



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 04, 2022

+ W.P.(C) 5563/2020, CM APPL. 20083/2020

KULAMANI BISWAL

..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Adv.
with Mr. Vikram Singh, Mr. Nanam
Jain and Ms. Urvi Mohan, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Chetan Sharma, ASG with
Mr. Apoorv Kurup, CGSC with
Mr. Amit Gupta, Ms. Nidhi Mittal,
Mr. Ojaswa Pathak and Ms. Aparna
Arun, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the facts and circumstances mentioned herein above and the submissions made, the Petitioner prays that the Hon’ble High Court may be graciously pleased to:

(i) Allow the present petition and set aside/quash the impugned Order bearing reference No.C-14011/01/2019-V&S dated 30.06.2020 (Annexure P -8) passed by the Respondent by a writ of certiorari or any other



*appropriate writ or direction;
(ii) set aside/quash any consequential orders passed in pursuance thereof by the Respondents;
(iii) allow exemplary costs of the present Writ Petition to the Petitioner against the Respondents; and
(v) pass such other and further order/(s) as may be deemed just and appropriate in the facts, circumstances and premises of the present case.”*

2. In substance the petitioner is challenging the impugned order dated June 30, 2020, whereby the President being the Appointing Authority of the petitioner has decided that an Inquiry Officer may be appointed to inquire into the charges framed against the petitioner and has accordingly appointed former CVO of PFC Limited Mr. Birendra Kumar as the Inquiry Officer and with a further prayer that the consequent orders passed thereof be also set aside.

3. The facts as noted from the record are that on December 08, 2013, the petitioner was appointed as Director (Finance) in NTPC Ltd. Government of India Enterprise by the respondent for a period of five years. On December 07, 2017, an FIR was registered by CBI against the petitioner along with Rohit Reddy Bathina (Director of M/s BGR Mines & Infra Pvt. Ltd.) and Prabhat Kumar (Associate of Rohit Reddy Bathina), under Sections 11 & 12 of the Prevention of Corruption Act, 1988 read with Section 120-B of Indian Penal Code, 1860. On December 07, 2017 and December 08, 2017, a preliminary investigation was initiated by CBI. The search and seizure was conducted at the petitioner's residence in Delhi as well as at Bhubaneswar and also at his office in Delhi.

4. On December 16, 2017, the petitioner was put under



suspension with immediate effect on the basis of the FIR registered against him. On December 07, 2018, the memorandum of charge sheet was issued to the petitioner. The tenure of the petitioner ended on December 08, 2018. It is the case of the petitioner that despite several representations, the respondent has not released the retirement benefits on completion of his tenure.

5. On December 13, 2018, the petitioner replied to the memorandum of charge sheet issued by the respondent. During 2018-2019, inquiry proceedings were held. It is the case of the petitioner that on August 04, 2020, the petitioner received the impugned order dated June 30, 2020, whereby it has been informed to the petitioner that the President of India in exercise of the powers conferred by Sub Rule (1) of Rule 26 of the NTPC Conduct, Discipline and Appeal Rules, 1977 ('CDA Rules', for short) has decided to conduct, *de novo* inquiry. In response to the impugned order, the petitioner had submitted a representation contesting the stand of the respondent on various grounds. But no reply of the same has been given, instead notice of preliminary hearing dated July 28, 2020, was received by the petitioner.

6. A counter affidavit to the writ petition was filed by the respondent and also a rejoinder to the counter affidavit was filed by the petitioner.

7. The submission of Mr. Sanjoy Ghose, learned Senior Counsel appearing for the petitioner primarily was, that the impugned order dated June 30, 2020, directing *de novo* inquiry against the petitioner is without providing any reason / justification or opportunity to defend



the initiation of *de novo* inquiry. He also stated that it is an admitted fact that the previous inquiry conducted against the petitioner emanating out of the same charge sheet stood concluded with the Inquiry Officer holding that no charges have been proved against the petitioner.

8. He also stated that Rule 28 of the CDA Rules categorically provides that, the decision taken under Rule 26 must be communicated to the petitioner but the same has not been communicated till date. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Punjab National Bank and Ors. v. Kunj Bihari Mishra, (1998) 7 SCC 84***, wherein it was held that failure to serve the notice indicating the tentative conclusions to disagree with the Inquiry Officer would vitiate the decision to take recourse to *de novo* proceedings.

