

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.25971 of 2013(O&M)

Dr. Neeraj Kumar ...Petitioner
Versus
National Institute of Pharmaceutical &
Educational Research (NIPER) and others ...Respondents

and

COC P No.270 of 2014(O&M)

Dr. Neeraj Kumar ...Petitioner
Versus
Dr.V.M.Katoch and others ...Respondents

Date of Decision: April 22, 2015

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Arjun Shukla, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate
for respondents No.1 and 4.

None for respondent No.5.

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HARINDER SINGH SIDHU, J.

By this judgment COCP No.270 of 2014 shall also stand
disposed of along with CWP No.25971 of 2013. In the Contempt
Petition, violation of the interim order dated 27.11.2013 passed in
CWP No.25971 of 2013 is alleged. It has been ordered to be heard

with the writ petition.

This writ petition has been filed praying for quashing the order dated 14.11.2013 (Annexure P-24) passed by the Appellate Authority, whereby, the petitioner has been ordered to be compulsorily retired by reducing the penalty of removal awarded by respondent No.3. Also challenged are the orders dated 18.03.2013 (Annexures P-20 and P-21) imposing the penalty of removal from service, which shall not be disqualification for future employment, as also the charge-sheet dated 16.11.2011 (Annexure P-6) and enquiry report dated 28.01.2013 (Annexure P-17).

The petitioner joined National Institute of Pharmaceutical & Educational Research (NIPER) as Assistant Professor on 29.07.2003. The appointment was on contractual basis for five years. In the contract, it was stipulated that the appointment may be terminated on three months' notice or three months' basic pay in lieu thereof on either side without any cause assigned. After the expiry of initial five years period in 2008, the contract of the petitioner was extended for six months on four different occasions and finally vide letter dated 08/13.09.2011 (Annexure P-36), the petitioner was informed that the Board of

Governors in its meeting held on 2.8.2011 after considering the recommendation of the selection committee with respect to the renewal of contract and Career Advancement Scheme of the petitioner decided that the case shall be reviewed by a special committee and till such time his service would continue. This course was adopted because on the basis of complaints received against the petitioner, a confidential agenda containing a draft charge-sheet was placed before the Board of Governors of the respondent No.1- Institute vide agenda item No.54.19 in its meeting held on 02.08.2011, wherein the Board of Governor resolved and authorized respondent No.3 to issue a charge-sheet to the petitioner and appoint Inquiring Authority and Presenting Officer as per provisions of the Rules. No sooner the petitioner came to know about this decision, he made a formal representation on 19.08.2011 to respondent No.2 (Chairman NIPER Board of Governors), who is also the Appellate Authority as per NIPER statutes, listing out various grievances against the authorities of NIPER. Respondent No.2 on 23.08.2011 directed the petitioner to submit the reply to the charge-sheet so that he could go through the reply and provide opportunity of personal hearing to the

petitioner to redress his grievances. The petitioner was served with the charge-sheet on 17.11.2011 by respondent No.3 (Officiating Director and also Disciplinary Authority), which contained the following articles of charge:

“ARTICLE-I

That Dr. Neeraj Kumar while working as Assistant Professor in National Institute of Pharmaceutical Education & Research (NIPER), Sector-67, SAS Nagar (Mohali), Punjab-160062 used unacceptable and derogatory words against seniors thus indulging in insubordination and misbehaviour thereby contravening the provisions of Rule 3 (i) (iii) and 3A(a) of the CCS (Conduct) Rules, 1964 as made applicable to NIPER.

ARTICLE-II

That Dr. Neeraj Kumar while working as Assistant Professor in National Institute of Pharmaceutical Education & Research (NIPER), Sector-67, SAS Nagar (Mohali), Punjab-160062 refused to allow benefit of departmental course PE-620 and PE-820 to Pharmaceutics Ph.D. students thus violating Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964 as made applicable to NIPER.

ARTICLE-III

That Dr. Neeraj Kumar while working as Assistant Professor in National Institute of Pharmaceutical Education & Research (NIPER), Sector-67, SAS Nagar (Mohali), Punjab-160062 was responsible for harassment of one Scheduled Caste student Mr. Prasad Pawar, thus violating 3 (1) (ii) and 3 (1) (iii) of the CCS (Conduct) Rules, 1964 as made applicable to NIPER.

ARTICLE-IV

That Dr. Neeraj Kumar while working as Assistant Professor in National Institute of Pharmaceutical Education & Research (NIPER), Sector-67, SAS Nagar (Mohali), Punjab-160062 threatened Prof. A.K. Bansal, Head Department of Pharmaceutic of dire consequences thus contravening Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964, as made applicable to NIPER.

ARTICLE-V

That Dr. Neeraj Kumar while working as Assistant Professor in National Institute of Pharmaceutical Education & Research (NIPER), Sector-67, SAS Nagar (Mohali), Punjab-160062 retorted to unacceptable behaviour insubordination, vitiating the atmosphere of the department, disrupting academic activities and leveling false and baseless allegations against seniors thus, contravening Rule 3

(1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964, as made applicable to NIPER.”

