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

+ W.P. (C) 3239/2003

B.S.METHAILA

.... Petitioner

Through: Mr. Jitender Chaudhary and
Ms. Shilpa Chohan, Advs.

versus

GOVT. OF NCT OF DELHI & ORS.

.... Respondents

Through: Ms. Avnish Ahlawat, Mr. N.K.
Singh and Ms .Palak Rohmetra, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
01.07.2019

1. These proceedings emanate from a charge-sheet, dated 7th June, 2002, issued to the petitioner, and pertaining to a period during which he was employed as Stores Officer in the Netaji Subhash Institute of Technology (Respondent No. 2 herein). The charge-sheet contained four Articles of Charge, which may be paraphrased as under:

(i) Article I of the Articles of Charge, against the petitioner dealt with an indent, received by the petitioner for procurement of eight Bread Boards, in 1999. The intent was for procuring the boards @ approximately ₹ 20,000/- each, on “repeat order” basis. Even so, it was alleged that the petitioner, by noting dated 26th July, 1999, sought approval of the Director of Respondent No. 2 to invite open tenders, for procuring the Bread Boards,

without bringing it to the notice of the Director that the same boards had earlier been purchased by Respondent No. 2 and that the indenter had requested that the eight new boards be purchased as a repeat order. The petitioner had accepted, in his statement dated 27th September, 2001 and 28th September, 2001, that the stores section, in which he was employed, maintained a record of purchases, of which he was aware. Moreover, it was alleged, the file did not reflect any inquiry sent to the two other firms mentioned in the indent, in addition to M/s Rama Electric and Machinery Stores. The petitioner was, therefore, alleged to have processed the case for procurement of the eight Bread Boards in a careless and negligent manner, reflecting lack of devotion to duty, as well as conduct, on his part, unbecoming of an employee of Respondent No. 2, which, it was alleged, violated clauses (i), (ii) and (iii) of Rule 3 (1) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter “CCS (Conduct) Rules”).

(ii) Article II alleged that, while obtaining expenditure sanction of ₹ 246,000/–, of the Director, *vide* Notice dated 25th October, 1999, the petitioner did not point out that the lowest bid of ₹ 30,750/–, quoted by M/s Rama Electric and Machinery Stores was greater than the approximate cost indicated by the indenter, of ₹ 20,000/–. The petitioner, it was alleged, had admitted, in his statement dated 27th and 28th September, 2001, that he had scrutinised the indent and was aware of the cost of the equipment. This, it was alleged, was with the *mala fide*

intent of favouring M/s Rama Electric and Machinery Stores, whose proprietor was the husband of an upper divisional clerk (UDC), working under him. Having obtained approval in this manner, the petitioner, it was alleged, placed the order on M/s Rama Electric and Machinery Stores. This, it was alleged, indicated lack of integrity, lack of devotion to duty and conduct, on the part of the petitioner, unbecoming of an employee of Respondent No. 2.

(iii) Article III, of the Articles of Charge against the petitioner, alleged that the petitioner had got tenders opened by a Committee consisting of members other than those suggested by him. Reliance was placed, in this context, on a Note, dated 12th September, 1999, in which the petitioner allegedly admitted that the constitution of the Committee was erroneous and suggested new names. This, it was alleged, reflected a negligent and casual approach, on the part of the petitioner, indicating lack of devotion to duty and amounting to misconduct within the meaning of Rule 3(1)(ii) of the CCS (Conduct) Rules.

(iv) Article IV, of the Articles of Charge against the petitioner, alleged that the petitioner had obtained the approval, of the Director, for procurement of eight Bread Boards, without issuing any advertisement in the newspaper. Further, it was alleged, quotations were received from three firms, including M/s Rama Electric and Machinery Stores, in response to letters dated nil, copies of which were not available on the file. This, again, it was alleged, indicated intent, on the part of the

petitioner, to favour M/s Rama Electric and Machinery Stores, reflecting lack of integrity and devotion to duty, as well as of conduct unbecoming of an employee of Respondent No. 2.

On these charges, the charge-sheet, which was issued by the Board of Governors (hereinafter referred to as “BOG”) of Respondent No. 2, in its capacity as the petitioner’s disciplinary authority, proposed holding of an inquiry against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as “CCS (CCA) Rules”], and directed the petitioner to submit, within 10 days of the receipt of the Memorandum, a written statement of his defence, along with a request for being heard in person, if he so desired.

2. An Inquiry Officer (hereinafter referred to as “IO”) was appointed, to inquire into the charges contained in the aforesaid charge-sheet dated 7th June, 2002.

3. At the very commencement of the inquiry proceedings, the documents enlisted along with the charge-sheet dated 7th June, 2002 *supra*, were provided to the petitioner. Inspection of the original documents was also permitted, and was carried out. At that stage, no request was advanced, by the petitioner, for being supplied any additional documents. On 25th September, 2002, however, the petitioner requested for being supplied certain additional documents and inspection thereof, to enable him to defend the charges against him. Copies of the said additional documents were also provided to

the petitioner, on 25th September, 2002, 18th October, 2002 and 28th October, 2002. Inspection, of the said additional documents was also sought, and was permitted, which was undertaken on 15th November, 2002. These facts stand reflected in the Inquiry Report dated 11th March, 2003 *infra*, submitted by the IO, and are not disputed by the petitioner.

4. The petitioner, thereafter, requested the IO for being permitted to engage a Defence Assistant (hereinafter referred to as “DA”) from outside the establishment of Respondent No. 2. The request was refused by the IO, against which the petitioner approached this court, under Article 226 of the Constitution of India, by way of CWP 6651/2002. *Vide* order dated 11th October, 2002, the said writ petition was disposed of, by a learned Single Judge of this Court, with liberty to the petitioner to seek the permission of the Hon’ble President of India, under Rule 14(8)(b) of the CCS (CCA) Rules, for permission to engage a DA from outside the establishment of Respondent No. 2, with the further direction that the decision, on the representation, be taken within 2 weeks.