9. That apart, it was his submission that Rule 26 of the CDA Rules which provides that, “*further inquiry according to the provisions of Rule 25*”, does not specify a new inquiry can be held on the same charges on which the inquiry has already been concluded. He has relied upon the judgment of the Supreme Court in the case of ***Managing Director, ECIL v. B. Karunakar (1993) 4 SCC 727***, in support of his submission that the decision to hold a *de novo* inquiry without giving the Report of the Inquiry Officer and without a notice intimating the tentative conclusions of the Disciplinary Authority disagreeing with the findings of the Inquiry Officer, which were in favour of the petitioner, is bad in law.

10. Mr. Ghose stated that despite there being a specific prayer in petition to produce the inquiry report, the same has not been furnished



to the petitioner till date. Mr. Ghose also stated that the Supreme Court in the case of ***Union Of India & Another v. Kunisetty Satyanarayana, (2006) 12 SCC 28***, has held that if the respondent had been exonerated on that very charge, a second inquiry would not be maintainable.

11. That apart, Mr. Ghose submitted that the petitioner retired on December 08, 2018, and there is no employer-employee relationship between the petitioner and the respondent, therefore, the CDA Rules which specifically applies only to the employees of the NTPC, therefore, *de novo* inquiry under the CDA Rules are not maintainable. The decision to hold the *de novo* proceedings in terms of the impugned order dated June 30, 2020 is illegal and bad in law since inception. In support of his submission, he has relied upon the judgment in the case of ***Dev Prakash Tewari v. U.P. Coop. Institutional Service Board, (2014) 7 SCC 260***, wherein it is held that once the appellant has retired from service on March 31, 2009, there was no authority vested with the respondents to continue the disciplinary proceeding.

12. Mr. Ghose has also stated that the initiation of *de novo* inquiry on the same charges on which the inquiry is already concluded amounts to double jeopardy and against the principles of *res judicata*. A fresh inquiry could have been initiated only if there had been some important procedure, material or fact precluded in the earlier inquiry or there is an inception of a new charge. Both of these factors are missing in the present case. He has relied upon the judgment in the case of ***K.R. Deb v. CCE, (1971) 2 SCC 102*** to state that the case of the petitioner is covered by this judgment.

13. Mr. Ghose submitted that the present Inquiry Officer cannot



question the wisdom of the previous Inquiry Officer who had duly conducted the inquiry at length. The Investigating Officer of CBI was examined by the respondent and on the basis of the same the petitioner was exonerated of all charges. Hence, the respondent at this stage cannot say that any evidence or documents that were to come from the CBI could not be brought out earlier. The respondent having been unable to get the desired finding in the inquiry report cannot conduct a *de novo* inquiry. In this aspect, he has relied upon the judgment of the Guwahati High Court in the case of ***Md. Safiqul Haque v. State of Assam and Ors., decided on September 13, 2001.***

14. Even on merits, he stated that the instant dispute arises from a tender matter in which the petitioner was merely one of the Directors on the basis of which he was named in the FIR dated December 07, 2017. The inquiries have been initiated only on the basis of the said FIR and no charges in the charge sheet have ever been proved. The entire tendering was done as per the Company Rules and procedures and the petitioner was only officially involved in the process with no independent role being played nor has any incriminatory material recovered from him. The process was done on the basis of the collective wisdom of the Board of Directors and in particular, the Chairman or ED (CC&M), were specifically authorised to finalize the details of the contract by way of Board Meeting. The mere filing of a FIR or charge sheet will not trump the fact that the petitioner has been exonerated of all charges after due completion of the earlier inquiry. Mr. Ghose has sought the prayers as made by the petitioner in this writ petition which includes quashing of the impugned order dated June 30,



2020.

15. On the other hand, Mr. Chetan Sharma, learned ASG briefed by Mr. Apoorv Kurup, Advocate justifies the impugned order by stating that the same was issued under Rule 26(1) of the CDA Rules upon receiving and by considering the Inquiry Report dated December 18, 2019, submitted by the Inquiry Officer. The order of the Disciplinary Authority should not be disturbed because it is a settled law that Writ Courts have very limited role in on-going departmental enquiries/proceedings. In this regard, he has relied upon the judgment of the Supreme Court in ***Pravin Kumar v. Union of India, (2020) 9 SCC 471***.

