

(2015) 07 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 6161 of 2003

Jagdishbhai Bhanabhai Rajgor

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 GLR 2320

Hon'ble Judges : G.R. Udhwani, J.

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; Harsheel Shukla, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

G.R. Udhwani, J.—The petitioner was serving as Insurance Medical Officer at D-29, E.S.I.S. Dispensary, Gomtipur, Ahmedabad, run by respondent-State of Gujarat. While treating the patient, on 30-5-1983, an unfortunate incident of death of said patient Somabhai Jinabhai took place. The petitioner was treating doctor along with nurse and other staff.

1.1. The heirs and family members of the deceased moved the City Civil Court, Ahmedabad with a plaint seeking a compensation in the sum of Rs. 85,000/- against the respondent, petitioner and the nurse on duty in the hospital. The suit came to be dismissed against which the First Appeal being No. 915 of 1987 came to be instituted in this Court. While reversing the judgment and decree of the trial Court, this Court in its judgment dated 27-4-1995 in the First Appeal afore-stated, made the following observations:

"5. However, coming to the conduct of defendant No. 3, the nurse, learned Judge while discussing issue No. 2 has come to the conclusion that she had given test dose of conjunctivitis. Yet the learned Judge has not appreciated properly the deposition of defendant No. 3, nurse, where during the cross-examination she

admits that if there is a reaction to the aforesaid drug, the eyes would turn red and in case of the said patient, in fact eyes did not turn red. If this is so, not only it shows that the reaction has not been noted by the nurse but also the doctor had not taken care to verify whether there is any reaction to the test dose."

2. Subsequent to the said observations, a charge-sheet came to be served upon the petitioner on 29-10-1999 intending a departmental inquiry for negligence in performance of his duties as the Medical Officer. The petitioner furnished the explanation to the said charge-sheet on 30-11-1999 and thereafter the departmental proceedings rested there.

3. The petitioner, thereafter, by impugned order dated 1-4-2003 was called upon to reimburse a sum of Rs. 2,13,350/- which was paid by the respondent herein to the heirs of the deceased i.e. the appellant in the aforesaid First Appeal. In the said letter, the petitioner's responsibility for negligence in performance of his duty as a Doctor was fixed and it was alleged that he did not take due care by giving a trial dose of medicine to the deceased so as to find out as to whether the deceased was prone to hypersensitivity and that without adopting the said procedure straightway full dose of medicine was given and due to reaction of the medicine, the deceased expired. Such averments in the letter are thus stigmatic.

Pertinently, in the impugned order, no reference to charge-sheet and the explanation given by the petitioner is made. Furthermore, the sole basis of impugned order is the judgment in the First Appeal afore-stated.

4. The petitioner has, therefore, challenged the same before this Court in the petition under Art. 226 of the Constitution of India.

5. By way of amendment, the petitioner has placed on record a circular dated 17-4-1995 issued by the Government at Annexure-E to the petition, which instructs all concerned to hold departmental inquiry in the cases where the Government suffers the loss exceeding Rs. 5,000/-.

6. Learned Counsel for the petitioner, while relying upon the said circular, as also impugning the letter dated 1-4-2003, Annexure-D as also while relying upon Rules 6, 9 and 11 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as Rules, 1971) would contend that without considering the explanation tendered by the petitioner and without holding the departmental inquiry, which was necessary since it involved an amount exceeding Rs. 5,000/- in view of circular aforesaid, as also in view of Rule 9, the respondent could not have fixed the responsibility of the petitioner even on the basis of the observations made by this Court in the afore-stated First Appeal. It is contended that nowhere in the judgment in the First Appeal, the petitioner is found to be negligent.

