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**(2016) 09 AHC CK 0037**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition (S/B) No. 8786 of 2016

State of U.P.

APPELLANT

Vs

Amitabh Thakur

RESPONDENT

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**Date of Decision :** 29-09-2016

**Acts Referred:**

All India Services (Discipline and Appeal) Rules, 1969 — Rule 5, 8

**Citation :** (2016) 10 ADJ 423 : (2016) 6 AILLJ 437

**Hon'ble Judges :** Satyendra Singh Chauhan and Dr. Vijay Laxmi, JJ.

**Bench :** Division Bench

**Advocate :** C.S.C, for the Petitioner; A.S.G, A.K. Verma and Amitabh Thakur, Advocates, for the Respondents

**Final Decision :** Dismissed

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## **Judgement**

Satyendra Singh Chauhan, J.—The State of U.P. has come forward to challenge the order dated 27.1.2016 passed by the Central Administrative Tribunal, Lucknow (for short "the Tribunal") in Original Application No.258 of 2015, by means of which the Original Application filed by the opposite party no.1 has been allowed and the order dated 14.7.2015 passed by the State Government has been quashed.

2. The facts in short giving rise to the present dispute are that opposite party no.1, who belongs to the Indian Police Service of 1992 batch of U.P. Cadre, while posted as I.G. (Civil Defence) was served with the order dated 13.7.2015 placing him under suspension with immediate effect. Another order of the same date i.e. 13.7.2015 was issued by the State Government instituting departmental enquiry against opposite party no.1 under Rule 8 of the All India (Discipline & Appeal) Rules, 1969 (for short "the 1969 Rules"). Opposite party no.1 was asked to give reply within fifteen days after receipt of the charge sheet to the D.G.P. Opposite party no.1 submitted his reply on 16.7.2015 denying the charges levelled against him. He also requested in a separate letter dated 20.7.2015 that he may be heard personally by Hon'ble the Chief Minister/competent disciplinary authority

as provided under Rule 8 (5) of the 1969 Rules. He was served with another order dated 14.7.2015 nominating Sri. V.K. Gupta, Director General/Chairman, U.P. Recruitment & Promotion Board Lucknow as Ex. Presenting Officer under Rule 8 (2) and 8 (6) (c) of the 1969 Rules, which was received by him on 21.7.2015. The aforesaid order dated 14.7.2015 was put to challenge before the Tribunal, seeking quashing of the same on account of non-compliance of various provisions of Rule 8 of the 1969 Rules. Opposite party no.1 placed reliance upon Rules 8 (2), 8 (4), 8 (5), 8 (6) (a) (b) & (c). Opposite party no.1 placing reliance upon Rule 8 (5) of the 1969 Rules submitted his reply to the charge sheet within the time provided by the petitioners i.e. within a period of fifteen days. He also made a request to be heard by the Hon"ble Chief Minister in his capacity of disciplinary authority, but without either taking into cognizance of his statement or having given him an opportunity to be heard, the Enquiry Officer was appointed under Rule 8(2) & 8(6) of the 1969 Rules on the very next day of the charges being drawn up against him. The Enquiry Officer was required to be appointed under Rule 8(6)(a) of the 1969 Rules, which categorically states that Enquiry Officer is to be appointed after considering the written statement of defence of the charged officer. Rule 8(2) of the 1969 Rules is only an enabling provision, but the actual sequence of action is governed by Rule 8(6)(a) of the 1969 Rules. Such action shows that the petitioners were biased against him and a free and fair disciplinary proceedings as laid down under various provisions of Rule 8 were not followed. Opposite party no.1 also made a request that he may be allowed to meet the Hon"ble Chief Minister in his capacity as disciplinary authority as contemplated under Rule 8(2)(b) of the 1969 Rules, which provides that the disciplinary authority is an authority competent under these Rules to impose on a Member of All India Service any of the penalties specified under Rule 6 of the 1969 Rules, which enumerates various minor and major penalties.

3. Counter affidavit was filed to which rejoinder affidavit had been filed by opposite party no.1 and after considering arguments of the parties, the Tribunal proceeded to allow the claim petition and quashed the order dated 14.7.2015 and the matter was remanded back to the petitioners to institute the disciplinary proceedings from the stage of submission of reply dated 15.7.2015 read with representation dated 20.7.2015 and proceed as per Rule 8(2) read with Rule 8(6) of the 1969 Rules. Hence this writ petition.