16. Mr. Sharma stated that the Disciplinary Authority's decision to disagree with the Inquiry Officer's report and to direct a *de novo* inquiry is valid as per Rule 26(1) of the CDA Rules, because of the following crucial aspects; (i) the major charge against the petitioner was that he demanded a bribe which itself is an independent offence; (ii) the evidences of *WhatsApp* / telephonic conversations cited by the CBI in its confidential report dated December 06, 2018 were not placed before the Inquiry Officer; and (iii) furthermore, it was directed by the Disciplinary Authority to marshal the relevant evidence and place it before the Inquiry Officer.

17. In other words, it is his submission that the critical evidence available with the CBI, was not placed before the Inquiry Officer due to the agency's concern of confidentiality. Therefore, the Disciplinary Authority was justified in its decision to direct a *de novo* inquiry as per Rule 26(1) of the CDA Rules. He has also stated that the inquiry



report, dated December 18, 2019, of the Inquiry Officer was based only on the FIR dated December 07, 2017, lodged by the CBI, without the other relevant evidence and examination of witnesses from M/s BGR Mining and Infra Pvt. Ltd.

18. He has referred to CBI's letter dated September 29, 2021, referring to the Ministry of Power's request for providing necessary documents and evidence to the Inquiry Officer for conducting the departmental proceedings against the petitioner, and has informed the Ministry of Power, that sufficient material on record in the form of documents and statement of witnesses have been sent to the Competent Authority. Subsequently, more material such as details of *WhatsApp* chats involving the petitioner, the oral statements of various witnesses (including NTPC officials), independent trap witnesses, extract of visitor registers, gate passes, statements of hawala agents and recovery-cum-seizure memo have also been sent by the CBI, which in itself are enough materials to proceed further with the departmental proceedings against the petitioner.

19. Mr. Sharma stated that the impugned order is only a direction for *de novo* inquiry and the charged employee will have every opportunity to establish his innocence in the consequent proceedings, therefore, the petitioner is not prejudiced in any manner by the impugned order for a *de novo* inquiry.

20. That apart, Mr. Sharma has relied upon Rule 26 (1) of the CDA Rules, to state that the Disciplinary Authority is not required to give the copy of the inquiry report and the note of disagreement to the charged employee, nor, the charged employee entitled to have an



opportunity to make a representation on the said inquiry report and note of disagreement. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Premanand v. Mohan Koikal, (2011) 4 SCC 266.***

21. Mr. Sharma has also contested the judgment relied upon by Mr. Ghose in the case of ***Managing Director, ECIL (supra)*** and ***Punjab National Bank & Ors. (supra)***, inasmuch as in ***Managing Director, ECIL (supra)***, the Supreme Court held that a delinquent employee is entitled to receive a copy of the Inquiry Officer's report before the Disciplinary Authority arrives at its conclusion with regard to the guilt or innocence of the employee in respect of the charges levelled against him. Even in the case of ***Punjab National Bank & Ors. (supra)***, is also an authority for the same proposition, inasmuch as when the findings in favour of the delinquent officer in the inquiry report is proposed to be overturned by the Disciplinary Authority, then the principles of natural justice mandate that an opportunity should be granted to such employee to make a representation, before the Disciplinary Authority records a finding with regard to the guilt or innocence of the employee on the charges leveled against him.

22. Mr. Sharma also distinguished the judgment of the Guwahati High Court in the case of ***Md. Safiqul Haque (supra)***, to contend that the High Court has erroneously relied upon the judgment in case of ***Managing Director, ECIL (supra)*** and ***Punjab National Bank & Ors. (supra)***, to conclude that the tentative conclusions of the Disciplinary Authority disagreeing with the views of the Inquiry Officer while deciding to hold a *de novo* inquiry must be intimated to the delinquent



officer or else it would vitiate the *de novo* inquiry in its entirety. He stated that the conclusion of the High Court is not in conformity with paragraph 30(v) of the judgment in the case of **Managing Director, ECIL (supra)**. The said paragraph reads as under:

“[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

23. That apart, he states that the judgment of the Guwahati High



Court in the case of *Md. Safiqul Haque (supra)* is also not in conformity and contradicts with the law laid down by the Supreme Court in the case of *Haryana Financial Corporation v. Kailash Chandra Ahuja, (2008) 9 SCC 31*, wherein it has been held that mere non supply of inquiry report would not *ipso facto* vitiate the whole inquiry proceedings.

