

Court No.4

Case :- WRIT - A No. - 1275 of 2019

Petitioner :- Amitabh Kumar

Respondent :- Hindustan Aeronautics Limited Thru M.D. Bangalore And Ors.

Counsel for Petitioner :- Yadukul Shiromani Srivast,Ankit Pande

Counsel for Respondent :- P.K. Sinha,Akash Sinha,Prakash Kumar Sinha

CONNECTED WITH

2. Case :- WRIT - A No. - 20277 of 2018

Petitioner :- Amitabh Kumar

Respondent :- Hindustan Aeronautics Ltd. Corporate.Office And Ors.

Counsel for Petitioner :- Amitabh Kumar In Person,Ankit Pande,Yadukul Shiromani Srivastava (Y.S.Lohit)

Counsel for Respondent :- P.K.Sinha,Akash Sinha,Prakash Kumar Sinha

AND

3. Case :- WRIT - A No. - 23944 of 2018

Petitioner :- Amitabh Kumar

Respondent :- Hindustan Aeronautics Ltd.Thru.Chairman-Cum-Man.Dir.And Ors.

Counsel for Petitioner :- Ankit Pande,Yadukul Shiromani Srivastava (Y.S.Lohit)

Counsel for Respondent :- Rajesh Kumar,Akash Sinha,Prakash Kumar Sinha

AND

4. Case :- WRIT - A No. - 32596 of 2018

Petitioner :- Amitabh Kumar

Respondent :- Hindustan Aeronautics Ltd.Bangalore Thru Chairman / M.D Ors

Counsel for Petitioner :- Yadukul Shiromani Srivast,Deepti Singh

Counsel for Respondent :- P.K Sinha,Prakash Kumar Sinha

AND

5. Case :- WRIT - A No. - 32622 of 2018

Petitioner :- Amitabh Kumar

Respondent :- Hindustan Aeronautics Ltd.Bangalore Thru Chairman / M.D Ors

Counsel for Petitioner :- Yadukul Shiromani Srivast,Deepti Singh

Counsel for Respondent :- P.K Sinha,Akash Sinha,Prakash Kumar Sinha

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Shri Y.S. Lohit, learned counsel for the petitioner and Shri P.K. Sinha, learned counsel for the opposite parties.
2. Notably, all the above writ petitions have been filed by Shri Amitabh Kumar challenging the orders being passed by the common opposite parties, therefore, all the writ petitions are connected together for the reason that the basic facts and circumstances involved in all the above writ petitions are similar, only punishment orders are different. Therefore, by a common order, the facts and circumstances of all the above writ petitions would be considered separately.
3. Writ-A No.1275 of 2019 is being treated as leading writ petition.
4. In the leading writ petition i.e. Writ-A No.1275 of 2019, the petitioner has challenged the order dated 31.10.2018 retiring the petitioner under Premature Retirement Scheme clarifying that such premature retirement shall not amount to punishment in any manner and the petitioner will be paid three months' basic pay in lieu of notice period as per terms of the payment and he shall be paid other consequential benefits, which are admissible under the Premature Retirement Scheme. The petitioner has also assailed the appellate order dated 03.01.2019 whereby the appeal of the petitioner has been rejected upholding the order dated 31.10.2018. Prayers of the aforesaid writ petition are being reproduced herein below:-

"(i) issue a writ, order or direction in the nature of certiorari by quashing the orders dated 31.10.2018 and 3.1.2019 as contained in Annexure Nos. 1 & 2 respectively to the writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties by directing them to reinstate the petitioner with continuity of service and full arrears of salary & allowances etc., followed by its consequential benefits.

(iii) pass any other suitable order or direction, which is deemed just and proper in the circumstances of the case."

5. By means of Writ-A No.20277 of 2018, the petitioner has assailed the downgrading of the marks by the Performance Review Board (hereinafter referred to as "PRB") constituted at the divisional level reviewing performance rating the petitioner 'below average' in the performance rating of 2014-15. He has also assailed the letter dated 02.12.2015 issued by the DGM (HR) whereby the performance appraisal and review for the year 2014-15 has been concluded as 'below average' and on the basis of aforesaid order, order dated 08.05.2017 was issued. Prayers of the aforesaid writ petition are being reproduced herein below:-

"(I) (a) To issue a writ, order or direction in the nature of Certiorari quashing the orders date 02.12.2015 as contained in Annexure Nos.6 to the Writ Petition.

(i) issue a writ, order or direction in the nature of certiorari by quashing the orders dated 8.5.2017, 2.12.2017 & 30.12.2017 as contained in Annexure Nos. 1, 2 & 3 respectively.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties by directing them to restore the 75% Marks which was awarded by the Initiating Authority & Reviewing Authority for each Quarter of the financial year 2014-15, followed by its consequential benefits.

(iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties by directing them to make the payment of Production Related Pay for the year 2014-15 which if calculated will not be less than Rs. 1 lac approx. and also to direct them to pay its interest at the market rate.

(iv) pass any other suitable order or direction, which is deemed just and proper in the circumstances of the case."

6. By means of Writ-A No. 23944 of 2018, the petitioner has assailed the order dated 16.02.2018 whereby the punishment of reduction to lower grade i.e. from Grade-IV to Grade-III has been awarded against the petitioner. He has also assailed the order dated 22.05.2018 whereby the appeal of the petitioner has been rejected upholding the order dated 16.02.2018; further, pursuant to the aforesaid punishment order and appellate order, the petitioner was

directed vide order dated 30.05.2018 to surrender/ vacate the possession of official accommodation C-5 to the Civil Department giving him liberty to apply for a B-Type quarter as per his entitlement. Prayers of the aforesaid writ petition are being reproduced herein below:-

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned punishment Order dated 16.02.2018, passed by the Respondent No.3 and impugned Appellate Order dated 22.05.2018, passed by the Respondent No.2, as contained in Annexure Nos.1 and 2 respectively to this Writ Petition.

(ii) to issue a writ, order or direction in the nature of Certiorari quashing the impugned Order dated 30.05.2018, issued by the Respondent No.4 for vacating the residential accommodation, as contained in Annexure No.3 to this Writ Petition.

(iii) to issue a writ, order or direction in the nature of Mandamus commanding Respondents not to give effect the operation and implementation of the impugned punishment Order dated 16.02.2018, passed by the Respondent No.3, impugned Appellate Order dated 22.05.2018, passed by the Respondent No.2 and impugned Order dated 30.05.2018, issued by the Respondent No.4 for vacating the residential accommodation, contained in Annexure Nos. 1, 2 & 3 respectively to this Writ Petition.

(iv) to issue any other writ, order or direction which this Hon'ble Court may deem just and proper in circumstances of the case;

(v) to allow this writ petition with all costs in favour of the petitioner."

7. By means of Writ-A No.32596 of 2018, the petitioner has assailed the punishment order dated 29.06.2018 whereby the punishment of 'postponement of one increment of pay with cumulative effect' has been awarded to the petitioner. The petitioner has also assailed the order dated 03.10.2018 whereby the appeal has been rejected upholding the punishment order dated 29.06.2018. Prayers of the aforesaid writ petition are being reproduced herein below:-

"(i) Issue a writ, order or direction in the nature of certiorari by quashing the punishment order dated 29.6.2018 and the appellate order dated 3.10.2018 as contained in Annexure Nos. 1 & 2 respectively.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect to the punishment order dated 29.6.2018 and appellate order dated 3.10.2018 as contained in Annexure Nos. 1 & 2 respectively.

(iii) Pass any other suitable order or direction, which is deemed just and proper in the circumstances of the case."

8. By means of Writ-A No.32622 of 2018, the petitioner has challenged the punishment order dated 28.06.2018 whereby he has been awarded punishment of 'postponement of one increment of pay with cumulative effect'. The petitioner has also assailed the order dated 03.10.2018 whereby appeal has been rejected upholding the order of punishment dated 28.06.2018. Prayers of the aforesaid writ petition are being reproduced herein below:-

"(i) Issue a writ, order or direction in the nature of certiorari by quashing the punishment order dated 28.6.2018 and the appellate order dated 3.10.2018 as contained in Annexure Nos. 1 & 2 respectively.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties by directing them not to give effect to the punishment order dated 28.6.2018 and the appellate order dated 3.10.2018 as contained in Annexure Nos. 1 & 2 respectively.

(iii) Pass any other suitable order or direction, which is deemed just and proper in the circumstances of the case."

9. Both the learned counsels for the parties have supplied compilations, which include the written arguments/ submissions and case laws.

10. Brief facts relating to appointment and promotion of the petitioner are common in all the above writ petitions. The petitioner was appointed on the post of Engineer (Works) Grade-II at Koraput Division of Hindustan Aeronautics Limited (hereinafter referred to as "HAL") on 22.08.2002. Thereafter, during the probation period the

petitioner was transferred to the Accessories Division, Lucknow on 01.10.2003. The petitioner was then confirmed to the post of Engineer (Works) Grade-II on 05.03.2004.

