

(2005) 10 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15962 of 2001

Government of A.P. and Others

APPELLANT

Vs

M.A. Majeed and Another

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 — Rule 10, 19, 19(2), 2, 8

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20, 20(2), 20(3), 20(4), 20(5)

Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 — Section 12, 12(1)

Central Civil Services (Temporary Service) Rules, 1949 — Rule 3, 4

Constitution of India, 1950 — Article 309, 311(1)

Citation : (2006) 1 ALD 823 : (2006) 1 ALT 661 : (2006) 2 LLJ 448 : (2007) 1 SLJ 459

Hon'ble Judges : P.S. Narayana, J;J. Chelameswar, J;B. Seshasayana Reddy, J

Bench : Full Bench

Advocate : G.P. for Services-III, for the Appellant; Ratna Reddy, for the Respondent

Judgement

J. Chelameswar, J.

I had the advantage of going through the judgments rendered by both my learned brothers. Both of them arrived at the same conclusion, but for slightly different reasons.

I agree with the conclusion reached.

P.S. Narayana, J.—I prefer to add a couple of sentences of my own while agreeing with the conclusion of my learned brother. The importance of a disciplinary enquiry or departmental enquiry in Service Jurisprudence need not be overemphasized. In view of the importance of the question involved in the present matter, the Division Bench thought it fit to refer the matter thus inviting a decision on the said point. The learned Counsel on record made elaborate submissions in relation to the language employed in Rule 19 of the A. P. Civil

Services (Classification, Control and Appeal) Rules, 1963, and Rule 20 of the amended Rules of 1991. Certain submissions were made even in relation to the meaning of "cause to be drawn" and also incidentally Rule 21 of the 1991 Rules and certain clarificatory memos and the G.Os., in relation thereto issued by the Government also had been pointed out. In the light of the reasons in detail recorded by my learned brother, the said reasons need not be repeated again. Rule 19 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1963 (hereinafter referred to as "old Rules") reads as hereunder:

(1) No order imposing on a member of a service a penalty specified in items (i), (ii), (iii), (v) or (ix) of Rule 8, or Rule 9 shall be passed except after

(a) the member of the service is informed in writing by the authority competent to impose penalty of the proposal to take action in regard to him and of the allegations on which the action is proposed to be taken, and is given an opportunity to make any representation he may wish to make to such authority; and

(b) such representation if any, is taken into consideration by the authority competent to impose the penalty.

Provided that where it is proposed, after an enquiry, to impose any of the above penalties, it shall not be necessary to give the person charged any opportunity of making a representation against the penalty and the penalty may be imposed on the basis of the evidence adduced during the enquiry.

(Proviso added by G.O. Ms. No.285 Ser-Cdt.15-4-80)

(2) (a) Without prejudice to the provisions of the Public Servants Inquiries Act, 1850 (Central Act 37 of 1850) in every case where it is proposed to impose on a member of a service any of the penalties, specified in items (iv), (vi), (vii) and (viii) in Rule 8, the authority competent to impose the penalty shall appoint an inquiry officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty or shall itself hold an inquiry either suo motu on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to file a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence, be permitted to inspect, and take extracts from, such official records as he may specify, provided that the inquiry officer may, for reasons to be recorded in writing, refuse such permission, if, in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral inquiry shall be held if such an

inquiry is desired by the person charged or is decided upon by the inquiry officer or is directed by the competent authority. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the persons charged shall be entitled to cross-examine the witness, to give evidence in person and to have such witnesses called, as he may wish, provided that the inquiry officer may, for special and sufficient reason to be recorded in writing, refuse to file, a call a witness. In the case where disciplinary action is initiated on the report of Anti Corruption Bureau, the inquiry officer may allow the concerned Investigating Officer to adduce evidence, to examine the witnesses and to cross-examine the defence witnesses with a view to proving the charges. After the oral inquiry is completed, the persons charged shall be, entitled to file, if he so desires, any further written statement of his defence. If no oral inquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The inquiry officer shall, on completion of the inquiry or the personal hearing of the person charged or both, forward the proceedings of the inquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds of charge, written statement filed in defence, if any, a sufficient record of the evidence adduced during the oral inquiry, a memorandum of the point urged by the person charged during the personal hearing, if any, and a statement of the findings of the inquiry officer on the different charges and the grounds therefor.

Provided that when the inquiry is conducted before the Tribunal for Disciplinary Proceedings, the Director or Additional Director of Prosecution shall lead the prosecution evidence in addition to or in lieu of the Investigating Officer of the Anti-Corruption Bureau on behalf of the Government.

(b) Except under very special circumstances to be recorded in writing by the inquiry officer or any officer to whom an appeal may be preferred, no pleader or agent shall be allowed to appear either on behalf of the Government or on behalf of the person charged before the inquiry officer.

Provided that when a request is made by the person charged for engaging a counsel on the ground that he is no acquainted with the language in which the inquiry is conducted, the inquiry officer or the officer to whom the appeal has been preferred shall allow the person charged to be represented by a counsel.

Provided further that in the case of an inquiry where the concerned Investigating Officer of the Anti-Corruption Bureau has been allowed to prove the charges, the person charged shall be entitled to engage a counsel in his defence.