24. Mr. Sharma has also stated that the impugned order on a *de novo* inquiry issued under Rule 26(1) of the CDA Rules is not barred by the principles of *double jeopardy* and *res judicata*. According to him, the decision to hold a *de novo* inquiry is because the earlier inquiry had technical or procedural defects. Such inquiry is permissible even if the service rules do not expressly authorise a *de novo* inquiry. In this regard, he has relied upon the judgment in the case of *Nahar Singh v. Union of India, 1991(21) DRJ 171*, which relies upon the judgments of the Supreme Court in *State of Assam v. J.N. Roy Biswas, (1976) 1 SCC 234* and *K.R. Deb v. CCE, (1971) 2 SCC 102*, wherein it was held that depending on the facts of each case it is possible to order *de novo* inquiry if there has been no proper inquiry because of any serious defect. If, for example, principle of natural justice have been violated then it is open to the Disciplinary Authority to come to the conclusion that a *de novo* inquiry should be held.

25. He has also relied upon the judgment of the Supreme Court in the case of *Union of India v. P. Thayagarajan, (1999) 1 SCC 733*, to state that when important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in



a miscarriage thereof. Therefore, the Disciplinary Authority is within its right to pass an appropriate order for a fresh *de novo* inquiry.

26. Mr. Sharma contested the plea of Mr. Ghose that the petitioner's tenure having come to an end on December 08, 2018 and no employer-employee relationship exist between the petitioner and the respondent, the *de novo* inquiry cannot be held as without merit, as the charge sheet was issued against the petitioner on December 07, 2018, i.e., before he had superannuated on December 08, 2018 and the Disciplinary Authority was authorised to direct a *de novo* disciplinary proceedings, in view of the Rule 32.2 of the CDA Rules, which contemplates continuation of disciplinary proceedings even after superannuation and the same shall have the effect as if the delinquent employee is in service till proceedings are concluded.

27. Furthermore, he has relied upon the recent judgment of the Supreme Court in ***Mahanadi Coalfields Limited v. Rabindranath Choubey*, 2020 SCC OnLine SC 470**. He seeks the dismissal of the writ petition.

28. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the impugned order dated June 30, 2020, whereby a decision has been taken to initiate *de novo* proceedings against the petitioner is justified. There is no dispute that the petitioner was issued a charge sheet on December 07, 2018, and the proceedings were conducted by the Inquiry Officer which resulted in the inquiry report dated December 18, 2019. The charge sheet issued to the petitioner consisted of three Annexures being Annexures-1, 2, 3 and 4. Annexure-3 is the list of documents in



support of charge which includes at Serial No.4 the copy of the CBI report dated December 06, 2018.

29. Admittedly, the CBI report was not produced in the inquiry. It is admitted by the respondent that the previous Inquiry Officer has not proved the charges framed against the petitioner. It is the case of the respondent that the CBI had vide its letter dated December 29, 2021, has taken a stand that sufficient material on record in the form of documents and statement of witnesses have been sent to the Competent Authority and some more details like *WhatsApp* chats involving the petitioner, the oral statements of various witnesses (including NTPC officials), independent trap witnesses, extract of visitor registers, gate passes, statements of hawala agents and recovery-cum-seizure memo related to this matter have also been sent by the CBI, which are additional material required to proceed further with the departmental proceedings against the petitioner.

30. In other words, the case of the respondent is that in the absence of the relevant material in the earlier departmental inquiry and the sole reliance has been placed on the FIR, which cannot be said to be an evidence that can be read against the petitioner, a decision has been taken, to produce all the material documents/evidence in the inquiry and for that purpose, it is necessary to hold a *de novo* inquiry. As stated above, the issue would be whether such a decision can be taken by the respondent. In this regard, I may reproduce certain provisions of the CDA Rules:

“Rule 25 Procedure for Imposing Major Penalties
(1) No order imposing any of the major penalties



specified in Clauses (f), (g), (h), (i), (j) (j), (k) and (l) of Rule 23 shall be made except after an inquiry is held in accordance with this rule.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint any public servant or retired public servant (hereinafter called the inquiring Authority) to enquire into the truth thereof.

(3) Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with a statement of the allegations, on which they are based, a list of documents by which and a list of witnesses by whom, the article of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement whether he admits or denies any of or all the articles of charge.

It will not be necessary to show or provide the documents listed with the charge-sheet or any other document to the employee at this stage.