11. Thereafter, the petitioner was promoted to Deputy Manager, Grade-III vide order dated 05.01.2007 and confirmed vide order dated 06.02.2009 and lastly on the post of Manager Grade-IV by order dated 18.07.2011 and confirmed vide order dated 05.03.2013.

(Order in Writ-A No.1275 of 2019)

12. Sri Y.S. Lohit, learned counsel for the petitioner has submitted that the impugned order dated 31.10.2018 and the letter dated 27.01.2016 referring to counseling dated 21.02.2015 & 30.5.2015 which alleges that *"From the period from 2011-12 on wards, your performance has not been found satisfactory. Even upon your job rotations, no significant improvement has been found in your conduct and performance. During past four years specially in 2012-13, 2014-15, 2016-17 and 2017-18, your final performance appraisal ratings were below average i.e. 12-B, 45-B, 9.69 C & 5.5 C respectively. Category B of MRC awarded to you ten times up to 2014-15 from your joining service denotes that you have limited potential and category C awarded to you twice during the last two years denotes you have no potential for advancement. For your below average performance, regular feedback has also been given to you to improve your performance. You have been advised and counseled many times to improve your performance by your superiors and Divisional Head over the period but it has also went in vain."* These allegations, as per Mr. Lohit, were incorrect.

13. Learned counsel for the petitioner further submitted that the petitioner was not assigned the work commensurate to his post of Manager (Civil) despite his application dated 23.12.2016, seeking the work which commensurate to his post so that he may prove his ability and potential. He was not counselled on 21.02.2015 and 30.05.2015,

copy of the application dated 23.12.2016 has been annexed as Annexure No. 10 to the writ petition.

14. Learned counsel for the petitioner submitted that the Screening Committee Report dated 23.09.2018 includes the complainant, Presenting Officer and the witness who were against the petitioner in disciplinary proceedings, therefore there is reasonable apprehension of bias. Petitioner being Manager (Civil), his premature retirement can only be done by HAL Complex Office but by a Note-Sheet dated 10.08.2017 Sri Ranjan Kumar, Deputy General Manager i.e. DGM (HR) and Sri GK Mishra, Senior Manager i.e. SM (HR) forwarded his name as Deputy Manager for premature retirement to Sri RB Sharma, General Manager i.e. GM (HR). By letter dated 16.08.2017 Sri RB Sharma asked about Performance Appraisal Report (hereinafter referred to as "PAR"), Gradation to which on 17.08.2017, only PAR Gradation of 2012- 13, 2014-15, 2016-17 was sent. By letter dated 22.08.2017, Sri RB Sharma asked Screening Committee's detailed report, recommendation & comprehensive brief as per Para 6.1, 6.2, 6.3 of Premature Retirement Scheme dated 05.04.2016; Feedback, counseling, performance, progress in disciplinary proceedings as per para 4.1 as premature retirement may not be processed till completion of proceedings as per Para 3.3(c). So as to justify the Note-Sheet dated 10.08.2017, he was demoted to Deputy Manager on 16.02.2018. Sri Ranjan Kumar DGM (HR) and Sri GK Mishra SM(HR) signed Note-Sheet dated 10.07.2018; the GM (Accessories Division, Lucknow) signed it who is not competent authority for Grade IV Officer who approved Note- 2. On pretext of demotion, by letter dated 11.07.2018, the Accessories Division, Lucknow, snatched the power from HAL Complex Office of his premature retirement and by letter dated 27.08.2018 proposed to make the Screening Committee of the officers of Accessories Division, Lucknow.

15. The order dated 31.10.2018 of premature retirement also demonstrated that in the year 2012-13 the petitioner's work was below

average. For 2012-13, para. 3.1(b)(i) of report refers 12-B marks which Sri RK Ahuja forged it by interpolating "01.04.12" as "02.07.12" which is not signed by PRB or by the Officer-in-Charge, HRD cell.

16. For 2013-14 even on job rotations, no significant improvement was found in conduct & performance. Job Rotation was made before framing of PC No.631 dated 05.04.2016. Grade-A was awarded in year 2013-14 even in Lean Department; Grade-A in 2014-15. PRB committee reduced Grade A to 45-B without reason as is referred in Hon'ble Court's order dated 18.03.2021 passed in WP No. 20277 (S/S) of 2018.

17. For 2014-15 i.e. Para 3.1 (b) (ii) of Report, learned counsel for the petitioner has drawn the attention of this court towards the order of this Hon'ble Court dated 18.03.2021 passed in WP No. 20277 (S/S) of 2018. Initiating Authority i.e. IA and Reviewing Authority i.e. RA, both awarded 73.25 marks and Category-A; PRB altered Final marks/ Performance Rating as 45B without giving reason contrary to Law of land in **U.P. Jal Nigam & others Vs. Prabhat Chandra Jain & others (1996) 2 SCC 363** and Para 6.2 of PC No.651 of 2000.

18. Even PAR of 2016-17 referred in Para 3.1 (b)(iii) was forged by Sri RK Ahooja, Deputy General Manager (Technical Services) i.e. DGM (TS). As per Page 05 of photocopy of documents filed by HAL on 18.04.2023, "PAR of 2016-17 was also submitted by the Petitioner" and "also assessed by the IA/RA on the remaining traits". Annexure No. R-8, pg 59 of SRA dated 04.07.2021 regarding SCA dated 24.03.2021 filed WP No. 1275 of 2019 depicts PAR submitted for 2016-17 w.e.f. 01.04.2016 to 31.03.2017 but as per screening committee. He didn't submit it.

19. For PAR of 2017-18, it was submitted that he was left with no work as by order dated 15.10.16, Sri RK Ahooja allotted maintenance & arbitration work but after representation dated 23.12.2016 which

stated that it is not sufficient work as per his ability; by order dated 07.01.2017 he snatched maintenance work; and no arbitration was in 2017-18.

20. Learned Counsel for the petitioner submitted that the reasons recorded in the order dated 31.10.2018 for premature retirement with termination from service is wrong, as his performance in 2012-2013 and 2014-2015 were below average i.e. 12-B and 45-B respectively or the category C awarded twice during last two years denotes "No potential for advancement" is incorrect and in para 33 and 47 of the Counter Affidavit dated 28.11.2014 filed in the **WP No.818 (S/B)** of 2014 filed against censure, which is reproduced herein as under-

"33. That in regard to content of para 33 of the writ petition it is stated that the disciplinary authority has considered the entire material on record including the representation of the petitioner and passed the punishment order imposing punishment of censure as well as withholding any further amount for the period during suspension to be paid to the petitioner. The disciplinary authority has also gone through the past record of the petitioner but the same being unblemished, have awarded minor punishment of censure only along with withholding further payment of amount during period of suspension to be paid to the petitioner."

"47. That, the content of para 48 of the writ petition is denied as stated. A bare perusal of the past record of the petitioner has in fact diluted the rigor of the punishment that could have been imposed on the petitioner for the reason that petitioner's past record was found to be unblemished which is evident from the past record of the petitioner."

21. The settled position of law is that the permanent or confirmed employee may not be terminated from service as it has been held by this Hon'ble Court in **Deo Raj Tiwari Vs. District Administrative Committee, Sultanpur** reported in **1992 SCC OnLine All 880 : 1994 All LJ 594**. Therefore, the manner in which the permanent officer i.e. the petitioner who was earlier promoted considering his work, conduct, performance and behaviour, was terminated from service coupled with premature retirement is inconsiderate.

22. *Per contra*, Shri P.K. Sinha, learned counsel appearing for the opposite parties, submitted that Rule-18 of the H.A.L. Conduct, Discipline and Appeal Rules, 1984 (hereinafter referred to as "CDA Rules") has been amended by way of inserting a new Rule and the old Rules-18 & 19 have been ordered to be renumbered as Rule-19 & 20 respectively. He added that the petitioner has accused some members of the Screening Committee of being bias but has not impleaded any of them in person as the opposite party. Shri P.K Sinha has drawn the attention of this court towards the demeanor of the petitioner and stated that his behaviour is abusive and the officers and employees of the HAL were scared of him and he was given several opportunities by the way of counselling, advisory letters and warnings but he did not improve himself. He even threatened the witness during the disciplinary proceedings due to which the matter was reported to police. The charges leveled against him in each of the Charge-Sheet were proved after giving him full opportunity, therefore, the punishment orders were passed. Due to these punishment orders and the below average marks awarded to him for many years, the Screening Committee recommended for his premature retirement. The Screening Committee has functioned impartially and has not passed any order of compulsory retirement; rather, the disciplinary authority has passed the order with independent mind. The appeal against the same has also been rejected.