5. The request, of the petitioner, for being represented by a DA from outside the establishment of Respondent No. 2 was rejected, by the IO, *vide* decisions dated 12th and 17th December, 2002, which were assailed, once again, by the petitioner, by way of CWP 39/2003. The said writ petition was disposed of, by a learned Single Judge of this Court, *vide* order dated 30th January, 2003. It may be noted, here, that an erroneous impression was created, as reflected in the said order,

that the IO had already submitted an Inquiry Report. However, as this error does not seriously affect the present proceedings, no further reference, thereto, is required. Suffice it to state that para 3 of the aforesaid order, dated 30th January, 2003, whereby CWP 39/2003 was disposed of, by this Court, read thus:

‘The petitioner being aggrieved by the aforesaid order did not participate in the proceedings, which due to the aforesaid situation were being conducted ex parte by the enquiry officer. It is stated that the enquiry officer has even submitted his report. However, before the submission of the enquiry report, the petitioner approached this court by this Writ Petition, on which notice was issued to the respondents. The respondents have entered appearance. Having considered the records having heard the learned counsel appearing for the parties, I directed the petitioner to consider if he is agreeable to receive defence assistance from an officer, who had retired from the same institution. Accordingly, counsel appearing for the petitioner obtained instructions and has stated today before me that the petitioner would be agreeable to have a defence assistance of Mr. S. R. Sibbal, who is retired from the same institute. Since the petitioner has now agreed to have the defence assistance from retired servant from the same Institute, in my considered opinion the enquiry now should order to be conducted in the presence of the petitioner for the ends of justice & to give the petitioner an opportunity of hearing in compliance with the principles of natural justice. Accordingly, the writ petition stands partly allowed to the extent that the petitioner shall be allowed to be represented in the enquiry proceedings to receive defence assistance from S. R. Sibbal, a retired officer of the respondent Institute. The enquiry Officer is directed to proceed with the enquiry from the stage when the petitioner did not participate in the said proceedings. *Evidence shall be recorded afresh in the presence of the petitioner and petitioner shall be allowed to cross-examine the said witness. The petitioner shall also be*

allowed to have his witness examined in the enquiry proceedings. It is also directed that thereafter the enquiry officer shall submit a fresh report in accordance with the law & without being any manner influenced by the earlier report submitted by him with the authority. The petitioner shall appear before enquiry officer on 17th Feb., 2003 at 3.00 P.M.”

(Emphasis supplied)

6. As the petitioner was out of India on 17th February, 2003, the inquiry proceedings were re-commenced on 21st February, 2003. On the said date, the DA submitted, to the IO, a written communication, seeking permission to inspect the following documents/files, in order to enable him to defend the petitioner:

- “1. All purchase files referred in tender notice pertaining to purchase of bread boards quantity 8.
2. Previous purchase file of bread boards referred for repeat order by indenter and HOD in Indent/specification.
3. Advertisement tender file F.175 (299)/95/PUR/NSIT for period June 1990 January 2000.
4. Tender sale register pertaining to file F.175 (299)/95/PUR/NSIT.
5. Store Section dispatch records for outside letters for period June 1999 Jan 2000.
6. DAK Dispatch Register of Institute for the period June 1999 to January 2000.
7. Peon book, Dispatch Records of Diary Section for period June 1999 to January 2000.
8. File movement records/register from April 1999 to Jan 2000.

9. Stock (Central Stock) Register for non-consumable for period Jan 1999 to Dec 2000.

10. File Index Register, Store Section from period Jan 99 to Aug 99.”

Additionally, copies of the following documents was sought:

- (i) organisational structure of Respondent No. 2 and its Store and Purchase Section, in order of hierarchy,
- (ii) a copy of the Rules and Regulations governing the purchase procedure followed by Respondent No. 2 on the date of purchase of the bread boards,
- (iii) a copy of the purchase procedure of the Government of NCT of Delhi/Government of India, being followed on the date of inviting tender and processing of the case by Respondent No. 2,
- (iv) copies of the tender sales register, DAK Dispatch register, peon book, for any specific date, as may be necessary,
- (v) a copy of the duties and responsibilities of the Indentor notified by Respondent No. 2 in accordance with Government rules,
- (vi) the specific duties and responsibilities of the in-charge of the stores and purchase section, as notified by Respondent No. 2,

- (vii) the specific duties and responsibilities of the Dean, Administration notified as per Government rules,
- (viii) the specific duties and responsibilities of the Head of the Department in respect of purchases, as per purchase procedure,
- (ix) a copy of the notification/order, of the NCT Delhi, approving application of CCS Rule 1965 to Respondent No. 2 employees,
- (x) a copy of the notification appointing the disciplinary authority, with his name and designation and
- (xi) a copy of the notification appointing the appellate authority, with his name and designation.

7. The IO observed that, though the request, of the petitioner, for being supplied the documents, was disposed of, *vide* daily order sheet dated 24th September, 2002, he would, nevertheless, go through the list once again and decide whether the documents, now sought by the DA, were relevant, and necessary. Apart from this, the IO requested the PO to produce, before him, the AR (S & P) and the then Head of the concerned Division, Prof. J. P. Gupta, so that certain clarifications, which were necessary in order to enable the IO to adjudicate on the inquiry, were obtained. The proceedings were adjourned to 24th February, 2003.

8. On 24th February, 2003, the IO put detailed questions to the AR (S & P), as well as to Prof. J. P. Gupta, and elicited responses thereto. On the petitioner requesting for permission to cross-examine the said two persons, the IO rejected the request, on the ground that they were not prosecution witnesses, so they were neither to be examined nor cross-examined, and that their presence was only being sought in order to obtain certain clarifications. He, however, offered the petitioner the option of calling them as witnesses.

9. The petitioner also requested for permission to be allowed inspection of the documents, to which reference was contained in the letter dated 21st February, 2003 *supra*, of his DA, before the proceedings continued. He pointed out that his DA had been permitted, to assist him, for the first time, by this Court, and that he was not present earlier. On the ground that the documents sought by the DA were relevant for his defence, the petitioner reiterated the request that they be provided. To this, the IO observed that this Court had, in its order dated 30th January, 2003, directed that the proceedings be re-commenced from the stage at which the petitioner stopped appearing. The request for being provided documents, it was observed, had been decided much prior thereto, and there was no occasion for the said decision to be revisited. As the petitioner was not proceeding with the matter in the absence of the documents requisitioned in the letter dated 21st February, 2003, the IO held that the petitioner was not cooperating with the proceedings, which would, therefore, continue *ex parte*.

