of charges and statement of the allegations on the government servant and to call upon the statement of defence from him. In the third step, on receipt of written statement of defence, the disciplinary authority is to consider the same and decide whether to hold enquiry into the article of charges or not, in the event, on consideration, it is decided to hold enquiry, then it could be by himself or by an enquiry officer, in a fourth step, once the disciplinary authority, after such consideration, decides to hold the enquiry through the enquiry officer, it is to transmit the records to the enquiry officer including the charge sheet, statement of allegation, written defence of the government servant. The competent authority gets jurisdiction to decide and order to hold enquiry, only when, after consideration of written statement of defence, does not find substance inasmuch he would not take simultaneous decision for initiating the departmental enquiry by issuing articles of charges.

22. The plea has been taken by the petitioner that after the judgment dated 08.11.2017 passed in CWJC No.22076 of 2014 (Md. Kamal Ashraf Vs. The State of Bihar and Ors.) by which the Court has quashed the order of dismissal on the ground that the enquiry officer has failed to follow the procedure prescribed under Rule 17 of the CCA Rules, 2005 and submits that after quashing the order of dismissal, the aforesaid steps were required to be taken by the disciplinary authority before asking the petitioner to face the enquiry conducted by the enquiry officer. Further, the plea has been taken by the petitioner that the proceeding is actuated or malafide, which is reflected from the fact that instead of following the procedure, straightway asking the enquiry officer to conduct the enquiry.

23. So, in the present case, it is to be decided as to whether it is required by the disciplinary/competent authority to take entire steps afresh, as de novo enquiry in view of the fact that the disciplinary authority had already taken all steps earlier before framing formal charge sheet in which he was put to the

departmental proceeding, ultimately dismissed from service, which has ultimately been quashed, or whether the enquiry is to start from the stage formal enquiry to be conducted under the rule, but before deciding this issue, let us examine the judgment relied upon by the petitioner.

24. Before examining the judgments, it would be relevant to examine the Rule 17 (1) to (6) of the CCA Rules, 2005. It will be proper to quote Rule 17 (1) to Rule 17 (6) of the CCA Rules, 2005 for proper understanding :

> ***"17. Procedure for imposing major penalties. -***
> ***(1) No order imposing any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.***
> ***(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.***
>
> ***Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule 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, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article 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 such document by which, and a list of such 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, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge 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 himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an

inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(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 thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about 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 his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records 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 defence, if any, submitted by the government servant:

(iii) a copy of the statement of

witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

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

25. Rule 17 (1) of the CCA Rules, 2005 is also relevant, though it is very innocuous in nature, but has its deep effect in the sense that while interpreting rest provisions, it has to be kept in mind that all provisions are not mandatory in nature but depends on formulation of provision, mere certain deflection and deviation will not *ipso facto* make the entire proceeding bad in view of the fact that phrase "as far as may be", which has been used in formulation of Rule 17 (1) is itself gives reflection that the procedure envisaged in this departmental enquiry to be followed as possible as, the phrase toned down the rigorous application of provision, the provisions mentioned in Rule 17 should be followed, mere failure to follow certain provision will not vitiate the proceeding itself unless the delinquent shows prejudice, failure to follow that procedure has caused the petitioner in the sense that he was made crippled to defend his case before the enquiry officer, but the Rule 17 (2) only gives the power of disciplinary authority to form an opinion about holding the enquiry on the imputation of

misconduct or misbehaviour against the government servant. In that event, the enquiry officer forms an opinion to hold enquiry, he would draw or cause to be drawn, the substance of imputation of misconduct or misbehaviour in support of article of charges, which would consist of relevant fact including any admission or confession made by the Govt. servant including list of witness to be examined by the prosecution during enquiry. Accordingly, charge sheet would be served by the proceedee officer and ask him to submit a written objection within the time specified as to state whether he desires to be heard in person and on receipt of the written statement of defence, the disciplinary authority may himself inquire into of the articles of charge which are not admitted or may appoint the enquiry officer for the purpose of holding an enquiry. So, two stages have been prescribed; at the first stage, the enquiry officer would be satisfied to initiate any proceeding, frame a charge sheet, serve the same to the delinquent along with the list of witnesses and records in support of charges as mentioned above. The provision in the second step makes it clear that on receipt of the reply, the disciplinary authority would decide as to whether it is fit case to be proceeded with in a departmental proceeding either by himself or through the enquiry officer.

