(2010) 11 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (C.) No. 6367 of 2008

Union of India (UOI) and Others APPELLANT

Vs

Sh. Irshad Wali RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 20, 3(1)
All India Services (Discipline and Appeal) Rules, 1969 — Rule 10(1), 8
Central Industrial Security Force Rules, 2001 — Rule 37

Citation : (2010) 11 DEL CK 0306

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Bhardwaj and Jagrati Singh, for the Appellant; Sudhir Nandrajog, Saahita Lamba, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner, Union of India through the Secretary, Ministry of Home Affairs has impugned the order of Central Administrative Tribunal in O.A No. 1312/2007, Irshad Wali v. Union of India and Ors.setting aside the order dated 5th September, 2006 under Rule 10 of All India Services (Discipline and Appeal) Rules, 1969 imposing a minor penalty on the Respondent of withholding one increment of pay for a period of three years without cumulative effect.

2. The Respondent is an IPS officer of 2004 batch and he was issued a memorandum imputing misconduct under Rule 10 of All India Services (Discipline and Appeal) Rules, 1969 contemplating imposition of minor penalty and was called upon to give representation/reply on the said memorandum within 10 days. The memorandum dated 10th August, 2005 issued under Rule 10 of All India Services (Discipline and Appeal) Rules, 1969 hereinafter referred to as Rules also contained a statement of imputation of misconduct on account of which the action was proposed to be taken against the Respondent. The imputation of misconduct stipulated that while undergoing training he consumed

liquor on Swapna Bar at Aramghar Chowrashtha on 1st May, 2005 along with two other IPS probationers Sh. Kewal Khurana and Anand Prakash, Tiwari which act was in violation of Rule 20(bb) of All India Services (Conduct) Rules 1968 and later on after coming out of the bar at about 2115 hours while purchasing cigarettes he had an altercation with the vendor of pan shop over the price of cigarette packet which resulted into a scuffle and fight. The statement of imputation categorically asserted that the Respondent was making a call on his mobile phone and seeing the scuffle involving his colleague, left the place to call a police patrol party and later on went to Raghavendra hospital where Sh. Kewal Khurana and Sh. Anand Prakash Tiwari were given first aid. Later on seeing the police constable who was asked to come and help IPS probationers, near the hospital the Respondent abused him and then pounced upon him for his refusal to rush to the scene of scuffle upon Respondent request earlier but he was physically restrained and held back by other probationers preventing him from proceeding further against the constable and thus his behavior of abusing and pouncing upon the police constable was unbecoming of a member of the service and was in violation of Rule 3(1) of All India Services (Conduct) Rules 1968.

3. The Respondent replied to the imputations made against him by memorandum dated 10th August, 2005 by his reply dated 16th September, 2005 categorically contending that he saw the pan shop owner misbehaving with his colleague Sh. Kawal Khurana and, therefore, he went to look for police patrol which is usually available in the area and he found a constable about 500 meters away and he requested him to intervene but he did not cooperate and so he went back. When he reached back, his friends had already gone after scuffle and on enquiry from the people, it transpired that they had gone to the private clinic. He denied consuming alcohol in public place and he also categorically denied that he abused the constable and pounced upon him for his refusal to rush to the scene of the scuffle. He stated that he had pointed out to his colleagues the constable who had not cooperated who could have avoided the incident and in the circumstances he categorically asserted that he had not misbehaved with anybody nor conducted himself in violation of conduct rules. He specifically stated that during the incident of 1st May, 2005 he rather acted with great responsibility by first seeking assistance of the nearest police patrol as he could have himself joined the scuffle and later on rushed to the medical clinic and mobilized the medicos for treatment of his colleagues who had been involved in scuffle.

4. The Petitioners, however, without any enquiry and without giving any material to the Respondent which could be the basis for arriving at the finding that the Respondent was liable for minor punishment, by order dated 5th September, 2006 imposed the penalty of withholding one increment of pay in the time scale of pay for a period of three years without cumulative effect under Rule 6 of the Rules. In the order it was stated that the competent authority after a careful examination of the record pertaining to the disciplinary proceedings against the Respondent and keeping in view the advice of the Union Public Service

Commission had come to the conclusion that the charges against him had been proved and ends of justice would be met if the penalty as advised by the commission is imposed on the Respondent.

