

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 21, 2017
Judgment delivered on: August 28, 2017

+ W.P.(C) 4125/2001

AK GAUTAM

..... Petitioner

Through: Mr. S.N. Kaul, Adv.

versus

I.I.T. & ANR.

..... Respondents

Through: Mr. T. Singhdev, Ms. Biakthansangi,
Mr. Tarun Verma & Ms. Puja
Sarkar, Advs. for R-1/I.I.T.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner challenging the charge sheet dated September 1, 1994, report of the Enquiry Officer, the order of the Disciplinary Authority dated June 23, 1997 and order of the Appellate Authority dated December 11, 1997.

2. The petitioner, who was working as Technical Assistant was issued a charge sheet on September 1, 1994 alleging violation of Rule 3(a) of Conduct Rules and Statute No.13(9) of the Statutes of the Institute, which stipulates that every employee shall maintain absolute integrity and devotion to duty and Rule 3(25) (2) of the CCS (Conduct) Rules, 1964. The charge against the petitioner was *“He while functioning as*

Technical Assistant in Computer Service Centre of the Institute pilfered two ICB's which were under his custody on 24.03.1994. Therefore he violated provision of Para 3(a) of Conduct Rules given in Schedule B to the Statutes of the Institute which inter alia stipulates that every employee shall at all times maintain absolute integrity and devotion to duty and Rule 3 (25)(2) of the CCS Conduct Rules, 1964 which stipulates the acts and omission amount to misconduct". The petitioner submitted his reply to the charge sheet on September 6, 1994 wherein he denied the charges. It is his case that, he requested the Disciplinary authority for a copy of Preliminary Enquiry (PE) and Information about date of approving chargesheet by Disciplinary authority. The PE was denied. No date on which the Disciplinary authority approved the chargesheet was given. One Prof. Anshul Kumar was appointed as Enquiry Officer on September 13, 1994. Later Professor Anshul Kumar was replaced by Professor C.M. Bhatia as the Enquiry Officer. It is averred on November 01, 1995 the petitioner made a request for inspection of documents. On November 3, 1995 petitioner submitted list of defence documents as well as the names of the defence witnesses. In addition, he sought (i) Copy of PE (ii) copies of statements earlier obtained of witnesses (iii) the approval of chargesheet by Disciplinary authority. It is his case that inquiry was conducted without allowing the inspection of the listed documents. A written request was submitted to the Enquiry Officer for the same and to intimate the CO the time and date for such an inspection. Inspection of the listed documents was done during the course of inquiry.

3. It is his case vide letter dated January 9, 1996, he was informed (i) DE was initiated with the approval of competent authority (ii) Additional documents of defence

be looked into by Establishment. The Enquiry Officer examined four witnesses namely G.S. Kohli, N.C. Kalra, S.S. Sehgal and Dr. M.N. Gupta. The statements of the aforesaid witnesses were recorded on January 9, 1996. On January 31, 1996 statement of the petitioner was recorded as DW1. It is the case of the petitioner that the depositions of the prosecution witnesses were handed over to him on January 22, 1996. Similarly, the Enquiry Officer refused to hand over the minutes of the hearing held on January 31, 1996 to the petitioner. The petitioner, in his representation dated March 18, 1996 has expressed his apprehension on the manner in which the proceedings were held. The reply to the petitioner's letter dated March 18, 1996 was given on March 29, 1996 in a most cryptic manner. On April 30, 1996 notice for hearing to be held on May 16, 1996 was issued. On June 5, 1996 the statement of the petitioner as DW 1 continued. On July 5, 1996 cross examination of the petitioner by the Presenting Officer was recorded. The petitioner produced another defence witness on August 1, 1996 namely S.N. Tiwari. The defence evidence was closed on August 13, 1996. On the same day, the petitioner protested against the decision of the Enquiry Officer to call for additional witnesses and other evidence. The petitioner wrote to the Director, Indian Institute of Technology against the decision of the Enquiry Officer to call additional evidence as Court/expert witnesses at that stage as Enquiry Officer refused to accept his protest letter. On August 19, 1996, the Enquiry Officer decided to call additional witnesses despite petitioner's protest. On August 27, 1996, the petitioner informed the Enquiry Officer that if additional witnesses are called for as Court/expert witnesses, he would not participate in the proceedings. The Assistant Registrar sent copies of the evidence

of additional witnesses recorded on August 27 and 29, 1996 to the petitioner. The Presenting Officer submitted his written brief on October 13, 1996 and the petitioner submitted his written brief on November 11, 1996. On December 26, 1996, the petitioner was given opportunity to make his representation against the findings of the Enquiry Officer, which was submitted by the petitioner on January 15, 1997. On May 21, 1997, the petitioner was given an opportunity to make a representation against the proposed punishment/penalty, which he made on June 3, 1997. On June 23, 1997, the order of penalty was passed, whereby the petitioner was imposed a penalty of withholding of one increment without cumulative effect for two years. The petitioner submitted his appeal to the Chairman, Board of Governors on September 17, 1997. On April 13, 1998, copy of letter dated December 11, 1997 was delivered to the petitioner, which was a copy of the order of the Appellate Authority, which according to the petitioner is highly cryptic and not sustainable in the eye of law.

