(1984) 12 AP CK 0031

In the Andhra Pradesh High Court

Case No : W.A. No. 919 of 1983

Union of India and Another APPELLANT

Vs

Mahendra Kumar RESPONDENT

Date of Decision : 13-12-1984

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 11, 12, 13, 14

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1), 9

Citation : (1985) 2 LLJ 108

Hon'ble Judges : K. Jayachandra Reddy, J;A. Lakshmana Rao, J

Bench : Division Bench

Judgement

Jaychandra Reddy, J.—This Writ appeal by the Union of India represented by its Secretary Department of Service and Technology, New Delhi is directed against the judgment of our learned brother Jeevan Reddy, J.

2. The respondent Sri Mahendra Kumar was selected and appointed as Officer Surveyor in the Department of Survey of India in they year 1959. From the year 1978 he has been functioning as General Secretary of the Survey of India Class-II Officers'' Association. The Surveyor-General of India, Dehradun, U.P. State by his order, dated 20th October, 1978 suspended him from service pending an enquiry into certain charges. Subsequently the suspension was revoked. Meanwhile disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as C.C.S. (C.C.& A.) Rules, were initiated and a memo containing three charges was served on him on 6th November, 1978 and they are as follows :-

"(1) That, the said Shri Mahendra Kumar while functioning as Officer Surveyor in the Centre for Survey Training and Map Production, Survey of India, Hyderabad, during the period February, 1978 wrote an anonymous letter addressed to Lt. Col. (now Colonel) P. Misra, Director, Survey Training Institute (CST & MP), Survey of India, Hyderabad, containing improper remarks, in a manner unbecoming of a Government servant, and thereby violating Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

(2) That, the said Shri Mahendra Kumar while functioning as Officer Surveyor in the Centre for Survey Training and Map Production, Survey of India, Hyderabad during February, 1978 and March, 1978 respectively wrote an anonymous letter and a pseudonymous letter both addressed to the Union Finance Minister, containing remarks amounting to complaints against officers of Survey of India and criticising the manner of functioning of Government of India, in a manner unbecoming of a Government servant and thereby violating Rule 3(1)(iii) and Rule 9 of the Central Civil Services (Conduct) Rules, 1964.

(3) That, the said Shri Mahendra Kumar while functioning as Officer Surveyor in the Centre for Survey Training and Map Production, Survey of India, Hyderabad during the period between June 1978 and August, 1978 most improperly circulated anonymous cyclostyled "bulletins" titled "Survey of India Civilian Officers'' Information Bulletin ...." from time to time, which included serious and derogatory allegations against superior officers of Survey of India, intended to create disaffection and division amongst the officers in the department and cause conditions prejudicial to the smooth running of administration and criticising the action of the Central Government in regard to its policies, and acted in a manner unbecoming of a Government servant, thereby violating Rule 3(1)(iii) and Rule 9 of the Central Civil Services (Conduct) Rules, 1964".

3. An Enquiry Officer was appointed. Both sides adduced evidence. Before the Enquiry Officer the respondent admitted having written these letters. On the basis of the material on record, the Enquiry Officer held that the first letter which is the subject matter of charge No. 1 did not contain any improper remarks. With regard to charge No. 2, he held that in view of the admission made by the petitioner having written the letters, until and unless an enquiry is held into the truth or otherwise of the allegations made therein, it is not possible to hold that they contained false, unfounded or imaginary complaints. So far as the third charge is concerned, it was held that it is not proved. The report was duly submitted to the disciplinary authority, viz., the Surveyor-General of India, who disagreed with the report of the Enquiry Officer and also held that all the three charges were proved against the respondent and awarded punishment of dismissal from services as not being a fit person to be retained in Government service. Against the said order the petitioner i.e., the respondent herein preferred an appeal to the Union of India, which is the appellate authority. Pending the appeal, the Union Public Service Commission was consulted in the matter as provided under the Rules and after receipt of opinion of the Union Public Service Commission the appellate authority modified the sentence of dismissal to one of reduction to the next lower post of Surveyor (Section Grade) on a pay of Rs. 900/- per month in the scale of Rs. 550-900/-, for a period of five years, with the stipulation that the petitioner will be restored to his original post on the expiry of the period of reduction, and that on restoration, such

