

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.11353/2005 & CM 8332/05 (stay)

% 19th September, 2013

BHAGWAN CHAND SAXENA Petitioner
Through: Mr. G.D. Bhandari, Advocate.

Versus

EXPORT INSPECTION COUNCIL OF INDIA AND ORS..... Respondents
Through: Mr. L.R. Khatana, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this writ petition is to the orders passed by the departmental authorities; disciplinary authority and the appellate authority; whereby petitioner has been visited with the penalty of removal from service. Penalty has been imposed inasmuch as petitioner was found guilty of harassing, threatening and causing sexual harassment of a lady employee Smt. Bimla Sharma.

2. I have heard the counsel for the petitioner at length on innumerable number of points which have been argued before me. The

different heads of arguments pertain to non-supply of documents during the enquiry proceedings, bias of the Director of the respondent No.1, bias of the enquiry officer, charges being vague, non-supply of Hindi translation of documents, there being no eye witnesses who have been examined, appellate authority not giving personal hearing etc etc. However before I deal with each of the arguments urged on behalf of the petitioner, I must state that I strictly and legally do not have to do so inasmuch as petitioner in the enquiry proceedings was proceeded *ex parte*, he did not cross-examine any witnesses of the management, he did not lead evidence of any of his witnesses and did not step into the witness box to disprove the evidence against him. The management had examined 11 witnesses and filed and proved various documents. Once the proceedings are *ex parte*, and there is no reason to hold that the proceedings have been wrongly held *ex parte*, there cannot take place arguments by the petitioner as if he is arguing before the enquiry officer on all the points and issues which actually should have been urged before the enquiry officer and evidence led accordingly before the enquiry officer. Even in a normal civil appeal against an *ex parte* judgment and decree, the defence of the defendant who has proceeded *ex parte* is not looked into, and in proceedings under Article 226 of the Constitution of India the same is all the more so because the scope of hearing before a Court

in a petition under Article 226 is extremely limited and report of the enquiry officer and the orders of the departmental authorities are set aside only if the findings are perverse or in violation of principles of natural justice or in violation of rules/law. Therefore, once the enquiry officer has given a detailed report running into 26 pages, after analyzing the entire oral and documentary evidence before him, such an *ex parte* report cannot be set aside in exercise of powers under Article 226 of the Constitution of India because there is no perversity in the findings and nor is there any violation of principles of natural justice. Counsel for respondent no.1 has rightly relied upon the Constitution Bench judgment in the case of ***Major U.R.Bhatt Vs. Union of India AIR 1962 Supreme Court 1344: (1962) 1 LLJ 656*** wherein in para-6 of the said judgment it is held that once a charged officer is rightly proceeded *ex parte* thereafter he cannot challenge the proceedings of the enquiry on the ground of unfairness and incompleteness.

3. In view of the above, the writ petition is liable to be dismissed on the sole ground that the arguments urged before me are as if a first appeal is being argued where a person has put his defence; though the fact of the matter is that there was no defence of the petitioner before the departmental authorities and therefore the proceedings before this Court cannot be converted into proceedings before an enquiry officer where the petitioner

seeks to argue his case afresh on the basis of a defence which does not exist in the enquiry proceedings. Also, as the subsequent narration in the judgment will show that even on facts the petitioner has been grossly misleading the Court with respect to arguments which have been urged. I must in this regard put on record my appreciation for the thoroughness in which the counsel for the respondent No.1 has rebutted the arguments of the petitioner and assisted the Court.

4. I must also before proceeding with the judgment put on record that after conclusion of arguments, counsel for the petitioner wanted to file written submissions pursuant to an earlier order passed by a learned Single Judge of this Court, which I did not agree to as I have heard the counsel for the petitioner, and thus, I do not need any written arguments. There is no law that a person must necessarily be allowed to file written arguments after conclusion of oral arguments. The request of the counsel for the petitioner is accordingly rejected.