23. Shri P.K Sinha stated that four charge sheets were issued against the petitioner, First Charge-Sheet on 20.08.2012 for shouting and disorderly behaviour with Mr. R. K. Bhardwaj, Deputy General Manager (Works) Head of the Department, for which the petitioner was put under suspension and after an inquiry of charges levelled against the petitioner which were proved by the Inquiry Officer, a minor punishment of censure dated 05.02.2014 was imposed upon him, which has been annexed as Annexure no. 17 of the writ petition.

24. Learned counsel for the opposite parties also stated that the Second Charge-Sheet was issued on 24.06.2016 to the petitioner for sending direct representation to the Chairman-cum- Managing Director, Corporate Office, HAL, Bangalore and after holding inquiry, "Minor Punishment" of stoppage of payment of one increment of pay with cumulative effect was imposed by the competent authority, which is annexed as Annexure no. 18 of the writ petition.

25. He further stated that the Third Charge-Sheet was issued on 04.01.2017 to the petitioner for obtaining attendance by unfair means for concealing his absence from the workplace and on 28.06.2018 after an inquiry the major punishment of stoppage of payment of one increment of pay with cumulative effect was imposed, which is annexed as Annexure no. 19 of the writ petition.

26. He further stated that the Fourth Charge-Sheet was issued on 16.01.2017 to the petitioner for willful insubordination or disobedience of lawful and reasonable orders of the superiors in the premises of the company and after due inquiry in accordance with the law, a major punishment of reduction to lower grade i.e. Grade-IV to Grade-III was imposed, which is annexed as Annexure no. 20 of the writ petition.

27. The learned counsel for the opposite parties has further drawn attention of this court towards the performance rating of the petitioner which is mentioned by the Screening Committee in para 3.1.b in its report dated 24.09.2018 and the entire service performance report was also noted by the Screening Committee in para 8(A) from where, it is discernable that the petitioner had earned marks below 50. In 2012-13 it was 12B, during 2014-15 it was 45B, during 2016-17 it was 9.69C & during 2017-18 it was 5.5C and thus, the petitioner has 4 below average ratings up to 2017-18.

28. He further pointed out that the PAR of the petitioner for 4 years was below 50 and in 2016-17 & 2017-18, it was extremely low, and

the perusal of the report of the Screening Committee, clearly shows that the Screening Committee has considered every minute details in para 8(B) of the personnel record of the petitioner. Also in para 8(C), the committee has considered the discipline and conduct of the officer in detail and looking to the totality of the circumstances, the screening committee recommended the case of the petitioner as fit for premature retirement under HAL Premature Retirement Scheme.

29. Learned counsel for the opposite parties has stated that the General Manager, Accessories Division, HAL, Lucknow, after considering in detail the report of the Screening Committee as well as records of the petitioner which is mentioned in detail in the impugned order dated 31.10.2018, has passed the Premature Retirement Order of the petitioner under Rule-18 of the CDA Rules w.e.f. 31.10.2018 afternoon. The General Manager / Competent Authority clearly mentioned in the said order, that according to the terms of the Rule-18 of the CDA Rules that the termination of the services under Premature Retirement Scheme shall not amount to punishment in any manner and the word "Termination has been used in the order as mentioned in Rule-18 of the CDA Rules which has been incorporated in the CDA Rules by way of the Circular No. HAL / HR / 19(2)/ Vol-VI/2016 dated 05.04.2015. Rule 18(1) provides for rights conferred on the management to 'terminate' the services of any Executive in Grade-I to Grade-X at any time during his services, if his services are no longer required, under Premature Retirement Scheme prevailing in the HAL Establishment from time to time and further Rule- 18(iii) clearly provides that termination of services of Executive under the scheme shall not amount to punishment and the official will be eligible for various benefits as specified under Premature Retirement Scheme. Thus, there is no substance in petitioner's argument that respondents cannot use terminology of 'termination' in premature retirement order.

30. He further stated that before passing of the Premature Retirement Order, the petitioner was already counselled on

21.02.2015 by the COP (M) and Chief Manager (HR) and a report of the same was also prepared on 30.05.2015, which is annexed as Annexure No. CA-4 in the Counter Affidavit. The petitioner was also provided with feedback of his performance in Annual PAR of 2016-17 & 2017-18 before passing the Premature Retirement Order which is annexed as Annexure No. CA-5 of the Counter Affidavit.

31. Shri P.K. Sinha, learned counsel for the opposite parties, placed the judgment of the Hon'ble Supreme Court rendered in **Baikutha Nath Das and Vs. Chief Distt. Medical officer** reported in **(1992) 2 SCC 299** to contend that the premature retirement is not a punishment and for this purpose, it is not necessary for the Screening Committee to adhere to the principles of natural justice. He also relied upon following judgments: - **State of Punjab v. Gurdas Singh** reported in **(1998) 4 SCC 92 : 1998 SCC (L&S) 1004** and **D.C. Aggarwal Vs. State Bank of India and another** reported in **(2006) 5 SCC 153**.

32. It is submitted that presumption of bias / *mala-fide* is not available to the petitioner for the reason that law is well settled, that question of bias or prejudice has to be established and not inferred. In regard to the allegation of bias regarding Shri R. K. Ahuja being a member in the inquiry, held against the petitioner wherein the petitioner was punished, it is submitted that in the case of **State of Rajasthan vs. Ramchandra** reported in **(2005) 5 SCC 151**, the Hon'ble Supreme Court relying on the judgment of **S. Jeevanathan vs. State Through Inspector of Police, T.N.** reported in **(2004) 5 SCC 230** has held that this Court did not accept the plea that an officer who was the complainant cannot be investigation officer. The question of prejudice or bias has to be established and not inferred. There cannot be any legal presumption in that regard. The Apex Court has considered that under Section 50(3), the Gazetted Officer or the Magistrate before whom the person who is to be searched is brought can, in a given case, come to hold that there is no reasonable ground for the search and shall forthwith "discharge" the person. Otherwise,

he shall direct the search to be made.

33. Shri P.K. Sinha has further placed reliance on para. 7 of the **Cantonment Executive Officer and another vs. Vijay D. Wani and others** reported in (2008) 12 SCC 230, wherein, the Hon'ble Supreme Court has held that question of bias is always a question of fact. The court has to be vigilant while applying the principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present set of facts, there had been no real bias neither established nor opportunity given to purge. Further, the Hon'ble Supreme Court has held that objectivity is the hallmark of the judicial system in our country. It is submitted that the Screening Committee has made objective assessment of the petitioner's record and thus, unanimously arrived at a conclusion for recommending for premature retirement of the petitioner.

34. He also placed reliance on **Dr. Abraham Kuruvilla vs. Sree Chitra Tirunal Institute of Medical Sciences & Technology** reported in (2005) 9 SCC 49, wherein, the Hon'ble Supreme Court have clearly held that *"bias would mean and imply 'spite or ill-will must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is a state of mind and it shows predisposition. Thus, general statement would not meet the requirement of law. Certain correspondence / orders which might have been passed against the petitioner long back would not meet the requirement of law to prove bias. Not only existence of a factual bias has to be proved, but it must also be shown that the same has resulted in miscarriage of justice."*

35. The law is well settled by the Hon'ble Supreme Court vide its judgment rendered in the case of **Deokinandan vs. Union of India** reported in (2001) 5 SCC 340, to the effect that once there is no whisper of any malafide and bias against the officers of the establishment in the memo of appeal which the petitioner himself

filed, the said plea ought not be considered for the first time before this Court. The relevant portion of para-6 of the **Deokinandan (supra)** is being reproduced herein as under: -

"6. In support of the first submission, learned counsel appearing on behalf of the appellant, on being asked by us, produced copy of the petition of appeal filed before the statutory authority, from a bare perusal of which it would appear that there is no whisper of the aforesaid ground therein. Therefore, it is not possible to allow the appellant to raise this point before this Court. Even otherwise we do not find any substance on merit as from relevant portion of the order-sheet of enquiry proceeding it would appear that the charge-sheet was served upon the delinquent in January 1983, on behalf of the Bank, list of documents to be relied upon by the Bank was submitted in the months of May and September 1983, list of witnesses was produced on behalf of the Bank in the month of October 1983, examination of witnesses on behalf of the Bank started in that very month, the delinquent went on taking time for cross-examination of some of the witnesses examined on behalf of the bank who were ultimately cross-examined on 20-3-1984, only after examination of witnesses on behalf of the Bank was completed, list of witnesses was filed by the defence for which the Conducting Officer fixed 11-4-1984 and 12-4-1984 as dates for their examination, on 11-4-1984 neither the defence representative appeared nor was a single witness produced on behalf of the defence, rather a prayer was made for time upon which the case was adjourned to the next day i.e. 12-4-1984, on the adjourned date, i.e., 12-4-1984 also neither any defence representative appeared nor was any witness produced by the defence and the Conducting Officer, therefore, had no option but to submit his report as in spite of full opportunity afforded to the defence no witness was examined. In view of the aforesaid facts, we find no difficulty in holding that reasonable opportunity was afforded to the appellant to adduce evidence during the course of enquiry. Thus, the first point raised is devoid of any substance."