7. It was contended that since the impugned letter is stigmatic in nature, the principles of natural justice were required to be followed. It is contended that no orders for reimbursement for compensation by the petitioner to the respondent

were passed in the First Appeal, and therefore, no liability of reimbursement of the said compensation could have been fixed upon the petitioner in absence of fixing the liability in a departmental inquiry, which was in fact contemplated, but was not brought to its logical end. It is contended that this conduct of respondent would indicate that they were satisfied with the petitioner's explanation, and therefore, no further action on the charge-sheet was taken. It is argued that in fact judgment in First Appeal preceded the charge-sheet and thus respondent was aware of the same, and thereafter, conscious decision was taken to hold the departmental inquiry according to Rules of 1971, and therefore, charge-sheet was issued subsequent to the judgment in First Appeal, but abruptly without conducting enquiry, impugned order came to be passed.

8. Learned A.G.P., however, relying upon the affidavit-in-reply would seek to justify the impugned letter/order. In his submission, the observations of this Court in the afore-stated First Appeal, as quoted above, were sufficient enough to hold the petitioner responsible and it was not necessary for the respondent to hold inquiry. He would contend that in view of Rule 11(1)(b) of Rules 1971, discretion lay with Disciplinary Authority to hold or not to hold inquiry. It is contended, that therefore, merely because no further proceedings were held after service of charge-sheet and petitioner's reply, no prejudice was caused to the petitioner, more particularly, when petitioners was given an opportunity of putting his explanation to charge-sheet in terms of Rule 11(1)(a) of Rules, 1971.

8.1. Learned A.G.P. would contend that the charge-sheet was issued and the explanation was considered and in view of the afore-stated observations, holding the petitioner responsible, a just and proper decision has been taken" by the State Government which does not require interference of this Court under Art. 226 of the Constitution of India.

9. Having considered the rival contentions, it cannot be disputed that the impugned order dated 1-4-2003 is stigmatic in nature; inasmuch as, it criticizes the petitioner's conduct in the performance of his duty as a Medical Officer and also seeks to recover the amount under compensation from him. It is settled legal position that before attaching a stigma to the Government servant, appropriate opportunity must be given to him. The affidavit-in-reply also criticizes the petitioner's conduct as a Doctor and as is evident from the affidavit-in-reply itself, a departmental inquiry was contemplated against the petitioner by issuing a charge-sheet, but for the reasons, which do not form part of the reply, the departmental inquiry rested there with no further progress. However, if the subject and the references of the impugned order dated 1-4-2003 are perused, it is more than clear that what weighed with the respondent was the decision to take steps against the petitioner on the basis of resolution dated 13-9-1996, 20-8-1997, 23-12-2002, Civil Suit No. 468 of 1997 and First Appeal No. 915 of 1987. It is worthwhile to note that as indicated above, after service of charge-sheet upon the petitioner in the year 1999 and his explanation, no progress was made, but straightway thereafter the order dated 1-4-2003 was passed on the

basis of observations as quoted in Paragraph No. 2. It appears that the respondent, on the basis of such observations circumvented the departmental proceedings which was impermissible in absence of the rules authorizing the respondent to do so. It appears that the respondent was under the misconception of the legal position that on the mere observations of this Court in the First Appeal, the responsibility of reimbursement of the amount under compensation can be fixed against the petitioner. This Court in the First Appeal had no occasion to fix the personal responsibility of the petitioner for the purpose of reimbursement and/or recovery of the amount under compensation.

10. Apart from the fact that the circular Annexure-E obliges the respondent to hold departmental inquiry in the event of recovery of the loss caused to the public exchequer by Government servant exceeding Rs. 5,000/-, Rule 9 of the Rules 1971 obliges disciplinary authority to inquire into the objectionable conduct of the Government servant before attaching stigma to him. It is noticed that the judgment in the First Appeal was delivered in the year 1995 and the charge-sheet was served upon the petitioner and the explanation thereto was given by him in the year 1999. Thus, the respondent was fully conscious of the fact that the petitioner could not have been held responsible for reimbursement of the amount under compensation in absence of an inquiry and thus a conscious decision to hold inquiry was taken. That being so, the question arises as to whether it was open for the respondent to circumvent the enquiry? The answer lies in the following rules:

11. Rule 6 of 1971 inter alia provides for minor and major penalties. For ready reference, it may be quoted hereunder:

"6. Nature of Penalties : Without prejudice to the provision of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member of the State, Subordinate or 1Inferior Service namely, 2Inserted vide GN/GAD/No. GS-77-79/1277-G, dated 18-5-1977.

