PMB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.517 OF 2009

The Administrator, U.T. Admn., Daman and Diu and DNH Secretariat and ors. ..Petitioners

Vs.

Jayram Ranoji Patole ..Respondent

Mr. H.S. Venegaonkar, advocate for the petitioners.
Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy, advocates for the respondent.

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: OCTOBER 27, 2021

P.C. (per the Chief Justice):

1. The Administrator, Union Territory Administration of Daman & Diu and Dadra Nagar Haveli Secretariat and three officers of the Education Department are the petitioners in this writ petition. They have mounted a challenge to a judgment and order dated June 20, 2008 passed by the Central Administrative Tribunal, Bombay Bench, Mumbai (hereafter "the Tribunal", for short), allowing Original Application No.68 of 2008 instituted by the respondent (hereafter "Shri Patole", for short). The original application was allowed with the following operative directions: -

"30. In view of the findings given herein before, we order the following: -

(a) The impugned order of penalty dated 14.8.2006 and the order of revision dated 17.1.2008 are hereby quashed.

(b) The applicant's suspension being without any basis and the regularization of the period of suspension being found to be in order, the order dated 31.10.2006 asking the applicant to deposit so called overdrawn amount of Rs.2,76,476/- is set aside.

(c) In addition to quashing of the Revising Authority's order dated 17.1.2008, it is further held that in view of the unconscionable and unexplained delay in pursuit of the disciplinary matter in the case of the applicant, the disciplinary proceedings are to be set at rest.

(d) Obviously because of the disciplinary proceedings pursued against him, the applicant has missed out selection grade, promotion etc. and thereby has been severely prejudiced. We direct the respondents to consider the case of the applicant for granting deemed selection grade, promotion, consequential increments etc. so as to grant commensurate financial benefits to him, while he was in service and after his superannuation."

2. Shri Patole had invoked the jurisdiction of the Tribunal challenging an order dated January 17, 2008 of the Administrator, the first petitioner herein, whereby he ordered a *de novo* inquiry to be conducted into the second of 2 (two) charges which were part of a memorandum

of charge-sheet dated November 18, 1993. Such order, according to Mr. Venegaonkar, learned counsel for the petitioners, was one passed in *suo motu* exercise of power of revision conferred on the Administrator by Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter, "the 1965 Rules", for short). It is not in dispute that the Administrator while making the aforesaid order dated January 17, 2008 had before him an appeal dated August 31, 2006 preferred by Shri Patole under Rule 24 read with Rule 26 of the 1965 Rules, wherein he had challenged the final order dated August 14, 2006 of his Disciplinary Authority awarding him a minor penalty of withholding of 3 (three) increments of pay and directing recovery of a sum of Rs.13,102/-, being the pecuniary loss caused to the Government by Shri Patole, owing to negligence, in making excess payment of Rs.7,008/- and also a payment of Rs.6,094/- for material which was not supplied.

3. Since the revisional order dated January 17, 2008 has noted all the factual events preceding it quite conspicuously,

we refrain from referring to the facts here in details; on the contrary, we consider it appropriate to reproduce the order dated January 17, 2008 in its entirety. The same reads thus: -

"No.DE/ADM/RTCVC/CONF/07-08/897UT Administration of Daman & Diu, Directorate of Education, Daman.

Dated : 17 Jan 2008

O R D E R

Whereas, Shri J.R. Patole, Teacher Grade-I was issued a Memorandum of Charge dated 18/11/1993 by the then Disciplinary Authority alleging therein that7 the Charged Officer has committed the following misconduct: -

Article-I: That Shri J.R. Patole, during the period while working as I/c Principal of Government Higher Secondary School, Diu has issued bogus School leaving Certificates and kept booklets of School Leaving Certificates in his personal custody. It is also reported that the said booklet subsequently has been destroyed by burning the same.

Article-II: It is also reported that during the period of his Inchargeship of Principal of Government Higher Secondary School, Diu he has committed irregularities in the purchases made during his period.