10. On 11th March, 2003, the IO submitted his Inquiry Report, holding all the allegations/charges, against the petitioner, to be proved. His findings, in respect of each of the Articles of Charge, may be paraphrased thus:

(i) Regarding Article I, the IO found that

(a) the petitioner had admitted that he had noticed, in the indent, the fact that it was a “Repeat Order”, as also the specifications attached to the indent,

(b) the petitioner had further admitted that he had noticed that there were three suppliers mentioned in the said indent, i.e. M/s. Instrumentation and Control, M/s. Rama Electric and Machinery Stores and M/s. ROMTEK,

(c) the petitioner had further admitted that he had noticed, under the heading “quantity already existing in the Department”, the figure “4”, as well as the approximate cost of each machine as ₹ 20,000/–,

(d) Prof. J. R. P. Gupta had also deposed, on 24th February, 2003, that the indent, dated 5th July, 1999, was for a “Repeat Order”,

(e) it was also confirmed, by Prof. Gupta, that the cost of ₹ 20,000/– was on the basis of previous purchases,

(f) the petitioner had admitted that the Stores and Purchase section was maintaining purchase file as well as Central/Register,

(g) the petitioner did not have the power to call for open tender or to change the members of the Purchase Committee once approved by the Director, which was also clarified by the AR (S & P), and

(h) the AR (S & P) also substantiated, in her deposition, the position that it was incumbent, on the petitioner, as Stores Officer, to highlight the reasons if there was a wide difference in the cost of material as mentioned in the administrative approval, while seeking expenditure approval from the competent authority.

Following on these observations, the IO found thus:

“In view of the facts and evidence adduced before me during the course of the enquiry by the DO; PO; then Head, ICE Division; and the present AR (S & P), I am of the view that the DO did not follow the established Purchase Procedure prevalent in the Institute (NSIT), intentionally and knowingly with the intent to benefit the firm M/s. REMS and he thus lacked devotion to duty. The charge mentioned in Article-I stand proved.”

In this context, it is also worthwhile to reproduce the observations, of the IO, reflecting the reliance, placed by him, on the depositions of Prof. Gupta and the AR (S & P), thus:

“Prof. J. R. P. Gupta the then HOD, Ice Division had also confirmed vide his deposition dated

24.2.03 that the indent dated 5.7.99 was for 'Repeat Order' only.

"The phrase 'Repeat Order' both at top and bottom of the indent form was written when I signed the Indent on 9.7.99." Prof. Gupta has further clarified.

PO Is it the same indent which was originated from the Mechatronics Lab?

Prof Gupta: Yes.

PO Was that for 'Repeat Order'?

Prof. Gupta: Yes.

PO Was the specification attached to the indent form attached by the Lab to make the indent more specific that it was the requisitioned/indent in 'Repeat Order' basis only and the cost mentioned as approximate Rs. 20,000/- each was also on the basis of the previous purchases.

Prof. Gupta: The specification was taken as the photocopy from the old file only and the approximate cost was also pertaining to that (DOS 24.2.03).

From the above, it is amply clear that the indent was for 'Repeat Order' only. This fact was also well in the knowledge of the DO. It is also an established fact that the system of procuring goods on 'Repeat Order' basis existed in NSIT.

PO Do you agree that the system of purchases on 'Repeat Order' basis existed in the NSIT in 1999-2000?

DO Yes (DOS 8.11.02).

The DO also confirmed of relevant records being maintained by S & P Section i.e. –

PO What records had been maintained for the purchases made by S & P Section? (DOS 8.11.02)

DO Records were maintained as (i) Purchase file (2) Central Stock Register.

It is also clear that it was not in the power of the DO to call for the NYT on 'Open Tender' basis in the instant case and also to change the members of the Purchase Committee once approved by the competent authority, i.e. the Director, NSIT.

This position was also clarified by the present AR (S & P), NSIT.

PO Can the S & P Section change the nature of the purchase as mentioned in the requisitioned/Indent Form? (DOS 24.2.03)

AR (S & P): No

PO Can the constitution of the Purchase Committee be changed by the Stores Officer suo moto without the approval of the competent authority?

AR (S & P): No

PO Can the Purchase Committee function without having a nominee of the Chairman or Director himself of the Purchase Committee?

AR (S & P): No.

Thus, the opening of the Tenders on 6.9.99 was in violation of the Rules of NSIT.

It was also necessary on the part of the DO to highlight the reasons while seeking expenditure

approval for the purchase of 08 numbers of Bread Boards at a cost of Rs. 30,750/- + Sales Tax per piece on 15.10.99 as there was a huge difference between the cost as mentioned in the administrative approval dated 28.7.99 @ Rs. 20,000/- per piece only: This position was substantiated by the present AR (S & P).

PO Is it not incumbent on the Stores Officers to high light the reasons if there is wide difference in the cost of material as mentioned in the administrative approval while seeking expenditure approval from the competent authority? (DOS 24.2.03)

AR (S & P) Yes.”

(ii) Regarding Article II, the IO relied on the same material, which was cited by him in respect of Article I, including the depositions of the AR (S & P) and Prof. Gupta. The findings, by him, are broadly repetitive of the findings returned in respect of Article I, and, following thereupon, the IO concludes thus:

“Thus, the purchase of VOLTEX make experimental Bread Board Accessories @ Rs. 30,750/- + Sales Tax from M/s REMS was in violation of the Purchase Procedure of NSIT. This purchase was done intentionally and malafidely with sole intention to benefit the Firm M/s. REMS whose proprietor was the husband of M/s Nirmal Oberoi, who was the dealing hand in Stores Section. Thus the charge is mentioned in Article-II stand proved.”