Minor Penalties

(1) Censure³

(2) Withholding of increments or promotion.

(3) Recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Major Penalties

(4) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increment of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of pay.

(5) Reduction to a lower time scale of pay, grade, post or service which shall

ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

(6) Compulsory retirement.

(7) Removal from service which shall not be a disqualification for future employment under Government.

(8) Dismissal from Service which shall ordinarily be a disqualification for future employment under Government.

Explanation : The following shall not amount to a penalty within the meaning of this rule:-

(1) Withholding of increments in pay of a Government servant for failure to pass a departmental or other examination with the rules or orders in this behalf for the time being in force or in accordance with the terms of his appointment.

(2) Stoppage of pay of a Government servant at the efficiency bar in the time-scale on the ground of his unfitness to cross the bar.

(3) Non-promotion whether in a substantive or officiating capacity of a Government servant to a service, grade or post for promotion to which he is in ordinary course eligible, on administrative grounds and not as a measure of penalty on the ground of his misconduct.

(4) Reversion to a lower service, grade or post of a Government servant officiating in a higher service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service grade or post or on purely administrative grounds.

(5) Reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders of Government in this behalf for the time being in force.

(6) Replacement of the services of a Government servant whose services had been borrowed from Central Government or other State Government or any other authority, at the disposal of the Central or State Government or the authority from which the services of such Government servant had been borrowed.

(7) Compulsory retirement of a Government servant in accordance with the provisions of any law or rules for the time being in force relating to such retirement.

(8) Termination of service -

(a) of a Government servant appointed on probation, during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders of Government in this behalf for the time being in force, or

(b) of a temporary Government servant on purely administrative grounds or

(c) of a Government servant employed under a contract in accordance with the terms of such contract."

11.1. It is clear from the aforesaid Rule, particularly, sub-rule (3) of Rule 6 that recovery of the pecuniary loss caused to the Government by the negligence of the Government servant is a minor penalty and the procedure for minor penalties is contemplated in Rule 11 which reads as under:

"11. Procedure for imposing minor penalties:

(1) Subject to the provisions of sub-rule (3) of Rule 10, no order imposing on a Government servant any of the penalties specified in 4[items (1)] to (3) of Rule 6 shall be passed except after -

(a) informing the Government servant in writing of the proposal to take action against him and of the imputation of misconduct or misbehaviour or of any culpable act or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal,

(b) holding an inquiry in the manner laid down in the sub-rules (3) to (23) of Rule 9, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary,

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration,

(d) recording a finding on each imputation of misconduct or misbehavior or of any culpable act or omission, and

(e) consulting the Commission where such consultation is necessary.

5[Provided that where it is proposed after considering the representation, if any, made by the Government servant under clause (a) to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, and inquiry shall be held in the manner laid down in sub-rules (3) to (22) of Rule 9, before making any order imposing such penalty on a Government servant.

(2) The record of the proceedings in such cases shall include -

(i) a copy of the intimation to the Government servant of the proposal to take

action against him,

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him,

(iii) his representation, if any,

(iv) the evidence produced during the inquiry,

(v) the advice of the Commission, if any,

(vi) the finding on each imputation of misconduct or misbehaviour, or of any culpable act or omission, and

(vii) the orders on the case together with the reasons therefor."