26. In the case of ***Rama Shankar Chaudhary Vs. The State of Bihar and Ors. reported in 2018 (1) PLJR 91,*** the coordinate Bench of this Court while considering the steps to be followed has deliberated the manner the enquiry proceeding will be conducted and placed reliance the view of ***Shankar Dayal Vs. State of Bihar (CWJC No.7207 of 2016),*** quoted in extenso the following paragraphs, but the phrase 'as far as may be' was not brought to the notice of the Court. It would be relevant to quote paragraph 9 of the said judgment.

> ***"9. As I have observed, this case is not in isolation rather this court is burdened with litigations of present nature. I shall do no better than to reproduce my opinion in similar circumstances in a matter arising from C.W.J.C.No.7207 of 2016 (Shankar Dayal Vs. State of Bihar) and the default committed by the disciplinary authority in the case of Shankar Dayal (supra) as taken note of by this Court, applies with full force to the case in hand. The relevant extract of the judgment runs as under:***
>
> > ***"The proceeding is clothed with gross statutory violations and confirms ignorance of statutory procedure provided under the Rules beginning from the stage of service of charge memo until the passing of the impugned order(s). The Disciplinary Authority has defaulted at each stage. The charge memo placed at Annexure 2/1 even though framed by the District Magistrate, Nalanda was never served upon the petitioner by the District***

Magistrate as mandated under rule 17(3) of "the Rules" nor the records in the custody of Mr. Kumar Alok would reflect any delegation of power. Mr. Alok has also not been able to satisfy from the records whether any such delegation has been made by the Disciplinary Authority in favour of any officer. Now in such circumstances the service of the charge memo by the Enquiry Officer and his direction to the petitioner to reply thereto, is unheard of in service jurisprudence and contrary to the "Disciplinary Rules".

Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a *gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:*

"6. ... ... The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges."

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. "The Rules" again do not authorize him to do so. The illegality did not stop here and continues further.

It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of "the Rules" draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses

and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

In continuation I would also refer to a judgment reported in 1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board) in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry

Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice. ....".

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again

refer to paragraph 14 of the judgment of the Supreme Court reported in (2009) 2 SCC 570 (Roop Singh Negi v. Punjab National Bank) which would again apply on all fours in the present case:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

27. In this judgment, the only issue has been decided in what manner the departmental proceeding is to be conducted. There is no doubt that in the event any prejudice to have been caused in defending himself in departmental proceeding enquiry in the manner that certain documents which are required to be served upon has not been served has caused

the prejudice to the delinquent government servant. Certainly, it will go to the root of the case, but, for example, the document, which has been demanded having no nexus to the defence of the government servant, in that circumstances, non-supply of the document will not vitiate the enquiry. There may be myriad of example of such nature, deviation to follow certain provision if does not cause any prejudice will not have bearing on the loyalty of departmental enquiry. The theory of the prejudice has been explained in the case of ***State Bank of Patiala and Ors. Vs. S.K. Sharma reported in AIR 1996 SC 1669*** where the Hon'ble Supreme Court has evolved certain basic principles of natural justice keeping in view the context of disciplinary inquiries and inflicting the order of punishment. In this judgment, it has been said that the violation of the procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. The violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice" or "no opportunity" or "no hearing", the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has caused the prejudice the delinquent officer/employee in defending himself properly and effectively. If it is found that prejudice has been caused to him, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. There may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. In those circumstances, the Court may not insist on proof of prejudice in such cases. Example has been given if there is provision expressly providing that after closure of evidence of employer, the employee shall be given an opportunity to lead evidence in his defence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. The test of prejudice in defending his case during departmental enquiry would be examined in the manner, whether the person has received a fair hearing during examining. Now, this very aspect can be looked into from the point of view of directory and mandatory provisions as mentioned in the statutory provision dealing with departmental proceeding. It will be relevant to quote paragraph 32 of the said judgment where the Hon'ble Supreme Court has summarized the principle of procedural deficiency in holding departmental enquiry causing prejudice to the concerned Government servant.