As no action was taken on the representation filed by the petitioner before respondent No.2, he filed CWP-2211 of 2012 for directions to respondent No.2 to exercise his statutory power under clause 3.1.2-j of the NIPER statutes. This petition was disposed of vide order dated April, 24, 2012 with a direction to respondent No.2 to take a decision on the grievances of the petitioner within a period of 8 weeks from the receipt of the order. Thereafter, the petitioner was called for personal hearing in Delhi on 26.06.2012, wherein, he again submitted his grievances in writing to respondent No.2. As no decision was taken within stipulated 8 weeks period, the petitioner filed COCP-2090-2012. Respondent No.2 initially vide letter dated 14.09.2012 issued directions to the Inquiry Officer to keep the inquiry in abeyance pending the consideration of the representation of the petitioner. On 05.11.2012, he passed a speaking order concluding that he did not find any evidence of malafide on the basis of which the impartiality of NIPER Administration can be doubted or it could be concluded as biased. Thereafter, the petitioner submitted his reply

to the charge-sheet on 14.02.2012. The petitioner also submitted a representation dated 18.12.2012 to respondent No.3, wherein, he again raised certain grievances namely that the Disciplinary Authority had misled the Board of Governors while submitting the confidential agenda item, the non-citing of Mr.Prasad Pawar, the SC student, as a witness, who was alleged to be harassed and that the Inquiry Officer and the Presiding Officer are biased against the petitioner. He also sent a similar representation dated 27.12.2012 to respondent No.2 (Annexure P-15), who vide his letter dated 16.02.2013 (Annexure P-16) advised the petitioner to cooperate with the inquiry so that it could be completed in a reasonable time. The petitioner was advised to argue his case before the Inquiry Officer and present evidence to substantiate his version. Respondent No.2 found no ground to issue any specific direction to the Director (NIPER), the Disciplinary Authority. It was stated that being the Appellate Authority, he would examine the matter at the time of appeal, if the petitioner was still aggrieved with the outcome of the disciplinary proceedings. Meanwhile, in the absence of any directions to stay the inquiry proceedings, the Inquiry Officer proceeded with the inquiry and as the petitioner did

not participate in the inquiry despite being given sufficient opportunities, the inquiry was held ex-parte.

On 06.02.2013, the Inquiry Officer submitted his inquiry report (Annexure P-17) holding charges under Articles No. I, II, III and V as fully established and Charge under Article IV as partially established. The petitioner filed CWP-3926-2013 praying for a direction to appoint an ad-hoc Disciplinary Authority as envisaged under Rule 12 of C.C.S. (CCA) Rules for dealing with the inquiry report contending that there is past litigation between the petitioner and respondent No.3 (the Disciplinary Authority). In the said writ petition, while issuing notice of motion to the respondents for 22.2.2013, the Court recorded the statement of learned counsel for the respondents that though the last day for filing reply to the inquiry report was to expire on 22.02.2013 itself, but the petitioner may file his reply within 7 days. Accordingly, the time for filing the reply was extended by the Court. It was clarified that issuance of notice of motion in the case would not be taken as a restraint on the Disciplinary Authority for proceeding in accordance with law.

Thereafter, the petitioner filed his detailed reply to the

inquiry report on 01.03.2013 denying all the allegations. On 19/21.03.2013, respondent No.3 after considering the reply passed an order (Annexure P-20 and P-21) imposing the penalty of removal from service, which shall not be a disqualification for future employment under the Government.

The petitioner filed CWP-8190-2013 against the order of removal. This petition was disposed of vide order dated 26.07.2013 with a direction to the petitioner to move a self-contained appeal before the Chairman of the Board of Governors (Appellate Authority) within 15 days. The Appellate Authority was directed to decide the same in accordance with law by passing a speaking order within a period of two months thereafter. Till the decision of the appeal, the petitioner was allowed to retain the official accommodation on payment of normal licence fee etc.

The petitioner filed the statutory appeal on 08.08.2013. Thereafter, respondent No.2 passed a speaking order dated 14.11.2013 (Annexure P-24) modifying the punishment of removal to that of compulsory retirement. It is this order along with the earlier order imposing penalty of removal and the report of the Inquiring Authority (Annexure P-17) and the charge-sheet

(Annexure P-17) that are challenged in the present petition.

Sh. Sanjay Kaushal, learned Senior counsel appearing for the petitioner has raised the following arguments:

(i) As the petitioner has been appointed on contractual basis, the punishment of compulsory retirement cannot be imposed upon him. At best, his contract could be terminated or not renewed as per the terms of appointment;

(ii) The entire exercise of issuance of charge-sheet and the subsequent proceedings are based on malafide and hence cannot be sustained. The petitioner has been a whistle blower and has repeatedly exposed the irregularities in the Institute by resorting to Public Interest Litigations and in each case he was successful. The complaints and the proceedings against him have been engineered with a malafide intent to show him his place for having dared to question the high-ups of the Institute.

(iii) On merits, none of the charges can be held to be proved against him and there is no sufficient independent evidence to substantiate any of the charges.

(iv) The punishment awarded is grossly disproportionate to the charges.