36. Replying to the submissions of learned counsel for the opposite parties, Counsel for the petitioner submitted that he does not materially find any drastic difference between the terms "premature retirement" and "compulsory retirement" as both these terms result in curtailment of the tenure and payment of pensionary benefits for

lessor number of years. He added that as per provisions of the CDA Rules “compulsory retirement” is included amongst the major penalties. But by virtue of the HAL Premature Retirement Scheme, 2016, it is been said that the “premature retirement” is not a punishment.

37. Learned counsel for the petitioner submitted that in **Kuldeep Singh Vs. Commissioner of Police** reported in (1999) 2 SCC 10, it has been held that ordinarily, the Court or a Tribunal do not interfere in the matter of disciplinary proceedings or the order of penalty but, they may interfere if there has been a violation of principles of natural justice, the Rules and the procedure is not followed or there has been arbitrariness or the order is perverse. He added that this matter is covered under legal maxim *sublato fundamento cadit opus*, that if the root goes, superstructure falls. In this regard, he placed reliance on **State of Punjab Vs. Davinder Pal Singh Bhullar and others** reported in (2011) 14 SCC 770. Stating that it is a case of official bias, he referred the case of **Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Others** reported in (1993) 4 SCC 10 to contented that the bias has 3 limbs -1) personal bias; 2) official bias; 3) pecuniary bias and nobody may be a Judge of his own cause.

38. Learned counsel for the petitioner also submitted that the major penalty has been imposed on the allegation that the petitioner had directly sent the representation to the Chairman & Managing Director of HAL though he had sent the same through proper channel. He added that in **Chatrapal Vs. State of U.P.** reported in 2024 SCC OnLine SC 146, Hon'ble Supreme Court has been pleased to direct to reinstate in service such an employee of District Judgeship with all consequential benefits who had sent the representation directly to the Hon'ble Chief Minister for redressal of his grievances. He also relied on the following judgments: -

1. **Punjab State Electricity Board Vs. Zora Singh &**

Others (2005) 6 SCC 776.

- 2. Arjun Chaubey Vs. Union of India & Others AIR 1984 SC 1356.**
- 3. Kuldeep Singh Vs. Commissioner of Police (1999) 2 SCC 10.**
- 4. State of U.P. Vs. Saroj Kumar Sinha (2010) 2 SCC 772.**
- 5. M.V. Bijlani Vs. Union of India (2006) 5 SCC 88.**
- 6. State of Gujarat Vs. Umedbhai M. Patel, AIR 2001 SC 1109.**

39. I have heard learned counsel for the respective parties and perused the material available on record.

40. In the background of the primary contentions advanced by learned counsel for both the parties, it is apt to refer Rule 18 of the CDA Rules (as amended), which is as follows:-

" Rule - 18:

Premature Retirement of Executives:

(i) The normal age of superannuation in the Company is 60 years. However, the Management will have the right to terminate the services of any Executive in Grade I to X, at any time during his service, if his services are no longer required, under the Scheme for Premature Retirement prevailing in the Company from time to time;

(ii) Provisions with regard to Scope, Coverage, Competent Authority to approve Premature Retirement, Procedure, etc, will be as notified in the Premature Retirement Scheme;

(iii) Termination of the services of an Executive under the Scheme shall not amount to Punishment. On Premature Retirement, the Officer will be eligible for various benefits as specified under the Premature Retirement Scheme."

41. I have examined the entire service record of the petitioner. As

per the Screening Committee Report, it is discernible that the petitioner had earned marks below 50. In 2012-13 it was 12B, during 2014-15 it was 45B, during 2016-17 it was 9.69C & during 2017-18 it was 5.5C and thus, the petitioner has four below average ratings up to 2017-18.

42. The PAR of the petitioner for 4 years was below 50 and in 2016-17 & 2017-18, it was extremely low, and the perusal of the report of the Screening Committee, clearly shows that the Screening Committee has considered every minute detail in para 8(B) of the personal record of the petitioner. Also in para 8(C), the committee has considered the discipline and conduct of the officer in detail and looking to the totality of the circumstances, the screening committee recommended the case of the petitioner as fit for premature retirement under HAL Premature Retirement Scheme. (PC. No. 710 dated 05.04.2016).

43. In **Baikutha Nath Das (supra)**, a three judge Bench of the Supreme Court laid down five principles, to be considered in judicial review, while determining validity of orders of compulsory retirement. Those principles have been universally followed, in subsequent decisions. The relevant paras of the judgments are as followed:

"33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks — not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791] and other decisions referred supra.

34. The following principles emerge from the above discussion:

(i) *An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.*

(ii) *The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.*

(iii) *Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.*

(iv) *The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.*

(v) *An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.*

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.

35. Before parting with the case, we must refer to an argument urged by Sri R.K. Garg. He stressed what is called, the new concept of Article 14 as adumbrated in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] and submitted on that basis that any and every arbitrary action is open to judicial

scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question whether a facet of principle of natural justice — audi alteram partem — is attracted in the case of compulsory retirement. In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement. Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma."

44. The said judgment and formulation of law was affirmed, by another three-Judge Bench of the Apex Court, in **Posts and Telegraphs Board v. C. S. N. Murthy** reported in (1992) 2 SCC 317, wherein the Apex Court held as under:-

"An order of compulsory retirement is not an order of punishment. FR 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bonafide and on the basis of material available on the record."

45. In **State of Gujarat v. Umedbhai M. Patel** reported in (2001) 3 SCC 314 the Apex Court re-stated the law on the point which follows as under:

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public

interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favor of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

46. In order to find out whether any government or public servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of his overall performance has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest. The scope of judicial review is limited to overseeing that parameters indicated in **Baikutha Nath Das (supra)** case and **Umedbhai Patel case (supra)** are satisfied. In **Umedbhai Patel (supra)** case the court has held the materials to be inadequate, and the decision to retire the public servant to be vitiated. **Umedbhai Patel (supra)** case was an instance where the decision was premised upon lodging of a criminal complaint, without any further action, which impelled, inter alia, the State to retire the public servant compulsorily.

47. Keeping in view the facts and circumstances of the present case and also the provisions of the Rules, and judgments relied upon it is evident from the arguments led by both the sides that petitioner's behaviour was abusive and was given various opportunities to bring a change in his behaviour but despite various advisory letters, counselling and punishments awarded in disciplinary proceedings by the HAL, there was no change in the behaviour of the petitioner which highlights his demeanor. Also, as far as accusation of bias against some members of the Screening Committee is concerned it is very well put on record by the counsel that the screening committee has acted impartially and the same has also been proved and accepted. Despite such allegation, petitioner has not impleaded any of them in person as the opposite party. The Screening Committee after proper perusal of Charge-sheet, Punishment orders and below average marks awarded to him in the past years recommended for his premature retirement, therefore I do not see any violation of Principles Natural Justice as petitioner was given ample opportunities and after giving him full opportunity, charges levelled against him in every Charge-Sheet were proved.

48. This court on relying upon the principle and para 33, 34 & 35 laid down in **Baikutha Nath Das (supra)**, deems it fit that the Court have very limited jurisdiction to interfere it can only interfere when the order passed, is based on malafide, no evidence, and is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material. Owing to the same, this court feels that in the present case no such conditions mentioned above has been fulfilled and there is no malice in the order passed by the authorities as all the proper steps and cautions have been fulfilled.

49. Notably, while passing the impugned order dated 31.10.2018 to retire the petitioner under Premature Retirement Scheme, all the earlier punishment orders were considered carefully having subjective satisfaction on the point that in view of the earlier misconducts of the

petitioner, he will not be eligible for any extra benefit from the Company, therefore, his services have been dispensed with using the term 'termination', though the word 'termination' is not happily worded but in the impugned order itself it has been categorically clarified that the aforesaid order of premature retirement shall not amount to punishment in any manner whatsoever. Therefore, the term 'termination' may not be misconstrued. This Court may not be oblivious to the fact that before passing earlier orders of punishment, which have been assailed by the petitioner in the above noted writ petitions, the petitioner was given repeated reminders to improve his work by filing his quarterly Mutually Agreed Task (hereinafter referred to as "MAT") but he did not file such report. For retiring any employee under the Premature Retirement Scheme, the employee should either complete 15 years of continuous service in the Company or should have attained 45 years of age as on the last date of September every year. Further, those employees, who have performance rating 'below average' i.e. marks below 50 for three times in the entire service period or those who have been imposed with two major penalties on account of misconduct during the preceding 10 years, may be retired under Premature Retirement Scheme. When the impugned order of premature retirement has been passed, the petitioner had already attained 50 years of age; had completed 15 years of continuous services; his performance was below average for three times in the entire service period and he was imposed with three major punishments, therefore, while passing the impugned order dated 31.10.2018, the competent authority has considered the guideline as indicated under Para 3.1 of the HAL Employees Premature Retirement Scheme.