4. The counter-affidavit has been filed, wherein the respondents have justified the impugned action.

5. Mr. S.N. Kaul, learned counsel for the petitioner would make three broad submissions, inasmuch as the charge sheet was not approved by the Disciplinary authority. Further it was issued by an Authority lower than the Disciplinary Authority i.e the Deputy Registrar. Mr. Kaul has drawn my attention to the deposition of the prosecution witnesses in support of his submissions. The chargesheet dated September 1, 1994, contained the names of five prosecution witnesses. Out of five prosecution witnesses, Prof. B.B. Madan, did not appear in the enquiry. The statements of the four

prosecution witnesses were recorded, which reveals that the said witnesses have deposed in favour of the petitioner. According to him, Sh. G.S. Kohli has expressly stated that he was told by the Company Executive Sh. Arora in the presence of Sh. Rajesh Bhatt, the then Programmer (Supervisory Officer) dealing with the computers and the security officer that the defective material was supplied to IIT by their company concerned. It is also the submission of Mr. Kaul that after the departmental enquiry has been completed, the enquiry could not have been re-opened to examine more witnesses. Such action of the Enquiry Officer is not maintainable. The prosecution could not be allowed to lead new or additional evidence to fill up the gaps in the evidence on record. When there is inherent lacuna in the evidence already recorded, then only new evidence may be permitted. The Enquiry Officer is duty bound to record in the ordersheet all the proceedings with reasons clearly for his decision which was not at all followed in the proceedings drawn. He states the Enquiry Officer allowed the additional evidence of four witnesses, Capt. B.S. Yadav, Sh. Sandeep Sawhney, Smt. Varda Koul and Sh. N.C. Kalra. The calling of Capt. B.N. Yadav, Security Officer, IIT, Delhi was unwarranted as he was already told by the representative of the company that material produced belonged to their company as stated in the statement of prosecution witness G.S. Kohli before the Enquiry Officer on 9th January, 1996. He states, his statement also could not be taken as that of a Court Witness as he was already present when statements of four witnesses were recorded. He states that Enquiry Officer was aware that company representative Sh. Kapoor had already stated before Sh. G.S. Kohli and Sh. Rajesh Bhatt in the Office of Security Officer that the material in question actually was supplied by

their company as per his statement given on 9th January, 1996 and there was no need at all to call another set of additional witnesses to negate the earlier version of the company representative (Sh. Kapoor) before Sh. Kohli, PW and the Security Officer, IIT on 7th April, 1994 and Sh. Rajesh Bhatt, Programmer. He also states that N.C. Kalra could not have been called as an Expert Witness as he had already appeared as a prosecution witness in the enquiry and his statement was recorded by the Enquiry Officer on 9th January, 1996.

6. Further the submission of Mr. Kaul was that the petitioner was denied a reasonable opportunity as the defence documents, the petitioner had sought for, i.e., related to preliminary hearing were denied to him. According to him, the Enquiry Officer shifted the responsibility by saying the request be looked into by the Establishment Branch and Head of Computer Services. He states, even the denial of statements of witnesses recorded earlier while holding the preliminary enquiry, was denial of reasonable opportunity.

7. It is also his submission that the Enquiry Officer has not discussed the evidence, which has come on record in right perspective. According to him, the disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer has a duty to arrive at findings on the basis of evidence on record. No adverse material against him could be considered unless made part of the proceedings. It is his submission that the findings of the Enquiry Officer are based on conjectures, surmises and non application of mind. It also suffers from serious infirmities. In support of his submissions, Mr. Kaul states as under:

- (i) In Para 1(a) of the Enquiry Officer's report, the Enquiry Officer has made reference of Prof. B.B. Madan, Head of CSC which directly relates to him and has influenced the proceeding drawn against the petitioner. As PW named Prof. Madan, did not appear in the enquiry and the petitioner had no occasion to cross-examine him, any inference about the version of Prof. Madan could not be brought in this proceeding.
- (ii) Enquiry Officer has not stated in his report that how the version of Sh. Kapoor, a representative (Executive) of M/S Sabisa Continental was ignored when he had categorically stated in the presence of Sh. Rajesh Bhatt, Officer of the I.I.T., and the Department Witness Sh. G.S. Kohli, Technical Assistant that the card in question was supplied by the said Company to the Department (IIT). Any version of the Company Representative afterwards as an additional witness had been an afterthought exercise. Enquiry Officer could not ignore statement given by Sh. Kohli before Enquiry Officer on 22.01.1996 (paras X, XI, XII, XIII & XIV) and his cross examination by the petitioner.
- (iii) Enquiry Officer has not given any reason that prompted him in examining Capt. B.N. Yadav, Security Officer, I.I.T. as Court witness when he was already available at the time when Statements of other PWs were recorded.
- (iv) Enquiry Officer could not examine Sh. N.C. Kalra, as Technical Expert when his statement was already on record as PW before the case of the prosecution was closed.
- (v) Enquiry Officer has nowhere discussed as to on what basis the earlier version of Sh. Kapoor a Sr. Executive representing M/s Sabisa Continental could be ignored, which was given before PW Sh. G.S. Kohli, and taken cognizance of Additional evidence without cogent basis.
- (vi) Enquiry Officer has held the petitioner guilty of the following lapses which were not subject matter of the enquiry instituted against the petitioner. He has stated under heading 4- Recommendation (pages 224-225) of PB refers namely, (a) Material to assemble the P.C. should not have been drawn