5. The Union Public Service Commission which was a party before the Central Administrative Tribunal as Respondent No. 2 and which has not been made a party in the writ petition by its report dated 1st August, 2006 had observed and noted the facts that Respondent had first abused the constable and then had pounced upon him for his alleged refusal to rush to the scene of scuffle upon his request earlier and he was physically restrained and held back by some other probationers. The commission also noted about the allegation of Respondent having consumed alcohol in a public place relying on the alleged statement of Sh. Preetinder Singh (another IPS probationer) who had allegedly stated that the Respondent had some hard drinks in the bar. It appears that some other report of the enquiry was relied by the Commission which had inferred the allegation of consummation of alcohol by the Respondent true on the basis of enquiry conducted. The relevant portion of the report of the commission, para 18 is as under:

18. The commission observe that as far as MOS 3 Irshad Wali is concerned according to Sh. Preetinder Singh (another IPS probationer), he had some hard drinks in the bar. This has also been substantiated by the Inquiry Authority in his report. The MOS 3 was not subjected to any medical examination. Therefore, it can be safe to conclude that according to the evidence on record the MOS3 had consumed liquor at the day of incident in violation of Rule 20(bb) and instructions contained in Govt.letter dated 18.1.1978. But it is surprising that Shri Preetinder Singh who saw MOS 2 also taking alcohol and who was also subjected to medical examination, this fact was ignored in the case of MOS 3. The commission do not feel whether it would be proper to hold the charge against MOS 3, and given clean chit to MOS 2 on the same facts i.e the statement of Shri Preetinder Singh, a fellow probationer. As far as the case of abusing and pouncing upon the police constable is concerned the action of the MOS 3 cannot be justified by any means. The misdeed of the MOS 3 gets substantiated by the statement of his fellow probationers, his own, as well as from the observation of the Inquiry Authority. He should have acted in a matured and responsible manner by lodging complaint against the said constable with his superior authorities but instead he chose to take the law into his own hands.

6. The Commission in the circumstances recommended that end of justice will be met if the penalty of withholding one increment of pay for a period of three years without cumulative effect is imposed on the Respondent under Rule 10 of the Rules which advice of Commission was accepted by the Petitioners and penalty was imposed on the Respondent.

7. We have heard the learned Counsel for the parties. The Tribunal by the order dated 3rd March, 2008 has held that unless a minor penalty is proposed which had not been done by memorandum dated 10th August, 2005, pre empting

dispensation of holding of enquiry would be highly illogical and irrational. Relying on Rule 10(1)(b) it has been further held that formation of an opinion by the disciplinary authority to hold whether an enquiry is necessary or not, has to be a positive act in every action for infliction of minor penalty. Considering the circumstances it had been further held that as no opinion had been formed dispensing with the enquiry and therefore, the penalty imposed was in contravention of Rule 10(1)(b). The minor penalty imposed on the Respondent had also been set aside on the ground that the principles of natural justice had not been complied with, as Rule 10 obligates the disciplinary authority to record a finding on each imputation of misconduct. Relying on Narpat Singh v. Rajasthan Financial Corporation, 2007(11) Scale 458 and S.N. Mukherjee Vs. Union of India, it had been inferred that recoding of reasons by disciplinary authority could not be dispensed with. The Tribunal concluded that the Petitioners had only reiterated to chronological events and had not dealt with the contentions raised by the Respondent and consequently the order could not be countenanced. The minor punishment was also vitiated by the Tribunal on account of violation of principles of natural justice as the Petitioners had agreed that the findings arrived at by the Commission and advise tendered which are also on the basis of alleged preliminary enquiry report and the statement recorded of fellow probationers, copies of which were not given to the Respondent and consequently any findings arrived at against the Respondent even for minor penalties could not be sustained relying on Pepsu Road Transport Corporation v. Lanchahman Dass Gupta and Another 2002 SCC 61.