50. Since premature retirement is not a punishment, therefore, the petitioner would be getting his all consequential service benefits, which are paid after premature retirement, therefore, I am not inclined to interfere in the impugned order dated 31.10.2018. The appellate authority has rightly passed a speaking and reasoned order dated

03.01.2019 rejecting the appeal of the petitioner upholding the punishment dated 31.10.2018.

51. Accordingly, Writ-A No.1275 of 2019 is **dismissed**.

(Order in Writ-A No.20277 of 2018)

52. Brief facts and prayers of the aforesaid writ petition have already been indicated in the preceding paragraphs, therefore, I am avoiding repetition thereof.

53. Learned counsel for the petitioner has assailed the letter dated 02.12.2015, 08.05.2017, 02.12.2017 and 30.12.2017 as contained in Annexure Nos.6, 1, 2 & 3 of the writ petition on the ground that the attitude of the opposite parties towards the petitioner has been arbitrary, in violation of CDA Rules and Article 14 of the Constitution of India.

54. As per Shri Lohit, no adverse remarks or adverse material was served upon the petitioner in the year 2014-15 but the impugned order dated 02.12.2015 downgrading the rating has been served upon the petitioner without affording opportunity of hearing or giving any show case notice.

55. Further submission of Shri Lohit is that on representation dated 08.09.2017 to Director State Defence Ministry, New Delhi, the AGM (TS) said in a letter dated 02.12.2017 as if 'matter has been re-examined' but there is no ambiguity in the circular/rules and no such letter can be forwarded but Senior Manager (HR) told his father vide letter dated 30.12.2017 about issuance of charge-sheet and payment under the Performance Related Payment (hereinafter referred to "PRP") Scheme is not paid for not fulfilling required PAR in years 2012-13 & 2014-15 though it was paid for year 2013-14. By letter dated 17.4.2018, the Director (Aero), Defence Production Department, Government of India told that "no medical claim is pending" and "it is for HAL to take actions as per Rules". Due to

representations on acts of corruption the ADL authorities made him defunct and manoeuvred to get shifted from place of expertise i.e. Construction Department to Lean Department; then got thrown to Barrackpur Division. When nothing was substantiated, they brought back to Lucknow but after arbitrarily disciplinary proceeding, he was ordered to be reverted which is being challenged separately.

56. Further submission is that if issue on reducing appraisal marks by Performance Review Board (hereinafter referred to as "PRB") brought in letter dated 2.1.2017 is examined, in letter dated 10.1.2017 Chief Manager (HR) said as if letter dated 18.2.2016, 4.5.2016, 27.6.2016 & 6.8.2016 on subject were sent and no further communication will be entertained but by letter dated 1.5.2017 the GM (HR-ER) told that other grievances in representation dated 13.2.2017 i.e. (i) Grant of Leave on Medical Grounds & (ii) Performance Appraisal Marks by PRB, ADL "is being advised to examine the matter & reply to you" but by same letter dated 1.5.2017 "Disciplinary Actions" was initiated under the CDA Rules and in lieu of examining the matter as per letter dated 1.5.2017, the letter dated 8.5.2017 of Chief Manager (HR) refers earlier communication dated 2.12.2015.

57. Learned counsel for the petitioner has further submitted that even by RTI reply dated 10.8.2016 the DGM (Swadeshikaran)/Public Information Officer declined to supply the Minutes of PRB as if there is no provision for it but no such Rule is provided. By representation dated 2.5.2017 he prayed to GM ADL to restore unilateral reduction made by PRB and Appraisal Marks awarded by Initiating Authority (hereinafter referred to as "IA") and Reviewing Authority (hereinafter referred to as "RA) and ensure the payment of PRP of 2014-15 at earliest with interest for inordinate delay by ADL as no opportunity was given and Minutes of PRB in reducing Final Marks/Performance Rating is not given but referring said "deficiencies". PRB requires to "overcome" without telling as to which Performance it deems "Below

Average" or "not satisfactory in meeting the Divisional/ Organisational goals'. It is not as per Para 14.1 HAL Personnel Circular No.651 dated 8.8.2000.

58. Further submission of Shri Y.S. Lohit is that the impugned orders are violative to PC no.651 dated 8.08.2000, HAL Corporate Office, introducing the Revised Performance Appraisal System for Officers HAL Corporate Office. Para 3.3 asks for Task Setting for each Quarter, jointly by Appraiser and the IA, by 7th of first month of each Quarter; to distribute Maximum Mark of 100 among all Tasks, based on their relative weightage/ importance. Para 3.5 asks the IA to evaluate Appraiser's performance by 7th of 1st month of the subsequent Quarter, after joint discussion with Appraiser, against set Task and award marks for each Task, keeping in view maximum marks decided for each Task at the beginning of Quarter. Thus, awarding of marks is not to be in a casual manner. Para 10 provides to constitute a PRB at Divisional/ Complex/ Corporate level to determine Final Marks/Performance Rating of Appraiser, taking into consideration evaluation made by IA. As per Para 10.6, Marks and Performance Rating awarded by PRB will be final but Para 10.1 provides that the PRB will consult IA & RA wherever necessary if they are not members of PRB.

59. *Per contra*, Shri P.K. Sinha has submitted that the impugning order dated 08.05.2017 as contained in Annexure No.1 clearly indicates that the same is in regard to grant of leave on Medical Ground at PRP payment for the year 2012- 2013 and for the staying of the Enquiry Committee proceeding constituted against the petitioner vide Charge sheet dated 24.01.2016 vide letter dated 04.01.2017 and 16.01.2017 petitioner raised grievance in regard to the non- payment of PRP for year 2012-2013 which have been decided by the said letter dated 01.03.2017 that in absence of filling the MAT, the petitioner has not filed the same in any accessible form and the same could not be evaluated. It has also been stated that the petitioner did not mentioned

the task in the MAT and further it has been said that the authorities has accessed the PAR of 2012-13 only on remaining traits and thus assessment was below average, as such the petitioner is not entitled for PRP for the year 2012-2013 as PAR marks 50 is below average. It has also been stated vide item no. VII, letter dated 26.06.2015 that the petitioner had requested to allow him to re-submit the MAT and PAR to the competent authority and it was held that since competent authority had already evaluated PAR for the year 2012-2013 the petitioner's request was not agreed by the division as the petitioner was not submitted PAR as even advised in consultation and feedbacks.

60. Further submission of Shri P.K. Sinha is that in substance vide impugned letter no.2056 dated 08.05.2017 in light of letter dated 01.05.2017 the PR rating of 2012-2013 was considered and the same was found to be correct. Further, vide letter dated 02.12.2015, the petitioner was communicated regarding PAR being below average in the year 2014- 2015.

61. Further, the impugned letter dated 02.12.2015 is already on record in the writ petition as Annexure-6 and the same is related to performance appraisal and review for the year 2014-15 whereby petitioner was made aware that PRB has rated him below average. Thus, looking to the entire scope of the writ petition, the same relates to only payment of PRP in the year 2012-13 and communication vide feedback dated 02.12.2015 relating to the fact that Performance Review Board have rated the petitioner 'below average' in the performance rating in the year 2014-15, which is not satisfactory in meeting Divisional/ Organizational goods.

62. Shri P.K. Sinha has further submitted that the said letters were already received by the petitioner and have also enclosed by the petitioner along with the writ petition. The petitioner has not challenged / impugned even the communication vide letter no. 2017 dated 01.05.2017 whereby it was communicated to the petitioner that

under what circumstances his PAR rating for the year 2012-13 is moderated below average based on only remaining traits as he has not filled PAR for 2012-13 till the time PAR evaluation for 2012-13 was considered. In absence of any challenge in the writ petition on any ground whatsoever as to how the evaluation of performance rating of the petitioner on the remaining traits which is 12 (B) is arbitrary and illegal in teeth of facts stated in the communication no 2017 dated 01.05.2017, the PRB assessment for the year 2012-13 is final and in absence of any challenge to the same by the petitioner, this Court ought not to interfere in the said evaluation by the PRB of the petitioner for the year 2012-13. There is no allegation of facts in the entire pleading regarding the PRB rating of the petitioner for the year 2012-13 to indicate as to how the same is incorrect in absence of any MAT submitted within time.