(c) Where it is proposed, after an inquiry, to impose on the person charged any penalty of (1) reduction to lower rank in the seniority list or a lower post or to lower stage in a time scale, (2) compulsory retirement (3) removal from service or (4) dismissal from service, such penalty may be imposed on the basis of the evidence adduced during the inquiry after furnishing a copy of the Enquiry

Officer's report to the person charged and after taking into consideration any representation made by him thereto within a reasonable time ordinary not exceeding one month. However, it shall not be necessary to give to the persons charged any opportunity of making representation on the penalty proposed to be imposed.

Provided that where it is necessary to consult the Andhra Pradesh Public Service Commission the record of enquiry shall be forwarded by Government to the Commission for its advice, and such advice shall be taken into consideration before making an order imposing any of the aforesaid penalties on the person charged.

(d) The authority imposing any penalty under these rules shall maintain a record showing:

(i) the allegations upon which action was taken against the person punished;

(ii) the charges framed, if any;

(iii) the person's representation, if any, and the evidence taken, if any; and

(iv) the findings and the grounds thereof, if any.

(e) Every order imposing penalty shall state the grounds on which it is passed.

(f) An order of suspension made on a member of a service and every order imposing on him any penalty, under these rules shall, --

(i) if he is on duty, be served on him by delivering or tendering it in person;

(ii) if he is on leave or under suspension or otherwise absent be communicated to him by registered post to the address given by him if any, or of his usual place of residence;

(iii) if it cannot be so served or communicated, be published in the Andhra Pradesh Gazette.

(3) (a) The provisions of Sub-rules (1) and (2) shall not apply where it is proposed to impose on a member of a service any of the penalties mentioned in Rule 8 or Rule 9 on the ground of conduct which has led to his conviction on a criminal charge or where the authority competent to impose the penalty is satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or give such opportunity.

(b) The provision of Sub-rule (2) shall not apply where the Governor of Andhra Pradesh is satisfied that in the interest of the security or the State it is not expedient to hold such inquiry or give such opportunity.

(c) The provisions of Sub-rules (1) and (2) shall not apply where it is proposed to impose on a member of a service any of the penalties mentioned in Rule 8 or Rule 9 on the basis of the recommendation contained in a report mentioned in

Sub-section (1) of Section 12 of the Andhra Pradesh Lokayuktha and Upalokayuktha Act, 1983.

(4) (a) All or any of the provisions of Sub-rules (1) and (2) may, in exceptional cases for special and sufficient reasons to be recorded by the competent authority in writing, be waived where there is a difficulty in observing fully the requirements of these Sub-rules, and those requirements can be waived without causing any injustice to the person charged.

(b) If, in respect of any person charged, question arises whether it is reasonably practicable to hold such inquiry or give such opportunity as is referred to in Sub-rule (2) the decision thereon of the authority competent to impose the penalty shall be final.

(5) (a) Where two or more members of the same service or different service are concerned in any case, the Government or any authority competent to impose the penalty of dismissal from service on all such members may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

(b) Subject to the other provisions of these rules, every such order shall specify the authority that may impose any of the penalties specified in Rule 8 on all the members concerned in the common proceeding and whether the procedure laid down in Sub-rule (1) or Sub-rule (2) shall be followed in the proceeding.

Explanation- It is not necessary to have an oral enquiry or to be heard in person in the case of reduction of rank in seniority lists (A & B Lists) of Constables fit for promotion as Head Constables in the Andhra Pradesh Police Subordinate Service or Andhra Pradesh Special Police Service.

Likewise, Rule 20 of 1991 Rules (hereinafter referred to as "the present Rules") dealing with PROCEDURE FOR IMPOSING MAJOR PENALTIES falling under Part-V reads as hereunder: --

(1) No order imposing any of the penalties specified in Clauses (vi) to (x) of Rule 9 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and Rule 21 or in the manner provided by the Public Servant (Inquiries) Act, 1850 (Central Act 37 of 1850) or the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1983, where such inquiry is held under the said Acts.

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

Explanation: Where the disciplinary authority itself holds the inquiry, any reference made in Sub-rule (7) to Sub-rule (20) and in Sub-rule (22) to the

inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 21, the disciplinary authority or the cadre controlling authority who is not designated as disciplinary authority and who is subordinate to the appointing authority can draw up or cause to be drawn up -

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

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

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

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

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

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary so to do, appoint under Sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 21.

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

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

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

(i) a copy of the articles of charge and the statement of the imputations of

misconduct or misbehaviour;

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

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

(iv) evidence proving the delivery of the documents referred to in Sub-rule (3) to the Government Servant; and

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

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

(8) (a) The Government Servant may take the assistance of any other Government Servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case so permits.

Provided that no member of service dealing in his official capacity with the case of inquiry relating to the person charged shall be permitted by the inquiry officer or by any officer to whom an appeal may be preferred to appear on behalf of the person charged before the enquiry officer.

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

Note (1) : The Government Servant shall not take the assistance of any other Government Servant posted who has pending two disciplinary cases on hand in which he has to give assistance.

Note (2): The Government Servant shall not take the assistance of any other Government Servant who is dealing in his official capacity with the case of inquiry relating to the Government Servant charged.