reduction will not affect his seniority and pay. It may be noted here that in its advice the Union Public Service Commission observed that charge No. 3 was not proved and that only charge Nos. 1 and 2 are partly proved. Challenging the said order of the Union of India, the respondent filed the writ petition.

4. It was contended before the learned single Judge inter alia that the three letters in question cannot be said to contain any improper or undesirable matter, the making of which can be termed as unbecoming of a Government servant, within the meaning of Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules (hereinafter referred to as "the C.C.S. (conduct) Rules"). The other submission was that the appellate order is not in accordance with sub-rule (2) of Rule 27 of the C.C.S. (C.C.& A) Rules and therefore it is liable to be set aside. It may not be necessary in this appeal to refer to the other submissions advanced before the learned single Judge. With regard to the first submission the learned single Judge held that a reading of the letter does not disclose any conduct unbecoming of a Government servant and therefore Rule 3(1)(iii) of the C.C.S. (Conduct) Rules is not attracted. Regarding the second submission the finding of the learned Judge is that the order of the appellate authority is not in accordance with Rule 27(2) of the C.C.S. (C.C.& A) Rules and therefore it is liable to be set aside.

5. In this appeal Sri. K. Nagaraja Rao, the learned Standing Counsel for the Central Government appearing for the appellant submits that the writing of anonymous letters and the pseudonymous letter making serious allegations against the Head of the Department as well as the Department as such in general undoubtedly amounts to a conduct which is unbecoming of a Government servant and therefore Rule 3(1)(iii) is attracted. It is also his submission that if such conduct is condoned it amounts to encouraging indiscipline among the services which will affect the smooth functioning of the Department. The learned counsel for the appellant also submits that the order of the appellate authority satisfies the requirement of Rule 27(2) of the C.C.S. (C.C.& A.) Rules and that the, appellate authority need not give elaborate reasons in support of its conclusions. It may be noted here that the Union Public Service Commission in its opinion exonerated the respondent of the charge and therefore it is not necessary to consider that charge.

6. We shall first take up the first submission of the learned counsel for the appellant. Rule 3(1) of the C.C.S. (Conduct) Rules reads as under :-

"Rule 3(1). Every Government servant shall at all times -

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do noting which is unbecoming of a 5 Government Servant"

This Rule provides that a Government servant shall at all times maintain absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. The rule is intended to forbear any Government servant from committing any act of misconduct. He should not act in an improper way which is unsuited to his position as Government servant. What type of acts can be said to be violative of this rule are not enumerated in the rest of the rules. Rules 4 to 22 of the C.C.S. (Conduct) Rules lay down as to what the Government servant should not do. But for the purpose of rule 3(1)(iii) of these Rules, what we have to see is whether the act complained of can be said to be unbecoming of a Government servant. For this purpose the facts obtaining in each case assume importance.

7. The gravities of the first two charges served on the respondent is that he wrote the letters in question making certain allegations against the Head of the Department and the Department in general. For a better appreciation of the point it is necessary to extract the three letters in full :-

"Letter No. 1

Dear Colonel,

Congrats on elevation to the coveted post and best wishes for a happy and long tenure.

It appears, you have too soon identified yourself with a group. You may be right because your present position is only by virtue of being a person of that group. But kindly don''t forget, you are the head of a family where others cannot be ignored or slighted. Well, if you are different to them as such, the confidence reposed in you while sitting on the particular chair will be a betrayal of your conscience.

Well, act as you please, but remember God i.e., your own people and the service to them. Life comes but once.

God be with you.

