Vijay Shankar Pandey vs Union Of India & Anr on 22 September, 2014

Equivalent citations: AIR 2015 SUPREME COURT 326, 2014 AIR SCW 5857, 2014 LAB. I. C. 4508, 2014 (6) ALL LJ 650, (2014) 4 SCT 368, (2015) 1 SERVLR 661, (2014) 3 ESC 439, (2014) 4 JLJR 439

Bench: A.K. Sikri, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9043 OF 2014
(Arising out of Special Leave Petition (C) NO.12019 of 2014)

Vijay Shankar Pandey … Appellant

Versus

Union of India & Another … Respondents

J U D G M E N T

CHELAMESWAR, J.

1. Leave granted.

2. The unsuccessful petitioner in the Writ Petition No.87(S/B)/2014 on the file of the High court of Allahabad is the appellant herein. By the impugned judgment dated 3.4.2014 the said writ petition was dismissed by a Division Bench of the Allahabad High Court.

3. The appellant is an officer of the Indian Administrative Service. On 22.7.2011 he was served with a chargesheet consisting of five charges. All the charges are to the effect that the conduct of the appellant is contrary to Rule-3, 7, 8 and 17 of The All India Services (Conduct) Rules, 1968 (hereinafter called "CONDUCT Rules"). After certain correspondence, (the details of which are not necessary for the present purpose), the disciplinary authority appointed an Enquiry Officer on 27.2.2012. The appellant submitted his reply on 5.3.2012. The appellant challenged the chargesheet before the Central Administrative Tribunal in O.A.No.623 of 2012 which was eventually dismissed

on 29.8.2012. Aggrieved by the same, the appellant filed a writ petition in the Allahabad High Court but withdrew the same subsequently. The order of the Central Administrative Tribunal became final.

4. The Enquiry Officer submitted his report on 30.8.2012 exonerating the appellant of all the charges. The copy of the said report is not served on him.

5. On 9.9.2012, the meeting of a Selection Committee for considering the cases of officers of the Indian Administrative Service for promotion to the Super Time Scale-II (ASTS-II) was held. The case of the appellant was considered and the decision was kept in a sealed cover. The appellant, therefore, submitted a representation to the Chief Secretary of the State of Uttar Pradesh on 11.9.2012 requesting that in view of exoneration by the Enquiry Officer, he be promoted to the Super Time Scale- II (ASTS-II). As there was no response to the representation, he approached the Central Administrative Tribunal on 26.9.2012 once again in O.A.No.381 of 2012 with prayer as follows:

> "a) to issue an order or direction commanding the respondents to take a final decision on the enquiry report which has already been submitted by the enquiry officer;
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> b) to issue an order or direction commanding the respondents open the sealed cover of the recommendations of the selection committee and to forthwith issue promotion orders in respect of the applicant;
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> c) Such other orders as this Tribunal may deem just, fit and proper be also passed in the interest of justice." On the same day 26.9.2012, an order (hereinafter referred to as the "IMPUGNED Order") invoking Rule 8(3) of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as "DISCIPLINE Rules") came to be passed by the State of U.P. rejecting the Enquiry Report dated 30.8.2012 (referred to supra). The relevant portion of the order reads as under:
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> "2. Enquiry Officer Sri Jagan Mathews sent the enquiry report vide his letter dated 30.08.2012. On examining the enquiry report of the Enquiry Officer at government level it was found that the Enquiry Officer had submitted a cursory report without observing the mandate of Rules -8(15), 8(16), 8(20) and 8(24) of All India Service (Discipline & Appeal) Rules, 1969 as criticism has been leveled in the writ petiion of the Central Government filed through Sri Vijay Shankar Pandey before the Hon'ble Supreme Court and as such it is a clear violation of Rule-3(1), Rule-7, Rule-8(1) and Rule-17 of the All India Service (Conduct) Rules, 1968. Therefore the Enquiry Officer has failed to properly investigate the facts in the enquiry proceedings.
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> 3. Therefore, in the matter of Sri Vijay Shankar Pandey IAS-1979, the Hon'ble Governor, after rejecting the enquiry report of Enquiry Officer, Sri Jagan Mathews, constitute in his place a 2 member Inquiry Board under sub-rule (3) of Rule-8 of All India Service (Discipline & Appeal) Rules, 1969, comprising of Sri Alok Ranjan,