11.2. There are different procedures respectively under Rule 9 and Rule 11 of Rules 1971 for imposing the major and minor penalty as contemplated in Rules 6(4), 6(5), 6(6), 6(7) and 6(8) read with various Explanation thereto and Rules 6(1), 6(2) and 6(3) respectively. Recovery of pecuniary loss caused to Government by negligence or breach of order is contemplated as minor penalty under sub-rule (3) of Rule 6 of Rules 1971 and the appropriate Rule applicable for imposing of such penalty is Rule 11. Sub-rule (1) of Rule 11 bars imposition of the penalties specified in sub-rules (1) to (3) of Rule 6, except as contemplated in clauses (a) to (e) of sub-rule (1) of Rule 11. Under clause (a) of sub-rule (1) of Rule 11, a Government servant is required to be informed about the proposed action against him, with necessary imputation of misconduct or misbehavior etc., and after giving him a reasonable opportunity of making the representation against such proposal. Under clause (b) of sub-rule (1) of Rule 11, disciplinary authority is obliged to form an opinion about necessity of holding an inquiry and in the event of its opinion to hold an inquiry sub-rules (3) to (23) of Rule 9 are required to be followed. Rule 9 can be reproduced hereinunder for ready reference:

"9. Procedure for imposing major penalties:-

(1) No order imposing any of the penalties specified in items (4) to (8) of Rule 6 shall be passed except after an inquiry, held as far as may be, in the manner provided in this rule and Rule 10 or in the manner provided by the Public Servants (Inquiry) Act, 1850 where such inquiry is held under that Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiry into the truth of any imputation of misconduct or misbehaviour or of any culpable act or omission, against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servant (Inquiry) Act, 1850, as the case may be, an authority to inquire into the truth thereof (hereinafter referred to as the Inquiry Authority)

6[Provided that where there is a complaint of sexual harassment within the meaning of Rule [3B]7 of the Gujarat Civil services (Conduct) Rules, 1971, the

Complaints Committee established in each Department or Office for inquiring into such complaints, shall be deemed to be the Inquiry Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules].

Explanation :- Where the disciplinary authority itself holds the inquiry, any reference in these rules to the Inquiry 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 or Rule 10, the Disciplinary Authority shall draw up or cause to be drawn up -

(i) the substance of the imputations of misconduct or misbehavior or of any culpable act or omission into definite and distinct Articles of charge;

(ii) a statement of the imputations of misconduct or misbehavior or of any culpable act or omission 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; and

(b) a list of documents by which, and a list of witnesses by whom the Articles of charges 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 or of any culpable act or omission 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 charge as are not admitted or if considers it necessary, to do so, appoint under sub-rule (2) an Inquiry 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 10.

(b) If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself inquire into such Articles of 14 charges or may, if it considers it necessary to do so, appoint under sub-rule (2), an Inquiry Authority for the purpose.

(c) The Disciplinary Authority may nominate any person hereinafter referred to as the Presenting Officer to present the case in support of the Charge, before

itself if it is to inquire into the charges or before the Inquiry Authority. 8[The Government servant may present his case with the assistance of any other Government approved by the Inquiry Authority, but may not engage a legal practitioner for the purpose unless the Disciplinary Authority having regard to the circumstances of the case so permits].

9Note : The Government servant may also take the assistance of a retired Government servant to present the case on his behalf subject to such conditions as may be determined in general or special orders issued by the Government from time to time.

(6) The Disciplinary Authority shall, where it is not the Inquiry Authority, forward to the Inquiry Authority -

(i) a copy of the Articles of charges and the statement of imputations of misconduct or misbehaviour;

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

(iii) a copy of the statement of witnesses, if any 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 Inquiry Authority on such day and at such time within ten working days from the date of receipt by him of the Articles of charges and the statement of the imputations of misconduct or misbehaviour, as the Inquiry Authority may, by a notice in writing specify in this behalf, or within such further time not exceeding ten days, as the Inquiry Authority may allow.

(8) If the Government servant who has not admitted any of the Articles of charges in his written statement of defence, appears before the Inquiry 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 charges, the Inquiry Authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(9) The Inquiry Authority shall return a finding of guilt in respect of those Articles of charges to which the Government servant pleads guilty.

(10) 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 charges, and shall adjourn the case to later date not exceeding thirty days, after recording an order that the Government servant may for the purpose of preparing his defence

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(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 witness to be examined on his behalf;

Note : If the Government servant applies orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (3), the Inquiry 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) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiry 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.

