THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Writ Petition No.12461/2017

Dr. Chandramani Mishra

Versus

The State of Madhya Pradesh & others

Date of Order	**08.01.2021**
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi
Whether approved for reporting	**Yes**
Name of counsel for parties	For Petitioner : Mr. Sanjay K. Agrawal, Advocate. For Respondents/State: Mr. Jubin Prasad, Panel Lawyer.
Law laid down	If the Disciplinary Authority proceeds under Rule 14 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966, then it does not mean that the Authority can only impose major penalty, but it can be culminated into a minor penalty too.
Significant Para Nos.	11, 12, 13 and 14.

Reserved on : 23.11.2020

Delivered on : 08.01.2021

(O R D E R)

(08.01.2021)

Vide order dated 01.09.2020, the respondents/State were granted time to file return, failing which their right to file return shall stand forfeited automatically. Despite that, learned Panel Lawyer is again seeking time to file return, whereas learned counsel for the petitioner submits that return of the

respondents is not required in the matter because he is confining his arguments to the legal aspect involved in the matter, therefore, this petition may be heard on the basis of facts mentioned in the petition itself.

2. Considering the aforesaid, this petition is heard finally.

3. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the legality, validity and propriety of the orders dated 11.07.2013 (Annexure-P/4) and 12.05.2017 (Annexure-P/7). Vide order dated 11.07.2013 (Annexure-P/4), the respondents inflicted minor penalty of withholding of two annual increments with non-cumulative effect upon the petitioner and vide order dated dated 12.05.2017 (Annexure-P/7), the Appellate Authority dismissed the appeal preferred by the petitioner wherein he had assailed the order passed by the Disciplinary Authority.

4. For resolving the controversy involved in the case necessary facts adumbrated in a nutshell are that the petitioner was a Medical Officer and at the time of his posting in Community Health Center, Gangev, Rewa, an order of suspension dated 02.05.2013 (Annexure-P/1) was issued placing him under suspension for the reason that he had committed misconduct as has been defined under Rule 3 of Madhya Pradesh Civil Services (Conduct) Rules, 1965 (in short the 'Rules, 1965') and, therefore, disciplinary action was proposed against him. Thereafter, a charge-sheet was issued to the petitioner on 05.06.2013 (Annexure-P/2) levelling two charges against him in which an enquiry was proposed under Rule 14(3) of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 (in short the

'Rules, 1966') against the petitioner. The said charge-sheet was communicated to the petitioner asking him to submit a written explanation/reply within a period of 15 days, otherwise the respondents would have no option but to proceed *ex parte* against him. Though the charge-sheet and its covering memo contained the date 05.06.2013 but the same was served upon the petitioner on 20.06.2013. The respondents thereafter passed an order on 11.07.2013 mentioning therein that despite granting time of 15 days for filing reply to the charge-sheet, the same was submitted by him on 27.06.2013 after expiry of the stipulated period, therefore, the same was not taken into consideration and decision was taken to proceed *ex parte* against the petitioner. Thereafter, instead of completing the enquiry; it was decided to inflict penalty of withholding of two annual increments with non-cumulative effect upon the petitioner. The suspension of the petitioner was also revoked holding that during the period of suspension, he would be entitled to get the subsistence allowance only. The reply to the charge-sheet submitted by the petitioner is also available on record as Annexure-P/3 and this fact has also been acknowledged by the Disciplinary Authority in its order dated 11.07.2013 which is impugned in this petition.

5. Learned counsel for the petitioner submits that the charge-sheet was issued to the petitioner proposing regular departmental enquiry, but even after filing the reply of the charge-sheet, without conducting any regular departmental enquiry, minor penalty of withholding of two annual increments with non-cumulative effect has been imposed upon the petitioner. He submits that once a charge-sheet has been issued and regular departmental enquiry is proposed under Rule 14 of the Rules, 1966, then that cannot be ended with a minor

penalty. If that is to be done, then the Authority is under obligation to issue fresh show-cause and impose minor penalty. In support of his contention, learned counsel for the petitioner has placed reliance upon a decision reported in **2008 (2) MPLJ 541 [Ajay Kumar Singh Vs. State of M.P. and others]**. He further submits that if a regular departmental enquiry was proposed and in pursuance to the same, minor penalty was imposed upon the petitioner then he was entitled to get full salary during the period of suspension.