without an order on 24.03.1994, (b) Since the CO felt that he will not assemble the P.C. he should have returned the material back; (c) C.O. Should have reported the matter in writing to Dr. M.N. Gupta after he found his P.C. non functional; (d) C.O. has not co-operated with the Head CSC (Prof. B.B. Madan), named as PW in the C.S. in addition to Security Department of I.I.T.

Enquiry Officer failed to be fair, impartial and judicious. In his Enquiry Report, he has gone on record to state as under:

“.....CO used all possible, non ethical ways and tried to show to the authorities at every step that I.O. was personally against this attitude. This practices direct insult and disrespect to the office of the IO. Institute should take adequate steps to protect the dignity of the office of the IO for future cases of any kind. IO strongly feels that C.O. cannot be absolved of the charge put against him due to his highly irresponsible behavior. The Director may take necessary action deemed fit”.

8. He states, that the appellate and the disciplinary authority orders are without reasons. That apart, in the last, it is his submission even though the Competent Authority has taken a decision to initiate disciplinary proceedings against the petitioner but the charge sheet has not been approved by him. He would rely upon the following judgments in support of his submissions:-

- (i) (2014) 1 SCC 351 Union of India and ors v. B.V. Gopinath and connected matters;*
- (ii) (1987) 1 SCC 227 Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and ors;*
- (iii) (1986) 2 SCC 651 R.P. Bhat v. Union of India and ors.*
- (iv) AIR 1961 SC 1623 State of MP v. Chintaman*
- (v) AIR 1974 SC 2325 State of Punjab v. Bhagat Ram*
- (vi) 1982 (2) SCC 376 State of UP v. Mohd. Sharif*

(vii) AIR 1970 SC 1302, Mahavir Prasad Santosh Kumar v. State of UP and Ors.

9. On the other hand, Mr. T. Singhdev, learned counsel appearing for the respondents 1, 2 and 3 would submit that the inquiry has been held in accordance with the principles of natural justice after giving due opportunity to the petitioner. He states that all the listed documents were given to the petitioner, which is in compliance of the principles of natural justice. He has drawn my attention to the deposition of the four PWs to contend that as there was no clarity, whether the charges have been proved or not, and also the fact that the purpose of Enquiry Officer is to go to the root of the charges, he was within his right under Rule 14(15) of the CCS (CCA) Rules to call for additional witnesses as Court/expert witnesses. He would state that on the strength of the deposition of the additional witnesses, the charges have been proved against the petitioner, which resulted in the issuance of the penalty order. In other words, he states that the additional witnesses appeared in the Inquiry, were at the behest of the Enquiry Officer and not of the respondents. He would contest the plea of Mr. Kaul that the charge sheet has not been approved by the Competent Authority by stating that no such plea has been taken in the writ petition. That apart, he would justify the disciplinary and appellate orders by stating that no reasons are required to be given when Disciplinary Authority and Appellate Authority are passing their respective orders. He would rely upon the following judgments in support of his contentions:-

(i) 2014 SCC OnLine HP 5321 K.P. Singh v. High Court of H.P. and others;

(ii) AIR 1963 SC 1323 State of Rajasthan and another v. Sripal Jain;

(iii) (2004) 4 SCC 636 Union of India and others v. Gurnam Singh;

(iv) W.P.(C) No. 12998/2004 Director, CBI v. S.P. Tanti and another decided on

May 31, 2007;

(v) C.A. No. 1113/1964 State of Madras v. A.R. Srinivasan decided on March 2, 1966;

(vi) 1990 (4) SCC 594 S.N. Mukherjee v. Union of India.

10. Having heard the learned counsel for the parties, insofar as the plea of Mr. Kaul that the charge sheet has not been approved by the Competent Authority is concerned, while reserving the case for judgment, this Court had directed the learned counsel for the respondents 1 to 3 to produce the relevant record where the charge sheet has been approved. The relevant file has been produced and perused by this Court. Suffice to state, that the draft charge sheet was put up for approval on July 29, 1994 and the same was approved by the Director on August 23, 1994, when the Director, IIT has while approving the draft charge sheet has stated '*approved*'. The Deputy Registrar has only communicated the Memorandum dated September 01, 1994 by stating that the same is being issued "*by order and in the name of the Director*". This plea of Mr. Kaul is not sustainable. Insofar as the judgment of the Supreme Court in the case of ***Union of India v. B.V. Gopinath (supra)*** relied upon by Mr. Kaul is concerned, in that case the Supreme Court has upheld the order of the Central Administrative Tribunal and the High Court by holding that apart from approving the initiation of departmental proceedings, the charge memo also need to be approved. Suffice to state, in view of my factual finding above, the ratio of the judgment of the Supreme Court having been satisfied, the plea of Mr. Kaul in this regard is without any merit.