5. It is necessary at this stage to state the charges which have been made against the petitioner. As per the imputation of misconduct in support of the chargesheet the facts are that an employer Smt. Bimla Sharma addressed complaints to the then Minister for State of Commerce on 25.7.2000 and 5.3.2001 with respect to indecent remarks and language

regularly made by the petitioner while functioning as a caretaker at EIA, Delhi during a long period from 1999 to 2001. Smt. Bimla Sharma also stated that the petitioner threatened her of dire consequences in case Smt. Bimla Sharma proceeded with a complaint of sexual harassment which she had made against one Sh. Shivdasani. Petitioner though was posted as a caretaker in EIC, he was frequently seen spending days at EIA- Delhi, Head Office. A preliminary enquiry was conducted by the sexual harassment committee of the respondent No.1 and which found the petitioner guilty of the acts complained of and therefore the main enquiry proceedings were initiated against the petitioner pursuant to the memorandum of charges dated 30.7.2003. The memorandum of charges is accompanied by the imputation of facts of misconduct. Smt. Bimla Sharma also had made a complaint dated 8.11.2000 to the Director of the respondent No.1 that petitioner was continuously threatening her through telephone calls and that when he did not succeed in the threats to make Smt. Bimla Sharma withdraw the case against Sh. Shivdasani, petitioner attempted to bribe Smt. Bimla Sharma for withdrawing her complaint against Mr. Shivdasani. An order was passed by the respondent No. 1 against the petitioner that he should not visit EIA, Delhi. The petitioner then through his wife Smt. Mahesh Kumari Saxena got a false complaint filed at the police station against Smt. Bimla Sharma.

The police investigated the complaint in detail and finding no substance in the complaint closed the same. The petitioner is therefore stated to be guilty of engineering a false complaint against Smt. Bimla Sharma.

6. The first aspect to be dealt with by me is whether petitioner was rightly proceeded exparte. In this regard before I reproduce the relevant portion of the enquiry officer's report which shows that proceeding of the petitioner exparte was justified, it is required to be stated in a nutshell that the petitioner repeatedly kept on asking adjournments on medical grounds by filing medical certificates. It is after about half a dozen opportunities that the enquiry officer ultimately proceeded exparte against the petitioner. Not only the fact that the petitioner was deliberately delaying the enquiry proceedings, the medical certificates which were filed by the petitioner were surprisingly from different doctors and different type of doctors spread throughout Delhi. Whereas one certificate was from MCD Hospital in old Rajendra Nagar, the second certificate was from a government dispensary at Kanti Nagar, the third certificate was from a private doctor of Chander Nagar, and the fourth certificate was of a Unani dispensary at Mehrauli. The certificates are therefore obtained from doctors in different parts of Delhi with considerable distances separating them. In fact, it is also relevant to note that the enquiry officer in the present case took pains to call for reply

from the doctors of the MCD hospital and the CGHS dispensary, however these doctors did not respond to the letters which were sent by the enquiry officer and whereafter the petitioner got certificates from a private doctor and then from a Unani dispensary at Mehrauli. Though the petitioner claimed he was ill for seeking adjournments but he attended hearing in another case. The petitioner had adopted the modus operandi of seeking adjournments even in the hearing before the Sexual Harassment Committee-SHCC. With this backdrop, the relevant portions of the enquiry officer's report proceeding the petitioner *ex parte* is reproduced as under:-

“Circumstances for holding Ex Parte Enquiry

4. The Charged Officer, Shri Bhagwan Chand Saxena initially appeared in the enquiry but later on failed to appear despite number of opportunities given and as such enquiry was conducted *ex parte*. The circumstances under which Shri Bhagwan Chand Saxena has been proceeded against *ex parte* are as follows:-

i) That the undersigned issued letter dt. 6.11.2003 to the Charged Officer informing about appointment of the undersigned as Inquiring authority to inquire into the charges leveled against him and further informed that preliminary hearing will be held on 14.11.2003. The undersigned also informed the Charged Officer that he can appear along with Defence Assistant as provided for under the rules. A copy of the same was also sent to Shri Rajvinder Singh, Presenting Officer.

ii) That on 14.11.2003, Shri Rajvinder Singh, Presenting Officer and Shri Bhagwan Chand Saxena, Charged Officer appeared and participated in the enquiry. The Charged Officer denied the Articles I, II and III of charges on 14.11.2003. However, the Charged Officer submitted representation vide letter defendant 14.11.2003 wherein he wanted some documents, which were not listed in the charge sheet. The Charged Officer was permitted to inspect listed documents by