In view of the above articles it seems that he has failed to maintain his integrity and devotion to his duties as Incharge Principal, thus violating the rule 3(1) of the Central Civil Service (Conduct) Rules, 1964.

And whereas, the Disciplinary Authority appointed Dr. B.R. Chand to inquire into the Article of

Charges as mentioned above.

And whereas Dr. Chand, the Inquiry officer submitted the Inquiry Report dated 18/12/1996 and held as under: -

> 'On the basis of the documentary and oral evidence adduced in the case before me and in the view of the reasons given, I held that charge No.1 against Shri Patole is not proved. Regarding Charge No.II against Shri Patole, I am of the opinion that some major irregularities have taken place but concern a member of related departments and not just Shri Patole. It will therefore be appropriate if these irregularities (of charge No.II) are examined by some senior officers preferably of the Finance/Accounts department.'

And whereas, Shri P.J. Bamania conducted an ex-parte inquiry in the matter and submitted his report dated 02/04/1997.

And whereas, subsequently Shri K.R. Kishore, the then ADM and Shri P.J. Bamania, the then AAO held inquiries in the case.

And whereas, Shri K.R. Kishore in his report dated 31/01/2002 held as under: -

> 'It appears that some of the records were not available even when AAO made the report, but it is a fact that some procedural as well as financial irregularities occurred for which the Head of office is more responsible and it is to point out that Shri J.R. Patole is not the Head of Office. In my opinion, the original record is to be seen again for coming to any conclusion. Therefore it would be better than an officer at Diu may be asked to look into the matter and finalize the issue. As regards my view is concerned the entire committee is to be held responsible and not Shri J.R. Patole alone.'

And whereas, it is felt that the inquiries conducted by Shri K.R. Kishore and Shri P.J. Bamania have not been conducted in accordance with the statutory rules namely CCS (CCA) Rules, 1965, because the inquiries are ex-parte in nature and further in the nature of being preliminary inquiries.

And whereas, the Inquiry Reports mentioned above were submitted before the Disciplinary Authority for appropriate orders.

And whereas, vide order dated 14/08/2006 the Disciplinary Authority imposed penalty on the Charged Officer as under :-

> '…...penalty of withholding of three increments of pay alongwith recovery of a sum of Rs.13102/- being the pecuniary loss caused to the Government by his negligence in making excess payment of Rs.7008/- and also a payment of Rs.6094/- for material which was not supplied.'

And whereas, the department pointed out to the Disciplinary Authority that the penalty of stoppage of 3 increments was not implementable because the date of increment of the Charged Officer falls in the month of August and that the date of superannuation of the Charged Officer falls on 30/04/2008.

And whereas, the department further pointed out to the Disciplinary Authority that the amount of recovery of Rs.13,102/- has been inadvertently mentioned in the penalty order referred to above and the amount of recovery from the Charged Officer should be Rs.1,94,336/- as already observed by the then Director (Accounts), Finance Secretary and Development Commissioner.

And whereas, the department subsequently pointed out to the Disciplinary Authority that the Charged Officer has wrongly availed increments for the period of suspension (from 11/06/1993 to 04/10/1996) even before the orders of the Disciplinary Authority as to how the period of suspension was to be treated.

And whereas, the Appointing Authority/Disciplinary Authority vide order dated 29/09/2006 ordered that an amount of Rs.79,208 + Rs.1,97,538/- totaling Rs.2,76,746/- received by the Charged Officer from the department on account of availment of wrong increments described above be recovered from the Charged Officer.

And whereas, the Disciplinary Authority vide its order dated 26/10/2006 issued a Show Cause Notice/Memorandum to the Charged officer stating that he proposed to revise the penalty order dated 14/08/2006 and further stated that further retention in the public service undesirable and the gravity of the charge is such as to warrant the imposition of penalty for recovery of Government money to the tune of Rs.1,94,336/-.

