Abhay Kumar Vs State Of Bihar And Ors

Court: Patna High Court

Date of Decision: Feb. 24, 2020

Acts Referred: Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 â€" Rule 5(a), 9(i)(Ga), 10, 14, 15, 16, 17, 17(1), 17(2), 17(3), 17(5), 17(6), 17(9), 17(11), 17(12), 17(13), 17(14), 17(15), 17(17), 17(18), 17(21), 17(22), 17(23), 18, 18(1), 18(2), 18(3), 18(4), 18(5), 27, 27(2), 31
Constitution Of India, 1950 â€" Article 226, 309

Hon'ble Judges: Chakradhari Sharan Singh, J

Bench: Single Bench

Advocate: Sunil Kumar, Harish Kumar

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties.

2. It was an aftermath of the petitionerÃ¢â‚¬â„¢s arrest by a State Vigilance team after having been caught allegedly red handed while accepting bribe,

that a departmental proceeding was initiated against him under the provisions of Bihar Government Servants (Classification, Control and Appeal)

Rules, 2005 (hereinafter referred to as the Ã¢â‚¬Å“RulesÃ¢â‚¬). Charges were framed. An Inquiry Officer and a Presenting Officer were appointed for the

purpose of the said enquiry.

3. The disciplinary proceeding has culminated into passing of an order imposing punishment of dismissal from service, which is being assailed in the

present writ application.

4. The petitioner was arrested on 21.02.2014 when he was posted as a clerk in the office of Circle Officer, Suryagarha in the District of Lakhisarai.

Consequent upon his arrest, he was put under suspension in accordance with the Rule 9 (i)(Ga) of the Rules by an order dated 11.03.2014. He was

released on bail on 14.06.2014. The charge-sheet in the departmental proceeding was, however, framed on 21.05.2015, before the petitionerÃ¢â‚¬â„¢s

release on bail. The gist of the three charges framed against the petitioner were as under:-

(i) One Manoj Kumar lodged a complaint with the Superintendent of Police, Vigilance Investigation Bureau, Bihar, to the effect that the petitioner was

demanding a sum of Rs.9,500/- for supply of certified copy of a document;

(ii) The said complaint of the complainant Manoj Kumar was got verified by the Vigilance Investigation Bureau through a Constable on 19.02.2014,

when the allegation was found to be correct; and

(iii) on the basis of verification, a raiding party was constituted on 21.02.2014 and the petitioner was found accepting the bribe money, caught red

handed and was arrested immediately.

5. In support of the first charge, a letter written by the Superintendent of Police, Vigilance Investigation Bureau, to the District Magistrate, Lakhisarai,

was shown as the evidence. In support of charge No. 2, verification report of the Constable, who was deputed to verify the correctness of the

allegation made in the complaint petition, was cited as evidence. The report of the raiding party was shown as the evidence to be relied on, in support

of the third charge.

6. The petitioner denied the charges and demanded certain documents through his letter dated 19.08.2014 addressed to the Inquiry Officer. The

Inquiry Officer submitted his report on 26.09.2014, which is less than one and half pages report. The said report has altogether five paragraphs. First

paragraph refers to his appointment as an Inquiring Officer and appointment of the then Circle Officer as the Presenting Officer. The second

paragraph, which is the longest of the five paragraphs, refers nothing beyond the three charges framed against the petitioner in the charge sheet and

the documents mentioned therein. Third paragraph has three sentences; firstly, that notices were issued to the petitioner and the Presenting Officer;

secondly, denial by the petitioner of the charges framed against him and his demand for supply of documents; and thirdly, production of a report of

Deputy Collector (Establishment) dated 09.09.2014 in response to the petitionerÃ¢â‚¬â„¢s reply/demand of documents in the departmental proceeding.

Fourth paragraph cryptically refers to the stand of the Circle Officer cum Presenting Officer. Last paragraph of the report has one sentence to the

effect that in the light of the above, the charges Ã¢â‚¬Ëœprima facieÃ¢â‚¬â„¢ stood proved.

7. The District Magistrate, Lakhisharai, who was admittedly the disciplinary authority, through his letter dated 05.11.2014, communicated to the

petitioner the report of the Inquiry Officer and asked him to submit his comments/response on the report of the Inquiry Officer within a fortnight.

8. The petitioner submitted his detailed reply on 20.11.2015 (Annexure-5). Several issues were raised by the petitioner in his response including a plea

that non examination of any witness in support of the charge had caused great prejudice to him inasmuch as he could not avail his right to cross-

examine the witnesses. He pointed out various irregularities in the proceeding before the Inquiry Officer and contended that necessary documents

should have been allowed to be exhibited by the Inquiry Officer and ought to have been duly proved by witnesses, which could have given him an

opportunity to cross-examine such witnesses. The District Magistrate, rejecting the petitionerÃ¢â‚¬â„¢s response/comments on the report of the Inquiry

Officer and accepting the report of the Inquiry Officer, held the petitioner guilty of the charges framed against him by an order issued on 20.04.2015

and imposed upon him punishment of dismissal from service, in exercise of the power under Rule 14 of the Rules.

9. On perusal of the order of the disciplinary authority, I find that he has referred to the (i) background leading to initiation of departmental proceeding,

(ii) a brief history of the case, (iii) framing of charge and appointment of the Inquiry Officer and the Conducting Officer. Thereafter, he has referred

to the contents of the charges and certain facts which were mentioned in the report relating to denial of the charges by the petitioner and the

comments of the Deputy Collector (Establishment). He has thereafter reproduced what has been mentioned in the report of the Inquiry Officer

regarding the stand taken by the Presenting Officer. In one sentence, the disciplinary authority has rejected the petitionerÃ¢â‚¬â„¢s response on the report

of the Inquiry Officer, which has been loosely termed as Ã¢â‚¬Ëœsecond show cause noticeÃ¢â‚¬â„¢. Thereafter, considering the Ã¢â‚¬Ëœgravity of the chargeÃ¢â‚¬â„¢,

the disciplinary authority imposed the said punishment of dismissal from service.

10. The petitioner preferred statutory appeal before the Divisional Commissioner, Munger, which gave rise to Service Appeal No. 05 of 2015, which

came to be rejected on 16.11.2016.

11. The petitioner has put to challenge, in the present writ application, the order of the disciplinary authority dated 20.04.2015 and the order of the

appellate authority dated 16.11.2016.

12. I have heard Mr. Sunil Kumar, learned counsel for the petitioner and Mr. Harish Kumar, learned Government Pleader No. 8.