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

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority such authority shall ask him

whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiry authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return his findings of guilty in respect of these articles of charge to which the Government Servant pleads guilty.

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

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

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

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

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

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

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

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

(13) On receipt of the requisition referred to in Sub- rule (12), every authority having the custody or possession of the requisitioned documents, shall produce the same before the inquiring authority, and the requisitioning of the documents can be done either at the instance of the Member of the Service or by the inquiring authority suo motu.

Provided that if the authority having the custody or possession of the

requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, shall submit the fact to the Head of Department, or to the Secretary of the Department concerned for a decision in the matter. Such decision shall be informed to the inquiring authority, and the inquiring authority shall on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

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

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

Note: New evidence shall not be permitted or called for, or any witness shall not be recalled to fill up gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

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

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and

shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

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

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

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in Clauses (i) to (v) of Rule 9 and in Rule 10 but not competent to impose any of the penalties specified in Clauses (vi) to (x) of Rule 9, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in Clause (vi) to (x) of Rule 9 should be imposed on the Government Servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

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

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

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded

is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

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

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government Servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor;

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

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

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

- (a) the report prepared by it under Clause (i);
- (b) the written statement of defence, if any, submitted by the Government Servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer of the Government Servant or both during the course of the inquiry, and
- (e) the orders, if any, made by the disciplinary authority and inquiring authority in regard to the inquiry.

Explanation: It is not necessary to have an inquiry in the manner provided for in this rule or to hear in person in the case of reduction of rank in seniority (A and B lists) of Constables fit for promotion as Head Constables in the Andhra Pradesh Police Subordinate Service or Andhra Pradesh Special Armed Police Service.

Rule 21 of the present Rules dealing with Action on the inquiry report also may be looked into, which reads as hereunder:

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 20 as far as may

be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not be inquiring authority to the Government Servant who shall be required to submit, if he/she so desires, his/her written representation or submission to the disciplinary authority within a reasonable time ordinarily not exceeding one month. It shall not be necessary to give the Government Servant opportunity of making representation on the penalty proposed to be imposed:

(i) Provided that, where the disciplinary authority disagrees with the whole or any part of the findings of the inquiring authority, the pointer points of disagreement together with a brief statement of the grounds therefore shall be communicated along with the report of the inquiry.

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

It may be appropriate to have a look at Cir. Memo. No. 290/Ser.C/94-2, Genl. Admn. (Ser.-C) Dept., dt. 1-6-1994 and Cir. Memo. No. 9594/Ser.C/97-2, G.A. (Ser. C) Dept., dt. 8-1-1998, which are as hereunder:

Appointment of Enquiry Officer under Sub-rule (2) of Rule 20 without following the procedure set out under Sub-rules (3) and (4) of Rule 20.

(Cir. Memo. No. 290/Ser. C/94-2, Genl. Admn. (Ser.-C) Dept., dt. 1-6-1994)

Order: The Departments of Secretariat, Heads of Departments and Collectors are aware that the A.P. Civil Services (CC & A) Rules, 1963 have been repealed by the A.P. Civil Services (CC & A) Rules, 1991 which came into effect from 1-10-1992.

2. The new Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991 corresponds to old Rule 19 (2) which deals with the procedure for imposing a major penalty. The new Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991, prescribes entirely a new procedure for conducting an enquiry by the disciplinary authority where it is proposed to impose a major penalty prescribed under the said Rules. Some of the salient features of the new rule are given below for immediate guidance of the disciplinary authority/enquiry authority:

(i) For imposition of a major penalty an enquiry should be conducted either

under the CCA Rules, or the Public Servant (Enquiry Act).

(ii) The disciplinary authority may itself conduct the enquiry or appoint an inquiry authority to conduct the enquiry.

(iii) The disciplinary authority itself can prepare or cause the preparation of the articles of charges, statement of imputations of misconduct or misbehaviour.

(iv) The articles of charges, statement of imputations of misconduct and list of witnesses and documents should be served on the Government servant by the disciplinary authority or at its instance and the Government servant should be required to submit the statement of defence and to state whether he desires to be heard in person.

(v) The disciplinary authority on receipt of statement of defence or where no statement of defence is received within the stipulated time, conduct the enquiry itself or appoint an inquiry authority to do so.

3. It may be noted from the above that as per the old rules, the inquiry officer used to be in the picture right from the start of the disciplinary proceedings, whereas under the new rules he comes into picture only when the disciplinary authority, after considering the statement of defence submitted by the Government servants, decides to appoint an Inquiry Authority from conducting an inquiry.

4. It is brought to the notice of Government that the disciplinary authorities appointing the Inquiry Officers straight away on receipt of a complaint against a Government Servant without following the procedure prescribed in Rule 20 (3), (4) the new A.P. Civil Services (CC & A) Rules, 1991 in the first instance. Such a course of action evidently which is not in accordance with the procedure prescribed under the new rules is liable to be set aside when questioned in a Court of Law. It is, therefore, impressed on the disciplinary authorities that they should invariably follow the procedure prescribed under Rule 20 (3), (4) of the CCA Rules, 1991 before they consider the appointment of an inquiry authority. Non-compliance with the prescribed procedure will be viewed seriously.