> ***"32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):***
>
> ***(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.***
>
> ***(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.***
>
> ***(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest.***

Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so

inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar (1994 AIR SCW 1050) . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory

provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz.,

to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

28. In the case of ***Ravindra Nath Singh Vs. Bihar State Road Transport Corporation reported in 1996 (2) PLJR 97*** wherein it has been said that the enquiry officer is not the competent authority to consider the reply of the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply, he will decide as to whether to close or to continue departmental proceeding. It will be relevant to quote relevant part of paragraph 6 of the said judgment.

"6. The Enquiry Officer is not the competent authority to consider the reply of the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceeding by holding domestic enquiry into the charges".

29. Further fairness of holding of proper

departmental enquiry has been considered, in the case of ***Chandrakant Kumar Anil Vs. The Union of India reported in 2015 (1) PLJR 960,*** placing reliance of the judgment in the case of ***Union of India & Ors. Vs. B.V. Gopinath reported in (2014) 1 SCC 351***, it has been held, the approval of the appointing authority/disciplinary authority is essentially required at two stages; first stage is to secure the clearance of the disciplinary authority for framing of the charges and second stage, charge sheet is to be issued after clearance of approval by the appointing authority/competent authority in view of the provisions of Rule 17 of the CCA Rules, 2005, which is, by and large at par with the Rule 14 of the CCA Rules, 2005, it mandates the approval of appointing authority/competent authority at two stages, first stage is to form an opinion for holding departmental enquiry as well as clearance of the charge sheet by the disciplinary-cum-appointing authority. It will be relevant to quote paragraphs 7 and 8 of the said judgment.

> ***"7. The Rules provide for a detailed procedure, to be followed, whenever any disciplinary proceedings are initiated against the members of the Indian Administrative Service. Rule 14 thereof assumes significance in this regard. Even in respect of other services, it is only the appointing authority or the disciplinary authority, as the case may be, who can initiate***

disciplinary proceedings. If the rules are silent in this behalf, mere issuance of charge sheet by the disciplinary authority would meet the requirement of law. Rule 14, however, contemplates two different stages. The first is of taking a decision, to initiate disciplinary proceeding, and the second is approval of the text of the charges.

8. In the judgment of the Supreme Court relied upon by the petitioner identical issue arose for consideration. Repelling the contention that taking of a decision by the

appointing authority for initiation of disciplinary proceedings will hold good for the subsequent stage i.e., framing of charges also, the Supreme Court held as under:

"40. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that 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 the supporting documents including a list of witnesses by which each article of charge is proposed to be approved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the

> ***charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister."***

30. In the case of ***State of Tamilnadu Vs. Pramod Kumar IPS and another reported in AIR 2018 SC 4060*** also the Court has placed reliance on the judgment of B.V. Gopinath (Supra) on the principle that even after the approval of initiation of the departmental proceeding, it is further obligatory to approve the charge memo, rejected the contention of the State of Tamilnadu that the initiation of the departmental proceeding and issuance of charge memo are at the same stage. The Court has held that it is not the same stage, but it is two different stages and both stages attracts the approval of disciplinary authority-cum-appointing authority. It will be relevant to quote paragraph 18 of the said judgment.

> ***"18. Rule 8(4) of the All India Services (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall***

> ***"draw up or cause to be drawn up" the charge memo. We see no reason to take a view different from the one taken by this Court in B.V. Gopinath (AIR 2014 SC 88) (supra) . We also see no substance in the submission made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr Giri is right in his submission that the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the appellant that Gopinath's case can be distinguished on facts. We are not in agreement with the contention of the appellant that the business rules and standing orders of the State of Tamil Nadu are quite different from the office orders and circulars issued by the Union of India which formed the basis of the judgment in Gopinath's case. A close reading of the said judgment would disclose that reliance on the office note was only in addition to the interpretation of the Rule".***

31. But this judgment is also on the issue of suspension. In paragraph 20, it has been held in the following term, there cannot be any dispute regarding the power or jurisdiction of the State Government for continuing, the first respondent, under suspension pending criminal trial. There is no dobut that the allegations made against the first respondent are serious in nature. However, the point is whether the continued

suspension of the first respondent for a prolonged period is justified and ultimately in view of judgment in the case of ***Ajay Kumar Choudhary Vs. Union of India reported in (2015) 7 SCC 291*** interfered with the order of suspension and given direction for posting on non-sensitive post, but the Court has approved that the State Government has jurisdiction for continuation of suspension pending the criminal trial.