13. A counter affidavit has been filed on behalf of the State of Bihar wherein the relief of the petitioner, which he is seeking in the present proceeding,

has been resisted.

14. Short submission, which learned counsel appearing on behalf of the petitioner has made, is that the findings recorded by the disciplinary authority

are totally perverse as there was no legal evidence at all before him or before the Inquiry Officer which could be said to be a valid basis to record that

the charges framed against the petitioner stood proved even on the standards of preponderance of probabilities. He has submitted that except for the

materials made available by the Vigilance Investigation Bureau, which had led to registration of the First Information Report, there was absolutely no

material before the disciplinary authority to hold the petitioner guilty of the charges. He has further argued that non-examination of the witnesses

present at the place of occurrence has vitiated the entire departmental proceeding. The orders passed by the disciplinary authority and the appellate

authority show complete non application of mind, he contends.

15. Mr. Harish Kumar, learned G.P. -8 on the other hand, has argued that considering the gravity of the charge against the petitioner, as he was

caught red handed while accepting gratification, the disciplinary authority rightly considered it appropriate to impose severest of the punishments

available under the Rules. He has contended that the petitionerÃ¢â‚¬â„¢s arrest on the allegation of accepting bribe in the presence of the Vigilance

Officials needs no proof as for the said reason, the petitioner was in custody for so many months. According to him, the Inquiry Officer, applying the

standard of preponderance of probabilities for establishing a charge in a departmental proceeding, rightly concluded in his report that the charges

against the petitioner stood proved. He would contend that, since strict rules of evidence do not apply in a departmental proceeding, the finding of the

disciplinary authority and the punishment imposed require no interference by this Court in the present proceeding under Article 226 of the Constitution

of India.

16. It is true that an act of a Government Servant indulging in corruption is one of the gravest of misconducts and imposition of maximum punishment,

if a charge of corruption is established, would certainly be befitting action on the part of the disciplinary authority. What is disturbing for this Court to

note is the manner in which the authorities, vested with the powers to exercise the quasi judicial functions, have handled the proceeding in hand which

pertained to a serious charge of bribe-taking by a Government Servant.

17. It is mentioned at this juncture itself that the Court has found force in the submission made on behalf of the petitioner that there was no evidence

at all before the Inquiry Officer to establish the charge against the petitioner of having demanded bribe or subsequently accepted the bribe as

consideration for doing certain favour to the complainant, which he was otherwise required to do in discharge of his official duty in general course,

other than the materials which have found the basis for lodging of the First Information Report. The complaint of the complainant, alleging demand of

bribe by the petitioner, formed part of the charge-sheet, but the complainant was neither summoned by the Inquiry Officer nor produced by the

Presenting Officer. Verification report of the Constable of the Vigilance Investigation Bureau after receipt of the complaint was also one of the

documents on which the Department was placing reliance to prove the charge against the petitioner. The Constable, a Government Servant too, was

neither summoned nor produced during the departmental enquiry. A report of the raiding party, which had caused the trap leading to petitionerÃ¢â‚¬â„¢s

arrest, was also one of the documents which was being relied upon to prove the charge against the petitioner. No member of the said raiding party

was present to prove any part of the incident in question. As a matter of fact, it appears, there was absolutely no effort made either to prove the

incident of the illegal demand made by the petitioner or of his acceptance of the bribe money. His arrest on the said allegation is a fact which is not at

all in dispute.

18. An inquiry officer, a disciplinary authority and the appellate authority under the Rules exercise quasi judicial functions. They are obliged to keep in

mind that they are bound by the statutory provisions and they are required to strictly adhere to the law in the form of the Rules which have been

framed under Article 309 of the Constitution of India. It is imperative for them to follow the statutory provisions, so that their decisions withstand the

scrutiny of judicial review and are not interfered on technical grounds of breach of the Rules. An act of corruption by a Government Servant in

discharge of his official duty is completely unacceptable and once a charge is proved, punishment of his removal from service may be the only option

available for the disciplinary authority, normally. In that background, if a Government Servant is framed with a charge of corruption, the burden on the

disciplinary authority to establish his misconduct strictly in accordance with law becomes heavier, for any laches at any stage of the disciplinary

proceeding, having the potential of prejudicing the case of delinquent, may render the proceeding vulnerable in judicial scrutiny.

19. Compliance of principles of natural justice is the most fundamental requirement in any proceeding, which can have evil consequences. Application

of mind, therefore, must be reflected in the findings/orders of a quasi judicial functionary, which is one of the essential facets of principles of natural

justice, irrespective of the fact whether the Rules expressly require so or not. Such finding or order becomes assailable in the absence of reflection of

application of mind. True it is that strict rules of evidence do not apply in a disciplinary proceeding; this would surely not mean that without any

evidence an adverse finding can be recorded in a disciplinary proceeding against a Government Servant. There must be some cogent evidence to

reach a finding of fact against a Government Servant in a departmental proceeding. I have expressed my views at this stage without referring to the

requirements under the statutory Rules for the reason that these requirements are fundamental, basic and essential in a disciplinary proceeding, even in

the absence of any statutory rule governing a departmental proceeding.

20. Keeping in mind the manner in which the departmental enquiry was conducted in the present case and the way the findings have been recorded

not only by the inquiry officer and the disciplinary authority but also by the appellate authority, I have considered it apt to examine various provisions of

the Rules which elaborately lay down the procedure for imposition of major penalties under the Rules. In the present judgment and order, I have

considered it apt to issue general directions to the authorities concerned to ensure strict adherence to the provisions under the Rules, which are being

noticed herein, since it has been experienced that in majority of the cases the disciplinary proceedings against the State GovernmentÃ¢â‚¬â„¢s Servants

fail the scrutiny of judicial review because of non compliance of mandatory statutory requirements.

21. Before I begin to deal with the statutory prescriptions under the Rules, I have no hesitation in recording my opinion that Rule 17 of Bihar

Government Servants (Classification, Control and Appeal) Rules, 2005, lays down an exhaustive procedure for imposition of major penalties and if the

procedure, prescribed therein, is zealously followed by the functionaries, chance of any procedural flaw in holding a disciplinary proceeding would be

completely ruled out.

22. Disciplinary Authority has been defined under Rule 2(j) of the Rules, which means Appointing Authority or any other Authority authorized by it,

who shall be competent under the Rules to impose on a government servant, any of the penalties, as specified in Rule 14 of these Rules. Rule 14

delineates penalties, which can be imposed on a Government Servant and contains two categories of penalties namely; minor and major penalties.