24.11.2003. The Charged Officer was also advised to give the name of Defence Assistant in case he desired as per rules. The Charged Officer was also permitted to give list of additional documents and witnesses, if any, up to 8.12.2003.

iii) That however, on 8.12.2003, the Charged Officer neither appeared in the enquiry nor submitted the list of additional documents and list of witnesses. However, the undersigned received on 9.12.2003 letter dt. 6.12.2003 from the Charged Officer wherein he stated that on 24.11.2003, he had inspected the documents but had objected to the fact that he was not allowed to inspect the original of listed documents and requested the undersigned to direct the Presenting Officer to allow the Charged Officer to inspect the original documents. The undersigned had also received copies of letter defendant 20.11.2003 and 29.11.2003 written by Charged Officer to the Presenting Officer for inspection of documents. Accordingly, the undersigned issued letter dt. 10.12.2003 to the Presenting Officer to clarify the objection raised by the Charged Officer. The undersigned further gave opportunity to the Charged Officer to submit list of additional documents and list of witnesses by 4.3.2004, vide letter dated 25.2.2004.

iv) That the undersigned received letter dt. 4.3.2004 from the Charged Officer who submitted a list of additional documents and a list of witnesses on 4.3.2004 to the undersigned. The said documents and list of witnesses were duly examined by the undersigned on 18.3.2004. The Presenting Officer was advised to provide accepted additional documents to a Charged Officer and the same was also communicated to Charged Officer vide letter dated 18.3.2004.

The accepted documents were handed over to the charged officer on 23.3.2004 by presenting officer.

v) That thereafter, the undersigned fixed the date of oral enquiry on 29.3.2004 at 11 A.M. at Export Inspection Agency, Delhi, S.O. Faridabad on day-to-day basis and sent notice for appearing in the enquiry to both the parties vide letter dt. 19.3.2004. The undersigned had also sent notices to all witnesses for appearing in the enquiry on 29.3.2004. The undersigned received a copy of letter dt. 23.3.2004 whereby the Presenting Officer had handed over accepted additional documents to the Charged Officer. The undersigned also received

letter from the Presenting Officer wherein it was stated by the Presenting Officer that the Charged Officer has received additional documents on 23.3.2004. However, the undersigned received a letter dt. 22.3.2004 and 26.3.2004 from the Charged Officer not to proceed with the enquiry fixed on 29.3.2004 and the same be kept in abeyance till all the documents are supplied/accepted. The undersigned further received a letter defendant 25.3.2004 from the Charged Officer wherein he stated that he is unable to attend the enquiry fixed on 29.3.2004 on account of illness and further sent medical certificate from MCD Dispensary, Rajinder Nagar, New Delhi. Accordingly, the undersigned adjourned the enquiry vide letter dt. 26.3.2004 and informed the Charged Officer and other parties.

vi) That thereafter, the undersigned fixed the next date of oral enquiry on 7.4.2004 and informed both the parties and witnesses. However, the undersigned again received a letter dt. 30.3.2004 from the Charged Officer wherein he wanted inspection of original documents and supply of copy of statement of departmental witnesses. The undersigned also received another letter dt. 3.4.2004 from the Charged Officer wherein he requested for adjournment on account of his illness and also sent medical certificate from MCD Dispensary, Rajinder Nagar, New Delhi. Accordingly, the undersigned again adjourned the enquiry and re-scheduled the hearing on 19.4.2004 and sent information of the same to both the parties including witnesses vide letter dt. 7.4.2004. The undersigned received letter dt. 15.4.2004 from the Charged Officer wherein it was intimated that Shri O.P. Arora will assist him as his Defence Assistant in the enquiry.