32. So, in summary, it is made clear that in view of provision contained in Section 17 of the CCA Rules, 2005, it is mandatorily required the approval of the disciplinary authority-cum-appointing authority at the time of initiation of the departmental proceeding and further approval of the charge sheet, but in the present case, whether the procedure has been followed or not or whether it will be required to observe again the same procedure again from initial stage, is to be examined.

33. The criminal case was lodged in connection with accumulation of property beyond known source of income and after that the Special Executive Officer, Bihar, Patna vide letter no. 4353 dated 28.06.2013 (Annexure-3) has issued the Prapatra 'K' on account of fact that the petitioner has acquired the property beyond known source of income in his name or in the name of his family member for that criminal case has been

instituted, followed by order of suspension, asked him to put his defence for consideration. The Additional Secretary to the Government, Bihar, Patna vide Memo No.1071 dated 09.03.2014 (Annexure-4) mentioned that the Governor of Bihar is satisfied that the petitioner has accumulated the property which has been found during the raid by the Vigilance beyond known source of income and for that the criminal case has been lodged and it has been decided to initiate departmental proceeding attaching Prapatra 'K'. In the said memorandum, it has also been mentioned that the letter has been approved by the Hon'ble Minister of the Department. In the Prapatra 'K', details of the property have been mentioned and by way of documentary evidence, it has been shown the letter no.398 dated 20.06.2013. So, at this stage, it cannot be said that the disciplinary authority has not applied his mind and granted approval at the first stage of initiation of the departmental proceeding and service of the charge sheet, but in the present case, the enquiry proceeding as well as the ultimate order has been tested before this Court in CWJC No.22076/2014 and the Court has examined the decision making process and inflicting the order of punishment, the tenor of the order passed by this Court depicts that the enquiry officer has not acted as an independent arbitrator inasmuch as the charges have been found proved without proper evidence and, in such circumstances, the enquiry proceeding has been held to have vitiated. It will be useful to quote relevant portion of the order dated 08.11.2017 passed in CWJC No.22076 of 2014.

> ***"From bare perusal of the aforesaid sub-rules, it would appear that sub-rule 11 says that if the Government Servant fails to appear within the specified time or refuses or omits to plead, the enquiry officer shall 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. Sub-rule 14 says that on the date so fixed for the inquiry, the presenting officer shall produce the oral and the documentary evidence by which the articles of charge are proposed to be proved on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined but from perusal of the order sheet of the enquiry officer, it is evident that the enquiry officer in his order sheet stated that the proceedee did not appear, even after several adjournments, and, therefore, he concluded the enquiry on the basis of facts stated by the presenting officer and the documents attached with the charge sheet. The provisions as contained in Rule 17 require the enquiry officer that he shall act in accordance with procedure laid down therein. The enquiry officer shall, in absence of the proceedee, ask***

the presenting officer to produce oral and documentary evidence, in order to prove the charge against the delinquent, but the enquiry officer never asked the presenting officer to present any evidence and it appears that the enquiry officer is not at all acquainted with the procedures and the rules meant for conducting enquiry against the delinquent. The role of the enquiry officer is of an independent arbitrator and not to take side of the Government against the delinquent and himself peruse the records and charge sheet, without asking the presenting officer to produce evidence, and submit his enquiry report. Such enquiry report is not at all acceptable and the same is based on no evidence as the report is not in accordance with sub-rule 23 of Rule 17 of Bihar C.C.A. Rules, 2005 but the disciplinary authority appears to be ignorant of these facts and procedure made by the Legislature and passed the order inflicting punishment against the delinquent/ petitioner which, in my view, is absolutely illegal and not sustainable in the eye of law. Similarly, the appellate authority also without considering the memo of appeal filed by the petitioner dismissed the appeal. The appellate order is also absolutely illegal.