> Agricultural Production Commissioner, Govt. of U.P. and Sri Anil Kumar Gupta, Infrastructure and Industrial Commissioner, Govt. of U.P. in order to enquire into the charsges imposed against him."

6. Challenging the order dated 26.9.2012, the appellant again approached the Central Administrative Tribunal by filing an O.A.No.395/2012. The earlier O.A.No.381/2012 was dismissed by the Central Administrative Tribunal on 16.4.2013 on the ground that it had become infructuous. O.A.No.395/2012 was also dismissed on 20.12.2013 with certain directions. The later decision was challenged by the appellant herein in Writ Petition No.87(S/B) of 2014, in which the order under appeal herein (hereinafter referred to as the Order under APPEAL) came to be passed dismissing the writ petition.

7. The background facts of this case are that a Writ Petition (C) No.37 of 2010 titled "Julio F. Ribero and others vs. Govt. of India including the appellant herein, came to be filed under the name and style of India Rejuvination Initiative, a non-Government Organisation (NGO). The said Writ Petition along with another culminated in a judgment of this Court in Ram Jethmalani & Others v. Union of India & Others, (2011) 8 SCC

1. All the charges against the appellant are in connection with the filing of the said Writ Petition on the ground that the conduct of the petitioner is violative of the various CONDUCT Rules. Charge No.1 is on account of certain statements made in the said Writ Petition against certain senior officers of the Government of India. The second charge is that the appellant failed to comply with the requirement of Rule 13 of the CONDUCT Rules whereunder he is obliged to give information to the respondent within one month of becoming a member of the such organization (NGO). The third and the fourth charges are based on the allegation made in the Writ Petition (Civil) No.37 of 2010. The substance of the charges is that those allegations tantamount to criticism of the action of the Central as well as State Governments and of giving evidence without the previous sanction of the government and, therefore, contravention of Rules 7[1] and 8[2] respectively of the CONDUCT Rules. Charge No.5 is that the appellant violated Rule 17[3] of the CONDUCT Rules.

Charge No.1 Writ Petition No.37(Civil)/2010 Julio F. Ribero and Others v. Govt. of India and others has been filed through India Rejuvenation Initiative, NGO before the Hon'ble Supreme Court wherein you are also a petitioner. In the aforementioned writ petition on behalf of the petitioners (which also included you) an additional affidavit has been filed by Sri Jasbeer Singh wherein para 4 of the allegations made by Sri S.K. Dubey against senior officers of the Enforcement Directorate in his letter to the Hon'ble Prime Minister have been endorsed, which was not expected of you being a member of the All India Services.

This conduct of yours is contrary to Rule-3 of the All India Service (Conduct) Rules, 1968 and you have violated the aforesaid rule.

Charge No.2 Before becoming member of the institution named India Rejuvenation Initiative, you did not inform the government, whereas as per Rule-13 of the All India Service (Conduct) Rules–1968 information is to be given within one month of becoming a member.

This conduct of yours is contrary to Rule-3 of the All India Service (Conduct) Rules-1968 and you have violated the aforesaid rule.

Charge No.3 In the writ petition No.37(Civil)/2010 Julio F. Ribero and others v. Govt. of India and others filed by you before the Hon'ble Supreme Court, by way of an additional affidavit filed by the petitioners (which also included you), senior officers of the Government of India were criticized, whereas the members of the All India Service are prohibited from criticizing, in the media or in the press, the actions of both the Central as well as the State Government, either in their own or in another person's name. as such you violated Rule-7 of the All India Service (Conduct) Rules-1968.