And whereas, even when the above Show Cause Notice remained pending decision, the Disciplinary Authority vide its order dated December, 2006 ordered that the period of suspension of the Charged Officer shall be treated as period spent on duty.

And whereas, the department submits that the orders of the Disciplinary Authority are not in accordance with CCS (CCA) Rules, 1965.

And whereas, the Charged Officer has also filed an Appeal dated 16/11/2006 against the order of Penalty dated 14/08/2006.

I have carefully examined the record of the case and I find that the inquiry in the Articles of Charges against the Charged Officer has not been conducted in accordance with CCS (CCA) Rules. Dr. B.R. Chand, the Inquiry Officer in the case held Charge No.1 has not proved. Regarding Charge No.II he has held that he was of the opinion that some major irregularities have taken place but concern a member of related departments and not just Shri Patole. It will therefore be appropriate if these irregularities (of charge No.II) are examined by some senior officers preferably of the Finance/Accounts department.

Further the inquiries conducted by Shri K.R. Kishore and Shri P.J. Bamania are also not in conformity with CCS (CCA) Rules, 1965 because firstly they were never appointed as Inquiry officers by the Disciplinary Authority. Secondly they did not give any opportunity to the Charged Officer to defend himself in the said inquiries. Thus the said inquiries were in the nature of ex-parte inquiries and the Charged Officer was denied the opportunity being heard and thus the said inquiries are violative of principle of natural justice.

Further in the Appeal filed by the Charged Officer, it has been contended that the charges are totally false and the Memorandum dated 26/10/2006 may please be dropped.

Now, therefore, I am of the view that end of justice would be met if the penalty orders imposed by the Disciplinary Authority are set aside. Accordingly I set aside the order dated 14/08/2006 imposing penalty and further set aside the order dated December, 2006 about the treatment of period of suspension of the Charged Officer on duty. However, the order dated 31/10/2006 of Assistant Director (Education) issued with the approval of the Secretary (Education) regarding recovery of Rs.2,76,746/- availed by Charged Officer on account of increments for the period of suspension shall stand. Further, it is ordered that the Disciplinary Authority shall order a de-novo inquiry in the Article-II of Article of Charges and the said inquiry shall be completed within six weeks. Further I find that in view of order of de-novo inquiry the appeal filed by the Charged Officer has become infructuous and no orders on the appeal of the Charged Officer are required to be passed on merit.

(R.K.VERMA)
ADMINISTRATOR,
DAMAN & DIU

To,
Shri J.R. Patole

Teacher Grade-I,
Government High School,
Daman.

Copy to :-

1. Finance Secretary/Secretary (Education), Daman-with a direction that a new Inquiry Officer shall be appointed by him and the de-novo inquiry shall be completed within six weeks of issue of this order.
2. Dr. B.R. Chand, Inquiry Officer, Daman.
3. Office copy/Guard file.

sd/-
(R.K.VERMA)
ADMINISTRATOR,
DAMAN & DIU"

4. The undisputed facts that can be culled out from the aforesaid order as well as the judgment of the Tribunal under challenge may be summarized below:

(i) Memorandum of charge-sheet was issued as far back as on November 18, 1993 containing two articles of charge and the petitioner was alleged to have failed to maintain integrity and devotion to duties as In-charge Principal, amounting to violation of Rule 3(1) of the Central Civil Services (Conduct) Rules, 1964.

(ii) Dr. B.R. Chand was appointed as Inquiry Officer, who submitted a report of inquiry dated December 18, 1996 holding that charge no.1 was not proved. Insofar as charge no.2 is concerned, Dr. Chand did not record any positive finding of guilt against Shri Patole but opined that the irregularities forming part of such charge need to be examined by some senior officer.

(iii) Shri P. J. Bamania, who was a witness for the prosecution in the inquiry conducted by Dr. Chand (does not appear from the order dated January 17, 2018 but appears from the impugned judgment of the Tribunal) was entrusted to conduct an inquiry. An *ex parte* inquiry was conducted by him, whereupon a report dated April 2, 1997 was generated and submitted.