23. Rule 15 of the Rules again refers to disciplinary authorities, sub-rule (1) whereof states that Government may impose any of the penalties specified

in Rule 14 on any Government Servant. Sub Rule (2) states that penalties under Rule 14 may be imposed on a Government Servant also by the

Appointing Authority or any Authority to which the Appointing Authority is subordinate or any other Authority empowered in this behalf, by a general

or special order of the Government. Which authority has the jurisdiction to institute disciplinary proceeding, has been prescribed in Rule 16 of the

Rules which states that;

(i) the Government or

(ii) the Appointing Authority or

(iii) any Authority to which the Appointing Authority is subordinate, or

(iv) any other Authority, empowered by general or special order of the Government;

(v) can either institute a disciplinary proceeding against any Government Servant or direct the disciplinary authority to institute disciplinary proceeding

against any Government Servant on whom the disciplinary authority is competent to impose any of the penalties specified in Rule 14.

24. As has been mentioned, Rule 14 classifies penalties into major and minor penalties. Following are the penalties, which are the major penalties

imposed, either of which require adherence to the procedure prescribed under Rule 17:-

xxx xxx xxx

Ã¢â‚¬Å“(vi) Withholding of increments of pay with cumulative effect.

(vii) Save as provided for in clause (iv), reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or

not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction

will or will not have the effect of postponing the future increments of his pay;

(vii) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the

time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to

the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or

service;

(ix) compulsory retirement;

(x) removal from service which shall not be a disqualification for future employment under the Government;

(xi) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:Ã¢â‚¬â€‹

25. First proviso to Rule 14 is clearly reads that in every case in which the charge of acceptance from any person, any gratification, other than legal

remuneration, as a motive or reward for doing or for power to do any official act is established, the penalty mentioned in Clause-X (removal from

service which shall not be disqualification for future employment under the Government) or Clause-XI (dismissal from service, which shall ordinarily

be a disqualification for future employment under the Government) shall be imposed. It is only in exceptional circumstance, and for special reasons to

be recorded in writing that any other penalty can be imposed in such circumstance, the second proviso envisages.

26. Language of sub rule (1) of Rule 17 opens with the expression Ã¢â‚¬ËœNoÃ¢â‚¬â„¢ and thereby bars issuance of an order imposing any of the major

penalties without holding an enquiry in the manner provided in the Rule. The expression Ã¢â‚¬Å“as far as may beÃ¢â‚¬ under sub rule (1), allows authorities

to exercise certain discretion in exceptional circumstance. The said expression, in my opinion, must not be treated to be diluting the statutory mandate

under Rule 17, which lays down the exhaustive procedure for holding a departmental proceeding.

27. If the disciplinary authority is of the opinion that there are grounds for inquiring about the Ã¢â‚¬Å“truth of any imputation of misconduct or

misbehaviour against a Government ServantÃ¢â‚¬, he may himself enquire into it or appoint, under these Rules, an Authority to enquire about the truth

thereafter. There is no ambiguity in the language of sub Rule (2) of Rule 17, which clearly says that the disciplinary authority may himself enquire into

the truth of imputation of misconduct or misbehaviour against a Government Servant. It has to be kept in mind that different procedures have been

prescribed under the Rules when, (a) the disciplinary authority decides to enquire into the correctness of imputation of misconduct himself; and (b)

appoints an authority to enquire about the truth of imputation of misconduct. The proviso to sub rule (2) conceives of a Departmental Inquiry

Commissioner who can be appointed as an inquiring authority and in such cases the Departmental Inquiry Commissioner has been given a discretion to

transfer the case of enquiry to an Additional Departmental Inquiry Commissioner.

28. Sub rule (3) requires the disciplinary authority to draw up or cause to be drawn up (i) the substance of imputation of misconduct or misbehaviour

as a Ã¢â‚¬Ëœdefinite and distinct Article of chargeÃ¢â‚¬â„¢ and (ii) a statement of imputation of misconduct or misbehaviour in support of the Article of charge.

29. It would be apt to mention here that Rule 31 of the Rules empowers the Government to make regulation to carry out any of the purposes of the

Rules. In exercise of the said power, Bihar Framing of Articles of Charge against Government Servants Regulations, 2017 (hereinafter referred to as

Ã¢â‚¬Ëœthe RegulationsÃ¢â‚¬â„¢) have been framed, which deal with the manner in which the Article of charges should be framed. The regulations have been

framed apparently to ensure full compliance of sub rule (3) of the Rules, which mandates framing of Ã¢â‚¬Ëœdefinite and distinct Article of chargeÃ¢â‚¬â„¢,

leaving no scope of vagueness. The regulations contain an illustrative Ã¢â‚¬Ëœ Model Article of ChargeÃ¢â‚¬â„¢ by way of Appendix-1.

30. The requirements of proper framing of charge by a competent authority in accordance with sub Rule (3) of Rule 17 stands fulfilled if the charge

portrays allegation of a misconduct by a Government Servant, in definite and distinct terms. Clause- (ii) of sub Rule (3) of Rule 17 requires statement

of imputations of misconduct or misbehaviour in support of the Article of charge which should contain the circumstance in which the Article of charge

has been framed. The statement of imputations of misconduct within the meaning of Clause-(ii) of sub Clause 3 of Rule 17 is nothing, but an

elaboration of facts based on which the Article of charge has been framed. The statutory purpose which the provision under sub Rule (3) aims to

achieve, is to communicate to a Government Servant, in clear and definite terms, the background in which the disciplinary proceeding has been

decided to be initiated against him and the charge(s) has/have been framed. Unambiguity and clarity in conveying the definite and distinct Article of

charge and substance of imputations of misconduct serves dual purpose of the delinquent Government Servant getting adequate opportunity to meet

the charge(s) framed against him and the manifestation of application of mind by the disciplinary authority at the time of framing of charge. Sub

clause(b) of clause (ii) of sub Rule (3) of Rule 17 requires supply of list of such documents by which, and a list of such witnesses by whom, the

articles of charge are proposed to be sustained.