63. Sri Sinha has stated with vehemence that in the entire above mentioned writ petition, the petitioner has not challenged his PAR ratings for the year 2016-17 and 2017-18, which are 9.69 C and 5.5 C for the year 2016-17 and 2017-18. As a matter of fact, the petitioner has not filled the MAT nor perform any task nor communicated any specific contribution as required under Clause-(kha) where he has to mention as what is most significant contribution which the petitioner considered by way of self-appraisal as mentioned in the Annexure-1 clause (Kha-1) to the rejoinder affidavit to supplementary counter affidavit filed on 18.01.2021 by the petitioner. Petitioner has enclosed as Annexure-1, which is his annual performance appraisal report for the period 22.07.2012 to 31.03.2013 which has been filed on 05.06.2015 and in column (kha-1), the petitioner has only submitted referred letter so even when he has filled at much later stage his PAR even in the same he has not mentioned his significant contribution in accessible format and he was awarded 0 marks in quarter 2, 3, 4 and his performance average score was 0.

64. Further submission of Shri Sinha is that in regard to PAR

entries for the year 2014-15 looking to the MAT of petitioner as contained in Annexure-5 to the writ petition for the period 01.04.2014 to 31.03.2015 in four separate sheets the task has been continuously repeated in every quarter and nothing has been completed.

65. As per Shri Sinha, PRB is thus not required to indicate reason in any manner once exercise of power is not quasi-judicial and is purely administrative and the allegation of the petitioner to the effect that PRB has not recorded in any reason while moderating the PAR of petitioner is of no consequence and liable to be rejected. It is in these circumstances the decision of PRB vis-à-vis the performance as mentioned by the petitioner in its MAT which is already on record of the writ petition as Annexure-4 and in light of 'scale of gradation' as provided at page 26 of the writ petition wherein circular dated 08.08.2000 is enclosed which provides for exceptional, above average, average, below average has been rightly moderated to 45-B and no interference at all is called for by this Court.

66. Shri Sinha has also submitted that as the petitioner has not challenged the communication dated 01.05.2017 as contained in Annexure-10 to the writ petition itself whereby PRB rating of petitioner for the year 2012-13 has been confirmed as 12-B and petitioner's rating in teeth of MAT of the year 2014-15 of the petitioner which is partially completed and thus, Board moderated the marks awarded by the IA & RA in presence of the RA in the PRB who raised no objection at all and concurred in the PRB moderation to 45-B from 73.25 the PAR of petitioner for the year 2014-15 stand confirmed as 45-B.

67. Shri P.K. Sinha has submitted that this writ petition is liable to be dismissed.

68. Having heard learned counsel for the parties and having perused the material available on record, I find that submission of Shri P.K. Sinha is liable to be accepted to the effect that in regard to PAR

entries for the year 2014-15 looking to the MAT of the petitioner for the period 01.04.2014 to 31.03.2015 in four separate sheets, the task has been continuously repeated in every quarter and nothing has been completed. Earlier the petitioner has not assailed the order dated 02.12.2015 (Annexure No.6) but after making amendment, the aforesaid order has been challenged but he has not challenged the communication letter dated 01.05.2017 (Annexure No.10) whereby PRB rating of the petitioner for the year 2012-13 has been confirmed as 12-B and the petitioner's rating in the teeth of MAT of the year 2014-15 which has been partially completed and thus, Board moderated the marks awarded by IA and RA in presence of the RA in PRB who raised no objection at all and concurred in PRB moderation to 45-B from 73.25, the PAR of the petitioner for the year 2014-15 stand confirmed as 45-B.

69. It has also been noted that the petitioner has been given various letters to complete the MAT but during the period in question, he did not complete the task. Further, considering the impugned punishment order, the last punishment order was passed on 31.10.2018 retiring the petitioner under the Premature Retirement Scheme of the HAL, the aforesaid punishment order has been merged in the last punishment order. Therefore, I do not find any infirmity or illegality in the impugned orders.

70. Accordingly, Writ-A No.20277 of 2018 is **dismissed**.

(Order in Writ-A No.23944 of 2018)

71. Brief facts and prayers of the aforesaid writ petition have already been indicated in the preceding paragraphs, therefore, I am avoiding repetition thereof.

72. Shri Y.S. Lohit has submitted that the impugned order dated 16.02.2018, passed by opposite party no.3, whereby the punishment has been imposed upon the petitioner lowering down the grade of the petitioner from Grade- IV to Grade-III is absolutely illegal, arbitrary

and unreasonable. Further, the impugned order dated 22.05.2018, passed by opposite party no.2 by which appeal of the petitioner dated 19.02.2018 has been rejected is arbitrary and illegal manner and without adhering to the principles of natural justice. The impugned order dated 30.05.2018, which has been issued by opposite party no.4 in furtherance of the punishment order dated 16.02.2018, whereby petitioner is required to vacate the residential accommodation immediately in pursuance of his reduction to the lower grade is absolutely illegal, arbitrary and unreasonable.

73. Shri Lohit has further submitted that the aforesaid impugned orders dated 16.02.2018, 22.05.2018 and 30.05.2018 are passed by the opposite parties with an ulterior motive to harass the petitioner did not adhere to the Rules of inquiry while conducting the inquiry and further more the principles of natural justice have not been followed during the inquiry. As neither the complainant was produced as a witness nor the complaint made by him was verified by calling upon him as a witness during the inquiry, despite the repeated request of the petitioner. As per the petitioner, the complaint which has been made with regard to the conduct of the petitioner cannot be relied upon as the same is based on fictitious and manipulated facts, as at the time of incident the petitioner was not available in the office which could have been verified from the entry registered in the computer data of the HAL as the same is a high security zone.

74. Learned counsel for the petitioner has further submitted that no oral inquiry has been conducted and further more the inquiry, which is said to have been conducted, is against the principles of natural justice and the CDA Rules and as such, the same cannot be sustained in the eyes of law.

75. *Per contra*, Shri P.K. Sinha has submitted that vide Rule-19 'discretion' has been granted to the Inquiry Officer to examine those upon whose testimony charge was based. The Inquiry Officer did not find it proper to call the complainant as witness as no one has denied

before him the authenticity & veracity of the complaint filed by Shri R.K. Ahuja, who was HOD. The petitioner never asked Inquiry Officer nor moved any application for calling Shri R.K. Ahuja, the complainant, to appear before the Inquiry Officer for his cross-examination. No application ever moved by the petitioner before Inquiry Officer for calling Shri R.K. Ahuja for examination on his complaint, as such the entire pleading of the petitioner to that effect for non-calling of complainant in the writ petition is of no consequence, even the appellate authority in para-(Cha) of appellate order at page-47 has dealt the matter and held that the Inquiry Committee did not found it necessary to call the complainant for verification of complaint, when nobody has denied allegations of the complaint filed by Shri R.K. Ahuja. Rule 19 of the H.A.L. Conduct, Discipline and Appeal Rules, 1984 reads as under:-

"AMENDMENTS

The Board may amend, modify or add to these rules from time to time and all such amendments, modifications or additions shall take effect from the date stated therein."

76. Shri P.K. Sinha has further submitted that earlier also inquiry was conducted against the petitioner for committing misconduct by misbehaving with Shri R.K Bhardwaj, DGM Works and the charge sheet dated 20.08.2012 was issued to him on the complaint of Shri. R.K Bhardwaj and the petitioner was placed under suspension with immediate effect and writ petition has been filed against the punishment order. The basic ground, which has been raised by the petitioner, that inquiry has been conducted in contravention of the CDA Rules and neither complainant was produced nor complaint was verified by the complainant inter-alia amongst other grounds of challenge, the Court found that complainant and petitioner both are employee of HAL and witnesses are also employee of HAL and statement of witnesses cannot be disbelieved merely on ground that they were subordinate staff of the complainant and they have cordial

relation with the complainant. This Court held that witnesses relied by the Inquiry Officer are natural witnesses of the alleged occurrence and cannot be disbelieved. This Court has also held that complaint has been made by Mr. R.K Bhardwaj, DGM Works HAL in its official capacity and it is not the case of the petitioner that Mr. Bhardwaj has not made complaint. In such situation, verification of complaint before the Inquiry Officer not needed and Division Bench of this Court did not thought its expedient to interfere in the punishment order as imposed upon petitioner in that case; further it is submitted that SLP No.8451/2016 filed by the petitioner against judgment and order dated 11.12.2015 (Annexure No.4 of WP No.23944 of 2018) passed by the Division Bench of this Court has been dismissed and thus, the order passed by the Division Bench attain finality in law. In these circumstances, there is no substance in the allegation of the petitioner that complainant has not been examined by the Inquiry Officer. This contention was also raised during course of personal hearing before the appellate authority and the appellate authority in Clause (Cha) of its order has rejected vide cogent reasoning.