Yours sincerely A well wisher. Letter No. 2 To

Hon''ble Sri H. M. Patel, Union Finance Minister, Government of India, New Delhi Revered Sir, The purpose of this note is to draw your kind attention towards the financial irregularities in Survey of India under the control of the Department of Science and Technology.

2. Besides the large scale squandermania in regard to purchase of equipment (mostly in foreign exchange) the use of which is not known even to the bosses, the expansion of the department with a view to double up its budget allocations is in the offing. Well, it is not a way to provide employment in doles, when there is no work except to increase the bureaucratic structure to a staggering size. Has any body gone into the manpower and work aspects ? Before any financial sanction could be provided, kindly do weigh its pros and cons in terms of inflationary pressure.

3. I wish to draw your pointed attention to the fixation of pay/allowances of army

officers in this organisation. Everywhere in a Government Department, the Accounts Officer fixes the pay of an individual in a given scale of pay and thus the allowances ordered accordingly.

4. For an army officer in Survey of India, twice a year, pay is fixed by the Surveyor-General always upward, almost unheard of in Government service. The fixation of allowances varies from item to item and the mode of receiving and paying. The definition of Basic pay changes from Allowance to Allowance.

5. The components of pay for an army officer as in Survey of India are :

1) Basic pay (Pre revised scale prior to 1973)

2) Personal Pay (Ranging from Rs. 600 to 700/-)

3) Old D.A.

4) Interim Relief.

According to 1973 rules the sum of the four items should be the basic pay for the purpose of allowances, but it changes in-variably in a way so that the Government is always at a loss. Since the army officers in the civil guise are at the helm of affairs, they must get benefited by all means.

6. The House Rent allowance :- (Say at Hyderabad) for private accommodation at 15% on the sum total of all the four whereas the house rent payable for Government accommodation is 10% of the sum of 1 and 2 with 3 and 4 conspicuously absent from the calculations. For a person with little intelligence the basic pay for the above purpose should be the same. Well, this can be verified from the Survey of India Office at Hyderabad and a probe ordered in this irregularity.

7. For the purpose of ADA :- (Particularly the latest instalment since 1st September, 1977 which is upto basic pay of Rs. 1600/- with marginal adjustments, the basic pay is taken as item 1 i.e., Basic Pay in old scale only. The personal pay which gives fat HRA and other allowances is conveniently ignored. How does any body reconcile to this chicanery ?

8. Army officers when in Survey of India Civil Scientific service are NOT allowed for kit maintenance allowance since they are not required to use the kit at all. This allowance is NOT even given to them and so also no mess/band allowance. However, for Income Tax Computation an imaginary rebate to the tune of Rs. 950/- is claimed by individual. It is strange how income tax rebate could be allowed on allowance which is NOT paid.

As custodian of the National exchequer, I as an ordinary taxpayer request you kindly to look into the whole gamut of cheating and tax evasion by these officers. The Department of Science and Technology appears to be abdicating its responsibility. You may order full enquiry into the whole affair and set the matters right.

I am sure that this note which has been written with a national spirit will NOT find its way in dust bin.

With solemn regards,

Yours respectfully, ''An Indian Citizen in the Service of Motherland, Hyderabad 10th March, 1978. Letter No. 3 To The Hon''ble Sri H. M. Patel, Union Minister of Finance, Government of India, New Delhi. Sir, An earlier letter on the subject, as below, would have reached you. Inspite of any action or no action it is our religious duty to go on reminding about the financial irregularities in Government Departments.

In survey of India, under the control of the Department of Science and Technology, the definition of pay in respect of a particular group of officers changes for House Rent Allowance (admissible for private accommodation) so that the public exchequer is always loser.

This is irregular and smacks of cheating. May be the amount involved when totalled is an insignificant fraction of the nation''s budget, but only these insignificant leakages, from the consolidate funds make a mighty dent which probably force you to go for excise levels for necessary balancing.