This conduct of yours is contrary to Rule-3 of the All India Service (Conduct) Rules-1968 and you have violated the aforesaid rule.

Charge No.4 In Writ Petition No.37(Civil)/2010 Julio F. Ribero and Others v. Govt. of India and others filed before the Hon'ble Supreme Court, by way of an additional affidavit filed by the petitioners (which also includes), officers of the Enforcement Directorate of Government of India were criticized, whereas as per Rule-8 of the All India Service (Conduct) Rules- 1968, members of the All India Service are not allowed to depose in any enquiry wherein the Central or the State government may be criticized.

This conduct of yours is contrary to Rule-3 of the All India Service (Conduct) Rules-1968 and you have violated the aforesaid rule.

Charge No.5 In Writ Petition No.37(Civil)/2010 Julio F. Ribero and Others v. Govt. of India and others filed before the Hon'ble Supreme Court, no permission of the State Government was sought for filing the additional affidavit which was filed by the petitioners (which also includes you), whereas members of the All India Service are not allowed to give any such information without prior permission of either the Central or the State Government which brings disregard to the Central or the State Government. As such you failed to observe Rule-17 of the All India Service (Conduct) Rules, 1968.

This kind of your conduct is against Rule-3 of the All India Service (Conduct) Rules-1968 and you are guilty for violating the aforesaid provision.

8. The appellant herein never disputed the fact that he was one of the petitioners in Writ Petition (Civil) No.37/2010 (referred to supra) nor did he disown statements (allegations) made in the said writ petition. The Enquiry Officer exonerated the appellant of all the charges. The second respondent rejected the report of the Enquiry Officer on two grounds; that the Enquiry Officer submitted a cursory report without observing the mandate of Rules-8(15), 8(16), 8(20) and 8(24) of the DISCIPLINE Rules; and failed to properly investigate the facts. Interestingly, the IMPUGNED order, states that the conduct of the appellant as recorded in the charge- sheet "is in clear violation of Rules-3(1), 7, 8(1) and 17 of 1969 Rules". Therefore, the second respondent ordered to constitute a two member Inquiry Board to again enquire into the charges framed against the appellant.

9. Mr. Pallav Shishodia, learned senior counsel appearing on behalf of the appellant attacked the IMPUGNED order dated 26.09.2012 on two grounds:

> (A) That invocation of Rule 8(3) of the DISCIPLINE Rules is wholly illegal. It is submitted that the said rule only enables the State to make a choice between the two courses of action available in case it decides to conduct an enquiry contemplated under the rules;
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> (i) Appointing an officer to enquire into the misconduct of the Public Servant; or
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> (ii) Appoint an authority or board under the Public Servants (Inquiries) Act, 1850.

10. It is further submitted that the State cannot resort to the provisions of the 1850 Act after having had appointed an Enquiry Officer under the DISCIPLINE Rules merely because the State is not able to agree with the report submitted by the Enquiry Officer.

11. Learned senior counsel further argued that the reason given (by the State for rejecting the Enquiry Officer's report) that the enquiry was conducted in violation of the mandate contained in Rules-8(15), 8(16), 8(20) and 8(24) of DISCIPLINE Rules, is wholly unsustainable in law - for the reason that the Order dated 26.9.2012 fails to specify the exact violations of above mentioned rules, committed by the Enquiry Officer. On the other hand, none of these provisions are attracted in the case on hand as each one of the above mentioned rules pertain to the procedure to be followed while conducting an enquiry. Rules 8 (15) and 8(16) of the DISCIPLINE Rules, incorporate the rule of audi altem partem to enable both the delinquent officer as well as the State to adduce evidence in support of their respective stands on the various charges set out in the chargesheet. Rule 8(20) of the 1969 Rules only enables the Enquiry Officer to either receive written briefs or hear both the Presenting Officer and the delinquent. The Rule does not mandate either causes of the action unless the parties desire so. It is not the case of the State at any stage that the Presenting Officer either wanted to be heard in person or to file a written brief, therefore, there cannot be any infraction of Rule 8(20) of the 1969 Rules. Lastly, it is submitted that Rule 8(24) of the DISCIPLINE Rules only prescribed the format in which the report is to be submitted. The non-compliance, if any, with the format (because the appellant is unable to make any submission as the copy of the report itself is not made available to the appellant), is not fatal to the validity of the report. According to the learned counsel Rule 8 (24) of the DISCIPLINE Rules is to be construed only as recommendatory but not as mandatory.