5. As per the provision of the new CCA Rules articles of charges, etc., will have to be prepared or got prepared by the disciplinary authority. Needless to say that the articles of charge form the basis of enquiry. Therefore utmost care and diligence is required to be taken while drawing up the articles of charges, as any defect or deficiency in the articles of charges will ultimately lead to vitiation of the entire proceedings. The disciplinary authority/inquiry authority should see that the charges are specified without any ambiguity and are fully supported by documentary evidence.

6. All the Departments of Secretariat, Heads of Departments and Collectors are requested to strictly follow the above procedure prescribed in the A.P. Civil Services (CC & A) Rules, 1991. Whenever an inquiring authority is to be appointed for conducting enquiry under the said rules, they are also requested to

bring these instructions to the notice of their subordinates for their guidance and compliance.

Appointment of Enquiry Officer under Sub-rule (2) of Rule 20 duly following the Procedure laid down in Sub-rules (3) and (4) of Rule 20 -Instructions - Reiterated.

(Cir. Memo. No.9594/Ser.C/97-2, G.A. (Ser. C)Dept., Dt. 8-1-1998)

Ref: Circular Memo.No.290/Ser. C94-2, G.A.(Ser. C) Dept.,

Dt. 1-6-1994.

Order: In the reference cited (copy enclosed) instructions were issued to the effect that the procedure laid down in Sub-rules (3) and (4) shall be followed before appointing the Enquiry Officer to conduct enquiry against any Government Servant.

2. Instances have come to the notice of the Government that the procedure detailed in Sub-rules (3) and (4) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 is not being followed before appointing Enquiry Officer. In most of the cases, the Enquiry Officers are appointed even without framing and serving articles of charge on the delinquent officer which do not stand for legal scrutiny. Consequently, the entire process is vitiated resulting the delinquent officer scot-free due to their retirement.

3. Keeping the above in view, it is reiterated that the procedure detailed in Sub-rules (3) and (4) of Rule 20 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 shall be followed scrupulously before taking a decision on the appointment of Enquiry Officer and the instructions issued in the reference cited shall be followed strictly.

4. The Departments of Secretariat, Heads of Departments and District Collectors are requested to follow the instructions issued in the reference cited and bring the same to the notice of all concerned for strict compliance. Any deviation/lapse in following the instructions shall be seriously and responsibility fixed on the erring authorities and suitable disciplinary action initiated.

The present question in controversy evidently arose because of the difference of language in Rule 19 of the old Rules and Rule 20 of the present Rules in relation to the framing of charges and which authority to frame charges and in the light of the language and the words "cause to be drawn", whether Rule 20 in relation to the framing of charges by the specified authority to be construed as mandatory or directory especially in the context of the concept of prejudice in relation to a departmental enquiry or a disciplinary enquiry. In *V. Rajamalliah v. High Court of A.P.* and Anr. 2001 (3) SLR 683 it was held as hereunder:

The second contention is also too much technical in nature. It is true that under 1963 Rules, a disciplinary authority could appoint an Enquiry Officer to conduct a departmental enquiry against a delinquent and authorise him to frame charges

also whereas in 1991 Rules, the disciplinary authority himself is required to frame the charges. This departure in the procedure in no way affect any of the rights of a delinquent employee. Whether the charges are framed by the disciplinary authority himself or the same are framed by the Enquiry Officer appointed by him, in our considered opinion, it would not make any difference as regards fairness to be extended to the delinquent employee in terms of procedure. The crux of the matter is that the charge has to be proved satisfactorily by substantive legal evidence by the disciplinary authority. Simply because the charge was framed by the Enquiry Officer, that itself would not vitiate the enquiry conducted by the Enquiry Officer or the findings recorded by him.

The learned Counsel on record were unable to place any decisions before this Court in relation to the meaning of the words "cause to be drawn" interpreted in relation to any Service Rule of analogous nature or any Service Rules, which are akin to the present Rules. Be that as it may, in *Jagdish Prasad Saxena v. State of Madhya Bharat* AIR 1961 SC 1070 at page 1074 the Constitution Bench while dealing with the nature of a departmental enquiry held "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." In *Nazeer Ahmed and Anr. v. Govt of A.P., Home Department and Ors.* 2004 (7) ALT 56 the Division Bench of this Court held that where charge memo was issued by an authority having no jurisdiction, the same would not debar competent authority to issue another charge-sheet. In *A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others*, "3 Judge Bench" of the Apex Court speaking through Ranganath Misra, C.J.I., observed "On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules." Yet another "3 Judge Bench" in *Raj Kumar and Others Vs. Shakti Raj and Others*, also had expressed similar views. In *Inspector General of Police and another Vs. Thavasiappan*, the Apex Court while dealing with issuance of charge-sheet and departmental enquiry under Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the "2 Judge Bench" speaking through Nanavati, J,

held as hereunder:

The learned Counsel also drew our attention to P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, wherein this Court in the context of Article 311(1) has held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, was next relied upon. Therein also this Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully support the contention of the learned Counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty.