Mr.K.K.Gupta, learned counsel for the respondents

No.1 to 4 has on the other hand justified the order of punishment.

He argued that a fair and proper inquiry has been held, sufficient

opportunity has been given to the petitioner, but the petitioner never chose to lead any evidence in defence and accordingly no fault can be found with the proceedings and order of punishment imposed on the petitioner. He states that the stance of the petitioner has been obstructionist throughout and he adopted delaying tactics at every step. His continuance in the institute is not conducive to the proper functioning of the institute.

Elaborating his arguments on the issue of malafide, Sh. Sanjay Kaushal has referred to the earlier litigation of the petitioner against the respondents. He states that in the year 2010, respondent No.3 in abuse of authority transferred the petitioner from his parent department to another department where the technical qualifications of the petitioner did not match. The petitioner filed CWP-14246-2010 seeking stay of the transfer, which was granted vide order 11.10.2010. Against this stay order, the respondent-Institute filed LPA-1529-2010 and during the hearing of the said LPA, the respondent-Institute filed an affidavit dated 06.01.2011 stating that the petitioner was not transferred to any other department but only his Head of the Department was changed for administrative purposes as the relations between him

and the Head of Department were not cordial. In view of this statement, the writ petition was disposed of. The petitioner filed CWP-18789-2011 against the re-constitution of the senate alleging that the same was in contravention of the NIPER Act and statutes. This petition was allowed by the High Court vide order dated 07.12.2012. Against this order, respondent Institute filed LPA-682 of 2013 but the same was dismissed as infructuous as statement was made on behalf of the learned counsel for respondent that they would implement decision of the learned Single Judge. The petitioner filed CWP-6485-2012 challenging the appointment of the Registrar, NIPER and the same was allowed vide order 30.11.2012. The respondent institute filed LPA-2106-2012 and the same is pending. It is argued that the present proceedings have to be viewed in the background of the aforesaid initiatives of the petitioner, which have scuttled the illegal actions of the respondents and caused them considerable public embarrassment. In this background, the action of the respondents, particular respondent No.3, has to be viewed as an attempt to ease out the petitioner from the respondent institute.

Learned counsel for respondents has countered the

aforesaid by pointing out that the sequence of the filing of the aforesaid petitions would reveal that the petitioner has resorted to the aforesaid litigation as a counter blast to the disciplinary proceedings initiated against him. He has pointed that the draft charge-sheet against the petitioner was approved by the Board of Governors of the respondent-Institute in the confidential agenda No.54.19 in its 54th meeting held on 02.08.2011 and all the litigations referred to by the petitioner are subsequent thereto, which clearly indicates his intent to coerce the respondents to drop the proceedings. He points out that CWP-18789-2011 regarding the constitution of the senate was filed on 03.10.2011. The appointment of the Registrar was challenged vide CWP-6458-2012 filed on 02.04.2012. Both these petitions are subsequent to the decision of the Board of Governors approving the charge-sheet against the petitioner, based on a series of complaints of indiscipline and misconduct made against the petitioner in the year 2009.

The above sequence pointed out by the Ld. Counsel for the respondents does not help substantiate the petitioner's contention regarding the action against him being the result of

malafide. Besides it is on record that the grievances of the petitioner with regard to his harassment and allegations of malafide against respondent No.3 were examined and dealt with in detail by respondent No.2 pursuant to the directions of the High Court passed in CWP-2211-2012, who passed a detailed speaking order and did not find any evidence of malafide or any material on the basis of which, the impartiality of the NIPER administration could be questioned. On another representation of the petitioner raising grievances against the Disciplinary Authority and the Inquiring Officer, a speaking order dated 16.02.2013 was passed by respondent No.2 advising him to cooperate with the inquiry and argue his case before the Inquiry Officer and present evidence to substantiate his version/ point of view.

After the submission of the inquiry report, the petitioner had filed CWP-3926-2013 for appointment of adhoc Disciplinary Authority as envisaged under Rule 12 of C.C.S. (CCA) Rules, but no order granting the prayer was passed, instead, the petitioner was given time to file reply to the inquiry report.

In view of the aforesaid facts and circumstances, I do not find any reason to agree with the contention of the learned

counsel for the petitioner that the entire proceedings initiated against the petitioner have been occasioned as a result of malafide on the part of the authorities of the respondent-Institute with a view to stifle and silence the petitioner and prevent him from raising his voice against irregularities and mal-administration of the respondent-Institute.

On the question of impermissibility of the imposition of the punishment of compulsory retirement on the petitioner, he being a contractual employee, Learned counsel for the petitioner points out that he was initially appointed vide letter dated 14.07.2003 on adhoc basis for a period of one year w.e.f. date of joining of duty. Vide letter dated 22.07.2004, his services were regularized on the terms and conditions contained in letter dated 14.07.2003 for a period of five years on contract basis w.e.f. 29.07.2003. On the expiry of the five years, the contract of the petitioner was extended for six months on four different occasions and finally vide letter dated 08/13.09.2011, he was informed that his case for renewal of contract and Career Advance Scheme is being reviewed by a Special Committee and till such time his services would continue. Learned Senior Counsel contends that

as the petitioner's appointment was on contractual basis, hence the punishment of compulsory retirement could not have been imposed upon him. He argues that at most the respondent authorities could terminate his contract or not renew it. In support Ld. Counsel has placed reliance on a decision of the Hon'ble Supreme Court in **L.P. Agarwal (Dr) v. Union of India, 1992 (3) SCC 526** where it has been held that the service law concept of premature retirement and superannuation are not attracted in the case of tenure appointments.