There are officers who are not entitled for any kit allowance. Moreover, yet they claim exemption in Income Tax on this invisible allowance. Since the bureaucracy is all powerful, nobody cares to put a stop to these contradictions.

We trust that as custodian of national finances you will take steps to put an end to these unethical practices.

With regards,

Yours faithfully, ...".

The respondent did not deny the fact of having written these letter in question. But what he pleaded was that his sole object in addressing these letters was to express his agony and anguish regarding the affairs of the Department actuated by a spirit of patriotic fervor. The Enquiry Officer regarding the first letter was noting that writing of anonymous letter was not expected of Government servant, however, observed that there is no sufficient evidence to prove that the allegations in the letter in question contained improper remarks. Regarding the other two letters he held that the charge against the respondent that he wrote both these letters was proved but added that unless the contents of those both the letters were thoroughly investigated into it could nor be conclusively stated that the respondent had made false, unfounded and imaginary complaints and since no investigation has been made and sufficient evidence had not been led in the enquiry in support of the allegations, it is not possible to arrive at a positive conclusion and therefore the second charge also should be held not proved. As already mentioned, the disciplinary authority disagreed with the findings of the Enquiry Officer and ultimately awarded the penalty of dismissal. The appellate authority consulted the Union Public Service Commission as provided under the Proviso to Rule 27 of the C.C.S. (C.C.& A.) Rules and obtained its advice. The Service Commission after due consideration of the entire material observed regarding the first change that the anonymous letter, which is admittedly written by the respondent contained improper remarks and writing such letter amounted to an act which is unbecoming of a Government servant and therefore charge No. 1 is proved. Regarding the second charge, the Service Commission noted the fact that the respondent has admitted having written these letters and rejected the plea of the respondent that he wrote those letters actuated by a spirit of patriotic fervour and that though the respondent did not indulge in making allegations against any particular officer of the Department of Survey of India, but he did mention certain aspects regarding the functioning of the Department of Survey of India which, as a Government Officer, he should have meticulously refrained from doing so. The other limb of the second charge was that there is a violation of Rule 9 of C.C.S. (Conduct) Rules. So far as this charge is concerned, the Service Commission has observed that the rule is not attracted and accordingly held that charge No. 2 is partially proved.

8. The learned counsel for the respondent submits that clause (iii) of the Rule 3(1) of the C.C.S. (Conduct) Rules is vague it is difficult to say in a precise manner as to what amounts to ''unbecoming of a Government servant'' and that writing letter either anonymous or pseudonymous highlighting certain irregularities and bringing the same to the notice of the authorities does not under any circumstances amount to an act which is unbecoming of a Government servant. Rule 3(1)(iii) of the C.C.S. (Conduct) Rules came up for consideration before a Division Bench of this Court in Khaja Khan v. Postmaster-General (1975 1 An. W.R. 64). The learned Judge after referring to various authoritative pronouncements considered the rights protected under Article 19 of the Constitution of India and also the argument that Rule 3(1)(iii) of the C.C.S. (Conduct) Rules is vague and arbitrary. The Division Bench observed :"

Regarding this impugned Rule 3(1)(iii) there is no direct authority of any Court. We may point out that the words "do nothing which is unbecoming of a Government servant" may be either in relation to his duties of office as well as to his private life. This rule enjoins a Government servant at all times whether in office or outside to do nothing which is improper or inappropriate or unsuited to his position as a Government servant"

The Division Bench further observed :

"If the Government servant is asked to do nothing which is unbecoming of a Government servant, he is merely asked to keep within the bounds of administrative decency. Given commonsense and a sense of decency, it will not be difficult to judge whether what conduct amounts to unbecoming conduct. What is unbecoming can always be ascertained, having regard to the entirety of conduct. We do not think the rule suffers from the vice of vagueness. Thus, it could form the subject-matter of the charge".

The Division Bench accordingly upheld the validity of the rule.