8. This Court has heard the learned Counsel for the parties in detail. The learned Counsel has contended that since the advice of UPSC and the order of penalty contained the reasons therefore, the principles of natural justice were not violated. The learned Counsel for the Petitioners has further contended that penalty could never be envisaged before issuance of the charge sheet or at the time of issuance of the same. In any case it is asserted that the penalty imposed was only of withholding of one increment for three years without cumulative effect for which enquiry was not required. According to him since the charge sheet was issued under Rule 10 of the All India Services (D & A) Rules, 1969 contemplating the procedure for minor penalty, no other penalty other than what is contemplated under the rule is imposed and therefore, the said rule has not been violated and consequently punishment imposed could not be set aside. The learned Counsel for the Petitioners has contended that not holding the enquiry would not vitiate the order of penalty as it was in consonance with the requirement of rule imposing minor penalty. The order of the Tribunal is also impugned on the ground that the sending of proposal for penalty to the charged officer has been dispensed with by 42nd Amendment to the Constitution and there has never been a provision in law in terms of which the punishment could be proposed before the stage of enquiry. The learned Counsel contended that under Rule 10 (1) (b) the proposal could be recorded only if the penalty proposed was of withholding of increments in excess of three years or with

cumulative effect or could have effect on pension. According to him the Tribunal has erred in holding that when proposed penalty was not mentioned in memo of charge, the only option was left was to hold an enquiry before imposing penalty.

9. The Respondent has contested the petition contending, interalia, that entire proceedings had been taken against him in gross violation of the rules and contrary to the principles of natural justice. According to him, the reliance has been placed while imposing minor penalty on him, on documents, statement, enquiry report and other materials which have been collected at his back. He asserted that even copies of the documents, leave aside an opportunity to rebut the same, was not given to him and in the circumstance, there is denial of principle of natural justice which vitiates the minor penalty imposed by the disciplinary authority.

10. The Respondent pleaded that this is an admitted case that he was not involved in the heated discussion between the Kewal Khurana and the vendor of the pan shop as he had gone away to make a telephone call. According to him, this is also admitted that he had gong to seek police assistance as the police constable had abdicated his responsibility and when he came back after seeking police assistance, the other probationer, Mr. Kewal Khurana had already been removed to the hospital. In the circumstances, there was no involvement of the Respondent so as to entail any penalty even minor penalty.

11. The Respondent categorically contended that there was no evidence that he had consumed alcohol. Neither any statement of anyone that he had consumed the alcohol was recorded before him, nor copy thereof supplied to him, nor he was subjected to any medical test. Similarly, there is no evidence recorded before him, nor copy given to him reflecting that he had assaulted the police constable at the hospital and had abused him. No statement of the police constable had been recorded. In fact, no enquiry was conducted, and in the circumstances, there was no evidence of any behaviour on the part of the Respondent which could be termed as inappropriate, or the Respondent committed any misconduct.

12. The Respondent''s contention is that suspicion cannot be a substitute for proof and the proof could be only the basis of evidence which could be collected in an enquiry. As no enquiry had been conducted, on the basis of assumptions of Union Public Service Commission, and advice rendered on the assumption by the Union Public Service Commission, the disciplinary authority could not pass any order imposing minor penalty on the Respondent. The assertion of the Respondent is that reasons have to given for each and every imputation of charge by the disciplinary authority whereas in his case on the assumption of Union Public Service Commission, the disciplinary authority has followed opinion as direction and without application of mind has imposed the minor penalty contrary to the principle of natural justice, and contrary to the rules and regulations. According to the Respondent, a bare perusal of order of punishment reveals that the disciplinary authority has merely carried out the opinion of Union

Public Service Commission. In any case, it is contended that no opportunity was given to the Respondent to defend himself and if any material had to be used against the Respondent for imposing any penalty, the same should have been supplied to him. The allegations against the Respondent were disputed questions of fact which required evidence and could be collected only by holding an enquiry, and in the circumstances, dispensing with the enquiry and imposing even minor punishment is vitiated. According to the Respondent initially the disciplinary authority had taken a decision to impose penalty of censure, however, on the advice of Union Public Service Commission without any further application of mind, the opinion of the Union Public Service Commission based on preliminary enquiry conducted by the Union Public Service Commission and the statement recorded, the minor penalty has been imposed upon the Respondent. The Respondent was not associated with the internal enquiry allegedly conducted by the Union Public Service Commission, nor any of the finding or material collected during the preliminary enquiry were communicated to the Respondent and any such statement which was recorded during the preliminary enquiry, which was not subjected to crossexamination by giving a reasonable opportunity to the Respondent could not be relied on, nor any penalty of any type even minor penalty could be imposed in the facts and circumstances.