Learned counsel for respondents No.1 to 4 has refuted the aforesaid arguments by making reference to the NIPER Act and statutes. He states that as per para 20 of the NIPER statutes employees of the Institute are governed by the Central Civil Services (Conduct) Rules, 1964 as amended from time to time. Para 21 of the Statutes deals with Discipline and Appeals and provides that the employees of the Institute shall be governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as amended from time to time. He pointed out that compulsory retirement is provided as a punishment under Rule 11(vii) of the CCS (CCA) Rules, 1965 and consequently argued

there is no infirmity in imposing that punishment.

The relevant provisions of the The National Institute of Pharmaceutical Education and Research Act, 1998 Act (for short “NIPER Act”) and statutes framed thereunder are reproduced below:-

Section 25 of NIPER deals with appointment and is reproduced as under:

“25. All appointments of the staff of the Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes-

(a) by the Board, if the appointment is made on the academic staff in the post of Assistant Professor or above or if the appointment is made on the non-academic staff in any cadre, the maximum of pay-scale for which is the same or higher than that of Assistant Professor; and

(b) by the Director, in any other case.”

The first statutes of the NIPER were published on 30.10.2003. The relevant provision of the said statutes are as under:-

“3.6 Selection Committee

Quorum: 50% of the total strength of the members in addition to the chairman.

There shall be selection committees for making recommendations for the appointment to the post of the Professors, Associate Professors, Assistant Professors, Registrar, Principal Library and Information Officer, Principal Scientific Officer and other posts. The Selection Committee for appointment to the posts specified in column 1 of Table 1 below shall consist of the persons specified in the corresponding entry in column 2.

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Note 2- The Selection Committee shall recommend appointment to the posts on contract basis not exceeding a period of five years and the contract may be renewed on similar terms by the Board on the recommendation of the Director.

4. Recruitment of Faculty

4.1 A candidate is to comply with the minimum qualification and experience indicated against each of the following category of posts. However, a relaxation in qualifications and experience can be made in case of other meritorious candidates, subject to the conditions laid down in these statutes else where.

4.1.1. Assistant Professor : Ph.D. with first class or

equivalent grade at the preceding degree in the appropriate branch with a very good academic record throughout and at least 5 years of teaching/ research/industrial experience with published work of high quality.

4.1.2 Associate Professor : Ph.D. with first class or equivalent grade at the preceding degree in the appropriate branch with a very good academic record throughout and at least 5 years of teaching/ research/industrial experience with published work of high quality and an established reputation of having made seminal contribution to knowledge in pharmaceutical and allied areas.

4.1.3. Professor: Ph. D with first class or equivalent grade at the preceding degree in the appropriate branch a very good academic record throughout and at least 10 years of teaching/ research/ industrial experience with published work of high quality well recognized and established reputation of having made conspicuous seminal contribution to knowledge in pharmaceutical and allied areas.

4.2 The recruitment shall be made on the recommendation of a Selection Committee constituted in accordance with para 3.6 of the Statutes of NIPER.

4.3 That recommendations of the Selection Committee shall be placed before the Board for

approval.

4.4 Appointment of an exceptionally well qualified candidate may be made on ad hoc/ Supernumerary basis by the Director after an interview by a special committee consisting of the Director, the Dean and the Head of the concerned department.

4.5 The Director shall bring such ad hoc appointments to the notice of the Board at next meeting.

4.6 Ad hoc appointment shall not exceed 5-10% of the total faculty staff.

4.7 An ad hoc appointment shall have to go through regular selection within one year against a normal vacancy in accordance with paras 4.2 and 4.3 of the statutes of NIPER.

5. CAREER ADVANCEMENT SCHEME:

5.1 There should be provision for placement in the next higher grade from Assistant Professor to Associate Professor and from Associate Professor to Professor after 5 years of satisfactory service. This should be based on a very strict selection process. The confidence in this system will depend upon putting in place an effective and well functioning system of performance appraisal. This must include consideration of the following:

- (a) *Faculty's annual appraisal reports.*
- (b) *Evaluation record of each year by the students.*
- (c) *Record of publications, reports, patents, etc.*
- (d) *Contribution made by the faculty for development of the Institute,*
- (e) *Recognition received from outside agencies in the form of projects awards etc.*

These reports and records of achievements would be examined by two external experts, whose recommendations shall be placed before the Selection Committee constituted in accordance with para 3.6 of the Statutes of the institute. The candidates shall be interviewed by the Selection Committee. On the recommendations of the further action to placement in the next higher grade or otherwise shall be taken.