(iv) Subsequently, Shri K.R. Kishore, Additional District Magistrate held inquiry in the case.

(v) Shri K.R. Kishore in his report dated January 31, 2002 opined that Shri Patole was not the head of the office and it is the head of the office who is more responsible; also that, the entire Committee was to be held responsible and not Shri Patole alone.

(vi) The reports of Shri K.R. Kishore and Shri P.J. Bamania were *ex parte* in nature. The Administrator perceived such inquiries as preliminary in nature, but remarked that they were not appointed Inquiry Officer to conduct inquiry against Shri Patole and, therefore, the procedure followed did not have the sanction of the 1965 Rules.

(vii) On April 7/10, 2006, i.e., in excess of 9 (nine) years of submission of report dated December 18, 1996 of Dr. Chand, the Disciplinary Authority of Shri Patole prepared a memorandum containing a note of disagreement with the findings of Dr. Chand qua charge no.2 only, and while referring to the subsequent inquiry reports that were obtained including the findings of Shri P.J. Bamania, the Assistant Accounts officer, called upon Shri Patole to explain within 15 days as to why major penalty contemplated under the 1965 Rules should not be imposed on him.

(viii) Final order dated August 14, 2006 followed, which has been take note of hereinabove.

(ix) The Department had pointed out to the Disciplinary Authority that the penalty of stoppage of 3 increments was not implementable; also that, the amount of recovery should be Rs.1,94,336/- instead of Rs.13,102/-.

(x) Other anomalies with regard to the payment received by Shri Patole, allegedly contrary to law, were also pointed out.

(xi) The Disciplinary Authority vide its order dated October 26, 2006 issued a further show-cause notice to Shri Patole proposing to revise the order of penalty dated August 14, 2006 coupled with a comment that further retention of Shri Patole in public service was undesirable.

(xii) Even when the show-cause notice had not been decided finally, the Disciplinary Authority in December 2006 ordered that the period of suspension shall be treated as period spent on duty.

(xiii) The Department had submitted before the Administrator that the orders of the Disciplinary Authority were not in accordance with the 1965 Rules.

(xiv) These facts being in the background, the Administrator proceeded to pass the order dated January 17, 2008 directing *de novo* inquiry into charge no.2 upon setting aside the order dated August 14, 2006 imposing penalty, the order dated December 2006 treating the period of suspension as on duty but upholding the dated August 31, 2006 regarding recovery of Rs.2,76,746/- availed by Shri Patole on account of increments for the period of suspension. He also held that the appeal filed by Shri Patole had become infructuous and, therefore, no order on the merit of the appeal was required to be passed.

(xv) The aforesaid order dated January 17, 2008 was passed without putting Shri Patole on notice and extending to him an opportunity of hearing.

5. It is also undisputed that Shri Patole retired on April 30, 2008, on attaining the age of superannuation.

6. We have heard Mr. Venegaonkar in support of the prayers made in the writ petition that the impugned judgment and order of the Tribunal ought to be set aside and that the order of the Administrator dated January 17, 2008 ought to be restored and allowed to be implemented so that the inquiry against Shri Patole is taken to its logical conclusion. According to him, Shri Patole had not been proceeded against in accordance with law and noticing the

serious flaws in the proceedings, the Administrator was left with no other option but to direct *de novo* inquiry against Shri Patole qua charge no.2. He contends that Shri Patole having allegedly committed acts of financial irregularities, charge no.2 is indeed quite serious and merits to be further inquired into for bringing the culprits to book. He, accordingly, prays that the Rule be made absolute and that the inquiry which has been initiated pursuant to the order of the Administrator dated January 17, 2008 by Shri Nilesh Gurav, Director of Education, Union Territory Administration of Dadra & Nagar Haveli and Daman & Diu in his capacity as an Inquiry Officer may be allowed to progress.

