

(2011) 04 MAD CK 0047

In the Madras High Court

Case No : Writ Petition (MD) No. 947 of 2006

C. Vadakathian

APPELLANT

Vs

The Special Commissioner and Commissioner for Revenue
Administration and The District Collector

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Constitution of India, 1950 — Article 11, 135(2), 14, 16, 162
Government of India Act, 1935 — Section 17, 240(3)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 18(c)
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1)

Citation : (2011) 04 MAD CK 0047

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : A. Rahul, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Judgement

M. Venugopal, J.—The Petitioner has filed the present Writ Petition as against the order dated 13.2.2003 in Na. Ka.A1-22582-2000

passed by the 2nd Respondent/District Collector in imposing the punishment of dismissal on him and the order of the 1st Respondent in Reference

No. Pani.5(3)/ 20784/2003 dated 25.10.2004 in modifying the punishment of dismissal into compulsory retirement and to quash the same.

Further, the Petitioner has also sought for a consequential direction being issued to the Respondents to reinstate him as Village Administrative

Officer with all back wages and attendant benefits treating the entire period of non-employment as duty period with suitable compensation for the

mental agony undergone thereto.

2. The Petitioner was selected and recruited by the Tamil Nadu Public Service

Commission for appointment as Village Administrative Officer in

the year 1981-82 and appointed as V.A.O. in Thanjavur District. He joined the post of V.A.O. on 09.7.1984. He was transferred to

Virudhunagar District during the year 1995. He was posted as Additional Village Administrative Officer in Enjar Village, Sivakasi Taluk. He

rendered 16 years of unblemished service as V.A.O. Also, he was discharging his duties and responsibilities lawfully to the entire satisfaction of his

superiors like Zonal/Regional Deputy Tahsildar of Taluk Office, Sivakasi, Sub Collector, Sivakasi under the overall supervision and control of

District Revenue Officer, Virudhunagar.

3. According to the Petitioner, the then Sub Collector, Sivakasi issued an interim suspension order dated 8.5.2000 followed by Charge Memo

dated 9.6.2000. Moreover, he was not given the copy of documents mentioned in the Annexure to the charge memo. The imputation of s of

Charges was based as per Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

4. The Petitioner's stand is that the Sub Collector, Sivakasi issued the charge memo in negation of the instructions mentioned in the Hand Book for

Disciplinary proceedings of the Government in Letter No. 46723/P & AR/Per-N/95-I dated 10.1.1995 and Rule 14(a), (1) and (2), Rule 17 (e)

and under Rules issued in G.O. Ms. No. 223 P & AR (Per-IV/93) dated 26.6.1993.

5. For the six Articles of Charges, the Petitioner submitted his explanation on 5.7.2000, rebutting each Articles of Charge. After receiving his

explanation, the Sub Collector, Sivakasi had not appointed an Inquiry Officer as prescribed in Government Letter No. 1118 P & AP (Per N/87)

dated 22.12.1987.

6. The Petitioner filed O.A. No. 3555 of 2000 before the Tamil Nadu Administrative Tribunal and obtained an interim stay. Even then he was kept

under compulsory wait. He issued a legal notice for initiating contempt proceedings through his counsel. He was reinstated into service with effect

from 18.7.2000. However, the period of compulsory wait from 8.5.2000 to 18.7.2000 was not regularised. He was also transferred by the

District Revenue Officer on 20.9.2000.

7. The Petitioner filed O.A. No. 7234 of 2000 before the Tamil Nadu Administrative Tribunal on the ground that the District Revenue Officer was

not competent to transfer him. The Tribunal granted an interim order dated 20.9.2000. But he was kept in compulsory wait from 21.9.2000 to

19.10.2000. He received a notice from the Revenue Divisional Officer, Sivakasi on 1.4.2002 whereby he and the Co-delinquent Thiagarajan,

Zonal Deputy Tahsildar were required to appear for an enquiry and also were asked to furnish the defence statement. In the said notice, he found

that the new charge memo dated 20.12.2000 was issued by the 2nd Respondent/District Collector, Virudhunagar. The charge memo issued by the

2nd Respondent/District Collector was not at all served on him.

8. The plea of the Petitioner is that the then District Collector, Virudhunagar cancelled the charge memo dated 9.6.2000 issued by the Sub

Collector, Sivakasi on the basis that the Sub Collector, Sivakasi was not competent to issue the charge memo. Therefore, the 2nd

Respondent/District Collector issued a fresh charge memo dated 20.12.2000 containing similar charges as mentioned in the earlier charge memo.

9. The charge memo issued by the District Collector was not served on the Petitioner and as such, he could not submit his explanation. An Inquiry

Officer was appointed without receiving his explanation. The enquiry was postponed by the Inquiry Officer and further the Petitioner was required

to furnish the copy of the charge memo issued by the 2nd Respondent dated 20.12.2000 since he was not in possession of the same. Three

notices were issued to the Petitioner requiring him to appear for enquiry on 15.7.2002, 9.8.2002, 16.9.2002. The office of the 2nd

Respondent/District Collector including the Assistant Subject Clerk, Personal Assistant (General) and (Accounts) and the District Revenue Officer

who handled the file had not taken care to ensure that the charge memo of the 2nd Respondent/ District Collector dated 20.12.2000 was duly

served on the Petitioner even after the appointment of an Inquiry Officer on 20.2.2002.

10. The 2nd Respondent/District Collector had not adhered to the settled principle that a disciplinary action is initiated only when the charge memo

or show cause notice are served upon the delinquent as per Sub Rule (c) of Rule 18 of Tamil Nadu Civil Services (Discipline & Appeal) Rules.

11. Without ascertaining the service of charge memo and defence statement either admitting or denying any of the charges, the Disciplinary

Authority had issued an order dated 20.2.2002 in ROC. No. A1/22582/2000 appointing the Revenue Divisional Officer as an Inquiry Officer after delay of one year and two months from the date of charge memo.

12. It is the version of the Petitioner that the Inquiry Officer failed to mark the records/documents referred to in the charge memo as Exhibits after

questioning the Petitioner. After inspection of files and oral enquiry, he was not submit any further statement of defence and attestation was not

obtained from him in each page. However, the subject clerk recorded the contents of the three charges and oral deposition recorded by him. The

Inquiry Officer threatened him to write in enquiry proceedings that no further enquiry was required and that the enquiry may be treated as final.

13. The Co-delinquent-M. Thiyagarajan, Zonal Deputy Tahsildar for whom the said charge memo dated 20.12.2000 was served after the lapse of

eight months and was permitted to peruse the records long before the oral enquiry. Further, the Petitioner was not provided with such an

opportunity. Also, he was not given the opportunity to cross examine the witnesses. The Charges No. 1 and 2 were culled out from the charge

memo issued by the Sub Collector, Sivakasi and not on the basis of decision being arrived at independently and consciously by the Disciplinary

Authority after following the instruction in Government Letter No. 14353 P & AR (Per N/93/1) dated 11.3.1993.

14.A reading of the Annexure of the Charge Memo dated 9.6.2000 issued by the Sub Collector, Sivakasi is indicated that the Petitioner was not

involved in regard to the issuance of pattas and his statement was not recorded by the Co-delinquent officer, who issued the patta. Added further,

when the subject clerk in the office ought to have returned such patta transfer applications which had no stamp and signature of the parties and that

he should have put up an office note to reject the paper and for action should have been taken to recover the loss of revenue from the Deputy

Tahsildar.

15. The Co-delinquent officer posing himself all along as Regional Deputy Tahsildar, passed orders for transfer of pattas in collusion with the

subject clerk. The Inquiry Officer prepared a table which contained 3 columns including the charge levelled against him, the statement submitted

during the enquiry and the 3rd column contained his remarks and findings. In

fact, no documents were marked through witnesses. The Inquiry Officer submitted the said table prepared by him on 7.10.2002 to the District Collector, Virudhunagar.

16. By means of a memo dated 02.12.2002 issued by the Tahsildar, Rajapalayam, the table containing the charges, the Petitioner's statement and findings of the Inquiry Officer was served on him. He was called upon by the Tahsildar to offer his further explanation. The memo dated 02.12.2002 had not specified any time limit within which he should furnish his explanation. The 2nd Respondent/District Collector, Virudhunagar, by an order dated 13.2.2003, dismissed the Petitioner from service based upon the so-called enquiry report of the Revenue Divisional Officer dated 7.10.2002. The 2nd Respondent passed the order of dismissal merely resting upon the remarks of the Inquiry Officer. The 2nd Respondent/District Collector had not independently considered the issue whether the charge memo was issued by him, was served upon the Petitioner or not and as to whether the defence statement was received from him. Also, the 2nd Respondent had not considered whether the evidence adduced during the enquiry was sufficient to impose a major punishment of dismissal upon the Petitioner.

17. Being dissatisfied by the order of dismissal dated 13.2.2003 passed by the 2nd Respondent/District Collector, the Petitioner filed an Appeal to the 1st Respondent/Special Commissioner and Commissioner of Revenue Administration, Chennai on 19.2.2003 and 7.3.2003. He also projected an Original Application No. 916 of 2003 and on advise he withdrew the same.