5.2 The recommendations of the Selection Committee shall be placed before the Board for approval.

5.3 The total number of faculty position in a Department shall remain fixed but flexibility shall be allowed for upgrading the respective positions for the incumbent. This way the merit of faculty member shall be recognized irrespective of the availability of a post in the higher cadre. This provision should be used very judiciously in the larger interest of the Institute.

5.4 *The placement in the next higher grade in accordance with para 5.1 above shall not interfere with the provision of lateral entry by direct direct recruitment. The faculty member placed in the next higher grade under the scheme shall however, get all the privileges of the higher post.*

6. REVIEW OF CONTRACTS OF THE FACULTY

6.1 *The NIPER adopt a policy of making appointments on contract basis. The period of contract laid is five years.*

6.2 *A Contract Review Committees may be constituted with the following composition:*

-Director, Chairman

-Dean

-Head of the Respective Department

-Two Experts from outside as NIPER

6.3 *Other Procedures shall be as prescribed under Clause 5.1 to 5.2 of the Statutes.”*

“20. Conduct Rules

The employees of the Institute shall be governed by the Central Civil Services (Conduct) Rules, 1964 as amended from time to time.

21. Discipline and Appeals

The employees of the Institute shall be governed

by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as amended from time to time.”

As per Section 25 of the NIPER Act, all appointments of the staff of the Institute except that of the Director are to be made as per the procedure laid down in the Statutes. Appointments of academic staff on the post of Assistant Professor and above are to be made by the Board. Para 3.6 envisages the constitution of a Selection committee to make recommendations for appointment to various posts including the post of Assistant Professor. As per Note 2 of para 3.6 of the Statutes, the Selection Committee shall recommend appointment to the posts on contract basis not exceeding a period of five years and the contract may be renewed on similar terms by the Board on the recommendation of the Director. As per para 4.2, the recruitment of faculty shall be made on the recommendations of the Selection Committee constituted in accordance with para 3.6 of the Statutes, which recommendation is to be placed before the Board for approval as per para 4.3. Para 5 deals with the Career Advancement Scheme, as per which, there is a provision for placement in the next higher grade after 5 years of satisfactory service. This is based on a very strict selection

process. Para 6 deals with the review of contracts of the faculty. Para 6.1 states that NIPER adopts a policy of making appointments on contract basis. The period of contract is five years. Para 6.2 deals with the constitution of the Contract Review Committee. Para 20 specifically states that the employees of the Institute shall be governed by the Central Civil Services (Conduct) Rules, 1964. And as per Para 21 for the purposes of discipline and appeal, the employees of the Institute are governed by the Central Civil Services (Classification, Control and Appeal) Rules as amended from time to time.

From these provisions, it is clear that the Statutes specifically provide that the appointments in NIPER are made on contract basis, which may be renewed from time to time. There is a specific provision that the employees will be governed by the CCS (Conduct) Rules and for the purposes of Discipline and Appeal would be governed by the CCS (CCA) Rules. As removal and compulsory retirement are specified as major penalties in the CCS(CCA) Rules, the argument of the Ld. Senior Counsel for the petitioner that such punishment cannot be imposed cannot be sustained.

The original contractual period of five years of the petitioner expired in 2008. Thereafter the petitioner's term has been extended on different occasions for six months each at a time. Finally vide letter dated 08/13.09.2011 (Annexure P-36), the petitioner was informed that the Board of Governors in its meeting held on 2.8.2011 after considering the recommendation of the selection committee with respect to the renewal of contract and Career Advancement Scheme of the petitioner decided that the case shall be reviewed by a special committee and till such time his service would continue. It has been stated in the written statement filed on behalf of respondents No. 1 & 4 that the renewal of the contract was not made in the absence of an assessment because of the pendency of the disciplinary proceedings. Thus even though the contract had not been renewed yet the fact remains that the petitioner continued as an employee of the institute and consequently would be governed the CCS (CCA) Rules. Further there is no challenge in the petition to the Statute which makes the CCS (CCA) Rules applicable to employees of NIPER.

The reliance placed by the Ld. Senior Counsel on the

decision of the Hon'ble Supreme Court in ***L.P. Agarwal's case*** (*supra*) is misplaced. In that case, the appellant therein had been appointed vide order dated April 6, 1979 for a period of five years or till he attains the age of 62 years. On November, 24, 1980 i.e. about one and half year after his appointment a resolution was passed to prematurely retire him by giving him three months pay and allowances in lieu of notice. It was in this context that the Hon'ble Supreme Court held that as the appellant had been appointed on tenure post, the question of superannuating or prematurely retiring him from the said post does not arise. It was observed that the concept of superannuation is alien to tenure appointments. The Hon'ble Court observed that once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Thus the Hon'ble Supreme Court did not rule out the curtailment of tenure on justifiable grounds. The Hon'ble Court however did not examine the issue regarding the circumstances under which a tenure could be curtailed as that did not arise for consideration.

The relevant observations of the Hon'ble Supreme

Court are as under:

“16. We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute services. We do not agree that simply because the appointment order of the appellant mentions that “he is appointed for a period of five years or till he attains the age of 62 years”, the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a five years tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court’s reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide “Tenure for five years inclusive of one year probation” and the post is to be filled “by direct recruitment”. Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes

out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading “the concept of superannuation” in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court’s judgment in Dr Bool Chand v. Chancellor, Kurukshetra University relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr D.C. Saxena v. State of Haryana has no relevance to the facts of this case.”