(11) The Inquiry 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 Inquiry 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.

(12) On receipt of the requisition referred to in sub-rule (11), every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiry Authority:

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, it shall inform the Inquiry Authority accordingly and the Inquiry 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.

(13) On the date fixed for the inquiry, the oral and documentary evidence by which the Articles of charges 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 shall have been cross-examined, but not on any new matter, without the leave of the Inquiry Authority. The Inquiry Authority may also put such questions to the witnesses as it thinks fit.

(14) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiry 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 of recall and reexamine 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 inquiry is adjourned. The Inquiry Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiry 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 interest of justice.

Note : New evidence shall not be permitted or called for and no witness shall be recalled to fill up any 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.

(15) 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 has been appointed.

(16) 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 Inquiry Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(17) The Inquiry 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.

(18) The Inquiry 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 case, if they so desire.

(19) If the Government servant to whom a copy of the Articles of charges has even 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 Inquiry Authority or otherwise fails or refuses to comply with the provisions of this Rule,

the Inquiry Authority may hold the inquiry ex-parte.

(20)(a) Where a Disciplinary Authority competent to impose any of the penalties specified in 10[Items (1)] to (3) of Rule 6 (but not competent to impose any of the penalties specified in Items (4) to (8) has itself inquired into or caused to be inquired into the Articles of any charges and that authority having regard to its own findings or having regard to its decision on any of the findings of any Inquiry Authority appointed by it, is of the opinion that the penalties specified in Item (4) to (8) of Rule 6 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 interest of justice, recall the witness and examine, cross-examine, and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(21) Wherever an Inquiry 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 Inquiry Authority which has and which exercises such jurisdiction, the Inquiry 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 Inquiry Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(22)(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 imputations of misconduct or misbehaviour or of any culpable act or omission;

(b) the defence of the Government servant in respect of each Article of charges;

(c) an assessment of the evidence in respect of each Articles of charges;

(d) the finding on each Article of charge and the reasons therefor.

Explanation.: If in the opinion of the Inquiry Authority the proceedings of the inquiry establish any Article of charges different from the original Articles of the charges, it may record its findings on such Article of charges:

Provided that the findings on such Article of charges shall not be recorded unless the Government servant has either admitted the facts on which such Article of charges are based or has had a reasonable opportunity of defending himself

against such Article of charges.

(ii) The Inquiry Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall included -

(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 or the Government servant or both during the course of the inquiry, and

(e) the orders, if any, made by the Disciplinary Authority and the Inquiry Authority in regard to the inquiry."

11.3. Before embarking upon Rule 9, it is required to be recalled that under Rule 11(1)(a), the disciplinary authority is obliged to inform the Government servant in writing about the proposal of intended action and the imputation of misconduct or misbehaviour or any culpable act or omission on which the action is proposed against the delinquent and a reasonable opportunity of making representation to the Government servant is also required to be given. Thereafter, on consideration of such report, the disciplinary authority is obliged to form an opinion about the necessity of holding of an inquiry under clause (b) of Rule 11(1) of the Rules. On formation of the opinion of necessity of an inquiry, sub-rules (3) to (23) of Rule 9 are required to be complied with.

11.4. Reverting to sub-rule (3) of Rule 9 obliges the disciplinary authority to draw or caused to be drawn up the substance of the imputation of misconduct or misbehaviour or any culpable act or omission in support of each Article of charges which may contain various details as indicated in sub-clause (a) of clause (ii) of sub-rule (3) of Rule 9. Such Articles of charges, statement of imputation and the material is required to be delivered to the Government servant under sub-rule (4) of Rule 9, and thereafter, a further procedure as contemplated in sub-rules (5) to (23) of Rule 9 is required to be followed. It, therefore, transpires that drawing up of a charge and statement of imputation and other material and service thereof upon the delinquent is a first step after the proposal to hold an inquiry against the Government servant.