13. The Respondent has also challenged the minor penalty imposed upon him which has been set aside by the Tribunal. He has contended that even the opinion of the Union Public Service Commission on the basis of which and treating it as direction by the disciplinary authority, was not supplied to the Respondent before he filed a petition before the Tribunal. Had the copy of the advice rendered by the Union Public Service Commission which has been followed as direction of the disciplinary authority supplied to him, the Respondent could point out the illegality in the same before the Disciplinary Authority. The advice of the Union Public Service Commission is based on the suspicion without any proof thereof, and the same could not be relied on.

14. We have heard the learned Counsel for the parties in detailed. This is not disputed that the procedure is prescribed for imposing minor penalty under Rule 10 of All India Services (Discipline and Appeals) Rules, 1969. The Rule 10 is as under:

10. Procedure for imposing minor penalties:

(1) Subject to the provision of Subrule (3) of Rule 9, no order imposing on a member of the Service any of the penalties specified in Clauses (i) to (iv) of Rule 6 shall be made except after

(a) informing the member of the Service in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry, in the manner laid down in subrules (6) to (23) of Rule 8, [in every case in which it is proposed to withhold increments of pay for a period exceeding three years, or with cumulative effect for any period, or so as to adversely affect the amount of pension payable to him, or in which the disciplinary authority is of the opinion that such inquiry is necessary].

(c) taking the representation, if any submitted by the member of the Service under Clause (a), and the record of inquiry, if any, held under Clause (b) into considerations;

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

(i) a copy of the intimation to the member of the Service of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission;

(vi) the findings on each imputation of misconduct or misbehavior; and

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

15. The Rule 10 (a) contemplates that a member of service can be informed of the proposal to take action against him and the imputation of misconduct or misbehaviour is to be communicated to him in writing so as to give a reasonable opportunity to the member of service to make such representation, he may wish to make against the proposal. If a representation is contemplated from the member of the service under Rule 10 (a) against the proposal to take action, the basis of the proposal ought also to be communicated to the member of the service. Though Rule 10 (b) contemplates holding of an enquiry as laid down in Sub Rule 4 to 23 of Rule 8, in case, it is proposed to withhold increment of pay for a period exceeding three years, or with cumulative effect for any period, or so as to adversely affect the amount of pension payable to him, or in such cases, where the disciplinary authority is of the opinion that such enquiry is necessary. If it is proposed to withhold increment for a period of less than three years, the enquiry under sub Rules 4 to 23 of Rule 8 could be dispensed with. However, for imposing any penalty on the basis of any material without an enquiry contemplated under sub Rules 4 to 23 of Rule 8, the materials which could be the basis for imposing minor penalty cannot be withheld, nor fresh material can be used which may have been collected after the notice has been issued to the employee and can be made the basis for imposing minor penalty. The employee cannot be condemned on the basis of any material evidence, which he has not had the opportunity to meet. If Rule 10 (a) contemplates information to the member of the service in writing of the proposal to take action and the material on the basis of which the action is proposed, in case any further material comes

to the notice of the disciplinary authority, the same should have also been communicated to the member of the service, before any decision to punish him is taken.