The present case is clearly distinguishable from the facts of the Supreme Court case. The petitioner herein has not been prematurely retired in public interest as an exercise to weed out inefficient employees under the provisions of some Act or Service Rules which permits premature retirement of a permanent employee after such employee has put in a certain number of years or attained a certain age, the concept which the Hon'ble Supreme

Court said would not be attracted in the case of a tenure post. In the instant case punishment of compulsory retirement which is permissible under the governing statutes has been imposed. Thus I see no illegality in the same.

Learned counsel for the petitioner next argued that not one of the five articles of charge can be stated to be proved on the basis of the evidence produced before the Inquiry Officer. With regard to the first article of charge, he stated that the allegation of his having used unacceptable and derogatory words against his seniors and his indulging in insubordination and misbehavior are false and baseless. The alleged unacceptable and derogatory words used by the petitioner against his seniors are in reality complaints and court cases filed by the petitioner against the seniors of the respondent-Institute for violation of provisions of NIPER rules and statutes. Regarding the allegation in the second article of charge that he refused to allow the benefit of departmental course PE-620 and PE-820 to Pharmaceutical Ph.D. students, thus, violating rule 3(1)(ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, he states that he has not refused to allow benefit of departmental course to any student. Only some delay was caused

for allowing the benefit, which was because the respondent-Institute delayed taking a decision for allotment of guide to Ph.D. students and accordingly, the petitioner could not be held responsible for delay and refusal of benefit to the students. Regarding the third allegation that he was responsible for harassment of one S.C. student Mr. Prasad Pawar, thus, violating Rule 3(1)(ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, it has been argued that the allegation is false and has been levelled to conceal the real allegation of complainant Mr. Prasad Pawar before the National Commission for Scheduled Castes in his complaint (Annexure P-25) where the student alleged that he was facing discrimination at the hands of the Head of Department, Dr. Sanyog Jain. He further states that the student himself in his affidavit dated 06.02.2012 had stated that he had no grievance against Dr. Neeraj Kumar. He further argued that the relevant para 11 of the letter dated 27.09.2010 of the student, wherein, he stated that he wanted NIPER fellowship under the petitioner, which clearly indicates that the student had no grievance against the petitioner, has deliberately not been referred to in the inquiry report. Regarding the other two allegations of unacceptable behaviour,

insubordination, vitiating the atmosphere of the department and disrupting the academic activities and levelling false allegations against his seniors, it has been stated that they are based on the evidence of Prof. A.K. Bansal, Head, Department of Pharmaceutical, who was and is inimical to the petitioner. He refers to the report of the Ombudsman/ Review Committee dated 22.04.2009 constituted by the Board of Governors to review the case of Dr. Aminesh Ray, Ex. Scientist, NIPER, which stated that Prof. K.K. Bhutani, Prof. Saranjit Singh, Prof. U.C. Banerjee, Prof. Rama Rao had a common nexus to keep Dr. Animesh Ray out of the system since he had blown the whistle against the unethical acts and wrong deeds at NIPER. Though, they had no doubt about the academic competence of Dr. Animesh Ray, yet they did not want him to be retained at NIPER, Mohali. He emphasized that Dr. Saranjit Singh and Dr. U.C. Banerjee who have been adversely commented upon by the Ombudsman are complainants and witnesses to prove article V of the charge and Dr. K.K. Bhutani is the Disciplinary Authority. As these three were held responsible for the illegal removal of Dr. Animesh Ray, hence no credence can be given to them.

The above submissions have to be examined in the context of the extremely limited scope of judicial review of an order of punishment as repeatedly emphasized by the Hon'ble Supreme Court. Broadly, it has been settled that the Courts do not act as an appellate authority over the findings of the disciplinary authority. The writ court while exercising writ jurisdiction, will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole judge of facts so long as there is some legal evidence to substantiate the finding. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

Examining the matter within the confines of the aforesaid parameters, I feel there is no ground to interfere with the findings of the authorities.

It is clear from the record that despite being given sufficient opportunities and notice, the petitioner did not choose to

participate in the Inquiry and was consequently proceeded against ex-parte. The inquiry officer after a detailed examination of the evidence held that charges I, II, III and V were fully proved against the petitioner and charge No. IV was partially proved. The petitioner submitted his reply to the inquiry report. The points raised by him were duly considered by the disciplinary authority, who also evaluated the findings of the Inquiring Authority on all the Articles of charge and only thereafter passed the order imposing the penalty of removal from service which shall not be a disqualification for future employment under the Government. The petitioner filed an appeal. All the points raised in the appeal were duly considered, the findings on the charges were examined in the light of the petitioner's objections thereto, and a speaking order (Annexure P-24) was passed reducing the punishment from removal to that of compulsory retirement.

It would be apposite to extract parts of the order of the Appellate Authority dealing with the procedure followed by the Inquiry Officer as well as the conclusions and findings of the Appellate Authority.