(iii) With respect to Article III, the IO holds that (a) the proposal for constitution of a Central Purchase Committee, as mooted by the petitioner *vide* notice dated 26th July, 1999, was

in contravention of the Purchase Procedure approved by the Finance Committee in 1990, (b) by calling two of the Committee members for opening of the tender on 6th September, 1999, ignoring the other two members, the petitioner flouted the orders, dated 28th July, 1999, of the Director and (c) the petitioner put up another note, on 10th September, 1999, in which he mentioned that the constitution of the Purchase Committee was erroneously not in order, and that the order, constituting the Committee, dated 28th July, 1999, required to be amended, for which purpose he proposed the name of four other officers for the Committee. As such, the IO found that, while the petitioner had the Central Purchase Committee constituted twice, the Director, *vide* order dated 28th July, 1999, approved other members for the Committee, and the purchase was processed by an entirely different committee. This, according to the IO, reflected negligence and lack of devotion to duty, on the part of the petitioner.

(iv) With respect to Article IV, the IO found that, though the Director approved procurement of the equipment as mentioned in the notice dated 26th July, 1999, of the petitioner, by Open Tender, no evidence of the floating of NIT, in any newspaper, was forthcoming. Neither was any such NIT reflected in the records of the S & P section and the Accounts section of the NSIT. That apart, quotations were received from the three firms, who tendered, in response to individual letters issued to them, and undue haste was also reflected, in making of payment

to M/s Rama Engineering and Machine Stores. Given the fact that the petitioner had more than adequate experience of the S & P section, his actions were found, by the IO, to be deliberate and with the intention of benefiting M/s Rama Engineering and Machinery Stores.

11. The petitioner challenged the aforesaid Inquiry Report before this Court, by way of WP (C) 2228/2003. *Vide* order dated 28th March, 2003, this Court disposed of the said writ petition, with liberty to the petitioner to represent to the BOG against the Inquiry Report. The order, dated 28th March, 2003, merits reproduction, *in extenso*, thus:

“This petition is directed against the order dated 24.2.2003 and dated 25.2.2003 passed by the respondent No. 3 and also the enquiry report dated 12.3.2003.

A departmental proceeding is instituted against the petitioner and is pending consideration. In the said departmental proceeding an Enquiry Officer has been appointed. Earlier the petitioner had approached this Court with a writ petition, which was registered as 39/2003 in this Court. The said writ petition was disposed of on 30.1.2003, partly allowing the writ petition. By the said order the petitioner was allowed to have defence assistance of Sh. S.R. Sibal, who had retired from the respondent Institute. It was ordered that the petitioner would be allowed to be represented in the said enquiry proceeding by Sh. S.R. Sibal. The Enquiry Officer was directed to proceed with the enquiry from the stage when the petitioner did not participate in the said proceedings giving a further direction to the Enquiry Officer to record the evidence afresh in the presence of the petitioner and also to allow the petitioner to cross-examine the

witnesses. Liberty was also granted to the petitioner to have his witnesses examined in the enquiry proceedings. A further direction was issued that the Enquiry Officer shall submit a fresh report of the enquiry in accordance with law and without being in any manner influenced by the earlier report submitted by him to the authority.

Pursuant thereto the petitioner was represented by his defence assistant and the disciplinary proceeding was held on 24.2.2003. However, it transpires from the said proceeding, which is placed on record, that the petitioner again withdrew from the proceedings and, therefore, it was ordered that the proceeding would go on ex parte. It is stated now that the Enquiry Officer has submitted his enquiry report.

Counsel appearing for the petitioner has contended that there is no appellate authority or revisional authority known to him before whom the petitioner could place his grievances, which are raised in the present petition. The disciplinary authority is the Board of Governors of the institute and accordingly in my considered opinion, the grievances that are raised by the petitioner in the present petition could also be effectively raised before the Board of Governors, which is the highest decision making body of the respondent Institute.

I am also informed by Mr. Luthra, learned counsel appearing for the respondent Institute that the second show cause notice is not issued to the petitioner and that he had only been furnished with a copy of the enquiry report.

Therefore, in my considered opinion, this is not the stage where any interference is called for. The grievances that are raised in this writ petition could also be effectively raised by the petitioner before the Board of Governors by filing a representation as against the enquiry report submitted by the Enquiry Officer, a copy of which has already been furnished to the petitioner. The petitioner is given the liberty to file such a representation

in the aforesaid manner before the Board of Governors raising the grievances that are raised in the present petition. The Board of Governors shall consider the said representation and the pleas raised therein and shall pass a conscious and considered decision on the said representation as expeditiously as possible. Petition be stand disposed of in terms of the aforesaid order.”

12. Despite the direction, of this Court, in the afore-extracted order, dated 28th March, 2003, to the petitioner, to represent to the BOG, it is not in dispute that no such representation was made, by the petitioner, till, on 5th May, 2003, the impugned order came to be passed. The order has been signed by the Director of the NSIT, “by order and in the name of BOG, NSIT”. The impugned Order notes the fact that, despite the directions contained in the afore-extracted order, dated 28th March, 2003, of this Court, the petitioner did not address any representation to the BOG and proceeds, thereafter, to hold thus:

“ AND WHEREAS on due consideration of the Articles of charge framed against the said Sh. Methaila and the Enquiry Report/Findings of the Inquiry Officer and keeping in view the nature and gravity of charges against the said Sh. Methaila, the Board of Governors in exercise of the powers of the Disciplinary Authority has come to the conclusion that the ends of justice would be met only if the penalty of compulsory retirement is imposed upon the said Sh. Methaila.

NOW THEREFORE, the Board of Governors, NSIT, in exercise of the powers of the Disciplinary Authority hereby imposes the penalty of compulsory retirement upon the said Sh. Methaila, Assistant Registrar, NSIT, with immediate effect.”

13. Though no date has been appended by the Director of the NSIT Prof. Baijnath Gupta, who has signed the impugned order, the petitioner has, in his writ petition, taken on the ground that, on 5th May, 2003, which was the date of the impugned order, Prof. Baijnath Gupta was out of station, for which purpose he has annexed, with the writ petition, Office Order dated 2nd May, 2003, evidencing the said fact. Additionally, in the writ petition, the petitioner has also sought to contend that no meeting of the BOG of the NSIT took place after 28th March, 2003. On this basis, the petitioner has sought to contend that the impugned order was ante-dated.