4. Submission of Sri. J.N. Mathur, learned Senior Advocate assisted by Sri. Sanjay Bhasin is that the Tribunal has committed manifest error in law in allowing the original application and thereby misinterpreted Rule 8(2) and 8(6) of the 1969 Rules. The Tribunal has misinterpreted the 1969 Rules and opposite party no.1 was required to participate in the enquiry rather than taking shelter in respect of his audience with the Chief Minister by raising a technical objection. Rules 8(2), 8(5) and 8(6) have been misinterpreted by the Tribunal. Opposite party no.1 cannot be permitted to take the aforesaid plea in order to avoid the disciplinary proceedings and also that the aforesaid objection has been taken only with a view to delay the proceedings. Hearing mentioned in Rule 5 of the

1969 Rules is required to be taken by the Enquiry Officer and not by any other authority, which is discernible from Rule 8(6)(a). Rules 8(2) and 8(6)(a) have to be read harmoniously and if they are read in such a manner, then hearing is to be given by the Enquiry Officer.

5. Counsel for the petitioner has further submitted that by issuing a charge sheet prejudice has not been caused to the opposite party no.1 and unless and until prejudice is caused to the opposite party no.1, the objection taken by the opposite party no.1 in respect of the issuance of the charge sheet without affording an opportunity by the disciplinary authority, is a futile exercise and the Tribunal has committed gross illegality in not considering the question of prejudice. He has also submitted that even if the opportunity is given by the disciplinary authority, no different opinion is going to be formed and no prejudice would be caused to the opposite party no.1.

6. In support of his contention, learned counsel for the petitioners has placed reliance on the following cases :-

Khem Chand v. Union of India and others, AIR 1958 SC 300;

A. Sudhakar v. Postmaster General, Hyderabad and another, (2006) 4 SCC 348;

Sough Bengal State Transport Corporation v. Ashok Kumar Ghosh and others, (2010) 11 SCC 71;

State of U.P. v. Harendra Arora and another, (2001) 6 SCC 392;

Haryana Financial Corporation and another v. Kailash Chandra Ahuja, (2008) 9 SCC 31;

Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others, (2015) 8 SCC 519;

Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others, (1993) 4 SCC 727;

State of Punjab v. V.K. Khanna and others, (2001) 2 SCC 330.

7. Per contra, opposite party no. 1, who appeared in person, has submitted that the Tribunal has committed no illegality while interpreting the Rules 8(2), 8(4), 8(5) and 8(6) (a)(b)(c) of the 1969 Rules. The scheme of the Rules stipulates that reply of the opposite party no.1 was required to be considered first and only thereafter charge sheet should have been issued to him, who happens to be a Class-I officer belongs to the IPS Cadre and the outcome of the initiation of the disciplinary proceedings against him is a result of malice prevailing against him. The guidelines dated 29.11.2012 issued by the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, which have been relied upon by the learned counsel for the petitioners and a copy of which was supplied to him, also stipulates the issuance of the charge sheet and selection of name of the enquiry officer and the presenting officer tentatively if the charged

officer denies the charges in his written statement of defence. He has also submitted that the guidelines dated 29.11.2012 also stipulate for expeditious disposal and if there is anything contrary to the guidelines, then the 1969 Rules will prevail. Apart from it, opposite party no.1 also submitted that in case of any difference of opinion to a given subject relating to interpretation of the 1969 Rules, then the matter shall be referred to the Central Government for its decision and the view expressed by it will prevail. It is also submitted that in pursuance to the letter dated 10.1.2016 of opposite party no.1 certain clarifications were sought by the I.G. (Karmik) from him, to which reply was given by him on 10.2.2016. All these facts go to indicate that the matter is pending at the level of the disciplinary authority and no decision has been taken by him and the enquiry officer was appointed and the charge sheet was issued on the total non-application of mind and without adhering to the provisions of the 1969 Rules. The only interpretation of Rule 8(5) is that the disciplinary authority must consider the written statement of defence of the opposite party no.1 first and then only take a decision as to whether he intends to initiate the disciplinary proceedings or not and any other interpretation would render Rule 8(5) redundant. He has placed much emphasis in respect of the circular issued by the DP & AR in respect of holding of the disciplinary proceedings dated 25.11.1981. He has submitted that the said circular clarifies the position in respect of the 1969 Rules and it very clearly lays down that disciplinary authority has the inherent power to review and modify articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused member of an All India Service under Rule 8(6) of the 1969 Rules. He has submitted that in view of the language used in the said circular, there is least doubt in respect of the objection raised by him that the enquiry officer has to be appointed only after consideration of the written statement of defence of him by the disciplinary authority and if he is of the opinion to proceed further, then only the disciplinary proceedings can be initiated and the enquiry officer is to be appointed. His submission is that only possible interpretation available in respect of the Rules has been adhered to by the Tribunal and, therefore, no illegality has been committed by it. In support of his contention, he has placed reliance upon the following cases :-