7. We need to place on record that in course of a previous hearing on October 20, 2021, Mr. Ramamurthy, learned advocate for Shri Patole had brought to our notice a communication dated July 21, 2021 issued by the said Shri Nilesh Gurav, addressed to Shri Patole. In his capacity as an Inquiry Officer, he had informed Shri Patole that a preliminary hearing of the departmental inquiry into the charges framed against Shri Patole would be held on July

28, 2021. Mr. Venegaonkar was called upon by us to answer as to how the inquiry could proceed when the order of the Administrator dated January 17, 2008 had been set aside by the Tribunal by the order under challenge. Mr. Venegaonkar responded by submitting that since the order of the Tribunal had been stayed by this Court by an order dated November 12, 2009 while issuing Rule, it was considered appropriate to proceed with the *de novo* inquiry. The explanation so furnished was considered unsatisfactory and by our order dated October 20, 2021, we stayed the notice dated July 21, 2021.

8. On the basis of our appreciation of the materials on record, we are tasked to decide essentially two questions, i.e., (i) whether, the Tribunal was justified in its interference with the order of the Administrator and (ii) whether, the relief granted by the Tribunal to Shri Patole is sustainable on facts and in the circumstances.

9. For answering these two questions, it would be appropriate for us to trace the reasons assigned by the Tribunal for setting aside the order of the Administrator.

Relevant portions from the judgment of the Tribunal assigning reasons for its interference are quoted below: -

> "23. We have carefully considered the facts on record and circumstances of the case as presented before us. We have given due consideration to the submissions made by the parties before us.
>
> 24. At the outset, we are constrained to observe that in this case from the beginning till the end defective approach underlines all the actions. The Verification Committee of 1992 had submitted an interim report. From the Bench we had raised a query as to the submission of the final report. In the absence of any response thereto we would only infer that the final report was never submitted by that Verification Committee.
>
> 24.1 The order of suspension referred to 'pending disciplinary proceedings' when in point of fact disciplinary proceedings had not commenced.
>
> 24.2 The chargesheet was based on un-verified and incomplete material as found out by the IO. There was no substance for issuing the first article of charge and that finding has never been challenged by the authorities concerned. Inspite of that the period of suspension remained unregularised. The second article of charge was based on an interim report which was obviously incomplete.
>
> 24.3 As clearly acknowledged in the impugned order dated 17.1.2008, the inquiry reports dated 2.4.1997 of Shri P. J. Bamania and 4.2.2002 of Shri K. R. Kishore were not in accordance with the rules.
>
> 24.4 The DA awarded the penalty which was incapable of being implemented. After passing of the penalty order the DA wanted to revise it. In taking these decisions, the DA took almost 10 long years after submission of the inquiry report. The DA drew

considerable support from the inquiry report dated 2.4.1997 of Shri Bamania which does not have any locus-standi in the eyes of law.

25. It is clear from the impugned order dated 17.1.2008 that it is an order of revision and is not an order by an Appellate Authority. In that order, the appeal filed by the applicant has been referred to right at the end of the order. Because the RA ordered the DA to cause de novo inquiry, the appeal filed by the applicant was viewed as infructuous and was just left at that. From these it is obvious that the AA was seized of the appeal but had kept it pending while he initiated revisionary proceedings and took it to completion. While doing so, he merely observed that the appeal filed by the applicant had become infructuous. The vires of such decision is not at all difficult to appreciate. Sub-rule (2) of Rule 29 of the CCS (CCA) Rules provides as under: -

> ‘(2) No proceeding for [revision] shall be commenced until after –
>
> (i) the expiry of the period of limitation for an appeal, or
>
> (ii) the disposal of the appeal, where any such appeal has been preferred.”

As can be seen from the rules as quoted, the appeal filed by the applicant had to be disposed of first and only then the proceedings for revision could be commenced. Since that was not done the proceedings for revision were ab initio void and as such the order dated 17.1.2008 has to be declared as unsustainable in the eyes of law and hence has to be quashed.