77. Further submission of Shri Sinha is that Shri R.K Ahuja, CM (TS) on whose written complaint charge sheet has been given was not called before the Inquiry Committee by the Inquiry Officer and the Appellate Authority has clearly rejected the contention of petitioner that as Shri R.K Ahuja has made complaint in his official capacity and the petitioner has not ever made any complaint that Mr. R.K Ahuja CM (TS) has never made any complaint and in these circumstances, it is not necessary that complainant shall be called for verification of complaint. Thus, the appellate authority has recorded the findings to the effect when this point was raised by the petitioner during course of oral hearing. As per Rule-19, once the petitioner does not dispute the filing of the complaint by complainant, it is in the sole discretion of the Inquiry Officer to call the complainant or not. Testimony of the complaint is established that complaint has been filed by the complainant and the merit of which has to be inquired by Inquiry

Officer from other evidences and to arrive at proper conclusion.

78. In the present case, the petitioner is said to have committed misbehaviour with senior most officer in the presence of his other colleagues and the Inquiry Officer examined those colleagues, who have stated that the petitioner has committed misbehaviour with the senior most officer in their presence and the petitioner did not cross-examine them, so in a peculiar facts and circumstances, even if the complainant is not called and the factum of complaint and allegations have been proved by the eye witnesses/ colleague employees, who have not been cross-examined, only for the reason that the complainant has not been examined may not be considered as reason to nullify the inquiry proceedings. Further, Shri Sinha has submitted that before passing the impugned punishment order, ample opportunity of hearing has been given to the petitioner to defend himself and to cross-examine the relevant witnesses but he did not cross-examine those witnesses, therefore, the Inquiry Officer has held the petitioner guilty for the misconduct in question and awarded impugned punishment, which has been affirmed by the appellate authority after providing opportunity of personal hearing to the petitioner, therefore, no interference is required in the impugned orders and this writ petition may be dismissed being misconceived. In support of his aforesaid submission, Shri Sinha has relied upon the judgment of the Apex Court in re; **State Bank of India v. Tarun Kumar Banerjee & Others, (2000) 8 SCC 12**. Therefore, as per Shri Sinha, the misconduct so committed by the petitioner is so serious and he might have been awarded more severe major punishment than the punishment awarded to him. Hence, no interference is required in the impugned punishment order and the appellate order.

79. Shri Sinha has submitted with vehemence that the petitioner has never preferred any representation or application before the Inquiry Officer to summon the complainant.

80. Having heard learned counsel for the parties and having perused

the material available on record, since the charge against the petitioner is very serious that he has misbehaved with his superior officer during office hours in the presence of his other colleagues and the Inquiry Officer has examined those eye witnesses/ colleague employees but the petitioner did not avail the opportunity of cross-examination despite the fact that he has been afforded such opportunity and on the basis of written complaint of the complainant and after corroboration of the allegations by oral evidence of the eye witness employees, the Inquiry Officer has awarded punishment of reduction to lower grade i.e. from Grade-IV to Grade-III and the appellate authority has upheld the aforesaid punishment order. The Apex Court in re; **Union of India and Others v. P. Gunasekaran, (2015) 2 SCC 610**, has held that the High Court in exercise of powers under Articles 226 & 227 of the Constitution of India cannot venture into reappreciation of evidence and interfere with conclusions in inquiry proceedings, if the same are conducted in accordance with law, or even the High Court cannot go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the light of aforesaid case and also considering the facts and circumstances of the issue in question, I am not inclined to interfere in the impugned orders as I do not find any infirmity or illegality in the same.

81. Accordingly, Writ-A No.23944 of 2018 is **dismissed**.

(Writ-A No.32596 of 2018)

82. Brief facts and prayers of the aforesaid writ petition have already been indicated in the preceding paragraphs, therefore, I am avoiding repetition thereof.

83. This is a case where mother of the petitioner has preferred a representation dated 10.12.2015 against the transfer of the petitioner to the Chairman, HAL. Notably, against the transfer order dated 27.06.2015, the petitioner filed a writ petition bearing Service Bench No.1260 of 2015, which was disposed of vide judgment and order

dated 25.08.2015 directing the petitioner to submit his joining at the transferred place i.e. Barrackpore Helicopter Division where he was transferred only for period of one year and in the aforesaid order, this Court has directed that if the petitioner did not submit his joining, the administrative action may be taken against him though he may prefer a representation before the competent authority for sympathetic consideration of his grievance.

84. On such representation one advisory dated 19.01.2016 was issued to the petitioner to say that he has violated the provisions of Rule 5 (xii) & (xiii) of the CDA Rules of the Company for making representation by the mother of the petitioner to the Chairman, HAL, Bangalore and copy thereof has been sent to State Defence Minister, New Delhi and Member of Parliament, Rajya Sabha, New Delhi to bring outside influence.

85. Despite the aforesaid advisory letter being issued on 19.01.2016, the petitioner preferred another representation to Professor Anil Kumar Sahani, Member of Parliament, who in turn preferred a letter dated 08.02.2016 addressing to the Chairman, HAL, Bangalore desiring him to take action against the authorities regarding non-entertainment the appeal of the petitioner to grant vacation leave for the absence period from 29.06.2015 to 30.08.2015, for which a warning letter dated 09.03.2016 was issued against the petitioner, for approaching the higher authorities including MPs, under the CDA Rules of the Company. Further, in spite of issuance of advisory and warning letters to the petitioner, he directly sent a representation dated 29.03.2016 to the CMD, HAL, Bangalore regarding non-payment of PRP against the order dated 23.09.2015, the aforesaid representation was disposed of by the competent authority on 27.04.2016 but the petitioner again preferred another representation dated 16.05.2016 to the CMD, HAL, Bangalore against the order dated 27.04.2016.

86. Shri Sinha has submitted that the aforesaid conduct of the petitioner comes within the definition of 'influence', which has been

defined in the Code of Conduct issued under the CDA Rules, particularly under Rule 4 (iii) read with Clause VIII of Schedule-I of the CDA Rules. Clause VIII (c) of Schedule-I of Rule 4 of the CDA Rules reads as under:-

"VIII. INFLUENCE

No officer shall bring or attempt to bring any outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service in the Company.

NOTE: (a)

(b)

(c) If an employee is found guilty of violating the above provisions of the rules, despite the issue of warning to him/her, disciplinary action should be initiated against him/her, under the provisions of Conduct Discipline and Appeal Rules/Disciplinary Action Rules/Standing Orders, as the case may be."

87. On the aforesaid conduct of the petitioner, charge sheet has been issued and the petitioner has been afforded opportunity of hearing by the Inquiry Officer and concluded the departmental proceedings thereby holding the petitioner guilty for the aforesaid misconduct. On the basis of findings of the Inquiry Officer, the disciplinary authority awarded punishment of 'postponement of one increment of pay with cumulative effect', against which the petitioner preferred representation before the appellate authority and the appellate authority rejected the representation vide order dated 03.10.2018 upholding the punishment order.

88. Assailing the aforesaid punishment order, submission of learned counsel for the petitioner is that the petitioner has got right to approach the competent authority directly by preferring representation placing his grievance and that conduct may not be treated as misconduct is not acceptable inasmuch as instead of submitting his

joining at Barrackpore Helicopter Division, firstly, mother of the petitioner preferred a representation to the the Chairman, HAL, Bangalore and copy thereof has been sent to State Defence Minister, New Delhi and Member of Parliament, Rajya Sabha, New Delhi, the petitioner was issued advisory letter dated 19.01.2016 as the authorities took lenient view not to initiate inquiry against him since the representation was preferred by mother of the petitioner for redressal of the grievance of the petitioner. However, despite receiving the aforesaid advisory dated 19.01.2016, the petitioner himself approached one Member of Parliament, who in turn preferred a letter dated 08.02.2016 to the Chairman, HAL, Bangalore to take appropriate action against the concerning authority to not entertaining the request of the petitioner for granting vacation leave to him for the absence period w.e.f. 29.06.2015 to 30.08.2015 and on such conduct, warning letter dated 09.03.2016 was issued to the petitioner under the Rules saying that he has directly approached the senior most authority and one Member of Parliament to bring outside influence, which is not permissible under the CDA Rules. In spite of issuing one advisory letter and one warning letter, the petitioner again preferred a representation dated 29.03.2016, to the CMD, HAL, Bangalore regarding non-payment of PRA against the order dated 23.09.2015 and despite the aforesaid representation having been disposed of by the competent authority vide order dated 27.04.2016, the petitioner again preferred a representation on 16.05.2016 to the CMD against the order dated 27.04.2016. Therefore, to me, repeatedly sending the representations to the higher authorities and outside bodies when one advisory letter and one warning letter were served upon the petitioner is a misconduct and shows the irresponsible and adamant approach of the petitioner, which is against the basic discipline of the Organisation and unbecoming for an officer. Further, during the course of the departmental inquiry, the petitioner was given opportunity of hearing to defend himself and to submit the documents/ evidence but he did not participate in the inquiry proceedings, therefore, the impugned punishment order has been passed awarding the punishment of

'postponement of one increment of pay with cumulative effect' and representation of the petitioner against the punishment order dated 29.06.2018 has rightly been rejected by the appellate authority vide order dated 03.10.2018. I do not find any infirmity or illegality in the impugned orders. It is needless to say that all the impugned orders have been considered and merged in the order dated 31.10.2018 retiring the petitioner under Premature Retirement Scheme.