State of Punjab v. V.K. Khanna and others, (2001) 2 SCC 330;

Oryx Fisheries Pvt. Ltd. v. Union of India and others, (2010) 13 SCC 427;

Union of India and others v. A.K. Pandey, AIR (2009) SCW 6354;

S.K. Dhawan v. Union of India and others, in Writ Petition (C) No.8216 of 2002, decided on 4.9.2015;

Rama Shanker Mishra v. Union of India, CAT Principal Bench rendered in OA No.702 of 2006, decided on 22.9.2006; and

State Bank of Patiala and others v. S.K. Sharma, AIR 1996 SC 1669.

8. Counsel for the Union of India, Sri. A.K. Verma has submitted that Rule 8(6) (a) is directory in nature and the circular dated 25.11.1981 is against Rule 8(6) (a). The disciplinary authority has formed an opinion as contemplated under Rules 8(2) and 8(6) of the 1969 Rules and it is not incumbent upon it to give hearing to opposite party no.1 in person or consider his reply before appointment of the enquiry officer. He has further submitted that after receipt of the written statement of defence, it is within the domain of the disciplinary authority to appoint the enquiry officer as contemplated under Rule 8(2) of the 1969 Rules. He has also submitted that the words used in Rule 8(5) to the effect that "whether he desires to be heard in person" is in respect of the reply submitted to the charge sheet served upon the officer.

9. We have heard learned counsel for the parties and perused the record.

10. The Tribunal while dealing with the issue in question in regard to the validity of the order dated 14.7.2015 by means of which the Government has proceeded to appoint an enquiry officer and Presenting Officer by exercising powers under Rule 8(2) and 8(6)(c), proceeded to quash the order dated 14.7.2015 and remanded the matter back to the respondents to institute the disciplinary proceedings from the stage of submission of reply dated 16.7.2015 read with representation dated 20.07.2015 and proceed as per Rule 8(2) read with Rule 8(6) of the 1969 Rules.

11. The turn of events in the present case go to indicate, according to the averments made in the Original Application, that on 10.7.2015 at around 4.45 P.M. the opposite party no.1 was extended threat by Sri. Mulayam Singh Yadav, Ex Chief Minister of Uttar Pradesh, National President of Samajwadi Party and father of current Hon"ble the Chief Minister of Uttar Pradesh Sri. Akhilesh Yadav, in respect of the matter related with the complaint made by the wife of the opposite party no.1 before Lok Ayukt in respect of Mining Minister when the opposite party no.1 was sitting in his office. The opposite party no.1 thereafter presented a complaint on 11.7.2015 before the Station House Officer, Police Station Hazratganj, Lucknow for registration of an FIR against Sri. Mulayam Singh Yadav. The S.H.O., Hazratganj, Lucknow received the application, but did not register the FIR against Sri. Yadav and the matter remained pending before the S.H.O., Hazratganj, Lucknow. These state of events prejudiced the State Government and the State Government started vengeance against the opposite party no.1 in all possible manner. On 13.7.2015 the State Government suspended the opposite party no.1 on frivolous charges as enumerated in the office order dated 13.7.2015 and on the same day the State Government also initiated the disciplinary proceedings against the opposite party no.1 under Rule 8 of 1969 Rules. Along with the aforesaid order, the State Government presented a 16 point charge-sheet against the opposite party no.1. The opposite party no.1 was asked through the order dated 13.7.2015 to submit his written statement of defence within 15 days of receipt of the charge sheet through the Director General of Police. It was also directed that in case he fails to submit his reply

