Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No.153 of 2013

Bhuwan Chandra Pandey ……Petitioner

Vs.

Union of India and others …….. Respondents

Mr. Sanjay Raturi, Advocate for the petitioner.
Mr. Sanjay Bhatt, Standing Counsel for the Union of India.

Reserved on: 27th February, 2020
Delivered on: 15th June, 2020

Chronological list of cases referred:-

1. AIR 1963 SC 1723
2. AIR 1963 SC 404
3. (1972) 4 SCC 618
4. (1969) 3 SCC 384
5. AIR 1965 SC 1103
6. (1999) 2 SCC 10
7. (1978) 3 SCC 366
8. AIR 1969 SC 983
9. (1976) 1 SCC 518
10. (1984) 4 SCC 635
11. (1999) 7 SCC 739
12. AIR 1964 SC 364
13. AIR 1964 SC 477
14. (1996) 3 SCC 750
15. AIR 1955 SC 233
16. AIR 1958 SC 398
17. AIR 1960 SC 1168
18. (2010) 8 SCC 191
19. (1990) 1 SCC 550
20. (1996) 2 SCC 384
21. (2010) 2 SCC 9
22. AIR 1952 SC 54
23. (1991) 1 SCC 57
24. AIR 1978 SC 1277
25. (1977) 2 SCC 491
26. (1982) 1 SCC 143
27. [2016 (5) Mh.L.J.] 878
28. (1998) 7 SCC 84
29. (2013) 7 SCC 251
30. (2003) 2 SCC 449
31. (2004) 8 SCC 653
32. (2006) 8 SCC 776
33. (2006) 4 SCC 153
34. (1977) 1 SCC 472
35. AIR 1963 SC 1612
36. (2003) 5 SCALE 66
37. AIR 1987 SC 2043
38. 1970 SC 748
39. (1995) 6 SCC 279
40. AIR 1966 SC 1827
41. AIR 1969 SC 414
42. (1991) 2 SCC 716
43. (1990) 4 SCC 594

44. (1970) 1 SCC 103
45. (1981) 2 SCC 159
46. AIR 1991 SC 1260
47. (1997) 6 SCC 241
48. AIR 1956 SC 285
49. (1990) 1 SCC 193
50. (1990) 2 SCC 715
51. (2005) 1 SCC 444
52. AIR 1965 SC 1153
53. AIR 1971 SC 1676
54. AIR 2005 SC 2392
55. (2005) 7 SCC 190
56. (2004) 12 SCC 673
57. (1970) 1 SCC 108
58. (1995) 1 SCC 332
59. AIR 2019 SC 2075
60. (2013) 12 SCC 372
61. (2013) 10 SCC 106
62. (2017) 2 SCC 528
63. (2010) 5 SCC 775
64. (1987) 4 SCC 611
65. (1991) 3 SCC 213
66. (2014) 7 SCC 223
67. (1983) 2 SCC 442
68. AIR 1991 SC 1241
69. (1996) 1 SCC 302
70. (1995) 6 SCC 749

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble R.C. Khulbe, J.

Hon'ble Ramesh Ranganathan, C.J.

Is the sole testimony, of the victim of sexual abuse, sufficient to hold the perpetrator guilty of misconduct in a departmental enquiry? Is the punishment of dismissal from service, imposed on the perpetrator as a consequence thereof, grossly disproportionate warranting interference by this Court in the exercise of its power of judicial review? These questions, among several others, arise for consideration in this writ petition.

2. The extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, has been invoked by the petitioner seeking a writ of certiorari to quash the order of punishment of dismissal dated 10.05.2012, the appellate order, the order directing initiation of a de-novo enquiry, and the fresh charge sheet, declaring the same as illegal, de hors the rules and unconstitutional; to issue a writ of mandamus commanding the respondents to treat the petitioner as continuing in service, and reinstate him with all consequential benefits including promotion, upgradation of pay, revised pay scales and arrears of salary, as he would have been entitled to, if the impugned orders had not been passed; for a writ of mandamus to consider the petitioner's claim for payment of damages on account of the

tortuous act of the respondents; and to quantify the damages to be recovered from the erring officers, and persons who were instrumental and responsible for the same.

3. Facts, to the limited extent necessary, are that, for the para-medic course (the duration of which was for a period of three months), the petitioner was nominated, for the three day period 16.08.1998 to 18.08.1998, as a guest instructor for an outdoor exercise with trainees, for conducting a half day theory class, a half night march exercise at the S.S.B. Academy Gwaldum, and to impart them training on military topics such as night navigation and map reading. On 18.08.1998 the trainees, including two lady members of the 94 medic course, were imparted training on theoretical subjects. The half night training exercise included a night march. However, because of heavy rains in that area, it was decided by the petitioner's superior officers not to permit both the lady trainees to march in the wet and muddy hilly areas to prevent any casualty occurring thereby. In the affidavit, filed in support of the writ petition, the petitioner states that it was decided to give minimum or grace marks for the night march training to the two lady trainees as they did not participate in the night march.

4. After completion of the night training exercise, the petitioner, along with several other members including the two lady trainees, sat in the cabin of a truck which was coming back to Gwaldum station. It is in the cabin of the truck that the petitioner is said to have molested one of the lady trainees, and to have sexually harassed her.

5. While this unsavory incident is said to have taken place in the cabin of the truck at around 11 p.m. on 18.08.1998, the victim trainee (hereinafter referred to as the "complainant") lodged a complaint on 19.08.1998 to the DIG F.A Gwaldum alleging sexual harassment by the petitioner during the return journey on 18.08.1998. Thereafter the petitioner was informed, by memorandum dated 08.10.1999, that it was proposed to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 (for short the "1965 Rules"). A statement of imputations of misconduct/misbehavior, on which action was proposed to be taken, was issued giving the petitioner an opportunity to submit his representation thereto. Rule 16 of the 1965 Rules prescribes the procedure for imposing the minor penalties as specified under Rule 11. The inquiry committee,

constituted thereafter, submitted its report on 21.09.2001 holding the petitioner guilty of the charges. The disciplinary authority agreed with the findings of the Inquiry Committee. Though minor penalty proceedings, under Rule 16 of the 1965 Rules, had been initiated against him by memorandum dated 08.10.1999, the petitioner, on being held guilty of the charges, was imposed, by proceedings dated 12.09.2003, the major penalty of dismissal from service.

6. Aggrieved thereby, the petitioner invoked the jurisdiction of the Central Administrative Tribunal, Allahabad bench (the "Tribunal" for short). In its order, in O.A. No.1632 of 2003 dated 18.03.2005, the Tribunal opined that the scope of judicial review was limited to ascertaining whether the disciplinary proceedings were vitiated on account of procedural illegality causing prejudice to the delinquent official, or if it was a case of no evidence and perverse finding applying the test of a reasonable and prudent common man and, lastly, on the proportionality of punishment i.e. whether the punishment imposed was shockingly disproportionate to the misconduct held proved, that too in exceptional and rare cases for cogent reasons. The Tribunal, thereafter, opined that it was clear that the inquiry proceedings had commenced with the statement of the charged officer which was against Rule 14 (16) of the 1965 Rules; and conversion of a minor penalty charge-sheet into a major penalty charge-sheet, without cancelling the earlier one and without giving the delinquent employee another charge-sheet under Rule 14, appeared to be prima-facie wrong and illegal. In view of these facts and circumstances, the impugned order was quashed with liberty reserved to the respondents to initiate fresh disciplinary proceedings in accordance with the Rules, and the law on the subject.

7. Instead of issuing a fresh charge-sheet under Rule 14 of the 1965 Rules, which relates to major penalty proceedings, the respondents again constituted a four member committee to hold an enquiry pursuant to the very same charge-sheet dated 08.10.1999. The said inquiry committee, in its report dated 12.06.2008, held that both charges 1 and 2 were not proved. The disciplinary authority, however, disagreed with the findings and conclusions of this inquiry committee; and, by order dated 04.11.2009, gave the petitioner an opportunity of making a representation, on the disagreement of the disciplinary authority with the findings of the central

complaint committee, within 15 days. A copy of the Inquiry Report, and the disagreement note, were enclosed along with the proceedings dated 04.11.2009. The petitioner submitted his reply to the notice dated 04.11.2009 and, thereafter, the advice of the Union Public Service Commission (for short the "UPSC") was sought, by proceedings dated 06.07.2010, to the punishment proposed to be imposed.

8. By its letter dated 12.08.2010, the UPSC informed that, on a perusal of the case report, it was observed that the Central Administrative Tribunal had, by its order dated 18.03.2005, quashed the order dated 12.09.2003, and had directed the disciplinary authority to initiate fresh disciplinary proceedings in accordance with the rules, and the law on the subject; the directions of the Tribunal had not been complied with; the central complaints committee had conducted an inquiry as per the previous charge-sheet; and the order of the Tribunal was required to be complied with, disciplinary proceedings were required to be initiated under Rule 14 of the 1965 Rules by issuing a fresh charge-sheet, and thereafter the matter should have been forwarded to the UPSC for its advice. The UPSC, while returning the case records, requested that necessary action be taken in this regard.

9. Thereafter, by proceedings dated 04.11.2011, the earlier charge sheet issued to the petitioner on 08.10.1999 was cancelled, and the petitioner was informed that a fresh charge sheet was being issued separately. By another proceedings No.10/23/DE/93/SSB/Pers.I/31 dated 04.11.2011, a fresh charge sheet was issued informing the petitioner that it was proposed to hold an inquiry against him under Rule 14 of the 1965 Rules. Two articles of charges were framed, and the statement of imputations of misconduct was annexed thereto.

10. A four member central complaints committee was constituted before whom the petitioner submitted his written statement of defence in reply to the charge sheet. The central complaints committee, in its report, held the petitioner guilty of both charges 1 and 2. On a copy of the inquiry report being furnished to him, the petitioner submitted his representation there-against by his letter dated 27.06.2011. On its advice being sought, the UPSC, in its proceedings dated 30.03.2012, opined that the charges held established against the charged officer constituted grave misconduct on his

part; and they considered that ends of justice would be met if the penalty of dismissal from service was imposed on him.

11. The petitioner was thereafter informed, by order dated 10.05.2012, that, on a careful consideration of the record of the inquiry and the advice of the UPSC, the President of India had concluded that ends of justice would be met if the penalty of dismissal from service was imposed on him. Aggrieved thereby, the petitioner preferred a statutory appeal on 20.07.2012. By proceedings dated 30.01.2013, the petitioner was informed that his appeal against the penalty of dismissal from service, addressed to the President of India, was taken up by the Ministry of Home Affairs, and the Ministry had considered and rejected the said appeal as devoid of merits.

12. Elaborate submissions have been put forth by Mr. Sanjay Raturi, learned counsel for the petitioner, and Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India. It is convenient to examine the rival contentions under different heads.

I. WERE THE FINDINGS RECORDED BY THE INQUIRY COMMITTEE PERVERSE?

13. Mr. Sanjay Raturi, learned Counsel for the petitioner, would submit that the charges in the fresh charge sheet were identical to those referred to in the earlier charge sheet; the findings of the committee of inquiry, holding the petitioner guilty of the charges, were perverse; the respondents were hell-bent on holding the petitioner guilty thereof; the findings of the second de-novo inquiry committee was based on surmises and conjectures; and there was no evidence on record to hold the charges to have been proved.

14. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel appearing for the Union of India, would submit that the inquiry committee, constituted after a fresh charge sheet was issued, held the petitioner guilty of both the charges; the findings recorded in this inquiry report were affirmed by the disciplinary authority who recommended imposition of the major penalty, of dismissal from service, on the petitioner; and the appointing authority had also agreed with the findings of the inquiry officer, and had imposed on him the punishment of dismissal from service.

15. It is settled law that, where there is some relevant material which the authority has accepted and which may reasonably support the conclusion that the officer is guilty of the charges, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the material and to arrive at an independent finding thereupon. The High Court is not constituted, in a proceeding under Article 226 of the Constitution, as a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned with whether the enquiry is held by an authority competent in that behalf, according to the procedure prescribed in that behalf, and whether the rules of natural justice have been followed. 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, in a petition for a writ under Article 226, to review the evidence and to arrive at an independent finding. (**State of Andhra Pradesh vs. S. Sree Rama Rao**[1]).

16. Whether or not the evidence, on which the domestic tribunal had relied upon, was satisfactory and sufficient to justify its conclusion would not fall to be considered in a writ petition. (**The State of Orissa and another v. Murlidhar Jena**[2]). A finding cannot be characterised as perverse or unsupported by any relevant material if it is a reasonable inference from proved facts. (**Union of India v. Sardar Bahadur**[3]). Where there is some evidence which the disciplinary or the appellate authority have accepted, and which evidence may reasonably support the conclusion that the officer was guilty of improper conduct, it is not the function of the High Court, in proceedings under Article 226, to review the evidence and to arrive at its own independent finding on the evidence. The High Court may interfere where the statutory authority has acted without or in excess of its jurisdiction or where it has committed an error of law apparent on the face of the record. (**Somnath Sahu v. The State of Orissa and Ors**[4]).

17. The High Court may also 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 consideration 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, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in proceedings for a writ under Article 226 of the Constitution. (**S. Sree Rama Rao**[1]; **The State of Madras v. G. Sundaram**[5]).

18. Although the Court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the Court interfere. The power of judicial review, available to a High Court under the Constitution, takes in its stride the domestic enquiry as well, and the Courts can interfere with the conclusions reached therein if there is no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse. (**Kuldeep Singh v. The Commissioner of Police and Ors.**[6]; **Nand Kishore v. State of Bihar**[7]; **Sree Rama Rao**[1]; **Central Bank of India v. Prakash Chand Jain**[8]; **Bharat Iron Works v. Bhagubhai Balubhai Patel and Ors.**[9]; **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Ors.**[10]; and **Yoginath D. Bagde v. State of Maharashtra and others**[11]).

19. The proceedings held against a public servant under the statutory rules, to determine whether he is guilty of the charge framed against him, are in the nature of quasi-judicial proceedings; and a writ of certiorari can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the authority in the said proceedings, which is the basis of his dismissal, is based on no evidence. (**Union of India v. H.C. Goel**[12]). If the findings are perverse and are not supported by the evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court to interfere in the matter. (**Yoginath D. Bagde**[11]). A conclusion, based on no evidence whatever, is a conclusion which is perverse and, therefore, suffers from an obvious and patent error on the face

of the record. (**H.C. Goel**[12]). The High Court under Article 226 has jurisdiction to enquire whether or not the conclusion of the authority, on which the impugned order of dismissal rests, is supported by any evidence at all. (**H.C. Goel**[12]).

20. The jurisdiction to issue a writ of certiorari is supervisory, and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal, as a result of appreciation of evidence, cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that, in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. (**Syed Yakoob v. K.S. Radhakrishnan and others**[13]; **G. Sundaram**[5]). Whether or not the evidence, on which the Tribunal relied, was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. (**Murlidhar Jena**[2]; and **G. Sundaram**[5]).

21. The High Court is not competent to consider the question whether the evidence before the Tribunal is insufficient or unreliable to establish the charge. It can only consider whether there was any evidence at all which, if believed by the Tribunal, would establish the charge. Adequacy or sufficiency of the evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Article 226 of the Constitution. (**State of U.P. and others v. Nand Kishore Shukla and another**[14]; and **H. C. Goel**[12]; **Hari Vishnu Kamath v. Syed Ahmed Ishaque**[15]; **Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam**[16]; **Kaushalya Devi v. Bachittar Singh & others**[17]; and **Syed Yakoob**[13]).

22. Bearing these principles in mind, let us examine whether or not the findings of the inquiry committee are based on no evidence or are perverse. To do so, it is necessary for us to refer, in brief, to the contents of

the inquiry report. A charge-sheet was issued to the petitioner on 04.01.2011 containing two articles of charge. Article-I was that, on 18.08.1998 at about 2330 hrs, the charged officer-an Assistant Commandant, during his posting as an Instructor F.A, Gwaldam, had outraged the modesty of the complainant while travelling, in truck No.URB-5255 of F.A. Gwaldam, after night navigation exercise of medics initial course. Article-II was that the charged officer, after having committed the aforesaid act of molestation of the complainant, had tried to put pressure on her on several occasions directly and indirectly to withdraw the complaint, and not pursue the matter further; and he had also sought to influence her through his father, who was the DIG, SSB, to withdraw her complaint against him.

23. In its inquiry report dated 06.05.2011, the Central Complaints Committee (for short "the Committee"), which had conducted the enquiry, observed that, except the part of outraging the modesty of the complainant, the other activities of the outdoor exercise, as referred to in Article-I, were admitted ie (i) participation of the complainant, the prosecution witnesses and the charged officer in the said night navigation exercise on 18.08.98; (ii) sharing the same back-seat in the cabin (behind the driver's seat) of truck No.URB-5255 of FA Gwaldam by the charged officer, Ms. M. Etta, the complainant, Mr. R.C. Kabadwal, SFA (M) and Mr. B.C. Mathpal, AFO (M), with Dr. Pradeep Joshi, SMO having occupied the front seat; (iii) their returning back to FA, Gwaldam from Dangoli area after completion of the night navigation exercise at around 2300 hrs; (iv) exchange of seats between Ms. M. Ette and the complainant; and (v) lodging of the complaint dated 19.08.1998 by the complainant.

24. With respect to Article-II, the Central Complaints Committee opined that, except the part relating to the alleged use of pressure on the complainant to withdraw the complaint, all other events, ie of the charged officer visiting the complainant's residence on 20.08.1998 at 0530 hrs, and at the temple gate of the Academy on 22.08.1998 at about 1830 hrs, and of his father meeting the complainant on 31.08.1998 were not disputed; and that the charged officer had met Dr. K.K. Pal in the latter's residence, at least for one time was also not in dispute except for the request to save him from the complaint lodged by the complainant.

25. The committee observed that there was no dispute that the complainant had, herself, written and lodged the complaint dated 19.08.1998; this had already been corroborated in the statements of the prosecution witnesses ie Dr. K.K. Pal, Smt. M. Ette and Mr. R.C. Kabadwal; in her complaint dated 19.08.98, the complainant had stated that the charged officer had touched his hands on her waist and the lower side; the other details, like the charged officer rotating his hands on her shoulder and putting his hands inside her *salwar*, then pressing her breast and kissing her, had been stated by the complainant in her statement dated 30.03.2011; along with others, the complainant had attended the night navigation/map reading exercise on 18.08.98 from 2230 hrs to 2330 hrs; both the lady trainees, who participated in the map reading exercise on 18.08.98, were called back when they started marching; Mr. R.C. Kabadwal had corroborated that the two lady trainees were withdrawn because of heavy rain, and as the nalas were overflowing; both Dr. P. Joshi and Mr. R.C. Kabadwal had also deposed that the complainant was not reluctant to participate in the marching exercise; the charged officer and the complainant, along with others, had travelled together in the truck from the debriefing point ie Dangoli Saddle to FA Gwaldam between 2300 hrs to 2400 hrs on 18.08.98; six people, including the two lady trainees and the charged officer, were sitting on the bench (back side seat of the driver) in the cabin; they were sitting in the following order, during the return journey, from the door to the window side (initially) ie Mr. Mahesh-PW, Mr. Mathpal- PW, Mr. Kabadwal- PW, the charged officer, Ms. M. Ette-PW, and the complainant; during the journey, the two lady trainees replaced their seats with each other; Mr. G.D. Joshi (driver of the truck) had stated that he had informed Dr. Pradeep Joshi of the breakage of the main *patta* of the bus and, accordingly, they were shifted to the truck; both the two lady trainees had taken their seats in the bus during the return journey, but were called to board the truck as the bus had broken down; the return journey started at around 2300 hrs; it was a dark night, and the light inside the truck had also been switched off; it was dark inside, and the visibility in the truck was poor; the terrain was hilly with broken roads; the truck underwent jerks and bumps as the road was uphill with numerous bends; and, besides the huge noise of the engine of the truck, there was heavy rain outside with dark and foggy weather.

26. The Committee further observed that, in her deposition, the complainant had stated that she sat besides the driver, after her Ms. Ette was sitting, and after Ms. Ette the charged officer was sitting; the charged officer had asked her to change places with Ms. Ette, but she did not get up; after that he has started putting his hand on her shoulder across her back, and had reached inside her *salwar*; it was so irritating that she got up from her place; the charged officer pulled her hands and made her sit beside him; and after that he did all those things which she had written in her complaint. In cross-examination, the complainant confirmed that she stood up from her seat and the charged officer pulled her hand and made her sit next to him. The committee recorded the corroborative statement of Ms. M. Ette who stated that the complainant had put her head on Ms. M. Ette's shoulder; she was shaking; after that Ms. Ette moved forward as she found some movement behind her; the complainant stood up; Ms. Ette moved to the window and looked out, and the complainant sat next to the charged officer. In his statement Dr. Pradeep Joshi (PW1) deposed that he saw the complainant in a disturbed mood at Kandhar stop and she was weeping; on not getting any reply regarding the reasons for her being disturbed, he told her 'I will talk to you tomorrow'; and he thought that the reason might be that she had not participated in the said night navigation exercise.

27. The Committee opined that, though both the lady trainees were willing to participate in the night march exercise, they were called back for their safety due to inclement weather ie heavy rain, overflowing of nalas etc; consequently, the question of their losing marks did not arise; the deposition of both Ms. Ette and Dr. Joshi was that the complainant was weeping; on reaching Gwaldam, the complainant had informed him of what had happened with her, and Dr. Joshi had told her 'don't worry', we will talk next morning'; the complainant had deposed that, 'as a trainee and a new recruit of SSB, she was shocked at what the charged officer, who was their instructor (meant for their safety and security), was doing, and she had reacted the way she did; when the incident was taking place, she first tried to protect herself resisting the charged officer; she had even requested him not to do this, but he did not stop; the stand of the charged officer, that the two lady trainees were taking revenge by maligning his reputation as he was a very tough and strict instructor, was unfounded; none of the prosecution witnesses had stated that the charged officer had scolded the trainees on any

occasion; the view of the charged officer that he was targeted due to other extraneous factors was not corroborated by any of the witnesses; since the lady trainees were withdrawn from the night march due to inclement weather, they could not have any fear of their losing marks; the complainant had also stated that she did not know the charged officer before coming to Gwaldam for training, and had no contact with him beyond the class room; from the statement of Ms. Ette, it was clear that the complainant had put her head on Ms. Ette's shoulder and had started crying, and was shaking; Ms. Ette heard the noise 'please….please'; and Ms. Ette had also stated that she was worried that what had happened to the complainant may happen to her and, in view of her safety, she had turned her face to the other side.

28. The committee opined that this was a natural reaction from any person who apprehends danger or feels helplessness; the complainant had stated that, 5-10 minutes later, Dr. Joshi had stopped the truck at Kandhar, and had asked everyone to get down from the truck; when everyone reboarded, Dr. Joshi sat next to the complainant; on seeing her disturbed and crying, Dr. Joshi told her that he would talk to her in the morning; there was no evidence that the complainant had developed any personal liking or soft corner for the charged officer; she had denied this fact, and had stated that she came to know that the charged officer was her Instructor when he came to take their classes at FA Gwaldam, and she did not even know his name; the intention of the charged officer was ostensibly manifested by his behaviour; despite reprimands from the complainant, he continued to act against moral sanctions; the charged officer had demonstrated unwelcome sexual advances, both directly and by implication; the statement of the complainant showed that the charged officer had put his hand on her shoulder, had pressed her breast and had kissed her; it was evident that the charged officer had harassed and pestered her; he had subjected the complainant to a conduct which was against moral sanctions, which did not stand the test of decency and modesty, and which projected unwelcome sexual advances; such action on the part of the charged officer was squarely covered by the term 'sexual harassment'; the material on record clearly established an unwelcome sexually determined behaviour on the part of the charged officer against the complainant; and this was also an act to outrage her modesty.

29. The committee held that the facts of the case showed that the complainant was a subordinate employee, while the charged officer was her Instructor taking classes; he was a superior officer at the training centre; by rank also, the relationship was that of a junior and a senior in the organization; the charged officer sat close to the complainant with ulterior motives and, taking advantage of his position, had outraged her modesty, which did not stand the test of decency; this activity continued despite her protest/resistance asking him not to do this; he continued his unwelcome sexual activities telling her why don't you like this, as recorded in the statement of the complainant; the affidavit on record clearly showed that the charged officer had caused sexual harassment by taking advantage of his superior position; the complainant had reasonable grounds to apprehend that her decision would disadvantage her in connection with her employment or work or promotion or qualifying the professional course/training; it created a hostile work environment; and adverse consequences might be visited upon her had the victim not consented to the conduct in question, or if she raised any objection thereto. The Committee concluded that the act of the charged officer was unbecoming of good conduct and behaviour expected from a superior officer, and undoubtedly amounted to sexual harassment of the complainant.

30. The Committee, thereafter, opined that the evidence on record disclosed that the complainant was twenty years old when she joined the SSB on 02.07.1998; after one month she was sent to FA Gwaldam to undergo Medics Initial Course-94th Batch from 10th August, 1998; the incident of sexual molestation occurred in the night of 18.08.1998; in her statement dated 30.03.2011, the complainant stated that there were 58 trainees of whom two were women; the charged officer did all those things which she had written in her complaint; after he kissed her and fondled her breast, she was continuously telling him not to do so; she told him "do not do this"; she was requesting him and pushing him with her hands; he held her hands and continued to tell "why don't you like this?"; she thereafter put her head on Ms. Ette's shoulder, and started crying; she complained to Dr. Pradeep Joshi after she got down from the truck, and told him what happened to her; after coming to her room, she wrote a complaint and took it to Dr. K.K. Pal and Dr. Pradeep Joshi; and, as Dr. K.K. Pal was not

present, Dr. Pradeep Joshi informed her that he would give the complaint to Dr. K.K. Pal who was the Senior Instructor.

31. The Committee refused to buy the petitioner's claim, that the complainant was disturbed because of her not participation in the night navigation exercise, holding that the evidence on record disclosed that both the girl trainees were called back due to inclement weather i.e. heavy rain, overflowing of Nallas etc, and for their safety; as such the question of their losing any marks did not arise; the statement of Smt. Ette and Dr. Joshi showed that the complainant was weeping; and this could only be because of misbehavior, and her molestation by the charged officer; the complainant had reacted immediately, and had resisted the advances of the charged officer requesting him not to do so, but he did not stop; the charged officer's contention that his reputation was maligned as he was a tough Instructor did not merit acceptance, as none of the witnesses had stated that the charged officer had scolded the trainees on any previous occasion; the complainant did not know the charged officer before coming to Gwaldam for training; and there was no contact between them beyond the class-room.

32. The Committee expressed its disbelief of the charged officer's statement that, because of the bumpy roads and jerks, he may have touched the complainant, but it was circumstantial and not intentional. The Committee opined that, while his body may have touched the complainant because of the jerks of the vehicle, his hands reaching out to her, and gradually coming down to her breast, was not on this account; the charged officer's hands had reached out to her breasts for pressing, and he had kissed her; despite her resistance, he continued to rotate his hands over her body and breast; he had pulled her hands to make her sit close to him; all these were not due to the congested sitting and the bumpy roads; he was taking advantage of the circumstances of the darkness in the cabin; it was a clear case of unwelcome sexual advances on the part of the charged officer, and amounted to sexual harassment; and the charged officer, being a superior officer, did that taking advantage of his position vis-à-vis the complainant.

33. With respect to Charge No. 2, of putting pressure directly or indirectly on the complainant to withdraw the complaint dated 19.08.1998, the Committee noted the deposition of the complainant, Ms. Ette and Dr.

K.K. Pal that the charged officer and his father had put pressure directly and indirectly on the complainant to withdraw the complaint; the charged officer had approached the complainant thrice at 05:30 AM on 20.08.1998 at the Female Quarters, at 1600 hrs on 22.08.1998 at the Medics Course Office, and again at 1830 hrs on 22.08.1998 at the Temple /Officers Mess Gate; his father had met the complainant on 30.08.1998 when Dr. Pradeep Joshi had called for the complainant; the charged officer's father had also met Dr. K.K. Pal at his residence at 2330 hrs on 19.08.1998, at 0600 hrs on 21.08.1998, and again at 0630 hrs on 25.08.1998; the complainant had clarified that the purpose of the visit was for her to withdraw her complaint; the charged officer's father was a Deputy Inspector General in the SSB, and his colleague officers in the training centre were Dr. K.K. Pal and Dr. Pradeep Joshi; the immediate beneficiary, of the complaint being withdrawn, was the charged officer as the allegations made against him would have been negated and his social position would have been restored; it was clear that both the charged officer and his father had met the complainant requesting her to withdraw the complaint; Dr. K.K. Pal had also stated that the charged-officer had approached him to save him from the allegations of sexual harassment; Dr. K.K. Pal was the Senior Instructor of the Medics Wing, FA, Gwaldam and In-charge of the 94th Medics (Initial) Course; Dr. Pal had further stated that the charged officer's father had also approached him exerting pressure on him to request the complainant to withdraw the case; Dr. K.K. Pal had advised the charged officer's father not to interfere in the case, and not to talk to anybody including the complainant; and, later on, he was informed that the charged officer's father had approached the complainant exerting pressure on her to withdraw the complaint. The Committee concluded holding that the overwhelming evidence on record established both charges 1 and 2.

34. It is true that the charges leveled in the fresh charge-sheet were similar to those referred to in the earlier charge-sheet. This was because both of them related to the very same incidents and had, necessarily, to be more or less identical. That, by itself, would not vitiate the subsequent inquiry held on a fresh charge-sheet being issued on 04.01.2011, since the need to issue a fresh charge-sheet was necessitated by the order of the Central Administrative Tribunal, in O.A. No. 1632 of 2003 dated 18.03.2005, holding that, since the earlier charge-sheet was issued under

Rule 16 of the 1965 Rules which related to minor penalty proceedings, a major penalty could not be imposed in terms thereof; and, in case a major penalty is to be imposed, then a fresh charge-sheet is required to be issued under Rule 14 of the 1965 Rules. It is in such circumstances that a fresh charge-sheet came to be issued, under Rule 14 of the 1965 Rules, to comply with the directions of the Central Administrative Tribunal.

35. As noted hereinabove, the High Court, in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, would neither sit in appeal, nor substitute its views for that of the domestic tribunal. It would also not undertake an examination of the adequacy or sufficiency of the evidence on record. It would interfere only if the findings of fact recorded by the Tribunal is based on no evidence or if the findings are perverse. "**No evidence**" does not mean "**total dearth of evidence**". A finding recorded in a departmental inquiry can be said to be perverse, or based on no evidence, if the findings, on which the Inquiry Committee had found the delinquent officer guilty of the charges, are based on evidence which no reasonable man would have considered sufficient or reasonable to establish a finding of guilt. As shall be elaborated later in this order, even circumstantial evidence or hearsay evidence is permissible in departmental inquiries.

36. The Inquiry Committee found no reason to disbelieve the statement of the complainant that the petitioner had reached out to her, had put his hand inside her salwar, had pressed her breasts and had kissed her; and, despite her resistance, he continued to rotate his hands over her body and breasts and had pulled her hands to make her sit close to him. This statement of the complainant, coupled with the evidence of Smt. Ette that the complainant was weeping, she used the words "please please" and, after putting her head on the shoulder of Smt. Ette, had started crying, and a complaint being lodged by the complainant, regarding this incident, by the very next morning, constitute sufficient evidence to establish the petitioner's guilt. Even with respect to Charge No.-II, the Inquiry Committee noted that the delinquent officer had approached the complainant thrice at 05:30 hrs on 20.08.1998, at 16:00 hrs on 22.08.1998, and again at 18:30 hrs on 22.08.1998, at three different places; and his father, who was a Deputy Inspector General in the Sashastra Seema Bal (ie the very same organization where both the petitioner and the complainant

were employed), had also met the complainant at the residence of Dr. K.K. Pal at 23:30 hrs on 19.08.1998, and again at 16:00 hrs on 28.08.1998. These undisputed facts, coupled with the evidence of Dr. K.K. Pal, that the charged officer's father had also approached him and had exerted pressure on him to request the complainant to withdraw the case, was sufficient, in a departmental inquiry, to hold both the charges to have been established.

37. Even in cases where there are two possible views which can be taken on the evidence on record, the High Court would not interfere, in certiorari proceedings under Article 226 of the Constitution, as long as the view taken by the Inquiry Committee is a possible view, and though the other view canvassed before it, on behalf of the delinquent officer, appeals to it more. It is only if the findings recorded, and the conclusions arrived at, by the Inquiry Committee are of such a nature, which no reasonable man could have arrived at, would the High Court then intervene. We are satisfied that the present case is not one such. The petitioner's contention that the findings recorded by the Inquiry Committee are perverse does not, therefore, merit acceptance.

II. IS THE SOLE TESTIMONY OF THE COMPLAINANT SUFFICIENT TO ESTABLISH THE CHARGES?

38. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that the petitioner was held guilty on the self-serving sole testimony of the complainant; no other witness had corroborated the complainant's testimony; and the complainant's self-serving evidence cannot form the basis for holding the petitioner guilty of the charges.

39. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India, would submit that the degree of proof, required to establish guilt in a departmental inquiry, is preponderance of probabilities, and not proof beyond reasonable doubt; and the sole testimony of the complainant, supported by the circumstantial evidence on record, sufficed to establish the charges levelled against the petitioner.

40. A woman, who is the victim of a sexual assault, is not an accomplice to the crime but is a victim of another man's lust. (**Vijay v. State of M.P**[18]; **State of Maharashtra v. Chandraprakash Kewalchand Jain**[19]). The Indian Evidence Act does not state that her evidence cannot be accepted unless it is corroborated in material particulars. She is,

undoubtedly, a competent witness under Section 118 thereof. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Criminal Court, in a criminal proceeding, must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind, and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act, similar to Illustration (*b*) to Section 114, which requires it to look for corroboration. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult, and of full understanding, the Court is entitled to base a conviction, in a criminal proceeding, on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances, appearing on the record of the case, disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should, ordinarily, have no hesitation in accepting her evidence. (**Chandraprakash Kewalchand Jain**[19]; **Vijay**[18]).

41. The testimony of the prosecutrix must be appreciated in the background of the entire case. The Criminal Court should examine the broader probabilities of a case and not be swayed by minor contradictions, or insignificant discrepancies, in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. (**State of Punjab v. Gurmit Singh & others**[20]; **Vijay**[18]). There is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction, in a criminal case, can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. (**Gurmit Singh**[20]; **Vijay**[18]; **Wahid Khan v. State of M.P**[21]; **Rameshwar v. State of Rajasthan**[22]). The Criminal Court may convict the accused on the sole testimony of the prosecutrix. (**Vijay**[18]). In cases involving sexual harassment, molestation, etc. the Criminal Court is duty-bound to deal with

such cases with utmost sensitivity. Evidence of the victim of sexual assault is enough for conviction, and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Criminal Court may, however, look for some assurance of her statement to satisfy its judicial conscience. (**Gurmit Singh**[20]; **Vijay**[18]**)**.

42. **State Of Maharashtra and another v. Madhukar Narayan Mardikar**[23] was an appeal against the judgment of the Bombay High Court which had observed that, since the lady was an unchaste woman, it was extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the uncorroborated version of such a woman who made no secret of her illicit intimacy with another person. In this context, the Supreme Court held that the lady was honest enough to admit the dark side of her life; even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes; it is also not open to any and every person to violate her person as and when he wishes; she is entitled to protect her person if there is an attempt to violate it against her wish; and she is equally entitled to the protection of the law. In short, save with her consent, no man is entitled to violate the person of any woman, whatever the circumstances may be.

43. As the sole testimony of a prosecutrix, in a criminal case involving sexual harassment and molestation, would suffice if it is otherwise reliable, there is no justifiable reason not to accept the sole testimony of a victim, of sexual harassment and molestation, in a departmental inquiry as the enquiry held by a domestic Tribunal is not, unlike a Criminal Court, governed by the strict and technical rules of the Evidence Act. (**Murlidhar Jena**[2]). A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probabilities, and not proof beyond reasonable doubt. If the inference was one which a reasonable person would draw, from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. (**Sardar Bahadur**[3]). If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. The only question is whether the proved facts of the case would warrant such an inference. (**Sardar Bahadur**[3]; and **S. Sree Rama Rao**[1]). If the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the

Constitutional provisions, the order passed by such authority cannot be interfered with merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial. (**Nand Kishore Prasad v. The State of Bihar and others**[24]).

44. Strict and sophisticated rules of evidence, under the Indian Evidence Act, are not applicable in a domestic enquiry. (**State of Haryana vs. Rattan Singh**[25]; **J.D. Jain v. Management of State Bank of India & others**[26]). Sufficiency of evidence, in proof of the finding by a domestic tribunal, is beyond scrutiny. (**Rattan Singh**[25]). In a departmental enquiry, guilt need not be established beyond reasonable doubt. Proof of misconduct is sufficient. (**J.D. Jain**[26]). All material, which are logically probative for a prudent mind, are permissible. There is no allergy even to hearsay evidence provided it has reasonable nexus and credibility. (**Rattan Singh**[25]).

45. In the present case, the testimony of the complainant gives graphic and shocking details of acts of sexual molestation perpetrated by the petitioner on her. This evidence is also corroborated in part by the testimony of others. The Enquiry Committee has held that, before this incident, the petitioner and the complainant were not even personally acquainted with each other, and the petitioner's claim, of the complaint having been instituted for extraneous considerations, was not tenable. In such circumstances, we see no reason why the Enquiry Committee should be faulted for largely relying on the testimony of the complainant. The contentions urged on behalf of the petitioner, under this head, necessitate rejection.

III. DID THE DISCIPLINARY AUTHORITY FAIL TO COMPLY WITH THE STATUTORY PROVISIONS, AND DID HE FAIL TO ASSIGN REASONS, WHILE DISAGREEING WITH THE FINDINGS RECORDED IN THE EARLIER INQUIRY REPORT?

46. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that, while disagreeing with the findings of the inquiry committee in its report dated 12-06-2008, the disciplinary authority had failed to comply with the mandatory requirement of Rule 15(1-B) & 15(2) of the 1965 Rules; and he did not assign reasons for such disagreement, and did not record his own findings on the charges. Learned Counsel would rely on **Dhirendra**

Kumar Pannalal Dixit Vs. Visvesvaraya National Institute of Technology, Nagpur[27] in this regard.

47. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India, would submit that, along with the show cause notice, a copy of the inquiry report and the disagreement note were furnished to the petitioner; the contention that the disagreement note was prepared with a pre-determined mind, and without assigning reasons, is not tenable; and a perusal of the disagreement note shows that reasons were assigned therein.

48. It is true that, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then, before it records its own findings on such charge, it must record its tentative reasons for such disagreement, and give the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry committee, containing its findings, is required to be conveyed, and the delinquent officer is required to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. Principles of natural justice require the authority which has to take a final decision, and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. (**Punjab National Bank vs. Kunj Behari Misra**[28]; **S.P. Malhotra v. Punjab National Bank & others**[29]; **Yoginath D. Bagde**[11]; **SBI v. K.P. Narayanan Kutty**[30]; **J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & others**[31]; **P.D. Agrawal v. SBI & others**[32]; and **Ranjit Singh v. Union of India**[33]). Not furnishing a copy of the recorded reasons, for disagreement from the enquiry report, can be said to cause prejudice to the delinquent. (**S.P. Malhotra**[29]).

49. In **Dhirendra Kumar Pannalal Dixit**[27], on which reliance is placed on behalf of the petitioner, the Bombay High Court held thus:-

> "…….Needless to state that when the Inquiry Officer (IO) exonerates the charged officer/employee (CO) of all charges, normally such officer is not guilty. The disciplinary authority (DA) therefore exonerates him & drops the charges. However, if the findings of IO are not acceptable to it either in part or fully, in that event it gets right to disagree with such of the findings which it finds unsustainable. It has to follow the procedure prescribed in service rules. The DA after getting the inquiry report, has to evaluate it & if it accepts the report as it is, the officer cannot be punished. **But when it**

finds that some findings of the IO are bad, it has to record its tentative reasons for its disagreement & then serve a notice upon the CO calling upon him to explain as to why the findings in report in his favour should not be accordingly modified or reversed. In present matters the IO has totally exonerated the CO, it was not necessary for the DA to first have explanation of CO before proceeding to evaluate the report. But in a hypothetical case, if the report finds CO guilty of few charges & not guilty of the remaining, the DA will have to follow the procedure stipulated by the Hon. Apex Court in case of **Union of India v. Mohd. Ramzan Khan: (1991) 1 SCC 588 & ECIL v. B. Karunakar: (1993) 4 SCC 727**. But in this case that contingency did not arise as the CO was acquitted of all the misconducts by the IO.

But then the opportunity to be extended or its nature does not change & the DA cannot arrive at a final verdict on fact of guilt or otherwise without first extending to the CO an opportunity to urge why & how a particular finding in his favour should not be varied. The Rule 15(4) of CCA & CCS Rules employs the word "tentative reasons" with some purpose. The DA cannot conclude the findings on fact without extending such an opportunity to the CO or behind his back. If it does so, the principles of natural justice expounded in cases of Mohd. Ramzan Khan & B. Karunakar (supra) stand violated. It is therefore apparent that the prima facie view of DA is expressed in these tentative reasons for its inability to agree with the findings of the IO. These tentative reasons emanate from the report of the IO or the material which has been proved on record of departmental inquiry. If the tentative reasons do not spring from the inquiry records, the so called reasons do not constitute legally sustainable grounds for issuing a show cause notice to the CO. If the show cause notice issued by the DA is found vitiated on any ground, then also the finding of IO cannot be discarded. If the explanation furnished by the CO is found satisfactory, the tentative reasons of the DA become unsustainable & the report of IO exonerating the CO must be given effect to. Hence, in cases where the IO exonerates the CO fully, the employer or the DA have to establish availability of legally sustainable material to form a tentative reasons to disagree with the conclusions of IO & adherence to the principles of natural justice thereafter. It is these tentative reasons which thereafter govern the further course of action & fate of disciplinary proceedings…..” (emphasis supplied)

50. Rule 15 of the 1965 Rules relates to action on the inquiry report. Rules 15(1)(b) and 15(2), which are relied upon on behalf of the petitioner, were substituted by Rules 15(2) and (2-A) vide Notification dated 21.08.2000, and were published in the Gazette of India. Rule 15(2), as amended in the year 2000, requires the disciplinary authority to forward or cause to be forwarded a copy of the report of the inquiry, if any, held by it or, where 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, if any, with the findings of the Inquiring Authority on any article of charge, to the delinquent Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether or not the report is favourable to the Government servant. This requirement was, in fact, complied with by the Disciplinary Authority who, pursuant to the second inquiry, had, by his proceedings dated 04.11.2009, furnished his disagreement note to the charged officer.

51. The said disagreement note, after taking note of the conclusions of the inquiry committee, records that, as per the statement of Ms. Ette, she had felt movement of the fingers of the petitioner over the shoulders of the complainant; moving the fingers on the shoulders of a lady employee amounted to physical contact and advances, which included unwelcome sexually determined behavior whether directly or otherwise; it had also been established that both the charged officer, and his father, had tried to influence the complainant, as approaching her to withdraw the complaint could not also be taken lightly; it had been established beyond doubt that the charged officer had also requested the complainant to withdraw the complaint, and the same had been proved with respect to his father who was a senior officer of the organisation; the facts of the case, and the circumstantial evidence, did prove that some incident had occurred; and, therefore, the findings of the Complaint Committee on both the charges were not acceptable to the Disciplinary Authority.

52. Rule 15(2-A) of the 1965 Rules requires the Disciplinary Authority to consider the representation, if any, submitted by the Government servant and record his findings before proceeding further in the matter as specified in sub-rules (3) and(4). The petitioner submitted his reply to the disagreement note asserting that the statement of the complainant was extremely doubtful. He denied having committed the acts as alleged or to have directly or indirectly tried to pressurize or influence the complainant to withdraw her complaint. It is, thereafter, that the matter was referred to the Union Public Service Commission vide proceedings dated 06.07.2010. In reply thereto the UPSC, in its proceedings dated 12.08.2010, pointed out, in our opinion rightly so, that the entire procedure, commencing from the appointment of the second inquiry committee, was vitiated as it fell foul of the order of the Tribunal in O.A. No. 1632 of 2003

dated 18.03.2005; it is pursuant thereto that the entire inquiry proceedings were dropped, the first charge sheet was cancelled, and a new charge sheet was issued on 04.01.2011; an inquiry was conducted with respect to the fresh charge-sheet; and the inquiry committee held the petitioner guilty of both the charges.

53. The second inquiry, also conducted on the basis of the first charge sheet dated 08.10.1999, was set at naught on the first charge sheet being cancelled by proceedings dated 04.11.2011. The contention that Rules 15(2) and 15(2-A) were violated is without any basis, since the eventual punishment of dismissal from service, imposed on the petitioner by order dated 10.05.2012, was on the basis of the fresh charge sheet dated 04.1.2011 issued after the second inquiry proceedings, wherein the inquiry committee had held the petitioner not guilty of both the charges were cancelled.

54. The second inquiry, conducted by the Inquiry Committee constituted under proceedings dated 12.06.2008, was not taken to its logical conclusion as no order of punishment was passed by the disciplinary authority, and all further proceedings were, instead, dropped on the advice of the UPSC. As a fresh charge-sheet was issued on 04.11.2011, after cancelling the earlier charge-sheet dated 08.10.1999, the second disciplinary proceedings, initiated pursuant to the first charge sheet, has no relevance, and deficiencies, if any, in such proceedings matter little, as the entire disciplinary proceedings, initiated in terms of the charge-sheet dated 08.10.1999, came to an end on its cancellation on 04.11.2011.

IV. IS THE DISCIPLINARY AUTHORITY INVARIABLY REQUIRED TO ASSIGN REASONS FOR PASSING AN ORDER OF PUNISHMENT ?

55. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that the Disciplinary Authority has not assigned valid reasons for holding the petitioner guilty of the charges; and, in the absence of valid reasons being assigned, the order of the Disciplinary Authority necessitates being set aside.

56. In his order dated 10.05.2012, the President of India (the competent authority) referred to the entire history of the case, and noted that the Central Complaint Committee had, in its proceedings dated 09.05.2011, held that both the charges stood proved; on a careful consideration of the

report of the Central Complaint Committee, and the other records of the case, the Disciplinary Authority had agreed with the findings of the Committee; a copy of the report of the Central Complaint Committee dated 08.06.2011 was furnished to the charged officer, by which he was given an opportunity to make his submissions; the representation of the charged officer dated 27.06.2011 was considered by the Disciplinary Authority, and his contention was found devoid of merits, as the circumstantial evidence of the prosecution witnesses, and the statement of the victim, proved both the charges leveled against the charged officer; on the Disciplinary Authority referring the matter for its advice, the UPSC, after taking into account all aspects relevant to the case, had noted that the charges established against the charged officer constituted grave misconduct on his part; and it had advised that ends of justice would be met if the penalty of dismissal from service was imposed on the charged officer. On a careful consideration of the record of the inquiry, and the advice of the UPSC, the President concluded that ends of justice would be met if the penalty of "Dismissal from Service" was imposed on the petitioner. The order of the President was communicated to the petitioner by the Deputy Inspector General of Police (Personnel).

57. It is not the requirement of Article 311(2) that, in every case, the punishing authority should, in its order, assign reasons for coming to its conclusion. (**Tara Chand Khatri v. Municipal Corporation of Delhi and others**[34]; and **State of Assam & others v. Bimal Kumar Pandit**[35]). When a Disciplinary Authority agrees with the findings and conclusions of the Enquiring Authority, it is not necessary in law to give detailed reasons as to why he intends to agree with the findings of the enquiring authority. [**G.M. (Personnel Wing), Canara Bank & others vs. M. Raja Rao**[36]]. In such a case, the question of non-compliance with principles of natural justice does not arise. (**Ram Kumar v. State of Haryana**[37]). It cannot also be laid down, as a general rule, that an order is a non-speaking order simply because it is brief and not elaborate. Every case has to be judged in the light of its own facts and circumstances. (**Tara Chand Khatri**[34]; **The Union of India and others v. K. Rajapa Menon**[38]; **State Bank of Bikaner & Jaipur and others v. Prabhu Dayal Grover**[39]; **State of Madras v. A.R. Srinivasan**[40]).

58. Disciplinary proceedings, against a delinquent officer, begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the Disciplinary authority, and which is made available to the delinquent officer also, it is unreasonable to suggest that the Disciplinary authority must record its reasons why it accepts the findings of the Tribunal. Where the disciplinary authority agrees with the findings of the inquiry tribunal which are against the delinquent officer, it cannot be said, as a matter of law, that either he or the appointing authority cannot impose the penalty against the delinquent officer in accordance with the findings of the inquiry tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are no doubt quasi-judicial, but having regard to the manner in which these enquiries are conducted, no obligation can be imposed on the disciplinary authority/ appointing authority to record reasons in every case. (**Tara Chand Khatri**[34]; **A.R. Srinivasan**[40]). Apart from any requirement imposed by the statute or a statutory rule, either expressly or by necessary implication, there is no legal obligation that the disciplinary authority should give reasons for its decision. (**Som Datt Datta v. Union of India & others**[41]; **Tara Chand Khatri**[34]).

59. While it may be necessary for a disciplinary or appointing authority, exercising quasi-judicial functions, to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer, in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons. (**Tara Chand Khatri**[34]).

60. A bare reading of the impugned order would show that the entire history of the case as also to the Inquiry Report of the Central Compliance Committee was referred to; and the Appointing/Disciplinary Authority had also recorded their concurrence with the findings of the Inquiry Committee. Since the order of the Appointing/Disciplinary Authority is one of concurrence, the reasons assigned, and the findings recorded, by the Inquiry Committee, to hold that the charges were established, would suffice as the reasons for the Appointing/Disciplinary

Authority to hold the petitioner guilty of the charges leveled against him. It is wholly unnecessary for the Appointing/Disciplinary Authority to again repeat the very same findings in his order. The contention, urged on behalf of the petitioner, therefore necessitates rejection.

V. IS THE APPELLATE AUTHORITY'S ORDER VITIATED FOR FAILURE TO ASSIGN REASONS?

61. Mr. Sanjay Raturi, learned counsel for the petitioner, would then submit that the appellate authority had failed to take into consideration Rule 27(A) of the 1965 Rules; the petitioner's appeal was rejected by a non-speaking order without assigning reasons; and such an order could not be sustained. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel appearing for the Union of India, would submit that the appellate authority, while dismissing the appeal, need not assign elaborate reasons in case he affirms the order of the disciplinary authority.

62. The charged officer was informed, vide memorandum dated 30.01.2013, that his appeal against the penalty of dismissal, addressed to the President of India, was taken up by the Ministry of Home Affairs, and the Ministry of Home Affairs had considered and rejected the appeal, made by the petitioner, as devoid of merit. Applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula or even an abstract proposition of law. It depends on the facts of the case, the nature of the inquiry, and the effect of the order/decision on the rights of the person and attendant circumstances. (**Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and others**[42]).

63. The appellate authority, if it affirms an order, need not give separate reasons. However, if the appellate authority disagrees, the reasons must be contained in the order. (**K.S. Gandhi**[42]; and **S.N. Mukherjee v. Union of India**[43]). It is not required that the reasons to be assigned by the appellate authority, while passing orders in a statutory appeal preferred against the order of punishment, should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on the particular facts and circumstances. (**K.S. Gandhi**[42]; and **S.N. Mukherjee**[43]).

64. As elaborate reasons have been assigned by the Enquiry Committee in recording findings of guilt against the petitioner in its enquiry report, and as the findings and conclusions of the Enquiry Committee had

also been accepted by the Disciplinary Authority, it was unnecessary for the appellate authority to assign separate reasons in affirming the order of the appointing/disciplinary authority, and in rejecting the appeal as devoid of merits.

VI. REPEATED ENQUIRIES: IS IT ILLEGAL, AND WAS THE THIRD ENQUIRY COMMITTEE PREJUDICED AGAINST THE PETITIONER?

65. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that three different inquiries were held against the petitioner only to punish him for acts of misconduct which he had not committed; repeated inquiries are impermissible, more so if they are held only to find the charged employee guilty of the charges; there was no material before the 2011 inquiry committee to hold that the charges levelled against the petitioner were established; the respondent, with a malafide intent and a biased attitude, had caused an inquiry once again; the inquiry report was submitted without considering the written defence submitted by the petitioner on 30.03.2011, and his defence brief dated 07.04.2011; the members of the 2011 inquiry committee were not impartial and independent; they had acted on the instructions of the disciplinary authority, and with a pre-determined mind, to hold the petitioner guilty of the charges; and they had failed to conduct the inquiry in accordance with the Rules.

66. It is not in dispute that the allegations, on which the charges are based, were made known to the delinquent, and he was called upon to file his written statement. The oral evidence of all the witnesses, tendered during the enquiry, was recorded in writing, and in the presence of the members of the Inquiry Committee. The members of the Inquiry Committee did not record their findings separately, and their findings, on each of the charges, were recorded together with the reasons therefor. (**General Manager, Eastern Railway and another v. Jwala Prosad Singh**[44]). The duty of the Inquiry Committee ends with the making of the report. The Disciplinary Authority has then to consider the record of the inquiry and arrive at his own conclusion on each charge. Whatever may be the impression created by a particular witness, on the mind of a member of the committee, is not recorded in writing, and the Disciplinary authority merely goes by the written record. (**Jwala Prosad Singh**[44]). Neither the findings

nor the recommendations of the Inquiry Committee are binding on the disciplinary authority. (**H.C. Goel**[12]; and **Jwala Prosad Singh**[44]).

67. A change in the composition of the Inquiry Committee, even after the proceedings are begun and some evidence has been recorded, would not make any difference to the case of the delinquent employee. The record would speak for itself and it is the record, consisting of the documents and the oral evidence, which would form the basis of the report of the Inquiry Committee. The Inquiry Committee is not the punishing authority, and its impression would not affect the decision of the Disciplinary Authority. There is no reason for holding that any known principle of natural justice is violated when the member/members of the Inquiry Committee are substituted by another or others. (**Union of India & others v. M.B. Patnaik and others**[45]; and **H.C. Goel**[12]). It is not necessary, therefore, that an enquiry, which had been held in part by more than one enquiry officer, should be continued by the same enquiry officers until the end. (**M.B. Patnaik**[45]).

68. In this context, it is relevant to note that the first inquiry was held on the basis of the charge sheet dated 08.10.1999 issued to the petitioner under Rule 16 of the 1965 Rules which relates to minor penalty proceedings. Both the inquiry committee in its report dated 21.09.2001, and the disciplinary authority in his order dated 12.09.2003, had held the petitioner guilty of the charges levelled against him. Consequent thereto, the disciplinary authority had imposed on him the punishment of dismissal from service which is a major penalty. The petitioner had approached the Central Administrative Tribunal questioning the validity of the said order of punishment. While setting aside the said order on the ground that, having initiated minor penalty proceedings and having issued a charge sheet under Rule 16 of the 1965 Rules, no major penalty could have been imposed on the petitioner, the Tribunal had, in its order in O.A. No.1632 of 203 dated 18.03.2005, granted liberty to the respondents to initiate disciplinary proceedings afresh under Rule 14 of the 1965 Rules.

69. Thereafter proceedings dated 05.12.2005 was issued by the Inspector General (Personnel) informing, among others, the petitioner that, consequent upon the order of punishment dated 12.09.2003 being quashed by the Central Administrative Tribunal, Allahabad Bench, with liberty

reserved to the respondents to initiate fresh disciplinary proceedings in accordance with the rules and the law on the subject, the President of India had decided that the said order of dismissal of service should be set aside; and on a consideration of the circumstances of the case, and keeping in view the observations of the Tribunal, it was decided that a fresh inquiry should be held under the provisions of the 1965 Rules against the petitioner, on the allegations which had led to his dismissal from service earlier.

70. By the said order dated 05.12.2005, the petitioner was also informed that the President had set aside the order of dismissal from service, along with the Notification dated 12.09.2003 by which the petitioner's name was struck off the strength of the force; he was reinstated into service; a fresh inquiry was directed to be held under the provisions of the 1965 Rules against him on the allegations, which led to his dismissal from service; and it was directed that the petitioner should, under Rule 10(4) of the 1965 Rules, be deemed to have been placed under suspension with effect from 12.09.2003, and would continue to remain under suspension until further orders. Consequential orders were passed by the Area Organizer (Admn.) on 13.03.2007.

71. Instead of issuing a fresh charge sheet under Rule 14 of the 1965 Rules, a four-member inquiry committee was erroneously constituted, vide proceedings dated 12.06.2008, to conduct an inquiry on the basis of the very same charge sheet dated 08.10.1999. It is this inquiry committee which held that the charges levelled against the petitioner had not been proved. The disciplinary authority, while disagreeing with the findings of the said inquiry committee, had issued notice dated 04.11.2009 to the petitioner to show cause. Thereafter, on its jurisdiction being invoked, the UPSC had pointed out this illegality. As a result, the earlier charge-sheet dated 08.10.1999 was cancelled by proceedings dated 04.01.2011, and a fresh charge-sheet was separately issued on the same day, i.e. 04.01.2011, and a fresh Enquiry Committee was constituted to enquire into the charges.

72. The departmental inquiry, pursuant to the first charge sheet dated 08.10.1999, was conducted by the Deputy Inspector General, S.S.B, A.P. Division, Itanagar and the order passed in the name of the President of India, imposing on him the punishment of dismissal from service, was communicated to the petitioner by the Inspector General (Personnel) by

proceedings dated 12.09.2003. The complaints committee, constituted by the Director General SSB vide proceedings dated 12.06.2008 to enquire into the allegations of sexual harassment against the petitioner, consisted of four members with the IG, FTR-Patna as its Chairperson, a lady officer (who was AO Birpu) as one member, a lady from an NGO as the second member, and the SAO (Legal) FTR Hqr Patna as the third member. Of these four members, the Chairperson and the first and the second members were women. In their report dated 30.07.2008, the four-member Committee opined that the first charge leveled against the petitioner was not proved, and the second charge could not be proved. It is with respect to this departmental inquiry that a disagreement note was prepared by the Disciplinary Authority, and communicated to the petitioner.

73. Thereafter, on a fresh charge-sheet being issued to the petitioner on 04.11.2011, a new four-member Committee was constituted with three lady members. This four-member Committee was different from the four-member Committee which had conducted the second departmental inquiry earlier. The members of the inquiry committee, in all the three inquiries, were separate and distinct. None of those, who constituted the first inquiry committee, were members of the second or the third inquiry committees. Likewise, the members of the third inquiry committee were different from that of the second inquiry committee. Consequently, the question of repeated inquiries having been conducted with a pre-determined mind does not arise.

74. Three separate inquiries were necessitated as the first inquiry was set aside by the Central Administrative Tribunal in its Order in O.A. No. 1632 of 2003 dated 18.03.2005 The second Inquiry Committee was constituted contrary to the orders of the Tribunal in O.A. 1632 of 2003 dated 18.03.2005, and, on this error on its part being pointed by the Union Public Service Commission in its proceedings dated 12.08.2010, a third inquiry committee was constituted thereafter. While the first inquiry had culminated in the imposition of a punishment, which was set aside by the Tribunal, and liberty was granted to the respondents to initiate a disciplinary inquiry afresh, the second inquiry was interdicted by the Union Public Service Commission even before an order of punishment, or otherwise, could be passed by the disciplinary authority. It is, thereafter, that the third inquiry committee was constituted.

75. It cannot, therefore, be said that holding three different inquiries against the petitioner is either illegal or with any *malafide* intent. The petitioner has not been able to show which of his contentions in his written brief has not been considered by the inquiry committee, and how he has suffered any prejudice thereby. The petitioner has not disclosed the basis for his submission that the inquiry was not impartial or independent, or that the enquiry committee had acted on the instructions of the disciplinary authority. Allegations of *malafides* would necessitate examination by a Court only if the person, against whom malice is alleged, is arrayed as a respondent eo-nominee, and is given an opportunity of being heard on these allegations. (**State of Bihar v. P.P. Sharma**[46]). The petitioner has neither chosen to array the members of the Inquiry Committee, nor the Disciplinary Authority, as respondents *eo-nominee*. It would be wholly inappropriate for us, therefore, to undertake an examination of the petitioner's plea of malafides, bias or lack of impartiality. Even otherwise, the inquiry report is elaborate and all the petitioner's contentions have been dealt with. We see no reason, therefore, to interfere with the inquiry proceedings on this score. The contention, urged under this head, also necessitate rejection.

VII. IS THE ENQUIRY COMMITTEE, CONSISTING OF LOWER RANK OFFICERS, ILLEGAL?

76. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that the inquiry committee consisted of lower rank officials; and the disciplinary authority had erred in having an inquiry caused by lower rank officials, and in relying on their report.

77. In **Vishaka & others vs. State of Rajasthan & others**[47], the Supreme Court framed norms and guidelines to prevent sexual harassment at work places. Clause (2) of the said guidelines defines sexual harassment as: (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually-coloured remarks; (d) showing pornography; and (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Clause (2) stipulates that, where any of these acts are committed in circumstances whereunder the victim of such conduct had a reasonable apprehension that in relation to the victim's employment or work, whether she was drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise, such conduct can be humiliating;

it was discriminatory, for instance, when the woman had reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruitment or promotion or when it created a hostile work environment; and adverse consequences might be visited if the victim did not consent to the conduct in question, or raised any objection thereto.

78. Clause (5), of the guidelines laid down by the Supreme Court in **Vishaka**[47], relates to disciplinary action, and stipulates that where such a conduct amounted to misconduct in employment, as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules. Clause (6) prescribes a complaint mechanism and thereunder, whether or not such conduct constituted an offence under the law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim; and such complaint mechanism should ensure a time-bound treatment of complaints. Clause (7) relates to complaints committees, and provides that the complaint mechanism, referred to in clause (6), should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality; the complaints committee should be headed by a woman, and not less than half of its members should be women; and further, to prevent the possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party, either NGO or other body which is familiar with the issue of sexual harassment.

79. As noted hereinabove, the four member complaints committee, constituted to conduct a fresh inquiry, pursuant to the charge-sheet dated 04.01.2011, consisted of three women. The guidelines laid down by the Supreme Court, in **Vishakha**[47], required the Chairman of the said committee to be a woman, at least 50 percent of the members of the Inquiry Committee to consist of women, and atleast one of them to be a third party preferably an NGO. It is in compliance with the guidelines in **Vishakha**[47], that the four member complaints committee was constituted. Consequently, the mere fact that some of the members of the Inquiry Committee were junior lady officers is of no consequence. Even otherwise, an Inquiry Officer / a Departmental Inquiry Committee is only a delegate of the

disciplinary authority, and its functions are only to record its findings on the charges leveled against the accused and nothing more. (**H.C. Goel**[12]). It matters little, therefore, that some of the members of the Committee were lady officers lower in rank than the petitioner, and some others were outsiders.

VIII. DID THE DISCIPLINARY AUTHORITY LACK JURISDICTION TO DIRECT THAT A FRESH CHARGE-SHEET BE ISSUED?

80. Mr. Sanjay Raturi, learned Counsel for the petitioner, would submit that no action was taken by the disciplinary authority to remit the case back to the Inquiry Authority and he had, instead, directed that a fresh charge sheet be issued; this was not within his jurisdiction, more so as a detailed inquiry report had been submitted pursuant to the earlier charge-sheet; issuing a fresh charge sheet was contrary to law and without jurisdiction**;** the respondent-authorities were prejudiced against the petitioner and had, therefore, directed that a fresh charge sheet be issued against him**;** initiation of de-novo inquiry proceedings is not permissible under the Rules; and all the orders issued by the respondents are, therefore, liable to be quashed.

81. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India, would submit that the advice of the UPSC was that the earlier charge sheet, issued under Rule 16 of the 1965 Rules, could not be made the basis for conducting an inquiry against the petitioner for imposition of a major penalty; the earlier charge sheet was therefore cancelled, and a fresh charge sheet was issued under Rule 14 of the 1965 Rules initiating major penalty proceedings; the order of the Tribunal in O.A. No.1632 dated 18.03.2005, which has attained finality, is binding both on the petitioner and the respondents herein; and, in terms of the said order, the respondents were given liberty to initiate inquiry proceedings after issuing a fresh charge sheet.

82. The 1965 Rules were made by the President of India in the exercise of the powers conferred by the proviso to Articles 309 and 148 of the Constitution of India. Rule 11 thereof relates to the penalties which can be imposed on a government servant i.e. minor penalties and major penalties. The punishment of dismissal from service is a major penalty under Rule 11 (ix) of the 1965 Rules. It is only the punishment of censure,

withholding of promotion, recovery from pay of the whole or part of any pecuniary loss caused by the charge-sheeted employee to the Government by negligence or breach of orders, reduction to a lower stage in the time-scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting his pension, and withholding of increments of pay, which constitute minor penalties.

83. The procedure for taking action against a charged officer, for imposing a minor penalty, is distinct and different from the procedure prescribed for imposing major penalties. Part VI of the 1965 Rules relates to the procedure for imposing penalties and Rule 14(1), which is procedure for imposing major penalties, requires that no order, imposing any of the penalties specified in clauses (v) to (ix) of Rule 11, shall be made except after an inquiry is held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850; the disciplinary authority may appoint an inquiry officer under the rules; he should draw up the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge; and thereafter an inquiry should be conducted etc. Unlike in the case of imposition of a major penalty (the procedure for which is prescribed in Rule 14), Rule 16 of the 1965 Rules prescribes the procedure for imposing minor penalties and thereunder, for imposition of a minor penalty under Rule 11, the government servant is required to be informed that action is proposed to be taken against him for the imputation of misconduct, for an inquiry to be held taking into consideration the representations submitted by the government servant, and for recording a finding on each imputation of misbehaviour.

84. Since the earlier charge sheet, issued to the petitioner on 08.10.1999, was under Rule 16 of the 1965 Rules, the disciplinary authority could not have imposed a major penalty, such as dismissal from service, without adhering to the procedure prescribed, for imposing major penalties, under Rule 14 of the 1965 Rules. It is, in such circumstances, that the Central Administrative Tribunal had quashed the order of punishment, granting liberty to the respondents to initiate disciplinary proceedings by issuing a fresh charge sheet under Rule 14. Instead of doing so, the disciplinary authority had, on the basis of the earlier charge sheet dated 08.10.1999, commenced disciplinary proceedings under Rule 14; and it is this error on its part which was pointed out by the UPSC, necessitating the

earlier charge-sheet being cancelled, and a fresh charge sheet being issued, under Rule 14 of the 1965 Rules on 04.01.2011.

85. The action taken by the disciplinary authority, in directing that a fresh charge-sheet be issued under Rule 14 after cancelling the earlier charge-sheet issued under Rule 16, is in strict compliance with the order of the Tribunal in OA No. 1632 of 2003 dated 18.03.2005, which order of the Tribunal has attained finality and is binding both on the petitioner and the respondents. Since the order of the Tribunal obligated the disciplinary authority to issue a fresh charge-sheet under Rule 14, in case it intended to take action against the petitioner for the misconduct of sexual molestation, the action taken, in cancelling the earlier charge-sheet and in issuing a fresh charge sheet thereafter, is in strict compliance with the order of the Tribunal and cannot, therefore, be faulted. The contentions that the disciplinary authority lacked jurisdiction to issue a fresh charge-sheet, and initiation of *de-novo* proceedings is not permissible under the Rules, are devoid of merits and necessitate rejection.

IX. DID THE UPSC LACK JURISDICTION TO ADVICE THAT A FRESH CHARGE-SHEET BE ISSUED?

86. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that, under the proviso to Rule 15 (3) of the 1965 Rules, the UPSC can only advise the disciplinary authority regarding the penalty to be imposed on the charged officer; the Rules did not authorize the UPSC to advise the disciplinary authority to re-issue a fresh charge sheet, by canceling the earlier charge sheet; the respondent had mis-interpreted the order of the Central Administrative Tribunal; issuance of a fresh charge sheet, by the disciplinary authority, was ultra-vires the power of recommendation of the UPSC, and was illegal; the UPSC lacked jurisdiction to interpret judgments/orders of Courts/ Tribunals; and the UPSC had limited jurisdiction, and could only make recommendations with regards imposition of penalty.

87. Article 320 of the Constitution relates to the functions of the Public Service Commission. Article 320(3)(c) requires the Union Public Service Commission to be consulted on all disciplinary matters affecting a person serving under the Government of India, including memorials or petitions relating to such matters; and it shall be the duty of the Public

Service Commission to advise on any matter so referred to them, and on any other matter which the President may refer to them. Under the proviso to Rule 15(3) of the 1965 Rules, in every case where it is necessary to consult the UPSC, the record of the inquiry shall be forwarded by the Disciplinary Authority to the UPSC for its advice, and such advice shall be taken into consideration before making an order imposing any penalty. It is in terms of Article 320(3)(c) of the Constitution of India, read with the proviso to Rule 15(3) of the 1965 Rules, that the Union Public Service Commission was consulted in the matter.

88. Government servants of the Union or the State are normally entitled to the protection of the three constitutional safeguards provided in Articles 311(1), 311(2) and 320(3)(c) of the Constitution of India. (**Pradyat Kumar Bose v. Chief Justice, Calcutta HC**[48]). The phrase "all disciplinary matters affecting a person", in Article 320(3)(c), is sufficiently comprehensive to include any kind of disciplinary action proposed to be taken in respect of a particular person. (**Pradyat Kumar Bose**[48]).

89. The submission that the UPSC lacked jurisdiction to advice the disciplinary authority regarding issuance of a fresh charge-sheet is not tenable. All that the UPSC did was to inform the disciplinary authority that its action, in initiating a second inquiry based on the earlier charge-sheet dated 08.10.1999 issued under Rule 16 of the 1965 Rules, was contrary to the order of the Tribunal in O.A. No. 1632 of 2003 dated 18.03.2005. As noted hereinabove, the Tribunal had, in its order in O.A. No. 1632 of 2003 dated 18.03.2005, held that imposition of the major penalty of dismissal from service, based on a charge-sheet issued under Rule 16 of the 1965 Rules (which relates to minor penalty proceedings), and without issuing a fresh charge-sheet under Rule 14 (which relates to major penalty proceedings), was illegal. These observations of the Tribunal, made on its jurisdiction being invoked by the petitioner himself, are binding both on the petitioner and the respondent, more so as the said order has attained finality. Even, in the absence of any advice from the UPSC, the action of the disciplinary authority, in conducting an inquiry based on the earlier charge-sheet dated 08.10.1999, fell foul of the order of the Tribunal in O.A. No. 1632 of 2003 dated 18.03.2005, and was illegal.

90. An order passed by a Court/Tribunal of competent jurisdiction, after adjudication on merits of the rights of the parties, binds the parties or the persons claiming right, title or interest from them. Its validity can be assailed only in an appeal or review. In subsequent proceedings, its validity cannot be questioned. (**Sushil Kumar Metha Vs. Gobind Ram Bohra**[49]). It cannot also be re-agitated in collateral proceedings. An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. The binding character of judgments, of Courts / Tribunals of competent jurisdiction, is in essence a part of the rule of law on which the administration of justice is founded. (**The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others**[50]; **U.P. State Road Transport Corporation vs. State of U.P. and others**[51]).

91. Matters in controversy decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court / Tribunal competent to decide it, and which proceedings have attained finality, is binding inter-parties. (**Gulabchand Chhotalal Parikh vs. State of Bombay (Now Gujarat)**[52]; **State of Punjab vs. Bua Das Kaushal**[53]). Once a matter, which was the subject-matter of a lis, stood determined by a competent Court / Tribunal, no party can thereafter be permitted to reopen it in a subsequent litigation. (**Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors**[54]; **Ishwar Dutt vs. Land Acquisition Collector and Anr**[55]). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (**State of Haryana vs. State of Punjab and Anr**[56]). The UPSC had merely reminded the disciplinary authority of its obligations to comply with the order of the Tribunal in O.A. No. 1632 of 2003 dated 18.03.2005 and nothing more. It is unnecessary for us to dwell on this aspect any further, since the order of the Tribunal in O.A. No. 1632 of 2003 dated 18.03.2005, a judgment inter-parties, is binding both on the petitioner and the respondents.

X. WAS THE EARLIER CHARGE-SHEET CANCELLED BY AN AUTHORITY SUBORDINATE IN RANK TO THE AUTHORITY WHICH ISSUED IT?

92. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that the charge sheet issued on 08.10.1999 was by the Director to the Government of India in the Cabinet Secretariat/Prime Minister’s Office; the

power to cancel, modify or review the 1999 charge sheet also vested with the same authority; however, in 2011, a sub-ordinate authority i.e. the Assistant Director (Pers-I), lower in status to the Director to the Government, had cancelled the earlier charge sheet issued by the Director to the Government of India.

93. Rule 12 of the 1965 Rules relates to disciplinary authorities and, under sub-rule (1), the President may impose any of the penalties specified in Rule 11 on any Government servant. Rule 12(2) enables imposition of any of the penalties specified in Rule 11 on (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President; and (b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where such order has not been made, by the appointing authority or the authority specified in the Schedule in this behalf. Rule 13 relates to the authority to institute proceedings and, under sub-rule (1), the President, or any other authority empowered by him by general or special order, may - (a) institute disciplinary proceedings against any Government servant; and (b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose, under the 1965 Rules, any of the penalties specified in Rule 11. Rule 13(2) stipulates that a disciplinary authority, competent under the 1965 Rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11, may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent, under the 1965 Rules, to impose any of the latter penalties. It is evident, therefore, that the power to institute disciplinary proceedings can be exercised not only by the disciplinary authority who is competent to impose a major penalty, but by others also.

94. A statutory functionary, exercising the power to impose punishment pursuant to a disciplinary enquiry, cannot be said to have delegated his functions merely by deputing a responsible and competent official, among others, to enquire and report. What cannot be delegated,

except where the law specifically so provides, is only the ultimate responsibility for the exercise of such power (**Pradyat Kumar Bose**[48]) ie the power to impose punishment.

95. Article 311(1) provides that no person, who is a member of the Civil Service of the Union or of an All India Service, or holds a civil post under the Union, shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not, in specific terms, require that the authority, empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer, or even that the enquiry should be held at his instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. (**State of Madhya Pradesh and others v. Shardul Singh**[57]). The guarantee, given under Article 311(1), does not include within it a further guarantee that the disciplinary proceedings, resulting in dismissal or removal of a civil servant, should also be initiated and conducted by the authorities mentioned in that Article. (**Shardul Singh**[57]). Initiation or enquiry by an officer, subordinate to the appointing authority, is unobjectionable. Such initiation can be at the behest of an officer subordinate to the appointing authority. Only dismissal/removal shall not be passed by an authority subordinate to the appointing authority. (**Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy**[58]).

96. The embargo imposed by Article 311(2) is on the imposition of punishment of dismissal / removal by an authority lower in rank than the appointing authority. Protection, even under the said Article, does not extend to initiation of disciplinary proceedings or for cancellation of the earlier charge-sheet. Moreover, the order cancelling the earlier charge-sheet was only in terms of the liberty granted by the Tribunal in its order in O.A. No. 1632 of 2003 dated 18.03.2005, and in compliance with its directions that major penalty proceedings, under Rule 14 of the 1965 Rules, could not be initiated based on the earlier charge-sheet dated 08.10.1999 issued under Rule 16 of the 1965 Rules which relates to minor penalty proceedings. In such circumstances, mere cancellation of the earlier charge-sheet, by an authority lower in rank than the officer who had issued it earlier, is of no consequence, more so as no constitutional or statutory protection is

conferred on a delinquent employee in this regard. This contention, urged on behalf of the petitioner, does not also merit acceptance.

XI. WAS THE PUNISHMENT IMPOSED ON THE PETITIONER DISPROPORTIONATE?

97. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that the punishment imposed on the petitioner is grossly disproportionate to the charges held established; and the respondents had, in their counter affidavit, admitted that the punishment imposed on the petitioner was grossly disproportionate to the charges held proved.

98. On the other hand Mr. Sanjay Bhatt, learned Standing Counsel appearing for the Union of India, would submit that, while para 72 of the counter affidavit could undoubtedly have been more elaborate, it cannot be understood as an admission that the punishment imposed on the petitioner was disproportionate; and in the light of the misconduct held established, of molestation and sexual harassment, the punishment of dismissal from service cannot be said to be disproportionate to the charges held established.

99. When charge(s) of misconduct are proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially in the domain of the departmental authorities. Courts would not take upon itself the task of the disciplinary/departmental authorities to decide the quantum of punishment or the nature of penalty to be awarded. Limited judicial review is available, to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty shocks the conscience of the Court. (**Naresh Chandra Bhardwaj vs. Bank of India and Ors.**[59]; **Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and Anr. v. Rajendra Singh**[60]). The High Court would not, as a court of appeal, go into the question of adequacy or sufficiency of the punishment. It is for the disciplinary authority to consider what should be the nature of the punishment to be imposed on a Government servant based upon the misconduct proved against him. (**Nand Kishore Shukla**[14]).

100. The power to reduce the penalty imposed by the disciplinary authority, which vests with the appellate authority departmentally, is, ordinarily, not available to the Court or a Tribunal. The Court, while undertaking judicial review, would not substitute its own opinion for that of

the competent authority, (**Kendriya Vidyalaya Sangthan v. J. Hussain**[61]; **Krishna District Coop. Central Bank Ltd. v. K. Hanumantha Rao**[62]; **UT of Dadra & Nagar Haveli v. Gulabhia M. Lad**[63]), as it does not sit in appeal over decisions qua the nature and quantum of punishment. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shocks its conscience, that the Court steps in and interferes. (**K. Hanumantha Rao**[62]).

101. However, the punishment should not be so disproportionate to the offence as to shock the conscience and amount, in itself, to conclusive evidence of bias. If the decision as to punishment is in outrageous defiance of logic, then the order would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. (**Ranjit Thakur v. Union of India and Ors.**[64]; and **Ex-Naik Sardar Singh v. Union of India**[65]).

102. Award of punishment, which is grossly in excess of the allegations proved, cannot claim immunity, and is open for interference, under the limited scope of judicial review, based on the doctrine of proportionality. (**K. Hanumantha Rao**[62]; **State of Jharkhand v. Kamal Prasad**[66]). When the punishment is found to be outrageously disproportionate to the nature of the charge, principles of proportionality come into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the **Wednesbury (1948) 1 KB 223 rule of reasonableness**, only when, in the facts and circumstances of the case, the penalty imposed is so disproportionate to the nature of charge that it gives rise to the belief that it is totally unreasonable and arbitrary. (**Kendriya Vidyalaya Sangthan**[61]; **K. Hanumantha Rao**[62]).

103. Any penalty grossly disproportionate to the gravity of the misconduct would violate Article 14 of the Constitution (**Bhagat Ram v. State of Himachal Pradesh**[67]; and **Ex-Naik Sardar Singh**[65]), and would be an act in excess of jurisdiction. (**V.R. Katarki v. State of Karnataka and others**[68]; and **State of U.P. and othersv. Ashok Kumar Singh and another**[69]).

104. Even in cases where the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent

employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with a direction to pass appropriate order of penalty. The Court would not, by itself, ordinarily mandate as to what should be the penalty in such a case. (**Naresh Chandra Bhardwaj**[59]; **Rajendra Singh**[60]). If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. (**B.C. Chaturvedi vs. Union of India**[70]).

105. Courts may interfere with the punishment imposed when it is found to be totally irrational or is outrageously in defiance of logic or is shockingly disproportionate, suggesting lack of good faith. Otherwise the opinion of the Court, that a lesser punishment would have been more appropriate, would not justify interference with the discretion exercised by the departmental authorities in imposing punishment for proved misconduct. (**J. Hussain**[61]; **K. Hanumantha Rao**[62]).

106. In the present case the Disciplinary Authority imposed, on the petitioner, the punishment of dismissal from service after concurring with the findings and conclusions of the Inquiry Committee that both Charges 1 and 2 were proved. The first charge, as noted hereinabove, related to sexual abuse and molestation by a superior paramilitary officer over his subordinate lady trainee. In the Paramilitary Forces, where the need to maintain discipline is of a very high order, such acts of a superior officer, in taking advantage of the vulnerability of a subordinate lady trainee and in indulging in such heinous acts of molestation and sexual abuse, justified the deterrent punishment of dismissal from service being imposed on him. Under no circumstances, be it in the Paramilitary Forces or elsewhere, can such acts either be condoned or a lenient view be taken thereof. The second charge, as held established is that the petitioner, after having indulged in such heinous acts, as also his father who was a high ranked official, in the cadre of Deputy Inspector General in the Sashastra Seema Bal, had sought to pressurize the complainant to withdraw the complaint.

107. The deponent of the counter-affidavit, filed in the present Writ Petition, is the Commandant, SSB, Gwaldam. It is not for him to sit in judgment over the decision of the President of India in imposing the punishment of dismissal from service on the petitioner for the charges held established. His concession, that the punishment is not proportionate, is therefore of no consequence. Even otherwise, we are satisfied that the punishment, imposed on the petitioner of dismissal from service, is commensurate to the charges held established. The contention urged on behalf of the petitioner, that the punishment of dismissal from service is shockingly disproportionate, therefore necessitates rejection.

XII. FAILURE TO CONSIDER RULE 353 OF THE CIVIL SERVICE REGULATIONS: ITS CONSEQUENCE:

108. Mr. Sanjay Raturi, learned counsel for the petitioner, would submit that Rule 353 of the Civil Services Regulations, which confers power on the authorities to grant compassionate allowance, even where the charges held established has resulted in imposition of the penalty of dismissal / removal from service, has not been considered by the respondents.

109. Mr. Sanjay Bhatt, learned Standing Counsel appearing for the Union of India, would fairly state that what was admitted in the counter-affidavit was the existence of Regulation 353 of the Civil Services Regulations, and not that the punishment was disproportionate.

110. Rule 353 of the Civil Services Regulations reads as under:-

> "No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency, but to an officer so dismissed or removed, compassionate allowance may be granted when he is deserving of special consideration, provided that the allowance granted to any officer shall not exceed two third of the pension which would have been admissible to him if he had retired on invalid pension".

111. In terms of Rule 353 the officer, dismissed or removed for misconduct, is not entitled for grant of pension. He may, however, be granted compassionate allowance, despite his dismissal or removal, if he is found deserving of special consideration. Payment of such compassionate allowance is restricted, by the proviso, to an amount not exceeding 2/3rd of the pension which would have been admissible to the officer if he had

retired on an invalid pension. While we see no reason to interfere with the punishment imposed on the petitioner of dismissal from service, for sexual misconduct and molestation of a sub-ordinate trainee and in attempting to coerce her to withdraw her complaint, the authorities concerned, despite imposing the punishment of dismissal from service on the petitioner, were, nonetheless, required to examine whether or not there were circumstances deserving of special consideration in the petitioner's case for him to be granted compassionate allowance.

112. Since the authorities concerned have not exercised their powers under Rule 353, suffice it to permit the petitioner to make a representation to the competent authority requesting him to exercise his powers under Rule 353. On any such representation being made, the competent authority shall, within a period of one month from the date of receipt of any such representation, consider the petitioner's claim, for grant of compassionate allowance, in accordance with law, and pass appropriate orders thereupon. We express no opinion on whether or not the petitioner is entitled for grant of compassionate allowance, and make it clear that, in case the competent authority arrives at a considered decision that compassionate allowance should be paid, the petitioner shall then be paid the amounts due within two months from the date on which an order is passed by the competent authority.

XIII. CONCLUSION:

113. For the reasons stated hereinabove, we see no reason to interfere either with the inquiry proceedings or with the order of punishment of dismissal from service imposed on the petitioner. The petitioner is, however, permitted to invoke Rule 353 by way of a representation which shall be considered by the competent authority as directed hereinabove. The Writ Petition is, accordingly, disposed of. However, in the circumstances, without costs.

(R.C. Khulbe, J.)
15.06.2020

(Ramesh Ranganathan, C.J.)
15.06.2020

NISHANT