16. This cannot be disputed that the memorandum dated 10th August, 2005 was issued to the Respondent proposing to take action against him under Rule 10 of All India Services (Discipline and Appeals) Rules, 1969 along with statement of imputation of misconduct or misbehaviour. The statement of imputation of misconduct only stated that the Respondent while making a call on his mobile phone, seeing scuffle involving his colleagues left the place to call a police party, and later on he went to Raghavendra Hospital where Sh. Kewal Khurana and Sh. Anand Prakash Tiwari were being given first aid. The imputation further stated that seeing the police constable near hospital who had declined to render any assistant, the Respondent first abused him and then pounced upon him for his alleged refusal to rush to the scene of scuffle. Along with memorandum and statement of imputation no other material was provided to the Respondent. The imputation was also made that he had taken alcohol in a public place, and perhaps under the influence of alcohol he had abused the constable and then had pounced upon him for alleged refusal to rush to the scene of scuffle.

17. These imputation made against him were denied by the Respondent by his representation dated 16th September, 2005 contending categorically that on seeing the pan shop owner misbehaving with his colleague Sh. Kewal Khurana he went to look for police patrol and requested the constable to intervene, but on his failure to cooperate, he went back and did not find other probationers there, and on enquiry, it transpired that they had been taken to the private clinic. Therefore, he proceeded to the clinic to help them. He categorically denied that he had consumed alcohol and that alcohol was consumed in the public places on 1st May, 2005 and that he had abused the constable and pounced upon him for his alleged refusal to rush to the scene of scuffle upon his request.

18. This cannot be disputed that pursuant to proposal dated 10th August, 2005 to take disciplinary action against Respondent and on receiving the reply dated 16th September, 2005, no further enquiry was conducted, nor any other material was supplied to the Respondent. With the counter reply filed by the Petitioner before the Tribunal, a copy of the alleged description given by the Respondent to the Deputy Director was also annexed from which also it cannot be inferred that he had admitted that he had consumed alcohol in a public place or that he had abused the constable and he had pounced upon him. Perusal of "description of whole episode" as given by the Respondent, the same cannot be construed in any manner to mean that the Respondent had admitted abusing the constable or pouncing upon him. If that be so then on what basis it has been opined by the Union Public Service Commission which was required to render its advice under Rule 10 (e) that the Respondent had abused and pounced upon the constable after taking alcohol in the public place, is not clear.

19. From the copy of the Union Public Service Commission advice dated 1st

August, 2006 it appears that in para 18 of the advice to the disciplinary authority, the Union Public Service Commission apparently relied on the statement of Sh. Preetinder Singh (another IPS probationer) and the report of the enquiry authority. Admittedly, no enquiry was conducted in presence of the Respondent, nor he was allowed to participate in any enquiry nor the copy of alleged statement of Preetinder Singh was given to him nor was he allowed to cross examine him. In the circumstances, on the basis of alleged enquiry conducted by the Union Public Service Commission and the basis of statement of some witnesses who had not been examined in his presence and who were not allowed to be cross examined by the Respondent, no adverse action could be taken against the Respondent. The relevant para of the advice rendered by Union Public Service Commission to the disciplinary authority regarding the Respondent is as under:

18. That Commission observe that as far as MOS 3 Irshad Wali is concerned, according to Sh. Preetinder Singh (another IPS probationer), he had some hard drinks in the bar. This has also been substantiated by the Inquiry Authority in this report. The MOS 3 was not subjected to any medical examination. Therefore, it can be sale to conclude that according to the evidence on record the MOS 3 had consumed liquor at the day of incident in violation of Rule 20 (bb) and instructions contained in Govt. letter dated 18.1.1978. But it is surprising that Sh. Preetinder Singh who saw MOS 3 also taking alcohol and who was also subjected to medical examination, this fact was ignored in the case of MOS 3. The Commission do not feel whether it would be proper to hold the charge against the MOS 3, and given clean chit to MOS 3 on the same facts i.e. the statement of Sh. Preetinder Singh, a fellow probationer. As far as the case of abusing and pouncing upon the police constable is concerned, the action of the MOS 3 cannot be justified by any means. The misdeed of the MOS 3 gets substantiated by the statement of his fellow probationers, his own, as well as from the observation of the Inquiry Authority. He should have acted in a matured and responsible manner by lodging complaint against the said constable with his superior authorities but instead he chose to take the law into his own hands.