within 15 days, it would be understood that he has nothing to say and the State Government can proceed unilaterally in the matter. It is stated that opposite party no.1 was away from Lucknow on 13.7.2015 and when he came back to Lucknow on 15.7.2015, he received all the orders of the State Government and immediately submitted his reply within 24 hours on 16.7.2015 vehemently denying all the charges levelled against him. Thereafter, opposite party no.1 presented another application before the State Government on 20.7.2015, wherein it was said by him that he has already submitted his reply on 16.7.2015 denying the charges and if the State Government is not ready to accept his written statement of defence, then he may be heard in person by the Hon"ble Chief Minister in the capacity of decision making/competent authority and to allow him to explain the facts as provided under Rule 8(5) of the 1969 Rules. Opposite party no.1 also requested by means of letter dated 20.7.2015 that any final decision taken by the State Government to proceed further or to drop the disciplinary proceedings initiated under Rule 8 of the 1969 Rules, be kindly taken only after the personal hearing under Rule 8(5) is given to him as he was having a right under Rule 8(5) of the 1969 Rules to be heard in person by the Hon"ble Chief Minister in the capacity of disciplinary authority. He also requested that he may be allowed to explain all the relevant facts before the Hon"ble Chief Minister as the competent authority/decision maker in this quasi-judicial proceedings before any final decision to proceed further, if any, is taken and allowing him a fair hearing in the matter in accordance with Rule 8(5) of the Rules. On 21.7.2015, opposite party no.1 got another order dated 14.7.2015 from the State Government, in which it was said that he has been suspended for gross misconduct on 13.7.2015 and a departmental enquiry has been initiated against him under Rule 8 of the 1969 Rules on 13.7.2015 and since the charges are extremely serious, the State Government by using its power under Rule 8(2) and Rule 8(6)(c) of the 1969 Rules, has decided to appoint Sri. V.K. Gupta, Chairman, U.P. Police Recruitment and Promotion Board, Lucknow as the Enquiry Officer and I.G. (Karmik), U.P. as the ex-officio Presenting Officer. The aforesaid order also indicates that the enquiry shall be completed on preferential basis and the report shall be submitted by the enquiry officer as soon as possible.

12. On these allegations, the Original Application was filed and it was pleaded therein that the correct interpretation of the Rules has not been made and Rule 8(6)(a) has not been given effect to and rather has been ignored while appointing the enquiry officer. Opposite party no.1 after receiving the charge sheet on 15.7.2015, has submitted his reply on 16.7.2015 and another letter dated 20.7.2015 has been written to the disciplinary authority requesting him to hear the opposite party no.1 in person.

13. For appreciating the argument of counsel for the parties, it would be relevant to reproduce Rule 8 of the 1969 Rules, which is most relevant for the purposes of the decision in the present case. For ready reference, Rule 8 of the 1969 Rules is quoted as under :-

" 8. Procedure for imposing major penalties.--

(8.1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10 or provided by the Public Servants (Inquiries) Act 1850 (37 of 1850) where such inquiry is held under that Act.

(8.2) 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 member of the Service, it may 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.

(8.3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the Service to which the member of the Service belongs.

(8.4) Where it is proposed to hold an inquiry against a member of the Service under this rule and or rule 10, the disciplinary authority shall draw up or caused to be drawn up--

(i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehavior 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 member of the Service;

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

(8.5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service 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.

(8.6) On receipt of the written statement of defence the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted and where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by the member of the Service, the disciplinary authority 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 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.

x x x x x x x x"

14. Rule 8(2)(b) of the Rules defines the disciplinary authority as the authority competent under these Rules to impose on a member of service any of the penalties specified in Rule 6. Rule 6 provides various minor and major penalties. Rule 7 is about the authority to institute proceedings and to impose penalty. Rule 8(1) provides that no order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10 or provided by the Public Servants (Inquiries) Act, 1950 (37 of 1850) where such inquiry is held under that Act. The scheme contemplated in respect of the holding of the enquiry, therefore, casts a duty upon the disciplinary authority to proceed in accordance with procedure laid down in Rule 8. Rule 8(1) imposes an obligation upon the disciplinary authority to proceed in the matter after holding an enquiry in the manner as provided in these rules. Rule 8(2) provides that 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 member of the Service, it may appoint under this rule or under the provisions of Public Servants (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth thereof. The words used in Rule 8(2) itself indicate that the disciplinary authority has to form an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour and how that opinion is to be formed, has been laid down in Rule 8(6)(a), which stipulates that on receipt of the written statement of defence, the disciplinary authority may appoint, under sub-rule(2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted and where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in Rule 9. Rule 8(5) casts an obligation upon the disciplinary authority to deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of the documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service 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. Rule 8(2) has to be read with Rules 8(4), 8(5) and 8(6) as Rule 8(2) indicates that this rule has to be read with Rules 8(4), 8(5) and 8(6). The disciplinary authority when proposes to hold an inquiry against a member of the Service, then how the opinion is to be formed, has been provided in Rule 8(4). Rule 8(4) provides that the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge should be drawn up; 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 member of the Service; (b) a list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained. After undergoing this exercise, the disciplinary authority is required to deliver or cause to be delivered to the member of the Service 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 the charges are sought to be proved and require him to submit a written statement of defence. After submission of written statement of defence, the concerned officer has also required to be asked as to whether he desires to be heard in person. Rule 8(6)(a) casts a duty upon the disciplinary authority to consider the written statement of defence of the officer and thereafter may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into the charges. Now, it has to be seen that whether the disciplinary authority after considering the written statement of defence of the officer, has formed an opinion in respect of the initiation of disciplinary proceedings and for appointment of the enquiry officer with a further rider of hearing the officer in person in case he desires.