“Procedure followed during the Inquiry: The inquiry

officer has concluded that four charges as proven beyond doubt and one partially proven. The inquiry report details the disciplinary proceedings followed, has details of the preliminary hearings on 6.2.2012, 16.3.2012, 26.3.2012, the report mentions that despite clear directions to either accept or deny the charges, the Appellant did not respond but he insisted that he had replied the charges to BoG chairman on 14.2.12 under intimation to the IO through letter dt. 19.2.12, in which he had asked for personal hearing from the Chairman, BOG as per his directions dt. 23.08.2011, that without the directions of Chairman, BOG, he will not be able to reply to the charges and answer guilty or not guilty and will not be able to participate in the progress of the inquiry as it vitiate the process, his defence and natural justice. The appellant has contended that the inquiry had been set up by Prof. K.K. Bhutani, officiating Director with malafide intentions. As the appellant was neither denying nor admitting the charges, the IO decided that it was deemed to have been denied by him. Consequently, he was directed to inspect the documents with the presenting officer (PO) and also asked to intimate the name of his Defence Assistant, if any. The appellant was also asked to submit the list of the defence witnesses upto 6.4.12. As the appellant had made

allegations about the impartiality of inquiry officer (IO), regular hearings were started on 25.6.12 after the Disciplinary Authority has disposed off the said representation of the appellant, the inquiry report mentions that inspite of the clear directions to the Appellant to appear before the inquiry, otherwise it would proceed ex-parte, the appellant had absented himself and neither there was any intimation from side, even though he was very much present in the institute on what day. After 18.7.2012, the next hearing was on 9.8.2012, which was followed by another hearing on 4.9.2012, the appellant did not appear in any of these hearings, no hearings were held during the period when the Chairman, BoG had directed the hearing to be kept in abeyance and it was resumed only after the speaking order was issued by the Chairman, BoG to proceed further.

The Inquiry Officer has described in detail the procedure followed regarding asking for nomination of the Defence Assistant, inspection of the documents and giving repeated opportunity to the Appellant to give his list of defence witnesses.”

The appellate authority recorded its conclusion as under:

Conclusions and Penalty: *As analyzed above, the*

undersigned has found the report of the Inquiry Committee and its acceptance by the Disciplinary Authority as appropriate and fully justified.

Undersigned as Appellate Authority is fully convinced that inquiry was conducted as per procedure defined in CCS (CCA) rules and adequate opportunity was given to Appellant to present and argue his case. Conclusions drawn in the Inquiry Report are well supported by documentary evidences and testimonies of relevant witnesses. Four of the charges have been proven beyond doubt. These proven charges are serious and pertain to the Appellate exhibiting misconduct resulting in destabilizing the functioning of the Institution by abruptly refusing to take the courses, refusing to register a student till the NIPER starts functioning according to his perception of what is correct, misbehaving with seniors and indulging in a behaviour which without doubt adversely affected the hierarchical functioning of NIPER. Further, his attempt to blame the administration for everything whenever advised to follow any advice in different disciplinary matters is a strong negative trait exhibited by the appellant all through.

xxx xxx xxx

In the preceding pages/ paragraphs undersigned as Appellate Authority has discussed whether

conclusions of Inquiry Officer are correct and supported by evidence. Based on analysis of different facts discussed above the undersigned fees fully justified to uphold the findings of the Inquiry and its acceptance by Disciplinary Authority. Next important issue is whether the penalty awarded to him is justified or what penalty would be appropriate and adequate as per CCS (CCA) rules. The contention of the Appellant that penalty for individual charges should be awarded is not acceptable as the establishment of all the charges leads to a common conclusion that the Appellant is not amenable to work as a member of a disciplined team, indulges in unacceptable behaviour frequently, uses language which is derogatory and thus affects the discipline & working atmosphere. Even if he may moral/rule position to justify, his conduct of not taking courses or not accepting a student abruptly resulted in disruption. In a young and growing institution like NIPER, SAS Nagar there is scope for change/Improvement and potential for establishing sound practices in line with its statutes and rules but all that cannot provide justification for persistent acts of insubordination, bad behaviour and disruption on ongoing activities, thus the conclusion of Disciplinary Authority that he is not fit to continue at NIPER is fully justified. Considering the age as well as productivity of appellant in the past, and

lack of any other serious charges of Financial and or moral turpitude the undersigned as Appellate Authority considers it appropriate to slightly reduce the penalty from removal from service to “compulsory retirement” which will be adequate and also will not be a bar to his seeking employment in the government elsewhere so that he may get a chance to reform himself in new settings in future.

The appeal of Dr. Neeraj Kumar, the appellant, is rejected and penalty modified to that of compulsory retirement.”

Thus, I find no merit in the contention of the petitioner that the findings are perverse and not sustainable.

Sh. Kaushal has next argued that assuming the charges to be proved, the punishment awarded to the petitioner is grossly disproportionate to the charges. He has argued that even the appellate authority has conceded that the petitioner may have taken a moral position or his action in one or two instances may have been justified on the basis of a rule. He argued that the appellate authority also itself recorded that the charges do not pertain to serious charges of financial and or moral turpitude and taking note of his age and productivity in the past, the authority

reduced the punishment from removal to compulsory retirement.