19. In light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice will be met if the penalty of withholding of one increment of pay in the time of scale of pay for a period of three years without cumulative effect is imposed on (i) Sh. Kewal Khurana, IPS Probationer (Ul:2004) (MOS-1) under Rule 8 of AIS (D & A) Rules, 1969, (ii) Sh. Anand Prakash Tiwari, IPS, Probationer (AM:2004) (MOS-2) under Rule 10 of AIS (D & A) Rules, 1969 and (iii) Sh. Irshad Wali, IPS Probation (NL:2004) (MOS-3) under Rule 10 of AIS (D & A) Rules 1969. They advise accordingly.

20. Similarly, without any admission on the part of the Respondent that he had abused and had pounced upon the constable, the Commission could not come to an inference that the Respondent had abused the constable and had pounced

upon him, nor the disciplinary authority could rely on such a finding for imposing minor penalty on the Respondent. If the disciplinary authority wanted to rely on the act of "the Respondent in abusing the constable and pouncing upon him and having alcohol in public place" then in absence of any specific admission, the only remedy left with the Petitioner was to conduct an enquiry which has not been done. To establish the disputed facts the enquiry could not be dispensed with by the Petitioner even under Rule 10 (b) in the facts and circumstances.

21. The learned Counsel for the Respondent has also relied on V. Srinivasa Rao Vs. State of Karnataka, G. Sundaram Vs. General Manager Disciplinary Authority, Canara Bank and Others, & N. Subramanian Vs. The Group Commandant Central Industrial Security Force and The Deputy Commandant, CISF to contend that even if the rule permits dispensation of enquiry, for establishing the disputes facts which are not admitted by the employee, in order to comply the principles of natural justice, an opportunity during enquiry is the bare minimum. In N. Subramanian (Supra) no enquiry was conducted in terms of Rule 37 of the Central Industrial Security Forces Rules, 2001 despite the employee denying the charge framed against him. In the circumstances it was held that though the said Rule 37 conferred on the disciplinary authority to order enquiry if the disciplinary authority is satisfied on the facts of the case, however, such a right is not conferred under Rule 37 on the delinquent employee to claim an enquiry. But in such a situation the Court can import the principles of natural justice for such an enquiry in the event of the charge being denied by the delinquent. It was held the enquiry is a bare minimum for a delinquent to expect from the employer before he is inflicted with the penalty even in the case of minor penalty based on certain charges which are not admitted and are denied. It was further held that even in a case where the rules do not make a provision for enquiry in cases where minor penalties are to be imposed, nevertheless, compliance of the principles of natural justice may be required and the non compliance may vitiate the order. The Court had also held that even in the case of a minor penalty an opportunity is to be given to the delinquent employee to have his say or to file his explanation in respect to the charges against him and to establish his defense. If the charges are factual and if they are denied by the delinquent employee, the enquiry is called for. In para 12 of the judgment the Division Bench of the Madras High Court had held as under:

12. In our considered view, an inquiry is contemplated in case where a delinquent refutes the charge and by such refutal, the employer is duty bound to prove the charge levelled against the delinquent by letting in evidence. This is more so when the delinquent employee seeks for such an enquiry in his explanation as well.

22. In G. Sundaram (Supra) relied on by the Respondent the Court was dealing with the bank''s regulation under which minor penalty could be imposed under the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976. A show cause notice was issued to the employee regarding allegations of omission