11. Insofar as the submission of Mr. Kaul that the petitioner was not given statements of the PE/prosecution witnesses is concerned, the pleas are primarily made by the

petitioner in paras 4.3 and 4.4 of the writ petition. In the said paragraphs, the following are the averments:-

“4.3 That the Petitioner submitted a reply to the above Charge-sheet on 6th September, 1994, denied the charges and also requested for a copy of the Statute 13(9) of the Indian Institute of Technology along with Schedule “B” under the Memorandum of Charges was issued. He also requested for a copy of the Preliminary Enquiry Report, statement of listed witnesses and also prayed for an Inquiry Officer from outside the Organization to ensure impartiality of the enquiry. A copy of this reply dated 6th September, 1994 is appended and marked as ANNEXURE P-2.

4.4 That, however, before supplying him with a copy each of the above documents requested by him, the Respondent-Indian Institute of Technology appointed on 30th September, 1994 Prof. Anshul Kumar from the Department of Computer Sciences and Engineering as Inquiry Officer and Shri N.K. Jain, Senior Technical Assistant as the Presenting Officer respectively.”

12. The letter dated September 06, 1994 referred to in para 4.3 would show that the petitioner had inter-alia stated as under:-

(i) The almirah in which his articles and documents etc. were kept was sealed by the Authorities on 25.3.1994. The list of the articles and documents duly certified by the officers in whose presence the almirah was sealed be furnished to him.

(ii) If a preliminary enquiry was held, report of the preliminary enquiry, the card No.H401050768 be permitted to be tested by him in the presence of responsible technical officer and an outside Enquiry Officer be appointed

(iii) A copy of Statute 13(9) of the IIT be furnished along with Schedule B.

13. In response to this letter, the respondents in their communication dated October 12, 1994 had stated (i) with regard to the supply of list of articles and documents found in almirah, request in that regard be made to the Enquiry Officer (ii) Preliminary Enquiry report is meant for the disciplinary authority to satisfy himself with regard to the prima facie case against the individual before initiating disciplinary action; (iii) To test the card No.H401050768, a request be made to the Enquiry Officer; (iv) there is no provision for appointing an Enquiry Officer from SC category; (v) the request for Statute be made to the Enquiry Officer.

14. The petitioner vide his letter dated January 12, 1995 has stated that the response of the respondents is very discouraging and unjustifiable. He reiterated his demand for the copies of Statute, Schedule B and Rules framed thereunder as the enquiry has been instituted against him under the same. The petitioner during the proceedings vide his letter dated November 03, 1995 addressed to the Enquiry Officer has further sought certain documents, which included original ledgers/bill cards, wherein the stock entries of VGA cards were made in the year 1993-1994 and 1994-1995. This was sought by the petitioner to prove that the stock entries of the VGA cards are not being made in a proper manner so as to facilitate accurate identification of the cards in question as distinguished from other cards and to pinpoint the proper source of supply and other relevant particulars, Rules and Orders of Competent Authority indicating the procedure required to be followed by the Store Section of the IIT for testing the VGA cards before entering them in the stores and authorizing payments and recording certificates on the

suppliers bills. According to the petitioner, this was required to prove that the proper system required to be followed was not being adhered to. He has also sought original test report of the cards received from the suppliers M/s Sabisa Continental, Nehru Place, New Delhi indicating *inter-alia* the parts of the cards tested and the methodology thereof and also the name and designation of the officers who tested the cards and submitted the reports during the years 1993-1994 and 1994-1995 to prove proper system of testing and reporting of the cards was not followed. He also sought copy of the Preliminary Enquiry, if held, and copies of the statements of the representative of M/s Sabisa Continental, Nehru Place, New Delhi, if recorded and also of Professor B.B. Madan, Dr. M.K. Gupta and Sh. N.C. Kalra, who have been included in the list of witnesses. The said request was rejected by the Enquiry Officer vide his letter dated January 9, 1996. On the same date, the hearing in the Departmental Enquiry was held, when the petitioner and his defence assistant were present; so also four witnesses namely Mr. G.S. Kohli, Mr. N.C. Kalra, Mr. S.S. Sehgal and Dr.M.N. Gupta. Their cross examination was also done by the defence assistant without any demur/protest. In fact, after the hearing of January 9, 1996 the enquiry proceedings were held on January 22, 1996 on which date, as conceded by the Ld. Counsel for the petitioner, the statements of witnesses recorded on January 9, 1996 were handed over to him and on January 31, 1996 the statement of the petitioner was recorded as DW1 and the defence documents of the petitioner were presented and marked as exhibits. Further, there is no submission of Mr. Kaul what prejudice has been caused to the petitioner nor there is a submission in what manner the Preliminary Enquiry would have a bearing on the

findings of the Enquiry Officer. In fact, the cross examination of the petitioner was extensively relied upon by Mr. Kaul during the course of the arguments. The petitioner having accepted the rejection of letter of January 09, 1996 and proceeded to cross examine the witness, cannot now plead the denial of the documents as sought by him. Merely because the documents have been asked for would not mean the same needs to be given. The relevancy of the same needs to be seen from the perspective of the charge sheet issued to the petitioner. Only those documents, which are relied upon need to be supplied. The charge against the petitioner is that he pilfered two ICs. Accordingly, I am unable to accept this plea of Mr. Kaul.