31. The requirement of drawing up definite and distinct Article of charge and statement of imputation of misconduct in support of Article of Charge

and supply of list of documents and list of such witnesses by whom the Articles of charge are proposed to be sustained are in the CourtÃ¢â‚¬â„¢s opinion

mandatory in character. Non-compliance of any of the requirements under sub Rule (3) may render a disciplinary action against a Government

Servant assailable on that ground. Whereas sub Rule (3) requires drawing up of Articles of charge and statement of imputations of misconduct etc.,

sub Rule (4) requires the documents as envisaged under sub Rule (3) of Rule 17 to be delivered to the Government Servant, requiring him to submit,

within such time as may be specified, a written statement of his defence. The Rule further provides that the Government Servant should be given a

liberty to state as to whether he desires to be heard in person. Before proceeding to the next step under the Rules, I need to pause here for a moment

to observe that Ã¢â‚¬Å“within such time as may be specifiedÃ¢â‚¬ stipulated under sub Rule (4) would certainly and undoubtedly mean within such

Ã¢â‚¬Å“reasonable timeÃ¢â‚¬ so as to enable the Government Servant to file effective written statement of his defence. Though nothing has been shown to

this Court as to whether any minimum time has been prescribed under the Rules, to be given to a Government Servant to submit his written statement

of defence, in my opinion, in no case, such period should be less than a fortnight, for the procedure relates to imposition of one of the major penalties

which may have serious evil consequences.

(underlined for emphasis)

32. Sub Rule (5) of Rule 17 is a very significant provision and one of the most important milestones in a disciplinary proceeding against a Government

Servant. Sub Rule (a) of Rule 5 allows the disciplinary authority either to himself enquire into the Articles of charge which are not admitted, and if he

thinks it necessary, to appoint an Inquiry Officer as stipulated under sub Rule (2). In case a Government Servant admits all the Articles of charges in

his written statement of defence, the disciplinary authority is required to record his findings on each charge after taking into account such evidence as

he may think fit and, thereafter, to proceed to take action in the manner prescribed under Rule 18. It is emphasized here that clause (a) of sub Rule (5)

of Rule 17 deals with a situation where a written statement of defence has been filed either denying the allegation of misconduct or admitting such

allegations. Clause (b) of sub Rule (5) of Rule 17 deals with a situation when no written statement of defence is submitted by a Government Servant

and it requires the disciplinary authority, in such circumstance, either to enquire into the Article of charge or appoint an appointing authority for the said

purpose.

33. It is noteworthy that there is apparent distinction between admission of the Article of charges in the written statement of defence filed by the

Government Servant and non-submission of written statement of defence. Whereas admission of an Article of charge will not require an enquiry, the

charge itself having been admitted in the written statement of defence, non-submission of written statement of defence will surely not amount to

admitting the Article of charge. Even in the absence of written statement of defence submitted by the Government Servant, the charges need to be

established by holding enquiry into charges in the disciplinary proceeding.

34. Sub Rule (6) of Rule 17 lists the records to be forwarded to the Inquiring Authority by the disciplinary authority, when the disciplinary authority is

not the Inquiring Authority, which are as under:-

Ã¢â‚¬Å“(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 Ã¢â‚¬Å“Presenting officerÃ¢â‚¬â€‹.

35. Sub Rule (7) requires the Government Servant to appear before the Inquiring Authority within 10 working days from the date of receipt by him of

the Article of charges and statement of imputations of misconduct or misbehavior on such day and at such time as the Inquiring Authority may, by a

notice in writing, specify in this behalf or within such further time, not exceeding 10 days, as may be specified by the Inquiring Authority. Clause (a) of

sub Rule (8) permits a Government Servant to engage a legal practitioner or take assistance of any other Government Servant or a retired

Government Servant subject to the permission of the Inquiring Authority. Sub Rule (8) (a) and sub Rule (8) (b), in substance, deal with the grant of

benefit of assistance which a Government Servant facing disciplinary proceeding may take either of a legal practitioner or of a Government Servant or

of a retired Government Servant. Needless to say that it is obligatory for an Inquiring Officer to apply the said provision whenever a Government

Servant facing disciplinary proceeding makes a request for availing assistance of a legal practitioner or another Government Servant or a retired

Government Servant.

(underlined for emphasis)

36. Sub Rule (9) of Rule 17 mandates the Inquiring Authority to ask the Government Servant, who has not admitted any of the Articles of charges in

his written statement of defence or has not submitted any written statement of defence, whether he is guilty or he has to say anything for his defence.

Sub Rule (9) of Rule 17 is evidently mandatory. If the Government Servant pleads guilty to any of the Articles of charges, the Inquiring Authority is

required to record such plea of the Government Servant, sign the record and obtain the signature of the Government Servant thereon. In terms of Rule

10, the finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty shall be returned by the Inquiring Authority.

(underlined for emphasis)

37. To put it differently, non-submission of written statement of defence by a Government Servant facing disciplinary proceeding shall per se not

amount to admission of his guilt. In such circumstance, the inquiring authority is required to ask whether the Government Servant admits his guilt or not

and proceed accordingly, thereafter. When the Government Servant fails to appear within specified time or refuses or omits to plead, the Inquiring

Authority, under sub Rule (11) of Rule 17 is supposed to require the Presenting Officer to produce the evidence by which he proposes to prove the

Articles of charge and, thereafter, to adjourn the case to a later date not exceeding 30 days, after recording an order, that the Government Servant

may, for the purpose of preparing his defence, (i) inspect the documents mentioned in the list of documents as stipulated in sub clause (b) of clause (ii)

of sub Rule (3) of Rule 17 of the Rules, by which the Article of charges are proposed to be sustained and for the Government Servant and (ii) submit

a list of witnesses to be examined on his behalf. The note below clause (ii) of sub Rule (11) of Rule 17 mandates that if the Government Servant

applies in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub Rule (3) the Inquiring Authority shall

furnish him such copies as early as possible. Further, for the said purpose of preparing his defence, the Inquiring Authority is required to give a notice

to the Government Servant for discovery or production of any documents which are in possession of the Government, but not mentioned in the list

specified in sub Rule (3) of Rule 17 of the Rules. The proviso to sub Rule (11) requires the Government Servant to indicate the relevance of the

documents required by him to be discovered or produced by the Government.

Sub Rule (11) of Rule 17, thus contemplates of a situation where a Government Servant fails to appear before the Inquiring Authority or refuses or

omits to plead before the Inquiring Authority within specified time. Even in such circumstance, the provision commands the Inquiring Officer to ask

the Presenting Officer to produce such evidence by which he proposes to prove the Articles of charge.