14. The petitioner has filed an additional affidavit, seeking to raise the following two contentions, which, in his submission, were not known at the time of filing the writ petition:

(i) The Principal Secretary, Directorate of Training, GNCTD had written, on 8th May, 2003, to the NSIT, requiring the proposal to penalise the petitioner to be placed before the regular meeting of the BOG of the NSIT, in view of the order dated 28th March, 2003 *supra*, passed by this Court in WP (C) 2228/2003.

(ii) Five of the erstwhile members of the BOG had been removed, and replaced by for other members, *vide* two orders, dated 22nd April, 2003. The decision to ‘compulsorily retire’ the petitioner had been taken after considering the opinion of the members who had already been removed. (It may be mentioned, even at this juncture, however, that, apart from

raising such a contention, the Additional Affidavit filed by the petitioner does not provide any material to support the assumption, of the petitioner, that the decision, to compulsorily retire him from service was taken by a BOG which included the members who already stood removed on 22nd April, 2003.)

15. Respondents Nos. 2 and 4 (i.e. the NSIT) filed a counter-affidavit to the writ petition, in which the following contentions have been advanced, to oppose the case set up by the petitioner:

(i) The petitioner was in breach of the order, dated 22nd March, 2003, as he had not made any representation to the BOG, as directed by the said order, till much after passing of the order, on 9th September, 2003.

(ii) The law did not require a second Show Cause Notice to be issued to the petitioner, before awarding punishment to him. Reliance was placed, for this purpose, on Rule 15(4) of the CCS (CCA) Rules, 1965, which reads thus:

“15. Action on the enquiry report. –

(4) If the disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduces during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and *it shall not be necessary to give the Government servant*

any opportunity of making representation on the penalty proposed to be imposed.”

(Emphasis supplied)

(iii) The petitioner had been allowed inspection of all documents prior to commencement of the inquiry. Reference was made, for the said purpose, to the Daily Order Sheets dated 19th December, 2002, 24th February, 2003 and 25th February, 2003.

(iv) The impugned Order was passed only after obtaining the approval of the BOG, by way of circulation, as was permissible under Clause 11 of the Memorandum of Association (hereinafter referred to as “MOA”), whereby the NSIT was governed, and which read thus:

“Any business which may be necessary for the Board of Governors to perform except such as may be placed before its meetings, may be carried out by circulation among all its Members in any resolution so circulated and approved by a majority of the members signing shall be as effectual and binding as if such a resolution has been passed at a meeting of the Board of Governors provided that at least 8 members of the Board of Governors have recorded their views on the resolution.”

It is averred, in the counter-affidavit, that the resolution, to compulsorily retire the petitioner from service, was circulated among the members of the BOG, seventeen of whom endorsed the said proposal, whereas two members opined that it ought to be placed before the regular meeting of the BOG. In acting on

the view of seventeen members, therefore, the counter-affidavit submits, no illegality could be attributed to the NSIT.

(v) Besides, it is averred, prior to taking the final decision, the subsequent representation, dated 9th September, 2003, of the petitioner, was put up before the BOG for its decision, on 19th September, 2003, at its 25th meeting. The BOG referred the matter to a high-powered Vigilance Committee which met on 23rd December, 2003, and found no substance in the representation made by the petitioner. The matter was directed, by the said Vigilance Committee, in its said meeting, to be placed before the BOG in its next meeting, which took place on 31st January, 2004 (the 26th meeting of the BOG). The report of the Vigilance Committee was accepted by the BOG as the said meeting. Nothing, therefore, it is averred, survived in the grievance voiced by the petitioner in his Additional Affidavit.

16. The petitioner has, in rejoinder to the counter-affidavit filed by Respondent Nos. 2 and 4, relied on the decision of the Hon'ble Lieutenant Governor, as appellate authority, passed in the disciplinary proceedings initiated against Ms. Nirmal Oberoi, UDC, reducing the penalty, awarded to her, from removal from service to reduction in rank from Grade III to Grade IV. The petitioner pleaded discrimination, *vis-à-vis* Ms. Nirmal Oberoi, in the matter of awarding of punishment. The petitioner has reiterated his submission that the impugned order, having been taken by the Respondent Nos. 3 and 4, instead of the BOG, stands vitiated even on that score, and has relied,

for the said purpose, on the judgment of the Supreme Court in *Mahabir Prasad v. State of U.P.*, AIR 1970 SC 1302. Apropos the submission, of Respondent Nos. 3 and 4, that the petitioner had not represented to the BOG, as directed by the order dated 28th March, 2003 *supra*, of this Court WP (C) 2228/2003, the petitioner has drawn attention to the fact that he, on 3rd April, 2003, wrote to the NSIT, stating that he would be submitting his representation consequent to receipt of a copy of the order, dated 28th March, 2003 *supra*, of this Court. As he had not received a certified copy of the said order, and no time limit had been fixed, by this Court, for compliance therewith, the petitioner has sought to submit that the NSIT acted arbitrarily in passing the impugned order dated 5th May, 2003. Insofar as the requirement of a second Show Cause Notice, before awarding punishment, is concerned, the petitioner has sought to submit that the NSIT was bound by the submission, made by its Counsel, before this Court, which convey the impression that such a Show Cause Notice would be issued.

17. The petitioner has filed yet another Additional Affidavit, drawing attention to Clause 22(b)(iii) of the MOA, which empowers the Chairman to exercise the powers of the BOG and seek the approval of the BOG in the next meeting, thereafter, in emergent cases. He has sought to contend that no such power had been exercised by the Chairman of the NSIT. Inasmuch as it is not the case the respondents that the impugned Order, dated 5th May, 2003, was passed by exercising powers under Clause 22(b)(iii) of the MOA, it is not necessary to advert to the said provision.

18. Detailed arguments were advanced, before me, on behalf of the petitioner by Mr. Jitender Chaudhary , and on behalf of the respondent by Mrs. Avnish Ahlawat . Written submissions have also been filed by the petitioner.