15. The argument of learned Additional Advocate General that after receipt of the written statement of defence of the officer concerned, if enquiry officer is appointed, then no prejudice has been caused to the opposite party no.1 and in absence of any prejudice being established, the appointment of the enquiry officer and issuance of the charge sheet will make any difference, has to be considered in the light of the scheme of the 1969 Rules and the safeguard provided to the officer in them. DP & AR found that there was some confusion prevailing in respect of the scheme of the Rules in this regard, therefore, it issued a circular dated 25.11.1981 clarifying the position to a greater extent and thereby laid down the procedure to be adopted by the disciplinary authority in respect of appointment of the enquiry officer and holding of the enquiry. The circular specifies that the disciplinary authority is to consider the written statement of defence of the officer first and thereafter appoint the enquiry officer in the matter as the disciplinary authority after considering the written statement of defence of the officer, may come to the conclusion that some of the charges are liable to be dropped or all the charges are liable to be dropped.

16. Paras 12.1 and 12.2. of the circular dated 25.11.1981 provide as under :-

"12.1. A question has been under consideration of this Department whether rule 8(6)(a) of the All India Services (Discipline & Appeal) Rules 1969, which is analogous to Rule 14(5)(a) of the Central Services (CCA) Rules, 1965, permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused member of an All India Service under the aforesaid rules. The question has been considered in consultation with the Ministry of Law and the position in respect of AIS (Discipline & Appeal) Rules, 1969 is clarified as under :-

The disciplinary authority has the inherent power to review and modify articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused member of an All India Service under Rule 8(6) of the AIS (Discipline & Appeal) Rules, 1969.;

The disciplinary authority is not bound to appoint an Enquiry Officer for conducting an enquiry into the charges which are not admitted by the accused member of the Service but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is not further cause to proceed with."

12.2. It may, however to be noted that the exercise of the powers to drop the charges after the consideration of the written statement of defence by the accused member of the Service will be subject to the following conditions :

In cases arising out of the investigation by the Central Bureau of Investigation, the CBI should be consulted before a decision is taken to drop any of, or all, the charges on the basis of the written statement of defence submitted by the accused member of the Service. The reason recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

The Central Vigilance Commission/State Vigilance Commission/Anti Corruption Deptt. as the case may be, should be consulted where the disciplinary proceedings were initiated on the advice of any of these bodies and the intention is to drop the proceedings altogether, as distinct from dropping or reviewing or modifying some charges."

17. The aforesaid circular quoted herein above, itself goes to indicate that confusion, if any, stands clarified and it is incumbent upon the disciplinary authority to consider the written statement of defence submitted by the officer and thereafter appoint the enquiry officer in the matter. In the present case, it has to be seen that opposite party no.1 was not available before the disciplinary authority and before any written statement of defence could be submitted by the opposite party no.1, the enquiry officer has been appointed by the disciplinary authority. This itself goes to indicate that the disciplinary authority has not proceeded in the manner as provided under the Rules and the requirement of Rule 8(6)(a) of 1969 Rules read with circular dated 25.11.1981 stands altered and the safeguard provided to the opposite party no.1 by way of consideration of his written statement of defence, also stands nullified and his chance of convincing the disciplinary authority not to proceed in the matter, also stands over ruled. Opposite party no.1 has submitted his written statement of defence on 15.7.2015, but prior to submission of the written statement of defence, enquiry officer has already been appointed by the disciplinary authority. Therefore, the opportunity as contemplated under Rule 8(6)(a) stands defeated by virtue of the appointment of the enquiry officer prior to submission of written

statement of defence by the opposite party no.1.