15. The Supreme Court in the case reported as *(2011) 2 SCC 316 SBI v. Vidyut Kr. Mitra*, has inter alia held that it was incumbent on the respondent therein to plead and prove prejudice caused by the non-supply of the documents. In other words, mere denial of documents shall not vitiate the enquiry but prejudice caused need to be pleaded and proved. No submissions in that regard have been made by Mr. Kaul.

16. I may also state here, later in the enquiry proceedings, the Enquiry Officer decided to call certain Court/Expert witness in the enquiry. The petitioner objected to this action of the Enquiry Officer.

17. The plea of Mr. Kaul on the Enquiry Officer calling additional witnesses and recording evidence after the Presenting Officer had closed his case is that such action violates Rule 14(15) CCS(CCA) Rules 1965.

18. It is noted from the facts that the Enquiry Officer had decided to call the Security Officer-III; the supplier of VGA Cards for clarification; (court witness) Mr. N.C. Kalra, Computer Science Centre as expert witness. The primary reason given by the Enquiry Officer, as seen from the notice (in the record) dated August 19, 1996 issued to the Security Officer Capt. B.N. Yadav was that reference of the VGA Cards in question and that of the Security Unit of IIT had come time and again during the proceedings of the enquiry as very important links. So, it became important to examine the VGA cards and to seek clarification. I may state here that Capt. B.N. Yadav was not a listed witness in Annexure-III of the charge sheet. So he was not examined earlier in the Disciplinary Proceedings. Similarly, Sandeep Sawhney, Senior Manager, M/s Sabisa Continental Pvt. Ltd accompanied by Ms. Varda Koul, Manager of the same Company were examined. Mr. N.C. Kalra was the only witness, whose name was found mentioned in Annexure-III of the charge sheet. He appeared in the enquiry as a prosecution witness. Later he was called as an Expert witness.

19. The aspect of recall/calling of witness/additional witness has been considered by the Supreme Court in the case of *Shivajirao Nilangekar Patil (supra)* on which reliance was placed by Mr. Kaul is concerned, the Supreme Court in para 27 has held that the basic principle of admission of additional evidence is that the person seeking the admission of additional evidence should be able to establish that with best efforts such additional evidence could not have been adduced at the first instance. Secondly, party effected by the admission or additional evidence should have an opportunity to rebut such additional evidence. Thirdly, that additional evidence was relevant for determining

the issue. Mr. Kaul had relied upon Rule 14 (15) of the CCS / CCA Rules, 1965 in support of his submission. It is noted that CCS / CCA Rules are not applicable for holding disciplinary proceedings in IIT. The proceedings as seen from the chargesheet are regulated / conducted under Statute 13 (9) of the Statutes. The said Statute stipulates *“No order imposing on any member of the staff any of the penalties specified at (viii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given opportunity to make representation to the appointing authority”*. The Statute 13 (9) does not have a stipulation akin to Rule 14 (15) of the CCS/CCA Rules. No reliance can be placed by Mr. Kaul on that Rule. Does that mean in the absence of a Rule an Enquiry Officer can call for additional witnesses at any point of time in the disciplinary proceedings. The answer has to be in the negative. The principles of natural justice and fairplay shall govern the situation if there is no Rule akin to Rule 14 (15) of the CCS/CCA Rules. It follows that the principles akin to 14 (15) of the CCS / CCA Rules which embodies principle of natural justice and fairplay, the Enquiry Officer can call for new evidence or recall and re-examine any witness on behalf of disciplinary authority before the presenting officer closes the case of the disciplinary authority. In the present case, it is noted that the presenting officer has closed the case of the disciplinary authority on January 9, 1996. The petitioner was examined on January 31, 1996. The witness S.N. Tiwari on behalf of the petitioner was lastly examined on August 13, 1996. In other words, the recording of evidence being complete, at the stage when the parties were to submit their written briefs, the Enquiry Officer decided to call Court / expert witness.

This action of the Enquiry Officer was clearly impressible and surely was to the prejudice of the petitioner.