vii) That thereafter, the undersigned again received a letter dt. 15.4.2004 from the Charged officer for adjournment of enquiry on the ground that he is still under treatment and is not in a position to participate in the enquiry and again sent medical prescription of dispensary of Kanti Nagar, Delhi. The undersigned again adjourned the enquiry fixed on 19.4.2004 and fixed the next date of hearing on 27.4.2004. Though, the medical prescription was not a proper document to take adjournment but still the undersigned adjourned the enquiry in question in the interest of natural justice. The undersigned also sent letter to medical officer of Kanti Nagar Dispensary to appear and give evidence in respect of said medical prescription.

viii) That the undersigned again received letter dt. 26.4.2004 from the Charged Officer to keep the enquiry in abeyance till the decision of disciplinary authority on his letter for change of inquiring officer. The undersigned also received letter dt. 1.5.2004 from the Charged Officer for inspection of original documents and supply of copy of statement of departmental witnesses. Besides, the undersigned also received a letter dt. 24.4.2004 from the Defence Assistant for adjournment of enquiry on the ground that his wife is admitted in the hospital and as such he is not in a position to attend the enquiry. The undersigned also received a letter dt. 26.4.2004 from the Charged Officer for adjournment of enquiry as he is still under treatment and sent another medical certificate, this time of one Dr. Khurana of Chander Nagar, Delhi. Accordingly, the undersigned again adjourned the enquiry and further kept the same in abeyance as the Charged Officer had submitted representation dt. 26.4.2004 for change of Inquiring Authority till the decision of disciplinary authority on his letter dt. 26.4.2004.

ix) That thereafter, the enquiry was fixed on 10.6.2004 and notice of the same was sent to the parties including Defence Assistant, Shri O.P. Arora vide letter dt. 31.5.2004 wherein it was informed that the disciplinary authority has not accepted his request for change of inquiring authority. The undersigned once again received letter dt. 5.6.2004 from the Charged Officer for adjournment of enquiry on the ground that he is still under treatment and also sent another medical certificate, this time of dispensary at Mehrauli, New Delhi. Thereafter, the undersigned sent a letter dt. 7.6.2004 to Shri O.P. Arora, Defence Assistant of the Charged Officer to appear in the enquiry on 10.6.2004 so that the enquiry can proceed further and it was further informed that the enquiry would be proceeded ex parte in case they failed to appear in the enquiry. A copy of this letter was also sent to the Charged Officer. The undersigned had also written a letter dt. 6.6.2004 to Shri O.P. Arora wherein it was informed that the enquiry will be conducted on 10.6.2004, 11.6.2004, 14.6.2004 and 15.6.2004. A copy of the same was sent to the Charged Officer and the Presenting Officer. However, on 10.6.2004, neither Shri Bhagwan Chand Saxena, the Charged Officer appeared nor Shri O.P. Arora appeared in the enquiry despite having knowledge of the same. The undersigned did not receive any communication from the Defence Assistant for not appearing on 10.6.2004. The Charged Officer as

usual submitted medical certificate for adjournment of enquiry on the ground of his illness, which has been his regular feature. For every date of hearing, the Charged Officer had been submitting the medical certificates from various Doctors. However, the undersigned adjourned the enquiry once again keeping in view the principles of natural justice.

x) Shri S.K. Tandon, Asstt. Director, EIC vide letter dt. 26.7.2004 had informed the undersigned that Shri Bhagwan Chand Saxena, the Charged Officer had attended the court on 19.7.2004 during the hearing of one case no. M/102 – Bhagwan Chand Saxena vs. Director which shows that he is medically fit and has been deliberately avoiding to appear in the enquiry.

xi) That the undersigned thereafter, fixed the enquiry on 16.8.2004 and sent notice of the same to all the parties vide letter dt. 31.7.2014. However, the Charged Officer, Shri Bhagwan Chand Saxena failed to appear on 16.8.2004 also. His Defence Assistant, Shri O.P. Arora did not appear on 16.8.2004.