As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2-A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2-A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3 (b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3 (b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in Clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second para of that Sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induct us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3 (b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can

be imposed which that lower authority is competent to award, is clearly erroneous.

Same view was expressed in Govt. of Government of Tamil Nadu and others Vs. S. Vel Raj, wherein reliance was placed on the decision referred to supra. In S. Parthasarathi Vs. State of Andhra Pradesh, it was held that when Government made it clear that Director should conduct enquiry, the Directors Head of the Department, cannot exercise his power under Rule by designating another person to conduct enquiry. In Surath Chandra Chakrabarty Vs. State of West Bengal, it was held that the whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up a defence. In R.C. K.S. Srinivasan Vs. Union of India (UOI), it was held that it is only when opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial and prejudice to the government servant resulting from an alleged violation of a rule must be proved.

2. Submissions at length were made by the Counsel on record, the learned Government Pleader for Services contending that on facts, no prejudice is caused to the concerned Government Servant and hence, the view expressed by the Division Bench need not be disturbed and on the contrary the Counsel representing the concerned Government Servant submitting that in the light of the Government's clarificatory memos and also the G.Os., the very intention of the Government is very clear that in relation to the framing of charges by a particular specified authority, the same to be treated as imperative or mandatory and hence, the Government is bound to follow the said procedure irrespective of the fact whether prejudice is shown by the Government Servant or not. In other words, in substance, the stand appears to be that such charge memo or charge-sheet drawn by an Officer other than the specified authority would be wholly without jurisdiction and hence, it would vitiate the whole departmental enquiry or disciplinary enquiry. In K.S. Srinivasan Vs. Union of India (UOI), while dealing with the requirements of the consultation with the Public Service Commission as specified by Rule 4 (b) of the Central Civil Services (Temporary Service) Rules, 1949, before declaration as to quasi-permanent status of a civil servant under Rule 3, the same was held to be mandatory on the ground that the Civil Servant cannot claim the benefit of Rule 3 and ignore at the same time the condition laid down in Rule 4 (b) since he cannot claim benefit of a part of the Rules and refuse to be bound by the conditions of the other part.

3. Where a rule under Article 309 of the Constitution of India under Service Law specifically mandates a specified authority or Officer as competent to issue charge memo any other would be incompetent to do so. The words "cause to be drawn" to be understood as concerned with the duties of a formal nature but however the application of mind in drawing the charges must be by the specified competent authority only. No other interpretation would be possible to the said

words referred to above in the specified context. Words are to be given contextual interpretation. The mandatory nature of the rule relating to the drawing of the charges had been further clarified by the Government by issuance of Clarificatory memos and G.Os. Where Government made the Service Rules and the Rule mandates specified authority, literal interpretation to be given to such rule and the same to be held as mandatory. It is needless to say that in such a case, issuance of charge memo by an incompetent authority would be wholly without jurisdiction. It is no doubt true that it may not preclude or come in the way of Government to issue yet another charge memo and further proceed in accordance with law. Suffice to state that the specified authority, in the light of the mandatory language of the rule, shall draw the charges or cause to be drawn, otherwise the same would be in contravention of Rule 20 of the present Rules. This intention also is clear on a careful comparison of the language of the old Rule with the present Rule. In the light of the findings referred to supra, I agree with the conclusion reached by my learned brother and the reference is answered accordingly.

B. Seshasayana Reddy, J.—A Division Bench of this Court made the following reference to the Full Bench:

(a) Whether framing of charge under Rule 20 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 by the Disciplinary Authority is a mandatory requirement?

(b) Whether the Enquiry Officer appointed by the Disciplinary Authority is competent to frame charge sheet and proceed with the enquiry?

2. This writ petition has been filed by the petitioners i.e. (1) The Government of A.P. Rep. by its Secretary, to Govt. I&CAD (CAD SER.II) Department, A.P. Secretariat, Hyderabad, (2) The Engineer in Chief, Irrigation, CAD Dept., (Admn. Wing), Erramanzil, Hyderabad and (3) The Superintending Engineer, IPI Circle, Warangal with prayer to issue a writ of certiorari calling for the records in O.A. No. 3190 of 1997 with M.A. No. 114 of 2001 and declaring the order dated 7-2-2001 passed by the A.P. Administrative Tribunal, Hyderabad and quash the same as arbitrary and illegal.

3. M.A. Majeed was appointed as Overseer by the Superintending Engineer, P.W.D. of G.V. Circle II, Warangal vide proceeding dated 19-12-1968 and subsequently he was promoted as Supervisor by the Chief Engineer vide proceedings dated 24-7-1976. He worked as Asst. Engineer in Division No. V! of Sub-Division-I at Metpally from 1987 to 1992. Disciplinary proceedings were initiated against him for certain irregularities while working as Assistant Engineer in Rangapet.