20. The reliance placed by Mr. Singhdev on the judgment of the Himachal Pradesh High Court in the case of ***K.P. Singh (Supra)*** shall not be applicable in view of my finding on facts, above. The question would be, whether in view of my finding above the enquiry has been vitiated. The answer is “No” as I find on a consideration of the depositions already on record excluding that of court / expert witnesses the findings/ conclusion of the Enquiry Officer is justified. In this regard, I refer to the following findings of the Enquiry Officer in his report at Pages 214-217:

“1. Although, the Charged Officer has denied charges as per minutes of the meeting dated 26.10.95, the inquiry proceedings and also evidences produced in the case very weak and therefore these very clearly point towards the Charged Officer as if he is guilty of the offence. The following points are submitted for consideration of the Director:

a. In spite of the fact that the Charged Officer in the presence of the then Head of CSC said that he did not change the IC's in the VGA card in question on 25-3-94, he deliberately asked a question in his letter dated 3-6-94 addressed to Head CSC, that were are two ICB's {Exhibit No.12(a)}. It may be pointed out that ICB's was a typing mistake. It should have been IC's. He further attempted to abbreviate ICB's, to be International Broadcasting Services, in his next letter dated 6-6-94 {Exhibit No.12(b)}. This abbreviation was although completely out of the context, even then he did it. It is obvious that he did so, to avoid answering the letter of the Institute Security Officer, dated 2-6-94 thus willfully indulging in delay-tactic. Thus, wasting precious time of his seniors, including that of the then Head CSC.

b. He did not make a statement before the Institute Security Officer for a long time, in spite of the reminders given to him by the Security Officer and also by the then Head, Computer Services Centre (Exhibits Nos. 13, 15 and 17). He also refused to give statement (Exhibit No. 19 note from Capt. B. Kumar, A.S.O) by saying that the Asstt. Security Officer is not competent to ask him to make a statement in his case. Finally, when the

Charged Officer felt that the Could not delay the statement any further, he made a wage statement (Exhibit No. 14). By doing so the Charge Officer exhibited the willful delay attitude and thus did not cooperate with the inquiry proceedings.

c) The Charged Officer got the material issued from the CSC stores at 4:30 PM, on 24.03.94 (Exhibit No.7) and did not assemble the PC on that day. The Charged Officer could not produce a written order from the Competent Officer, authority/directing him for the issue of the computer parts / material, so as to authenticate that he was ordered by his seniors to assemble the PC on 24.3.94. Further, he also could not substantiate as to why was it necessary to get the material issued at 4:30 PM, especially when the Institute closes at 5:30 PM, and also he wanted to follow the order for Dr. M.N. Gupta (Exhibit No.9) regarding PCs.

d) The Charged Officer tried to take initially the shelter of the circular (Exhibit No.9) in his Examination-in-Chief, to say that he did not assemble the PC on 24.3.94, because he was afraid that if he did so, he will violate the order (Exhibit No.9). Whey then he got the material issued on 24.3.94 at 4:30 PM. However, when the Inquiry Officer remarked (Minutes dated 31-1-96) that the order pertains to repair of old PC's and not to the assembly of new PC's, Mr. Gautam's interpretation of the said order in the next proceedings of meeting (answer to Q.13 Minutes dated 5.7.96) changed.

e) In case Mr. Gautam felt that he was able to assemble the PC on 24.3.94, he should have returned the said computer parts (material) that he got issued to the Computer Services Centre stores on the same day, rather than keeping the same under his custody.

f) Mr. Gautam made a statement in his Examination-in-Chief (Q.5 Minutes dated 28.2.96) that he did not test the VGA card after the same was received from the vendor. In fact the test report is signed by Mr. Gautam on 17.3.94. The report of test has been submitted to the Inquiry Officer as Exhibit No.6. Further, a complete test report for all material supplied by M/s. Sabisa Continental is also signed by Mr. G.S. Kohli, Mr. N.C. Kalra, Dr. M. N. Gupta and counter signed by Prof. B.B. Madan. This is placed as Exhibit 3, confirming that the card was tested and was functional before it was taken on charge by CSC stores on 28.2.94.

g) Mr. Gautam deliberately left the VGA card in question in the CSC stores on 25.3.94, without filling the return voucher and also without taking any acknowledgement, so that he could take advantage of situation and could claim that he has returned the card and that he he

has not changed the IC's. The answer to the question No. 23 in his Cross-Examination, (Minutes dated 5-07-96) is worth attention of the Competent Authority. "He says he does not want to reply that why was the card left with CSC storekeeper without signatures on 25-03-94."

h) The only defence witness of Mr. Gautam is Mr. S.N. Tiwari, who neither is a hardware qualified technician, nor he possesses any experience of PC assembly: For entire of his defence Mr. Gautam's witness is based on the statement of Mr. S.N. Tiwari, Data Processor (a commerce graduate). Mr. Gautam did not approach any technically expert persons like Mr. N.C. Kalra, Mr. Rajesh Bhatt, Mr. S.S. Sehgal and Mr. G.S. Kohli, when he felt the need for advice / help on assembly of the PC on 25-3-94, he has also not been able to give any satisfactory answer to this effect before the Inquiry Officer.