(underlined for emphasis)

38. Be it kept in mind that it is the legislative intent as disclosed in sub Rule (11) of Rule 17 that even in case of failure on the part of the Government

Servant to make himself available before the Inquiring Authority, the department is not absolved of its obligation to prove the charge before the

Inquiring Authority on the basis of cogent evidence. It is also evident from the sub Rule (11) that a Government Servant has been given yet another

chance to prepare his defence before the Inquiring Officer, though he had not appeared before the Inquiring Officer or had refused or omitted to

plead. For the purpose of preparing his defence, a Government Servant has right to inspect the documents specified in the list of documents mentioned

in sub Rule (3) of Rule 17 of the Rules. He may apply in writing for supply of copies of the statement of witnesses and require discovery or production

of documents, indicating relevance of the document, for the purpose of preparing his defence. Sub Rule (11) gives a Government Servant facing

disciplinary proceeding an adequate opportunity to prepare his defence against the Articles of charge. It is legally settled principle that in a

departmental proceeding, unless charges are specifically admitted by the Government Servant facing proceeding, the same are required to be proved

against him on the basis of cogent evidence, materials.

(underlined for emphasis)

39. Sub Rules (12) and (13) need to be read together with sub Rule (11). Once a notice of Government Servant is received by the Inquiring Authority

for discovery or production of documents, the Inquiring Authority is required to forward such notice to the authority in whose custody or possession

the documents are kept, with a requisition for production of document by such authority, by such date as may be specified in such requisition. The

proviso to sub Rule (12) of Rule 17 of the Rules empowers the Inquiring Authority to refuse to requisition such of the documents as are, in its opinion,

not relevant to the case, for reasons to be recorded in writing. Rule 13 requires every authority having custody or possession of requisitioned

documents to produce such documents before the Inquiring Authority, on a requisition made by the Inquiring Authority under sub Rule (12). Proviso to

sub Rule (13) states that if production of all or any of such documents which have been requisitioned by the Inquiring Authority are found by the

Authority having custody/possession of the requisitioned documents to be against public interest or security of the State, he shall inform the Inquiring

Authority accordingly and on being so informed, communicate the information to the Government Servant.

40. On conjoint reading of sub Rules (12) and (13) of Rule 17 of the Rules, it can be easily inferred that if a Government Servant applies for supply of

documents in a departmental enquiry under the Rules, for the purpose of preparing his defence and such documents are in possession of the

Government, the Inquiring Authority is to requisition such documents from the officer in whose custody such documents are kept. The Inquiring

Authority at the same time has jurisdiction to refuse to requisition the documents but while refusing to requisition the documents, the Inquiry Officer is

required to record reasons in writing. This provision, for the Inquiring Authority to record reasons in writing while refusing to requisition the documents

demanded by a Government Servant for the purpose of production or inspection, is mandatory. The requirement that the Government Servant shall

specify the relevance of the documents which he wants to be discovered or produced, is equally mandatory. It is also mandatory for the officer in

whose possession the documents are to honour the requisition made by the Inquiring Authority and make available the same for discovery or

production as stipulated under sub Rules (11) and (12) of Rule 17 of the Rules. There are two circumstances invisioned in the proviso to sub Rule (13)

where the authority, having the custody or possession of the requisitioned documents may not make available the documents namely, (i) production of

all or any of such documents will be against public interest and (ii) such production shall be against security of the State. Before declining to make

available the requisitioned documents, the authority having the custody or possession of the requisitioned documents is required to record his

satisfaction with reasons, in writing and is, thereafter, required to inform the Inquiring Authority in that behalf. Once the Inquiring Authority receives

such information to the effect that production of requisitioned documents would be against public interest or against security of the State, he has duty

to communicate such information to the Government Servant and is required to withdraw the requisition for production or discovery of such

documents.

(underlined for emphasis)

41. Sub Rule (14) of Rule 17 is the next step, when on the date fixed for the enquiry, oral and documentary evidence, by which the Articles of charge

are proposed to be proved, are to be produced on behalf of the Disciplinary Authority. The witnesses are to be examined by or on behalf of the

Presenting Officer who may be cross-examined by or on behalf of the delinquent Government Servant. The Rule enables the Presenting Officer to re-

examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority.

It further enables the Inquiring Authority to put such questions to the witnesses, as he thinks fit.

It is thus mandate of the above mentioned statutory provision that evidence, oral or documentary, in support of the charges are to be produced by the

Presenting Officer first, so that the Government Servant facing departmental enquiry has the opportunity to cross-examine witnesses and to rebut any

evidence adduced during the proceeding. In the CourtÃ¢â‚¬â„¢s opinion, sub Rule (14) of Rule 17 is one of the most significant stages of a departmental

enquiry where the disciplinary authority through the Presenting Officer has a duty to substantiate the Articles of charge. Failure on the part of the

Presenting Officer to adduce such relevant evidence in support of Articles of charge would lead to failure on the part of the department to establish

the charge. The provision casts a duty upon the Inquiry Officer to give the Government Servant an opportunity to cross-examine the witness of the

department and it allows the Presenting Officer to re-examine the witnesses on any points on which they have been re-examined. It is significant that

the Presenting Officer may also re-examine a witness on a point or on a new matter, but for the said purpose, he will have to seek leave of the

Inquiring Authority. Sub Rule (15) confers discretion upon the Inquiring Authority before the close of the case on behalf of the disciplinary authority, to

allow the Presenting Officer to produce such evidence also which was not included in the list given to the Government Servant. Further, it permits the

Inquiring Authority itself to call for the new evidence or recall and re-examine any witness. This is, however, subject to the condition that the

Government Servant, is given on demand; (i) a copy of list of further evidence proposed to be produced and (ii) an adjournment of the enquiry for

three clear days before production of new evidence.

(underlined for emphasis)

42. In such circumstance, the Inquiring Authority would be required to give the Government Servant an opportunity of inspecting such documents

before they are taken on record. Sub Rule (15) allows the Inquiring Authority to permit the Government Servant to produce new evidence, if it is of

the opinion that such evidence is necessary in the interest of justice. The proviso to sub Rule (15) postulates that new evidence shall not be permitted

or called for or any witness shall not be recalled to supplement the evidence, and such evidence may be called for, only if there is inherent lacuna or

defect in the evidence, produced originally.

43. Sub Rules (14) and (15) of Rule 17 of the Rules strike balance between the duty of the disciplinary authority through the Presenting officer to

establish the Articles of charge in a departmental enquiry and the right of the Government Servant of a reasonable and fair treatment, so that he may

have adequate opportunity to effectively meet the materials in the nature of evidence, brought on record before the Inquiring Authority. The Rules

envisage a situation where the Inquiring Authority may have to direct production of such evidence, which was not listed in the list of original

documents, based on which, the charges were proposed to be proved by the department. At the same time, the provision takes adequate care of the

opportunity which a Government Servant facing departmental proceeding must have to meet new evidence, being placed on record of the

departmental enquiry.