(B) The ultimate conclusion of the State in rejecting the Enquiry Report dated 30.08.2012 is that the "Enquiry Officer has failed to properly investigate the FACTS". The learned counsel submitted that there are no facts in dispute which require to be investigated. All facts alleged in the chargesheet against the appellant are admitted by the appellant. The Enquiry Officer is required only to record a conclusion whether, in his opinion, the admitted facts constitute any misconduct under any of the CONDUCT Rules referred to in the chargesheet.

12. On the other hand, Shri K.V. Vishwanathan, learned senior counsel for the respondent submitted that the Order under APPEAL does not call for any interference as the order of the Enquiry Officer is

in utter non-compliance with Rule 8(15), (16), (20) and (24) of the DISCIPLINE Rules. Learned counsel also submitted that the decision of the State is well within the authority conferred under Rule 8, sub-Rule (3) of the DISCIPLINE Rules.

13. The Division Bench based its conclusion, that the IMPUGNED order dated 26.9.2012 cannot be faulted, on two factors. They are:

> (i) that the Enquiry Officer submitted his Report dated 30.8.2012 without following the procedure prescribed by law under Rule 8 of the DISCIPLINE Rules; (ii) More interestingly, the High Court accepted the submission on behalf of the State that the initial order of the appointment of Enquiry Officer under Rule 8 is unsustainable in law. Such a flaw was realized by the State only at the stage of considering the said Enquiry Officer's report.

14. The High Court, therefore, came to the conclusion that the State Government is justified in law to appoint a Board of Enquiry, contemplated under Rule 8(3) of the DISCIPLINE Rules.

15. Now, we proceed to consider the submissions.

16. The first submission of the appellant is to be examined in the light of Rule 8(1), (2) and (3) of the DISCIPLINE Rules. Rule 8 as far as is relevant is extracted:

> Rule 8. Procedure for imposing major penalties – (1) No order imposing any of the major penalties specified in Rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and Rule 10, or, provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.
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> (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the Service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.
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> (3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the service to which the member of the service belongs.

17. It is apparent that Rule 8(1) prohibits imposition of any major penalty without holding an enquiry either in accordance with the procedure prescribed under the Rules or under the provisions of the Public Servants (Inquiries) Act, 1850.

18. Rule 8(2) specifically authorises the disciplinary authority to appoint an authority to enquire into the truth of any imputation of misconduct or misbehaviour against a member of the service if the disciplinary authority is of the opinion that there are grounds to inquire into. Such an authority

could be appointed either in exercise of the power conferred under Rules or under provisions of the Public Servants (Inquiries) Act, 1850.

19. Rule 8(3) contemplates appointment of a Board as an Inquiring Authority and stipulates that such Board shall consist of not less than two senior officers of whom at least one should be an officer of the service to which the delinquent officer belongs. The expression "Board" is not defined under the Rules. The only conclusion that can be drawn from the scheme of Rules 8 (2) & (3) is that the expression 'Enquiring Authority' implies either a single member authority or Board consisting of two or more members.

20. All the parties - the appellant, the respondents and the Central Administrative Tribunal and the High Court proceeded on the basis that the IMPUGNED order constituting a two member Enquiry Board under Rule 8(3) of the DISCIPLINE Rules is an order constituting such a Board under the provisions of the Public Servants (Inquiries) Act, 1850. We do not see any basis for such a conclusion. The IMPUGNED order nowhere refers to the Public Servants (Inquiries) Act, nor there is anything in Rule 8(3) which suggests that whenever a multi-member Board is appointed as an Enquiring Authority, such a Board could be appointed only under provisions of the Public Servants (Inquiries) Act. The language of Rule 8(2) is wide enough to enable the disciplinary authority to appoint either a single member Enquiring Authority or a multi-member Board to inquire into the misconduct of a delinquent officer.

21. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the Enquiry already undertaken and resort to appointment of a fresh Enquiring Authority (multi- member). The issue is not really whether the Enquiring Authority should be a single member or a multi member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb v. The Collector of Central Excise, Shillong, (1971) 2 SCC 102, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a sub-Inspector, Central Excise (the appellant before this Court). The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge".

22. The Court held that:

> "12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary

> Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.
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> 13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant." (Emphasis supplied) and allowed the appeal of K.R. Deb.

23. It can be seen from the above that the normal rule is that there can be only one Enquiry. This Court has also recognized the possibility of a further Enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the Report submitted by the Enquiring Authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second Enquiry.

24. The scheme of Rule 8 of the DISCIPLINE Rules and Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are similar. Therefore, the principle laid down in Deb's case, in our opinion, would squarely apply to the case on hand.

25. Therefore, it becomes necessary for us to examine the legality of the IMPUGNED order in the light of the law laid down in Deb's case i.e. whether a further enquiry is really warranted on the facts of the case. We shall proceed for the purpose of this case that such further enquiry need not be by the same officer who initially constituted an enquiring authority and could be by a multi-member board.

26. The respondents recorded four reasons for ordering a fresh inquiry by a Board, under the IMPUGNED order.

The Inquiry Report dated 30th August, 2012 is cursory. The inquiry was conducted in violation of Rules 8(15), (16), (20) and (24) of the DISCIPLINE Rules.

The contents of Writ Petition (C) No. 37 of 2010 on the file of this Court constitutes a criticism of the Central Government, and therefore, is a clear violation of Rule 3(1), Rule 7, 8(1) and 17 of the CONDUCT Rules. That the Inquiry Officer failed to properly investigate the facts before submitting his report.

27. The legality of the IMPUGNED order depends on the tenability of the above. We shall deal with the last of the above-mentioned four reasons:

> 4th Reason:
>
> It is an absolutely untenable ground, since there was nothing for the Enquiry Officer to investigate regarding the facts of the various allegations in the charge-sheet. The appellant herein never disputed the factual correctness of the allegations. He

admitted that he was a petitioner in Writ Petition (C) No. 37 (supra). He never disowned any one of the allegations made in the said Writ Petition. Therefore, there were no facts to be investigated into.

Ist Reason:

Coming to the first reason - that the report is a cursory report. A copy of the report is not made available to the appellant. The content of the said report is not known. The only admitted fact about the report is that the appellant was exonerated of all the charges made against him. If such a conclusion is otherwise justified, whether the report is cursory or elaborate, should make no difference to the legality of the report. What matters is the correctness of the conclusions recorded, not the length or the elegance of the language of the report which determines the legality of the conclusions recorded in it. Therefore this ground is equally untenable.

2nd Reason:

The second reason stated is that the Enquiry Officer did not observe the mandate of Rule 8(15), (16) and (24) of the DISCIPLINE Rules. We deem it appropriate to examine the content and scope of these rules[4] and record our conclusion regarding the applicability of each of the rules to the facts of the case on hand.

28. Rule 8(15) provides that both the oral and documentary evidence by which the articles of charge are proposed to be proved by the disciplinary authority shall be produced on the date fixed for the Enquiry; witnesses on behalf of the disciplinary authority may be examined both in chief as well as cross etc. It is obvious from the Rule that the rule cannot have any application where the delinquent officer admits the correctness of the factual allegations against him.

29. Rule 8(16) speaks of adducing additional evidence and the procedure thereof. For the reasons mentioned in the context of sub-Rule (15), sub- Rule (16) will equally have no application, where the delinquent officer does not contest the factual correctness of the allegations made against him.

