HIGH COURT OF SIKKIM, GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 15.10.2015

S.B.: HON'BLE MR. JUSTICE SONAM PHINTSO WANGDI, JUDGE.

WP (C) No. 05 OF 2015

PETITIONER : Smt. Chezum Lepcha,
Sub-Inspector,
Sikkim Police,
R/o Lall Bazar Road,
Gangtok,
East Sikkim.

versus

RESPONDENT : State of Sikkim,
through the Director General of Police,
Government of Sikkim,
Gangtok,
East Sikkim.

Petition filed under Article 226 of the Constitution of India

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Appearance :

Mr. Bhaskar Raj Pradhan, Senior Advocate with Mr. Jorgay Namka, Ms. Tshering Palmoo Bhutia and Ms. Panila Theengh, Advocates for the Petitioner.

Mr. J. B. Pradhan, Additional Advocate General with Mr. S.K. Chettri and Ms. Pollin Rai, Assistant Government Advocates for the State-Respondent.

J U D G M E N T

WANGDI, J.

1. This Writ Petition seeks to assail the impugned Office Order bearing No.POL/AIGP/HQ/2011/03 dated 09.01.2012 and Office Order bearing No.36/PHQ/2012 dated 30.03.2012 imposing the penalty of removal of the Petitioner from service and the Office Order bearing No. 60/PHQ/12 dated 23.06.2012, reinstating the Petitioner as Sub-Inspector in the Sikkim Police Force with effect from 01.04.2012.

2. The Petitioner was appointed in the post of Sub-Inspector in the Sikkim Police Force in the year 2004 along with 27 other candidates and had topped the merit list during the recruitment process. After her period of probation, she was posted as Sub-Inspector at Gyalshing Police Station, West Sikkim on 08.11.2006, where she served for 4 (four) years. During her tenure at Gyalshing Police Station, she was entrusted with more than 30 (thirty) cases, in addition to normal day to day duties, which included law and order duty, VVIP duty, monitoring and supervision of PS, etc.

3. The Petitioner was then transferred to Sadar Police Station, Gangtok, East Sikkim in May, 2010 and while being posted there, she was placed under suspension without any prior notice or inquiry vide Office Order dated 09.01.2012. It is stated that the order of suspension was issued after 2 (two) years from the date of her transfer from Gyalshing Police Station purportedly under sub-rule (1) of Rule 10 of the Sikkim Police Force (Discipline and Appeal) Rules, 1989 (hereinafter referred to as "the Rules of 1989"). The order of suspension was followed by a Memorandum bearing No 61/AIGP/HQ dated 30.01.2012 containing four charges intimating her that an inquiry under Rule 7 of the Rules of 1989, was proposed to be held against her. As per the Memorandum dated 30.01.2012, ASP/CID was designated as the Inquiring Officer, under the Rules of 1989. The following were the four charges contained in the Memorandum: -

> **"**Article - 1
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> That the said Sub Inspector Chezum Lepcha, SSP/East Office, Gangtok, Sikkim is charged for showing scanty respect of law and careless attitude to duty while dealing with Gyalshing Case No. 27(08)09, dated 31.08.2009, u/s 376 IPC while functioning as SI Gyalshing PS from December 2006 to May 2010.
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> Article - 2
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> That the said SI Chezum Lepcha conducted investigation of the above mentioned case in a

slipshod manner and submitted charge sheet without completing the investigation.

Article - 3

That said SI Chezum Lepcha failed to respond to the urgent WT Message generated from the PP (S&W) regarding submission of CFS report and exhibits in report of Gyalshing PS Case No. 27(08)09, dated: 31.08.09, u/s 376 IPC.

Article - 4

That the said SI Chezum Lepcha failed to complete the investigation of 04 other cases in time and kept those cases pending for more than 2 years without any valid reasons."

4. As regards the first charge, it was submitted that the charge-sheet in respect of criminal case mentioned therein had been submitted to the SHO, Gyalshing P.S., who after examining it routed to the concerned Court through the S.P., West Sikkim. When the case was pending before the Sessions Judge at Namchi, the Petitioner came to be suspended as stated earlier.

5. Although, as many as sixteen documents were mentioned in the list of documents attached to the Memorandum to sustain the charges, copies of those were not provided to her. On her request for supply of the documents by letter dated 04.02.2012, the Assistant Inspector General of Police replied vide letter dated

08.02.2012 directing that the Petitioner must submit her reply within ten days and further, if the authority decided to conduct a departmental inquiry the documents sought for would then be furnished to her. The Petitioner's request was thus declined, compelling the Petitioner to file her reply without having the benefit of preparing it after fully appreciating the charges levelled against her in the absence of the documents and the statement of witnesses named in the list of witnesses attached to the Memorandum of charges.

6. It is stated that in her reply to the Memorandum of charges the Petitioner had made it clear that as none of the documents mentioned at Annexure III had been made available to her, an opportunity be provide to her to dispute the charges after she was supplied with those. It is stated that the Petitioner had categorically denied all the charges in her written statement dated 17.02.2012. That after she had filed her written statement, the Petitioner was neither called by the AIGP, PHQ, Gangtok nor by the Inquiry Officer nor did any proceedings take place as prescribed and laid down under the Rules of 1989.