Having considered the facts aforesaid, the order dated 10.10.2014, as contained in Annexure-1, and the order dated 30.09.2015, as contained in Annexure-9, are set aside. This writ petition is, accordingly, allowed. The matter is remitted to the disciplinary authority to proceed afresh in accordance with law".

34. Though this Court has quashed the enquiry proceeding, but did not quash the charge sheet. So the enquiry proceeding has to proceed from the stage of proceeding conducted by the enquiry officer i.e. after the stage of serving of charge sheet. It is not required under the law to revisit the same process i.e. form an opinion, approved the initiation of the proceeding as well as also approved the charge sheet up to that stage, this Court in the earlier proceeding has not found fault. In such view of the matter, the claim of the petitioner that it should again be revisited and re-initiated from the initial stage in the same manner can not be accepted and, accordingly, this point is rejected.

35. The petitioner has placed reliance on the judgment of ***State of Punjab Vs. V.K. Khanna and Ors. reported in (2001) 2 SCC 330*** on the principle of malafide, the Court has deduced the principle to be applied in testing the malafide in the term that it must appear from the surrounding circumstances, behaviour and action should reflect real danger of biasness or likelihood of bias, but the opinion should not be based on surmises and conjectures, which would not be enough. The principle has been explained in paragraph 8 wherein it has been held that the test, therefore, is as to whether there is a mere

apprehension of bias or there is a real danger of bias. For that proposition, it will be relevant to quote paragraph 8 of the said judgment.

> ***"8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise".***

36. But this judgment is not applicable to the fact of the present case on account of fact that during criminal investigation, it has to be found that the petitioner has acquired disproportionate property beyond known source of income, though the proceeding has been stayed by the Hon'ble Supreme Court on account of issue has been raised that lodging of the FIR in the economic offence police station is per se illegal and the entire proceeding is vitiated and the issue is pending before the Hon'ble Supreme Court for consideration, the fate of criminal proceeding is dependent on the decision of Hon'ble Supreme Court. Another point has been raised by the petitioner

that suspension should not be of a longer period inasmuch as when the same set of charge generate two proceedings, first criminal proceeding and another is the departmental proceeding, in such circumstances, the departmental proceeding should be kept in abeyance and the suspension should not be too long, but it should be maximum of ninety days in terms of judgment in the case of ***Ajay Kumar Choudhary Vs. Union of India reported in 2015 (2) PLJR 250 (SC)*** applying the principle derived from the provision of Section 167 (2) of the Code of Criminal Procedure and held that it should be ensured that proceeding should be completed within ninety days and delinquent Govt. servant should not be kept under suspension preferably beyond ninety days differed with the view of the Constitution Bench, but ultimately, the Court has refused to interfere with the departmental proceeding and order of suspension. So crux of the matter is that within ninety days, the charge sheet must be served and it should be completed without unnecessary delay. It will be relevant to quote paragraphs 13, 14 and 15 of the said judgment.

> ***"13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973***

contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in (Raghubir Singh v. State of Bihar (1986) 4 SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not

served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

15. So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in

> ***any manner known to law, and this action of the respondents will be subject to judicial review".***

37. Further a plea has been taken that as the charges levelled in the criminal case as well as in the departmental proceeding is identical, in such view of the matter, the proceeding should be awaited till the completion of the trial and placed reliance on the judgment in the case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC 679*** wherein the Hon'ble Supreme Court has summarized the principles in paragraph 22. In paragraph 22 (v), it has been held that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if there were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest. So the Court has not granted the blanket stay of the proceeding, so the guideline is, if the charges are identical and the criminal proceeding would take a long period, in such circumstances, departmental proceeding must continue and be completed. It will be relevant to quote paragraph 22 of the said

judgment.

