
(2011) 03 DEL CK 0509

In the Delhi High Court

Case No : Writ Petition (C) No. 1760 of 2008

Union of India (UOI) and Another

APPELLANT

Vs

Tarlok Singh

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14(18), 32

Constitution of India, 1950 — Article 141, 226, 320(3)

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9(21)

Citation : (2011) 03 DEL CK 0509

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : M.M. Sudan, for the Appellant; Meenu Maini, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioners Union of India through the Secretary, Ministry of Information and Broadcasting and Anr. have challenged the order dated 12th March, 2007 passed by the Central Administrative Tribunal, Principal Bench in O.A No. 2759/2005 titled as Sh. Tarlok Singh v. Union of India and Ors." allowing the original application of the Respondent and setting aside the order dated 28th August, 2002 of major punishment imposed upon the Respondent and holding that consequent to setting aside of major punishment the Respondent shall be entitled for all consequential benefits.

2. The brief facts to comprehend the disputes between the parties are that the Respondent was appointed as JE on 9th June, 1989 and was subsequently promoted as AE (Electrical). On 9th July, 1996 a memorandum of charge sheet was served on the Respondent alleging that he had accepted an alternator of lesser frame size and had falsely recommended passing of the first running account bill of M/s. Escorts Ltd. Allegations were also made that he did not initiate action for testing the alternator. The articles of charges made against the

Respondent were denied by him. An enquiry officer, Sh. Onkarmal Kedia, Commissioner for Departmental Inquiries, CVC was appointed to enquire into the charges framed against the Respondent. Though an enquiry was conducted in which the Respondent did not examine himself as witness, however, in compliance with Rule 14(18) of CCS (CCA) Rules, 1965 the evidence against the Respondent was not put to him. The allegation was also made by the Respondent that the enquiry officers conducted the enquiry proceedings in violation of the principles of natural justice.

3. The enquiry officer gave a report dated 26th May, 1998 and a copy of the enquiry report was also given to the Respondent. The Respondent submitted a representation dated 6th May, 1999 categorically contending that the enquiry was not conducted in compliance with the principles of natural justice; that the enquiry officer has not put the evidence which was against the Respondent in compliance with Rule 14(18) of CCS (CCA) Rules, 1965 and also that the disciplinary authority, without properly considering the representation and without dealing with the pleas and contentions raised by the Respondent imposed a penalty of withholding of two increments for a period of two years with cumulative effect.

4. The Respondent also came to know that the UPSC was consulted regarding the punishment to be imposed, however, copy of the opinion of UPSC was not given to the Respondent, which was mandatory. The Respondent, therefore, filed an appeal on 17th March, 2003 which was converted into a revision petition, however, the reviewing authority rejected the same by order dated 30th November, 2005. Aggrieved by the order, the Respondent filed an original application being O.A No. 2759/2005 before the Central Administrative Tribunal, Principal Bench on the grounds inter-alia that the enquiry officer did not put the evidence adduced against him during the enquiry in compliance of Rule 14 sub Rule 18 of CCS (CCA) Rules, 1965 which contemplates that the enquiry authority, after Government servant closes his case, and if the employee has not examined himself, shall generally question him on the circumstances appearing against him in the evidence, for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him. The Respondent also challenged the appointment of Sh.O. Kedia, Commissioner for departmental enquiry, CVC, who conducted the enquiry against the Respondent, on the ground that he was also directed to hold the enquiry in case of Sh.D.S. Manchanda and Sh. Lalit Kumar against whom similar charge sheet had already been issued.

5. The Respondent contended that after examining the prosecution witness since there was no defence witness, the enquiry officer ought to have put the evidence adduced during the enquiry against the Respondent in compliance of Rule 14(18) of CCS (CCA) Rules, 1965. The Respondent also contended that though there were three charges against the Respondent, the enquiry officer did not put any question in regard to any evidence which was adduced against him during the enquiry. The Respondent categorically contended that the enquiry officer had

only put two generic questions in regard to charge No. 2 and charge No. 3 stipulating rebuttal of charges, but did not put any question regarding the evidence which had been recorded against the Respondent and which was required to be explained by him. The Respondent in the circumstances contended that the infirmity in the enquiry proceedings vitiates the entire enquiry and relied on "Ministry of Finance v. S.B. Ramesh", 1998 2 SLJ 67 SC holding that the failure of enquiry officer to put mandatory question on the charged officer regarding circumstances appearing against him would vitiate the entire enquiry proceedings.

6. The Respondent also objected to the enquiry officer directing the presenting officer to give his brief to refer to some extraneous material which was not produced during the enquiry. In the brief the presenting officer referred to the charge leveled against the Respondent being investigated through Sh.V.B. Gupta, Director, CEA regarding the frame size on the basis of which the Director General, AIR was directed to replace the Jyoti make alternator of the same size THJD-66-4-B3 with the alternator of the frame size as specified in the agreement. The presenting officer also referred to the advice of the CVC. Relying on the presenting officer's brief, it was contended that the chargesheet issued against the Respondent was based merely on the enquiry report submitted by Sh.V.B. Gupta, Director, CEA but surprisingly the basis on which the chargesheet was issued to the Respondent was not given to the Respondent. In the circumstances it was contended that even the enquiry officer could not have relied on preliminary enquiry without supplying a copy of the same to the Respondent. It was further asserted that reliance of the enquiry officer on the report of Sh.V.B. Gupta, a copy of which was not supplied to the Respondent vitiates the entire enquiry proceedings. The Respondent also objected to the appointment of Sh. Uppal as presenting officer and contended that his appointment had seriously prejudiced the case of the Respondent as Sh. Uppal was one of the officers, who was concerned with the whole episode in respect of which the charges had been made against the Respondent. Reliance was placed by the Respondent on Rule 57 of CPWD Code. The Respondent also relied on a letter by the presenting officer Sh. Uppal, who had not raised any objection in regard to any item accepted by the Respondent. Relying on the testimonies of Sh. Manchanda who was the Chief Engineer in connection with the case of Sh. Lalit Kumar and Sh.D.C. Banerjee who was the department witness in the case of Lalit Kumar, it was contended that they were categorical in stating that the frame size would not materially effect the capacity of the alternator as long as it satisfies other technical parameters without causing excessive heat in the winding. It was thus contended that the charges have not been made out even on the basis of the department witnesses. The Respondent before the Tribunal also challenged the punishment imposed upon him on the ground that the UPSC recommendation which was relied upon by the Disciplinary Authority, a copy of which, as also a copy of the CVC report was not supplied to him, which was mandatory and thus the entire disciplinary proceedings were vitiated. In the

circumstances the Respondent had prayed that his application be allowed and the order of major penalty of withholding of two increments for a period of two years with cumulative effect be quashed.

7. The petition was contested by the Petitioners contending inter-alia that the Respondent had not presented himself as defence witness and he was generally examined on 6th April, 1998 in accordance with Rule 14 sub Rule 18 of CCS (CCA) Rules, 1965. Without categorically denying that the evidence adduced during the enquiry was not put to him, the Petitioners contended that there has been no violation of Rule 14(18) of CCS (CCA) Rules, 1965. The Petitioners, however, did not deny that the questions put to the Respondents were generic in nature e.g do you have anything else to say"; the prosecution has charged you with proposing over payment of Rs. 1.03 lakhs to the agency while recommending release of payment of part rate after accepting supply of LT panel. Your comment" Regarding the copies of recommendation of the UPSC and the advice of CVC, the Petitioners contended that in his written statement of defence dated 27th July, 1996, the Respondent had not sought for the copies of the documents. Regarding the appointment of Sh.A.J.S. Uppal as presenting officer it was asserted on behalf of the Petitioners that appointment was as per rules and there was no question of any prejudice caused to the Respondent. Regarding the preliminary enquiry it was clarified that it was conducted by Sh.V.B. Gupta, Director, CEA and not by Sh. Uppal. It was further contended that the duty of presenting officer is only to present the case for and on behalf of the disciplinary authority and, therefore, the question of bias cannot be attributed to him.

8. The Tribunal after noting the pleas and contentions of the parties relied on State Bank of India and others Vs. D.C. Aggarwal and another, holding that it is obligated upon the department to serve a copy of the report of CVC along with the enquiry officer's report to the charged officer as the charged officer would be deprived of a reasonable opportunity in contravention of the principles of natural justice, if the copy of the report is not supplied to him. Taking into consideration the three questions put to the Respondent the Tribunal noted that it is the Articles of Charge that had been put to the Respondent and not the evidence adduced during the enquiry against him and, therefore, there was no valid compliance of Rule 14(18) of CCS (CCA) Rules, 1965. In paragraph 6 of the order, the Tribunal held that there has been non compliance of Rule 14(18) of CCS (CCA) Rules, 1965 and the enquiry is also vitiated on account of non supply of CVC recommendations. The reasons and observations of the Tribunal are as under:

6. It is trite that till the decision of the Tribunal is not overturned or modified, the same has precedent value and has to be followed under the doctrine of precedent. It is also trite that in a disciplinary proceeding, Courts/Tribunal cannot go into the correctness of the charge and re-appreciate the evidences by assumption of the role of Appellant authority. It is open for the Courts/Tribunal to

interfere in the matter only when the disciplinary proceedings are based on "no evidence" "surmises" and "conjectures". Supply of CVC second stage advice has been made obligatory on the basis of D.C. Aggarwal's case (Supra). It is also trite that administrative instructions, if not specific, would not be applied retrospectively. The decision in D.C. Aggarwal's case (Supra) relied upon in the T.K. Nath's case, has held that non-supply of CVC recommendations, which are administrative in nature along with the enquiry report, not only prejudice the concerned but deprived him of a reasonable opportunity to show cause against the enquiry report which ultimately affected the substantiate right of the applicant to effectively defend. The decision of the Apex Court is binding on us under Article 141 of the Constitution of India and we are in agreement with the decision of the Coordinate Bench decision in T.K. Nath's case (Supra). We rule that non-supply of CVC second advice to the applicant has certainly prejudiced him in the enquiry, which vitiates the subsequent orders. In so far as Lalit Kumar's case is concerned, despite stay, we find that issue of CVC advice has been left open. Accordingly, stay of operation of our order would not be an impediment for us to rely upon in T.K. Nath's case as well as D.C. Aggarwal's case (Supra). The issue pertaining to punishment of withholding of two increments has been a matter of decision in an identical situated case of Harish Kumar v. Union of India and Ors. OA-256/2002 decided on 5.2.2004 by the Jodhpur Bench of the Tribunal, wherein it is ruled that whereas increment can be withheld when one gets it and by no stretch of imagination two increments can be withheld in a year since one does not get them at all. From the perusal of penalty order, it is certain that penalty order is not in consonance with Rule 11 of CCS(CCA) Rules, 1965 as the same has been issued with a closed mind, which cannot be sustained in law. As regards violation of Rule 14(18) of CCS(CCA) Rules is concerned, CCS Rules are formulated for according a reasonable opportunity to a Government servant. One of the rules is that a delinquent is generally examined. The enquiry officer is obligated to put questions to the delinquent pertaining to the incriminating evidences, brought forth in the course of disciplinary proceedings, with an object sought to be achieved. Accordingly, Rule 14(18) considered by the Apex Court in OA-1826/98 decided on 14.9.2002 Charanjit Singh Khurana v. Union of India as well as by the Ministry of Finance and Another Vs. S.B. Ramesh, The same has been upheld as a mandatory valid compliance, which has been held to have caused prejudice and vitiated the enquiry in Lalit Kumar's case (Supra). In the facts and circumstances of the present case, what we find is that enquiry officer, on general examination of the applicant on 6.4.98, has only put him the article of charge alleged against him but incriminating evidence has not been put. This has deprived the applicant an opportunity of defence by virtue of Rule 14(18) OF THE Rules *ibid*, which is mandatory provision to be complied with and dispensation of which has not ruled either by the Apex Court or any pronouncement. Accordingly, Rule 14(18) has not been validly complied with, which has certainly caused prejudice to the applicant and deprived him to effectively rebut the circumstances appearing against him in the form of evidence. This has also vitiated the orders passed by

the Respondents subsequently. It is trite that it is incumbent upon the enquiry officer to serve a copy of document relied upon so that one gets an opportunity to defend. A reference of V.B. Gupta's report, preliminary enquiry conducted before the disciplinary proceedings has been made. When the enquiry officer was brought to the notice the above objection, no finding has been recorded thereupon. Accordingly, once the evidence of witness where V.B. Gupta's report has been mentioned has been relied upon having not been furnished to the applicant. He has been denied a reasonable opportunity to effectively defend the charges levelled against him.

9. The order of the Tribunal is challenged by the counsel for the Petitioners primarily on the ground that the Respondent was liable to show as to what prejudice had been caused to him on account of non supply of the copy of Union of India (UOI) and Others Vs. Alok Kumar, Union of India and Ors. v. Alok Kumar holding that in terms of CVC circular dated 28th September, 2000 regarding non-furnishing of CVC's, first stage advice to the employee along with the chargesheet, disciplinary proceedings would be vitiated only if it is established that prejudice was caused to the employee in defending himself. It was also held that consultation with CVC is not a mandatory requirement. On the facts of the case the Supreme Court had held that there was nothing on record to show that CVC's advice was taken into consideration and it influenced the mind of the appointing authority and in the circumstances it was held that no prejudice was caused to the employee and failure to supply copies of CVC recommendation/advice would not vitiate the enquiry proceedings. Regarding non compliance of Rule 14(18) of CCS (CCA) Rules, 1965 it was contended that perusal of the record will reveal that the said provision has been complied with as three questions were put by the enquiry officer to the charged officer. The Petitioner also contended that the supply of CVC's second stage advice was introduced by the instruction issued by CVC on 28th September, 2000 and they were prospective in nature whereas in the case of the Respondent the enquiry report was submitted on 26th May, 1998 and the Respondent had submitted his explanation to the same on 2nd February, 1999. The Petitioners also contended that the enquiry officer in his enquiry report has not relied upon the preliminary enquiry conducted by Sh.V.B. Gupta, therefore, no prejudice had been caused to the Respondent on account of non supply of copy of the preliminary report.

10. The learned Counsel for the Petitioner, Mr. Sudan also relied on Union of India (UOI) and Another Vs. T.V. Patel, holding that consultation with Public Service Commission on all disciplinary matters under Article 320(3)(c) is not mandatory and consequently absence of consultation or any irregularity in consultation process or in furnishing copy of advice tendered by Public Service Commission will not vitiate the enquiry.

11. The petition is contested by the Respondent, contending inter-alia that no material should have been relied upon by the enquiry officer, the copy of which had not been relied upon in the charge sheet and which had not been supplied to

the charged officer. The reliance has been placed by the Respondent on State Bank of India and others Vs. D.C. Aggarwal and another, " holding that the material not supplied for showing to the charged officer cannot be taken into account by the Disciplinary authority in passing the order of punishment. In this matter, the enquiry officer had exonerated the charged officer however, the report was directed by the Bank, employer to be submitted through Central Vigilance Commission (CVC). The CVC however, disagreed with the report and recorded its finding of guilt and recommended imposition of major penalty of removal. The copy of recommendation of CVC was denied to the employee on the ground that the recommendation of CVC was a privileged document. The Disciplinary authority, however, relying on the recommendation of CVC disagreed with the report of the enquiry officer and imposed major punishment. The order of punishment passed by the Disciplinary authority was held to be vitiated for violation of principles of natural justice in denying the copy of the recommendation of CVC. The Respondent also contended that the Central Vigilance Commission has also amended its rule vide Notification dated 28th September, 2000 which contemplated providing the second stage advice of CVC to the charged officer prior to imposition of penalty. The Commission held that it is consulted at two stages in Disciplinary proceeding i.e. first stage advice is obtained on the investigation report before issue of the charge sheet and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of enquiry report. The Commission however, categorically noted that when the CVC second stage advice is obtained, a copy there of may be made available to the concerned employee along with the I Os report, to give him an opportunity to make representation against the I Os finding and CVC advice if he desires to do so. The relevant extract of CVC advice based on the judgment of the Supreme Court in D.C. Aggarwal (Supra) is as under:

3. The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of enquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

12. The Respondent also contended that the rules provide for grant of only one increment in a year which can be withheld for a number of years, but if two increments are granted in a year, they cannot be withheld at the same time.

13. Regarding non-compliance of the Rule 14(18) of CCS(CCA) Rules, the Respondent asserted that he had not appeared as a witness during the enquiry, therefore, the enquiry officer was mandated to put the evidence adduced against him during the enquiry. Instead of putting the evidence adduced against him during the enquiry, the enquiry officer only repeated the charges which were against the Respondent. It was contended that the rule is mandatory and non-compliance of the same would vitiate the enquiry proceedings. The Respondent placed reliance on *Ministry of Finance v.S.B. Ramesh*, SLJ 1998 (2) 67.

14. This Court has heard the learned Counsel for the parties in detail and has also perused the record. The learned Counsel for the Petitioner has relied on *Union of India (UOI) and Another Vs. T.V. Patel*, holding that where the Disciplinary authority sought advice of the UPSC before imposition of penalty on the delinquent officer, it was not necessary for the Disciplinary authority to make available the copy of the advice tendered by the UPSC to the delinquent officer so as to enable him to make effective representation to the punishment proposed, on the ground that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and it does not confer any right on the public servant, so that the absence of consultation or any irregularity in consultation process or in furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent Government servant a cause of action in a Court of law. In this case the Disciplinary authority has sought advice of the UPSC which was tendered. After the Disciplinary authority passed the order, a copy of the advice tendered by the UPSC was also sent along with the copy of the final order imposing the penalty on the delinquent officer. In the circumstances, the question to be determined by the Supreme Court was whether a copy of advice tendered by the UPSC is to be furnished along with the order of penalty or before passing an order imposing final penalty. Referring to Rule 32 in Part-IX of CCS Rules, it was held that the rule contemplating "along with a copy of the order passed in the case by the authority making the order" would mean the final order passed by the authority imposing the penalty on the delinquent government servant. Consequently, relying on the judgment of the Constitution Bench in AIR 1957 SC 192, *State of U.P. v. Manbodhan Lal Srivastava*, it was held that the provisions of Rule 320 (3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or in furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent Government servant a cause of action in a Court of law. Para 25 at page 793 of *T.V. Patel (Supra)* is as under:

25. In view of the law settled by the Constitution Bench of this Court in the case of *Srivastava (supra)* we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a

court of law.

15. The learned Counsel for the Petitioner has also impugned the order of the Tribunal holding that non-supply of the CVC recommendation along with enquiry report not only prejudiced the concerned charged officer, but also deprived him of his reasonable opportunity to show cause against the enquiry report which ultimately affected the substantial right of the applicant to defend himself effectively.

16. The learned Counsel for the Petitioner has however, relied on Union of India (UOI) and Others Vs. Alok Kumar, to contend that non-supply of the CVC second stage advice will not vitiate the enquiry proceeding and the punishment imposed upon the Respondent, as the Respondent had not disclosed as to what prejudice had been caused to him. According to him, the prejudice being a matter of fact should have been categorically pleaded and demonstrated by cogent documents. It was further contended that de facto prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment could be set aside.

17. In Alok Kumar (Supra), the Supreme Court had considered whether it is the duty of the Disciplinary authority to furnish the report of CVC and whether supply of CVC report arises out of a statutory rule or in consonance with the principles of natural justice and whether non-supply of such a report would cause any prejudice to the officer concerned. In the facts and circumstances of the case, it was held that there was nothing on record to show that CVC recommendations had actually been taken into consideration and the same had affected the mind of the Disciplinary authority while considering the defence of the delinquent officer and imposing punishment upon him. The Supreme Court had held that unless such notices were actually considered and had some prejudicial effect to the interest of the delinquent officer, it would not be necessary for the Court to interfere with the departmental enquiry. In Alok Kumar (Supra), the Supreme Court therefore, did not vitiate the enquiry proceeding on the ground that a copy of the CVC first stage recommendations/reports were not provided to the charged officer. Paras 78 & 79 at page 376 are as under:

78. No rule has been brought to our notice where it is a mandatory requirement for the disciplinary authority to consult the vigilance officer and take the said report into consideration before passing any order. If that was the position, the matter would have been different.

79. In the present case, firstly, no such rule has been brought to our notice and secondly, there is nothing on record to show that the alleged notes of the CVC were actually taken into consideration and the same effected or tainted the findings or mind of the authority while passing the orders of punishment. Thus, in our view, the findings of the Tribunal cannot be sustained in law. Unless the Rules so require, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In

absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the concerned officer. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in the cases of State of Andhra Pradesh and another Vs. Dr. Rahimuddin Kamal, and Deokinandan Prasad Vs. The State of Bihar and Others,

18. Though the Tribunal has held relying on D.C. Aggarwal's case (supra) that non-supply of CVC recommendations has deprived the Respondent of a reasonable opportunity to show cause against the enquiry report which ultimately affected the substantial rights of the Respondent to effectively defend himself, however, the learned Counsel for the Respondent is unable to show as to how the CVC recommendations were taken into consideration by the Disciplinary authority, and how the case of the Respondent has been prejudiced. It was incumbent upon the Tribunal to have considered whether there were any such CVC Notes or recommendations which had a direct bearing on the enquiry in question and whether such recommendations or Notes were actually taken into considerations by the Disciplinary authority while passing the impugned order and whether the Respondent had suffered de facto prejudice as a result of non-furnishing of advice. In absence of these factors, the order of the Disciplinary authority imposing penalty on the Respondent cannot be faulted, nor can the order of the Tribunal to this effect be sustained.

19. The next contention on behalf of the Petitioner is about the non-compliance of the Rule 14(18) of CCS(CCA) Rules. According to the Petitioners, Rule 14(18) was substantially complied with. Perusal of the record, however, reveals that it is an admitted case that the Respondent did not examine himself as a witness. In case the Respondent had not examined himself as witness, it was incumbent upon the enquiry officer to put evidence adduced against the Respondent during the enquiry to him in compliance of Rule 14(18) of CCS(CCA) Rules. The said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances, which would be in the consonance with the principle of reasonable opportunity and audi alteram partem as inbuilt in the principles of natural justice. On perusal of the questions put by the enquiry officer to the Respondent, it is apparent that out of the three articles of charges, only two articles of charge were put to the Respondent, while none of the evidence in support of those articles of charges which were against the Respondent were put to him.

20. Perusal of Rule 14(18) clearly reveals that it is obligatory upon the enquiry authority to question the delinquent officer on the circumstances appearing against him in the evidence, for the purpose of enabling him to explain any circumstance. As there is no reference to the evidence brought on record or circumstances appearing against the applicant, putting the charges against the

Respondent was not valid compliance of Rule 14(18) of the CCS(CCA) Rules 1965.

21. Provisions analogous to Rule 14(18) of CCS(CCA) Rule exist in Rule 9(21) of Railway Servant (Discipline & Appeal) Rules, 1958. In the matter of *Moni Shankar V. Union of India*, 2008 (1) AJW 479, an enquiry proceeding was conducted in which the following questions that were put to the Charged Officer: "please state if you plead guilty?" ; "Do you wish to submit your oral or written arguments?"; "Are you satisfied with the enquiry proceeding" and "Can I conclude the enquiry", were held to be not in compliance of Rule 9(21) of Railway Servant (Discipline & Appeal) Rules, 1958 as such type of questions did not reveal the evidence adduced in support of charges against the charged officer.

22. In *Ministry of Finance and Another Vs. S.B. Ramesh*, the Supreme Court had held the Rule 14 (18) of CCS (CCA) Rules, 1965 to be mandatory. The Apex Court had upheld the decision of the Tribunal holding that the order of the Disciplinary Authority was based on no evidence and that the findings were perverse, on the reasoning that even if the Enquiry Officer had set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry thereafter. Or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under Sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this was construed to be a serious error committed by the Enquiry Authority. This also cannot be disputed that if the charged officer has examined himself as a witness then it will not be obligatory to examine the charged officer under Rule 14(18) of CCS(CCA) Rules. However, in the absence of any defense statement by the charged official, it was mandatory on the part of the enquiry officer to examine him under Rule 14(18), and the non-compliance of which will vitiate the enquiry proceedings.

23. Consequently, the order of the Tribunal quashing the enquiry proceeding on account of non-compliance of Rule 14(18) of CCS(CCA) Rules 1965 by not putting the evidence adduced before the enquiry officer in support of the three articles of charge to the charged officer vitiates the enquiry proceeding, cannot be termed to be illegal or un-sustainable so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

24. In the circumstances, the order of the Tribunal setting aside the punishment awarded to the Respondent does not require any interference in the facts and circumstances of the case and the writ petition is therefore, dismissed. The parties are however, left to bear their own costs.