44. It is on the closure of the case for the disciplinary authority before the Inquiring Authority that the Government Servant is to state his defence,

either orally or in writing. It further requires that if the defence is made orally, it shall be recorded and the Government Servant shall be required to

sign the record. In either case, a copy of the statement of defence is to be made available to the Presenting Officer by the Inquiring Authority.

45. Next comes the step when the Government Servant may examine himself in his own behalf if he so prefers, whereafter the witnesses produced

by him shall be examined and shall be liable to examination, cross-examination and re-examination by the Inquiring Authority according to the

provisions applicable to the witnesses for the disciplinary authority as stipulated under sub Rule (17) of the Rules. Under sub Rule (18) of Rule 17, in

case the Government Servant has not examined himself, the Inquiring Authority may generally question him on the circumstances appearing against

him in the evidence, for the purpose of enabling the Government Servant to explain any circumstance appearing in the evidence against him. The stage

under sub Rule (18) of Rule 17 of the Rules is of immense significance, which enables the Government Servant to understand from the Inquiring

Authority, the materials which have come against him so as to explain such circumstances which have appeared in the evidence against him. This is

the stage when the process of adduction of evidence in support of the charge as well as in support of the defence of the Government Servant is

completed. The Inquiring Authority, at this stage, may hear the Presenting Officer and may permit him and the Government Servant to file written

briefs of the respective cases, if they so desire. Though the provision under sub Rules (21) and (22) of Rule 17 are not relevant for the purpose of

present adjudication, I shall be referring to the said provisions too at a later stage in the present judgment.

(underlined for emphasis)

46. Sub Rule (23) of Rule 17 lays down the manner in which the records are to be prepared by the Inquiring Authority after conclusion of the enquiry.

It requires that the records, as stipulated in clause (i) of sub Rule (23) must contain the followings:-

Ã¢â‚¬Å“After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

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

(b) the defence of the government servant in respect of each article of charge.

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

(d) the findings on each article of charge and the reasons thereof.Ã¢â‚¬â€‹

47. It is mandatory under clause (i) of sub Rule (23) that assessment of the evidence in respect of each of Article of charge is done by the Inquiring

Authority, while preparing the record. He is also required to record his specific finding on each Article of charge and Ã¢â‚¬Å“the reasons thereofÃ¢â‚¬. I

emphasize at this stage that a finding recorded by an Inquiring Authority on an Article of charge without reasons thereof cannot be said to be a finding

within the meaning of clause (i) of sub Rule (23) of the Rules. Similarly, an enquiry report can be of no value if it doesnÃ¢â‚¬â„¢t contain specific findings

recorded by the Inquiring Authority on each of the Article of charge. Needless to say that the reasons recorded in support of the findings on each

Article of charge must reflect assessment of evidence on record.

(underlined for emphasis)

48. The explanation to clause (i) of Rule 23 of Rule 17 of the Rules permits an Inquiring Authority to record his finding, if in his opinion, the proceeding

of the enquiry may establish any Article of charge, different from original Articles of the charge(s). Such finding however, cannot be recorded unless

the Government Servant either admits such facts on which such Article of charge is based, or had a reasonable opportunity of defending himself as

against such Article of charge. It is evident on careful reading of clause (i) of sub Rule (23) that if there are material bases before the Inquiring

Authority to record a finding in respect of misconduct against the Government Servant, which was not specifically mentioned in the charge memo, he

(the Inquiring Authority) may record his finding but subject to the condition that such facts have either been admitted by the Government Servant or he

had reasonable opportunity to defend himself. Clause (ii) of sub Rule (23) requires the Inquiring Authority to forward to the disciplinary authority, the

records of the enquiry which must include;

(a) the written statement of defence, if any, submitted by the Government Servant;

(b) the oral and documentary evidence produced in the course of the enquiry;

(c) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the enquiry;

(d) the orders, if any, made by the disciplinary authority and the Inquiring Authority in regard to the enquiry; and

(e) the report prepared by the Inquiring Authority under clause (i) of sub Rule (23) of Rule 17.

The purpose behind the statutory mandate under clause (ii) of sub Rule (23) is of immense significance as it is the disciplinary authority who has to

finally make up his mind on the proof of guilt or otherwise of the Government Servant in a disciplinary proceeding. For reaching the conclusion, it is

mandatory for the disciplinary authority to look into the records sent by the Inquiring Authority in accordance with clause (ii) of sub Rule (23) of Rule

17.

(underlined for emphasis)

49. Rule 18 of the Rules prescribes following actions which can be taken by the disciplinary authority on the enquiry report, if it is not itself the

Inquiring Authority:-

(a) The disciplinary authority, shall forward or cause to be forwarded a copy of the enquiry report to the Government Servant who may submit, if he

or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days. This is the stage of supply of the

enquiry report by the disciplinary authority to the Government Servant. (See sub Rule (3) of Rule 18).

(b) It may be noted that the disciplinary authority, in appropriate cases may remit the matter to the Inquiring Authority for further enquiry and report.

In such circumstance the Inquiring Authority shall be required to proceed to hold further enquiry in accordance with the provisions of Rule 17, as

noted above. (See sub Rule (1) of Rule 18).

(c) The disciplinary authority, if he disagrees with the findings of the Inquiring Authority on any Article of charge, is required to record its reason for

disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose. (See sub Rule (2) of Rule 18).

(d) There are two mandatory requirements for the disciplinary authority while taking action on the enquiry report under sub Rule (2) of Rule 18 if he

intends to disagree with the findings of the Inquiring Authority on any Article of charge. Firstly, he will be obliged to record his reasons for such

disagreement and secondly, he will have to record his own findings on such charge, if the evidence on record is sufficient for the purpose.

(e) The requirement of supply of the enquiry report to the Government Servant as stipulated in sub Rule (3) of Rule 18 has already been noticed

above. Sub Rule (3) also stipulates a situation where the disciplinary authority disagrees with the finding of the Inquiring Authority. In such

circumstance the enquiry report must accompany the findings of the disciplinary authority as required under sub Rule (2) so as to enable the

Government Servant to submit, if he so desires, his written representation or submission to the disciplinary authority.

(f) Sub Rule (4) of Rule 18 is a mandate to the disciplinary authority to Ã¢â‚¬Å“considerÃ¢â‚¬ the representation or submission, if any, submitted by the

Government Servant, before proceeding further.