xii) The undersigned had fixed the first date of oral enquiry on 29.3.2004 and since then, the enquiry was adjourned on the request of the Charged Officer. The Charged Officer had been submitting medical certificates of different dispensaries before the date of hearings. The undersigned had given ample opportunities to the Charged Officer to appear in the enquiry but he failed to appear. However, the conduct of the Charged Officer by sending letter along with medical certificates before the hearing shows that he has been deliberately not appearing in the enquiry and submitting medical certificates just for adjournment. The Defence Assistant or the Charged Officer also failed to appear in the enquiry on 16.8.2004 despite having the knowledge of the same. The attitude of the Charged officer has been evasive and uncooperative since beginning and he has not shown any inclination to appear in the enquiry. In fact, his attitude has always been to delay the enquiry by submitting letters for adjournment. The conduct of the Charged Officer has not been proper and he was not cooperating in the enquiry. The undersigned has also seen enquiry report of SHCC in which also the conduct of the Charged Officer was the same. Even during the said investigation, the Charged Officer failed to appear and had been requesting for adjournment. Even assuming that the Charged Officer was not well, it

was the duty of the Defence Assistant to appear in the enquiry and apprise the undersigned of condition of Charged Officer. When the Charged Officer has been attending the courts otherwise and has been sending letters after letters to the Management and to the undersigned, he should have taken the enquiry seriously and should have appeared on the date of hearings. The Charged Officer should have come to the undersigned when he was well and taken date to suit him but he never came to the undersigned. The enquiry was adjourned five times due to purported illness of the Charged Officer. Even the doctors who had issued medical certificates did not attend the enquiry. It is also observed that the defence assistant did not care to apprise the Enquiry Authority regarding the illness of the charged officer. It was clear that the charged officer was being evasive and uncooperative and was not interested in appearing in the enquiry and as such the undersigned had no option but to proceed with the enquiry as ex parte on 16.8.2004. Accordingly, the undersigned conducted the ex parte proceedings from 16.8.2004 onwards.” (underlining added)

7. In my opinion, the above portion of the report of the enquiry officer quite clearly shows that the enquiry officer was justified in proceeding exparte against the petitioner. As already stated above, I need not go into the arguments which have been urged before me, however, let me still deal with each of the arguments which have been urged before me.

8. First argument which is urged on behalf of the petitioner is that charges against the petitioner are vague without date and time not having been given and in fact the complainant Smt. Bimla Sharma had given only one complaint dated 25.7.2000 which did not make any allegations against the petitioner. Both these contentions urged by the petitioner are incorrect because the complaint dated 25.7.2000 specifically makes allegations

against the petitioner that the petitioner although being posted in EIC used to come to the EIA office and used to make remarks against the petitioner. Further, the report of the enquiry officer shows that the complainant Smt. Bimla Sharma had also made oral complaints to her superiors in the respondent No.1. There is no law that there has to be first many written complaints and only then there can be enquiry with respect to sexual harassment and other mental harassment of a lady employee. The acts which are complained of can also without making detailed written complaints on each occasion be established during the enquiry proceedings and which has been so done in the present case. In the enquiry proceedings besides the complaint dated 25.7.2000 other letters of Smt. Bimla Sharma dated 8.11.2000 and 25.3.2003 were filed. The letter of Sh. T.S. Narula, the then Joint Director was also filed alongwith the letter of Smt. Bimla Sharma dated 25.7.2000 and also the letter of the Deputy Director Sh. A.K. Saxena directing the petitioner not to visit the export inspection agency.

9. In a complaint of the nature of mental harassment, agony and sexual harassment of a lady employee, and which is caused over a long period of time, it is not the law that specific dates have to be given once many witnesses depose in favour of the management with respect to the complaints which were made by Smt. Bimla Sharma both in writing and

orally from time to time. The report of the Enquiry Officer in the present case shows that the Enquiry Officer has considered the detailed statements of witnesses as also the members of the sexual harassment committee to give a finding of guilt against the petitioner. Even if, the report of the sexual harassment committee and all the evidences of its members before whom Smt. Bimla Sharma complained with respect to harassment is not looked into, yet the guilt of the petitioner is otherwise sufficiently established by other witnesses and the documentary evidence. Therefore, in a case such as the present, where the harassment charges against the petitioner is proved and the petitioner has not cross examined the witnesses of the management, not led his evidence, not appeared in the witness box and stood the test of cross-examination, in my opinion, the argument that the charges are vague and therefore enquiry proceedings must fail is an argument without any substance whatsoever and is accordingly rejected.