26. Because the revision order dated 17.1.2008 suffers from a serious legal flaw as has been pointed out and hence is not sustainable, we deem it unnecessary to consider the vires or the appropriateness of the decisions taken therein.

27. For more than 16 years the applicant has

been put to the hardship of contending with pending disciplinary proceedings and having to put up with unfortunate spectre of his juniors overtaking him. His suspension was without any basis and, therefore, regularization of the period of suspension as having been spent on duty as ordered in December, 2006 was just and proper. Having so decided, there cannot be a view that the applicant had overdrawn any amount by drawing normal pay etc. for the period of suspension.

28. As regards the penalty order dated 14.8.2006, as already mentioned, it draws heavily on the unilateral enquiry report of Shri Bamania. A comprehensive enquiry into the matter was never done; neither by the original verification committee nor by the inquiry officer Dr. Chand nor at any other stage. In fact Dr. Chand and Shri Kishore had recommended for comprehensive inquiry and had clearly expressed that the material available was inadequate to arraign the applicant with the charges which were framed against him. In spite of being a witness for the prosecution in the inquiry conducted by Dr. Chand, Shri Bamania was asked to and in fact did submit further inquiry report which, as already stated, forms the backbone of the penalty order.

29. We have no hesitation in according with the contention of the applicant that all along he has been accused of some wrong doings which have never been clearly spelt out but have always been left vague. If the DA found Dr. Chand's inquiry to be inadequate he could have ordered him to cause further inquiry on such points as he thought fit but, instead, he has relied on fresh unilateral inquiry made by Shri Bamania, which is not permissible under Rule 15 of the CCS (CCA) Rules. In taking this decision, we respectfully follow the judgment of the Apex Court in K. R. Deb's case (supra). We, therefore, hold that the penalty order dated 14.8.2006 is not sustainable in the eyes of law."

10. We entirely and unhesitatingly share the views expressed by the Tribunal. An order of affirmance ought to ordinarily follow but before we affirm the judgment and order under challenge, we place on record our utter displeasure at the manner in which the administration of the Union Territory proceeded against Shri Patole. We need to point out, in our endeavor to sustain the relief that was ultimately granted to Shri Patole by the Tribunal, only a few of the glaring illegalities in the procedure that was adopted which the Administrator ought to have borne in mind while directing *de novo* inquiry.

11. The first is with regard to the inquiry conducted by Dr. Chand. The task of an Inquiry Officer is to record his opinion, on the basis of the evidence led before him by the prosecution and the defence, as to whether the particular charge stands proved or not. It is normally not open to the Inquiry Officer to suggest a particular course of action after the report of inquiry is submitted. Dr. Chand held charge no.1 to be not proved. Qua charge no.2, there was insufficient evidence to hold that such charge stood proved.

Thus, in our opinion, Dr. Chand ought to have closed the inquiry by observing that charge no.2 also did not stand proved because the prosecution did not lead the requisite evidence to persuade him hold against Shri Patole. In terms of Rule 15 of the 1965 Rules, it is the power of the Disciplinary Authority, after recording reasons, to remit a case to the Inquiry Officer for further inquiry and report whereupon he shall proceed to hold further inquiry according to the provisions of Rule 14. There was no such circumstance in the present case for Dr. Chand to go beyond his brief and opine that the irregularities need to be further examined by a senior officer. That would amount to collection of materials against the delinquent after he had disclosed his defence to fill up gaps in the prosecution case. Rule 14(15) of the 1965 Rules had been given a complete go-bye by Dr. Chand. Whatever investigation was required, should have preceded initiation of the disciplinary proceedings. After the delinquent employee has disclosed his defence and the prosecution could not lead enough evidence to have a finding of guilt recorded on the basis of the materials on record, it was not open to Dr. Chand under sub-rule (15) of Rule 14 of the 1965 Rules to suggest that further examination is required. However, if the Disciplinary Authority upon perusal of the report of inquiry were of the view that there are reasons for disagreement, the course of action predicated in the decision of the Supreme Court in **Punjab National Bank vs Kunj Behari Misra**, reported in (1998) 7 SCC 84, had to be followed.