(g) Sub Rule (5) of Rule 18 lays down that if the disciplinary authority, having regard to its findings of all or any of the Articles of charge, is of the

opinion that any of the penalty specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall make an order imposing

such penalty. Clauses (i) to (v) of Rule 14 refer to minor penalties which can be imposed under the Rules, as has already been noticed in the foregoing

paragraphs.

(h) If the disciplinary authority, having regard to its findings on all or any of the Articles of charge and on the basis of evidence adduced during the

enquiry is of the opinion that any of the penalties specified in clause (vii) to (xi) of Rule 14 should be imposed on the Government Servant, the

disciplinary authority shall make an order imposing such penalty. Sub Rule (6) categorically mentions that it shall not be necessary for the disciplinary

authority to give the Government Servant any further opportunity of making representation on the penalty proposed to be imposed.

(i) The Bihar Public Service Commission is required to be consulted and its advice taken into consideration before making any order imposing any

penalty on the Government Servant wherever it is necessary to consult the Commission.

(underlined for emphasis)

50. Rule 17 has been framed in a manner as to ensure full compliance of the principles of natural justice and fair play in taking decisions in disciplinary

matters against a Government Servant. In the CourtÃ¢â‚¬â„¢s opinion, the Inquiring Authority and the Presenting Officer have statutory duty and

obligation to strictly adhere to the provisions under Rule 17 of the Rules as even slight deviation may have the consequence of prejudicing adversely

the right of a Government Servant to prepare his defence and defend himself effectively during the disciplinary proceeding. There is no gainsaying that

a Government Servant facing disciplinary proceeding cannot claim more opportunity by way of right than what has been prescribed under the Rules.

The Rule 17 adequately takes care of the rights of a Government Servant facing disciplinary proceeding and the duties of the disciplinary authority,

Inquiring Authority and Presenting Officer. As has been noticed above, there are stages where the provisions require recording of reasons.

Illustratively, (i) if the Government Servant applies for discovery or production of documents to prepare his defence, the Inquiring Authority is required

to requisition the document from the authority in whose custody the documents are in possession for the purpose of discovery and production. The

proviso to sub Rule (12) of Rule 17 empowers the Inquiring Authority to refuse to requisition such documents, if in its opinion, they are not relevant to

the case. Before refusing to requisition the documents, he is required to record reasons. (ii) Similarly, under sub Rule (2) of Rule 18 of the Rules, the

disciplinary authority is required to record its Ã¢â‚¬Å“reasonsÃ¢â‚¬â€‹ if he disagrees with the findings of the Inquiring Authority on any Article of the charge.

51. Let it be recorded that the Inquiring Authority and the disciplinary authority discharge quasi judicial functions who act as impartial arbiters while

determining the guilt or otherwise of a Government Servant. An Inquiring Authority is equally impartial who has to record his findings on the basis of

materials which are adduced before him on behalf of the disciplinary authority through the Presenting Office and, on behalf of the Government

Servant by himself or through his agent. It is not the job of the Inquiring Authority to act as a prosecutor in a departmental enquiry. He is required to

act fairly. In case of Union of India Vs. Prakash Kumar Tandon (AIR 2009 SC 1375), the Supreme Court, dealing with the role of the Inquiry Officer

has held as under:-

Ã¢â‚¬Å“15. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the

enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It

is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for

the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority.

He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.Ã¢â‚¬â€‹

52. In the aforesaid background there is necessity of recording of reasons as stipulated under the Rules. Recording of reasons reflects application of

mind by an authority. If any authority intends to take a decision or record his finding adverse to the interest of a Government Servant in a disciplinary

proceeding, recording of reasons becomes an essential function. The significance of recording of reasons has been noted in a series of decisions;

illustratively in cases of G. Vallikumari Vs. Andhra Education Society, reported in (2010) 2 SCC 497, Oryx Fisheries Pvt. Ltd. Vs. Union of India &

Ors. reported in (2010) 13 SCC 427 and Kranti Associates (P) Ltd. & Anr. Vs. Masood Ahmed Khan & Ors. reported in (2010) 9 SCC 496.

53. In case of Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors. reported in (2012) 4 SCC 407, the Supreme Court reiterated the emphasis

on recording of reasons observing that if the decision reveals inscrutable face of the sphynx, it can, by its silence render it virtually impossible for the

CourtÃ¢â‚¬â„¢s to exercise their power of judicial review in adjudging the validity of the decision. I therefore hold that it is mandatory for the authorities

under the Rule to record reasons in their orders at any stage wherever the provisions so specifically provide. Non recording of reasons despite

statutory requirement would render the decision of the authority vulnerable and unsustainable.

(underlined for emphasis)

54. It is true that the CourtÃ¢â‚¬â„¢s interference exercising power of judicial review under Article 226 of the Constitution in the matters of disciplinary

proceeding would be required in case of non-compliance of such requirements only, if a Government Servant pleads and establishes any prejudice

caused to him because of such non-compliance. However, I do not find any reason why the Inquiring Authorities and the Disciplinary Authorities, who

perform their respective roles under the Rules would not strictly adhere to the procedure as laid down under Rule 17 of the Rules.

55. I have discussed hereinabove and referred to the role of the disciplinary authority and the action which he may take on receipt of the enquiry

report. The statutory provisions clearly require the disciplinary authority not only to supply the inquiry report to the Government Servant but also seek

his response/comments thereon. A Government Servant has a right to satisfy the disciplinary authority by making his representation if findings of the

inquiry officer are adverse against him. It is in that background, it is incumbent upon the disciplinary authority to consider the representation of the

Government Servant against the findings of the inquiry office, before recording his finding of guilt and before recording his agreement with the adverse

findings of the inquiring authority. The Supreme Court in case of Punjab National Bank Vs. K.K. Verma, reported in (2010) 13 SCC 494 has laid

down in no uncertain terms that a Government Servant facing disciplinary proceeding, is entitled to defend himself against the charge framed against

him and prove his innocence before the disciplinary authority. The Court has observed that right to represent against the findings of the inquiry

authority has not been disturbed by 42nd Amendment of the Constitution and denial thereof would make the final order vulnerable. The findings of the

disciplinary authority after having received the records from the inquiry authority and representation if any of the Government Servant, must reflect his

application of mind and must reflect consideration, not only of the records made over to him by the Inquiring Authority but also of the representation of

the Government Servant against the report of the Inquiry Officer.