(4) On receipt of the written statement of the employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority or by Inquiring Authority appointed under sub rule (2)

Provided that it may not be necessary to hold an inquiry in respect of the charges admitted by the employee in his written statement. The disciplinary authority shall, however, record its findings on each such charge.

(5) Where the disciplinary authority itself inquires or appoints an inquiring authority for holding an inquiry, it may, by an order appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.



(6) *The employee may take the assistance of any other public servant but may not engage a legal practitioner for the purpose Provided that the employee shall not take assistance of a public servant who has two pending disciplinary cases on hand in which he has to function as Defense assistant.*

(7) *On the date fixed by the inquiry authority, the employee shall appear before the inquiring Authority at the time, place and date specified in the notice. The inquiring authority shall ask the employee whether he pleads guilty or has any defense 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 employee concerned thereon. The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.*

(8) *If the employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defense:*

- i) inspect the documents listed with the charge- sheet;*
- ii) submit a list of additional documents and witnesses that he wants to examine; and*
- iii) be supplied with the copies of the statement of witnesses, if any, listed in the charge-sheet.*

Relevancy of the additional documents and the witness referred to in sub rule 8 (ii) above will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the inquiring authority is satisfied about their relevance to the charges under inquiry.

(9) *The inquiring authority shall ask the authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.*

(10) *The authority in whose custody or possession the requisitioned documents are, shall arrange to produce*



the same before the inquiring authority on the date, place and time specified in the requisition notice: Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Company. In that event, it shall inform the inquiring authority accordingly.

(11) 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 crossexamined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(12) Before the close of the prosecution case, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge- sheet or may itself call for new evidence or, recall or re-examine, any witnesses. In such case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned.

(13) When the case for the disciplinary authority is closed, the employee may be required to state his defense, orally or in writing, as he may prefer. If the defense is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defense shall be given to the Presenting Officer, if any, appointed.

(14) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, re-examination and examination by



the inquiring authority according to the provision applicable to the witnesses for the disciplinary authority.

(15) The inquiring authority may, after the employee closes his case and shall if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

(16) After the completion of the production of the evidence, the employee and the Presenting Officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence.

(17) If the employee does not submit the written statement of defense referred to in sub-rule (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these rules, the inquiring authority may hold the enquiry ex-parte.

(18) Whenever any inquiring authority, after having heard, recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross examine, and re-examine any such witnesses as hereinbefore provided.

(19) If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such articles of charge



shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has been given a reasonable opportunity of defending himself against such article of charge.

(20) (i) After the conclusion of the inquiry, report shall be prepared and it shall contain:

(a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) a gist of the defense of the employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings of each article of charge and the reasons therefore.

(ii) The inquiring authority, where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry which shall include:

(a) the report of the inquiry prepared by it under sub-clause (i) above.

(b) the written statement of defense, if any, submitted by the employee referred to in sub-rule (13);

(c) the oral and documentary evidence produced in the course of the enquiry;

(d) written briefs referred to in sub-rule (16) if any; and the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

NOTE: With a view to conduct the Disciplinary proceedings expeditiously and more efficiently:

i. Online facilities (Video Conferencing, Microsoft Teams, etc.) may be used at all stages of Inquiry / Disciplinary Proceedings. All proceedings conducted via online mode shall be deemed to be regular proceedings conducted in terms of these Rules, and all the courtesies and protocols applicable to physical proceedings, in terms of these Rules, shall apply to such virtual proceedings.

ii. Further, the Inquiry Officer may, with reasons to be recorded in writing, direct that the Inquiry proceedings



be conducted through Online mode (Video Conferencing, Microsoft Teams, etc.) at any stage of the proceedings.

iii. A formal set of SOP / Guidelines, governing the manner in which certain aspects of physical disciplinary proceedings needs to be suitably adapted for implementation through online mode, are placed at Annexure-IV.”

Rule 26 Action on the Inquiry Report

(1) The disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing remit the case to the inquiring authority for fresh / de novo or further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 25 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the article of charge is of the opinion that any of the penalties specified in Rule 23 should be imposed on the employee it shall, notwithstanding anything contained in Rule 27 make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

(5) If charges are proved or partly proved by the Inquiring Authority and the Disciplinary Authority himself is not the Inquiring Authority, a copy of the Inquiry report giving observations & findings shall be given to the charged employee for his comments. The comments, if any so given by the Charged employee within the stipulated time shall be considered by the Disciplinary Authority.



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Rule 31.2 Continuation of Disciplinary Proceedings after superannuation

An employee against whom disciplinary proceedings have been initiated shall cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and / or allowance after the date of superannuation.”

31. A perusal of Rule 26(1) clearly reveals that when an inquiry report is submitted to the Disciplinary Authority, *“the disciplinary authority if it is not itself the inquiring authority, may for reasons to be recorded by it in writing either remit the case to the inquiring authority for fresh / de novo or further inquiry and the inquiry authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 25 as far as may be”*.

32. Rule 25(12) also contemplate that, *“the Inquiry Officer may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or, recall or re-examine, any witnesses. In such case, the employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned”*.

33. From the above position of the Rules and noting, the case setup by the respondent that there is a sufficient evidence on record in the nature of *WhatsApp* chats involving the petitioner, the oral statements of various witnesses (including NTPC officials), independent trap witnesses, extract of visitor registers, gate passes, statements of hawala



agents and recovery-cum-seizure memo related to this matter have also been sent by the CBI, which are additional materials, which are intended to be produced so as to proceed further with the departmental proceedings against the petitioner.

34. It is true that such materials could have been produced by the respondent during inquiry. It appears that the CBI did not part with the aforesaid materials to the Disciplinary Authority for being produced in inquiry to maintain confidentiality. Given the limited nature of documents produced in the earlier inquiry, the charges were not proved. The Rules, contemplates a *de novo* inquiry can be initiated against a delinquent employee for reasons recorded in writing and the reasons now stated by the respondent being germane to the decision to conduct a *de novo* inquiry, the decision of the respondent cannot be faulted.

35. The plea of Mr. Ghose is that, such a *de novo* inquiry cannot be initiated. I am not in agreement with the said submission. The Rule 26(1) contemplates when an inquiry report is submitted, the Disciplinary Authority can remand the matter back to the Inquiry Officer for him to conduct the inquiry from a particular stage or if in the wisdom of the Disciplinary Authority that certain infirmities which occurred goes to the root of the hold *de novo* proceedings. In this case, certain relevant materials/documents were not produced in the earlier inquiry proceedings. Now the CBI has decided to produce/give the same to the Disciplinary Authority. The *de novo* inquiry is justified. The charges against the petitioner are very serious in nature. It is obligatory on the part of the Disciplinary Authority to inquire into the



charges based on all the materials/evidence now made available by the CBI and which may have a bearing on the outcome of the inquiry.

36. Hence, the inquiry report submitted by the Inquiry Officer was considered but not accepted by the Disciplinary Authority, which decided to hold a *de novo* proceedings. In other words, the Inquiry Report has not been acted upon by the Disciplinary Authority.

37. Insofar as the judgment relied by Mr. Ghose in the case of ***Managing Director, ECIL (supra)*** is concerned, the Supreme Court has only held that the Disciplinary Authority has to give a copy of the inquiry report submitted by the Inquiry Officer before taking a decision on the findings of the Inquiry Officer on the charges framed against the delinquent officer. It is not such a case. The Disciplinary Authority has not accepted the inquiry report submitted by the Inquiry Officer in this case, hence, the same is not required to be given to the petitioner.

38. Similarly, insofar as the judgment in ***Punjab National Bank & Ors. (supra)*** is concerned, the same is on the proposition that if the Disciplinary Authority disagrees with the findings of the Inquiry Officer, principles of nature justice requires that an opportunity should be given to the delinquent employee to make a representation on the conclusion of the Disciplinary Authority in the disagreement note on the findings in the report of the Inquiry Officer.

39. In the case in hand as stated above, the Disciplinary Authority has not accepted the Inquiry Report submitted by the Inquiry Officer. Rather, the Disciplinary Authority has decided to hold a *de novo* proceedings. Hence, the judgment has no applicability.

40. Similarly, reliance has been placed by Mr. Ghose on the



judgment of the Supreme Court in the case of *Union Of India & Another (supra)* is concerned, the Court held, if the respondent had been exonerated, on a charge, a second inquiry would not be maintainable. There is no dispute on the said proposition of law. The facts of the said case clearly demonstrate that the charge sheet was issued to the delinquent employee which has been inquired into by a Competent Authority in a regular inquiry which culminated in his exoneration, hence, the Supreme Court has held that second inquiry on that very charge is not maintainable.

41. But in the case in hand, the Disciplinary Authority has not acted on the Inquiry Report submitted by earlier Inquiry Officer. Rather, it has taken a decision to hold a *de novo* proceeding, hence the said judgment is clearly distinguishable.

42. Mr. Ghose has also relied upon the judgment of the Supreme Court in the case of *Dev Prakash Tewari (supra)*, to hold that if the authority is not vested with any power of continuing the disciplinary proceedings after retirement then the inquiry lapses and the employee is entitled to all the retiral benefits. Suffice to state, I have already reproduced the relevant provisions of Rule 32.1 of CDA Rules, which clearly contemplates that inquiry can be held after the employee has attained the age of superannuation, inasmuch as the proceedings initiated earlier, i.e., before the date of retirement shall be deemed to be proceedings against an employee as if he is still in service.

43. In fact, the petitioner cannot urge this point for the simple reason that the petitioner had participated in the earlier inquiry proceedings which were held after December 08, 2018, without any



demur and protest. He allowed the Inquiry Officer to submit his report. Hence, the petitioner having participated in the inquiry proceedings accepted the position under the Rules and that the Authority has power to continue with the disciplinary proceedings even after superannuation, the petitioner, now, cannot contend otherwise. This plea is rejected.

44. Insofar as the reliance placed on the judgment in the case of ***K.R. Deb (supra)*** is concerned, the same has no applicability in the facts of this case, as the Disciplinary Authority has taken a decision to hold *de novo* proceedings against the petitioner which was not the case therein. Moreover, the rule permits disciplinary authority to hold a *de novo* inquiry and it is not the case of the petitioner that the previous inquiry has been set aside on the ground that the report of the Inquiry Officer did not appeal to the Disciplinary Authority.

45. Similarly, in the case of ***Md. Safiqul Haque (supra)*** is concerned, the said judgment has no applicability in view of the conclusion with regard to the judgment of the Supreme Court in ***Managing Director, ECIL (supra)*** and ***Punjab National Bank & Ors. (supra)***.

46. I may also state that Mr. Ghose has relied upon the judgment in the case of ***National Highways Authority of India & Ors. v. Madhukar Kumar & Ors., MANU/SC/0698/2021***, which has no bearing on this case, as the said judgment is with regard to the National Highways Fee (determination of rates and collection) Rules, 2008.

47. Mr. Sharma is justified in relying upon the judgment of this Court in the case of ***Nahar Singh (supra)*** wherein the Court in the



following paragraphs has held as under:

“14. From the aforesaid decisions of the Supreme Court it would follow that, depending on the facts of each case it is possible to order de novo enquiry if there has been no proper enquiry because of any serious defect. If, for example, principle of natural justice have been violated then it is open to the disciplinary authority to come to the conclusion that a de novo enquiry should be held.

15. In the present case the Enquiry Officer had found that the charges against the appellant had been proved. Nevertheless the disciplinary authority came to the conclusion that the summary of allegations which had initially been prepared did not bring out all the relevant facts. In the absence of detailed summary of allegations the appellant must have been placed at a disadvantage. It is on the basis of the summary of allegations that evidence of prosecution witnesses was recorded and opportunity granted to cross-examine them. Such right cannot be effectively exercised if the summary of allegations is vague. Realizing this serious infirmity, the disciplinary authority ordered the re-framing of the summary of allegations and de novo enquiry. We find no illegality have been committed. Apart from the law laid down by the Supreme Court we find that even Section 21 of the General Clauses Act, 1897 would give a power to an authority to rescind, amend or revoke an order passed by it. What has happened, in effect, in the present cases is that the order dated January 17, 1980, whereby the enquiry was initially ordered, has been rescinded and a fresh enquiry ordered. The principles enshrined in Section 21 of the General Clauses Act, are clearly applicable and it cannot be said that the disciplinary authority could not act in the manner in which he did. Rather we do not find any infirmity in the decision of the learned Single Judge and in our opinion he rightly came to the conclusion that the disciplinary authority has not acted contrary to law. No other contention is raised. This appeal is accordingly dismissed. There will be no order



as to costs.”

48. Similarly, Supreme Court in the case of ***Union of India v. P. Thayagarajan (supra)***, in paragraph 8 held as under:

“8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature.”

(emphasis supplied)

49. In view of my above discussion, I do not see any merit in this petition, the same is dismissed. No costs.

CM APPL. 20083/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 04, 2022/aky