He (hereinafter referred to as delinquent) was placed under suspension pending enquiry under G.O.Rt.No.583, dt. 4-5-1993. The 1st respondent delinquent filed O.A. No. 804 of 1994 questioning the order of suspension and the said O.A. was disposed of with a direction to the department to complete the enquiry within a

period of three months from the date of receipt of a copy of the order and for any reason the enquiry is not completed within the stipulated time, the Government was directed to examine the need to continue him under suspension and pass appropriate orders. The suspension of the delinquent came to be revoked pending finalization of the disciplinary proceeding in G.O. Rt. No. 1233 dated 29-10-1994. The Government appointed Administrator-cum-Chief Engineer, Jagtial as Enquiry Officer under Rule 20(2) of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (herein after referred to as "the ARCS Rules" for brevity) to conduct departmental enquiry against him. The Enquiry Officer framed the following charges against the 1st respondent-delinquent.

(1) The Assistant Engineer while working in Rangapet Section of Division No.1 has taken Rs.8,000/-from Sri B. Hanumanthu, President, Labour Co-op. Society, Rangapet saying that he would give the work on D-53 on nomination to him and he has to pay to Executive Engineer and Superintending Engineer. This speaks about his motive of extracting bribe.

(2) The Assistant Engineer has not handed over the material (38.25 M.T) of cement amounting to Rs. 50,451.15 ps and Anr. (9.50 M.T.) of cement amounting to Rs. 7,125/- while he was transferred and I.R. para relating to Non-handing over of materials to the extent of Rs. 87,162.25 is pending.

(3) 7 F accounts in all the sub-divisions in which the A.E. worked in O & M Division No. 1 have not been finally settled. It shows his mala fide intention to swallow the Government property, thus resulting in embezzlement of Government Property.

4. A charge memo dated 20-6-1993 was served on the delinquent who submitted written statement of defence on 31-8-1993. The Enquiry Officer conducted the enquiry on the charges levelled against the delinquent and submitted report on 16-5-1994. With regard to Charge No. 1, the Enquiry Officer held the same as not proved and with regard to charges No. 2 and 3, he held the same as proved. The Government under a memo dated 19-1 -1995 sent a copy of the report of the Enquiry Officer to the 1st respondent-delinquent to enable him to submit written representation. Thereafter, the delinquent submitted written representation. The Government on considering the Enquiry report and the written representation issued G.O.Ms. No. 53 Irrigation and Command Area Development (Ser.I.1) Department, dated 21 -5-1997 imposing punishment of dismissal on the delinquent and ordering recovery of Rs. 69,309/- besides initiation of criminal proceeding against him. The delinquent questioned the punishment imposed on him by filing O.A. No. 3190 of 1997 on the file of the Andhra Pradesh Administrative Tribunal. The learned Tribunal dismissed the O.A on 4-2-1998. Assailing the order passed in O.A. No. 3190 of 1997, the delinquent filed W.P. No. 4595 of 1998 and the said writ petition came to be allowed on 20-12-2000 remitting the matter back to the Tribunal for fresh disposal. The relevant portion of the order passed in W.P. No. 4595 of 1998 dated 20-12-2000

reads thus;

After hearing both sides and having regard to the facts and circumstances of the case, we think it just and proper to remit the matter to the Tribunal for fresh consideration and disposal as to whether the enquiry officer can frame the charges. Hence, the matter is remitted to the Tribunal for fresh enquiry and disposal in accordance with law. All the contentions of the petitioner including the contention that the enquiry is vitiated for the reason that the Enquiry Officer himself has framed the charges are left open. The Tribunal shall dispose of the matter expeditiously on its own merits as this Court has not expressed any opinion with regard to the merits of the case.

Both the parties shall appear before the Tribunal on 25-1-2001 without insisting for any notice and without fail.

Since the matter is remitted to the Tribunal, the order passed by it in O.A. No. 3190 of 1997 dated 4-2-1998 is set aside.

5. On remand the delinquent filed M.A. No. 114 of 2001 taking additional plea that the disciplinary proceedings initiated against him were vitiated as the enquiry was not held in accordance with the Rules 20 and 21 of the ARCS Rules. The learned Tribunal, on considering the material brought on record and on hearing the counsel for both the parties, recorded a finding that the enquiry was not conducted in accordance with the Rules 20 and 21 of the ARCS Rules and thus allowed the O.A. as well as M.A.114 of 2001 by order dated 7-2-2001 and directed the department to reinstate the delinquent into service forthwith and conduct the enquiry afresh strictly in accordance with the Rules 20 and 21 of A.P.C.S. Rules. Assailing the order dated 7-2-2001, the respondents in the said O.A. No. 3190 of 1997 have filed this writ petition.

6. The writ petition came up for hearing before the Division Bench. The Division Bench being not able to concur with the view expressed by the another Division Bench of this Court in V. Rajamalliah Vs. High Court of A.P. and another, thought it fit to refer the matter to the Full Bench in order to have authoritative pronouncement on the subject. Thus, the matter is before us for adjudication on the issues stated supra.

7. Heard the learned Government Pleader for Services appearing on behalf of the writ petitioners and Sri M. Ratna Reddy, learned Counsel appearing for the 1st respondent-delinquent.