7. It is submitted that Rule 7(14) of the Rules of 1989, which lays down the procedure to be followed in adducing evidence, was completely abandoned. It is emphasised that none of the procedures laid down have been complied with and the Petitioner was called only to receive the impugned Office Order No. 36/PHQ/2012 dated 30.03.2012 by which the Petitioner was removed from service. The inquiry report upon which the impugned Office Order dated 30.03.2012 was based and the documents mentioned in the Memorandum were not at all furnished to the Petitioner before the impugned order was passed. No witnesses were ever examined as would be revealed by the records and the Petitioner was neither summoned nor given any opportunity to defend herself in the manner prescribed under the Rules of 1989. No opportunity was given to cross-examine the 11 (eleven) witnesses listed in the list of witnesses and of examining the documents contained in the list of documents, which admittedly had not been furnished to her, in order to enable her to rebut the said documents. She was also deprived of the opportunity to adduce her evidence, both oral and documentary, in her defence. Thus, there was

gross violation of the principles of natural justice in the manner in which the proceedings were conducted.

8. The Petitioner, thus, was constrained to file an Appeal on 30.04.2012 against the impugned order dated 30.12.2012 without a copy of the inquiry report although she was only allowed to inspect the report before the appeal was filed. In the appeal, she had specifically pleaded that since ST Case No.25 of 2009 before the Sessions Judge was underway, it would not be appropriate for the Appellate Authority to adjudicate upon her Appeal before the case was finally disposed off. It is stated that even the Appellate Authority had failed to follow the procedure laid down under Rule 11, more particularly, Rule 11(5) of the Rules of 1989, which, *inter alia*, provides that a reasonable opportunity of making representation must be provided to the Appellant against the proposed penalty on the basis of the evidence adduced during the inquiry.

9. It is submitted that even before the Appellate Authority no proceedings took place on her appeal. She was neither summoned nor was she given an opportunity

to present her case. In fact, no date was fixed for hearing by the Appellate Authority except to serve the Petitioner with the impugned orders dated 23.06.2012 on 25.06.2012. The Petitioner was neither given an opportunity to make a representation against the proposed penalty nor provided with an opportunity of hearing in complete disregard to the provision made in that behalf in the Rules of 1989. The impugned order was passed placing the Petitioner at the lowest scale in the pay band of Sub-Inspectors and her seniority reduced to the junior-most place amongst the Sub-Inspectors as on 09.01.2012. The Petitioner, of course, was reinstated as a consequence of which she has no option but to report on duty and was posted as Sub-Inspector at the Gangtok Sadar Police Station.

10. Later, when the Petitioner came to learn that the accused in the Sessions Case (S.T. Case No. 25 of 2009) relating to the first charge had been convicted by the Sessions Court, she obtained a copy of the judgment dated 15.09.2012 on 11.12.2012 and in pursuance of the liberty sought for in her Appeal, she filed an additional application before the Appellate Authority mentioning in

detail the findings of the Sessions Judge in the Criminal Case (S.T. Case No. 25 of 2009) with a copy of the judgment attached requesting for a review of the impugned decision.

11. When she was waiting for a reply to the additional application by the Appellate Authority, the Petitioner came across a letter bearing No.230/SP/HQ/ 2014 dated 13.05.2014 written by the S.P., PHQ, Gangtok, addressed to the S.P. East District, Gangtok, requesting circulation of a seniority list of Sub-Inspectors. In the seniority list, the Petitioner was found to have been placed at Sl. No.84, instead of Sl. No. 13. Realising the gravity of the matter after having gone through the seniority list, which had been circulated for the first time, she approached an Advocate for legal advice and as advised by him, a legal notice was issued on 11.06.2014.

12. It is submitted that the Petitioner was restrained from engaging any Advocate and had to defend herself in view of Rule 7(8) of the Rules of 1989, by which it is not permissible for her to do so unless the Presenting Officer is a legal practitioner. It is averred that the Petitioner had

been consistently pursuing with the concerned authorities for remedy and that ultimately it was only after she saw the seniority list circulated vide letter dated 13.05.2014 that she realised the gravity of the situation compelling her to engage a counsel. The Petitioner has given detailed reasons as to why the delay had occurred in approaching this Court.

13. In the counter-affidavit filed on behalf of the Respondents, the fact as regards non-compliance of Rules has not been denied except to state: -

(i) that the Petitioner's record as Police Officer at Gyalshing Police Station was not satisfactory having been served with various show cause notices for lapses on her part;

(ii) that the first charge was serious one, as she was held to be responsible for causing disappearance of exhibits in Gyalshing Police Station case No.27(8)09 and not forwarding the case exhibits to CID for onward transmission to CFSL, Kolkata for analysis and opinion and further, she had misled the entire chain of the command as well as the trial Court by not sending the seized exhibits including blood sample of

the accused to CFSL, Kolkata for analysis while in all the documents of the case and the case diary she had mentioned that the exhibits had indeed been sent to CFSL for analysis;

(iii) that she had been summoned by the Inquiry Officer in his office and had been given ample opportunity to go through the documents listed in Annexure III;

(iv) that the Inquiry Officer did not examine any of the witnesses listed at Annexure IV to the Memorandum, as it was not felt necessary and had relied only on the case documents;

(v) that no prejudice has been caused to the Petitioner as she being the Investigating Officer of the case, was aware of all the documents relied on by the Inquiry Officer;

(vi) that inquiry report was a reasoned one and the Disciplinary Authority passed the impugned order after due application of mind and, it was only after careful perusal of the documents that the Disciplinary Authority had imposed the penalty of removal of the Petitioner from service by the impugned order dated 30.03.2012; and

(vii) that the Appellate Authority was kind enough to set aside the order of removal from service imposed by the Disciplinary Authority and reducing the Petitioner to the lowest stage in the pay band applicable to Sub-Inspectors and her seniority reduced.

14. It is emphasised that the conviction of the accused in the criminal case by the Sessions Court was on the basis of circumstantial evidence and *de hors* the CFSL report, as the Exhibits had never been sent for examination and that this formed the crux of the departmental inquiry against the Petitioner.

15. Apart from the above, it has been asserted that the Petitioner was guilty of delay and laches and also waiver and acquiescence. As the Petitioner had chosen to file Writ Petition only on 09.02.2015 when the impugned orders had been passed on 09.01.2012, 30.03.212 and 23.06.2012, she had waived her right and, had also acquiesced in the position, she having accepted the orders passed by the Appellate Authority by reporting on duty. Since the Writ Petition was filed only after the seniority list was circulated in terms of letter dated 13.05.2014 by which she had been placed at the lowest place in the

seniority list of the Sub-Inspectors, which as per the Respondent, also was a consequence of the impugned order dated 23.06.2012 of the Appellate Authority, the case being set up by the Petitioner was an afterthought.

16. In his arguments, Mr. B. R. Pradhan, learned Senior Advocate, appearing on behalf of the Petitioner, would seriously contend that the disciplinary proceedings against the Petitioner was not conducted fairly *inasmuch* as the mandatory rules prescribed under the Rules of 1989 had not been complied with. The impugned Memorandum dated 30.01.2012 was issued to her without giving her an opportunity to show cause as to why such a disciplinary proceeding should not be held against her.

17. That the Petitioner had not been supplied with the statement of witnesses whose name appeared in the list attached to the Memorandum, thereby depriving her of the opportunity of cross-examining them. The documents mentioned in the list of documents were also not supplied to her. That the Petitioner was not informed as to when and where the inquiry proceedings were going to take place and, in fact, no inquiry proceedings at all took place.

The documents were refused to be supplied in spite of Petitioner's request and instead was only allowed to inspect them in the office of the Inquiry Officer even when it had been specifically conveyed to her by the AIG, PHQ in response to her request that the documents would be supplied if it was decided to hold a disciplinary proceedings against her.

18. That the Appellate Authority also did not give the Petitioner an opportunity of hearing and to adduce evidence and the copy of the inquiry report was provided to her only after conclusion of the proceedings before the Appellate Authority. That neither was she informed of the date of hearing nor did any hearing take before the Appellate Authority thereby depriving the Petitioner the opportunity to place her case. The Petitioner was only handed over the impugned order which was passed *ex parte* by which Petitioner's scale of pay was reduced placed at the lowest in the seniority list of Sub-Inspectors.

19. For the aforesaid reasons, it is submitted that the Petitioner has been seriously prejudiced and her reputation, right to life and honour have been irreparably

damaged. That the punishment is disproportionate to the alleged charges. It is further submitted that after conviction of the accused in the criminal case, the Petitioner had submitted an additional representation essentially for review of the order of punishment imposed upon her as the basis of the charges framed against her had been rendered non-existent. It is thus submitted that in view of the manner in which the Petitioner had been punished by imposing major penalty without even holding a semblance of a proceeding before the Inquiry Officer, the Disciplinary Authority and the Appellate Authority, the impugned orders deserved to be quashed.

20. On the question of delay, it is submitted that the cause of action in the case is a continuous one and if the impugned orders are allowed to continue, it would amount perpetuation of the illegal orders. The Petitioner continues to suffer the stigma of reduction of grade and pay on a daily basis and would continue to suffer the same. The application dated 11.12.2012 filed before the Appellate Authority by the Petitioner after the trial in the Gyalishing P.S. Case No.27(08)/09, has still not been disposed of by the Appellate Authority and no communication has been

received by the Petitioner. It is submitted that the Petitioner has not waived her legal right in view of her relentless pursuit to get the orders passed against her reviewed. Therefore, the Petitioner was neither guilty of delay and laches nor of waiver and estoppel.

21. Mr. J. B. Pradhan, Learned Additional Advocate General, arguing for Respondents would submit that although the procedure prescribed under the Rules had not been strictly followed, no prejudice has been caused to the Petitioner *inasmuch* as the entire charges framed against her were based upon the case records of which she was aware. This was the very reason why the inquiry officer did not deem it necessary to examine witnesses or conduct any proceeding. The necessity to give the Petitioner copies of the documents as per Rules was substantially complied with as she had been given an opportunity to inspect them. As was apparent, inquiry officer had submitted a detailed and reasoned inquiry report to the Disciplinary Authority who upon its consideration, accepted it and awarded the punishment. Even the Appellate Authority had duly considered her Appeal and had given his decision only after examination

of entire records including the inquiry report and the order of Disciplinary Authority. There was, therefore, no illegality committed while passing the impugned orders. It was conceded fairly by the Learned Additional Advocate General that a copy of the inquiry report was not supplied to the Petitioner before being considered by the Disciplinary Authority, but the fact that in the Appeal filed by the Petitioner, references were made to portions of the inquiry report, would reveal that she had been given access to the report. Thus the plea of prejudice being caused to the Petitioner was obviously not correct.

22. The issue as regards delay, laches, waiver and acquiescence was seriously pressed for the reasons already alluded to earlier and, therefore, as per the Learned Additional Advocate General, the Petitioner ought not be given indulgence after she was guilty of gross delay in approaching this Court and also the fact that she had accepted the impugned order by joining her post as a consequence of the order of the Appellate Authority.

23. I have carefully considered the rival submissions, pleadings and the records.

24. Before entering into the merits of the case, we may first consider the preliminary objection raised as regards delay and laches and also waiver and acquiescence set up by the Respondents.

25. In the Writ Petition, the Petitioner has set out in detail the circumstances which prevented her from approaching this Court. It has been averred as follows: -

(a) On 09.01.2012, i.e., after almost two years from the Petitioner's posting as Sub-Inspector at Gyalshing P.S., she was placed under suspension without any prior notice or inquiry. On 30.01.2012, she was served with a Memorandum but, as it was incomplete, she had approached the AIGP, PHQ, Gangtok and by her application dated 04.02.2012, Annexure P4, requested for supply of the complete record in order to enable her to file a comprehensive written statement. However, vide letter dated 08.02.2012, Annexure P5, she was directed to respond to the statement and articles of charges further conveying that the documents and the

statements of witnesses would be provided in case it was decided to conduct Departmental Inquiry and that she could inspect the documents in the Office of SP/West, if she so desired. The Petitioner thus filed her written statement, Annexure P6, on 17.02.2012 under such compelling circumstances.

(b) That no proceedings took place after the Petitioner had filed her written statement but was only called to receive the impugned Office Order dated 30.03.2012, Annexure P7. Being shocked by the impugned Office Order, the Petitioner sought for certified copies of the entire proceedings, copies of all documents and the inquiry report, etc. vide her applications, one of which was dated 29.04.2013. When the documents were still not provided, the Petitioner as conveyed in the Office Order dated 30.03.2012, preferred an Appeal on 30.04.2012 without the benefit of going through the documents attached with the memorandum of charges and the Inquiry Report having been

refused by the Inquiry Officer. After the appeal was filed, the Petitioner was never summoned. No date was ever fixed and no hearing took place but, on 25.06.2012 she was served with a copy of Office Order dated 23.06.2012. That after passing of Office Order dated 23.06.2012 the Appellate Authority, after a lapse of one year and three months from the Order dated 30.03.2012, finally furnished only the alleged inquiry report on 05.06.2013.

(c) That the Petitioner *bona fide* believed that the Trial Court's judgment was of utmost importance to the entire issue and, therefore, after having obtained a certified copy thereof, she once again approached the Appellate Authority and filed an additional application on 11.12.2012, Annexure P13. This was all due to *bona fide* belief by the Petitioner and her lack of legal knowledge as she was restrained from engaging an Advocate.

(d) The Petitioner having filed her additional application before the Appellate Authority which

was accepted and not rejected by the Appellate Authority, she *bona fide* believed that her matter was still pending adjudication and, therefore, did not approach the competent forum and kept waiting for the Appellate Authority to adjudicate upon her application.

(e) That in the meantime the Petitioner was furnished with a copy of the alleged inquiry report on 05.06.2013 which established the fact that her matter was pending adjudication before the appellate forum and the Petitioner *bona fide* believed so. However, sometime in May, 2014 only when she came across letter dated 13.05.2014 containing seniority list of Sub-Inspectors addressed to S.P., East District, Gangtok, while she was posted as Reader to S.P., East District, Gangtok, did she realise that she had been dropped and placed at Sl. No.84 instead of Sl. No.13 in the seniority list.

(f) The Petitioner then approached a Lawyer and sought his advice. The Petitioner's counsel after having examined her matter in detail, advised

her to immediately approach this Court for which purpose she was asked to collect/obtain all relevant documents. The Petitioner then immediately started to collect/obtain the relevant documents and, the said process took more than three months. Thereafter the Petitioner's counsel started preparing the Case and got the draft petition ready which took more than two months. By the time her counsel could settle the petition, the High Court was closed for winter vacation and the Counsel went on a pre-planned holiday and hence, the writ petition could be made ready to be filed only on 09.02.2015. In the meantime, the Petitioner also got a Legal Notice issued on 11.06.2014. The Petitioner specifically states that the delay was not deliberate but for *bona fide* reasons as already stated and the petition was filed with due diligence and does not suffer from any delay and laches.

26. Mr. J. B. Pradhan, Learned Additional Advocate General, no doubt, referred to a catena of decisions by

which it has been held that if there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the Courts would decline to intervene and grant relief in exercise of its writ jurisdiction.

27. In ***Karnataka Power Corpn. Ltd. Through its Chairman & Managing Director and Another vs. K. Thangappan and Another : (2006) 4 SCC 322***, referred to by the Learned Additional Advocate General, it has been held that delay or laches is one of the factors which is to be borne in mind when the High Courts exercise their discretionary powers under Article 226 of the Constitution and may refuse to invoke such powers if there is negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances. However, in that very case, it has been held that even where fundamental right is involved the matter is still within the discretion of the Courts as pointed out in ***Durga Prashad vs. Chief Controller of Imports and Exports : (1969) 1 SCC 185***. Apart from this, the following decisions were also relied by the Learned

Additional Advocate General on the question of delay, estoppel and prejudice:-

(i) ***Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu : AIR 2014 SC 1141***;

(ii) ***Chairman, Life Insurance Corporation of India and Others vs. A. Masilamani : (2013) 6 SCC 530***;

(iii) ***V. Chandrasekaran and Another vs. Administrative Officer and Others : (2012) 12 SCC 133***;

(iv) ***Cauvery Coffee Traders. Mangalore vs. Hornor Resources (International) Company Ltd. : (2011) 10 SCC 420***;

(v) ***Naresh Kumar vs. Department of Atomic Energy and Others : (2010) 7 SCC 525***;

(vi) ***M.P. Palanisamy and Others Vs. A. Krishna and Others : (2009) 6 SCC 428***;

(vii) ***Union of India and Others vs. Bishamber Das Dogra : (2009)13 SCC 102***.

(viii) ***Prabir Banerjee vs. Union of India and Others : (2007) 8 SCC 793***;

(ix) ***Om Prakash Mann vs. Director of Education (Basic) and Others : (2006) 7 SCC 558***;

(x) ***State of U.P. vs. Harendra Arora and Another: (2001) 6 SCC 392***;

28. On a careful examination of the aforesaid decisions, I find that the common principle propounded in

all the cases is that delay by itself would not non-suit a person. Whether to condone such delay or not is a matter of discretion which has to be exercised by Courts having regard to the facts and circumstances of each case. Delay is not condoned when injustice is caused to others due to third party right being ripened during the interregnum.

29. In ***Tukaram Kana Joshi and Others vs. Maharashtra Industrial Development Corporation and Others : (2013) 1 SCC 353***, it is held as follows: -

> **"12.** The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.
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> **13.** The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It

is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. : (1975) 1 SCC 152; State of M.P. v. Nandlal Jaiswal : (1986) 4 SCC 566; and Tridip Kumar Dingal v. State of West Bengal : (2009) 1 SCC 768).

14. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports : (1969) 1 SCC 185; Collector (LA) v. Katiji: (1987) 2 SCC 107; Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur : (1992) 2 SCC 598; Dayal Singh v. Union of India: (2003) 2 SCC 593; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar : (2011) 5 SCC 607).

15. In H.D Vora v. State of Maharashtra : (1984) 2 SCC 337, this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.**"** **[underlining mine]**

30. In ***Lajja Ram and Others Vs. Union Territory Chandigarh and Others : (2013) 11 SCC 235***, it has been held as under:-

> **"9.** Although the underlying policy behind dismissal of petitions on grounds of delay and laches is to discourage agitation of stale claims, still this Court has held that the delay in approaching the Court must not always act in prejudice to the aggrieved party and the Court must prudently exercise its discretion in doing so. This Court in Tridip Kumar Dingal v. State of W.B. : (2009) 1 SCC 768, has held that this Court may refuse to exercise its discretion where there is delay and laches in invoking jurisdiction of the Writ Court. However, the exercise of such discretion must be based on the facts and circumstances of each case and the decision must rest upon a variety of factors including the nature of fundamental rights breached, the remedy claimed and when and how the delay arose. This Court, in Northern Indian Glass Industries v. Jaswant Singh : (2003) 1 SCC 335, has observed that the conduct of the party challenging the notifications and pleading condonation of delay also plays an important role in exercise of this discretion.**"**
>
> **[underlining mine]**

31. In ***Basanti Prasad vs. Chairman, Bihar School Examination Board and Others : (2009) 6 SCC 791***, it has been held as follows:-

> "**20.** In State of Madhya Pradesh v. Nandlal Jaiswal : (1986) 4 SCC 566 , it was held as under: (SCC P 594, paras 23-24)
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> > "23. ……. There can be doubt that the petitioners were guilty of gross delay in filing the writ petitions with the result that by the time the writ petitions came to be filed. ……..
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> > 24. ……..…..… If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not

> satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. ……. Of Course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacketformula, for there may be cases where despite delay and creation of third-party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; *ex hypothesi* every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.**"** **[underlining mine]**

32. On an analysis of the above decisions, it is apparent that delay by itself cannot be a ground for refusal to entertain a *lis*. The only thing that is required to be seen is as to whether the Petitioner has given cogent reasons for the delay in approaching the writ court. We have seen from the decisions that delay of 4 to 10 and 10 to 30 years have been condoned, where the demand of justice was compelling. The Courts had interfered even in cases where third party rights had arisen when the claim made by the applicant is legally sustainable and, when substantial justice and technical considerations are pitted against each other, the Courts have preferred the cause of substantial justice.

33. In ***State of Punjab vs. Davinder Pal Singh Bhullar and Others. : (2011) 14 SCC 770***, while dealing with the doctrine of waiver, it has been held that waiver cannot always and in every case be inferred merely from the failure of the party to take objection. Acquiescence, on the other hand, is sitting by, when another is invading the rights, as held in ***Power Control Appliances vs. Sumeet/ Machines (P) Ltd. : (1994) 2 SCC 448***.

34. In a given case where the infraction shocks the judicial conscience, the Court should exercise its discretion as held in ***Tukaram Kana Joshi and Others*** (supra). I have no hesitation to hold that in the present case, the infraction of the rules committed by the Respondent is a serious one, which indeed shocks the conscience of this Court. I am of the considered opinion that although there is some delay on the part of the Petitioner in approaching this Court, the manifest illegality cannot be sustained on the ground of delay or laches. Apart from this, from the sequence of events narrated above, I am satisfied that the Petitioner had been quite diligent in her pursuit for justice.

35. Having held so, we may deal with the facts of the case that would be germane for determination of the

questions involved in this case. Since the grievance essentially is the violation of the Rules and non compliance of the mandatory procedure, we may proceed to examine the relevant rules.

> **"6. Procedure for imposing penalties specified in clauses (iv) to(x) of rule 3.**
>
> (1) Subject to the provisions of sub-rule 26 of rule 7, no order imposing on a police officer any of penalties specified in clauses (iv) to (x) of rule 3 shall be made except after-
>
> (a) informing the police officer in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
>
> (b) holding an inquiry in the manner laid down in sub-rules 3 to 22 of rule 7 in every case in which the disciplinary authority is of the opinion that such enquiry is necessary;
>
> (c) taking the representation, if any submitted, by the police under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
>
> (d) recording a finding of such imputation of misconduct or misbehaviour; and
>
> (e) consulting the Commission where such consultation is necessary.
>
> (2) Notwithstanding anything contained in clause (b) of sub-rule 1, if in a case it is proposed after considering the representation, if any, made by the police Officer under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the

police Officer or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period an inquiry shall be held in the manner laid down in sub-rules 3 to 22 of rule 7, before making any order imposing on the police officer such penalty.

(3) The record of the proceedings in such case shall include-

(a) a copy of the intimation to the police officer of the proposal to take action against him,

(b) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(c) his representation, if any;

(d) the evidence produced during the inquiry;

(e) the advise of the Commission, if any;

(f) the finding on each imputation of misconduct or misbehaviour; and

(g) the order on the case together with the reasons therefor.

7. Procedures for imposing penalties specified in clauses (xi) to (xv) of rule 3.-

(1) No order imposing any of the penalties specified in clauses (xi) to (xv) of rule 3 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule,

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a police officer, it may itself inquire into, or appoint an authority to inquire the truth thereof.

Explanation. - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule 7 to sub-rule 20 and in sub-rule 22 to the inquiring

authority shall be constructed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a police Officer, the disciplinary authority shall draw up or cause to be drawn up –

(i) the substances of the imputations of misconduct or misbehaviour into definite and distinct article of charge;

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

(a) A statement of all relevant facts including any admission or confession made by the police officer;

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

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

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint under sub-rule 2 an inquiry authority for the purpose, and where all the articles of charge have been admitted by the police officer in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in under sub-rule 25.

(b) If no written statement of defence is submitted by the police officer, the disciplinary

under authority may itself inquire into the articles of charge or may, if it considers it necessary so to do, appoint sub-rule 2 an inquiry authority for the purpose.

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

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority –

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

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

(iii) a copy of the statement of witness, if any, referred to in sub-rule 3:

(iv) evidence proving the delivery of documents referred to in sub-rule 3 to the police officer, and

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

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

(8) The police officer may take the assistance of any other police officer to present the case on his behalf but may not engage a legal practitioner for the purpose unless and Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority,

having regard to the circumstances of the case, so permits.

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

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the police officer pleads guilty.

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

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

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

Note:- If the police officer applies in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule 3, the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery

or production of any documents which are in the possession of the Government but not mentioned in the list referred to in sub-rule 3.

Note:- The police officer shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

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

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

(13) On receipt of the requisition referred to in sub-rule 12, every authority having the custody or possession of the requisitioned document shall produce the same before the inquiring authority.

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

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer shall be entitled to re-examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

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

Note:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally or the enquiry officer thinks that it is necessary for just decision of the case.

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

(17) The evidence on behalf of the police officer shall then be produced. The police officer may examine himself in his own behalf if he so prefers. The witness produced by the police officer shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

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

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

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

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

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

(22) (1) After the conclusion of the inquiry, a report shall be prepared and it shall contain –

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

(b) the defence of the police officer in respect of each article of charge;

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

(d) the findings on each articles of charge and the reasons therefor.

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

Provided that the finding on such articles of charge shall not be recorded unless the police officer has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself such article of charge.

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

(a) the report prepared by it under clause (1);

(b) the written statement of defence, if any, submitted by the police officer;

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

(d) written briefs, if any, filed by the Presenting Officer or the police officer or both during the course of the inquiry; and

(e) the order, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

(23) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provision of this rule.

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

(25) If the disciplinary authority having regard to its findings in all or any of the articles of charge is of the opinion that any of the penalties specified in clause (xi) to clause (xv) of rule 3 should be imposed on the police officer, it shall not be necessary to give the police officer any opportunity of making representation to the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the police officer.

(26) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clause (iv) to clause (x) of rule 3 should be imposed on the police officer, it shall, notwithstanding contained in rule 6, make an order imposing such penalty.

(27) Orders made by the disciplinary authority shall be communicated to the police officer who shall be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings of each articles of charge, or, where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiry authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.”

36. It is an admitted case on the part of the Respondent that none of the aforesaid Rules were complied with, except to state that a part of it substantially complied with when the Petitioner had been permitted to inspect the documents in the office of the inquiry officer. As would appear from the provisions, at each stage of the proceedings, opportunity has been provided to the delinquent of either making representation or for right of hearing and the right to be supplied with the copies of statements of witnesses and documents upon which the charges are based. The purpose of making such provisions is obviously to enable the delinquent to prepare an effective defence and also to examine and cross-examine the witnesses named by the prosecution and to produce defence witnesses with the object to satisfy the principle of natural justice to achieve the cause of justice.

37. The stand taken by the Respondent that the necessity to comply with the provisions was not felt as the entire case was based upon the case records in Gyalshing Police Station Case No.27(8)09, in my view, appears to be quite unacceptable. Had the Petitioner been given the

benefit of the opportunities provided under the Rules, the dereliction alleged against her could have been explained. In paragraph 8 of the rejoinder filed by the Petitioner, it has been stated as follows:

> **"**8. In reply to the contents of paragraph 12 of the Counter Affidavit filed by the Respondent, the Petitioner states that due to her health issue, she had, with the prior approval and information and after her leave was sanctioned she had proceeded on Medical Leave from 01.12.2008 to 23.12.2014, unfortunately as she again fell ill she could not personally join duty but had informed the authority. As far as the issue of the interim report is concerned the Petitioner had duly submitted the same to the OC/Gyalshing PS as she was subordinate to her at that point of time. The Petitioner during the relevant time was at the initial stages of her pregnancy and morning sickness is very common, she was away from her family alone and posted in West Sikkim due to which reason she was late to her office sometimes, however she carried out her duty which was assigned to her with utmost sincerity. Annexure R10 was neither served on the Petitioner nor was she asked to show cause about the same. That with respect to Annexure R11 to R14, as stated hereinabove, the Petitioner at the relevant time was pregnant, facing lots of medical complications, she was away from her family alone and posted in West Sikkim and fell sick regularly due to which reason she could not attend her office regularly. She gave birth to a baby Girl on 31.05.2010 and was on sanctioned maternity leave w.e.f. 24.05.2010 to 21.08.2010 and extension of leave for 25 days w.e.f. 22.08.2010 to 14.09.2010 due to her ill health. Thereafter the Petitioner joined her duty and despite her condition she was entrusted with night duties also.**"**

38. We have to bear in mind that the delinquent is a lady officer and the facts and circumstances set out in

paragraph 8 of the rejoinder reproduced above cannot be easily brushed aside. It may be noted that the averments in paragraph 8 have not been traversed by the Respondents. Had the Petitioner been the given opportunities provided under the Rules, those facts may have been brought on record for consideration by the inquiry officer, Disciplinary Authority and the Appellate Authority. The facts set out in paragraph 8 are certainly mitigating circumstances which could have altered the decision of the Disciplinary Authority. Unfortunately, on the very admission of the Respondent, the Petitioner was deprived of such opportunities. In the case of ***Bishamber Das Dogra*** (supra) cited by the Learned Additional Advocate General, it has been held that in case the inquiry report had not been made available to the delinquent employee it will *ipso facto* vitiate the disciplinary proceedings. In the present case, it is not just that copy of the inquiry report that was not supplied, even Rule 6 of the Rules of 1989 appears to have been violated. Apart from these, as pointed out by the Learned Senior Counsel for the Petitioner, the disciplinary proceedings are vitiated on the following serious infractions:-

"a. There was no inquiry as contemplated under Rule 7(1) of the said rules.

b. No presenting officer was appointed as required under Rule 7(5) (c) of the said rule.

c. No documents was supplied to the Petitioner as under Rule 7(3)(b) read with Rule 7(6)(iii) & (iv) of the rule.

d. No information of the appointment of any Presenting Officer was given to the Petitioner and therefore the Petitioner was not given a choice to appoint any Police Officer or a lawyer as required under Rule 7(8) of the said rule.

e. No opportunity was given to the Petitioner to state whether she had any defence to make under Rule 7(9) of the said rule.

f. No opportunity given to the Petitioner to adduce evidence as required under Rule (7)(11) of the said rule.

g. No oral or documentary evidence ever produced before the Enquiry Officer as required under Rule 7(14) of the said rule.

h. No opportunity to cross examine witness provided to the Petitioner as required under Rule 7(15) of the said rule.

i. No opportunity given o the petitioner to state her defence as required under Rule 7(16) of the said rule.

j. No opportunity given to the Petitioner to provide her evidence as required under Rule 7(17) of the said rule.

k. The petitioner was not examined by the Disciplinary Authority/Enquiry Officer to explain circumstances against her as required under Rule 7(18) of the said rule.

l. No opportunity given to the Petitioner of hearing or to file written brief as required under Rule 7(19) of the said rule.

m. No assessment of the evidence as required under Rule 7(22)(1)(c) of the said rule.

n. No evidence, documentary or oral taken, therefore the Enquiry Officer could not have produced the records before the Disciplinary Authority, the records as required under Rule 7(22)(2)(d) of the said rule.

o. The Disciplinary Authority did not either record its reasons for disagreeing with the Enquiry Officer or records its own findings as required under Rule 7(24) of the said rule.

p. The deletion of the Rule 7(25) vide the amendment Rules, 1995 makes it clear that the Disciplinary Authority ought to have given an opportunity of hearing to the Petitioner before imposing penalty on the Petitioner. This was admittedly not done.

q. The report of the Enquiry Officer was not furnished to the Petitioner as required under Rule 7(27) of the said rule.**"**

39. In ***Kashinath Dikshita vs. Union of India and Others : (1986) 3 SCC 229***, on facts somewhat similar to the one at present where large number of infractions had been admitted as set out in paragraph 4 of the judgment, one of which was for the refusal to supply of copies of documents and statements of witnesses which had been turned down as in the present case and, the plea taken by the Respondent was that no serious prejudice had been caused, it was held that such a plea was not acceptable and the order of dismissal was held to be a nullity and non-existent in the eye of law.

40. In ***Union of India and Others vs. Prakash Kumar Tandon : (2009) 2 SCC 541***, it was held that "if the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby".

41. In ***State of Uttar Pradesh and Others vs. Saroj Kumar Sinha : (2010) 2 SCC 772***, it has been held as follows:-

> **"28.** An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.
>
> .....
>
> **30.** When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.
>
> .....

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.

34. This Court in *Kashinath Dikshita v. Union of India [*(1986) 3 SCC 229*]*, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

35. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows: (*Kashinath Dikshita case*, SCC pp.234-35, para 10)

> "*10.* ..... When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross- examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to

> comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: 'What is the harm in making available the material?' and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

36. On an examination of the facts in that case, the submission on behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: (*Kashinath Dikshita case*, SCC p.236, para 12)

> "*12.* Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

……..

39. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State *of Punjab v. Bhagat Ram*: [(1975) 1 SCC 155] (SCC p.156, paras 6-8)

> "*6.* The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.
>
> *7.* The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant.

> Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.
>
> *8.* It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."
>
> **[Underlining mine]**

42. In the light of the principle laid down in the conspectus of decisions cited above and the fact that the disciplinary proceedings was carried out in flagrant violation of the Rules right from the inception commencing from the stage of Rule 6 of the Rules of 1989, I find it difficult to hold that the Petitioner has not been prejudiced. The manner in which the proceedings were conducted, to state the *least,* is shocking.

43. Another aspect is that if the case of the Respondent is that the Petitioner was indolent, their own conduct does not appear to be beyond reproach as it took almost two years for them to initiate the disciplinary proceedings by suspending the Petitioner from service vide Office Order dated 09.01.2012, Annexure P2, which raises

serious question on the *bona fides* of the proceedings. Then on her request for copies of the documents and the statement of witnesses after she was served with the memorandum of charges, she was directed to file her written statement within the time stipulated assuring that she would be supplied with those materials, if it was decided to hold departmental inquiry against her after considering her written statement. However, even after it was decided to proceed against her, far from supplying the materials, the Petitioner was not even heard either by the Inquiry Officer or by the Disciplinary Authority but was only handed down with the impugned order of dismissal. It did not stop there because her request for the materials were refused even as the Petitioner required those in order to enable her to file an effective appeal. Appeal thus filed without the benefit of studying the materials, was also heard *ex parte* and only the impugned order served on her. Curiously, she was supplied with those only after about one and half years, i.e., on 05.06.2013, after the impugned appellate order. The entire thing reflects the sordidness of it all.

44. Therefore, the plea of delay, laches waiver and acquiescence of prejudice not being caused to the Petitioner raised by the Respondent appear to be mere incantations in an effort to defend the indefensible.

45. For the aforesaid reasons, the Office Order No. POL/AIGP/HQ/2011/03 dated 09.01.2012 being Annexure P2, the inquiry report submitted vide M. No.291/AIGP/PHQ dated 05.06.2013 filed as Annexure P9, the Office Order bearing No. 36/PHQ/2012 dated 30.03.2012 issued by the Disciplinary Authority, Annexure P7 and Office Order bearing No. 60/PHQ/12 dated 23.06.2012 issued by the Appellate Authority, Annexure P11, hereby stand quashed and set aside as being a nullity and non-existent in the eye of law. Resultantly all actions taken in pursuance of the aforesaid orders shall also stand rendered *non est* and a nullity having no effect.

46. Before parting, it is directed that taking into account the facts and circumstances and the lapse of time, the Respondent may consider dropping the proceedings against the Petitioner on the charges in question. While taking this decision, the Respondent shall keep in view

that the delinquent is a lady officer who had undergone severe physical and mental trauma as set out in paragraph 8 of the rejoinder reproduced above. The fact that she has undergone immense mental stress thus far may be sufficient to correct her dereliction, if any. The object of the Rules is to ensure that discipline is maintained. This may have been achieved by now. In view of the fact that no third party right has arisen during the interregnum there should be no impediment for the Respondent in taking a decision.

47. In the result, the Writ Petition is allowed.

48. No order as to costs.

Sd/-
(S.P. Wangdi)
Judge
15.10.2015

Approved for reporting : **Yes**

Internet : **Yes**

jk/to