18. In lieu of repeated representations of the Petitioner dated 1.7.2003, 22.12.2003 and 2.6.2004, the 1st Respondent/Special Commissioner and Commissioner of Revenue Administration, Chennai passed the impugned order dated 25.10.2004 modifying the punishment of dismissal into one as compulsory retirement.

19. The Learned Counsel for the Petitioner submits that the impugned order of the 2nd Respondent dated 13.2.2003 imposing the punishment of dismissal on the Petitioner and the order of the 1st Respondent dated 25.10.2004 in modifying the punishment of dismissal into a case of compulsory retirement are arbitrary, unjust and illegal, besides the same are in disregard to Article 14, 21 and 311 of the Constitution of India.

20. It is the further contention of the Learned Counsel for the Petitioner that non-serving of charge memo issued by the 2nd Respondent to the

Petitioner before appointing the Inquiry Officer is bad in law. Further, the Petitioner's explanation ought to have been obtained before arriving at a decision whether to appoint the Inquiry Officer.

21. The Learned Counsel for the Petitioner projects an argument that no detailed evidence were allowed to be let in and the Petitioner was not

provided with an opportunity to adduce rebuttal evidence. As a matter of fact, the Inquiry Officer had not prepared the enquiry report in

accordance with the procedure laid down in the Handbook of Disciplinary Proceedings.

22. The Learned Counsel for the Petitioner submits that the Petitioner was not supplied with the findings in the form of detailed enquiry report

consisting of charges, defence statement, evidence of both parties, assessment of evidence and findings were not supplied to him so as to enable

him to furnish his further explanation. However, the Petitioner was served only with the table having 3 columns prepared by the Inquiry Officer.

Hence, the impugned order resting upon such findings/remarks of the Inquiry Officer is unsustainable in law.

23. The next limb of the argument of the Petitioner is that there is no allegation against him that indulged in granting transfer of pattas for monetary

gains or bribe. Also, he is not the Competent Authority to issue transfer of patta. The Annexure to the charge memo dated 9.6.2000 goes on to

add that all the patta transfer applications are not in order; that the statement of V.A.O. has not been obtained and the applications are not

properly stamped and in spite of the defects the Deputy Tahsildar issued patta transfers.

24. The Learned Counsel for the Petitioner submits that the 1st Respondent (Appellate Authority) had mentioned in the impugned order that

Survey No. 560 of Enjar Village, Sivakasi is classified as Government Promboke and the Delinquent (Petitioner) recommended for the issuance of

patta thereby he was responsible for transferring the valuable property from the Government to the third parties. If the Charge Memo dated

9.6.2000 issued by the Sub Collector, Sivakasi is perused, then, it is clear that Survey No. 560 has been classified as "Village Agraharam

Natham" and the same is not mentioned as Government Promboke. The Survey No. 560 is seen in the Annexure is Item No. 30. The remarks

column which is available as against the Item No. 30 does not mention that the Petitioner recommended for the issuance of patta. Hence, the

contra finding of the 1st Respondent in this regard is not a valid one.

25. Lastly, it is the contention of the Learned Counsel for the Petitioner that when the Co-delinquent officer of the Petitioner has been imposed

with the punishment of stoppage of increment, then, the action of the Respondents in imposing the punishment of compulsory retirement on him is

an arbitrary and unconstitutional one.

26. Per contra, the Learned Government Advocate appearing for the Respondents submits that the Petitioner while working as Village

Administrative Officer, Enjar Village, Sivakasi Taluk managed to collude with M. Thiyagarajan, Special Deputy Tahsildar (PIC) in wrongly

transferring 35 patta cases, incorrect booking of six "B" memos on various individuals who had not actually encroached the Government land and

misappropriated Government money and further that based on the report of the Tahsildar, Sivakasi in regard to the aforesaid lapses, the Sub

Collector, Sivakasi in Proceeding No. A2/3735/2000 dated 08.5.2000 placed the Petitioner under suspension.

27. The Learned Government Advocate for the Respondents brings it to the notice of this Court that the Petitioner projected O.A. No. 3555 of

2000 before the Tamil Nadu Administrative Tribunal and based on the interim stay order dated 30.05.2000 he was posted as V.A.O. in the same

Village and that the Sub Collector, Sivakasi framed charges against him as per Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal)

Rules, 1955 in Ref. No. A2/3735/2000 dated 9.6.2000.

28. Moreover, as per the Senior Standing Council of Tamil Nadu Administrative Tribunal, the Petitioner was transferred as Village Administrative

Officer to other division as per proceedings of the 2nd Respondent in B1/22582/2000 dated 20.09.2000. The Petitioner filed O.A. No. 7234 of

2000 dated 29.09.2000 before the Tamil Nadu Administrative Tribunal and obtained a stay and as such, the Petitioner was posted to the Enjar

Village.

29. The Learned Government Advocate for the Respondents contends that since

the Petitioner colluded with Thiyagarajan, Special Deputy Tahsildar (Higher Official) for the lapses, the authority who is empowered to award punishment to the higher officer involved in the case, all colluded records were called for by the 2nd Respondent/District Collector and the charges earlier framed by the Sub Collector, Sivakasi in his proceedings A2/3735/2000 dated 9.6.2000 were cancelled. That apart, the 2nd Respondent/District Collector as per proceedings in A1/22582/2000 dated 20.12.2000 framed fresh charges as per Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and that the Revenue Divisional Officer, Sivakasi was appointed as Inquiry Officer. In the Enquiry Report dated 7.10.2002 the Inquiry Officer found all the charges were proved and that the enquiry report was served on the Petitioner and that he has not offered his further explanation. The 2nd Respondent/District Collector, Virudhunagar, after perusing the charges, explanation and records of the Petitioner was dismissed from service as per proceedings in ROC.A1/22582/2000 dated 13.2.2003. The Petitioner was served with the said order and he filed O.A. No. 916 of 2003 before the Tamil Nadu Administrative Tribunal impleading the 1st Respondent/Special Commissioner, 2nd Respondent/District Collector and the Sub Collector as Respondents and praying to quash the order. But the Petitioner informing the 1st Respondent on 01.07.2003 through his petition that he had withdrawn the O.A. No. 916 of 2003 and it was dismissed on 23.06.2003. Subsequently, he had requested to pass appropriate order on his representation dated 07.03.2003.

30. It is the stand of the Respondents that the 1st Respondent that the 1st Respondent/Special Commissioner and Commissioner of Revenue Administration, Chennai had modified the dismissal order of the 2nd Respondent into compulsory retirement as per proceedings No. Ser.V(3)/20784/2003, dated 25.10.2004.

31. The Learned Government Advocate for the Respondents draws the attention of this Court to the effect that the charge memo dated 9.6.2000 issued by the Sub Collector was cancelled by the 2nd Respondent/District Collector for the simple reason that he is a competent authority to issue charge memo as per Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules to another delinquent who is charged for the same

delinquencies.

32. The Learned Government Advocate for the Respondents contends that as per Rule 40(a) of Tamil Nadu State and Subordinate Service Rules

"A member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is

qualified" and as per Rule 40(b) of Tamil Nadu State and Subordinate Service Rules "any authority to whom the appointing authority is

administratively subordinate will in respect of any post within the jurisdiction of the appointing authority also be competent to effect transfers and

postings to a post within the jurisdiction aforesaid" and as such, insofar as the Petitioner is concerned, the Sub Collector is the competent authority,

who is administratively subordinate to District Revenue Officer and therefore, the District Revenue Officer is quite competent to transfer the

Petitioner from one station to another.

33. Apart from the above, the Learned Government Advocate for the Respondents contends that the Petitioner was served with the copy of the

charge memo dated 20.12.2000 issued by the 2nd Respondent/ District Collector while serving the notice for enquiry on 9.6.2000 but he had not

attended the enquiry on 9.9.2002. However, he appeared before the Inquiry Officer on 16.9.2002 and gave explanations for each charge levelled

against him.

34. Continuing further, the Petitioner had deposed before the Inquiry Officer that he was not to be enquired any further, and requested to complete

the enquiry proceedings. The Inquiry Officer submitted his findings on 7.10.2002 since the charges levelled against the Petitioner were based on

records only. The Inquiry Officer's report was served on the Petitioner on 03.12.2002 and that he was required to submit his further explanation,

if any. The Petitioner had not submitted his further explanation after providing reasonable time of two months and 11 days. The 2nd

Respondent/District Collector, Virudhunagar on 13.2.2003 passed orders dismissing the Petitioner from Government service.

35. The Learned Government Advocate for the Respondents submits that the Petitioner deposed before the Inquiry Officer that he was not to be

enquired any further and made a request to complete the enquiry proceedings and as such, the plea that the Petitioner was not provided with the

opportunity to peruse the records was only an afterthought and also that since the charges levelled against him were based on records only there

were no witnesses in the entire disciplinary proceedings and consequently there is no room for cross examination.