and commissions. Though the reply of the official was considered, however, he was directed to reimburse a particular amount on account of pecuniary loss to the bank. The employee had not complied with the demand and direction of the bank and, therefore, a charge memo was issued to the employee and after considering his written reply an order was passed exercising powers under the Regulations and penalty was imposed. It was contended by the employee that without holding an enquiry into the allegations made in the charge memo, no penalty could have been imposed and no penalty, even minor penalty could be imposed though Regulation 8 of the Banking Regulations contemplated the imposition of minor penalty and did not envisage examination of witness, cross examination of witnesses and furnishing of a copy of the enquiry report to the delinquent officer and the disciplinary authority could impose a minor penalty without going through the whole procedure of elaborate enquiry. Hon''ble Mr. Justice H.L. Dattu (as he then was) had held that where a minor punishment has to be imposed the procedure for holding an enquiry need not be followed otherwise desired by the disciplinary authority, however, the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed by the delinquent officer and give his reasoned findings whether an enquiry is necessary or not. The duty to give satisfactory reasons for coming to a decision is a duty of importance which cannot be lawfully disregarded. It was further held that since reasons are the links between the materials on which certain conclusions are based and the actual conclusions and they disclose how the mind is applied to the subject matter and it excludes the chances to reach an arbitrary, whimsical or capricious decision, the Court had held that since the disciplinary authority while passing the order did not even say that a case of this nature did not require any enquiry much less a summary enquiry, therefore, the order imposing penalty was held to be invalid especially as the delinquent officer in his reply to the charge memo had requested the disciplinary authority to hold an impartial enquiry. In V. Srinivasa Rao (Supra) a Division Bench of Karnataka High Court had held that in cases where the charge levelled against a civil servant is disputed and in the very nature of things it is not possible to record a finding of guilt without holding an enquiry in terms of sub Rule (3) to (23) of Rule 11, it would be obligatory on the part of the disciplinary authority to hold an enquiry for the reason that such cases cannot be decided on mere representation. It was further held that even in cases where a minor penalty is proposed to be imposed against a civil servant, if the nature of the charge or charges levelled against him are such that a finding of guilt could be recorded only after holding a regular enquiry in which oral and documentary evidence in support of charges should be recorded and the delinquent should be given an opportunity to cross examine the witness or explain the documents, the holding of an enquiry as provided in Rule 12 (1)(b) becomes mandatory and the disciplinary authority is bound to form an opinion that the holding of an enquiry is necessary and to hold the enquiry. In the circumstances, the allegations against the Respondent that he was drunk and had abused the constable and had pounced upon him could be basis for even minor penalty, had they been established after giving a reasonable opportunity and not merely considering his representation denying the allegation made against him.

23. The Tribunal by its order dated 3rd March, 2008 has set aside the minor penalty imposed upon the Respondent which order is also sustained by this Court. However, the Tribunal in paras 11, 12 and 13 of the order dated 3rd March, 2008 has also held that the plea of the Petitioner''s counsel that as the penalty imposed, did not exceed the limit of three years of withholding of increment and the penalty did not affect the pension of the applicant, the enquiry was not required could not be countenanced as the proposal for punishment by the disciplinary authority was a subsequent event and till the memorandum was issued to the Respondent dated 10th August, 2005 the statement of imputations, that is allegations levelled against the Respondent reflected an opportunity to the Respondent to make a representation and nowhere a minor penalty had been proposed. In the circumstances, the Tribunal has held that since in the memorandum no penalty was envisaged and a representation was called for, therefore a tentative conclusion of minor penalty was made by the disciplinary authority later on and it was not known as to in what circumstances minor penalty could be inflicted upon the Respondent. It is held that in such an event, pre empting dispensation of holding of enquiry would be highly illogical and irrational. It is further held that in the circumstances by implication such an opinion could not be formed about not holding an enquiry and imposing minor penalty was in contravention of Rule 10(1) (b) of All India Services (Discipline and Appeal) Rules, 1969.

24. The learned Counsel has contended that such observation of the Tribunal cannot be sustained as the Rule 10 is intra vires and it does contemplate dispensation of enquiry in certain cases in the discretion of the Petitioner and the Respondent does not have a right to claim enquiry. The learned Counsel for the Petitioner has also relied on Food Corporation Of India Hyderabad And Others Vs. A. Prahalada Rao And Another, to contend that such rule cannot be held to be ultra vires nor can be challenged by the Respondent.

25. Perusal of the memorandum dated 10th August, 2005 reflects that it was issued under Rule 10 of All India Services (Discipline and Appeal) Rules, 1969. Rule 10 of the said rules which is reproduced hereinbefore categorically reflects that it contemplates the procedure for imposing minor penalties even without holding enquiry. In the circumstances it is apparent that a minor penalty was contemplated. In the circumstances the observation of the Tribunal that in the Memorandum "nowhere a minor penalty was proposed against the Respondent" was not indicated is not correct in as much, as, the memorandum was issued under Rule 10 which is the rule for imposition of minor penalty and it was not for imposition of major penalty. Consequently, the observation of the Tribunal that till the issuance of memorandum and even in the memorandum no minor penalty was envisaged is not correct as the memorandum was issued for minor penalty and not for major penalty.