9. The learned counsel for the respondent further submits that Rule 3(1)(iii) of the C.C.S. (Conduct) Rules is general rule and if at all any Government servant is to be punished for misconduct it can be done only in contravention of Rules 4 to 22 of the C.C.S. (Conduct) Rules. His further submission is that Rules 8 and 9 of the C.C.S. (Conduct) Rules specifically deal with writing letters, anonymous, or pseudonymous and therefore the question of invoking Rule 3 does not arise. We are unable to agree, as these rules are not relevant for the purpose of this case. Rules 8 and 9 of the C.C.S. (Conduct) Rules specifically prevent Government servant from resorting to writing any letter to any newspaper or periodical, either anonymously or pseudonymously, either in his own name or in the name of others, and making any statement of fact or opinion which has the effect of adverse criticism against Government policy. In support of his contention the learned counsel for the respondent relied on a judgment of the Supreme Court of India in A. L. Kalra v. P. & E. Corporation of India Limited [1984 II-LLJ 186]. In that case an employee of the Project and Equipment Corporation of India Limited was removed from service on the ground that he committed certain acts of misconduct viz., that he took a loan for construction of a house but failed to furnish the relevant documents, nor did he refund the amount of advance and that he also drew a conveyance advance, but he did not repay the amount, Rule 4(1) of the Project and Equipment Corporation of India Ltd., employees (Conduct, discipline and appeal) Rules is in the same language as that of Rule 3(1)(iii) of C.C.S. (Conduct) Rules. Their Lordships after considering the other rules along with Rule 4 therein held that the acts complained of do not amount to nay misconduct as enumerated under the various rules. While holding so, their Lordships observed that Rule 4 is a general rule laying a norm of behaviour and unless a specific conduct amounts to misconduct which falls in any one of the misconducts enumerated in Rule 5, an officer cannot be punished. A careful perusal of the judgment shows that the rules framed by the Project and Equipment Corporation of India Ltd., which is a Public undertaking are Conduct and discipline rules wherein all the misconducts are enumerated in Rule 5 and the procedure and the punishment that can be awarded also mentioned in the same rules. But in the instant case the C.C.S. (Conduct) Rules do not enumerate any acts of misconduct as such, but only lay down what Government servants should not do. So far the imposition of penalty is concerned, we have to look to C.C.S. (C.C.& A.) Rules to which aspect we shall advert later. Therefore the decision of the Supreme Court has no application to the facts of this case.

10. Now bearing in mind the observation made by the Division Bench of this Court, we shall examine the contents of the letters. As already noted, though the first two letters are anonymous, the respondent ultimately admitted having written these letters. The third one is pseudonymous. In the first letter no doubt the author firstly intended to offer his congratulations, but categorically suggested that the Director to whom it was addressed identified himself with a group. This certainly amounts to an improper remark. It is no doubt stated in

that letter that the Head of the Department, the Director, should not ignore the others. But a plain reading of the letter shows that certain indirect and satirical observations which amount to improper remarks are made. In the second letter certain financial irregularities in the Department of Survey of India are enumerated including rebate of income tax that was allowed and the author ultimately stated that the Union Minister as a custodian of the national exchequer should look into the "whole gamut of cheating and tax evasion by these Officers". This remark which is made against all officers is certainly improper. The Enquiry Officer also held that the respondent who wrote this letter acted in a manner unbecoming of a Government servant, but exonerated him on the ground that an investigation was not made into truth or otherwise of these remarks. Though the officer has not indulged in making remarks against any particular officer, he did make certain improper remarks regarding functioning of the Department. The third letter, also addressed to the Union Minister of Finance, which is pseudonymous stands on the same footing it was written by way of a reminder and in that letter it was mentioned that a particular group of officers are getting House Rent Allowance at the cost of public exchequer which is "irregular and smacks of cheating", and in our view the respondent, a Government servant, ought not to have made such an improper remark.