10. The next argument of the petitioner was that the Director of the respondent no.1 was biased against him and therefore, the enquiry proceedings must fail. Firstly, I have failed to understand this argument because for the sake of argument, even if we assume that the Director of respondent no.1 was biased against the petitioner yet, once the said lady Astt. Director Ms. Neena Sadanah is not in any manner concerned with the

enquiry proceedings, then how can the alleged bias make any difference. Also, the allegations of alleged bias of Ms. Neena Sadanah are totally baseless allegations because counsel for respondent no.1 has rightly argued that the so called claim of bias has not been substantiated and the same is nothing except self serving statements. Counsel for respondent no.1 has rightly contended that by making self serving statements grave charge of bias cannot be proved especially as there is no substantiated complaint of the petitioner against the said Ms. Neena Sadanah.

11. The next argument which is urged on behalf of the petitioner is that the enquiry officer was biased because the enquiry officer did not adjourn the case and wrongly proceeded *ex parte* against the petitioner. This argument again is misconceived and it would be covered under the head decided against the petitioner that petitioner was rightly proceeded *ex parte* by the enquiry officer. Also, I may note that the petitioner had tried to change the enquiry officer, however, his request was considered by the appropriate authority and rejected. In any case, the claim made for request of change of an enquiry officer was unjustified and baseless because the ground of bias against the enquiry officer has no substance much less on the ground that there was non supply of documents and which is an issue dealt with hereinafter.

12. The next argument which is urged on behalf of the petitioner is that the petitioner had asked for two sets of documents which were not supplied to him and therefore, the enquiry officer was biased and there is violation of principles of natural justice. The two documents which were asked for by the petitioner pertain to statement of witnesses made before the sexual harassment committee as also the statement of the complainant Smt. Bimla Sharma. This case of the petitioner was rejected by the enquiry officer in the following terms in his letter dated 18.3.2004

“9. The document required under sl. No. 9 is not admitted since all such statements would have been the basis of the report of CCSH and the report is already one of the listed documents in the charge sheet and is available for examination to C.O, he may refer the report of CCSH for his defence. All the members of CCSH Committee are the listed witnesses in the Charge Sheet and C.O would have full opportunity to examine them, not admitted.

10. The document required under sl. No. 10 is also a statement/deposition made by one of the witnesses during the course of inquiry by CCSH and no such statement has been relied upon for framing of charge sheet. Hence the relevance given for the demand is not directly related to the charge and the C.O. should know that the charge is substantiated by the report of CCSH, which is available to be C.O. for examination. More over, both Bimla Sharma and Priya Narula, Advocate are listed witness in the Charged Sheet and C.O. would have full opportunity to cross examine them, not admitted.”

13. I do not find any illegality in the action of the enquiry officer in rejecting the request of the petitioner inasmuch as counsel for respondent no.1 has rightly relied upon the judgment of the Supreme Court in the case

of *Pandit D. Aher Vs. State of Maharashtra (2007) 1 SCC 445* wherein in para 10 the Supreme Court has said that documents which are not relied upon as per the charge sheet do not have to be supplied to the delinquent official and only those documents are required to be supplied whereupon reliance is placed upon by the department. Also the issue of documents which the petitioner asked for being not supplied would have relevance if the petitioner was not proceeded ex parte in the enquiry and petitioner would have sought to prove these documents in the enquiry proceedings. Once the petitioner remained ex parte in the enquiry proceedings, and he did not lead evidence, I fail to understand as to how even if these documents which were supplied were to be looked into, how the same can in any manner make difference to the conclusion of the enquiry officer. It is relevant to state that the members of the sexual harassment committee who appeared as witnesses before the enquiry officer not only confirmed the report, but also deposed as to the complaints which were made against the petitioner by Smt. Bimla Sharma. At best the report of the sexual harassment committee cannot be looked into as per the stand of the petitioner, however, this cannot make any difference because Smt. Bimla Sharma personally appeared in the departmental enquiry proceedings, and gave her statement against the petitioner. Smt. Bimla Sharma was not cross examined, and nor were any

other witnesses who deposed on behalf of the management. In such circumstances, the enquiry officer was justified in arriving at a finding of the petitioner causing mental agony and harassment as also giving out threats and causing sexual harassment to Smt. Bimla Sharma. Therefore, the argument that petitioner has been prejudiced because of non-supply of the statements made by witnesses before the sexual harassment committee, is an argument which is rejected especially because in the enquiry proceedings, the complainant Smt. Bimla Sharma as also the management have deposed and proved the case against the petitioner.