i) Mr. Gautam has stated in his Examination-in-Chief that on 25-3-94, when the VGA Card started giving garbage signals, he was certain that the card was faulty. Why did he then not return the card to stores through a return voucher, following the proper official procedures. Why did he not himself report the matter either to Dr. M.N. Gupta or to Prof. B.B. Madan, the Head of the CSC. He also later wrote to the Director as per Exhibit No.11, (Reply of Dy. Registrar E-II), that the card may be given to him for testing. It would have been more appropriate if he wrote that the card may be got tested through an independent expert in his presence, against possible fault etc.

j) Prof. B.B. Madan, the then Head of the CSC had asked Mr. N.C. Kalra to test the card. Mr. Kalra's statement says that the cards was tested in presence of Mr. Gautam, Mr. Gautam himself switched on the supply (Minutes dated 9.01.96 statement of Mr. N.C. Kalra). However, Mr. Gautam denies the statement. May be that it is convenient for him to do so. Mr. N.C. Kalra's statement clearly says that during the process of testing of the VGA card in question, when he changed the entire set of DRAM IC chips by new IC's, the card started working. This shows that either one or more of the DRAM IC chips were faulty in the card in question.

k) In his Cross-Examination Mr. Gautam has not replied some very vital question as per, minutes dated 5-7-96, (question Nos. 2, 20 & 23) which may have been very important to clarify many doubt of the inquiry. He deliberately avoided to answer the questions put to him by the P.O. May, he feels that doubts would give him benefits to prove himself innocent.

l) That the statement of Mr. S.N. Tiwari during the Examination-in-

Chief and also during his Cross-Examination clearly says that “Mr. Gautam did not keep the Computer parts and material in the almirah and locked the same in his presence”, negating Mr. Gautam’s statement in his defence witness (Answer to question No.2 minutes dated 31-1-96) that “he kept the computer parts / material in his almirah and locked it in presence of Mr. S.N. Tiwari.” As per the statement in his Examination-in-Chief (Minutes of 1-08-96 last line of first paragraph), and also answer to question No.18, Mr. S.N. Tiwari in his Cross-Examination has clearly said that Mr. Gautam took away the material from the terminal room of CSC to be kept in his Almirah. Mr. Tiwari did not accompany Mr. A.K. Gauam for keeping material in the almirah. He further says that it is his presumption that Mr. Gautam would have kept the material in the almirah.

m) This statement as described in para (l) shows that the Charged Officer gave a non-truthful statement that he kept the material in the said almirah and locked it in presence of Mr. S.N. Tiwari.

n) That Mr. S.N. Tiwari has also given various statement in his Examination-in-Chief and also during his Cross-Examination which may be called as hear-say, rather than witness. However, when subjected to deeper question Mr. Tiwari gave confusing answers e.g. answers to question Nos. 33 and 34, (Minutes dated 13.8.96) where he says that he has seen the VGA in question from closer look, but he will not be able to recognize it, if asked to do so. Mr. Tiwari says further, during answer to question 14 in Cross-Examination that he did not check the material that Charged Officer brought to the terminal room, but he saw the material while sitting in his seat in the terminal room. These two statements contracted each other – closer look & watching from his seat in the terminal room.”

21. Even under the heading recommendations, the Enquiry Officer stated as under:

“(a) It is sufficiently clear that the original DRAM IC chip in the VGA card in question have been put instead, thus making a case of pilferage/theft.

(b) That the evidence lead to the conclusion that the Charged Officer has not discharged his duty in a responsible manner and has not behaved as a responsible employee of the Institute, due to which he cannot be absolved of the charge. The following lapses have been committed:

(i) *The material to assemble the PC should not have been drawn from the CSC store without a written order and also late in the afternoon at 4.30 PM on 24.03.94.*

(ii) *Since the Charged Officer felt that he will not be able to assemble the PC the same day, he should have returned the material back to the CSC stores, against a return voucher on 24.3.94. he should not have kept the material under his custody on 24.03.94 and also on 25.03.94 (until he returned the card CSC store).*

(iii) *The moment the Charged Officer found that the VGA card in question was non-functional, he should have reported the matter in writing either to Dr. M.N. Gupta or to the Head Computer Services Centre. It is not a justified practice to return the card in question to the CSC Stores without the return voucher & without taking any acknowledgement.*

(iv) *The Charged Officer should have shown full co-operation during investigations. It is reported that he has not co-operated with the Head CSC, and also with the Security Unit of IIT Delhi. Further, he has also shown non-cooperation and non-compliance with the Inquiry Officer all through the inquiry proceedings.”*

22. The plea of Mr. Kaul that the findings of the Enquiry Officer are perverse is not tenable. The charge stands proved. I may also state here, one of the plea of Mr. Kaul was that Prof. B.B. Madan, PW, who did not appear in the enquiry and the petitioner had no occasion to cross examine him, any inference about the version of Prof. Madan could not be made in the report by the Enquiry Officer is not appealing, inasmuch as reference to Prof. Madan was made by the Enquiry Officer in para (J) of his report by observing Prof. Madan had asked Mr. Kalra to test the card and Mr. Kalra in his statement said that the card was tested in the presence of the petitioner, which statement

of Mr. Kalra was denied by the petitioner. No incriminating evidence imputed to Prof. Madan against the petitioner has come on record, which required cross examination of Prof. Madan by the petitioner. In fact, the charge has not been proved on that statement of Prof. Madan.