11. The learned single Judge while observing that anonymous or pseudonymous such letters should not be encouraged in the interests of discipline in the departments, however held that such letters or petitions very often lead to discovery of several fraudulent and illegal going-on, which equally serves the public interest. We are however of the view that what we are concerned in a case like this is whether the act of the respondent in writing such anonymous or pseudonymous letters making improper remarks against the department itself in which he is serving amounts to a conduct, which is unbecoming of a Government servant. In Kameshwar Prasad v. State of Bihar [1962 I LLJ 249] the Supreme Court held that the Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III. But their Lordships also observed that certain limitations can be imposed in exercising of those rights by clauses 5 and 6 of Art. 19 of the Constitution of India. At this stage it may be noted that the vires of Rules 3(1)(iii) is not questioned either before the learned single Judge of before us. Therefore, we have to proceed on the basis that this rule is constitutionally valid. That being so, what all that is required to be considered is whether the acts of the respondent which are complained of, attract Rule 3(1)(iii) of C.C.S. (Conduct) Rules. As observed by the Division Bench in Khaja Khan v. Postmaster-General (supra) it will not be difficult to judge whether what conduct amounts to unbecoming conduct. In O.K. Ghosh and Another Vs. E.X. Joseph, the Supreme Court of India held.

"There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties Discipline amongst Government employee and their efficiency may in sense, be said to be related to public order."

In Pickering v. Board of Education (39) U.S. 563) Marshall, J., held :

"The State has interest as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees"

In this context it must also be noted that in the C.C.S. (Conduct) Rules various types of misconduct are not enumerated. Rules 4 to 22 of the C.C.S. (Conduct) Rules only lay down what a Government servant should not do, but they are not exhaustive. For instance taking bribe is not mentioned as an act of misconduct. But that does not mean that an officer who was found guilty of taking bribe cannot be said as having not committed an act which is unbecoming of a Government servant. The C.C.S. (C.C.& A.) Rules are provided for disciplinary proceedings that can be taken against the Central Government servants and various punishments than can be awarded. Rule 11 of the C.C.S. (C.C.& A.) Rules prescribes various penalties and lays down that

"The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a Government servant, namely :- ....

It may be noted that as per this rule, it is for the disciplinary authority to impose penalties specified therein for good and sufficient reasons. As to what would be the good and sufficient reasons in a given case, depends on the facts and circumstances obtaining in that case. We have already held that the respondent in those three letters which he has admittedly written, has made certain improper remarks, and as a Government servant he should not have indulged in making such remarks, that too by writing anonymous letters at least two of them. No doubt mere writing of anonymous letters by itself may not be culpable, but if he makes certain improper remarks in such anonymous letters certainly it is an act which is unbecoming of a Government servant. Efficiency in a department very much depends on the discipline that has to be maintained. If a Government servant being in service indulges in writing anonymous letters that itself is deplorable and if he further makes improper remarks in such anonymous letters, against his superiors or against the functioning of the department that certainly amounts to an act which is unbecoming of Government servant. Therefore, we are unable to agree with the learned single Judge that Rule 3(1)(iii) of the C.C.S. (Conduct) Rules is not attracted.

12. The appellate authority party allowed the appeal and modified the punishment. Rules lays 27(2) of the C.C.S. (C.C.& A) Rules lays down that the appellate authority shall consider (a) whether the procedure laid down in these rules has been complied with, and if not, whether such noncompliance has

resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on record. Under the proviso to this rule the appellate authority shall consult the Service Commission if necessary. The appellate authority no doubt consulted the Service Commission and obtained its advice. But the order of the appellate authority does not disclose that it had applied its mind to the aspect "whether the findings of the disciplinary authority are warranted by the evidence on the record". The order of the appellate authority read thus :-

"Subject :- Disciplinary proceedings under CCS (CCA) Rules 1965 against Shri Mahendra Kumar, Officer Surveyor, Survey of India - Appeal against the penalty of dismissal from service.

