THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 7th JULY, 2017

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.35 of 2016

Petitioner **:** Shri Gajendra Singh Rana,
S/o Late M. S. Rana,
Presently posted at
HQ, Project Swastik,
C/o 99 APO

versus

Respondents **:**

1. The Union of India
represented by the Secretary,
Ministry of Defence (Border Roads)
'B' Wing, 4th Floor,
Sena Bhawan,
New Delhi – 110 011.

2. The Joint Secretary (Border Roads),
Ministry of Defence,
'B' Wing, 4th Floor,
Sena Bhawan,
New Delhi – 110 011.

3. The Director General Border Roads,
Headquarters DGBR,
Seema Sadak Bhawan,
Ring Road,
Delhi Cantt.,
New Delhi – 110 011.

4. The Director,
Central Vigilance Commission,
Satarkta Bhavan,
G.P.O. Complex,
Block 'A', INA,
New Delhi – 110 023.

5. The Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi – 110 069.

6. The Chief Engineer,
Project Swastik,
C/o 99 APO

Application under Article 226 of
the Constitution of India

Appearance

Mr. Tashi Rapten Barfungpa, Mr. Thinlay Dorjee Bhutia and Ms. Dorjee Uden Nadik, Advocates for the Petitioner.

Mr. Karma Thinlay Namgyal, Central Government Advocate for the Respondents.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioner, by filing the instant Writ Petition, seeks;

(i) Quashing of the impugned Inquiry Report dated **19-02-2010**, the impugned Office Memorandum issued by the Director, Central Vigilance Commission, vide letter dated **13-03-2012**, the impugned Advice dated **11-05-2015** issued by the Union Public Service Commission and the Impugned Order dated **23-08-2016**.

(ii) A declaration that the Disciplinary Proceeding dated **19-06-2008** is bad and *non est* in the eye of law, to accredit his upgradation and grant his non-functional upgradation, with effect from **01-04-2011**, arrears of salary and all other service benefits, with interest, from **01-04-2011**.

2. The Petitioner joined the Border Roads Organisation (BRO) on 20-02-1995, as an Assistant Executive Engineer (Civil), through the Union Public Service Commission (UPSC). He served in different parts of the country and is presently posted in Sikkim, as an Executive Engineer, HQ, Project Swastik. The matter goes back to August 2005, when he was posted in Jaisalmer, Rajasthan and assigned the task, *inter alia*, of resurfacing Jaisalmer Bye Pass Road, comprising of a stretch of 18.655 kms.

3. On completion of the works, a Court of Inquiry was convened against the Petitioner by the HQ, Director General Border Roads (DGBR), vide its letter dated **13-10-2005**, with the terms of reference, as follows;

> **"**…….
>
> 2. Terms of Reference:-
>
> *(a) The mode of execution of resurfacing of Jaisalmer bye pass, i.e., by manual or by machine and whether the works documents maintained accordingly.*
>
> *(b) Whether HSD booked during the period Aug & Sep 05 for the works, in works diary and charged off in POL documents are justified ?*
>
> *(c) Out of 735 labourers mustered against Jaisalmer bye pass to investigate why 492 CPLs in SW Bill bearing Vr No. 45TF/ 95RCC/2306/2408/45TF dated 21 Sep 2005 did not turn up for receiving their monthly wages inspite of ample chances / time given by the paying officer detailed by CE (P) Chetak resulting in depositing of unpaid amount of Rs. 3.10 Lacs in single Muster Roll. It may also be investigated why large number of CPLs were recruited with out completion of formalities like medical examination by medical officer and without completion of documentation by RCC / TF and subsequently 492 CPLs so recruited were discharged upto 01 Sep 2005. The court to also ascertain the aspect of false mustering in above cases by physical verification / verification of thumb impression from forensic Labs in respect of paid Muster Rolls.*
>
> *(d) The court to examine physically in detail the resurfacing works of 18.645 Kms executed with 19% BUSG works as reflected / booked as correction works where as per preliminary enquiry, hardly any correction works less than 5% carried out. The actual work done on ground, booking and justification of resources including receipt / consumption of contract materials as per MB, RMR, works diary be checked by court.*
>
> *(e) To bring out the total loss to state due above irregularities and pin point the responsibility.*
>
> ……**"**

4. Pursuant thereto, two Articles of Charge were formulated against the Petitioner vide Memorandum bearing No.BRDB/02 (197)/2007-GE.II, dated **19-06-2008**. Article II being relevant for the present purposes is being reproduced hereunder;

> ***"STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI GS RANA, EE (CIV) (GO-2504M) EX OC 95 RCC/45 BRTF/(P) CHETAK***
>
> ……..…….
>
> ***ARTICLE-II***
>
> *1. That during aforesaid period while functioning as Officer Commanding the said Shri GS Rana, EE (Civ) did not maintain long roll, Identity Card register of CPL and did not ensure medical examination of CPLs before their recruitment as per instructions/SOP which led into irregularities in mustering of CPLs.*
>
> *2. During Aug 2005, 750 CPLs were paid wages for the period from 21 Jul 2005 to 20 Aug 2005 according to Muster Roll Nos. 2306/2362/45 TF and 2306/2364/45 TF both dated 26 Aug 2005. While making payment to CPLs for Sep 2005 for the period from 21 Aug 2005 to 31 Aug 2005, 490 CPLs out of 734 CPLs mustered under Muster Roll No. 2306/2408/45 TF dated 21 Sep 2005 did not turn up for receiving the payment. Therefore an amount of Rs. 3,10,474/- was deposited into Government Treasury by means of TR as unpaid wages. To these 490 CPLS an amount of Rs. 4,30,567/- was paid as wages for Aug 2005 for the period from 21 Jul 2005 to 20 Aug 2005. These 490 CPLs were later found false mustered which has been proved by forensic experts thereby causing a loss of Rs.4,30,567/- to the State.*
>
> *3. By the above act, the said Shri GS Rana, EE (Civ) has failed to maintain absolute integrity, devotion to duty and acted in a manner which was unbecoming of his official position and status, as held by him, thereby violated the provisions of Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964."*

5. The aforesaid Memorandum was received by the Petitioner on 30-07-2008, duly acknowledged by him on 31-07-2008, whereby he denied all Charges. On appointment of Presenting Officer and Inquiring Authority, information thereof was forwarded to him, vide letter dated 20-10-2008, received by him on 01-11-

2008. Proceedings before the Inquiry Officer in which the Petitioner participated, commenced on 07-01-2009 and concluded on 30-07-2009. As directed, he submitted his defence statement on 27-07-2009 and a Case Brief on 18-09-2009. After a spell devoid of communication, on 19-03-2012 he was supplied with a copy of the Inquiry Report, dated 01-12-2009, in which he had been exonerated of all Charges, along with Disagreement Note of the Disciplinary Authority and copies of the 2nd Stage Advice of the Central Vigilance Commission (CVC), dated 13-03-2012, advising sanction of prosecution and imposition of suitable major penalty on him and another personnel. On 31-03-2012, in order to submit an effective written representation within the period prescribed by relevant Rules, the Petitioner sought more documents from the Respondent Authorities. In response, the First Inquiry Report and Disagreement Note were re-furnished to him. He submitted a written representation on 17-07-2012 confining it to the First Inquiry and Disagreement Note of the Disciplinary Authority, being oblivious of a Second Inquiry which had been ordered by the Disciplinary Authority on 29-01-2010 and Report submitted on 19-02-2010, finding him partially guilty under Article II, after the Inquiring Authority re-examined the matter. Meanwhile, on a case registered against him, on the same issue he appeared before the CBI, ACB, Jodhpur, on 29-09-2012, wherein the matter stood closed on account of lack of Prosecution materials. From 17-07-2012 no communication ensued between the Petitioner and the Respondent Authorities till 25-05-2015, when he received letter of even date, enclosing copy of

the impugned advice dated 11-05-2015 of the UPSC, giving him an option of submitting a reply within fifteen days. Through this communication, he learnt of the further Inquiry against him where he was found partially guilty.

6. In response to the letter dated 25-05-2015, the Petitioner submitted a representation, dated 11-06-2015, stating therein that, for the Second Inquiry the Disciplinary Authority had collected evidence behind his back, but denied him an opportunity of rebutting the new evidence against him. Based on this representation, a letter dated 09-12-2015 was issued by the Ministry of Defence D. (Vigilance) to the DGBR, relying upon the decision of the Hon'ble Supreme Court in ***Union of India and Others*** vs. ***S. K. Kapoor***[1], requiring the Authority to furnish copies of relevant documents to the Petitioner. In due compliance thereof, the Petitioner received the documents on 29-12-2015. On 11-01-2016, the Petitioner submitted his detailed Written Statement in response to the communication of 29-12-2015 and prayed for exoneration. That after an elapse of eleven years since the initiation of the proceedings, which has caused him serious prejudice, mental agony and trauma, denial of non-functional upgradation w.e.f. 01-04-2011 and non-upgradation of his scale, the impugned Order dated 23-08-2016 was issued, which reads as follows;

> "……..
>
> 15. NOW THEREFORE, in exercise of the powers conferred by Rule 15 (4) of Central Civil Service

[1] (2011) 4 SCC 589

> (Classification, Control and Appeal) Rules, 1965, and in consultation and agreement with the Union Public Service Commission, the President is inclined to take a view that justice would be met by imposing the penalty of **"reduction to a lower stage in the time scale of pay by one stage for a period of one year with further direction that the CO will not earn increments of pay during the period of this reduction and, on the expiry of such period, the reduction will not have the effect of postponing his future increments"** with immediate effect on Shri GS RANA, EE (Civil) (GO No.2504M). It is further direction that a relevant entry in the service records of Shri GS RANA, EE (Civil) (GO No.2504M) be made.
>
> ……."

That, Office Memorandum dated 08-01-1971 and 14-10-2013 of the Ministry of Personnel, Public Grievances and Pensions, *inter alia*, provides that a Disciplinary Authority is required to take a final decision after receipt of Inquiry Report within three months and all major penalty proceedings against a Government Servant is required to be completed and final orders issued within eighteen months from the date of delivery of Charges, respectively, which have clearly been flouted, hence, the prayers in the Petition.

7. In the Counter-Affidavit, it was averred that the Writ Petition is liable to be dismissed, the cause of action having arisen beyond the jurisdiction of this Court. That, the Order of the Disciplinary Authority dated 23-08-2016 was based on a finding that the Petitioner had committed lapses in the works which he was to execute, for which Charges were levelled against him. Admittedly, the First Inquiry Report was submitted by the Inquiry Officer on 01-12-2009 and the dates furnished by the Petitioner pertaining to the Inquiry were undisputed. However, while admitting delay in the proceedings, it was explained that the delay was on account of the

active deliberation by the Disciplinary Authority in consultation with the CVC and UPSC. The documents being voluminous required detailed study by various Authorities, in the channel of administration, to avoid any miscarriage of justice. That, despite the delay, which was unintentional, the Petitioner was supplied with copies of all relevant documents, thus no violation or deprivation of reasonable opportunity to the Petitioner occurred. That, the Report of the Inquiring Authority is only an enabling document, to assist the Disciplinary Authority in arriving at his opinion about the guilt of the Petitioner, but is not binding on the Disciplinary Authority. Hence, the Petitioner cannot claim exoneration by the Inquiring Authority unless its findings are accepted in totality by the Disciplinary Authority. A Departmental Inquiry requires "preponderance of probability" which was established against the Petitioner, hence, the Writ Petition not being sustainable in law, deserves a dismissal.

8. In Rejoinder, it was averred that the Petitioner at the time of filing the Writ Petition was posted in the State of Sikkim as Executive Engineer, HQ Project Swastik and the very fact that the impugned Order dated 23-08-2016 was served on the Petitioner, within the State of Sikkim, reveals jurisdiction of this Court, as provided under Article 226 of the Constitution of India.

9. While canvassing the point that this Court has jurisdiction, Learned Counsel for the Petitioner drew strength from the decision of the Gauhati High Court in ***Sri Pratap Kaivarta*** vs. ***The***

Union of India and Others[2]. It was further contended that the principles of natural justice have been violated as relevant documents were not made over to him, on which count, reliance was placed on ***Union of India and others*** vs. ***Mohd. Ramzan Khan***[3] and ***Managing Director, ECIL, Hyderabad and Others*** vs. ***B. Karunakar and Others***[4]. That, delay has vitiated the disciplinary proceedings as no reasons for the delay have been revealed. In support of this submission, Learned Counsel for the Petitioner relied on ***State of A. P.*** vs. ***N. Radhakishan***[5] and ***P.V. Mahadevan*** vs. ***MD, T.N. Housing Board***[6].

That, the penalty was not commensurate to the offence which was minor and the Respondents have clearly violated the provision of Rule 15(2) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules], hence, the Petitioner deserves the reliefs, as prayed.

10. *Per contra,* dwelling on the ambit of this Court under judicial review, Learned Central Government Counsel expostulated that this Court cannot sit on Appeal on the conclusion of the Disciplinary Authority and drew attention to the following decisions;

(i) ***Praveen Bhatia*** vs. ***Union of India and Others***[7]***;***

(ii) ***Registrar General, High Court of Judicature of Madras*** vs. ***K. Muthukumarasamy***[8]***;***

(iii) ***Delhi Police, Through Commissioner of Police and Others*** vs. ***Sat Narayan Kaushik***[9]***.***

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2 MANU/GH/0315/2015 [WP(C) No.6481 of 2007 dated 12-06-2015]
3 (1991) 1 SCC 588
4 (1993) 4 SCC 727
5 (1998) 4 SCC 154
6 (2005) 6 SCC 636
7 (2009) 4 SCC 225
8 (2014) 16 SCC 555
9 (2016) 6 SCC 303

11. While gathering strength from the ratio in ***Chairman, Life Insurance Corporation of India and Others*** vs. ***A. Masilamani***[10], it was vehemently argued that delay cannot be a reason for setting aside the proceedings. It was next contended that the magnitude of the offence deserved a major penalty, as in the absence of medical examination and Report of Casual Paid Labourers (CPLs), if a fatality of any CPL had occured, compensatory payment would have resulted in enormous financial loss to the Respondents. That, the cause of action arose in Jaisalmer, thereby debarring the jurisdiction of this Court, for which reliance was placed on ***C.B.I. Anti-Corruption Branch, Mumbai*** vs. ***Narayan Diwakar***[11], ***National Textile Corpn. Ltd. and Others*** vs. ***Haribox Swalram and Others***[12] and ***Alchemist Ltd. and Another*** vs. ***State Bank of Sikkim and Others***[13].

12. The submissions put forth by Learned Counsel were heard at length. I have carefully perused and considered the pleadings, the entire documents appended, as well as the Judgments cited at the Bar.

13. The first relevant question for determination would be, whether this Court has jurisdiction in the instant matter? If this be answered in the positive, the next query would be, whether the disciplinary and other proceedings initiated against the Petitioner is liable to be quashed on grounds of inordinate delay and violation of the principles of natural justice?

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[10] (2013) 6 SCC 530
[11] (1999) 4 SCC 656
[12] (2004) 9 SCC 786
[13] (2007) 11 SCC 335

14. Addressing the issue flagged by Learned Counsel for the Respondent pertaining to jurisdiction, it would be worthwhile firstly to contemplate on the provision of the Article 226(2) of the Constitution of India. This provision reads as follows;

> **"226. Power of High Courts to issue certain writs.**—(1)…….
>
> (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
>
> ……**"**

It is apparent on the face of the provision that even if a part of the cause of action accrues within the jurisdiction of the Court, it will lend jurisdiction in the matter.

15. It may be beneficially be recapitulated that in 1963, by the Constitution (Fifteenth) Amendment, Clause (1-A) was inserted in Article 226 of the Constitution, which was subsequently renumbered as Clause (2), by the Constitution (Forty-second) Amendment Act of 1976. After insertion of this provision the High Court could issue a writ when the person or the Authority against whom the writ is issued, is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction. In ***Kusum Ingots and Alloys Ltd.*** vs. ***Union of India and Another***[14], the Supreme Court held that, although in view of Section 141 of the Code of Civil Procedure, 1908 (for short "CPC"),

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[14] (2004) 6 SCC 254

the provisions of Section 20(c) of the CPC would not apply to Writ proceedings, however, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226 of the Constitution, being in *pari materia*, the decisions of the Supreme Court rendered on interpretation of Section 20(c) of the CPC, shall apply to the Writ proceedings also. That, keeping in view the expressions used in Clause (2) of Article 226 of the Constitution, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. That, although cause of action has not been defined in any statute, but judicially interpreted would, *inter alia*, mean every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Thus, we find that the provisions have been succinctly explained and the phraseology of cause of action has been clearly defined.

16. We may usefully refer to a fairly recent decision of the Supreme Court on the same question, i.e., jurisdiction. In ***Nawal Kishore Sharma*** vs. ***Union of India and Others***[15], the Appellant therein was employed in the Off-Shore Department of the Shipping Corporation of India and on medical examination found unfit for service at sea. His registration as a seaman was cancelled and a copy of the letter sent to the Appellant in Bihar, his native place, where he had settled, after being found medically unfit. The Appellant sent a representation from his home to the Respondents, claiming disability compensation to which, a response was sent by

[15] (2014) 9 SCC 329

the employer. The Supreme Court found that the employer had issued the order cancelling his registration as seaman to his Gaya address where he had settled and all claims and representations were made by the Petitioner from his home address at Gaya, which were entertained by the Respondent and responded to in his Bihar address. It was held that the Writ Petition ought not to have been dismissed for want of territorial jurisdiction, as a part or fraction of cause of action arose within the jurisdiction of the Patna High Court.

17. On the bedrock of the said ratiocination, while examining the facts herein, it is undisputed that the impugned letter/order dated 23-08-2016 issued by the Ministry of Defence, Respondent No.1, was forwarded to his place of posting, i.e., Sikkim. Clearly, a fraction of the cause of action has arisen within the jurisdiction of this Court. The matter pertaining to jurisdiction is determined accordingly.

18. Now, very pertinently to address the issue regarding the parameters of judicial review in disciplinary matters, this Court is conscious that the scope of judicial review is to be confined to the decision-making process and to determine whether the Inquiry was held by a Competent Authority and Inquiry conducted as per procedure. It cannot travel into the arena of the decision nor can it sit as a Court of Appeal. In ***State of Uttar Pradesh and Another*** vs. ***Man Mohan Nath Sinha and Another***[16] at Paragraph 14, it is held as follows;

> **"14.** The scope of judicial review in dealing with departmental enquiries came up for consideration

[16] (2009) 8 SCC 310

before this Court in the case of *State of A.P.* v. *Chitra Venkata Rao* [(1975) 2 SCC 557] and this Court held: (SCC pp.562-63, paras 21 and 23-24)

> "*21.* ……... The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability or that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.
>
> ……..……..**"**

The ambit of judicial review in Disciplinary Proceedings having thus been lucidly laid down, no further discussions need ensue on this point.

19. The chronology of the facts reveal that the proceedings against the Petitioner commenced in the year 2005 and terminated on 23-08-2016, when the impugned Order was issued, traversing a

period of almost eleven years, during which the Petitioner was left in suspended animation. It would now be appropriate to peruse the provision of Rule 15(1) of the CCS (CCA) Rules, 1965. Rule 15(1) provides that 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 further Inquiry and Report and the Inquiring Authority shall thereupon proceed to hold further Inquiry, according to the provisions of Rule 14, as far as may be. Pausing here for a moment, Rule 14 is the Procedure for major penalties and provides that no order imposing any penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an Inquiry held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850, where such Inquiry is held under that Act. Rule 15(2) requires the Disciplinary Authority to forward a copy of the Report of the Inquiry held by it. If the Disciplinary Authority is not the Inquiring Authority, a copy of the Report of the Inquiring Authority, together with its own tentative reasons for disagreement with the findings of Inquiring Authority on any Article of Charge to the Government Servant shall be forwarded, who, if he so desires, may file a written submission within fifteen days, irrespective of whether the Report is favourable to him or not.

20. Bearing the above provisions in mind, we may walk back in time and examine whether there was compliance of the Rules set out above. The Terms of Reference were set out on 13-10-2005, almost three years later, the Articles of Charge were formulated against the Petitioner on 19-06-2008. No explanation for this delay

has been extended by the Respondents. The proceedings before the Inquiring Authority, in which the Petitioner participated, commenced on 07-01-2009 and concluded on 30-07-2009. It emanates that the Inquiring Authority had submitted his Report on 01-12-2009 exonerating the Petitioner on all counts, but no intimation regarding this state of affairs was made to the Petitioner. Instead, the Disciplinary Authority remitted the case on 29-01-2010 to the Inquiring Authority for further Inquiry. Vide letter dated 19-03-2012 the Disciplinary Authority served a copy of the First Inquiry Report and copy of the 2nd Stage Advice of the CVC to the Petitioner, when infact, by this time the Second Inquiry had already drawn to a close, wherein the Petitioner without his participation, had been found partially guilty of the offence under Article II. For undisclosed reasons, the Disciplinary Authority concealed the fact of the Second Inquiry Report while making over the First Inquiry Report and 2nd Stage Advice of CVC to him on 19-03-2012. Consequently, the Petitioner being unaware of the Second Inquiry confined his response dated 17-07-2012 to the aforesaid two documents. It was only on 25-05-2015 after almost three long years of his response and five years after completion of Second Inquiry, a communication was sent to him, enclosing a copy of the impugned Advice of the UPSC dated 11-05-2015, that he learnt of the Second Inquiry conducted against him and completed on 19-02-2010. The above facts clearly reveal that the conduct of the Disciplinary Authority who took its own time to conduct the proceedings, i.e., from 2005 onwards, and deemed it fit to complete it only on 23-08-2016 with

the impugned Order with no valid reasons afforded for the delay. Relevant documents were submitted belatedly to the Petitioner, inasmuch as although the First Inquiry was completed on 01-12-2009, copy was sent to him on 19-03-2012. The Second Inquiry Report although completed on 19-02-2010, was sent to him only on 25-05-2015, more than five years, after conclusion of Inquiry. The act of the Disciplinary Authority in choosing not to disclose the fact of Second Inquiry to the Petitioner is indeed violative of the principles of natural justice, as it is clear that no opportunity of either putting forth his case in defence or hearing was afforded to the Petitioner. After the First Inquiry Report was remitted to the Inquiring Authority for re-examination, it was incumbent upon the Disciplinary Authority to have informed the Petitioner that the matter was being re-examined and an opportunity undoubtedly should have been afforded to him to put forth his stand on the issue. In other words, the Petitioner ought to have been put to notice, that, the Disciplinary Authority being in disagreement with the findings of the First Inquiry Report had in terms of Rule 15(1) of the CCS (CCA) Rules, 1965, remitted the matter for re-examination. Not only was the above fact concealed from the Petitioner, but the Second Inquiry Report was also not made over to him, clearly establishing *mala fide* on the part of the Respondent Authorities as they have adopted a cloak and dagger approach. The provisions of Rule 15(1) and (2) of the CCS (CCA) Rules, 1965, having already been put forth hereinabove, goes without saying have been clearly flouted by the Disciplinary Authority.

21. On this count, it would be appropriate to refer to the decision of ***S.K. Kapoor***[1], wherein it was held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same be supplied in advance to the Charge-Sheeted employee, so that he may have the chance to rebut the same. Further, in ***B. Karunakar***[4] it was, *inter alia*, held that when the Inquiry Officer is not a Disciplinary Authority, the delinquent employee has the right 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, with regard to the Charges levelled. That right is a part of the employee's right to defend himself against the Charges levelled against him. The denial of the Inquiry Officer's Report, before the Disciplinary Authority takes its decision on the Charges, is the denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

22. It was urged by the Respondents that in view of the findings of the Disciplinary Authority, this Court ought not to interfere in the decision thereof, for which attention of this Court was drawn to ***Praveen Bhatia***[7]. The Appellant therein was issued an Order for Compulsory Retirement as he failed to submit his property returns for the years 1981 to 1986 and the Return was belatedly filed after about six years on 28-03-1992. The conduct was found unbecoming of an Officer of the Air Force. The High Court accepted the stand of the State-Respondent and dismissed the Petition. The Supreme Court dismissed the Appeal of the

Petitioner, as from the records, it was evident that the prescribed period for filing the property return was 6 months and although the Appellant was aware of the requirement, he chose not to file his return. The facts and the offence in ***Praveen Bhatia***[7] are clearly distinguishable from the facts in the case under discussion, inasmuch as the Charge under which the Petitioner herein was found to be guilty was for not conducting a medical inquiry of the CPLs, while in ***Praveen Bhatia***[7] the Appellant had failed to abide by the prescribed period of filing property returns which was transgression of the Conduct Rules. In my considered opinion, the magnitude of the two offences cannot be compared.

23. In ***A. Masilamani***[10] relied on by Learned Central Government Counsel for the Respondents, it was held that, whether or not the Disciplinary Authority should be given an opportunity to complete the Inquiry afresh from the point that it stood vitiated, depended upon the gravity of the delinquency involved and the magnitude of misconduct alleged against the employee. The matter therein was remitted for *de novo* Inquiry from the stage that the Inquiry stood vitiated as the Hon'ble Supreme Court was of the view that Charges were grave inasmuch as the Appellant, an employee of the LICI had after taking Housing Loan, committed certain irregularities and deviations with respect of the construction of the said house and the loan had been obtained upon non-disclosure of the facts in entirety. In the case at hand, the records and the submissions of Learned Counsel indicate that the criminal proceedings initiated against the Petitioner before the CBI Court was

closed due to lack of materials for Prosecution, while in the Disciplinary Proceedings the Petitioner was found guilty of not getting the CPLs medically examined and obtaining their Reports. The magnitude of the delinquency in the said case and the case at hand do not merit comparison.

24. In this context, we may also keep in view the requirement in Article 311(2) of the Constitution which provides that "*No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges*".

25. The Respondent Authorities have admitted the delay caused by them, but given a frail argument that, it was on account of the voluminous documents that required to be studied and the journey of the documents through various Authorities in the channel of administration that caused the delay. On this count, we may usefully refer to the decision of ***P.V. Mahadevan***[6], in which the Hon'ble Supreme Court quashed the disciplinary proceedings on the ground of delay holding that;

> **"11.** …… Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. ……..…..**"**

26. In ***N. Radhakishan***[5], it was observed as under;

> **"19.** ..... It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that his is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately the court is to balance these two diverse considerations.**"**

27. Thus, on the entirety of the facts and circumstances and discussions placed hereinabove, the Inquiry is evidently vitiated on account of the inexplicable inordinate delay, coupled with the fact that the procedure prescribed in Rule 15 of the CCS (CCA) Rules, 1965, have not been complied with.

28. Consequently, the Writ Petition is allowed.

29. The impugned Inquiry Report dated 19-02-2010, Office Memorandum dated 13-03-2012, Advice dated 11-05-2015 and the Impugned Order dated 23-08-2016, reflected in Paragraph 1(i) above are quashed and set aside. The Disciplinary Proceeding dated 19-06-2008 is *non est* in the eyes of law.

30. Accordingly, necessary consequential reliefs to the Petitioner to follow in accordance with Law.

31. No order as to costs.

Sd/-

(Meenakshi Madan Rai)

Judge

07-07-2017

Approved for reporting : **Yes**

ds/bp Internet : **Yes**