18. The question of bias and prejudice run parallel and if the bias is established from the evidence on record and the statement made and the circumstances leading to such an inference, then the question of prejudice becomes secondary. The aforesaid question came to be considered in the case of V.K. Khanna (supra) and in para 34 of the judgement, the apex Court held as under :-

"34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias - what bias means has already been dealt with by us earlier in this judgement, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz... the inquiry shall proceed irrespective of the reply --- is it an indication of a free and fair attitude towards the officer concerned ? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative--the inquiry follows but not otherwise and it is this part of service jurisprudence, on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

19. The aforesaid question also arose before the learned Single Judge of the Delhi High Court in the case of S.K. Dhawan (supra) and the Delhi High Court dealt with the issue in question extensively and held in paras 13, 14, 15 and 22 as under :-

"13. A perusal of the same would reveal, it deals with the procedure to be followed by the Disciplinary Authority while imposing major penalty. It is a matter of record that the charge-sheet issued to the petitioner was for major penalty. Sub Regulation 3 stipulates that the Disciplinary Authority shall frame definite and distinct charges on the basis of allegations against the officer/employee. The Articles of Charge together with the statement of allegations on which they are based shall be communicated in writing to the officer/employee who shall be required to submit within such time as may be specified by the Disciplinary Authority not extending 15 days or within the extended time as may be granted, a written statement of defence. On receipt of the written statement, the Disciplinary Authority itself or if it considers it necessary to do so appoint under sub-Regulation 2 an Enquiry Officer for that purpose, but it may not be necessary to hold an enquiry, if the Charged Officer admits the charge(s).

14. A similar provision with regard to Union Bank of India had come up for interpretation on identical facts before this Court in the case of M.P. Rajput's

(supra), where a charged officer was denied the right of reply to the charge-sheet issued to him. This Court in para No.13 noting similar provisions of the Union Bank of India has in para No.15 framed a question whether appointment of an Enquiry Officer would stand vitiated, if that is done without first giving delinquent employee a chance to submit his written statement of defence. This Court relying upon the judgment of the Supreme Court in the case of V.K. Khanna's (supra), wherein in para No.34 the Supreme Court has held that "it is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in affirmative the inquiry follows but not otherwise", was of the view that in terms of the judgment of the Supreme Court it is inescapable viz. the appointment of the Enquiry Officer before even the receipt of the written statement of the petitioner would be in violation of Sub-Rule (3), (4) & (5) of the Regulation 6. The effect would be that the entire proceedings conducted by the Enquiry Officer and the punishment imposed on that basis would also stand vitiated.

15. That apart this Court in the case of H.N. Wadhwa's (supra) has also on a similar issue wherein on an additional charge the Charged Officer was not asked to submit the written statement of his defence, this Court through the learned Single Judge held that the employer failed to give an opportunity to the employee to file written statement of defence before commencement of enquiry, which failure was serious enough to vitiate the enquiry to the extent of additional charge which conclusion was upheld by the Division Bench in view of Regulation 6 of the New Bank of India Officers Employees" (Discipline and Appeal) Regulations, 1982. The Division Bench in para No.6 has stated as under:-

"6. The purpose of giving an opportunity to the employee concerned to submit a written statement of his defence is to enable him to satisfy the Disciplinary Authority, by way of his reply, that the charges served upon him were not tenable and called for no inquiry. If the Disciplinary Authority is satisfied with the written statement of defence submitted by employee, he is not required to hold an inquiry against him and may decide to drop the proceedings initiated by him. Therefore, by not giving an opportunity to the respondent to file his written statement of defence, the appellant deprived him of this valuable opportunity to satisfy the Disciplinary Authority that the charges against him did not warrant an inquiry.

22. The misconduct(s) imputed against the petitioner are of very serious nature with regard to his honesty, integrity, devotion and diligence. The petitioner need to have been given an opportunity on the misconduct(s) imputed for the first time in the charge-sheet. Further, the Disciplinary Authority acknowledges the right of the petitioner to file a written statement but the directive to file the written statement of defence before the Enquiry Officer is not contemplated under Regulation 6. The statement of defence should and must be considered by

the Disciplinary Authority before even appointing an Enquiry Officer to conduct the enquiry. This writ petition needs to be allowed in view of the position of law, noted above. The impugned orders dated February 25, 2000, January 18, 2001, August 18, 2002 and June 18, 2002 are set aside."