26. If the memorandum was issued for imposition of minor penalty, and the rules give an option to hold an enquiry or not in certain circumstances, dispensation of holding of enquiry in some of the cases cannot be termed as illogical or irrational. It is for the disciplinary authority to decide in view of the record whether the dispensation of enquiry would be appropriate or not. If the dispensation of enquiry is not appropriate in view of denial of charges which involves disputed questions of material/incriminating facts, the enquiry should be held. If not so held, the delinquent would be entitled to challenge the findings of the disciplinary authority and imposition of minor penalty. But the disciplinary authority cannot be deprived of its power under the rule to impose a minor penalty without holding a detailed enquiry under sub Rules (6) to (23) of Rule 8 in appropriate cases. For example, if the case involves only documentary evidence which is a matter of record, or where the documents are of impeachable authenticity, the Supreme Court in Food Corporation Of India Hyderabad And Others Vs. A. Prahalada Rao And Another, while interpreting an analogous provision in Rule 60 for imposition of minor penalties in case of Food Corporation of India had held that if Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether to hold enquiry in a particular case or not would not mean that in all cases where employees dispute their liabilities a full fledged enquiry should be held. The Apex Court had held that otherwise the entire purpose of interpreting summary procedure for imposing minor penalties would be frustrated. Rule 60 contemplating procedure for imposing minor penalties in case of Food Corporation of India is as under:

Procedure for Imposing Minor Penalties:

(1) Subject to the provisions of Sub-regulation (3) of Regulation 59, no other imposing on an employee any of the penalties specified in Clauses (i) to (iv) of Regulation 54 shall be made except after.

a) Informing the employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

b) Holding an inquiry in the manner laid down in Sub-regulations (3) to (23) of Regulation 58, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

c) Taking the representation, if any, submitted by the employee under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

d) Recording a finding on each imputation of misconduct or misbehavior.

(2) Notwithstanding anything contained in Clause (b) of Sub-regulation (1), if in a case it is proposed, after considering the representation, if any, made by the employee under Clause (a) of the sub-regulation, to withhold increment of pay and such withholding of increments is likely to affect adversely the amount of

retirement benefits payable to the employee or to withhold increments of a pay for a period exceeding 3 year or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in Sub regulations (3) to (23) of Regulation 58 before making any order imposing on the employee any such penalty.

27. The Supreme Court repelled the argument that the discretion given under the rules to hold or not to hold the enquiry for imposing minor penalty would be misused or would be exercised in an arbitrary manner. It was held that it could not be a ground to negate such a provision as it will always be open to the employee to challenge the same before the appropriate forum, if the enquiry is necessitated in certain circumstances. It was held that it is for the disciplinary authority to decide whether the procedure for departmental enquiry as contemplated under Regulation 58 for imposing major penalty should be followed or not for imposing even minor penalties and such a discretion cannot be curtailed by any interpretation contrary to the language of the rule.

28. In the circumstances observations to the contrary made by the Tribunal in paragraphs 11,12 & 13 cannot be sustained. However, observation that in the facts and circumstances of the Respondent, as he had denied that he had abused the constable and pounced upon him and he was under the influence of alcohol, enquiry should have been conducted to establish the guilt of the Respondent even for imposition of minor penalty cannot be faulted. 29. In the totality of the facts and circumstances, minor penalty imposed upon the Respondent cannot be sustained, and to that extent the order of the Tribunal setting aside the minor penalty imposed upon the Respondent cannot be faulted and is sustained. Therefore, the writ petition is without any merit and is dismissed with the observations made hereinbefore. However, the observations made by the Tribunal in paras 11, 12 and 13 do not correctly state the law and to that extent, the same are set aside. The parties in the facts and circumstances are, however, left to bear their own costs.