Analysis

19. Having heard learned counsel, I proceed to apply myself to the issues at hand.

20. The inquiry proceedings, against the petitioner, were admittedly being conducted as per the CCS (CCA) Rules. The procedure, for imposing a major penalty, under the CCS (CCA) Rules, is to be found in Rule 14 thereof. It is essential, therefore, that one appreciates, the very outset, the said Rule, and its inflexions and contours. For this purpose, the relevant sub- rules of Rule 14 may be reproduced thus:

“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the

Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof;

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

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

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

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

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

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

(5) (a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in

his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

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

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

(6) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority –

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

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

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

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

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

(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the Inquiring Authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

NOTE.- The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

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

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

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

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

NOTE. – If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

(iii) *give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow, for the discovery or production of any documents which*

are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE. – The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

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

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

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

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

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and

may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

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

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

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

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

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

21. While exercising the power of judicial review, over the order passed by the disciplinary, or the appellant, authority, consequent to departmental proceedings against an allegedly delinquent employee, the Court, acting under Article 226 of the Constitution of India, does not sit as a court of appeal. The jurisdiction exercised by the Court is strictly one of judicial review, which is concerned more with the

manner in which jurisdiction has been exercised by the authority below, rather than the merits of the findings of such authority. The jurisdiction exercised by this court is in the realm of *certiorari*, regarding which the following observations, by the Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477** are, by now, regarded as *locus classicus*:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law

which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or*

Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. *Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.*”

(Emphasis Supplied)

22. Two principles stand enunciated, by the Supreme Court, in the matter of observance of the canons of natural justice in disciplinary proceedings, which are of relevance in the present case. The first is to be found in the following passage, from the judgment of the Constitution Bench in *Union of India v. T. R. Varma, AIR 1957 SC 882*:

“Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a court of law. *Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given*

an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.”

(Emphasis Supplied)

23. In *Tirlok Nath v. Union of India*, (1967) 1 SLR 759, which, too, is a decision rendered by a Constitution Bench the Supreme Court, one finds the following passage:

“But this rule requires that the public servant concerned must be afforded an adequate opportunity of defending himself. It is for this reason that it is obligatory upon the Inquiry Officer not only to furnish the public servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, *if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence.*”

(Emphasis Supplied)

24. Of the various submissions advanced on behalf of the petitioner, I deem it appropriate to dispose of certain contentions at the outset. While doing so, I have borne, in mind, the principle, enunciated in *State Bank of Patiala v. S. K. Sharma*, (1996) 3 SCC 364 (which digested several earlier authorities on the issue) and followed, thereafter, in a host of decisions, including *State of T. N. v. Thiru K. V. Perumal*, (1996) 5 SCC 474, *State of U. P. v. Harendra Arora*, (2001) 6 SCC 392 and *Aligarh Muslim University v. Mansoor Ali Khan*, (2000) 7 SCC 529, that mere violation of a procedural requirement, while conducting the inquiry, or while passing the order

on the conclusion thereof, would not vitiate the disciplinary proceedings, unless and until the charged officer is able to establish the existence of prejudice, having resulted as a consequence of such violation. Wade, in his classic treatise on Administrative Law, expresses the same principle in the following words:

“...At the other end of the spectrum of power, public authorities themselves are now given the benefit of natural justice, as illustrated at the end of this section. Basically the principle is confined by no frontiers. On the other hand it must be a flexible principle. The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter'. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility'. *There must also have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice.*”

(Emphasis supplied)

25. The petitioner has sought to contend, in the written submissions filed before this Court, that there was a violation of Rule 15(2) of the CCS (CCA) Rules, as the IO had not placed the Inquiry Report before the BOG of the NSIT. This is a question of fact, and has not been pleaded in the writ petition. Ordinarily, therefore, it cannot be permitted to be urged, especially in written submissions. Even otherwise, a copy of the Inquiry Report was forwarded, to the petitioner, by the Director of the NSIT on 12th March, 2003, inviting his comments thereto. As such, I am of the opinion that this lacuna,

even if it existed, could not be said to have resulted in any prejudice to the petitioner. The petitioner has, I may note, not been able to establish any prejudice having resulted to him, as a result of this alleged lacuna, either, especially as the final decision, to compulsorily retire the petitioner from service, was circulated amongst the members of the BOG, seventeen of whom concurred therewith.

26. The emphasis, placed by the petitioner, and vocalised by learned counsel representing the petitioner”, on the non-issuance of any “Second Show Cause Notice” is also, in my view, entirely bereft of substance. The only crutch – if it may be called one – on which the petitioner seeks to rest this contention is the reference, in the order dated 28th March, 2003 *supra*, to the contention, advanced by Mr. Luthra, learned counsel to appear on behalf of the NSIT, “that the second show cause notice is not issued to the petitioner”. This single reference, by itself, in my view, can hardly constitute a basis for the petitioner to urge that the NSIT was mandatorily required to issue a second show cause notice. The NSIT has, in its counter-affidavit, drawing attention to Rule 15 (4) of the CCS (CCA) Rules, which clearly states that no separate opportunity need to be afforded, to the employee, to represent against the penalty proposed to be imposed on him. Even if, therefore, a contention was advanced, by learned counsel appearing for the NSIT, before this Court on 28th March, 2013, to the effect that second show cause notice had not been issued to the petitioner, that cannot create any estoppel, in favour of the petitioner and against the NSIT, mandating it to issue a second Show Cause Notice, when Rule 15(4) of the CCS (CCA) Rules clearly

ordains otherwise. There can be no estoppel against the law, and no party can be bound by a statement made by its Counsel before the court, if the statement reflects an erroneous legal position, contrary to the provisions governing the issue.

27. The pleas of bias and victimisation, raised by the petitioner, founded on the premise that the Director of the NSIT was uniquely disposed towards him, too, have no legs to stand on, and are not supported by any evidence worth the name. Even otherwise, the final decision, to compulsorily retire the petitioner from service, was taken by the BOG, and not by the Director of the NSIT, and had the concurrence of as many as seventeen members of the BOG. The plea of *mala fide* is, as raised by the petitioner, too, therefore, has necessarily to fail.