36. According to the Learned Government Advocate for the Respondents, the Village Administrative Officer's post is a lowest Executive post in

the hierarchy of the Revenue Department who is expected to possess a thorough and detail knowledge of the Government lands; about the lands

owned by the ryots and even about the people of the in-charge village. Also, the Village Administrative Officer must be a resident of the in-charge

village. The recommendation of the Village Administrative Officer is very important for every decision taken by the superior officers. In the instant

case, the Petitioner furnished wrong recommendations and colluded with the Co-delinquent [M. Thiagarajan-Special Deputy Tahsildar] who is

superior to him. The involvement of each happenings/courses, official capacity of the delinquent and many other factors are to be considered

before awarding any punishment. Hence, the Petitioner cannot equate the punishment awarded to him with the punishment inflicted on the Co-

delinquent (Special Deputy Tahsildar).

37. The Learned Government Advocate for the Respondents takes a legal plea that the Petitioner had not exhausted his remedy of preferring a

Revision Petition to the Secretary to Government, Revenue Department, Chennai against the order of compulsory retirement passed in Appeal by

the 1st Respondent, but filed a Writ Petition before this Court and when he had not exhausted the alternative remedy available to him, then, the

present Writ Petition is not maintainable in the eye of law.

38. Added further, in Annexure 3 to the Charge Memo dated 20.12.2000, 29 patta transfers files were listed out and the Petitioner had not

produced any evidence before the Inquiry Officer cited by bringing witnesses or adducing further evidence and hence, the Inquiry Officer was

perforced to rely upon the documents mentioned in Annexure 3 of the Charge Memo for arriving at his conclusion and viewed in that perspective

the action of the Inquiry Officer is quite correct and legally valid one in law.

39. The other contention of the Respondents is that the Petitioner had furnished wrong recommendations for patta transfers for majority of cases

and the orders were passed an officers who are not quite competent to pass such orders and this would unerringly point out that he had colluded

with the Co-delinquent (Special Deputy Tahsildar) for ulterior motives. As a matter of fact, only on a sympathetic consideration, the 1st

Respondent modified the punishment of dismissal from service to the Petitioner to a case of compulsory retirement and the said punishment of a

compulsory retirement imposed on the Petitioner is quite proportionate to the charges levelled against him.

40. Lastly, the Learned Government Advocate for the Respondents submits that a petition for transfer of patta will have to be received in the Taluk

Office and if the Petition is fit for consideration, then, the same will to be forwarded to the Village Administration Officer for verification of the

contends with Village Accounts and the Assistant in the Taluk Office dealing with the subject of Patta Transfer and that after perusing the proposal

has prepared a file and submit to the competent authority and further that the charge memos are not written by the subject dealing Assistant

working in the Taluk Office. In fact, all the patta transfers files are prepared by the Petitioner and orders were passed by an officer who has not

competent to issue such an order.

41. The Learned Counsel for the Petitioner cites the decision of Hon''ble Supreme Court in Durga Enterprises (P) Ltd and Anr. v. Principal

Secretary, Government of U.P. and Ors. (2004) 13 SCC 665 wherein in paragraph 3 and 4, it is observed as follows:

3. The High Court, having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of

relegating the parties to a civil suit.

4. We, therefore, set aside the impugned order of the High Court and remit the matter to it for taking a decision on merits, after hearing the parties,

within the earliest possible period.

42. He also invites the attention of this Court to the decision of Hon''ble Supreme Court in Man Singh v. State of Haryana and Ors. (2008) 8 MLJ

518 (SC) at page 519 wherein it is, among other things, held as follows:

Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable

that no fair minded authority could ever have made it. The concept of equality as

enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness. We have, therefore, examined the case of the Appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the Appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The Appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the Appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the Appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the Appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not

sustainable. The Appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.

43. Also, the Learned Counsel for the Petitioner seeks in aid of the decision of this Court in *N. Nandagopalan v. The Secretary to Government,*

Personnel & Administration Reforms (Q) Department, Fort St. George, Chennai - 9 2007 Writ L.R. 52 wherein it is laid down as follows:

It is well settled that if employees were involved in the same incident, the Department should proceed against all or should not proceed against

anyone - There is no discretion to proceed against some of employees and no action taken against other employees, when they are identically

placed, and their involvement being identical.

44. It is well settled principle in law that a charge sheet must actually be served on the Delinquent. The principles relating to the service of

processors in relation to the manner of service of charge sheet. As a matter of fact, a charge sheet cannot be subjected to a challenge

independently and therefore, ordinarily a Court of Law will not interfere with the charge sheet. However, if an employee who has effected service

of charge sheet cannot turn round and contend that he has not been served or there has been a delay in regard to the conduct of the disciplinary

proceedings, in the considered opinion of this Court.

45. It is to be noted that an employee who has been issued with the memorandum of charges within a prescribed time limit, to answer may admit

or deny the charges. A bare denial of the charges or even refusal to answer the charges required a formal fact finding enquiry where the

Disciplinary Authority has to prove his case. Indeed, admission is a matter of conduct and not a contract having a quid pro quo. Admission of the

delinquent must be taken as a whole and not a part of it. If the charged employee/delinquent admits the charges levelled against him, then, there is

no need for any enquiry for finding out the truth in regard to the allegations mentioned in the charge. Thereupon, the Disciplinary Authority will take

a decision in regard to the quantum of punishment depending upon the nature and gravity of misconduct. It is needless for this Court to point out

that the Disciplinary Authority will act only where an admission of delinquent is categorical, voluntary and unequivocal.

46. The list of documents by which the charge against the delinquent employee is sought to be established is an integral part and parcel of the

memo. This list confers on the delinquent, the right to copies of documents on which the department base its case. The documents are to be

supplied by the Authority. If copies of documents are voluminous and they could not be furnished, then, the substance of documents should atleast

be furnished [As a minimum requirement]. Besides granting an opportunity to copy down the documents by the charged employee.

47. The ingredients of fair hearing are: (1) Advance Notice; (2) Right to make representation; (3) Right to be heard. It is to be remembered that an

employee has got the right to claim the procedural and substantive rules of Natural Justice. An opportunity to put forward one's defence is one of

the essential principles of Natural Justice.

48. At this stage, this Court worth recalls the decision in Russell v. Duke of Norfolk (1949) 1 All E.R. 109, it is held that "one of the essential

facets of Natural Justice is that the concerned ought to have a reasonable opportunity. The service of charge sheet is to be distinguished from the

issuance of charge sheet. Furnishing of the allegations on which charges are based is a part of reasonable opportunity of making an effective

representation and as such, it is an integral concept of the Rules of Natural Justice."

49. A proper enquiry includes an opportunity to know what is the case against a Delinquent. This Court aptly points out the decision B. Surinder

Singh Kanda and Government of the Federation of Malaya (1962) App. Cas 322 at page 323, it is among other things observed as follows:

Secondly, that the failure to supply the Appellant with a copy of the report of the board of inquiry, which contained matter highly prejudicial to him

and which had been sent to and read by the adjudicating officer before he sat to inquire into the charge, amounted to a failure to afford the

Appellant "'a reasonable opportunity of being heard'" in answer to the charge within the meaning of Article 135(2) of the Constitution and to a denial

of natural justice (post, p. 338).

50. Further, in the aforesaid decision, at page 337 & 338, it is observed and held hereunder:

In the opinion of their Lordships, however, the proper approach is somewhat

different. The rule against bias is one thing. The right to be heard is another. Those who rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo iudex in causa sua*: and *Audi alteram partem*. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made

against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair

opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education*

v. Rice [1911] A.C. 179, 182 down to the decision of their Lordships" *Board in Ceylon University v. Fernando* [1960] 1 W.L.R. 223. It follows,

of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the

other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will

not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side

has had access to the judge without his knowing. Instances which were cited to their Lordships were *In re an Arbitration between Gregson and*

Armstrong, [1894] 70 L.T. 106, *D.C. Rex v. Bodmin Justices, Ex parte MeEwen* [1947] K.B. 321 and *Goold v. Evans & Co.*, [1951] 2 T.L.R.

1189, C.A. to which might be added *Rex v. Architects' Registration Tribunal* (1945) 61 T.L.R. 445 and many others. Applying these principles,

their Lordships are of opinion that inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in

agreement with the view expressed by Rigby J. In these words: "'In my view, 'the furnishing of a copy of the findings of the board of inquiry 'to the

adjudicating officer appointed to hear the disciplinary 'charges, coupled with the

fact that no such copy was furnished "to the Plaintiff, amounted to such a denial of natural justice "as to entitle this Court to set aside those proceedings on this "ground. It amounted, in my view, to a failure to afford the "Plaintiff a reasonable opportunity of being heard to answer to "the charge preferred against him which resulted in his dismissal." The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused.

51. In the American Trial, one of the salient features is the right of an affected party to have timely and specific notice of the issues to be resolved at the hearing. An opportunity is given to the party to know about and to contest any assertion of fact or law made by the opposite party.

52. It may not be out of place for this Court to point out the decision Union of India (UOI) Vs. T.R. Varma, wherein the Hon"ble Supreme Court has observed as follows:

Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the relief's to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefore: Rashid Ahmed Vs. The Municipal Board, Kairana, and K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , Rel. on.

53. Apart from the above, this Court cites the following decisions:

(a) In C.C.T. Orissa and Others Vs. Indian Explosives Ltd., at page 690, the Hon"ble Supreme Court in para 8 and 9 has observed as follows:

7. The High Court seems to have completely lost sight of the parameters

highlighted by this Court in a large number of, cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for the assessment years, 1997-98 and Assessment years 1998-99 in respect of ICI India Ltd. In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside. 8.

The Respondent-Assessee shall, within a period of eight weeks from today, file its response, if any, to the show cause notice dated 14.1.2004.

The Commissioner shall consider the reply to the show cause notice filed, if any, and dispose of the proceeding in accordance with law.

(b) In Khem Chand Vs. The Union of India (UOI)and Others, at page 301, the Hon"ble Supreme Court has observed hereunder:

The reasonable opportunity envisaged by the provision contained in Article 311(2) includes-(a) An opportunity to deny his guilt and establish his

innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an

opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or any other witnesses in support of

his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he

can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against

the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short

the substance of the protection provided by rules, like r. 55 referred to above, was bodily lifted out of the rules and together with an additional

opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and

has now been incorporated in Article 311 (2) so as to convert the protection into a constitutional safeguard. AIR 1948 121 (Privy Council) , Rel.

On; AIR 1937 31 (Privy Council) , Ref.; AIR 1945 47 (Federal Court) , Dissent. From.

Held, on the facts of the case that the Appellant though entitled to have a further opportunity given to him to show cause whey the particular

punishment should not be inflicted on him was not given the opportunity and that, therefore, there was no getting away from the fact that Article

311(2) had not been fully complied with and the Appellant had not the benefit of all the constitutional protection and accordingly his dismissal could

not be supported.

(c) In Jagdish Prasad Saxena v. The State of Madhya Bharat (Now Madhya Pradesh) AIR 1961 SC 1070 (V 48 C 180) at page 1071 the

Hon"ble Supreme Court has held as follows:

The Appellant, permanently employed as distillery inspector, was furnished with a charge-sheet on the basis of alleged admissions he had made in

the course of enquiry directed against some other Government servants in connection with the commission of certain offence. In fact, the result of

that enquiry was that the Appellant was absolved from any complicity in the commission of the offence. Later, he was removed from service on the

strength of the alleged admissions without holding a formal enquiry as required by the Service Rules:

Held that, as the statements made by the Appellant did not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry

constituted a serious infirmity in the order of dismissal passed against him, as the Appellant had no opportunity at all of showing cause against the

charge framed against him and so the requirement of Article 311 (2) was not satisfied, Even if the Appellant had made some statements which

amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged admissions without

holding a formal enquiry as required by the rules.

It is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after

supplying him with a charge sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet.

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge

and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the Appellant and to hold that in view of

the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in

dealing with cases of orders passed against public servants terminating their services AIR 1957 Madh. B. 15.

(d) In the decision of Hon"ble Supreme Court in Union of India v. V.P. Seth and Anr. 1994 I L.L.N. 882 at page 883 & 884 it is observed as

follows:

2. Sri. Goswami the learned Senior Counsel appearing for the Appellant rightly points out that the position of law has now been settled by this

Court by two recent decisions reported in Baikuntha Nath Das v. Chief District Medical Officer, Baripada and. Posts and Telegraphs Board v.

C.S.N. Murthy [1992 I L.L.N. 948], which clearly hold that un-communicated adverse remarks can certainly be considered for the exercise of

power of compulsory retirement. In paragraph 34 (of SCC) (Para 32 of AIR) of the decision first mentioned, this Court evolved the following

principles:

(i) An Order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii) The Order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant

compulsorily. The Order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an Order of compulsory retirement. This does not mean that judicial scrutiny is

excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied

that the Order is. passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would

form the requisite opinion on the given material; in short; if it is found to be a perverse Order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in

the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would

naturally include the entries in the confidential records/

character rolls, both favourable and adverse.

If a government servant is promoted to a higher post notwithstanding the

adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An Order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it excommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

and further, in paragraph 3, it is held as follows:

3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an Order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the Rule of audi alteram partem has no application since the Order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the Order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions.

(e) In Suresh Koshy George Vs. University of Kerala and Others, at page 201 in paragraph 7, it is observed and held thus:

The only other contention that was taken before the Division Bench and repeated in this Court was that inasmuch as the Vice Chancellor did not

make available to the Appellant a copy of the report submitted by the second Respondent before he was called upon to make his representations

against the provisional decision taken by him, there was breach of the principles of natural justice. The Appellant had been duly informed of the

charge against him long before the inquiry began; the inquiry was held after due notice to him and in his presence; he was allowed to cross-examine

the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. No rule either statutory or otherwise was

brought to our notice which required the Vice Chancellor to make available to the Appellant a copy of the report submitted by the Inquiry Officer.

It is not the case of the Appellant that he asked for a copy of that report and that was denied to him. The rules of natural justice are not embodied

rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great

extent on the facts and circumstances of the case in point, the constitution of the

Tribunal and the rules under which it functions.

Further, in the aforesaid decision in paragraph 11, it is observed as follows:

11. In *Byrne and Anr. v. Cinematograph Renters Society Ltd. and Ors.*(1) Lord Harman J. observed: ""What, then, are the requirements of natural

justice in a case of this kind ? First, I think that the person accused should know the nature of the accusation made; secondly that he should be

given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything

more."" The decision of the Judicial Committee in *University of Ceylon v. Fernando* (2) appears to go much further than what was laid down in the

aforementioned cases. For the purpose of this case it is not necessary to take assistance from the ratio of that decision. Suffice it to say that in the

case before us there was a fair inquiry against the Appellant; the officer appointed to inquire was an impartial person-he cannot be said to have

been biased against the Appellant; the charge against the Appellant was made known to him before the commencement of the inquiry; the

witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every

opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of

natural justice. It is true that the Vice Chancellor did not make available to the Appellant a copy of the report submitted by the Inquiry Officer.

Admittedly the Appellant did not ask for a copy of the report. There is no rule requiring the Vice Chancellor to provide the Appellant with a copy

of the report of the Inquiry Officer before he was called upon to make his representation against the provisional decision taken by him. If the

Appellant felt any difficulty in making his representation without looking into the report of the Inquiry Officer, he could have very well asked for a

copy of that report., His present grievance appears to be an after thought and we see no substance in it.

(f) In *Indian Oil Corporation Limited and Anr. v. Ashok Kumar Arora* Judgments Today 1997 (2) S.C.C. 367 at page 368 the Hon"ble Supreme

Court has laid down as follows:

At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not

exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that

the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on

no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is catena of judgments of this Court

which had settled the law on this topics and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this

topic viz., State of Andhra Pradesh v. S. Sree Rama Rao, 1963 (3) SCR 25, State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, ,

Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, and Nelson Motis Vs. Union of India and

another, .

(g) In Tribhuwannath Pandey v. Government of the Union of India through the Secretary, Ministry of States of the Dominion, New Delhi and Anr.

AIR 1953 Nag 138 at page 139 it is held as follows:

A charge that the Petitioner's work during the period of his probation is found to be unsatisfactory is so vague that it cannot be said to give any

idea to him to what he had to answer. In such a case, it cannot be said that the Petitioner was given a reasonable opportunity, to show cause

against the action proposed to be taken against him. For an opportunity to be reasonable a person must be told in the clearest terms and with full

particularity what his alleged faults are.

It should be left to the Government servant concerned to find out or imagine what the charges levelled against him are.

(h) In State of M.P. Vs. L.P. Tiwari, at page 2176 the Hon''ble Supreme Court has opined as follows:

R.9 enjoins that, the disciplinary authority, where it proposes to hold an enquiry against the delinquent under Rule 14, a copy of articles of the

charges, statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which charges are proposed to be

sustained shall be issued or caused to be issued by the disciplinary authority to such Govt. Servant within a period of 45 days or 90 days where

disciplinary authority is the State Govt. From the date of order of suspension. The dereliction thereof entails the authority with denuding the power

to continue the officer under suspension, thought the power of enquiry subsists. This is clear from proviso to R.9(2-b) which says that "the period of suspension shall in no case be continued beyond the period of 90 days from the date of the order of suspension. "It is thus clear that service of the articles of charge is not a condition precedent. Putting it in transmission within the period is sufficient compliance. What is emphasised in the rule is initiation of the proceedings within the period of 90 days, and not effecting the service of the articles of charge issued or caused to be issued when the Government servant makes himself scarce. Non-service, therefore, per se does not render the initiation of the disciplinary proceedings against the delinquent officer illegal, after the expiry of 90 days. No doubt every endeavour has to be made to have the charge-sheet served on the delinquent but the delinquent who evades receipt of it, cannot be allowed to take advantage of such evasion.

(i) In *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, the Hon"ble Supreme Court has observed as follows:

Under Cls. 38 and 40 of Regulations irregular attendance, absence without leave and without reasonable cause and failure, without sufficient cause to report, when directed for duty amount to acts of misconduct. The State Transport Corporation may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. A permanent employee (writer in a Depot in this case) is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows what the charges levelled against him are and the allegations levelled against him are and the allegations on which such charges are based.

The order of termination passed against such an employee without giving him opportunity to show cause against the action proposed to be taken against him is bad in law since it contravenes the provisions of Cl.4(b) of the Regulations and also the principles of natural justice. A writ of certiorari in such a case must issue quashing the order of dismissal, but this will

not preclude the corporation from making a fresh enquiry against the employee after giving him reasonable opportunity to show cause as provided under Cl.4(b) of the Regulations. Spl. Civil Appln. No. 419 of 1963, dated 28.5.1963 (Guj), Reversed.

54. It is not out of place that earlier the Petitioner has been issued with the charge memo by the Sub Collector, Sivakasi dated 9.6.2000 and he has submitted his explanation on 5.7.2000 representing each articles of charge. Subsequently, the 2nd Respondent /District Collector, Virudhunagar has cancelled the charge memo dated 9.6.2000 issued by the Sub Collector, Sivakasi based on the reason that the Sub Collector, Sivakasi is not competent to issue the charge memo to the Petitioner. As such, the 2nd Respondent/District Collector issued a fresh charge memo dated 20.12.2000 to the Petitioner. Therefore, it is quite clear that the 2nd Respondent/District Collector, Virudhunagar has set right the defect of issuance of charge memo dated 9.6.2000 issued by the Sub Collector, Sivakasi and later he himself has issued the charge memo dated 20.12.2000 (as the competent authority) to the Petitioner. Therefore, it is futile for the Petitioner to press on a point that earlier the Sub Collector, Sivakasi has issued a charge memo dated 9.6.2000, who is not competent to issue the same to the Petitioner.

55. The pivotal issue that revolves on a narrow campus is that whether the Petitioner has been issued or served with the charge memo dated 20.12.2000 by the 2nd Respondent/District Collector (being the competent authority)? The next incidental question that arises for determination is: whether the explanation of the Petitioner has been obtained before arriving at a decision in appointing an Inquiry Officer?

56. This Court has perused the File Ne. Mu.(A1).22582/2000 dated 26.9.2003 A. Ku. Pages 1 to 46 Na. Ka. Pages 1 to 464. A perusal of the File indicates that the Tahsildar, Sivakasi in his confidential D.O. in Roc.B.3.2771/2000 dated 1.5.2000 addressed to Ashish Vachhani, I.A.S., Sub Collector, Sivakasi, has, among other things, stated that "the Village Administrative Officer, Enjar has approached and obtained patta transfer orders in these cases from Thiru N. Thiagarajan, the then Special Deputy Tahsildar [Photo Identity Cards). In these cases the Special Deputy Tahsildar (P.I.C.) has passed orders as if he is in the capacity of Zonal Deputy

Tahsildar, during that tenure, he actually holded the post of Special Deputy Tahsildar (P.I.C.)."

57. In the said letter, in paragraph 2 to 5, it is mentioned as follows:

2. Further in his reports third cited, the Revenue Inspector, Mangalam has reported that the Village Administrative Officer, Enjar had submitted B.

Memos for the orders of the Zonal Deputy Tahsildar, for certain cases, which are not actually encroached, resulting in fabrication of false records

in booking B. Memo cases. Further in one case, the Village Administrative Officer has assigned bogus B. Memo number for which the Zonal

Deputy Tahsildar has not passed order. Likewise other irregularities including minor misappropriation of Government money have been committed

by the Village Administrative Officer, Enjar. I submit that the irregularities regarding fabrication of B Memos are furnished in the Annexure-II and

details of minor misappropriation furnished in Annexure III. I also submit that even for the Jamabandhi for Fasli 1409, he produced the Village

Accounts during the eleventh hours for the Taluk/Husur scrutiny on 24.4.2000 evening. Thiru Vadakkathian is working as Village Administrative

Officer, Enjar for the past five years.

3. In the circumstances reported above, I submit that in the interest of Village Administration, if deemed fit, Thiru Vadakathiyan, Village

Administrative Officer, Enjar may be transferred to some other unimportant village during the period of enquiry on the following irregularities

committed by him in the capacity of Village Administrative Officer, Enjar namely:

a) Minor Misappropriation of Government money, b) fabrication of false records for B. Memos, c) assigning bogus numbers to B. Memos

d) collusion with Thiru Thiagarajan in Patta Transfer cases.

4) The patta transfer cases ordered by Thiru M. Thiagarajan on the basis of report of Village Administrative Officer, Enjar require revision. I

therefore submit that all the patta transfer cases shown in Annexure I may kindly be cancelled after giving an opportunity to concerned pattadars

and remanded to Tahsildar Sivakasi for fresh enquiry and disposal.

5. I send herewith the details of irregularities in the Annexure appended to this D.O. Letter, as called for by the Sub Collector and for necessary

action against the Village Administrative Officer, Enjar and Thiru M. Thiagarajan,

Deputy Tahsildar.

58. Along with the letter aforesaid, the Tahsildar, Sivakasi in Annexure-I has mentioned the 35 Irregularities noticed in Patta Transfer Files ordered

by Thiagarajan, Deputy Tahsildar. In Annexure-II also [Incorrect booking B. Memos/Assigning bogus number to them] a to f details have been

mentioned. Significantly, in Clause (f), the Tahsildar, Sivakasi has mentioned as follows:

A perusal of Account No. 7 and B. Memo orders passed for Fasli 1408 reveals that B. Memo orders were obtained for 25 cases but 31 cases

were brought into Account No. 7, for remaining Six cases for which B. Memo orders have not been obtained were entered willfully into Account

No. 7 by the Village Administrative Officer.

59. Continuing further, in Annexure-III under the head "Misappropriation in collection of Land Revenue etc. has been made mention of by the

Tahsildar, Sivakasi.

60. The Petitioner as per Sub Collector's Proceedings in Na. Ka.A2.3735/2000 dated 8.5.2000 has been placed under temporary suspension as

per 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in connection with the misappropriation of collection of Government

money, for granting B Memo handed over fake documents and furnishing incorrect numbers and also abutted the former Deputy Tahsildar of

Sivakasi Region.

61. By means of Proceedings in Na. Ka.A2.3735/2000 dated 8.8.2000, the Sub Collector, Sivakasi addressed to the 2nd Respondent/ District

Collector, Virudhunagar, has, inter alia, stated that as against the Petitioner action has been taken as per Section 17(b) of the Tamil Nadu Civil

Services (Discipline and Appeal) Rules and further, he has given his explanation dated 5.7.2000 and pending enquiry, he has been reinstated as

Village Administrative Officer of Enjar Village etc.

62. It transpires from the File that the Sub Collector, Sivakasi in Na. Ka.A2/3735/2000 dated 18.8.2000 has framed 3 charges against the

Petitioner as per Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules mentioning the same in Annexure-I together with the

Form of Questionnaire.

63. It is to be borne in mind that as per Rule 9A of Tamil Nadu Civil Services (Discipline and Appeal) Rules, "In any case where more than one Government Servant of the same department are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in Rule 8 shall be the authority in that Department in respect of the Government servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together." 64. It is useful for this Court to refer to the Charges No. 1 to 3 framed by the District Collector as per Charge Memo proceedings dated 20.12.2000 in respect of the Petitioner. The Charge No. 1 relates to the irregularities committed by the Petitioner in regard to 25 Patta Transfer Cases at Enjar village. The Charge No. 2 relates to the Petitioner abutted Thiyagarajan, Special Deputy Tahsildar of Enjar Village in misusing his official power as limits and abusing his position in regard to the grant of 33 patta transfer orders. The 3rd Charge is that the Petitioner has indulged in acts unbecoming of a Government servant and thereby violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rules, 1973.

65. In the instant case, as per Proceedings of the Collector in Na. Ka.A1.22582 dated 20.2.2002 it is seen that the Former Deputy Tahsildar-M.

Thiyagarajan has alone received the Charge Memo and has submitted his explanation, although the name of the Petitioner is also mentioned as a

person against whom charges have been framed against under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

66. In the said proceedings of the Collector dated 20.2.20002, the Revenue Divisional Officer, Sivakasi has been appointed as an Inquiry Officer

by the District Collector and that he has been directed to submit his enquiry report within 30 days after following the rules, conduct of personal

enquiry etc. as per Chapter 3 of the Handbook on Office Administration Section (e).

67. As seen from the D.O. Proceedings in Na. Ka.A2.22582/2000 dated 8.9.2001 of the P.A. (General) of the District Collector addressed to

Annadurai, Revenue Divisional Officer, Sivakasi, a request has been made for cancelling the 33 Patta Transfer Orders and also to serve the charge

memo to the concerned officers and further to return the served copies.

68. The Tahsildar, Sivakasi, by means of his Proceedings dated 19.11.2002 Na.

Ka.A3.6476/02 addressed to the 2nd Respondent/ District

Collector, Virudhunagar-2, has stated that he has served the charge memo to the Former Deputy Tahsildar M. Thiyagarajan on 20.11.2002 and

has returned the copy for taking necessary action and also that since the Petitioner [C. Vadakathian, who served as V.A.O. in this circle] has been

transferred to Rajapalayam Circle as Korukkampatti V.A.O. The charge memo in respect of him has been sent to Rajapalayam Tahsildar on

18.11.2002 for service.

69. Nowhere in the File there is any indication to show that the Petitioner has been served with the fresh charge memo dated 20.12.2000 issued

by the 2nd Respondent/District Collector [cancelling the earlier charge memo dated 9.6.2000 issued by the Sub Collector, Sivakasi].

70. A duty is caused on the Appointing Authority of the Inquiry Officer to establish that the Delinquent viz., the Petitioner has been served with the

imputation of charges and that he has been provided with a sufficient opportunity of making an effective representation which is a basic ingredients

of the principles of natural justice.

71. As far as the present case is concerned, in the absence of proof that the Petitioner has been served with the charge memo dated 20.12.2000

issued by the 2nd Respondent, this Court comes to an inevitable conclusion that the Petitioner has not been served with the charge memo dated

20.12.2000 and consequently, he has been handicapped in not getting an opportunity to answer the charges levelled against him. Therefore, this is

a classic example of violation of Principles of Natural Justice since the Petitioner has not been served with the Charge Memo dated 20.12.2000

and as such, he has been deprived of an opportunity to know what are the charges levelled against him causing serious prejudice to him and

resultantly to defend his case in an effective and efficacious fashion.

72. As far as the disciplinary proceedings are concerned, it cannot be ignored that the procedure as per Sub-rule (b) of Rule 17 of the Tamil Nadu

Civil Services (Discipline and Appeal) Rules is a more elaborate one. The oral enquiry is conducted akin to a Court of Law trial. If a major penalty

is warranted on account of the seriousness of the allegations levelled against a person, then, as per Rule 17(b) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, the charges have been framed against the

Delinquent. A success of any disciplinary case centres around the soundness of the charges framed. The charges are the essence allegations levelled against a Delinquent. A charge sheet ought to accompany a list of witnesses who are proposed to appear during the oral enquiry in support of the charges. A copy of the complaint or copies of complaints made by the concerned and the copies of statements taken from witnesses which form the basis on which the charge or charges are framed against a delinquent employee ought to be furnished to him at the time of communication of the charge memo itself. A list of documents which are proposed to be produced in support of the charges must also accompany the charge sheet etc. The delinquent is required to submit his reply to the Articles of Charge by a certain date to be specified in the charge memo.

73.A Government Circular No. 14353/Per.N/93-1, dated 11.03.1993 specifies the guidelines to be followed by the Disciplinary Authorities. In

the said guidelines, it is, among other things in paragraph 2, held hereunder:

2. The procedure to be followed in disciplinary cases against Government Servants is laid down in detail in the Tamil Nadu Civil Services

(Classification, Control and Appeal) Rules. The Tamil Nadu Civil Services (Classification, Control and Appeal) Rules have been framed in

conformity with the provisions of Article 311 of the Constitution of India. It is absolutely necessary that the procedure as laid down in these rules

and the various instructions issued there under are followed rigidly. Any failure to observe the proper procedure, either willfully or through

negligence, is liable to vitiate the entire proceedings rendering them null and void. Necessary instructions were also incorporated in Chapter II of

the "Handbook on Disciplinary Proceedings" regarding the guidelines to be followed while framing charges.

74. In Letter No. 46723/Per.N/95-1, dated 10.1.1995 of Personnel and Administrative Reforms (Per.N) Department, Secretariat, Madras 9, the

Government have issued instructions to follow the uniform procedure while taking the disciplinary proceedings wherein in paragraph 2 & 3 it is

stated thus:

2. In order to avoid such lacunae and to ensure uniform approach in all the departments, the Government reiterates that the procedure prescribed

in the Handbook on Disciplinary Procedure should be scrupulously followed in the

conduct of disciplinary proceedings by the disciplinary authority and the same forwarded to the Government as the case may be.

3. The Government have already issued a number of instructions on the above subject. The object behind the issue of these instructions is that

delay while processing the disciplinary cases should be avoided. At the same time it should be clearly remembered that while handling the

disciplinary cases, all the procedures contemplated in the rules and the connected instructions should be followed without fail.

75. The common guideline as per 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is that the Articles of Charge must state

the plain facts and then describe the manner of behaviour/ nature of misconduct of an employee. There is no embargo to add all charges of

violation of departmental rules as well as criminal violations /offences which can be looked into departmentally viz., misappropriation of

Government money, defalcation and theft of departmental materials etc. If a charge is framed and duly served but no explanation is received within

the time determined, then, there is no need to frame another charge for non-submission of the explanation. In fact, there is no necessity to send any

reminder. In a case where necessary action ought to be proceeded with after taking into consideration the relevant facts and records based on

which charges were drawn. In this regard, a clause is mentioned in the charge memo to the effect that if no explanation is received within the time

fixed, it will be presumed that the concerned employee/ Government servant has no explanation to submit and the matter will be proceeded further

resting on the merits of the matter based on available materials on record.

76. The deliverance of the charge memo or the show cause notice as per Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules will only ignite the commencement of disciplinary action. Soon after the method of service being completed it can safely be concluded that

the disciplinary action has been initiated and set to be pending.

77. Moreover, it is within the purview of the Disciplinary Authority to cause or deliver the charge sheet along with the enclosures thereto to an

employee. Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules enjoins that every order, notice and other process made or

issued under these rules shall be served in person on the Government servant

concerned or sent to him by Registered Post Acknowledgement Due

or if such person is not found by leaving it at his last known place of residence or by giving or tendering it to an adult member of his family or if

none of the means aforesaid is available by affixing it in some conspicuous part of his last known place of residence. A Disciplinary Authority must

observe the procedure enshrined in Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as regards the method/mode of

service of notice or order on the delinquent who may refuse to receive the same.

78. In *Kumari C. Gabriel Vs. The State of Madras running the National Employment Organisation and Others*, , this Court has held as follows:

All enquiries, judicial departmental or other, into the conduct of individuals must conform to certain standards. One is that the person proceeded

against must be given a fair and reasonable opportunity to defend himself. Another is that the person charged with the duty of holding the enquiry

must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely

during the procedural stages of enquiry but also in dealing with the evidence and the material on record when drawing up the final order. A further

requirement is that the conclusion must be rested on the evidence and not on matters outside the record. And when it is said that the conclusion

must be rested on the evidence, it goes without saying that it must not be based on a misreading of the evidence. These requirements are basic and

cannot be whittled down, whatever be the nature of the inquiry whether it be Judicial, departmental or other.

79. It is true that strict rules of evidence are not applicable to the domestic enquiry. However, if the materials collected behind the back of an

employee/delinquent are relied upon by the Inquiry Officer, then, they must be provided to the delinquent. The enquiry will be set aside for not

following the principles of natural justice, when the materials collected behind the back of an employee/delinquent are relied on by the Inquiry

Officer, as per decision of the Hon''ble Supreme Court in *State of Assam and Another Vs. Mahendra Kumar Das and Others*, .

80. In departmental proceedings, a Disciplinary Authority while appointing an Inquiry Officer to conduct an oral enquiry is to nominate the officer

who will attend the enquiry on their behalf/department and present the records

and other documents and further to comply with any request made for supply of materials or documents or additional documents as the case may be during the course of enquiry.

81. In the event of unsatisfactory disposal of the matter by the concerned authority or even the statutory appellate forum, then, this Court is empowered in law to remand the matter to that forum drawing the attention to the shortcomings, in the considered opinion of this Court.

82. At the risk of repetition, it is to be pointed out that it is not established to the subjective satisfaction of this Court on behalf of the 2nd

Respondent/District Collector, Virudhunagar that the fresh charge memo dated 20.12.2000 has been served on the Petitioner. A perusal of the

entire File will unerringly point out that an endeavour has been made by the respective Tahsildar concerned to serve the charge memo dated

20.12.2000 to the Petitioner. Also, the letter of the Tahsildar, Sivakasi dated 19.11.2002 addressed to the 2nd Respondent/District Collector,

Virudhunagar indicates candidly that "the Petitioner has been transferred to Rajalpalayam Circle as V.A.O. Korukkampatti and as such, the charge

memo has been sent to Rajapalaym Tahsildar on 18.11.2002 for effecting service.

83. Since the Petitioner has not been served with the charge memo dated 20.12.2000 there has been a violation of principles of natural justice and

even after the appointment of the Inquiry Officer when the charge memo dated 20.12.2000 has not been served to the Petitioner, then, the

domestic enquiry proceedings stands vitiated, in the eye of law, as opined by this Court.

84. Though a plea is taken in the counter filed on behalf of the 2nd Respondent to the effect that the Petitioner has been served with a copy of the

charge memo dated 20.12.2000 issued by the 2nd Respondent/District Collector while serving the notice for enquiry on 9.9.2002, on perusal of

records, this Court firmly is of the view that the File produced by the Government Pleader is conspicuously silent about the service of charge memo

dated 20.12.2000 to the Petitioner. On this simple ground alone, this Court opines that the Petitioner is entitled to succeed. Without proving the

factum of serving the charge memo dated 20.12.2000 to the Petitioner, the participation of the Petitioner before the Inquiry Officer in the enquiry

proceedings on 16.9.2002 as averred by the 2nd Respondent in the counter at

paragraph 8 and later enquiry report of the Inquiry Officer dated 07.10.2002 holding that the charges levelled against the Petitioner have all been proved are of no avail. The non-submission of explanation to the Inquiry Officer's Report even though the Petitioner has been served with the copy of the Inquiry Officer's report on 3.12.2002 will not anyway heighten the case of the 2nd Respondent inasmuch as the non-supply of charge memo dated 20.12.2000 even before commencement of enquiry or appointment of an Inquiry Officer cuts the case of the 2nd Respondent completely and comprehensively. Consequently, the final order passed by the 2nd Respondent dated 13.2.2003 in dismissing the Petitioner from service is also not a legally valid one, in the eye of law.

85. Admittedly, the Petitioner has preferred an Appeal as against the order of dismissal from service passed by the 2nd Respondent in Proceedings Na. Ka.A1-22582-2000 dated 13.2.2003 before the 1st Respondent. The 1st Respondent, while disposing of the Appeal on 25.10.2004, has upheld the view of the Collector but based on sympathy, has reduced the punishment of dismissal from service into a case of compulsory retirement and with this modification, has rejected the Appeal.

86. As against the order passed by the 1st Respondent dated 25.10.2004 [in the Appeal Petition filed by the Petitioner], the Petitioner has the remedy of preferring a Revision Petition before the Secretary to Government, Revenue Department, Chennai. A review relates to the revising order of a Subordinate Official/Authority while "review" enables the review of the concerned authority's own order. Generally, when the Tamil Nadu Civil Services (Discipline and Appeal) Rules provides an effective remedy to the Petitioner to prefer a Revision Petition before the Secretary to Government, Revenue Department, Chennai as per Tamil Nadu Civil Services (Discipline and Appeal) Rules, then, the Petitioner, without bypassing the statutory remedy, is not entitled to file the present Writ Petition before this Court. Since the Petitioner's Writ Petition has been entertained in the year 2006, at this distance of time, this Court opines that the Petitioner cannot be directed to choose an effective and efficacious alternative remedy of preferring the Revision as per Rules.

87. Be that as it may, the fact that the Petitioner has not been served with the charge memo dated 20.12.2000, this Court opines that the Petitioner

has been deprived with a fair opportunity to present his explanation/prepare his reasonable defence and in the instant case, he is at lost to know

what are the charges levelled against him after the issuance of fresh charge memo dated 20.12.2000. As such, no proper hearing has been

provided to the Petitioner because of the simple fact that no individual ought to be condemned unheard. To put it differently, a fair opportunity to

contradict the charges by issuance of charge memo dated 20.12.2000 has not been provided to the Petitioner notwithstanding the fact that the

administration can be energised by removing the deadwood so that the key positions are occupied by individuals of impeccable integrity and

ability.

88. It is to be borne in mind that the term "issued" is to supplement with the term "actual communication", in the considered opinion of this Court.

It is needless to emphasise that the Administrative Officers owe a duty to act judicially as well as to act fairly. This Court at this point of time

quotes the decision in Ridge v. Baldwin 1963 (2) All ER 66 wherein it is held that "Administrative function is called Quasi Judicial where there is an

obligation to adopt a judicial approach and to comply with the basic requirements of Natural Justice. Where there is no such obligation, the

decision is called purely "administrative" and there is no third category.

Admittedly, Fairness involves reasonableness." By and large, absence of fairness by itself will not be sufficient, unless that amounts to illegality.

After all, Natural Justice is a form of justice in its obstruct moral sense, as distinguished from a Legislation or Statute or a Decision by a Court of

Law.

89. To put it in a nutshell, the term "Natural Justice" being a concept is not the edicts of a statute. In the ingredients of fair hearing viz., 1)Prior

Notice; 2)Right to make a Representation; 3)Right to be heard, when any of these essentials are found wanting, then, the decision arrived at by the

Inquiry Officer or by the Competent Authority/Appropriate Authority is tainted with ARBITRARINESS, as opined by this Court.

90. The term "Natural Justice" has not been defined anywhere it was used at times in the sense of Eternal Law, Natural Law, Natural Equity. In

Vionet v. Barrett (1885) 55 (LJ. QB.) 39 at page 45 Lord Fisher, Master of Rolls observed that "Natural Justice is the natural sense of what is

right and wrong. The principles of natural justice bind equally in every age and upon all mankind.

91. The two principles of natural justice are: (1) No person should sit in judgment in his own cause, or in any way in which he is interested

debet esse iudex in propria causa. Since a Judge is likely to have a bias wherever he has an interest in the case, this is also called the Doctrine of

Bias; (2) No one accused of any charge of likely to suffer any civil consequences, should be adjudged unless he has notice of the proceedings and

he has been provided with an opportunity of put forwarding his case viz., *Audi Alteram Partem*. It is apt to quote the great philosopher Seneca's

quotation (around 4 B C - A D 56) which is as follows: "Whoever should adjudge anything, the other party not having been heard. Even though he

should decide fairly, it would scarcely be fair." The concept of Natural Justice is nothing but principles of natural law which have not yet taken the

shape of positive law ruling the people, and are followed, in unwritten or unquotified or unenacted form and is of general application. However, it

has assumed the form of concrete law in due course.

92. In *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, , it is held that violation of Natural Justice affects fundamental rights under

Article 14 and 16 of the Constitution of India.

93. In *Abbot v. Sullivan (1952) 1 K.B. 189 and 195* it is held that the principles of Natural Justice are easy to proclaim but their precise extent is

far less easy to define. The term "Natural Justice" has not been defined anywhere. The term "Natural Justice" Latin equivalent is *Jus Naturale* and

Lex Naturale.

94. This Court deem it appropriate to cite the following decision of Hon'ble Supreme Court in *Uma Nath Pandey and Ors. [2009 (2) CTC 185]*

wherein it is held thus:

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on

determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The

first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is

the first limb of this principle. It must be precise and unambiguous. It should

appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play....(emphasis supplied).

95. This Court aptly points out the decision of Hon''ble Supreme Court S.L. Kapoor Vs. Jagmohan and Others, wherein it is observed that "old distinction between a judicial act and an administrative act has withered away and it has been agreed that the administrative decisions can be assailed for want of opportunity to show cause notice." The non-observance of the principles of natural justice are itself a prejudice and a proof of prejudice independently of proof of denial of principles of Natural Justice are an unnecessary and redundant one, in the considered opinion of this Court.

96. Bearing in mind, the above principles and also applying the same to the facts of the present case pertaining to the Petitioner, this Court has already held that there is no proof to the subjective satisfaction of this Court that the Petitioner has been served with the issuance of charge memo dated 20.12.2000 issued by the 2nd Respondent and as such, the Inquiry Officer's Report dated 07.10.2002 and the subsequent order of the 2nd Respondent in passing the impugned order of dismissal of the Petitioner from service dated 13.2.2003 are illegal, invalid and they do not stand a moment scrutiny in the eye of law, as opined by this Court.

97. As against the order of the 2nd Respondent dated 13.2.2003 in dismissing the Petitioner from service, the Petitioner has preferred an Appeal and that the 1st Respondent as an Appellate Authority has passed the order dated 25.10.2004 in reducing the punishment of dismissal from service into one of compulsory retirement by taking a sympathetic view.

98. As per Rule 23(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in case of an Appeal against an order imposing any penalty specified in Rule 8 or 9 the Appellate Authority shall consider (a)Whether the facts on which order was based have been established; (b)Whether

the facts established afford sufficient ground for taking action; (c)Whether the penalty is excessive, adequate or inadequate and pass orders -

(i)confirming, enhancing, reducing, or setting aside the penalty; or (ii)remitting the case to the authority which imposed the penalty or to any other

authority with such direction as it may deem fit in the circumstances of the case etc.

99. As seen from the impugned order of the 1st Respondent dated 25.10.2004 in paragraph 6 the 1st Respondent has mentioned about the details

submitted by the Petitioner in his Appeal Petition. A reading of the paragraph 6 of the impugned order dated 25.10.2004 passed by the 1st

Respondent shows that the Petitioner, has, inter alia, stated that the Inquiry Officer, without the availability of the charge memo in the files and also

by not providing sufficient time to the Petitioner, has submitted the enquiry report etc. In short, the Petitioner has stated that the 2nd

Respondent/District Collector, Virudhunagar, without any enquiry or by not providing an opportunity to the Petitioner to deny or to submit his

explanation, has passed the impugned order dated 13.2.2003.

100. However, a perusal of para 9 of the impugned order of the 1st Respondent dated 25.10.2004 indicates that "Sivakasi Revenue Divisional

Officer has been appointed as an Inquiry Officer on 20.2.2002 and that the enquiry notice has been issued on 15.7.2002. However, the same has

not been served on the Delinquent (Petitioner). The enquiry has been determined on 9.8.2002 and the said notice has been issued to the

delinquent, but the delinquent (Petitioner) has not appeared for the enquiry. Again the enquiry has been fixed for 9.9.2002 and the same has been

served on 5.9.2002. In the notice enclosure, the charge memo copy has been enclosed. On 9.9.2002, the Appellant (Petitioner) has not appeared

for enquiry. Therefore, the enquiry has been fixed on 16.9.2002 and the same has been served on 14.9.2002. On 16.9.2002 the Sivakasi

Revenue Divisional Officer (Inquiry Officer) has conducted the enquiry. At the time of enquiry, the Delinquent (Appellant) (Writ Petitioner) has

appeared and has tendered his statement. In the enquiry, in his statement, the Petitioner has stated that he is not in need of further enquiry and the

enquiry itself is sufficient and that itself can be taken as final enquiry. Hence, the Revenue Divisional Officer has concluded the enquiry and has

submitted his Enquiry Report on 7.10.2002." 101. On going through the impugned order of the 1st Respondent dated 25.10.2004, in paragraph

9, the 1st Respondent himself has categorically stated that the Petitioner has been issued with the charge memo copy along with the enquiry notice

dated 9.9.2002 which has been served to the Petitioner on 5.9.2002. Before serving the charge memo dated 20.12.2000 issued by the 2nd

Respondent to the Petitioner well in advance the Inquiry Officer has been appointed on 20.2.2002, which is an incorrect procedure in the

considered opinion of this Court, insofar as it relates to the conduct of disciplinary proceedings/domestic enquiry. Therefore, this Court opines that

the action of the 2nd Respondent, in appointing the Inquiry Officer on 20.2.2002 even before serving of the fresh charge memo dated 20.12.2000

to the Petitioner, is not a sustainable one, in the eye of law. Further, in the instant case, the charge memo dated 20.12.2000 has been served on the

Petitioner not at the appropriate time and in this regard, the procedure initiated as per Rule 18(c) of the Tamil Nadu Civil Services (Discipline and

Appeal) Rules have been violated by the Disciplinary Authority. Serving of the charge memo along with the notice dated 9.9.2002 on 5.9.2002 to

the Petitioner to appear for an enquiry will not provide either a premium or a lever to the 2nd Respondent or any other authority to take a stand

that the Petitioner has been prejudice for the supply of the charge memo dated 20.12.2000 only on 5.9.2002 for the enquiry slated on 9.9.2002.

The non-supply of the charge memo dated 20.12.2000 to the Petitioner in time though taken as a plea by the Petitioner in the Appeal, has not

been adverted to properly as per Tamil Nadu Civil Services (Discipline and Appeal) Rules and there is no specific/definite/categorical finding by

the 1st Respondent in the impugned order dated 25.10.2004 that the Disciplinary Authority has followed meticulously and scrupulously the

procedure prescribed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules in true letter and spirit.

102. Suffice it for this Court to point out that admittedly the non-service of charge memo dated 20.12.2000 well before the appointment of an

Inquiry Officer on 20.2.2002 is a clear negation of Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which speaks of the

mode of service of charge memo or the show cause notice and the interregnum period is only to be construed as the disciplinary action against the

Petitioner is only envisaged in law. Only after the completion of delivery of the charge memo/method of service of charge memo to the delinquent,

it can safely be said that the disciplinary action has been initiated and pending. Inasmuch as the 1st Respondent/Special Commissioner and

Commissioner of Revenue Administration, in his proceedings No. Pani.5(3)/20784/2003 dated 25.10.2004, has not dealt with the serving of

charge memo or deliverance of charge memo as enjoined under Rule 18(c) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, the

impugned order passed by him though reducing the punishment of dismissal from service in respect of the Petitioner into one of compulsory

retirement, the same has no legs to stand as per well established principles of law and accordingly, the same stands vitiated.

103. Coming to the aspect of compulsory retirement, it is to be noted that an employee must work hard, discharge his duties honestly coupled with

integrity in performing thereof, which will certainly earn his/her utility value in retention of service. This will certainly contribute one's excellence in

service, as opined by this Court. Only on complete evaluation of entire record of service, if the authority concerned comes to an opinion that in

public interest the officer needs to be retired compulsorily, ordinarily the Court of Law will not interfere with the exercise of such bona fide exercise

of power. Therefore, a Court of Law has to exercise the power and duty of judicial review to take into account whether the said power has been

exercised properly by the authority concerned or the same has been exercised in an arbitrary or illegal manner or the same being vitiated either

based on mala fide or actuated by alien consideration or capriciously in retiring the Government Servant compulsorily from service.

104. An order of compulsory retirement is not a punishment which is an axiomatic principle in law. A Government Employee compulsorily retired

is entitled to receive the retirement benefits including pension, hence, the Appropriate Authority, Government must exercise its power only in public

interest so as to reach the efficiency of service. The exercise of power to compulsorily retire an employee should not hang like Damocles sword on

a public servant, as opined by this Court. Per contra, the same must act as a check and a legitimate and reasonable measure to ensure the

efficiency of service and free from corruption and incompetence.

105. In the light of qualitative and quantitative discussions and on an overall assessment of the facts and circumstances of the present case in an integral manner, this Court comes to an inevitable conclusion that the Enquiry Report dated 07.10.2002 submitted by the Revenue Divisional Officer, Sivakasi, the impugned Orders of the 2nd Respondent in Na. Ka.A1-22582-2000 dated 13.2.2003 and the 1st Respondent in reference No. Pani.5(3)/20784/2003 dated 25.10.2004 do suffer from serious material irregularities or patent illegalities like the non-observance of principles of natural of justice etc. Resultantly, this Court, to prevent an aberration of justice and to promote substantial cause of justice by exercising its power of judicial review under Article 226 of the Constitution of India, sets aside the Enquiry Report dated 7.10.2002 and the Impugned Orders of the 2nd Respondent dated 13.2.2003 and the 1st Respondent dated 25.10.2004. Viewed in that perspective, the Writ Petition succeeds.

106. In the result, the Writ Petition is allowed, leaving the parties to bear their own costs. The Enquiry Report dated 7.10.2002 and the Impugned Orders of the 2nd Respondent dated 13.2.2003 and the 1st Respondent dated 25.10.2004 are set aside by this Court for the reasons assigned in this Writ Petition since they are not in tune with the well established principles of Law. Further, the rules of disciplinary procedures have not been adhered to scrupulously and meticulously in true letter and spirit by the authorities concerned. Hence, this Court remits back the entire gamut of the matter to the 2nd Respondent/ District Collector, Virudhunagar, who is directed to issue a fresh Charge Memo dated 20.12.2000 to the Petitioner in respect of the alleged irregularities committed by him. Upon serving the charge memo to the Petitioner, the Petitioner is directed to submit his explanation within two weeks from the date of receipt of charge memo.

107. After receipt of the explanation, the 2nd Respondent/ District Collector, Virudhunagar is directed to proceed with the matter afresh and to appoint a fresh Inquiry Officer and to take further action in accordance with the Tamil Nadu Civil Services (Discipline and Appeal) Rules, Circulars/Letters/Instructions of the Government [issued administratively based on the Executive power of the State under Article 162 of the Constitution of India, although they are not to be construed as Statutory Rules

framed under Article 309 of the Constitution of India regulating the conditions of service] governing the disciplinary procedures issued from time to time and further adhere the parameters of law. No wonder, the Administrative Instructions/ Circulars/Orders cannot override the statutory rules made under Article 309 of the Constitution without amendment as per decision of Hon"ble Supreme Court in K. Kuppusamy and Another Vs. State of T.N. and Others, . Further, the Executive instructions can supplement statutory rules but not supplant them. The Executive instructions are not to restrict the operation of statutory rules. In service matters, the Executive instructions cannot prevail over the rules framed under Article 309 of the Constitution of India, as opined by this Court. The 2nd Respondent/District Collector, Virudhunagar shall fix a time limit of six months requiring the Inquiry Officer to complete the enquiry proceedings and to submit his findings/report so as to give a complete quietus to the subject matter in issue. The Petitioner is directed to lend a helping hand to the Inquiry Officer in regard to the completion of proceedings within the time fixed by this Court.

108. However, the liberty is given to the Petitioner to raise all Factual and Legal pleas before the Inquiry Officer/Appropriate Authority in the subject matter in issue and it is open to the Petitioner to make use of the final order dated 8.3.2003 passed by the 2nd Respondent/District Collector in imposing a punishment of stoppage of increment with cumulative effect for a period of three years to Former Special Deputy Tahsildar, Sivakasi-M. Thiagarajan (Co-delinquent) and to seek an appropriate remedy thereto as envisaged by Law.