Whereas Shri Mahendra Kumar, Officer Surveyor, Survey of India, was dismissed from service by an order dated 7th July, 1981 passed by the Surveyor-General of India.

2. Now, therefore, the President having considered the appeal dated 20th August, 1981 preferred by Shri Mahendra Kumar and after taking into account the advice tendered by the Union Public Service Commission and all the other factors relevant to the case hereby allows his appeal to the extent that the penalty imposed on him in the said order of the Surveyor-General of India, dated 7th July, 1981 is modified to one reduction to the next lower post of Surveyor (Selection Grade) on a pay of Rs. 900/- per month in the scale of Rs. 550-900 for a period of 5 years, with the stipulation that he will be restored to his original post of the expiry of the period of reduction, and on restoration such reduction will not affect his seniority and pay

3. A copy of the Union Public Service Commission''s letter No. F-3/163/81-6-I dated 8th February, 1982 containing their advice is enclosed".

13. As rightly pointed out by our learned brother Jeevan Reddy. J., the order of the appellate authority is not in conformity with the sub-rule (2) of Rule 27. The appellate order does not even say that it affirms or adopts the reasoning and the findings of the Commission. As already noted the disciplinary authority found the officer guilty of the charge No. 3 also, through the Enquiry Officer exonerated him. The Service Commission in its advice indicated that charge No. 3 is not proved. But the appellate authority does not even mention that it does not agree with the disciplinary authority regarding charge No. 3. That itself shows that the appellate authority did not apply its mind independently. The order of the appellate authority decided ones not also disclose categorically that it accepted the advice tendered by the Service Commission. Be that as it may, as a quasi-judicial authority the appellate authority is expected to apply its mind and record its own findings in compliance with Rule 27(2). In this view of the matter, the order of the appellate authority is liable to be quashed and to that extent we agree with the learned single Judge.

14. The next question is whether the matter should be remanded to the appellate authority for reconsideration at this distance of time in view of our findings that writing of the above mentioned letters amounts to conduct unbecoming or a Government servant attracting Rule 3(i)(iii). The respondent joined the service in the year 1959 and he wrote these letters in the year 1978 by which time he has already put in 19 years of service. He has already undergone the ordeal of enquiry which resulted in the order of his dismissal which was later modified by the appellate authority on 12th February, 1982. No doubt the awarding of penalty is exclusively within the power of the disciplinary authority subject to appeal. But under certain special circumstances the court also, while exercising its jurisdiction under Article 226 of the Constitution of India, should see whether it is necessary in the interests of justice to again remand the matter particularly after a lapse of long time. In Bhagat Ram v. State of H.P. (AIR 1985 S.C. 454) their Lordships while setting aside an order of dismissal considered whether it was necessary under the circumstances to remand the matter or whether the court itself can impose some suitable penalty and observed thus :-

"The question is once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held ? After all what is the purpose of holding a fresh inquiry" Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to us in exercise of our jurisdiction under Art. 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair or conductive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.

The above observations by the Supreme Court apply to the facts of this case in all fours. Taking into consideration all the circumstances, we are of the view that a major penalties is uncalled-for in this case. So far as the minor penalties are concerned, it is not possible in this case to impose the penalty of withholding increments in as much as the respondent has already reached the maximum in the scale of pay even in the year 1978. The other minor penalty that can suitably be imposed in this case is withholding his promotion and such withholding of promotion for a period of three years will, in our view, meet the ends of justice.

15. Accordingly, the writ appeal is allowed and the penalty imposed by the appellate authority is modified to one of withholding of promotion of the respondent for a period of three years with effect from today. No costs.

16. The learned counsel for the appellant orally applied for leave to appeal to the Supreme Court of India. We see no grounds to certify that this is a fit case involving any substantial question of law of general importance that requires to be decided by the Supreme Court. The request is, therefore, rejected.