8. Learned counsel for the petitioners submits that the language couched in Sub-rule (3) and Rule 20 of ARCS Rules is such that charges can either be drawn up by the Disciplinary Authority or cause to be drawn up and therefore framing of the charges by the Enquiry Officer is in conformity with the ARCS Rules. He further submits that delinquent" respondent did not choose to raise any objection with regard to the drawing up of the charges by the Enquiry Officer either during the course of enquiry or in the earlier round of litigation and further he did not

plead any prejudice because of the charge memo being drawn up by the Enquiry Officer. In support of his submissions, reliance has been placed on the decision of the Division Bench of our High Court in V. Rajamalliah's case stated supra wherein it is observed:

The second contention is also too much technical in nature. It is true that under 1963 Rules, a disciplinary authority could appoint an Enquiry Officer to conduct a departmental enquiry against a delinquent and authorize him to frame charges also whereas in 1991 Rules, the disciplinary authority himself is required to frame the charges. This departure in the procedure in no way affect any of the rights of a delinquent employee. Whether the charges are framed by the disciplinary authority himself or the same are framed by the Enquiry Officer appointed by him, in our considered opinion, it would not make any difference as regards fairness to be extended to the delinquent employee in terms of procedure. The crux of the matter is that the charge has to be proved satisfactorily by substantive legal evidence by the disciplinary authority. Simply because the charge was framed by the Enquiry Officer, that itself would not vitiate the enquiry conducted by the Enquiry Officer or the findings recorded by him.

9. The learned Counsel for the 1st respondent submits that under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the appointment of Enquiry Officer arises when the disciplinary authority is not satisfied with the statement of defence submitted by the delinquent on the charges levelled against him. The language used in Rule 20 of C.C.A. Rules is very plain and there is no room for any doubt as to the stage at which the role of the Enquiry Officer commences.

10. Keeping in view the rival contentions of the parties, we have gone through the C.C.A. Rules 1963 and C.C.A. Rules 1991. C.C.A. Rules 1991 came into effect on 1-10-1992. It is no more in dispute that enquiry against the 1st respondent delinquent Officer has been commenced under C.C.A. Rules, 1991. Under Rule 19(2) (f) (sic. (a)) of C.C.A. Rules, 1963, there is some ambiguity with regard to the authority i.e. disciplinary authority or Enquiry Officer to frame the charges. For better appreciation we may refer to Rule 2(a) Order 19(2)(a) (sic. Sub-rule (2)(a) of Rule 19) and it reads as follows:

Without prejudice to the provisions of the Public Servants Inquiries Act, 1850 (Central Act 37 of 1850) in every case where it is proposed to impose on a member of a service any of the penalties, specified in items (iv), (vi), (vii) and (viii) in Rule 8, the authority competent to impose the penalty shall appoint an inquiry officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty or shall itself hold an inquiry either suo motu or on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other

circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to file a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence, be permitted to inspect, and take extracts from, such official records as he may specify, provided that the inquiry officer may, for reasons to be recorded in writing, refuse such permission, if, in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral inquiry shall be held if such an inquiry is desired by the person charged or is decided upon by the inquiry officer or is directed by the competent authority. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the persons charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the inquiry officer may, for special and sufficient reason to be recorded in writing, refuse to file or call a witness. In the case where disciplinary action is initiated on the report of Anti Corruption Bureau, the inquiry officer may allow the concerned Investigation Officer to adduce evidence, to examine the witnesses and to cross-examine the defence witnesses with a view to proving the charges. After the oral inquiry is completed the persons charged shall be, entitled to file, if he so desires, any further written statement of his defence. If no oral inquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The inquiry officer shall on completion of the inquiry or the personal hearing of the person charged or both, forward the proceedings of the inquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds of charge, written statement filed in defence, if any; a sufficient record of the written statement filed in defence, if any, a sufficient record of the evidence adduced during the oral inquiry, a memorandum of the point urged by the person charged during the personal hearing, if any, and a statement of the findings of the inquiry officer on the different charges and the grounds therefor.

11. Under Rule 20(5)(a) of C.C.A. Rules, 1991, on receipt of written statement of defence, the disciplinary authority may enquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint under Sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its finding on each charge after taking such evidence as it may think and shall act in a manner laid down in Rule 21. The language in Rule 20 (5)(a) is very plain that the appointment of Enquiry Officer arises after receipt of the written statement of defence of the delinquent. The object in making the disciplinary authority to draw up charges under revised C.C.A. Rules, 1991, to our mind, is to enable the disciplinary authority to give a

second thought as to whether the proceedings are to be continued or not, on going through the written statement of defence on the charges levelled against the delinquent officer. The another object appears to be to avoid unnecessary delay in the disciplinary proceedings in case the delinquent officer admits of the charges levelled against him. The Government after taking note of the object with which new CCA Rules came into force issued Circular Memo No. 290/Ser.C/94-2, Genl. Admn. (Ser.-C) Dept., dated 1 -6-1994. Under the said circular memo the Government informed all the Departments of Secretariat, Heads of Department and Collector that framing of charges by the Inquiry Officer is not in accordance with the procedure prescribed under the new Rules. It is useful to refer the above circular and it reads as follows:

Order: - The Departments of Secretariat, Heads of Departments and Collectors are aware that the A.P. Civil Services (CC & A) Rules, 1963 have been repealed by the A.P. Civil Services (CC & A) Rules, 1991 which came into effect from 1-10-1992.