> ***“22. The conclusions which are deducible from various decisions of this Court referred to above are:***
>
> ***(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.***
>
> ***(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.***
>
> ***(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.***
>
> ***(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.***
>
> ***(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the***

> ***criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest".***

38. In the case of ***Shashi Bhusan Prasad Vs. Inspector General & Ors. reported in 2019 (3) PLJR 349 SC***, the Hon'ble Supreme Court has held that the two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. The object of criminal trial is to inflict appropriate punishment upon an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof beyond reasonable doubt is necessary to record conviction, but degree of proof of misconduct in departmental enquiry is different, based on the principle of preponderance of probablity. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted whereas in departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of preponderance

of probability. Acquittal in a judicial proceeding does not *ipso facto* absolve the delinquent from the liability under the disciplinary jurisdiction of authority. This is the basic principle of departmental enquiry vis-a-vis criminal trial. It will be relevant to quote paragraph 19 of the said judgment.

> ***"19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto***

> ***absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court".***

39. In the present case, it has been argued that after the order of dismissal relate back to the date of initiation of the proceeding in view of Rule 9 (5) which provides that where the 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 further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, 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. So, it will be treated that the petitioner has remained under suspension for a long six years. Technically the petitioner may be correct that it will be relate to

the date of the order of dismissal, but the order has been set aside on technical ground and how the period of suspension should be treated and whether he will be given the entire pay or part pay depends on the outcome of the departmental proceeding. In order to resolve this issue, provisions of Bihar Service Code is pressed into service. Sub-rule (1) of Rule 97 of the Bihar Service Code postulates that where the government servant is dismissed, removed or suspended or reinstated, the authority competent to order the reinstatement would consider and make a specific order regarding the pay and allowances for the period of absence from duty and on whether the period shall be treated as a period spent on duty. Sub-rule (2) provides that where the authority competent is of opinion that the Govt. servant has been exonerated or in the case of suspension, the authority competent concludes that the order of suspension was wholly unjustified, the Govt. servant shall be given full pay and allowance as if the order of suspension has not been passed. It will be misconstruction of Rule 97 that on quashing the order of suspension or dismissal, he will *ipso facto* be entitled to entire salary. A reference can be made to the decision reported in ***2019 (3) PLJR (SC) 329 (State of Jharkhand & Anr. Vs. Amresh Narayan Sinha)***. It will be relevant to quote paragraph 9 of the said judgment.

> ***"9. Sub-rule (1) of Rule 97 indicates that where a government servant is suspended, the authority competent to order the reinstatement has to consider and make a specific order regarding the pay and allowances for the period of absence from duty and on whether the period shall be treated as a period spent on duty. Sub-rule (2) indicates that where the authority concludes that the suspension was "wholly unjustified", the government servant shall be given full pay and allowances as if the order of suspension had not been passed. The High Court misconstrued the provisions of Rule 97 in coming to the conclusion that full pay and allowances must necessarily follow as a consequence of the suspension being revoked. This construction is contrary to the plain terms of Rule 97 as extracted above. The disciplinary proceedings have been held in abeyance pending the conclusion of the criminal trial. It is only after the conclusion of the departmental inquiry that the competent authority will have to decide, in terms of Rule 97, how the period of suspension should be treated and whether it is liable to be treated as a period spent on duty. A decision will be taken on the pay and allowances which should be allowed. The directions which were issued by the High Court at this stage were hence contrary to Rule 97".***

40. So, after such quashing the order of dismissal on account of technical ground, in view of Rule 97, the

entitlement of entire salary will be decided after the conclusion of the departmental proceeding and not before that. As such, the claim of the petitioner that he should be given the entire salary is misconstrued and misplaced. The entitlement of salary for entire period will be decided after completion of departmental proceeding.

41. But one thing is very serious in nature, which has been alleged by the petitioner, that he is not being paid the subsistence allowance. This Court directs the respondents, if subsistence allowance has not been paid or is not being paid, the subsistence allowance in terms of Rule 9 read with Rule 10 of the CCA Rules, 2005 must be paid to the petitioner without delay as subsistence allowance is meant to enable the delinquent to sustain incarceration of the departmental proceeding.

42. As the criminal proceeding has been stayed, this Court is of the view that the criminal proceeding will consume a lot of time, in such view of the matter, the departmental proceeding must be completed within a period of six months from the date of receipt/production of a copy of this order but subject to cooperation extended by the petitioner in completion of the departmental proceeding. If the petitioner does not cooperate, the enquiry officer would record reason and

he will be at liberty to proceed *ex parte* and complete the same within the period as mentioned above.

43. With this observations and directions, this writ application is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/-

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