6. On the other hand, learned Panel Lawyer appearing for the respondents/State seeks time to apprise this Court whether that law as cited on behalf of the petitioner still prevails or not.

7. I have heard the arguments advanced by learned counsel for the parties and perused the record.

8. As per the contention of the petitioner, the core question arises for consideration is whether the disciplinary proceeding initiated by invoking Rule 14 of the Rules 1966 can be culminated by imposing minor punishment or not?

9. As contended by learned counsel for the petitioner, the respondents initiated disciplinary proceeding as per the provisions of Rule 14(3) of the Rules 1966, meaning thereby, the said enquiry was initiated with an intention to impose major penalty against the petitioner, but without following the procedure for imposing minor penalty, the impugned order has been issued which according to him is illegal. He further contended that this Court in the case of **Ajay Kumar Singh** (supra) has held that if disciplinary proceeding initiated for imposing major penalty then minor penalty cannot be inflicted unless fresh proceeding for imposing minor penalty is initiated.

10. The facts of the case of **Ajay Kumar Singh** (supra) on which learned counsel for the petitioner has placed reliance are not similar with the case at hand for the reason that in the said case, show-cause notice was issued to the employee and reply was filed by him and after considering his reply, the Disciplinary Authority was of the opinion that regular enquiry had to be initiated and then appointed Enquiry Officer and also the Presenting Officer but lateron, minor punishment of censure was inflicted upon the petitioner therein.

11. The High Court in the case of **Ajay Kumar Singh** (supra) has observed as under:-

> ".....If the Authorities were of the opinion that there was no propriety for holding an enquiry in the light of the reply of the petitioner; the enquiry could have been well **dropped** and a fresh opportunity ought to have been given to the petitioner before inflicting minor penalty in the nature of censure...."

However, plain reading of Rule 14 of the Rules, 1966, it nowhere provides that if the Authority is proceeding under such provision by initiating enquiry then only major penalty would be imposed. Merely because Rule 10 of the Rules, 1966 provides two types of penalties i.e. minor and major clarifying that the major penalty can be inflicted only after initiating regular departmental enquiry, but the same does not mean that if Disciplinary Authority proceeded under Rule 14 of the Rules, 1966 then minor penalty cannot be imposed upon the petitioner. For substantiating this equation, it is apposite to see Rule 14 of the Rules, 1966:-

> "**14. Procedure for imposing penalties.** - (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 10 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15 or in the manner provided by the Public Servants'

(Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(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 Government servant, it may itself inquire into or 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:

[Provided that where there is a complaint of sexual harassment within the meaning of sub-rule (3) of Rule 22 of the Madhya Pradesh Civil Services (condut) Rules, 1965, the complaints committee established in each Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary authority for the purpose of these rules and the complaints committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.]

Explanation. - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain :-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which,

and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose; and where all the articles of charges have been admitted by the Government servant in his written statement of the defence the disciplinary authority shall record its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15;

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or ma;, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose;

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct and misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence providing the delivery of the documents referred to in sub-rule (3), to the Government servant; and a copy of the order appointing the "Presiding Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing specify in that behalf, or within such further time, not exceeding ten days, as inquiring authority may allow.

(8) The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner, for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of these articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority, shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presiding Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf.

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse requisition to such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority :

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge arc proposed to be proved

shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Officer and may be cross-examined by or on behalf of the Government servant. 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.

(15) 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 riot included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant 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 enquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record, in their case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the

disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 10 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 10); has itself inquired into or the articles of any charge and that authority, having regard to its own finding or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of opinion that the penalties specified in clauses (v) to (ix) of Rule 10 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses if necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after haying heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by itself :

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconducts or misbehaviour;

(b) the defence of the Government servant in respect of each articles of charge;

(c) an assessment of the evidence in respect of each article of charge; and

(d) the finding on each article of charge and the reasons therefor.

Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry establish an article of charge different from the original articles of the charge, it may record its finding on such article of charge :

Provided that the finding on such article of charge shall not be recorded unless the Government servant 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 where it is not itself the disciplinary 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 Government servant;
>
> (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 Government servant or both during the course of inquiry; and
>
> (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

In view of the aforesaid provision it is clear that Rule 14 of the Rules, 1966 nowhere provides that if the Authority proceeds under the said provision then minor penalty cannot be inflicted. But, on the contrary, if provision of sub-Rule 21(a) of Rule 14 of the Rules, 1966 is seen, it clearly describes that under the said provision i.e. Rule 14 of the Rules, 1966, the Disciplinary Authority can also impose minor penalty and if not competent to impose the major penalty, which is prescribed under sub-rules (v) to (ix) of Rule 10 of the Rules, 1966, then record of the said proceeding shall be placed before the Competent Authority which can impose the said penalty. Further, Rule 15 of the Rules, 1966 provides as to what action would be taken by the Disciplinary Authority on the enquiry report and not only this but sub-rule (3) of Rule 15 of the Rules, 1966 empowers the Disciplinary Authority to impose any of the penalties as specified in Rule 10 of the Rules, 1966. The respective provision contained in Rule 15 of the Rules, 1966 is reproduced hereinbelow:-

> "**15. Action on the inquiry report**. - (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report

> and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14 as far as may be.
>
> (2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.
>
> **(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in [x x x] Rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty [but in doing so it shall record reasons in writing] :**
>
> Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant."

Further, Rule 16 of the Rules, 1966 specifically deals with the manner in which minor penalty can be imposed and it also contains that even for imposing a minor penalty, the Disciplinary Authority can proceed under Rule 14 of the Rules, 1966 and can also take a decision to initiate regular departmental enquiry. For the purpose of convenience, Rule 16 of the Rules, 1966 is reproduced hereinbelow:-

> "**16. Procedure for imposing minor penalties.**- (1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of Rule 10 and Rule 11 shall be made except after-
>
> (a) informing the Government servant 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-rules (3) to (23) of Rule 14, 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 Government servant 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 misbehaviour; and

(e) consulting the commission where such consultation is necessary.

[(1-a) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government Servant under clause (a) of that sub-rule to withhold increments of pay of Stagnation Allowance and such withholding or increments of pay or Stagnation Allowance is likely to effect adversely the amount of pension payable to the Government Servant or to withhold increments of pay or Stagnation allowance for a period exceeding three years of to withhold increments of pay or Stagnation allowance with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.]

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

(i) a copy of the intimation to the Government servant of the proposal to take action against him;
(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;
(iii) his representation, if any;
(iv) the evidence produced during the inquiry;
(v) the advice of the commission, if /any;
(vi) the findings on each imputation of

> misconduct or misbehaviour; and
> (vii) the orders on the case together with the reasons therefor."

A plain reading of sub-rule (b) of Rule 16 of the Rules, 1966 makes it clear that the Disciplinary Authority can initiate an enquiry as per Rule 14 of the Rules, 1966, even for inflicting minor penalty.

12. In view of the aforesaid discussion, it is clear that if the enquiry is initiated by the Disciplinary Authority under Rule 14 of the Rules, 1966 it does not mean that the Authority has taken a decision to impose the major penalty or if minor penalty is to be imposed then no regular departmental enquiry can be initiated under Rule 14 of the Rules, 1966. This aspect has not been considered by the High Court in the case of **Ajay Kumar Singh** (supra), therefore, I am not convinced with the contention raised by learned counsel for the petitioner saying that when the Authority has issued a charge-sheet after taking decision to proceed under Rule 14 of the Rules, 1966 then it cannot impose minor penalty in the said proceeding and if at all they had to impose the minor penalty, then they should have issued a fresh show-cause to the petitioner for imposing minor penalty. In view of the foregone discussion, it is also clear that the Disciplinary Authority if proceeds under Rule 14 of the Rules, 1966, it cannot be presumed that the delinquent would only suffer with major penalty and this analogy is contrary to the statutory provisions as has been quoted hereinabove.

13. In the present case, from perusal of the impugned order, it is clear that the Authority has issued the charge-sheet and sought explanation/reply from the petitioner but as the same has not been submitted by the petitioner within the stipulated time, therefore, the Authority proceeded *ex parte*

against him and also imposed minor penalty against him. The arguments advanced by learned counsel for the petitioner could have been justified if the charge-sheet issued by the Disciplinary Authority had been dropped and minor penalty would have been imposed without following the procedure of imposing the minor penalty, but the case at hand is on a different footing. The submission as has been made by learned counsel for the petitioner relying upon the case of **Ajay Kumar Singh** (supra) does not impress this Court because the said case is on different footing considering the situation when the charge-sheet issued and dropped. The Court in the said case has also not considered the respective provisions as have been discussed hereinabove. The observations made by this Court in the case of **Ajay Kumar Singh** (supra) are not relevant and not applicable in the present case for the reason that the Court has observed that if any enquiry is initiated under Rule 14 of the Rules, 1966 and is **dropped** by the Disciplinary Authority then for imposing minor penalty, the Authority is under obligation to issue fresh show-cause, but here in this case, the enquiry was not dropped and it is culminated into a minor penalty. Accordingly, it is held that the Disciplinary Authority even in the proceeding initiated under Rule 14 of the Rules, 1966 can also impose minor penalty, therefore, the submission made by learned counsel for the petitioner is hereby rejected**.**

14. Even otherwise, in my opinion, if the respective provision for imposing minor penalties are seen then it can be easily gathered that the basic intention of the statute to impose minor penalty that without following the principle of natural justice and noticing the person concerned, no penalty can be inflicted. As per Rule 16 of the Rules, 1966, information to the Government servant in writing of the proposal to take action

against him is required. The imputation of misconduct or misbehaviour on which action is proposed to be taken, has to be informed to the Government servant. If charge-sheet is issued invoking Rule 14 of the Rules, 1966, the same contains the proposal for taking action with imputation of misconduct or misbehaviour on which action is proposed to be taken and it fulfils the requirement for imposing the minor penalty. Indisputably, the Government servant is noticed about the action and the misconduct which is the foundation for taking action against him. Accordingly, the analogy as applied by learned counsel for the petitioner does not attract because the charge-sheet fulfils the requirements of notice. As per the meaning of notice as has been given in The Major Law Lexicon 4th Edition, 2010 by Justice S.S. Subramani which is quoted hereinbelow:-

> "NOTICE, in its legal sense, may be defined as "information concerning a fact actually communicated to a party by an authorised person, or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in its legal consequences." [T.P. Act (4 of 1882), S.3; See Indian Trust Act (2 of 1882), S.3]"

I have no hesitation to say that even after invoking Rule 14 of the Rules, 1966, minor penalty can also be inflicted by the Disciplinary Authority.

15. However, the petition was based upon the contention that the petitioner was not given proper opportunity of hearing and the order impugned was issued in violation of principle of *audi alteram partem*. The reply to the charge-sheet was filed by the petitioner on 27.06.2013 and admittedly, the charge-sheet though contained the date 05.06.2013 but got served upon the petitioner only on 20.06.2013 meaning thereby

the stipulated period of 15 days for submitting the reply to the charge-sheet starts from the date of service of charge-sheet but not from the date of issuance of charge-sheet. The Authority committed mistake by not accepting the reply of the petitioner saying that the same had been filed after the prescribed period contained in the charge-sheet and resultantly, without considering the reply of the petitioner, proceeded *ex parte* against him and issued the impugned order. It clearly indicates that the impugned order passed by the Disciplinary Authority is without application of mind, suffers from violation of principle of natural justice, therefore, on this count alone, order dated 11.07.2013 (Annexure-P/4) passed by the Disciplinary Authority as also order dated 12.05.2017 (Annexure-P/7) passed the Appellate Authority which are impugned in this petition are not sustainable in the eyes of law, therefore, the same are hereby set-aside.

16. With the aforesaid, the petition filed by the petitioner stands **allowed** giving liberty to the respondents that if they are still of the opinion that disciplinary proceeding has to be initiated against the petitioner, then they may pass fresh order in accordance with law considering the reply submitted by the petitioner.

Parties shall bear their own costs.

(SANJAY DWIVEDI)
J U D G E

Devashish

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