11.5. As noticed above, once the opinion is formed for holding a departmental inquiry even for imposition of minor penalty, Rules 9(3) to (22) are required to be followed by virtue of Rule 11(1)(b). Thus, once sub-rule (3) and sub-rule (4) of Rule 9 are invoked by disciplinary authority, it would be incumbent upon it to complete the rest of the procedure contemplated under sub-rules (5) to (23) of Rule 9 by virtue of Rule 11(1)(b).

11.6. In the instant case, it is common ground that in compliance with sub-rule (3), clauses (i) and (ii) of Rule 9, a charge-sheet dated 29-10-1999 which

included the substance of imputation and the statement of imputation of misconduct etc., was served upon the petitioner. The service of substance of imputation and the statement of imputation itself thus amounted to formation of opinion as required in clause (b) of sub-rule (1) of Rule 11. Consequently, other provisions i.e. sub-rules (4) to (23) of Rule 9 were required to be followed as mandated by clause (b) of sub-rule (1) of Rule 11.

11.7. Having complied with sub-rule (3) of Rule 9, it was incumbent upon the respondent to comply with other provisions i.e., sub-rules (4) to (23) of Rule 9 as contemplated in clause (b) of sub-rule (1) of Rule 11.

11.8. Admittedly, such a procedure was not followed and it appears that the respondent was prompted to circumvent by the observations made against the petitioner in the judgment of this Court in the afore-stated First Appeal, to put the further procedure of inquiry in a suspended animation, misconceiving the legal position that no procedure under clause (b) of sub-rule (1) of Rule 11 was necessary. It appears that on the said premises the petitioner was called upon to reimburse a sum of Rs. 2,13,315/- to the respondent by the impugned order. The impugned order, being in clear breach of Rule 11(1) clause (b), cannot be sustained.

11.9. Even, otherwise, as contemplated in Circular (Annexure-E), the respondent was obligated to conduct a departmental inquiry as the amount involved was more than Rs. 5,000/- and the circular mandates the inquiry in such a case. Thus, not only the mandatory provisions of Rule 11(1), clause (b) were breached, the procedure adopted by the respondent was also in breach of the instructions contained in the circular.

12. Under the afore-stated circumstances, this Court is of the opinion that the impugned order cannot be sustained. The same is, therefore, quashed and set aside. It appears that during the pendency of the petition, the petitioner had deposited a sum of Rs. 50,000/-, in the year 2004. The said amount shall be refunded to the petitioner. Rule is made absolute in the above terms with no order as to costs.

1Censure

2The word "Censure" Deleted vide GN/GAD/No. GS-12-CDR/1095/539/Inq. cell, dated 16-5-1996

3The word "Censure" Inserted vide GN-GAD-No : GS-2000-45-CDR-1095-539-Inq Cell, dated 1-12-2000.

4[Item (1) deleted vide GN/GAD/No. GS-12-CDR/1095/539/Inq. Cell, dated 16-05-1996 and reinserted vide GN/GAD/No-GS-2000-45-CDR-1095-539-Inq. Cell dated 1-12-2000]

5[Inserted vide GN/GAD/No. GS/98/32/CDR/1092/311/Inq. Cell, dated 16-7-1998.

6[Inserted vide GAD/GN/GS/2004(62)/CDR/1098/171/Inq. Cell, dated 1-12-2004].

7[Substituted vide GN/GAD/GS/2007(21)/CDR-1098-171/Inq. Cell, dated 18-8-2007].

8[The portion [] Substituted vide GN/GAD/No. GS/77-97/CDR/1277/1478-G, dated 1-7-1977]

9Inserted vide GN/GAD/No. GS/86/17/CDR/1084/565/Inq. Cell, dated 16-4-1986.

10[Item (1) deleted vide GN/GAD/No. GS-12-CDR/1095/539/Inq. Cell, dated 16-5-1996. and reinserted vide GN/GAD/No. GS-2000-45-CDR-1095-539-Inq. Cell, dated 1-12-2000].