Ld. Counsel contends that the charges proved against him cannot be said to constitute 'grave misconduct' so as to justify his compulsory retirement. In support Ld. Counsel has relied upon **D.V. Kapoor v. Union of India, (1990) 4 SCC 314,** and a decision of the Delhi High Court in **W.P.(C) 245 of 2012** titled as **Union of India & ors Vs. R.P. Sharma (Retd.).**

The said decisions may be of no help to the petitioner. In both the cases, the petitioners were employees of the Central Government on whom a cut in pension was imposed. In D.V. Kapoor's case, the entire gratuity and pension was ordered to be withheld as a penalty, and in the case before the Delhi High Court penalty of 10% cut in pension for five years was imposed. Both the cases turned on the interpretation of Rule 9(1) of the Central Civil Services (Pension) Rules, 1972 which reads as under: -

“9.(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the government, if, in any departmental or judicial proceedings, the pensioner is

found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.”

As per this Rule, pension of an employee can be withheld or withdrawn if the pensioner was found guilty of 'grave misconduct' or negligence during his period of service. 'Grave misconduct' was defined in Rule 8(5)(b) as under:-

“The expression ‘grave misconduct’ includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the government) so as to prejudicially affect the interests of the general public or the security of the State.”

It was in the aforesaid context that the Hon'ble Supreme Court held that the condition precedent to imposition of punishment

of withholding pension is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5) and as the charges in that case were not proved and consequently there was no grave misconduct hence the order withdrawing pension was quashed.

In ***D.V.Kapoor's case*** (supra), the Hon'ble Supreme Court held as under:-

“8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the government employee to the government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), Explanation (b) which is an inclusive definition, i.e. the scope is wide of the mark dependent on the facts and circumstances in a given

case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity is committed. It is not necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission."

Similarly, in **R.P. Sharma's case** (supra), the Delhi High Court quoted with approval the finding of the Tribunal holding that misconduct like corruption, embezzlement, causing financial loss, criminal offence, moral turpitude and the like can be termed as grave. But error of judgment, supervisory lapse, inadvertent negligence, delay in taking action not causing any financial loss

etc. cannot be construed as "grave misconduct".

Clearly, the above judgments are not relevant for the present case. The specific requirement in those cases was that the pension could be withheld or withdrawn only in case the employee was found guilty of grave misconduct.

To the contrary, under Rule 11 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, under which, the petitioner has been proceeded against, the penalties specified therein, whether major or minor, may be imposed for 'good and sufficient reasons'. After assessing the seriousness of the charges, the penalty of removal from service was imposed by the disciplinary authority which was reduced to compulsory retirement by the appellate authority.

The scope of interference by the Courts in the matter of imposition of punishment by the disciplinary authority is very limited. The Hon'ble Supreme Court in **S.R. Tewari v. Union of India, (2013) 6 SCC 602**, observed as under :

"28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed

appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide Union of India v. Bodupalli Gopalaswami and Sanjay Kumar Singh v. Union of India.)”

Emphasising the same position, it was held in **Kendriya Vidyalaya Sangathan v. J. Hussain, (2013) 10 SCC 106** as under.

“7. When the charge is proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the

delinquent, previous penalty, if any, and the discipline required to be maintained in the department or establishment where he works, as well as extenuating circumstances, if any exist.

*8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See *UT of Dadra & Nagar Haveli v. Gulabhia M. Lad.*) In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.”*

On the basis of evidence before it, the inquiring authority held that four of the charges were proved against the petitioner and one charge was partly proved. The disciplinary authority considered the reply of the petitioner to the inquiry report and after discussing all the points raised by the petitioner imposed the penalty of removal from service. The appellate authority again took note of all the points raised in appeal and imposed the punishment of compulsory retirement.

The Court when examining the matter, being far removed from the controversy may be inclined to take a different, more considerate and compassionate view than that taken by the authorities and be of the opinion that the same result of severance of relationship may have been achieved by terminating the contract or not renewing it, as admittedly, the petitioner's contract had not been renewed and only his services had been continued vide order dated 8/13.09.2011 pending the consideration of his case by a special committee.

On 27.11.2013, while issuing notice of motion, it had been specifically recorded in the order that the petitioner wanted an honourable exit and would eschew all monetary benefits and it was

necessary for his future prospects that his status be reflected as Assistant Professor in NIPER. During the course of final hearing of this case, I repeatedly made attempts to see if an amicable way out could be found, whereby, the petitioner is able to exit NIPER and pursue a successful career elsewhere without carrying the blemish of the penalty imposed. These efforts were not successful .

Despite the aforementioned divergence in view and perception, in the facts and circumstances of the case, it is not possible to hold that the penalty awarded is grossly disproportionate to the charges so as to shock the conscience of the Court warranting interference in exercise of the power of judicial review.

Thus, the writ petition is dismissed. Consequently, the Contempt Petition also stands disposed of.

April 22, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE