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

+ W.P. (C) 898/2006

R.K. SHIVDASANI

..... Petitioner

Through: Mr. S. K. Gupta and
Mr. Vikram Singh, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Ripu Daman
Bhardwaj, CGSC with
Mr. T. P. Singh, Adv. for
R-1/UOI Mr. L.R.
Khatana, Adv. for R-2, 3
& 5 to 8

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
01.07.2019

1. The travails of the petitioner, in the present case, commenced with the addressing, by Ms. Bimla Sharma, an employee of the Export Inspection Council of India (EIA) – where the petitioner was, at the time, working as Deputy Director (Vigilance) – of a complaint, dated 3rd February, 1999, the English translation of which reads thus (as reproduced in the order, dated 20th April, 1999 in CM No. 1805/99 and 2380/99 in CW 1238/99, passed by this Court):

“I beg to submit that on 2/2/99 at 3.30 p.m., I went to Deputy Director Shri R.K. Shivdasani’s cabin to make a phone call. Then he said “Bimla, you are looking very beautiful today”. Where is your programme to go? I have sufficient currency notes today. You may come to any

hotel wherever you like. These type of words he has said so many times. The other obscene words which he uttered, I cannot write. On that time, Sh. N.K. Premi was sitting in his cabin who told him that there are orders of the Supreme Court. You cannot say such words to any lady, but he (R. K. Shivdasani) did not stop any continued to speak too much. At that time, I came out. I will request you to take necessary action in the matter and kindly provide me security.”

2. The above complaint resulted, in its inexorable course, to the issuance, to the petitioner, of a chargesheet, dated 23rd March, 1999, proposing to hold a disciplinary enquiry, against him, under Rule 11 of the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978 (hereinafter referred to as “the CCA Rules”), and calling for the response of the petitioner thereagainst. The chargesheet contained a single Article of Charge, the Statement of Imputation of Misconduct, in respect of which, read thus:

“Shri R.K. Shivdasani, while functioning as Deputy Director, Export Inspection Agency-Delhi, misused his official position and indulged in a gross immoral act subversive of discipline inasmuch as, he misbehaved with and sexually harassed a female subordinate employee, namely Smt. Bimla Sharma, Steno. Gr.I. on 2.2.1999 when she entered the office cabin of Sh. Shivdasani for making a phone call at about 15.30 hrs. When Smt. Bimla Sharma went to the cabin of Sh. Shivdasani to make a phone call, Sh. Shivdasani told her:

“बिमला तुम आज बहुत सुन्दर लग रही हो. कहाँ जाने का प्रोग्राम है ? मेरे पास आज काफी नोट है जिस भी होटल में चाहो चलो. (“Bimla, you are looking very beautiful today. What is your program? I am

carrying a lot of money, we can go to any hotel of your choice.”

At that point of time, another employee of EIA-Delhi, Sh. N.K. Premi, Office Assistant was also sitting in the cabin of Shri. Shivdasani. Shri. Premi told Shri. Shivdasani that “कि सुप्रीम कार्ट के आदेश है. आप किसी महिला को ऐसे शब्द नहीं बोल सकते.” (“the Supreme Court has directed that you cannot use such words with any woman.”) but, Shri. Shivdasani paid no heed and carried on misbehaving and using the sexually coloured remarks with Smt. Bimla Sharma with a sinister request for sexual favours. Smt. Bimla Sharma left the cabin in disgust and reported the matter of her sexual harassment by Shri. Shivdasani to the office as well as to the President of Delhi Region Export Inspection Employees’ Association, New Delhi vide our letter dated 3.2.1999, in order to protect the dignity and escape from victimisation. She also stated therein that “ऐसे शब्द वो कई बार कह चुके हैं और जो उन्होंने दूसरे अश्लील शब्द बोले हैं वो मैं लिख नहीं सकती.” (“he has used such words on several locations, and I cannot reproduce the other vulgar words that he has used.”) A protest was lodged by the Association against the sexual harassment of Smt. Bimla Sharma by Sri Shivdasani vide letter dated 3.2.1999. The unwelcome sexual advances of Shri. Shivdasani tantamount to an attack at the dignity of the woman and tarnished the image of EIA-Delhi.”

The chargesheet alleged that the above alleged act, of the petitioner, contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964 [hereinafter referred to as “the CCA (Conduct) Rules”], as applicable to the employees of the EIA.

3. At this stage, the petitioner was sought to be transferred out of Delhi, against which he moved this Court, by way of C.W. 1238/99 [*R. K. Shivdasani v. Export Inspection Agency (Delhi)*]. Vide order

dated 20th April, 1999, this Court stayed the order of transfer of the petitioner, expressing a *prima facie* view that it had been issued on extraneous considerations. A reading of the said order also discloses certain *prima facie* observations, by this Court, regarding the validity of the enquiry proceedings, and the charges levelled, against the petitioner, therein, as well. This Court also opined that the EIA had failed to bring the case within the parameters laid down by the Supreme Court in *Vishaka v. State of Rajasthan, (1997) 6 SCC 241*. The writ petition highlights the fact that no counter-affidavit was filed, by the EIA, despite the specific direction of this Court. It may be noted, here, that, as the order of transfer, which was impugned in C.W. 1238/99 was, subsequently, modified, the petitioner withdrew the writ petition on 17th January, 2002.

4. The writ petition avers, further, that, on 10th May, 1999, Smt. Bimla Sharma also complained to the Vigilance Cell of the Delhi Police which, after an enquiry, closed the matter on 19th July, 1999.

5. It is further averred, in the writ petition, that, on 24th December, 1999, the petitioner addressed a communication, to the EIA, seeking certain documents, to defend himself against the charge against him. The said communication included, apparently, a request to the IO that the attendance register of the Administrative Section of the EIA, for the month of February, 1999, be kept in safe custody. The writ petition does not condescend, however, to place, on record, the said communication dated 24th December, 1999.

6. On 28th December, 1999, the petitioner addressed a communication to the Joint Director in the office of the EIA, who had been designated as the Inquiry Officer (IO) to enquire into the charge against the petitioner, in which he submitted that his request, *vide* letter dated 24th December, 1999, addressed to the IO (which, too, is not on record), to allow inspection of the prosecution documents, had not evoked any response. Despite this, the petitioner annexed, with the said letter, a list of documents, which he requisitioned in order to enable him to defend himself against the charge levelled against him, by way of a tabular statement, which may be reproduced, for ready reference, thus:

“List of Additional Defense Documents

S. No.	Documents	Custodian	Relevancy
1.	CVC circular Memo No. 1/15/65 – coord dt. 20.7.1965	CVC/ Vigilance Cell EIA	To apprise about the conduct of the inquiry
2.	MHA Circular regarding procedure to be followed after the recording of statement of the witness GICS Dept. Of Personnel & AROM No. 134/775/AVD 1 dt. 1.6.1976	Ministry of Home Affairs (DOPT)	To apprise regarding procedure to be followed w.r.t statement of witnesses.
3.	Supreme Court's order duly attested by Registry of Supreme Court as referred by Mr. N.K Premi, Prosecution	Registry of Supreme Court of India	To apprise about the orders of Hon'ble Supreme Court w.r.t. present inquiry proceedings

	witness		
4.	Compliance Report of the orders as referred to at Sr. No. 3 above.	EIA Delhi/ Addl. Director EIA Delhi	To establish and prove that the orders, if any, as referred to Sr. No. 3, whether were complied with or not.
5.	EIA D(Q/C) conf/99/7426 dt. 5.2.99 regarding action taken / follow up action on my report w.r.t. complaint of Mr. P.K Chawla, clerk grade 1 and Mr. Jai Bhagwan, Lab assistant grade 1 against Mr. S.K Saxena Asst. Director in connection with processing of their medical bills	EIA Delhi/EIA Delhi	To establish that present DRA is outcome of the conspiracy, as I had proposed action against certain EIA, Delhi officials in my report
6.	GSP ledger in particular page 31 for the month of Sep-Oct 98 for deposit holders of GSP Certificate seekers	GSP Section EIA Delhi	To establish that present DRA is revengeful act as I had pointed out gross negligence on the part of certain EIA employees
7.	RICE ledger in particular page no. 55 onwards for the month of April'98 onwards for deposit holders of Rice Exporters	Inspection Wing EIA Delhi	To establish that present DRA is revengeful act in collusion with Ms. Bimla Sharma by certain employees of EIA Delhi as I had pointed out gross negligence on the part of certain EIA employees

8.	DD (RKS) correspondence w.r.t. GSP & Rice ledger with DD (RKS) & Addl. Director KJS	EIA Delhi/Mr.K.J. Srivastava Addl. Director, EIA Delhi / Mr. Rajiv Kudesia the then DD, GSP and Rice Section from Jan'99 onwards	To establish that present DRA is revengeful act as had pointed out gross negligence on the part of certain EIA employees involving revenue loss to the department.
9.	My notes dt. 6.3.96, 8.3.96, 16.3.96, 27.3.96 regarding refusal to attend official work by Ms. Bimla Sharma as part of her official duties	EIA Delhi/ Addl. Director EIA Delhi / DD (RKS) for his personal copy	To establish that present complaint by Ms. Bimla Sharma, stenographer is revengeful Act to teach DD (RKS) a lesson for making complaint against her
10.	Delhi Region Export Inspection Employee Association letter dt 12.2.99 addressed to Mr. R. P. Aggarwal Joint Secretary M/o Commerce by Mr. R.N Prasad, DREIEA	General Secretary DREIEA/ DREIEA office	To apprise about the contents of the letter in connection with present DRA
11.	Minutes of meeting DREIEA members had with Mr. R.P Aggarwal, Joint Secretary M/o Commerce on 5.2.99 as referred in their letter dt. 12.2.99 at Sr. no. 10 above	DREIEA Office /JS (RPA) M/o Commerce	To apprise about the deliberations of the meeting by the executive members with JS (RPA)
12.	EIA C.C.A	EIA Delhi	To apprise about

	Rules		the latest EIA CCA Rules as applicable to me
13.	Correspondence file w.r.t. complaint of Ms. Simla Sharma between EIAEIA and Delhi Police by EIA Delhi	Delhi Police/ EIA Delhi/EIA Delhi	To apprise about the nature of the complaint and outcome thereof
14.	VITNL report 47 dt. 17.6.99 and dt. 2.7.99 on status and working of telephone number 5729835 available on adjacent table of Ms. Bimla Sharma	Divisional engineer, MTNL Karol Bagh Exchange/ Delhi Police/ DD (RKS)	To establish that the statement given by Ms. Bimla Sharma to police is false and mischievous as far as working status of telephone number of 5729835 is concerned as on 2.2.99
15.	Counter affidavit on behalf of the respondents (EIA Delhi) and Mr. K.J. Srivastava, Addl. Director (EIA Delhi) to H'able High Court filed by respondents in WP 1238/99 and reed by the petitioner (DD RKS) on 16.8.99	EIA Delhi/ Mr. K.J. Srivastava Addl. Director, DD (RKS)	To establish that the respondents have tried to mislead the H'able court on the subject matter
16.	Copies of Ms. Bimla Sharma's complaints to EIA Delhi reed on 4.2.99 at diary no. 1682, dt. 24.4.99, dt. 6.9.99 and to Delhi Police dt.	Director I & Q/C / EIA Delhi / MOC/ NCW Delhi and Central District Delhi Police	To establish that Ms. Bimla Sharma is habitual In making false, fabricated, mischievous complaints out of revengeful attitude towards DD (RKS)

	10.5.99 along with it's enclosure		
17.	Copy of H'able Supreme Court judgement dt. 6.4.99 in the matter of Capt. M. Paul Anthony Vs. Bharat Cold Mines Ltd. Delivered by H'able bench of Mr. Justice S. Saghr Ahmad and Mr. Justice V.N Khare	Publisher Judgements Today, D-1/ G.F-1, Virat Bhawan, Commercial Complex, Dr. Mukherji Nagar, Delhi – 110009/ Registry of Supreme Court of India/ DD (RKS) for copy of publication "Judgement Today"	To apprise H'able inquiry officer on the continuation/ otherwise of the present inquiry proceedings
18a.	Copy of H'able Supreme Court judgment in the matter of Tarak Nath Ghosh Vs. State of Bihar on Police Investigation for complaints processed / likely to be processed by Police.	AIR 1968 SC 372/1968 SCR/224 Registry of Supreme Court of India	To apprise and establish the fact about continuation of the present DRA proceedings, as this judgment is having direct bearing on the present proceedings
18b.	Copy of H'able Supreme Court judgement in the matter of Jagannath Prasad Vs. State of UP on Police Investigation for complaints processed / likely to be processed, by Police.	AIR 1961 SC 1245/ ILR 1961 ALL 167/1961 2 LLJ 116/ Registry of Supreme Court of India	To apprise and establish the fact about continuation of the present DRA proceedings, as this judgment is having direct bearing on the present proceedings
19.	Medical prescription of	IDD (RKS)	To establish that Ms. Bimla Sharma

	DD (RKS) dt. 4.9.99 and X Ray reports thereof dt. 4.9.99 of Safdurjang Hospital		has made false and mischievous complaint dt. 6.9.99 against DD (RKS)
20.	EIA/EIA Employees Service, appeal and control rules	EIA/ EIA	To apprise about the service, appeal and control rules
21.	National Commission for women Act 1990 and guidelines/ instructions issued by National Commission for Women on sexual harassment	National Commission for Women, Deen Dayal Upadhyay Marg. Delhi /Govt. Publication Division	To apprise about the provision of the rules, applicability, compliance by the complainant and department
22.	Protection of Human Rights Commission Act 1993	National Commission for Women, Deen Dayal Upadhyay Marg, Delhi /Govt. Publication Division	To apprise about the provision of the rules
23.	MHA notification No. 108/54 Establishment (A) dt. 20.11.54 regarding interpretation of Rule 23	Ministry of Home Affairs DOPT	To apprise for avoiding hardship to charged officer
24.	D.G P&T circular 105/26/81 Vigilance III dt. 30.3.1981 regarding that 2 penalties cannot be imposed for same offence	D.G P&T	To apprise whether the present proceedings are in order or not
25.	Letter dt. 21.12.99 of Ms.	Addl. Secretary M/o Commerce/	To establish that Ms. Bimla Sharma

	Bimla Sharma addressed to chairperson EIA & Addl. Secretary M/o Commerce regarding change of present inquiry officer	Chairperson EIA/ Director/ Addl. Director EIA	is interfering with proceedings and or in appointment of Inquiry officer which is against the conduct rules
26.	Daily attendance record of all those employees in particular of Ms. Bimla Sharma, stenographer grade 1, working / having their seat in administration section during the month of Feb 99	EIA Delhi/ Addl. Director EIA Delhi, DD Admin EIA Delhi	To establish absence /presence of the employees in particular of Ms. Bimla Sharma stenographer grade 1 on 2.2.99
27.	Daily proceeding page no. 11 in the matter of departmental inquiry conducted against Mr. M.L Gupta	Inquiry officer/ Director 1 & Q/C/ DD (RKS) as PO	To establish that threats were reed during proceedings by DD (RKS) that it will not be good for him if he does not take up JD (MLG)'s DRA casually
28.	DREIEA letter dt. 2.2.99 from Mr. Praveen Sakhuja Vice President to the then DD (Vigilance) along with its enclosure	Praveen Sakhuja Vice President DEEIEA / DD (RKS) (the then DD Vigilance)	To establish that present DRA is revengeful act as DD (RKS) was requested by Mr. Praveen Sakhuja to investigate certain gross negligence on the part of certain EIA employees in connection with loss of DD/ cheques worth

			more than one lakh of rupees
29.	Blank EIA Delhi receipts bearing no. 003 and 004 of book number 17183 seized during official round to GSP section by DD (RKS) as DD vigilance	DD (RKS)	To establish that the present complaint by Ms. Bimla Sharma is a revengeful act to prevent DD (RKS) from initiating any action against the supporters of Ms. Bimla Sharma against whom DD (RKS) was about to initiate action as DD Vigilance
30.	DD (RKS) letter dt. 15.2.99 addressed to General Secretary DREIEA and his reply dt. 20.2.99 in connection with complaint of Ms. Simla Sharma	DD (RKS)/ General Secretary DREIEA	To establish that 9 members of the Secretary executive committee of DREIEA were not aware about the letter dt. 3.2.99 and 12.2.99 of Mr. R.N Prasad President of the association and to establish that Mr. R.N Prasad has written these letters out of revengeful act against DD (RKS)
31.	Recorded audio conversation between DD RKS and various employees of EIA Delhi	DD RKS	To establish that Ms. Bimla Sharma, has made the complaint out of revengeful act, in conspiracy and on instigation of certain individuals

The petitioner also submitted, with the said letter, a list of thirteen officers, whom he desired to cite as defense witnesses.

7. The IO responded to the above communication, *vide* a letter, which is, apparently, wrongly dated 7th December, 1999. Of the 31 documents requisitioned by the petitioner, *vide* his letter dated 28th December, 1999 *supra*, for his defence, the IO “admitted” the documents at S. Nos 1, 2, 10, 11, 12, 13, 14, 16, 17, 18(a), 18(b), 20, 21, 22, 23, 24, 26 and 28. The request for the documents at (i) Sr. Nos 3 and 4 was rejected on the ground that the justification cited by the petitioner did not indicate the Case No, etc., (ii) S. Nos 5, 25 and 27 was rejected on the ground that the justification provided by the petitioner was not relevant to the charge against him, (iii) S. Nos 6, 7, 8, 29 and 31 was rejected on the ground that the justification provided by the petitioner was vague, (iv) S. No. 9 was rejected on the ground that the person, to whom the notes referred to, had been submitted, was not mentioned and the period stated was of 1996, which was not relevant to the present case, (v) S. No. 15 was rejected on the ground that the matter was *sub judice*, (vi) S. No. 19 was rejected on the ground that the complaint, referred to by the petitioner, was dated 6th September, 1999, which was not being dealt with by the IO and (vii) S. No. 30 was rejected on the ground that it involved an internal matter of the employees Association. The IO also allowed seven, out of the thirteen defense witnesses cited by the petitioner.

8. Proceedings, in the enquiry against the petitioner, commenced on 24th August, 2000. Para 33 of the writ petition acknowledged that,

“as per the brief submitted by the Presiding Officer (PO) the following documents were handed over to the petitioner:

- a. Letter from Ms. Geeta Luthra dated 6.5.2000 in response to letter dated 6.2.2000 from the Joint Director and inquiry Officer,
- b. EIA Delhi note No: EIA:DEL:ADMN:GEN: dated 30.12.99 of Shri. G.C. Ghosh Section Officer [page 1, 2 & 3],
- c. *Attendance register of officers of EIA Delhi for the month of February 1999 (5 pages),*
- d. EIA note No: EIA: D(Q/C): CCRKS: 2000:5451 dated 5.2.99 [3 pages],
- e. Letter No: EIA:DEL: DD[I/C]:CONF-99-2000:2368 dated 27.1.2000 of DD [KC],
- f. Letter No: EIA:D{Q/C}:TSNRKS:2000:4879 dated 6.1.2000 of JD [TSN] [pages 1 & 2] and
- g. Export Inspection Council Employees Classification & Appeal Rules, 1978 [15 pages].”

9. Proceedings, in the enquiry against the petitioner, took place on 27th March, 2001 and 28th March, 2001. The petitioner did not attend the proceedings on either of the said dates, purportedly on the ground that he had not been provided the documents sought by him for his defense.

10. Inquiry proceedings took place, thereafter, on 17th April, 2001, 24th April, 2001 and 5th May, 2001. The petitioner remained absent on the first two dates, i.e. on 17th April, 2001 and 24th April, 2001. He

presented himself before the IO on 5th May, 2001, and tendered a representation. In the said representation, he pointed out that the attendance register of Smt. Bimla Sharma, for the month of February, 1999, had not been provided to him and referred, in this context, to EIA Delhi Note No. EIA/DEL/ADMN/GEN/99 dated 30th December, 1999, which observed that there was no attendance register of staff of the Administration Section for the month of February, 1999, as required by the petitioner. Expressing chagrin at this fact, especially as he had, *vide* his letter dated 11th September, 2000 *supra*, requested that the Attendance Register be preserved, the petitioner requested the IO not to proceed with the enquiry, pending disposal, by this Court, of C.M. No. 2304/2001, filed by the petitioner in C.W. 1238/1999. He also relied, in this context, on the judgment of the Supreme Court in *Deepak Puri v. State of Haryana, (2000) 10 SCC 373*.

11. On 4th June, 2001, it was submitted, by the PO, to the IO, that the process of verification of the prosecution documents was over, whereas the petitioner contended, *per contra*, that the said process was yet incomplete. Besides, he submitted, the documents required, by him, for his defense, had yet to be provided to him. The IO noted that the submission, dated 5th May, 2001, of the petitioner, was still under consideration, and adjourned the inquiry to 3rd July, 2001.

12. On 3rd July, 2001, the IO queried, of the petitioner, as to whether he desired to cross-examine the prosecution witnesses, to which the petitioner responded that the verification of the prosecution documents was not yet over, and that the only document provided to

him, among the documents sought for, by him, to defend the charge, was the complaint, dated 3rd February, 1999, of Smt. Bimla Sharma. Even the said complaint, he submitted, had not yet been provided in original. The PO submitted that he had nothing further to add, beyond the submissions noted in the record of personal hearing dated 4th June, 2001.

13. The IO, in the said record of proceedings dated 3rd July, 2001, rejected the representation, dated 5th May, 2001, of the petitioner, holding that the petitioner had already been provided all the documents which had been made available to the IO. The petitioner protested, submitting that he had only been given seven documents on 24th August, 2000, of which the only document, figuring in the list of documents sought for, by him, with his letter dated 24th December, 1999, was the CCA Rules. The petitioner also drew attention to the fact that, in his letter dated 27th January, 2000, addressed to the Additional Director, EIA, the Deputy Director-in-charge had acknowledged that supplying the correspondence file, to the petitioner, could weaken the case of the EIA in the Court. The petitioner, therefore, reiterated his request for being provided the remaining documents relied upon by the prosecution, as well as the defence documents sought by him. The IO, however, closed the enquiry proceedings, citing the delay had been occasioned therein. The PO and the petitioners were directed to submit their respective written briefs.

14. As directed by the IO, briefs were filed by the PO as well as by the petitioner. Reference has been made, in the said briefs, to the EIA, defending the charges against the petitioner, as the “prosecution”, though the proceedings were civil in nature. For the sake of convenience, therefore, this judgment, too, uses the same expression.

15. The PO contended, in his brief dated 23rd July, 2001, that the listed documents, filed by the prosecution (actually, the management), had been inspected by the petitioner on 29th May, 2000, and a certificate, to the said effect had also been obtained by the then PO. Apropos the request for additional documents, for his defense, as submitted by the IO *vide* letter dated 24th July, 2000, the PO contended that the said letter had been taken on record by the IO, but no instructions were given, thereon, by the IO to the PO. The written brief filed by the PO further sought to point out that Smt. Bimla Sharma had identified her complaint and confirmed the details therein, during the proceedings held on 27th March, 2001. Further evidence, in favour of the Management, it was pointed out, had been led by the examinations-in-chief of Sh. N. K. Premi and Sh. R. N. Prasad, testifying as PW-2 and PW-3 respectively. The brief of the PO further sought to point out that, even on 3rd July, 2001, the petitioner again requested for providing of the documents required for his defense, and refused the opportunity to examine the prosecution witnesses. Averring that all documents, which were available to the PO, had been provided to the petitioner, the written brief of the PO argued that the allegation of Smt. Bimla Sharma was borne out by the testimonies of Sh. N. K. Premi and Sh. R. N. Prasad and that, in view of the fact that

these two witnesses were eyewitnesses to the incident, no further evidence was required to be produced by the prosecution. Inasmuch as the petitioner, despite having been given an opportunity, by the IO, to examine the prosecution witnesses, chose not to do so, the brief of the PO urged that the complaint of Smt. Bimla Sharma stood proved. The PO further sought to discountenance the submission, of the petitioner, that requisite documents had not been supplied to him, by contending that the enquiry against the petitioner was based on the complaint of Smt. Bimla Sharma, for sexual harassment, which was confirmed by an eyewitness. It is contended, in conclusion, that “the CO (i.e. the petitioner) could not bring any document or any defence witness during the proceedings of enquiry”.

16. The petitioner submitted, *per contra*, in his written brief before the IO, that he had been unjustifiably denied the documents, which were required, by him, to defend the allegations against him. He relied on the communication, dated 27th January, 2000 *supra*, wherein it was acknowledged that, if the requisite correspondence file was supplied to the petitioner, it could weaken the case of the EIA before the Court. The petitioner emphasised the fact that the Attendance Register of Smt. Bimla Sharma was a document of vital importance and that withholding the said document, from him, prejudiced his defense. He also complained that he had not been afforded an opportunity to cross-examine the prosecution witnesses. The delay, he urged, was on the part of the prosecution in failing to provide the documents within time, despite their having been allowed by the IO. There had, therefore, he urged, been fundamental violation of the principles of

natural justice. He further contended that the charge against him was *mala fide*, at the instance of Mr. S.K. Saxena, the then Assistant Director (Admn.), EIA, and his juniors. He submitted that, till that date, he had not been provided the documents sought by him, in particular the letter, dated 3rd February, 1999, of Smt. Bimla Sharma, which constituted a complaint against the petitioner. In such circumstances, the petitioner submitted that no allegation of sexual harassment of Smt. Bimla Sharma could be fastened on him. In fact, he submitted, Smt. Bimla Sharma was absent from duty on 2nd February, 1999, on which date the incident of sexual harassment was alleged to have taken place. It was for this reason, submitted the petitioner that Smt. Bimla Sharma did not choose to apprise the superior officers, who were available in the office, merely a phone call away. Equally, he submitted, it was inexplicable as to why Mr. Premi, allegedly a witness to the incident, did not report the incident to the superior officers. He pointed out that the complaint of Smt. Bimla Sharma had also been investigated by the Vigilance Cell of the Delhi Police, who examined and interrogated the petitioner. He submitted that, in the course of the said investigation, the statements, of Mr. K. K. Kharbanda, Section Officer as well as Mr J. P. Maikhuri, an outside and independent eyewitness, who were present in the petitioner's cabin at that time, had been recorded, and that both the said witnesses had confirmed that no such incident had occurred in the petitioner's cabin at 3:30 p.m. on 2nd February, 1999, as alleged by Smt. Bimla Sharma. He pointed out that, as the Investigating Officer of the Delhi Police found no truth in the complaint of Smt. Bimla Sharma, the complaint was closed on 19th July, 1999. He submitted

that the matter was also referred to the Police Commissioner by the Director [I & Q/C], through the Disciplinary Authority, i.e. the Additional Director, *vide* letter dated 3rd June, 1999, and that, consequent thereupon, the SHO, Karol Bagh PS, had also thoroughly investigated the matter, but found no *prima facie* case against the petitioner. It was, apparently, for this reason, contended the petitioner that the EIA was withholding, from the petitioner, the correspondence file between the EIA and the Delhi Police. The petitioner further pointed out that the alleged deposition of Smt. Bimla Sharma, as PW-1, before the IO, was unsigned by her, and bore the signatures only of the IO and the PO. It did not, therefore, have any evidentiary value and could not be relied upon or taken on record. Apropos the evidence of Mr. Premi, the petitioner submitted that he had not elaborated as to the unparliamentary words allegedly uttered by the petitioner, or explain why, even after the petitioner so behaved, Smt. Bimla Sharma continued to remain in his cabin, without complaining to any higher authority. With respect to PW-3 Mr. R.N. Prasad, the petitioner submitted that he had deposed regarding forwarding of the complaint of Smt. Bimla Sharma, and questioned as to how Mr. Prasad could at all testify to the correctness thereof, especially as he was posted in an entirely different office, located in a different building. The petitioner also provided a tabular response to the brief of the PO. He reiterated that Smt. Bimla Sharma was absent from office on 2nd February, 1999. With respect to the submission, of the PO, that no direction was issued, by the IO, for providing documents to the petitioner, the petitioner pointed out that, in fact, the said direction was issued on more than one occasion. The petitioner also complained against non-

compliance, by the EIA, with the guidelines for dealing with such cases, as set out in the well-known judgment of the Supreme Court in *Vishaka (supra)*.

17. The IO issued his Inquiry Report, which was furnished to the petitioner, by the EIA, under cover of Memorandum dated 11th March, 2002, affording the petitioner an opportunity to represent against the findings of the Inquiry Report. It was noted, in the Inquiry Report, that the documents listed with the chargesheet were handed over to the PO on 11th May, 2000 and were inspected by the petitioner on 29th May, 2000. Though the Inquiry Report notes the fact that, according to the petitioner, the original complaint, dated 3rd February, 1999, of Smt. Bimla Sharma had not been provided to him, the IO also finds that, deposing as PW-1, Smt. Bimla Sharma stated that the contents of the letter, dated 3rd February, 1999 were correctly written and bore her signatures. Moreover, he finds, the said complaint was authenticated by PW-2 and PW-3. Dismissing the submissions of the petitioner as “extraneous”, and “not subject matter of enquiry”, the IO notes that the petitioner did not cross examine the prosecution witnesses, nor “introduced his witnesses in the proceedings”, and limited himself to questioning the prosecution documents. The objection, of the petitioner, that the statement, allegedly made by Smt. Bimla Sharma during inquiry proceedings, deposing as PW-1, did not bear her signatures, the IO chose, instead, to fault the petitioner for not raising this issue on 3.7.2001 the last date of hearing”, and also for not intimating, in writing, to the IO, of the said fact. On the ground that the enquiry was based on the complaint of Smt. Bimla Sharma, which

was confirmed, by her, deposing as PW-1, as genuine, and had also been authenticated by PW-2 and PW-3, none of whom the petitioner chose to cross-examine, the IO held that the petitioner had contravened the provisions of Rule 3(1) (i), (ii) and (iii) of the CCS (Conduct) Rules.

18. *Vide* his letter dated 30th March, 2002, the petitioner responded to the aforesaid Inquiry Report of the IO, contending as under:

(i) Sexual harassment of women at the workplace being specifically covered by Rule 3C of the CCS (Conduct) Rules, the invocation, against the petitioner, of Rule 3(1) of the said Rules was unjustified and illegal.

(ii) The chargesheet, issued to the petitioner, was “in total violation of Rule 3C of the CCS (Conduct) Rules.”

(iii) The petitioner was deemed to have retired w.e.f. 17th February, 2001, on which date he sought voluntary retirement. He was, therefore, covered by the CCS (Pension) Rules, 1972.

(iv) The petitioner had disputed the veracity of the copy of the complaint, dated 3rd February, 1999, of Smt. Bimla Sharma, as provided to him. The original of the said document was, however, never made available.

(v) The Inquiry Report did not deal with the submissions advanced by the petitioner in his defense statement dated 4th

August, 2001, and expressed no disagreement with the said submissions.

(vi) The inquiry had, therefore, been held in the absence of the original prosecution documents. This was, admittedly, because, if the said documents were provided to the petitioner, the case of the EIA, against the petitioner, pending before this Court would get weakened, as was confirmed *vide* the letter dated 27th January, 2000, of the EIA *supra*.

(vii) In the absence of the original prosecution documents, and the documents sought by the petitioner for his defence, it was not possible for the petitioner to cross-examine any of the prosecution witnesses.

(viii) In such circumstances, the IO was not justified in closing the inquiry on 3rd July, 2001, denying, in the process, to the petitioner, his right to produce defence witnesses and cross-examine the prosecution witnesses.

(ix) There was no explanation for how Mr. R. N. Prasad, who was posted in another building, came to know about the correctness of the complaint of Smt. Bimla Sharma, qua an incident alleged to have taken place in the petitioner's cabin at 3:30 p.m. on 2nd February, 1999.

(x) There was wilful denial, to the petitioner, of the attendance register of Smt. Bimla Sharma for the month of February, 1999. This was a vital document and, in holding

against the petitioner without providing the said documents to him, the IO infringed the principles of natural justice.

(xi) The deposition of Smt. Bimla Sharma, during the course of the inquiry proceedings, being unsigned by her (on the 2nd page), could not be read in evidence. This submission, of the petitioner, which went to the root of the matter, was dismissed, by the IO, on the tenuous ground that it had not been raised prior to the last date of hearing.

(xii) Investigations, conducted by the Vigilance Cell of the Delhi Police, into the complaint of Smt. Bimla Sharma, at the instance of Smt. Bimla Sharma, resulted in the petitioner being found entirely innocent of the allegations levelled against him.

(xiii) The petitioner had been denied an opportunity to produce eyewitnesses, who could testify that the alleged incident of sexual harassment had never taken place, i.e. Mr. K. K. Kharbanda and Mr. J. P. Maikhuri. The request for producing the said witnesses was rejected, by the IO, as not relevant, without any reasons for so holding. These witnesses and clearly deposed, before the Vigilance Cell of the Delhi Police, on 5th July, 1999, 8th July, 1999 and 1st July, 1999, to the effect that the alleged incident of sexual harassment had never taken place. These depositions had been placed, by the petitioner, on the record of the inquiry, through his defense statement, but had been ignored by the IO.

(xiv) The opportunity of producing other defense witnesses, too, had been denied.

(xv) The petitioner had been denied access to the documents relating to the investigations conducted by the Delhi Police, which completely exculpated him. This was clear infraction of the principles of natural justice, for which purpose the petitioner placed reliance on *State of M.P. v. Chintaman Sadashiva Waishampayan*, AIR 1961 SC 1623, *State of U.P. v. Shatrughan Lal*, AIR 1998 SC 3038 and *State of Punjab v. Bhagat Ram*, AIR 1974 SC 2335.

In the circumstances, the petitioner pleaded that he be exonerated of the charge against him.

19. On 12th June, 2002, the request, of the petitioner, to be permitted to voluntarily retire from the services of the EIA, was accepted.

20. *Vide* order, dated 26th September, 2005, purportedly issued under Rule 9 of the CCS (Pension) Rules, by the Hon'ble President of India, the petitioner has been penalised with 50% cut in pension without cumulative effect for a period of two years from the date of his retirement.

21. Following thereupon, *vide* office order dated 29th October, 2005, issued by the EIA, the pension of the petitioner has been reworked.

22. Aggrieved thereby, the petitioner is before this Court in the present writ proceedings.

Rival Submissions

23. Mr. Gupta has advanced arguments on behalf of the petitioner, and Mr. L. R. Khatana has advanced arguments on behalf of the EIA.

24. Mr. Gupta advances the following submissions:

(i) The impugned order of punishment applied retrospectively. This was impermissible, as the petitioner already stood retired on 23rd February, 2001.

(ii) There was no finding, against the petitioner, of grave misconduct. In the absence of such a finding, punishment could not be imposed under Rule 9 of the CCS (Pension) Rules, as held by this Court in *U.O.I. v. Dr. V. T. Prabhakaran, 2010 SCC Online Del 2478*.

(iii) The impugned order of punishment was passed without consulting the Union Public Service Commission, as required by the proviso to Rule 9(1) of the CCS (Pension) Rules.

(iv) The PO was never asked, by the IO, to produce the documents which were allowed, by him, *vide* his decision dated 7th December, 1999 *supra*. (In this connection, it may be noted

that, *vide* letter dated 6th January, 2000, the IO directed the Deputy Director In-charge to make arrangements to produce the documents, sought by the petitioner, before him on 13th January, 2000. However, it appears that the said documents were not produced.)

(v) In this context, Mr. Gupta drew my attention to sub- rules (11) to (13) of Rule 11 of the CCA Rules, which read thus:

“(11) The inquiring authority shall, if the Agency employee 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 Agency employee 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 Agency employee applies orally or in writing for the supply of copies of 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 Agency but not mentioned in the list referred to in sub-rule (3).

NOTE: - The Agency employee shall indicate the relevance of the documents required by him to be discovered or produced by the Agency.

(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 such-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 recoded by it in writing that the production of all or any of such documents would be against the Agency's interest or 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 Agency employee and withdraw the requisition made by it for the production or discovery of such documents."

(vi) There was total contravention of the procedure prescribed in sub- rules (16) to (19) of Rule 11 of the CCA Rules, too. In fact, the IO has completely jettisoned the procedure prescribed in sub- rules (16) to (18), and straightaway proceeded to sub- rule (19) of Rule 11. For ready reference, sub- rules (16) to (19) of Rule 11 of the CCA Rules:

“(16) When the case for the disciplinary authority is closed the Agency employee 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 Agency employee 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 Agency employee shall then be produced. The agency employee may examine himself in his own behalf if he so prefers. The witnesses produced by the Agency employee 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 Agency employee closes his case, and shall, if the Agency employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Agency employee 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

Agency employee, or permit them to file written briefs of their respective case, if they so desire.”

(vii) The Inquiry Report held the charge, against the petitioner, to be proved merely on the basis of the testimony of the prosecution witnesses. There was no discussion, even cursory, of the defense put forward by the petitioner, far less any analysis thereof.

(viii) The finding that the petitioner had defaulted in producing his defense witnesses was obviously unsustainable, as no opportunity, to produce defense witnesses, was accorded to the petitioner.

25. Mr. Khatana, appearing for the respondent, candidly acknowledged, the very outset, that strict compliance with the letter of Rule 11 of the CCA Rules may not be forthcoming in the present case; he, however, sought to submit that the spirit of the said Rule had been followed, and that violation thereof, if any, was essentially procedural in nature. He sought to place reliance on the judgment of the Supreme Court in *Pandit D. Aher v. State of Maharashtra, (2007) 1 SCC 445*, to contend that copies, only of documents on which the department sought to place reliance, were required to be furnished to the charge officer. In any case, he submitted, the documents which were allowed by the IO were in the public domain. He sought to point out that the petitioner attended the inquiry on all days except dates on which the prosecution witnesses had been called. He also acknowledged that the abrupt conclusion of the inquiry proceedings appeared to be irregular, but sought to contend that the petitioner accepted it without protest.

By granting an opportunity to the petitioner to submit his defense brief, Mr. Khatana would seek to urge, the IO acted in accordance with the procedure prescribed. The principles enunciated in *S. K. Kapoor (supra)*, on which Mr. Gupta placed reliance, Mr. Khatana would seek to urge, were only directory in nature. Mr. Khatana seeks, *per contra*, to rely on the judgment of the Supreme Court in *Apparel Export Promotion Council v. A. K. Chopra, (1999) 1 SCC 759*. In fact, Mr. Khatana submits that the punishment imposed on the petitioner did not operate retrospectively, as he had been sanctioned only provisional pension. For all these reasons, Mr. Khatana would urge, the writ petition deserves to be dismissed.

Analysis

26. Having heard learned counsel at length and consider the material on record, I am of the opinion that the impugned order of punishment of the petitioner cannot sustain.

27. There is a litany of precedents, starting from *Taylor v. Taylor, (1875) 1 Ch. D. 476*, and travelling through the celebrated decision in *Nazir Ahmed v. King Emperor, AIR 1936 PC 253*, through a catena of judgments of the Supreme Court, till as late as *Dharani Sugars & Chemicals v. Union of India, (2019) 5 SCC 480*, enunciating the proposition that, where the law requires a thing to be done in a particular manner, it has to be done in that manner alone or not done at all. This rule has especial application in the case of actions governed by statutory prescriptions and proscriptions, whether they

are to be found in plenary, or in subordinate, legislation. To wit, in the present case, the action against the petitioner having been, avowedly, taken under Rule 11 of the CCA Rules, the detailed and exhaustive procedure, prescribed in the various sub-rules of the said Rule, was necessarily required to be adhered to, while proceeding against the petitioner. Action taken in violation of the said procedure becomes necessarily pregnable, in law, even on that sole ground. Of course, if the violation is only of some minor procedural stipulation, and the violation does not result in any noticeable prejudice to the charged officer, it may be open to the management to argue that the decision to punish the charged officer cannot be set-aside solely on that score. In the present case, however, there is stark and abject violation of the procedure prescribed in sub-rules (11) to (17) of Rule 11, and the case, clearly, is not one in which it is possible to accept the argument, of Mr. Khatana, that the “spirit of the Rule” has been followed, though the form thereof has not.

28. The stipulations and prescriptions contained in Rule 11 of the CCA Rules are clear and unequivocal, and may be set out thus [insofar as it involves sub-rules (11) to (19)]:

“(11) The inquiring authority shall, if the Agency employee 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 Agency employee 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 Agency employee applies orally or in writing for the supply of copies of 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 Agency but not mentioned in the list referred to in sub-rule (3).

NOTE: - The Agency employee shall indicate the relevance of the documents required by him to be discovered or produced by the Agency.

(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 such-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 Agency's interest or 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 Agency employee and withdraw the requisition made by it for the production or discovery of such 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 Agency employee. The Presenting Officer shall be entitled to re-examine the witness 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 think 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 Agency employee or may itself call for new evidence or recall and re-examine any witness and in such case the Agency employee 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 Agency employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Agency employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest 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 Agency employee 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 Agency employee 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 Agency employee shall then be produced. The agency employee may examine himself in his own behalf if he so prefers. The witnesses produced by the Agency employee 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 Agency employee closes his case, and shall, if the Agency employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the

purpose of enabling the Agency employee 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 Agency employee, or permit them to file written briefs of their respective case, if they so desire.”

29. The requirements of sub-rules (11) to (19) of Rule 11 of the CCA Rules may be paraphrased thus:

(i) The charged officer may apply for discovery or production of any document, which is in the possession of the EIA, but not mentioned in the list of documents enclosed with the chargesheet. He is, however, required to provide the relevance of the said documents. On receipt of such notice, by the charged employee, seeking discovery or production of documents, the IO *shall* forward the said request to the authority, in whose custody or possession the documents are kept, with a requisition for production of the documents by a specified date. The IO has, however, the right to refuse production of documents which, according to it, are not relevant to the case.

(ii) On receipt of the requisition from the IO, the authority having the custody or possession of the requisitioned documents *shall* produce the same before the IO, provided that, if such production is against the interests of the EIA or against public

interests or the security of the State, the authority having custody or possession of the documents *shall* inform the IO accordingly, and such information *shall* be communicated, by the IO, to the charged employee. In such an event, the IO can withdraw the requisition for production or discovery of such documents.

(iii) On the date fixed for the inquiry, the disciplinary authority shall produce the oral and documentary evidence, by which the article/articles of charge is/are proposed to be proved. The PO shall examine the witness, who may be cross-examined by, or on behalf of the charged officer. The PO shall have a right of re-examination. The PO has the right to produce additional evidence, subject to the condition that, the list of such additional evidence shall be made available to the charged officer at least three days prior to the production of the evidence. The charged officer shall be allowed to inspect such documents, before they are taken on record. Similarly, an opportunity to produce new evidence shall also be extended to the charged officer.

(iv) Consequent to closure of the case for the disciplinary authority, the charged officer shall be required to state his defence, orally or in writing. A copy of the statement of defense shall be given to the PO.

(v) It is only thereafter, that the evidence, on behalf of the charged officer, shall be produced. The charged officer may examine himself if he so prefers. The witnesses produced by the charged officer shall then be examined, and shall be liable to cross-examination, re-examination and examination by the IO.

(vi) After the charged officer closes his case, the IO may generally question the charged officer on the circumstances appearing against him in the evidence, for the purpose of enabling the charged officer to explain any such circumstance. This requirement is mandatory, where the charged officer has not examined himself.

(vii) After the completion of production of evidence in the manner aforesaid, the IO may hear the PO and the charged officer, or permit them to file written briefs.

30. A glance at the above procedure, as exhaustively prescribed in Rule 11 of the CCA Rules, *vis-à-vis*, the procedure followed in the present case, makes it more than apparent that there has been scant regard for the former. The scheme of the rule is categorical. The petitioner was entitled to seek discovery or production of documents, in the possession of the EIA, but not mentioned in the list annexed to the chargesheet. Subject to his providing the relevance of such documents, the IO was bound to forward the said request to the authority, in whose custody or possession the documents were kept,

with a requisition for production thereof. This, in fact, was done in the present case.

31. On receipt of such requisition, the authority having possession of the documents was equally bound to produce the same before the IO. Refusal to do so could only be for one of the reasons contemplated by the proviso to sub-rule (13) of Rule 11, i.e., where such production would be (i) against the interests of the EIA, or (ii) against public interest, or (iii) against the security of the state. Needless to say, the “interests of the EIA” could not include the consideration that production of the documents may weaken the case of EIA, against the petitioner, being contested before this Court. Such a construction would be absurd and preposterous, in equal measure.

32. Despite no such exigency existing, the documents which were allowed, by the IO, *vide* letter dated 7th December, 1999, were never made available to the petitioner. This, even by itself, was sufficient to vitiate the proceedings in their entirety.

33. That apart, there is considerable force, in the submission of the petitioner, that the non-providing of the attendance register of Smt. Bimla Sharma for the month of February, 1999, was starkly violative of the principles of natural justice and fair play. The allegation, against the petitioner, was of having sexually harassed Smt. Bimla Sharma on 2nd February, 1999. The petitioner had specifically taken a stand that Smt. Bimla Sharma was not present in office on the said date. It was essential, therefore, for the petitioner to be provided a copy of the

attendance register of Smt. Bimla Sharma for 2nd February, 1999. The comment, contained in the EIA note dated 30th December, 1999 to the effect that the attendance register for the Admn. Section of the EIA, for the month of February, 1999 was not available, obviously cannot be accepted, and necessary invites an inference that the said attendance register was either deliberately destroyed, or was being suppressed, so as to prejudice the defense of the petitioner.

34. It is only once the above exercise, of production and providing of documents was over, that the stage of recording of evidence would reach. A reading of the record of proceedings dated 4th June, 2001 reveals that, on the said date, the IO specifically recorded that the representation dated 5th May, 2001, of the petitioner, was still under consideration. On the next date of hearing, i.e., 3rd July, 2001, the IO abruptly rejected the said representation dated 5th May, 2001, on the sole ground that the documents available with the IO had been provided to the petitioner, completely ignoring – whether inadvertently or otherwise – the fact that the documents, sought by the petitioner, and the supply whereof had been allowed by the IO, had yet to be supplied to petitioner. He proceeded, after requiring the petitioner to cross-examine the witnesses of the prosecution, to abruptly close the inquiry. Needless to say, this decision of the IO is totally unsustainable in law and was blatantly violative of principles of natural justice and fair play.

35. Mr. Gupta is right in his submission that, in doing so, the right of the petitioner, to lead defense evidence, was rudely emasculated.

Sub-rule (16) of Rule 11 stipulates that, when the case of the disciplinary authority is closed, the charged officer would be required to state his defense, a copy whereof would be provided to the PO. In the present case, the IO preferred never to close the case of the disciplinary authority at all, but to close the inquiry itself on 3rd July, 2001. As a result, the procedure prescribed in Sub-rule (16) to (18) of Rule 11 was conveniently jettisoned. Neither was the case of the disciplinary authority closed, nor, thereafter, was an opportunity extended, to the petitioner, to state his defense, nor, needless to say, was any opportunity was given to the petitioner, thereafter, to lead his defence. Sub-rules (17) and (18) of Rule 11 requires the IO to, if the charged officer chooses not to examine himself in the inquiry proceedings, generally question the charged officer on the circumstances appearing against him in the evidence, so as to enable him to explain the circumstances. As no opportunity was extended, to the petitioner, to lead his defense evidence at all, this procedure was also done away with.

36. Mr. Gupta is right, therefore, in contending that the IO acted as though Sub-rules (16) to (18) of Rule 11 of the CCA Rules were not in existence at all, and straightway proceeded to apply Rule 19 thereof. These infirmities are fatal. They completely negated the right of the petitioner to a fair defense, to the charge against him. They have resulted in blatant prejudice to the petitioner, and disclose unholy haste, on the part of the IO, to complete the proceedings, any which way, sacrificing, in the process, the procedure specifically set out in

Rule 11 of the CCA Rules, whereunder the proceedings had been initiated.

37. The entire proceedings against the petitioner, in my view, would be liable to be set-aside even on this ground.

38. The petitioner has also objected to the fact that he was provided only photocopies of the documents relied upon by the EIA. The copy of the complaint, dated 3rd February, 1999, of Smt. Bimla Sharma as provided, to him, was also a photocopy. The IO has, in his inquiry report, noted the fact that the petitioner was entitled to the original of the said document. However, a reading of the inquiry report discloses that, despite the efforts of the IO, the said original complaint of Smt. Bimla Sharma was never made available.

39. Though the IO has chosen to rely, in this context, on the deposition of Smt. Bimla Sharma, before him, vouchsafing the contents of the copy of the complaint dated 3rd February, 1999 *supra*, there is substance in the objection of Mr. Gupta, that the said statement was also, conspicuously, unsigned on the page where she had deposed to the said effect. There is no explanation, forthcoming, for this lacuna. The finding, of the IO, on this aspect, is obviously a finding *in terrorem*, for want of any better explanation. The IO has sought to wish away this contention of the petitioner by stating that he ought to have raised it at least on the last date of hearing. Needless to say, such a finding need only to be rejected to be discarded. This, in my view, is a serious infirmity in the proceedings.

40. As already noted hereinabove, the documents requisitioned by the petitioner to enable him to defend the charge against him, the supply of which was allowed by the IO *vide* letter dated 7th December, 1999 were never provided to the petitioner.

41. To this, too, there is no explanation, whatsoever, either in the inquiry report, or in the impugned order of the disciplinary authority, or even by learned counsel appearing for EIA before this Court.

42. The finding of the IO, to the effect that the petitioner had not introduced his defense witnesses, is also, obviously, preposterous, as no opportunity, to introduce defense witnesses was ever extended to the petitioner, as also noted hereinabove. The petitioner had also pointed out that the Smt. Bimla Sharma had moved the Vigilance Cell of Delhi Police alleging sexual harassment, of her, by the petitioner, on 3rd February, 1999. This allegation was investigated by the Vigilance Cell of Delhi Police and found to be without substance. The petitioner points out that during the said proceedings, Mr. K.K. Kharbanda and Mr. J.P. Maikhuri, who were present in the office on the date of alleged incident, had come on record stating that no such incident had taken place. These statements were, therefore, pivotal to the defence of the petitioner. Even at the stage of considering the petitioner's request for leading the defense witnesses, the IO, without any justifiable reason, denied the right to lead the defense of Mr. J.P. Maikhuri, and allowed the petitioner only to lead the evidence of Mr. K.K. Kharbanda. Having done so, it was incumbent on the IO to direct

the EIA to make the said defense witnesses, as they were officers of the EIA.

43. The IO never even allowed the stage of defence evidence to reach, as he closed the evidence prior thereto.

44. The impugned order dated 29th October, 2005 of the disciplinary authority is totally non-speaking in nature and does not consider any of the submissions made by the petitioner in his representation dated 5th May, 2001 against the inquiry report. The inquiry report of the IO, too, does not consider the submissions of the petitioner, choosing to confirm the allegations against him solely on the basis of the statement of the three prosecution witnesses, whose testimonies were never allowed to be tested by cross-examination, except on 3rd July, 2001, on which date, as per the order passed on the previous date of hearing i.e., 4th June, 2001, the representation dated 5th May, 2001, of the petitioner, ought to have been taken up and decided. The petitioner was, therefore, clearly taken by surprise on 3rd July, 2001, when he was asked to cross-examine the PWs and even if he was not in a position to do so on the said date, the IO acted in a clearly arbitrary manner in choosing to close the inquiry thereupon.

45. In any event, the stage of recording the evidence could not be said to have reached at all, as the documents sought by the petitioner, as allowed by the IO, including the attendance register of Smt. Bimla Sharma for the month of February, 1999, were yet to be made available to him.

46. Clearly, the manner in which the inquiry against the petitioner has proceeded is a mere mockery of the principles of natural justice and fair play. It is obvious that the EIA acted with a view to confirm the charge, against the petitioner, at all costs, in violation of the most basic canons and tenets of principles of natural justice.

Conclusion

47. In view of the above findings, I am of the view of that the impugned order dated 29th October, 2005 imposing, on the petitioner, a penalty of 50% reduction in pension, cannot sustain, and has necessarily to be set aside. Accordingly, the impugned order dated 29th October, 2005 is quashed and set aside.

48. The petitioner would be entitled to all consequential reliefs, including arrears of pension, if they have been withheld in accordance with the impugned order.

49. As the petitioner has, unfortunately, expired as far back as in 2006 itself, these benefits would necessarily have to be paid to the surviving legal heirs of the petitioner, who already stand substituted.

50. The EIA is directed to comply with this order within a period of four weeks from the date of pronouncement thereof. Failure to do so, shall invite interest at the rate of 12% per annum from the date of expiry of the said period of four weeks, till the date of payment of the said amount.

51. Thought the facts of the case would warrant imposition of costs on the respondent, as the petitioner has expired in 2006, I refrain from doing so.

52. The writ petition is disposed of accordingly with the above terms.

JULY 01, 2019

dsn

C. HARI SHANKAR, J



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