20. In para 22 of the aforesaid judgement, the Delhi High Court finally held that the disciplinary authority though acknowledges the right of the petitioner to file a written statement, but the directive to file the written statement of defence before the Enquiry Officer was not contemplated under Regulation 6. Therefore, the statement of defence should and must be considered by the disciplinary authority before even appointing an enquiry officer to conduct the enquiry. With the aforesaid observation, the order impugned in the writ petition was set aside.

21. In the present case, the same position exists and the order passed by the State Government, therefore, suffers from manifest illegality in appointing the enquiry officer without considering the reply of the opposite party no.1.

22. The question of prejudice was put forward and argued in the case of A.K. Pandey (supra) and the apex Court after considering the provision as contemplated under Rule 34 of the Army Rules, held that the period of not less than 96 hours was mandatory in nature. Therefore, the question of prejudice was negated by the apex Court in the aforesaid case.

23. In the case of State Bank of Patiala (supra) various parameters have been laid down by the apex Court in respect of causing prejudice to the person concerned facing in the disciplinary proceedings. The relevant para of the judgement is quoted as under :-

"We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity "and "no

hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and

violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".

(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

24. The aforesaid test laid down by the apex Court covers the case of the opposite party no.1 as he has asserted his right at the very first instance by moving a representation before the disciplinary authority as well as challenging the order before the Central Administrative Tribunal. In the aforesaid case while laying down the various parameters, the apex Court also considered the case of B. Karunakar (supra) and then laid down the test. The provisions contained in Rule 8(6)(a) of the 1969 Rules, is in the interest of a person, who has been proceeded with and not in public interest and once a person who has been proceeded with and his right and fair opportunity have been curtailed, then the order cannot sustained.

25. The provision which is conceived in the interest of the officer proceeded with, has to be held to be mandatory in nature and the violation thereof, amounts to denial of opportunity available to the officer concerned at a particular stage and the said stage has been specifically dealt with in the case of V.K. Khanna (supra) as well as by the learned Single Judge of the Delhi High Court in the case of S.K. Dhawan (supra). The learned Single Judge of the Delhi High Court in the case of S.K. Dhawan (supra) after considering the judgements of Division Bench of that Court in the cases of M.P. Rajput v. Union of India and others, (2009) VAD

(Delhi) 330 and Punjab National Bank v. H.N. Wadhwa, LPA 191/2007 decided on March 04, 2013, specifically held that the language with which the provision is based was existing in the case of B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749.

26. Regulation 6 of Union Bank of India Officer Employee's (Discipline & Appeal) Regulations, 1976 containing the analogous provisions were considered in the cases of M.P. Rajput (supra) and H.N. Wadhwa (supra) and thereafter the view which has been taken by the Tribunal, has been approved.

27. Identical question arose before the Central Administrative Tribunal, Principal Bench in the case of Rama Shanker Mishra (supra) and the said view was expressed by the Tribunal in para 46 of the judgement, which reads as under :-

"46. If one has regard to the above, despite drawing of a charge sheet in November 2005, non-consideration of written statement of defence of the applicant by the State Government, i.e., the disciplinary authority functioning under the State Government and in the facts that no inquiry officer has been appointed, Rule 8 (6) (a) has not been complied with within its entirety and application. Moreover, when the State Government can withdraw charges of one Rajiv Asthana, a Forest Officer of UP cadre, the applicant in the wake of principle of equality enshrined under Article 14 of the Constitution, expects a fair and equitable treatment to him, which, inter alia, would precede consideration of his written statement of defence and the contentions raised thereof with application of mind by the State Government to drop the charges against him. It is unfortunate that despite making a representation, the same has not been taken cognizance of by the charges with the result the applicant has been discriminated invidiously being similarly circumstances, insofar as the charges, which are the same, is concerned. We expect from the State Government, being a model employer, on a direction to consider the written statement of defence of the applicant in the light of the instructions referred to above and also in the light of the similar treatment is meted out to Rajiv Asthana to his request of dropping the charges, which would culminate into a reasoned order passed by them. We also hold that in All India Service Rules before appointing an inquiry officer, it is incumbent and obligatory upon the disciplinary authority to act in consonance with Rule 8 (6) (a) of the Rules *ibid* and the instructions of 1981 and thereafter to appoint the inquiry officer, failure to exercise this obligation causes prejudice to the applicant to the all India servant and would, in turn, be a violation of subsistence rules of procedure, which may vitiate the proceedings."

28. The consistent view of the different Courts has been dealt with in such circumstances and it was held that opportunity provided to the charged officer cannot be said to be a mere formality or procedural in nature and violation of which, will cause prejudice to the charged officer.