28. The petitioner has also sought to fault the manner in which the order, dated 5th May, 2003, compulsorily retiring him from service, was passed. He has sought to contend that the Director of the NSIT was out of station on the said date; this contention has, however, been satisfactorily answered, by the NSIT, in its counter-affidavit, by pointing out that the date of 5th May, 2003, as reflected at the end of the punishment order, was the date of issuance of the order, which already stood signed prior thereto. No legal infirmity can be discerned, in such course of action. The order, dated 28th March, 2003, required the decision, on the petitioner's representation, to be taken by the BOG of the NSIT. The petitioner chose to represent, against the Inquiry Report issued to him, nearly six months thereafter, on 9th

September, 2003. The impugned Order was passed on 5th May, 2003, after waiting for nearly a month and a half, during which the petitioner made no effort to submit any representation, against the Inquiry Report issued to him, as directed by the order dated 28th March, 2003 *supra*. Though the order, dated 28th March, 2003 *supra* did not stipulate any time period within which the petitioner was required to submit his representation, challenging the Inquiry Report, to the BOG, the very fact that the BOG was directed to take a decision, on the representation, expeditiously, implied that the petitioner was also required to act with due expedition. In passing the impugned order of punishment on 5th May, 2003, after having waited for nearly a month and a half after the passing of the order dated 28th March, 2003 *supra*, by this Court, it cannot be said that the BOG of the NSIT acted in any arbitrary or illegal manner.

29. Insofar as the manner in which the impugned order, dated 5th May, 2003, was passed, and the procedure that was followed prior thereto, is concerned, I am of the opinion that no serious objection can be taken thereto. The NSIT has, in its counter-affidavit, pointed out that the concurrence, of the BOG, to the decision to accept the Inquiry Report dated 12th March, 2003 *supra*, and to award, to the petitioner, the punishment of compulsory retirement from service, as a consequence thereto, was obtained by circulation, as was permissible under Clause 11 of the MOA governing the NSIT. It is also pointed out that as many as seventeen, of the nineteen members of the BOG, gave their concurrence to the said proposed course of action. Due application of mind by the BOG, in terms of the relevant provisions of

the MOA had, therefore, been accorded, before the impugned decision, to compulsorily retire the petitioner from service, was taken. The representation, dated 9th September, 2003, of the petitioner, against the Inquiry Report dated 12th March, 2003 *supra*, was also placed before the BOG in its meeting, and referred, by it, to a high-power Vigilance Committee. The said Vigilance Committee also met, and found no merit in the representation of the petitioner. The decision of the Vigilance Committee was again placed before the BOG, in its next meeting, and the decision to reject the petitioner's representation, as suggested by the Vigilance Committee, was accepted by the BOG. In these circumstances, I am of the opinion that it cannot be said that the NSIT, or the BOG of the NSIT, acted in violation of any of the provisions applicable to the case, or of the order dated 28th March, 2003 *supra*, passed by this Court, before deciding to compulsorily retire the petitioner from service. The contention, of the petitioner, that the manner in which the impugned order, dated 5th May, 2003 *supra*, came to be passed, was in violation of the applicable provisions, as well as of the order dated 28th March, 2003 *supra*, passed by this Court, is, therefore, rejected.

30. The plea of discrimination vis-à-vis Ms Nirmal Oberoi, as advanced by the petitioner in his Additional Affidavit, besides being, again, a fresh plea on facts which cannot be permitted to be raised in such a manner, cannot, even on merits, sustain. The roles of the petitioner and Ms Nirmal Oberoi cannot be equalized, in view of the specific roles attributed to the petitioner in the charge-sheet. This plea, as advanced by the petitioner is also, therefore, rejected.

31. Having said that, I am of the opinion that, though the contentions advanced, on behalf of the petitioner, as dealt with, by me, hereinabove, are devoid of substance, there are two substantial contentions advanced, on the petitioner's behalf, which merit acceptance, and serve to vitiate the impugned order, dated 5th May, 2003, in its entirety.

32. Firstly, the petitioner has sought to contend that the IO acted illegally in rejecting the request, made by his DA, *vide* his letter dated 21st February, 2003, for permission to inspect ten documents and to be provided copies of eleven others. A perusal of the Daily Order Sheets following the said request indicates that the IO did not condescend to apply his mind thereto. In fact, in the Daily Order Sheet dated 21st February, 2003, though the IO observed that he would consider the relevance of the documents, sought by the DA in his communication dated 21st February, 2003 *supra*, as well as his request for being provided inspection/copies thereof, a perusal of the Daily Order Sheet dated 24th February, 2003, reveals that the IO did not, in fact, examine the said request on merits at all, but merely rejected it on the ground that the request for supply of documents already stood disposed of, on 24th September, 2002. By so holding, the IO effectively resiled on the reassurance provided in the record of proceedings on 21st February, 2003, to the effect that he would consider the request, of the DA, for being provided inspection/copies of the documents cited in the letter submitted by him on the said date. The IO was bound, therefore, to consider the said request and take a decision thereon.

33. In this context, a reading of the order dated 30th January, 2003 *supra*, passed by this Court, discloses specific mention, therein, of the necessity for the petitioner to be granted an opportunity of hearing *in compliance with the principles of natural justice*. It cannot be forgotten, in this context, that it was for the first time, by virtue of the said order dated 30th January, 2003 *supra*, of this Court, that the petitioner was provided the assistance of a DA. If, therefore, the DA requested for permission to inspect certain documents, the principles of natural justice required the IO to be considerate to the said request, and not to reject it without any application of mind thereto – especially after having agreed, on the immediately previous date of hearing, to consider the request on merits. The request, after all, was only for inspection of the documents, and no prejudice would have resulted, to the NSIT, were such a request to be permitted. It would be facile, as well as unrealistic, to expect a DA, freshly appointed and who had never participated in the proceedings theretofore, to be able to effectively, or even adequately, defend the petitioner, without even having had an opportunity of inspecting the original records. This attitude, of the IO, in effect rendered the allowance, granted to the petitioner by this Court *vide* its order dated 30th January, 2003, to be represented by Mr S. R. Sibbal, chimerical. The purpose of allowing the petitioner such representation stood completely defeated thereby. The IO could, quite easily, have fixed a date and time for the DA to carry out such inspection, and thereafter proceeded with the matter. Some degree of flexibility is required to be observed, in conducting of disciplinary proceedings, which are essentially in the nature of in-

house trials, and cannot be permitted to be guided by the same rigid tenets which attach to judicial proceedings. Where the proceedings are for imposition of major penalty, and are, therefore, fraught with the propensity to liquidate the services of the concerned employee – as has, indeed, happened in the present case – Inquiry Officers are expected to be more considerate, while examining requests for being provided copies of documents, inspections thereof, and the like.