23. The law in regard to the scope of judicial review on the findings of the Enquiry Officer is quite well settled. The Supreme Court in the case of ***Union of India vs. Manab Kumar Guha 2011 (11) SCC 535*** has *inter-alia* held that when a finding is recorded by the Enquiry Officer that the respondent petitioner therein had illegally detained and then released complainant was based on material on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review is erroneous. I reproduce the relevant part of the judgment as under:

“It is well settled that the High Court while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence. It interferes with the finding of the enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order the learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review.”

24. One of the pleas of Mr. Kaul was, the orders of the Disciplinary Authority and the Appellate Authority are unreasoned orders which does not reveal an application of mind is concerned, Mr. Kaul in support of his submission had relied upon the judgment of the Supreme Court in the case of ***R.P. Bhat (supra)***, wherein the Supreme Court held that

neither Article 311(2) nor rules of natural justice requires that in every case, the Appellate Authority should, in its order state its own reasons except where the Appellate Authority disagrees with the findings of the Disciplinary Authority. But where the CCS (CCA) Rules are applicable, the requirement of Rule 27(2) must be complied with. The word ‘*consider*’ in Sub Rule (2) implies due application of mind. The Supreme Court held, there was no indication in the Appellate order that the Appellate Authority was satisfied as to whether the procedure laid down in the Rules has been complied with and if not, whether such non-compliance has resulted in violation of the provisions of the Constitution or in failure of justice. It also held that the Appellate Authority has also not given any finding on the crucial question as to whether the findings of the Disciplinary Authority were warranted by the evidence on record. The Supreme Court set aside the Appellate Order. It may be stated here that the judgment relied upon by Mr. Kaul relates to an Appellate Authority order and not to an order of the Disciplinary Authority. In the case of ***Director (Marketing), Indian Oil Corpn. Ltd. And Another v. Santosh Kumar (2006) 11 SCC 147***, the Supreme Court has, noting the language employed by the Disciplinary Authority, which has been adopted in-toto by the Appellate Authority, held that there is a total non application of mind by the Appellate Authority. It necessary follows, even if the Disciplinary Authority order is bereft of reasons, the Appellate Authority order must reveal application of mind. In this regard, I quote paras 9, 10 and 11 of the judgment of the Supreme Court as under:-

“9. We have also perused the order passed by the General Manager (Operations) which is available at page 51 and the order passed by the

Director (Marketing) who is the appellate authority. A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.

10. *For the sake of convenience, we extract both the orders available at page 51-52 of the paper book:*

"I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97 in the capacity of the Competent Disciplinary Authority.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point in his appeal dated 25.3.2000 which may warrant any change in the said final order passed by me as the Competent Disciplinary Authority.

The appeal of Shri Santosh Kumar is hereby forwarded to Director(M)-the Appellate Authority for his kind consideration and orders.

General Manager (Operations)

I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97. Shri Santosh Kumar has preferred an appeal against the order of penalty of "Dismissal", inflicted upon him by GM(Ops.) - the Competent Disciplinary Authority vide reference No. IR/1461/(N-113) dated 30.12.1999 as a measure of disciplinary action against

Shri Santosh Kumar.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point which may warrant my interference with the said orders passed by the Competent Disciplinary Authority. Accordingly, I hereby reject the appeal of Shri Santosh Kumar. Let Shri Santosh Kumar be advised accordingly.

Director (Marketing)"

11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs."

25. In the present case, the petitioner had submitted appeal against the order of the Disciplinary Authority dated June 23, 1997 and the same was of 17 pages. He had

raised various grounds in his appeal. Even though Mr. Singhdev had relied upon a judgment of the Supreme Court in the case of *S.N. Mukherjee (supra)* to contend that there is no requirement for the Appellate Authority to give separate reasons if he agrees with the order of the Disciplinary Authority, impugned in the appeal, I am unable to agree with the said submission of Mr. Singhdev in view of the recent pronouncement by the Supreme Court in as much as Supreme Court in the case of *LIC vs. A. Masilamani 2013 (6) SCC 530* has held that the order of Appellate Authority itself should reveal application of mind and he cannot simply adopt language employed by the Disciplinary Authority and proceed to affirm its order. In view of the aforesaid judgment of the Supreme Court, the plea of Mr. Kaul is appealing but whether this Court is required in the facts of this case to remand the matter back to the Appellate Authority for passing a speaking and reasoned order. I am of the view, in view of my finding above wherein I have held the findings of the Enquiry Officer are not perverse, in other words the charge stands proved against the petitioner, no purpose would be achieved in remanding the matter back to the Appellate Authority that too after 16 years have elapsed. That apart, the penalty imposed on the petitioner is of stoppage of one increment without cumulative effect for a period of two years, which is not a harsh penalty. The present petition is without merit and the same is liable to be dismissed. Ordered accordingly. No costs.

V. KAMESWAR RAO, J

AUGUST 28, 2017

ak/jg