12. Be that as it may, the second glaring illegality is that the Disciplinary Authority after receipt of the report of Dr. Chand appointed Shri P.J. Bamania and Shri K.R. Kishore, to conduct further investigation obviously with the intention of collecting further materials to nail Shri Patole. Based on the report of Shri P.J. Bamania, the Disciplinary Authority prepared his note of disagreement and called for an explanation from Shri Patole. This procedure is unheard of in the jurisprudence regarding holding of departmental inquiries. The report of Shri P.J. Bamania was not an evidence which was led in the course of the inquiry conducted by Dr. Chand and could never have been used by

the Disciplinary Authority against Shri Patole, yet, the same formed the plinth of the note of disagreement of the Disciplinary Authority who, we have observed from such note, recorded conclusive findings of guilt instead of tentative reasons for disagreement, quite contrary to the law laid down in **Kunj Behari Misra** (supra).

13. The third brazen illegality is the time taken by the Disciplinary Authority to prepare his note of disagreement. It is not the law that a Disciplinary Authority can proceed against any delinquent officer/member of the staff at his own sweet will and take an indefinite period of time to prepare his note of disagreement. Even in disciplinary proceedings, the officer/member of the staff proceeded against has a right to claim expeditious conclusion thereof in consonance with Articles 14 and 21 of the Constitution. We may reasonably infer that such a long time [a little in excess of 9 (nine) years] was spent in collecting materials adverse to Shri Patole for the purpose of nailing him and that, to prevent further loss of time, the final order was passed on August 14, 2006 in such great haste that it was

found not only to be unimplementable but suffered from errors regarding figures for which the Disciplinary Authority had to even proceed for a revision of the order.

14. These illegalities are referred to for the sole purpose of highlighting that no fault could have been attributed to Shri Patole. Disciplinary proceedings which were initiated against Shri Patole by the memorandum of chargesheet dated November 11, 1993 in respect of incidents prior to that date could not even be taken to its logical conclusion for more than 12 (twelve) years. Since the disciplinary proceedings suffered from incurable defects, as rightly found by the him, the Administrator ought to have, in exercise of revisional powers, initiated action against those officers who were blameworthy in not completing the disciplinary proceedings against Shri Patole within reasonable time as well as those who were actually involved in the financial irregularities as observed by Shri K.R. Kishore. The direction to proceed only against Shri Patole, more than 15 (fifteen) years of the alleged incidents and that too a couple of months before his retirement from service, reeks of *mala fide* in the sense that

a scapegoat had to be found and Shri Patole, being at the fag end of his service career, seemed to be the ideal choice. The order for *de novo* inquiry solely against Shri Patole also evinces an intention to obtain a report adverse to him.

15. Now, we may shift our attention and examine the order of the Administrator dated January 17, 2008 to ascertain whether it is legal and valid. It is pellucid from the aforesaid extract of the judgment of the Tribunal that it held the order of the Administrator to be without jurisdiction having regard to Rule 29 of the 1965 Rules. We have read Rule 29 of the 1965 Rules, in between the lines. Rule 29 being important for the purpose of a decision on this writ petition, we quote relevant portions thereof hereinbelow: -

> "**29. Revision.** – (1) Notwithstanding anything contained in these rules:
> (i) *****
> (ii) *****
> (iii) *****
> (iv) *****
> (v) *****
> (vi) *****
> <u>may at any time, either on his or its own motion</u> or otherwise, <u>call for the records of any inquiry and revise any order</u> made under these rules or under the rules repealed by Rule 34 <u>from which an appeal is allowed, but from which no appeal has been preferred</u> or from which no appeal is

allowed, after consultation with the commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that *****
Provided further *****

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules."