29. All the cases which have been relied upon by the learned Additional Advocate General, consistently laid down the same principle of law, which has been laid

down in the case of Khem Chand (supra) wherein in para 19 of the judgement, the following principles were summarised:-

"19. To summarise: the reasonable opportunity envisaged by the provisions under consideration includes--

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based ;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant."

30. But in the said case, the question before the apex Court was that after submission of the enquiry report, no opportunity was given to the charged officer against the proposed action to be taken against him therein. The Court was concerned with the fact as to whether any show cause notice was required to be given against the proposed action taken against the delinquent officer. In these circumstances, it was laid down as indicated in para 19. The interpretation of Article 311 and the opportunity as contemplated therein requiring of giving opportunity to what extent has been considered and it was held by the apex Court that opportunity to give reply against the proposed punishment, was implicit in the said clause. In the said case the question of prejudice did not arise at all for consideration.

31. In the case of A. Sudhakar (supra) also the same principle was adhered to, but the question of prejudice was not in issue in the aforesaid case also.

32. In the case of Ashok Kumar Ghosh (supra), the language used in Regulation 38(2) was altogether a different language and, therefore, the argument raised by the delinquent employee was negated by the apex Court. Regulation 38(2) of the South Bengal State Transport Corporation Service Regulations was considered and after considering the language used in Regulation 38(3), it was held by the apex Court that neither Regulation 38(2) nor Regulation 38(3) provides that before the appointment of the enquiry officer the reply of the delinquent employee is to be considered, whereas in the present case, the position is converse.

33. The question which arose for consideration before the apex Court in the case of Harendra Arora (supra) was as to whether non-furnishing of enquiry report would be fatal unless prejudice is shown. In this context, the apex Court after

following catena of decisions, held that Rule 55-A of the Rules which contemplates for furnishing of copy of the enquiry report, was a procedural one and of a mandatory character.

34. In the case of Kailash Chandra Ahuja (supra) also it was considered as to whether non-supply of the enquiry report will ipso facto result in vitiating the proceedings and declaring the order of punishment as non est and ineffective. There also the same principle of law was laid down. The case of Dharampal Satyapal Ltd. (supra) relied upon by the counsel for the petitioner, is in different context and is in respect of the excise duty. Therein, the apex Court was of the view that a legal obligation was cast upon the tax payer to pay the excise duty and thus came to the conclusion that giving of hearing was not material and negated the plea of the prejudice.

35. In the case of B. Karunakar (supra) the apex Court has considered the question of prejudice in extenso and in the aforesaid case, the prejudice was in regard to non-supply of enquiry officer's report. The aforesaid case dealt with the enquiry in normal circumstances.

36. Here in the case in hand, the question is altogether different and we are concerned with the bias of the petitioners as it has been stated that opposite party no.1 was threatened by Sri. Mulayam Singh Yadav and in consequence thereof, opposite party no.1 tried to lodge an FIR which was not registered by the concerned police station, but on a protest, which attracted the media attention, malafidely opposite party no.1 was immediately placed under suspension and subjected to the disciplinary proceedings. Once the question of bias is writ large, then in the opinion of the Court, the question of prejudice will become secondary in view of the law laid down by the apex Court in the case of V.K. Khanna (supra).

37. The action of the disciplinary authority, who has not cared to consider the written statement of defence of the opposite party no.1 as contemplated under Rule 8(6)(a) of the 1969 Rules and thereby proceeded to appoint the enquiry officer, cannot be held to a valid exercise of power under law. The safeguard which has been provided to the officers belonging to the All India Service, is altogether different in nature as compared to others and since they are discharging very sensitive duties, they are often made the victim of their impartial working and they are subjected to wrath of the Government just to teach a lesson to the officer or to victimise the officer. The safeguard which has been provided under Rule 8(6)(a), is only with a view that the disciplinary authority may consider as to whether the charges levelled against the officer are illusory or fabricated or there is enough evidence and material on record to support the charge and thereafter take a decision to appoint an enquiry officer. The aforesaid process cannot be put in a reverse gear nor the interpretation put forward by the learned Additional Advocate General can be accepted as the language of the 1969 Rules. The imperative duty cast upon the disciplinary authority goes to indicate that the disciplinary authority should proceed in the

manner as contemplated under law and as laid down in the 1969 Rules and he can not circumvent or bypass the said procedure only on account of malice and bias.

38. In the above circumstances, we do not find any merit in this writ petition.

39. Writ petition is accordingly dismissed.