30. Rule 8(20)[5] enables the Enquiring authority to hear both the presenting officer on behalf of the disciplinary authority and the delinquent officer, after recording of the evidence is complete. In addition, it enables the Enquiring Authority to permit written briefs by both the parties, in case they desire so.

31. Application of Rule 20 thus depends upon the existence of two factors.

(i) the appointment of a presenting officer.

the presenting officer desires to file a written brief.

32. We could not find any categorical assertion on the record by the State that a presenting officer was in fact appointed and such officer desired to file a written brief or make oral submissions, but was prevented from doing so by the Enquiring Authority. Therefore, even this reason must fail.

33. Coming to Rule 8(24), the sub-Rule reads as follows:-

> "(24)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-
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> (a) the articles of charge and the statement of imputations of misconduct or misbehaviour;
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> (b) the defence of the member of the Service in respect of each article of charge;
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> (c) an assessment of the evidence in respect of each article of charge; and
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> (d) the findings on each article of charge and the reasons therefor.

Explanation.-If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge. Provided that the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority shall forward to the disciplinary authority the records of inquiry which shall include-

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the member of the Service;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the member of the Service or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

34. It stipulates as to what should be the content of the report. From a reading of the above Rule, it is clear that the rule will have virtually no application to a case where the delinquent employee does not dispute the factual correctness of the allegations contained in the articles of charge. Therefore, it follows that this reason also is wholly untenable.

3rd Reason:

> Coming to the 3rd reason given in the IMPUGNED Order that the content of the Writ Petition (C) No. 37 of 2010 is critical of the Government of India, and therefore, violative of Rule 3(1), 7, 8(1) and 17 of the CONDUCT Rules, we are of the opinion that this ground is equally untenable.

35. Rule 17 of the CONDUCT Rules reads as follows:

> "17. Vindication of acts and character of members of the service.—No member of the service shall, except with the previous sanction of the Government, have recourse to any Court or to the press for the vindication of official act which has been the subject-matter of adverse criticism or attack of a defamatory character.
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> Provided that if no such sanction is conveyed to by the Government within twelve weeks from the date of receipt of the request, the member of service shall be free to assume that the sanction sought for has been granted to him.
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> Explanation.—Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity. Provided that he shall submit a report to the Government regarding such action." We fail to understand how this Rule could be said to have been violated, in the background of the allegations contained in the charges framed against the appellant. In our opinion, this rule has no application whatsoever to the allegations contained in the charge-sheet. The rule only prohibits a member of the service from having recourse either to a Court or to the press for vindication of the official acts of such member which have been the subject matter of adverse criticism or a defamatory attack. It is not the content of any one of the charges against the appellant that he sought to vindicate any one of his official acts by filing WP (C) No. 37 of 2010.

36. Rule 7 of the Conduct Rules reads as follows:

> "7. Criticism of Government.—No member of the service shall, in any Radio Broadcast or communication over any public media or in any document published anonymously, pseudonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion— which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government; or which is capable of embarrassing the relations between the Central Government and any State Government; or which is capable of embarrassing the relations between the Central Government and the Government of any Foreign State:

> Provided that nothing in this rule shall apply to any statement made or views expressed by a member of the service in his official capacity and in the due performance of the duties assigned to him."

37. Clearly this Rule only prohibits criticism of the policies of the Government or making of any statement which is likely to embarrass the relations between the Government of India and a Foreign State or the Government of India and the Government of a State. Allegations of mal- administration, in our opinion, do not fall within the ambit of any of the abovementioned three categories. The entire burden of song in the Writ Petition (C) No.37 of 2010 is regarding mal-administration.

38. Rule 8 of the Conduct Rules reads as follows:

> "8. Evidence before committees, etc.—(1) Save as provided in sub-rule (3), no member of the service shall, except with the previous sanction of the Government, give evidence in connection with any inquiry conducted by any person, committee or other authority.
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> (2) Where any sanction has been accorded under sub-rule (1) no member of the service giving such evidence shall criticize the policy or any action of the Central Government or of a State Government.
>
> (3) Nothing in this Rule shall apply to—
>
> (a) evidence given at any inquiry before an authority appointed by the Government, or by Parliament or by a State Legislature; or evidence given in any judicial inquiry; or evidence given at departmental inquiry ordered by any authority subordinate to the Government.

In substance the Rule prohibits a member of the service to give evidence in connection with any inquiry conducted by any person, committee or other authority except with the previous sanction of the Government. However, sub-rule (3)(b) makes a categorical declaration that nothing in the Rule shall apply to evidence given in any judicial inquiry. Writ petition filed in public interest before the highest court of the country cannot be an inquiry contemplated under Rule 8(i). This is apart from the fact that sub- rule (3)(b) expressly excludes evidence given in any judicial inquiry. Dehors such an exception, Rule 8 would be subversive of the basic freedom of the citizens of this country, detrimental to the norms of good governance and antithetical to the liberal democratic structure of the Constitution.

39. Rule 3(1) reads as follows:

> "3. General.—(1) Every member of the service shall, at all times, maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service."

40. We are at a loss to comprehend how the filing of the writ petition containing allegations that the Government of India is lax in discharging its constitutional obligations of establishing the rule of law can be said to amount to either failure to maintain absolute integrity and devotion to duty or of indulging in conduct unbecoming of a member of the service.

41. Even otherwise, the IMPUGNED order, in our opinion is wholly untenable. The purpose behind the proceedings appears calculated to harass the appellant since he dared to point out certain aspects of mal- administration in the Government of India. The action of the respondents is consistent with their conduct clearly recorded in (2011) 8 SCC 1[6]. The whole attempt appears to be to suppress any probe into the question of blackmoney by whatever means fair or foul. The present impugned proceedings are nothing but a part of the strategy to intimidate not only the appellant but also to send a signal to others who might dare in future to expose any mal-administration. The fact remains, that this Court eventually agreed with the substance of the complaint pleaded in Writ Petition No.37 of 2010 and connected matters; and directed an independent inquiry into the issue of black money.

42. The Constitution declares that India is a sovereign democratic Republic. The requirement of such democratic republic is that every action of the State is to be informed with reason. State is not a hierarchy of regressively genuflecting coterie of bureaucracy.

43. The right to judicial remedies for the redressal of either personal or public grievances is a constitutional right of the subjects (both citizens and non-citizens) of this country. Employees of the State cannot become members of a different and inferior class to whom such right is not available.

44. The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding. There is another factor which brings the respondent virtually within the ambit of legal malice, to say the least Mr. Jasveer Singh, another employee of the respondent was also a co-petitioner in the Civil Writ filed in this Court. However, no action is taken against him. This leaves much to be desired and makes bonafides of the respondents suspect.

45. The appeal is allowed. The judgment under appeal is set-aside. Consequently, the O.A. stands allowed as prayed for. The respondents are liable jointly and severally to pay costs to the appellant which is quantified at Rs.5,00,000/- (rupees five lakhs). It is open to the respondents to identify those who are responsible for the initiation of such unwholesome action against the appellant and recover the amounts, if the respondents can and have the political will.

.....J. [J. CHELAMESWAR] .....J. [A.K. SIKRI] New Delhi September 22, 2014

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[1] Rule 7. Criticism of Government.—No member of the Service shall, in any Radio Broadcast or communication over any public media or in any document published anonymously,

pseudonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion,— i. Which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government; or ii. which is capable of embarrassing the relations between the Central Government and any State Government; or iii. which is capable of embarrassing the relations between the Central Government and the Government of any Foreign State:

> Provided that nothing in this rule shall apply to any statement made or views expressed by a member of the service in his official capacity and in the due performance of the duties assigned to him.
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> [2] Rule 8 Evidence before committees, etc.—(1) Save as provided in sub- rule (3), no member of the Service shall except with the previous sanction of the Government, give evidence in connection with any inquiry conducted by any person, committee or other authority.
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> (2) Where any sanction has been accorded under sub-rule (1) no member of the service giving such evidence shall criticize the policy or any action of the Central Government or of a State Government.
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> (3) Nothing in this rule shall apply to—
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> (a) evidence given at any inquiry before an authority appointed by the Government, or by Parliament or by a State Legislature; or
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> (b) evidence given in any judicial inquiry; or
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> (c) evidence given at departmental inquiry ordered by any authority subordinate to the Government.
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> (4) No member of the Service giving any evidence referred to in sub-

rule (3) shall give publicity to such evidence.

[3] Rule 17. Vindication of acts and character of members of the service:—No member of the service shall, except with the previous sanction of the Government have recourse to any court or to the press for the vindication of official act which has been the subject-matter of adverse criticism or attack of a defamatory character.

Provided that if no such sanction is conveyed to by the Government within twelve weeks from the date of receipt of the request, the member of the service shall be free to assume that the sanction sought for has been granted to him.

Explanation.—Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity. Provided that he shall submit a report to the Government regarding such action.

[4] (15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by, on behalf of, the disciplinary authority. The witness shall be examined by, or on behalf of, the Presenting Officer and may be cross- examined by, or on behalf of, the member of the Service. The Presenting Officer shall be entitled to re-examine the witnesses on any points, on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(16) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the member of the Service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the Service shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give to the member of the Service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the Service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

[5] Rule 8(20). The inquiring authority may, after the completing of the production of evidence, hear the Presenting Officer, if any appointed, and the member of the Service or permit them to file written briefs of their respective cases, if they so desire.

[6] Ram Jethmalani & Others v. Union of India & Others, (2011) 8 SCC 1

- 40. We must express our serious reservations about the responses of the Union of India. In the first instance, during the earlier phases of hearing before us, the attempts were clearly evasive, confused, or originating in the denial mode. It was only upon being repeatedly pressed by us did the Union of India begin to admit that indeed the investigation was proceeding very slowly. It also became clear to us that in fact the investigation had completely stalled, inasmuch as custodial interrogation of Hasan Ali Khan had not even been sought for, even though he was very much resident in India. Further, it also now appears that even though his passport had been impounded, he was able to secure another passport from the RPO in Patna, possibly with the help or aid of a politician.

41. During the course of the hearings the Union of India repeatedly insisted that the matter involves many jurisdictions, across the globe, and a proper investigation could be accomplished only through the concerted efforts by different law enforcement agencies, both within the Central Government, and also various State Governments. However, the absence of any satisfactory explanation of the slowness of the pace of investigation, and lack of any credible answers as to why the respondents did not act with respect to those actions that were feasible, and within the ambit of powers of the Enforcement Directorate itself, such as custodial investigation, leads us to conclude that the lack of seriousness in the efforts of the respondents are contrary to the requirements of laws and constitutional obligations of the Union of India. It was only upon the insistence and intervention of this Court that the Enforcement Directorate initiated and secured custodial interrogation over Hassan Ali Khan.

42. The Union of India has explicitly acknowledged that there was much to be desired with the manner in which the investigation had proceeded prior to the intervention of this Court. From the more recent reports, it would appear that the Union of India, on account of its more recent efforts to conduct the investigation with seriousness, on account of the gravitas brought by this Court, has led to the securing of additional information, and leads, which could aid in further investigation. For instance, during the continuing interrogation of Hassan Ali Khan and the Tapurias, undertaken for the first time at the behest of this Court, many names of important persons, including leaders of some corporate giants, politically powerful people, and international arms dealers have cropped up. So far, no significant attempt has been made to investigate and verify the same. This is a further cause for the grave concerns of this Court, and points to the need for continued, effective and day-to-day monitoring by an SIT constituted by this Court, and acting on behalf, behest and direction of this Court.