14. The next argument which was urged on behalf of the petitioner is that the documents which were supplied were in English but since petitioner did not know English, and therefore, he ought to have been supplied translation of the documents, and since they were not supplied, the enquiry proceedings must fail. Both the aspects with respect to the petitioner not knowing English and not being supplied the Hindi translations are *ex facie* false. Firstly, the entire correspondence entered into by the petitioner with the respondent no.1 or with any other authority or before the enquiry officer is only in English. Counsel for respondent no.1 therefore rightly urges that it is absurd for the petitioner to contend that he should be given translated documents. Counsel for respondent no.1 also rightly states

that in fact even if, the issue of supplying of documents in Hindi is to be considered as necessary, yet the argument of the petitioner that he was not supplied with the documents is blatantly false because in the writ petition itself in para 7 at page 4 petitioner himself admits that he did receive the Hindi translations of the documents, however, his grievance is restricted to the translations not being 'authenticated'. I agree with the counsel for respondent no.1 that the argument of authentication being required is baseless because there is no law that the documents have to be authenticated. The petitioner cannot raise this issue of the translations as there is no issue of any fraud or forgery or falsity of the translations. Therefore, on both the counts of the petitioner allegedly not knowing Hindi or not receiving the Hindi translation of documents, the arguments are misconceived and hence rejected.

15. It was then urged by the petitioner that petitioner even if he was proceeded ex parte should have been sent each and every day's proceedings by the enquiry officer. When asked as to that under which provision of law the petitioner is raising this argument, counsel for the petitioner placed reliance upon a Conduct Rule of the Central Government Employees. However, counsel for the petitioner was not able to show as to how conduct rules of Central Government employees are applicable to employees of the

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respondent no.1. In fact even on facts, the argument on behalf of the petitioner is misconceived because counsel for respondent no.1 has rightly pointed out to me the averments made by the petitioner in his letter dated 4.11.2004 wherein at page 6, the petitioner himself admits that all the daily order sheets and proceedings of the enquiry were supplied to the petitioner on 14.9.2004/22.9.2004 and well before the enquiry officer gave his report. I may also state that there is no law that after every date of hearing, the enquiry officer in the departmental enquiry proceedings must send copies of those proceedings to an officer who deliberately chooses to remain away and is proceeded *ex parte*. No such rule has been pointed out of the respondent no.1 by the petitioner that every date's proceedings and order sheets must be sent to a charged officer although the charged officer is proceeded *ex parte* and though he deliberately does not participate in the departmental enquiry proceedings.

16. It was then argued by the petitioner that there was no eye witness and therefore, the case against the petitioner was misconceived and the enquiry officer's report is to be set aside for this reason. This argument is also incorrect because when we refer to the enquiry report we find that witnesses deposed to complaints having been made by Smt. Bimla Sharma and also that orders were passed by the respondent no.1 to prevent the

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petitioner from coming to the office where Smt. Bimla Sharma was posted because petitioner was not otherwise posted at the EIA office where Smt. Bimla Sharma was posted. The report of the Enquiry Officer shows that to prove the case of the management with respect to the complaints made by besides Smt. Bimla Sharma , witnesses who appeared were Sh. Anil Johri, then Advisor, EIC, Delhi, Sh. T.S.Narula, the then Joint Director, who had since retired, Sh. G.C.Ghosh, Section Officer, EIA Calcutta, Mr. P.S.Rawat, Clerk, EIA, Delhi and Mr. Shekhranand, Junior Hindi Translator, EIA, Delhi. The different witnesses have proved the different aspects of the charges against the petitioner. The enquiry report also shows how the petitioner got a baseless complaint filed by his wife against Smt. Bimla Sharma, and which complaint was found to be false by the police. Therefore, the contention of the petitioner that enquiry report is incorrect and bound to be set aside on the ground that there was no eye witness is an argument without merit and is accordingly rejected.