(emphasis supplied)

16. We have noticed an apparent inconsistency between sub-rule (1) and sub-rule (2) of Rule 29 of the 1965 Rules. The mandate of sub-rule (1) is that any of the authorities mentioned in clauses (i) to (vi) of sub-rule (1) of Rule 29 may, at any time, on his own motion exercise the power of

revision in respect of an order, when an appeal is allowed from such an order but from which no appeal has been preferred. However, sub-rule (2) provides that no proceedings for revision shall be commenced until after the disposal of the appeal, when any such appeal has been preferred. If indeed the power of revision cannot be exercised *suo motu* as per sub-rule (1), when an appeal is allowed under the Rules of 1965 and an appeal, in fact, has been preferred, the question of exercising the power of revision after disposal of the appeal would seem to us to be incongruous. To reconcile the two, we can think of only one instance bearing in mind the facts and circumstances before us where both sub-rules (1) and (2) can co-exist, i.e., if after disposal of the appeal of Shri Patole, the Administrator had in mind that there were others who had been instrumental in loss of Government revenue and that they ought also to be proceeded against. If that were the case, certainly revisional powers could have been exercised after disposal of the appeal of Shri Patole and inquiry against them ordered, but not otherwise. However, we need not rest our decision on such incongruity or reconciliation. We are *ad idem* with the Tribunal that an appeal having been preferred by Shri Patole within the period of limitation prescribed in Rule 25 of the said 1965 Rules and such an appeal having been laid before the Administrator for a decision on its merits, the Administrator committed gross error of law, on the one hand, by not deciding the appeal on merits and on the other hand, proceeding to pass a revisional order setting aside all the orders/proceedings post issuance of the charge-sheet dated November 18, 1993 and directing a *de novo* inquiry into charge no.2 afresh without granting any opportunity to Shri Patole and/or without considering the lapse of time since the charges were framed, the time-lapse having occasioned without any fault being attributable to Shri Patole.

17. On the basis of our understanding of Rule 29 of the 1965 Rules, we hold that once an appeal had been validly preferred before the Administrator, who was the Appellate Authority, the power of revision was not available to him in terms of sub-rule (1) of Rule 29 till such time the appeal

had been disposed of; even if power was available under sub-rule (2), it could be exercised only after disposal of the appeal of Shri Patole. Not having decided such appeal, the Administrator acted illegally rendering the order a nullity.

18. Corruption of officers in public service can hardly be tolerated and we would certainly appreciate measures taken to weed it out at all costs but, of course, according to law. Merely because the charge against Shri Patole is grave and serious and is related to corruption should not, however, be viewed in isolation to direct *de novo* inquiry, for the law governing departmental inquiries for misconduct of a public servant relating to corruption are not different from those relating to other misconduct. If circumstances exist for proceeding departmentally for corruption or corruption related charges, none should be spared. Remitting the case to the Inquiry Officer for *de novo* inquiry against Shri Patole only, on facts and in the circumstances, reasonably warrants an inference about the inclination of the Administrator not to come down heavily on all black sheep under his administration but evinces his anxiety only to

proceed against one of several black sheep. This action, upon assumption of a power not provided by law, cannot sustain judicial scrutiny tested on the touchstone of Article 14 of the Constitution.

19. The result of the aforesaid discussion is that the order of the Tribunal appears to us to be perfectly justified. Not only that, the relief granted to Shri Patole does not seem to us to be unreasonable or unjust in any manner whatsoever so as to warrant any interference.

19. The impugned judgment and order of the Tribunal is, thus, upheld. The petitioners are directed to implement the directions of the Tribunal within 3 (three) months from date. The Rule stands discharged, and the writ petition is dismissed.

20. This is a case where costs should be imposed. We, however, on second thoughts propose not to impose costs on the petitioners and the parties are left to bear their own costs.

(M.S. Karnik, J.) **(CHIEF JUSTICE)**