2. The new Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991 corresponds to old Rule 19(2) which deals with the procedure for imposing a major penalty. The new Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991, prescribes entirely a new procedure for conducting an enquiry by the disciplinary authority where it is proposed to impose a major penalty prescribed under the said Rules. Some of the salient features of the new rule are given below for immediate guidance of the disciplinary authority/enquiry authority:

(i) For imposition of a major penalty an enquiry should be conducted either under the CCA Rules, or the Public Servant (Enquiry Act).

(ii) The disciplinary authority may itself conduct the enquiry or appoint an enquiry authority to conduct the enquiry.

(iii) The disciplinary authority itself can prepare or cause the preparation of the articles of charges, statement of imputations of misconduct or misbehaviour.

(iv) The articles of charges, statement of imputations of misconduct and list of witnesses and documents should be served on the Government servant by the disciplinary authority or at its instance and the Government servant should be required to submit the statement of defence and to state whether he desires to be heard in person.

(v) The disciplinary authority on receipt of statement of defence or where no statement of defence is received within the stipulated time, conduct the enquiry itself or appoint an inquiry authority to do so.

3. It maybe noted from the above that as per the old rules, the inquiry officer used to be in the picture right from the start of the disciplinary proceedings, whereas under the new rules he comes into picture only when the disciplinary authority, after considering the statement of defence submitted by the Government servants, decides to appoint an Inquiry Authority from conducting

an inquiry.

4. It is brought to the notice of Government that the disciplinary authorities appointing the Inquiry Officers straight away on receipt of a complaint against a Government servant without following the procedure prescribed in Rule 20(3)(4) the new A.P. Civil Services (CC & A) Rules, 1991 in the first instance. Such a course of action evidently which is not in accordance with the procedure prescribed under the new rules is liable to be set aside when questioned in a Court of Law. It is, therefore, impressed on the disciplinary authorities that they should invariably follow the procedure prescribed under Rule 29(3), (4) of the CCA Rules, 1991 before they consider the appointment of an inquiry authority. Non-compliance with the prescribed procedure will be viewed seriously.

5. As per the provision of the new CCA Rules articles of charges, etc., will have to be prepared or got prepared by the disciplinary authority. Needless to say that the articles of charge form the basis of enquiry. Therefore, utmost care and diligence is required to be taken while drawing up the articles of charges, as any defect or deficiency in the articles of charges will ultimately lead to vitiation of the entire proceedings. The disciplinary authority/inquiry authority should see that the charges are specific without any ambiguity and are fully supported by documentary evidence.

6. All the Departments of Secretariat, Heads of Departments and Collectors are requested to strictly follow the above procedure prescribed in the A.P. Civil Services (CC & A) Rules, 1991. Whenever an inquiring authority is to be appointed for conducting enquiry under the said rules, they are also requested to bring these instructions to the notice of their subordinates for their guidance and compliance.

12. The Government after noticing that some departments are making a departure of the Rule 20 of the C.C.A. Rules, 1991 issued another Circular Memo 9594.Ser,C/ 97-2,G.A(Ser. C) Dept. Dt.8-1-1998.

Order: In the reference cited (copy enclosed) instructions were issued to the effect that the procedure laid down in Sub-rules (3) and (4) shall be followed before appointing the Enquiry Officer to conduct enquiry against any Government Servant.

2. Instances have come to notice of the Government that the procedure detailed in Sub-rules (3) and (4) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 is not being followed before appointing Enquiry Officer. In most of the cases, the Enquiry Officers are appointed even without framing and serving articles of charge on the delinquent officer which do not stand for legal scrutiny. Consequently, the entire process is vitiated resulting the delinquent officer scot-free due to their retirement.

3. Keeping the above in view, it is reiterated that the procedure detailed in Sub-rules (3) and (4) of Rule 20 of A.P. Civil Services (Classification, Control & "

Appeal) Rules, 1991 shall be followed scrupulously before taking a decision on the appointment of Enquiry Officer and the instructions issued in the reference cited shall be followed strictly. (

4. The Departments of Secretariat, Heads of Departments and District Collectors are requested to follow the instructions issued in the reference cited and bring the same to the notice of all concerned for strict compliance. Any deviation/lapse in following the instructions shall be seriously and responsibility fixed on the erring authorities and suitable disciplinary action initiated.

13. It is apparent from Rule 20 that the role of the Enquiry Officer commences after the disciplinary authority framing the charges and applying its mind to the statement of defence, if any, filed by the delinquent. We express our inability to agree with the view taken by the Division Bench of this Court in V. Rajamalliah's case that Rule 20 (4) is too much technical in nature. The object of making the disciplinary authority to frame the charges and consider the written statement of defence, if any, filed by the delinquent before the appointment of Enquiry Officer has been stated in the aforesaid paras of the judgment and therefore, we do not wish to burden the judgment by reiterating the same. In our considered opinion, it is mandatory for the disciplinary authority under the C.C.C.A. Rules, 1991 to frame charges before the appointment of the Enquiry Officer. The appointment of Enquiry Officer under Rule 20(2) arises after serving the articles of the charge and receiving the written statement of defence, if any, from the delinquent.

14. Accordingly, the reference is answered. Registry is directed to post the matter before the appropriate Bench for further hearing on merits.