34. A perusal of the documents, of which inspection was sought, by the DA, in his letter dated 21st February, 2003, also reveals that they were relevant documents, given the charges against the petitioner. They were documents relating to the purchase of bread boards, issuance of tenders in respect thereof, store section dispatch records, file movement records, and other such records, which would have a pivotal role to play, insofar as the decision to purchase the bread boards, issued letters to prospective suppliers, decide to, or not to, invite open tenders, etc., were concerned. In proceeding without allowing the DA even one opportunity to see the set records, the IO has, in my view, acted in violation of the principles of natural justice, which the order, dated 30th January, 2003, bound him to follow.

35. The second submission, of learned counsel for the petitioner, which, in my view, merits acceptance, discloses an even more fatal infirmity, in the manner in which the IO has chosen to proceed. A perusal of the Inquiry Report – especially the passages, therefrom, which have been extracted hereinabove – reveal that the IO has relied, extensively, on what he, himself, refers to as the “depositions” of the

AR (S & P) and Prof. J. P. Gupta. Even so, when the petitioner requested for permission to cross-examine the said persons, the request was rejected, by the IO, in the daily order sheet dated 25th September, 2002, on the ground that the said persons had not been called as witnesses, but had been summoned only to provide certain clarifications. The CCS (CCA) Rules contemplate no such procedure. If the IO chose to call officers, of the NSIT, to provide clarifications, and chose, also, to rely on the said clarifications to hold against the petitioner, the *de minimis*, of the principles of natural justice, which he would be required to follow, would be to accord the petitioner an opportunity to test the said “depositions” by granting the petitioner an opportunity to cross-examine the “deponents” thereof. In fact, the very acknowledgement, by the IO, in his Inquiry Report, of the fact that the statements of Prof J. P. Gupta and of the AR (S & P) were in the nature of “depositions”, itself goes to vitiate the proceedings, as the IO has chosen to rely on the said depositions without allowing them to be tested by the petitioner, by cross-examining the deponents.

36. These infirmities lethally imperil the proceedings, resulting in the passing of the impugned order dated 5th May, 2003, in view of the law laid down by the two Constitution Bench judgments of the Supreme Court in *Tirlok Nath (supra)* and *T. R. Varma (supra)*. Prejudice, to the petitioner, is writ large in both the above decisions of the IO, i.e., firstly, the decision not to allow inspection, to the DA, who was appearing on behalf of the petitioner for the first time, an opportunity to examine and inspect the relevant records of the case, as sought in his letter dated 21st February, 2003, and, secondly, the

decision to rely on the depositions of Prof. J. P. Gupta and of the AR (S & P), as recorded in the Daily Order Sheet dated 24th February, 2003, without allowing the petitioner an opportunity to cross-examine the said deponents who, effectively, were being treated as witnesses in favour of the NSIT.

37. These two infirmities being, in my view, fatal to the proceedings, the impugned order, dated 5th May, 2003, imposing, on the petitioner, the punishment of compulsory retirement from service has necessarily to be set aside even on this score. The breach being, however, procedural, rather than substantive, in nature, the setting aside of the impugned order dated 5th May, 2003, cannot result, *ipso facto*, on the reinstatement of the petitioner in service *per se*, save and except to the extent, and for the purpose, stipulated hereinafter. The NSIT would, keeping in view the law laid down by the Supreme Court in *E.C.I.L. v B. Karunakar*, AIR 1994 SC 1074, necessarily have to be afforded an opportunity to reconsider the matter, by holding the inquiry *de novo*, from the stage where examination of the documents had been denied to the DA.

Conclusion

38. Consequent on the above discussion, the writ petition is allowed in the following terms:

- (i) The impugned order, dated 5th May, 2003, whereby the penalty of “compulsory retirement from service” has been awarded to the petitioner, is quashed and set aside.

(ii) Applying the law laid down by the Supreme Court in ***B. Karunakar (supra)***, the petitioner is entitled to be reinstated in service with effect from the date on which he was compulsorily retired, i.e. 5th May, 2003. He shall be deemed as having continued in service till the date of his superannuation, albeit on suspension, and would be entitled to subsistence allowance, in accordance with the applicable legal provisions, till the date of his superannuation. Arrears of subsistence allowance, as would be payable to the petitioner as a consequence of this order, would be disbursed to him within a period of six weeks from the date of pronouncement of this judgment.

(iii) The disciplinary proceedings, which were initiated against the petitioner by issuance of the charge-sheet dated 7th June, 2002 *supra*, would be conducted *de novo*, if necessary, by appointing a fresh IO for the purpose. The petitioner would also be entitled to be represented, if he so chooses, by any ex-employee of the NSIT, as his Defence Assistant. The said Defence Assistant is entitled to seek inspection of the relevant records, as also to seek copies thereof. If allowing of inspection of the records would not cause any prejudice to the NSIT, the IO is expected to allow such request for inspection, and to fix a date and time when such inspection could be carried out. Any request for copies of documents, however, would be exclusively within the discretion of the IO. Any such request, if made, would be considered by the IO on its merits and, if the IO

chooses to reject the said request, cogent, detailed and speaking reasons would be provided in support thereof.

(iv) No reliance shall be placed, by the IO, or the disciplinary authority, on any evidence or testimony, tendered during the inquiry proceedings by any person, including Prof. J. P. Gupta or the AR (S & P), without permitting the petitioner an opportunity to cross-examine the deponent thereof.

(v) The proceedings would be conducted in accordance with Rules 14 and 15 of the CCS (CCA) Rules.

(vi) The IO is directed to conclude the inquiry within a period of six months from the date of pronouncement of this judgment, if necessary by proceeding on a day-to-day basis, and the disciplinary authority is directed to pass his order, consequent to the findings of the IO, in accordance with law, within a period of three months thereafter.

(vii) Needless to say, should the petitioner continued to remain aggrieved by the decision of the Disciplinary Authority, all remedies available, to him, in law, thereagainst, would stand reserved.

39. There shall be no order as to costs.

C. HARI SHANKAR, J

JULY 01, 2019/HJ