89. Accordingly, Writ-A No.32596 of 2018 is **dismissed**.

(Order in Writ- A No.32622 of 2018)

90. Brief facts and prayers of the aforesaid writ petition have already been indicated in the preceding paragraphs, therefore, I am avoiding repetition thereof.

91. This is a case where charge sheet has been issued against the petitioner on two allegations that the D.M. (Security) vide letter dated 28.10.2016 enclosing therewith a copy of report dated 25.10.2016 submitted by one Shri Dhara Singh, Security Jamedar and Shri R.K. Shukla, Security Guard had informed that on 25.10.2016, the petitioner approached colony gate at about 1720 hours from outside and punched his attendance card at 1721 hours to obtain attendance. Since the petitioner was to leave colony gate, security personnel questioned the petitioner for coming from outside to punch card, then the petitioner misled the security personnel by stating that the petitioner had gone for medical purpose during lunch and it took quite a lot of time. The petitioner immediately made entry in Lunch late coming register and moved out. As per report, the petitioner did the same act on 24.10.2016 also wherein he approached the colony gate at 1735 hours from outside and clandestinely punched out attendance card and moved outside. Relevant documents and report of the Security Guard were provided to the petitioner; the second allegation against the petitioner was that he had wrongly stated to the Security Staff that he had gone to medical after lunch, hence got late. To verify

the same, DCMS was asked to confirm about any entry in medical records/computer on 25.10.2016 in respect of the petitioner. Vide letter dated 10.11.2016, C.M. (HR)-Medical informed that as per records of receiving of medicines, the petitioner had not received medicines through RC on 25.10.2016. Therefore, as per allegations, the petitioner had not gone to medical department on 25.10.2016 and had punched the card by deceiving the security staff to obtain full day attendance.

92. Thereafter, relevant documents were provided to the petitioner by the Inquiry Officer and he was given opportunity to cross-examine the witnesses but he did not avail the same. After conclusion of inquiry, the Inquiry Officer submitted his report wherein all the charges levelled against the petitioner were found to be proved. Thereafter, a copy of inquiry report was provided to the petitioner vide letter dated 05.06.2018 calling for his representation, if any, against the findings of the Inquiry Officer. On that, the petitioner submitted his representation saying that he be provided inquiry report in Hindi language as he is not conversant in English language. However, since he is a senior officer, therefore, he is very well conversant in English language. Vide letter dated 15.06.2018, the petitioner was again asked to submit his defence reply/ representation within three days but no representation was preferred by the petitioner against the findings of the inquiry. The disciplinary authority perused the findings of the inquiry report and found that the charges levelled against the petitioner are serious in nature and mainly pertains to indiscipline and absence from work place unauthorizedly and concealing the same by falsifying. Therefore, considering the gravity of proven misconduct, the disciplinary authority awarded punishment of 'postponement of one increment of pay with cumulative effect'. Against the aforesaid order of punishment, the petitioner filed an appeal, which has been rejected by the impugned order dated 03.10.2018.

93. Challenging the aforesaid punishment order and the appellate order, learned counsel for the petitioner has submitted that the impugned orders have been issued without ascertaining the preponderance of probability of alleged misconduct and even the alleged misconduct has not been proved as per the provisions of CDA Rules.

94. Learned counsel for the petitioner has further submitted that the impugned punishment is a major punishment, therefore, such punishment may not be awarded without conducting full fledged departmental inquiry by affording opportunity of hearing to the petitioner.

95. *Per contra*, Shri P.K. Sinha has stated that the petitioner has annexed 'article as charges' of the charge sheet dated 04.01.2017 in which it is mentioned that Deputy Manager (Security) vide letter dated 28.10.2016 enclosing therewith the copy of report dated 25.10.2016 submitted by Shri Dhara Singh, Security Jamedar and Shri R.K. Shukla, Security Guard had informed that on 25.10.2016, petitioner approached colony gate at 1720 hours from outside and punched his attendance card at 1721 hours to obtain attendance and petitioner misled the security personal by stating with he has gone for medical purpose during lunch and it took quite lot of time and petitioner had made entry in lunch late coming register and moved out. In the same manner, the petitioner did that he had approached colony gate on 24.10.2016 from outside and clandestinely punched out his attendance card and moved outside. After the inquiry made by Shri Durga Prasad, Security Officer vide LAN dated 26.10.2016 from CM (TS) regarding physical presence of petitioner in his designated area on 24.10.2016 and 25.10.2016, CM (TS) vide LAN dated 27.10.2016 informed that to the best of his knowledge, the petitioner was not present in Civil Department after lunch on 24.10.2016 and 25.10.2016. On further inquiry from Medical Department, C.M. (HR)-Medical informed as per records of receiving of medicines, the

petitioner had not received medicine through RC on 25.10.2016 and further on checking of online registration record S.M. (IT) informed that no registration exists on 25.10.2016 and as such, the petitioner had not gone to the Medical Department on 25.10.2016 and has punched the card by deceiving Security Staff to obtain full day attendance.

96. Further submission of Shri Sinha is that as a matter of fact, the specific charge is that the petitioner has clandestinely punched out his attendance card by approaching from outside and moved outside after punching in the evening at 1721 hours and 1735 hours and moved outside and made entry in the lunch late coming register. The specific charge is that he has come from outside and punched his card at the said time on 24.10.2016 and 25.10.2016 and made entry in the late coming register and moved outside. This charge relates to the specific misconduct of falsification as provided under Rule-5 sub clause-30 as he was not entitle to come from outside and punch his card as if he is going outside at 1721 and 1735 hours on 25.10.2016 and 24.10.2016 respectively. Thus, the entire argument of learned counsel of the petitioner regarding RA-4 for deduction from salary for his absence from duty is totally circumventing the fact of the charge sheet and the charges.

97. Sri Sinha has further submitted that the petitioner has not submitted any explanation as to how he was entitle to punch his card at 1721 hours and 1735 hours on 25.10.2016 and 24.10.2016 by coming from outside, only to mislead the security staff as if he is coming out from the said gate at 1721 hours on 25.10.2016 and 1735 hours on 24.10.2016 and thus clandestinely tried to show that he was present on his duty place upto 1721 hours on 25.10.2016 and 1735 hours on 24.10.2016 which fact was found not correct on the basis of report of the Security Jamedar and Shri R.K Shukla, Security Guard as he has punched his card by coming from outside and falsifying his attendance in the second shift.

98. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if any charge sheet is provided to the delinquent employee, he should submit his defence reply within time so stipulated so that the departmental inquiry could be conducted and concluded strictly in accordance with law by affording opportunity of hearing.

99. In the present case, relevant documents were provided to the petitioner by the Inquiry Officer and he was given opportunity to cross-examine the witnesses on 12.10.2017 and 16.10.2017 but he did not avail the same. Later on, CCTV footage was produced during examination-in-chief and the petitioner was given opportunity to cross-examine such witnesses. So far as the demand of the petitioner for providing inquiry report in Hindi, he himself has mentioned in the application for appointment that he has got knowledge of English language and he can speak, read and write English properly. Even the official language of the HAL is English, particularly for officers, therefore, the petitioner in order to create confusion and delay in giving explanation on the inquiry report, he took a plea that such report be provided in Hindi.

100. Notably, in other departmental proceedings, the petitioner did not take such plea to provide copy of charge sheet or inquiry report in Hindi but in the present case, since the allegations were liable to be verifiable from the CCTV footage and records, therefore, the petitioner tried to delay the inquiry proceedings.

101. In view of the above, punishment order dated 28.06.2018 does not suffer from any illegality or infirmity likewise the appellate authority while deciding the appeal of the petitioner has categorically stated that charge on the petitioner is to leave workplace without permission and after the end of the second shift by coming from outside and punching the attendance card for obtaining whole salary of the day by falsifying and manipulating his conduct has been proved, therefore, the appellate authority upheld the punishment

order. In view of the above, I do not find any infirmity or illegality in the impugned orders.

102. Accordingly, Writ- A No.32622 of 2018 is **dismissed**.

[Before parting with, I appreciate the efforts and research work done by Mr. Piyush Tripathi, Research Associate, attached with me in finding out the relevant case laws applicable in the present case.]

[Rajesh Singh Chauhan,J.]

Order Date :- 25.09.2024
RBS/-