17. Another argument which was urged on behalf of the petitioner was that the appellate authority did not give any personal hearing to the petitioner and therefore, principles of natural justice are violated. I may state that in fact the settled law is to the contrary that the appellate authority does not have to give any personal hearing and the personal hearing has only

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to be given by the disciplinary authority. Reference in this regard be made to the recent judgment in the case of *Oriental Bank of Commerce & Anr. Vs. R.K. Uppal (2011) 8 SCC 695* and which holds that no personal hearing need be given by the appellate authority unless there is a specific rule in this regard.

18. On behalf of the petitioner, it was then argued that the orders of the disciplinary authority and the appellate authority are non-speaking orders and are therefore to be set aside on this ground itself. Once again this argument is without merit because the disciplinary authority and the appellate authority are not bound in law to pass detailed orders in the nature of the judgments, and they can well adopt the detailed findings, conclusions and reasoning in the report of the enquiry officer. In any case, when we refer to the order of the disciplinary authority which has been passed in that case, it is seen that the order of the disciplinary authority dated 16.11.2004 in fact is a very detailed order running into 4-5 pages (single spacing) and where all the aspects urged on behalf of the petitioner have been dealt with. As already stated above, the disciplinary authority need not have passed a detailed judgment/order, however, yet the disciplinary authority has done so. The order of the appellate authority does not have to be a detailed order in law and therefore, once the Appellate Authority confirms the findings and

conclusions of the Disciplinary Authority and the report of the enquiry officer on which it is based nothing further in law is required.

19. One argument which was then sought to be raised that the complaint made to the sexual harassment committee by Smt. Bimla Sharma is time barred, however, once again the argument is without any merit, and is also not supported by any ground in the writ petition and hence was not carried forward, when the counsel for the petitioner was put a specific query that which is the law and what is time limit for a complaint to be made of sexual harassment to a sexual harassment committee.

20. The next argument which was urged on behalf of the petitioner was that a learned Single Judge of this Court vide observations made in an order dated 20.4.1999 since had held that Mr. Shivdasani was not guilty, therefore, petitioner also should not be held guilty. I have really once again failed to understand this argument because when we see the order dated 20.4.1999, that order is only an interim order in a case where certain observations are made, however more important is the fact that the order in the case of Mr. R.K. Shivdasani, and there are no observations with respect to any of the issues as against the petitioner. Therefore, I fail to understand as to how any observations made in a case of Mr. Shivdasani can in any

manner exonerate the petitioner with respect to article of charges made against him.

21. It was finally urged by the petitioner that since in the order of the appellate authority there is an observation that harassment of Smt. Bimla Sharma had spoiled the office atmosphere for other female colleagues, and which is not in the article of charges, therefore, the order of the appellate authority should be set aside. This argument, in my opinion, is without merit because a stray observation, that too in an order of the appellate authority, cannot result in setting aside the detailed report of the enquiry officer and the detailed order which is passed by the disciplinary authority in this case. At best, the observations in the order of the appellate authority should be taken as stray observation and which definitely cannot affect the punishment of removal imposed upon the petitioner in the facts of this case where is petitioner is found to be guilty of mental agony harassment of Smt. Bimla Sharma including by giving of threats to Smt. Bimla Sharma and her sexual harassment.

22. To conclude, it is necessary to once again reiterate that petitioner in the present case has been rightly found guilty of harassment of a female employee, threatening her with dire consequences, getting false complaints filed against the aggrieved employee, deliberately delaying and

thereafter not participating in the enquiry. Petitioner is also guilty of raising baseless grounds in the writ petition which are in fact against the facts and especially the ground with regard to non-supply of hindi translations of documents and is thus guilty of abuse of the process of law.

23. In view of the above, the petition being wholly without merit, and since respondent no.1 has been put to unnecessary costs for contesting this case, the same is dismissed with costs of Rs. 30,000/-. Costs be paid within two months.

SEPTEMBER 19, 2013
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VALMIKI J. MEHTA, J.