(underlined for emphasis)

56. This is unfortunate that despite there being clear provisions under the Rules, there has been consistent abject failure on the part of the inquiry

authority, disciplinary authority as well as the appellate authority in the present case. The charge against the petitioner as Government Servant of

indulging in corruption is of very serious nature which fact is undeniable. There was absolutely no evidence before the inquiry office to record his

finding to the effect that the charge against the petitioner stood proved. He has just done a formality of concluding the enquiry and recording his prima

facie opinion in his report. The complainant, who had made the allegation against the petitioner on the basis of which the trap was laid leading to the

petitionerÃ¢â‚¬â„¢s arrest was neither summoned nor examined for undisclosed reasons. The Supreme Court has observed in case of Commissioner of

Police Vs. Jai Bhagwan reported in (2011) 6 SCC 376 that non examination of complainant during departmental proceeding leads to denial of

opportunity to a Government Servant of cross-examination. Paragraph-16 of the said decision is relevant and, is therefore being reproduced

hereinbelow:-

Ã¢â‚¬Å“16. It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The

allegation of receiving Rs. 100 as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning

back of Rs. 100 by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement

of Mrs Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by

her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs. 100 note nor noted down its number. Mr

Narang was also not examined during the course of departmental proceedings. Non-examination of the complainant and P.S. Narang during the

departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police

(F&A) Rules, 1980.Ã¢â‚¬â€‹

57. In case of Union of India Vs. Gyanchand, reported in (2009) 12 SCC 78, the Supreme Court recorded that charge of corruption in a disciplinary

proceeding requires to be proved to its hilt, as it brings civil and criminal consequences upon the employee concerned. Paragraphs 21 and 31 of the

said decision are being reproduced hereinbelow, for quick reference.

Ã¢â‚¬Å“21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned.

He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of

quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

xxx xxx xxx

31. In Municipal Committee, Bahadurgarh v. Krishnan Behari [(1996) 2 SCC 714 : 1996 SCC (L&S) 539 : AIR 1996 SC 1249] this Court held as

under: (SCC p. 715, para 4)

Ã¢â‚¬Å“4.Ã¢â‚¬Â¦In a case of such natureÃ¢â‚¬"indeed, in cases involving corruptionÃ¢â‚¬"there cannot be any other punishment than dismissal. Any sympathy

shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of

misappropriation that is relevant.Ã¢â‚¬â€‹

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam [(1976) 3 SCC 71 : 1976 SCC (L&S) 381 : AIR 1975 SC

2025] , U.P. SRTC v. Basudeo Chaudhary [(1997) 11 SCC 370 : 1998 SCC (L&S) 155] , Janatha Bazar (South Kanara Central Coop. Wholesale

Stores Ltd. v. Sahakari Noukarara Sangha [(2000) 7 SCC 517 : 2000 SCC (L&S) 962] , Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001

SCC (L&S) 469 : AIR 2001 SC 930] , Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] , NEKRTC v. H.

Amaresh [(2006) 6 SCC 187 : 2006 SCC (L&S) 1290 : AIR 2006 SC 2730] and U.P. SRTC v. Vinod Kumar [(2008) 1 SCC 115 : (2008) 1 SCC

(L&S) 1] , wherein it has been held that the punishment should always be proportionate to gravity of the misconduct. However, in a case of

corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has

both civil and criminal consequencesÃ¢â‚¬â€‹.

58. The disciplinary authority, in the present case, has not examined the evidence available on records of the disciplinary proceeding. He has gone by

seriousness of the charge only, in his impugned order dated 20.04.2015.

59. It is painful to note the capricious manner in which the Divisional Commissioner has dismissed the petitionerÃ¢â‚¬â„¢s appeal, which exemplifies lack

of responsibility while exercising his powers under appellate jurisdiction leading to passing of the order dated 16.11.2016. The appellate order does not

at all deal with the points/grounds taken by the petitioner. He has not mentioned in his order as to what grounds were taken by the petitioner in his

memo of appeal. He has rejected the petitionerÃ¢â‚¬â„¢s appeal in one sentence recording that the order of the disciplinary authority is legally valid and,

therefore, no interference was required.

60. Rule 27 of the Rules deals with the manner in which an appeal is to be considered by the appellate authority. Sub Rule (2) of Rule 27 of the Rules

requires the appellate authority to consider;

a) whether the procedure laid down in these Rules has been complied with and whether non-compliance has resulted in the violation of any provisions

of the Constitution of

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe.

61. Sub Rule (3) requires the appellate authority to consider all the circumstances of the case and to make such orders as it may deem just and

equitable.

62. The appellate authority, it seems has not even cared to look to the statutory provision under which he was exercising his appellate power. Forum

of appeal is an important right of a Government Servant under the Rules. The said right of consideration of the petitionerÃ¢â‚¬â„¢s appeal has been

rendered meaningless by the manner in which the appellate authority has dismissed the appeal.

63. In such view of the matter, the impugned orders dated 20.04.2015 passed by the disciplinary authority and order dated 16.11.2016 passed by the

appellate authority are interfered by this Court being unsustainable in law.

64. I direct the disciplinary authority, in the facts and circumstances of the case, to consider afresh, the report of the inquiry officer and the materials

available on record of the departmental enquiry, and take afresh decision in accordance with law. It will be open for him to exercise his power under

sub Rule (1) of Rule 18 of the Rules by remitting the case back to the Inquiring Authority for further enquiry. Consequent upon quashing of the

impugned order of dismissal and the appellate order, the petitioner shall be required to be reinstated forthwith. Because of the manner in which the

departmental enquiry has been conducted and the punishment has been imposed, I direct that the petitioner shall be entitled to to full back wages for

the period during which he remained out of service because of illegal order of punishment.

65. This writ application is allowed accordingly in terms of the directions and observations as made hereinabove.

66. I express my anguish and displeasure over the manner in which the disciplinary proceeding has been held in the present case and the appellate

order has been passed.

67. In numerous cases, this Court has experienced that more often than not, the authorities/functionaries, under the Rules, fail to adhere to the

statutory provisions. Breach of statutory prescriptions in disciplinary proceedings, involving matters of serious misconduct by Government Servants,

renders the disciplinary action unsustainable, which is not in public interest. I have dealt with various provisions under the Rules, in the present

judgment, with an expectation, that top officials, under the State Government, shall take all possible corrective measures including by way of imparting

training to the officials who play their respective roles under the Rules. For the said purpose, let a copy of this order be sent to the Chief Secretary,

Bihar, for him to chalk out ways and means to ensure strict compliance of various provisions under the Rules, in the light of the observations made in

the present judgment.