IN THE HIGH COURT OF MEGHALAYA AT SHILLONG

: ORDER :

WP (C) No.19 of 2015

Professor Ashish Kumar Das ……. Petitioner

-Versus-

North Eastern Hill University &ors ……. Respondents

Date of Order: **::** 30th August, 2017

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

Shri S Chakrawarty, Sr.Adv with Ms. Mahanta, for the petitioner

Shri S Sen,
Shri GS Massar, Sr.Adv with Shri LS Darnei } for the respondents

AFR **BY THE COURT:**

Preliminary

The petitioner, who was serving as professor in the department of Mathematics with the respondent No.1 North Eastern Hill University [hereinafter referred to as 'the respondent-university' or 'the university'] and who was subjected to disciplinary proceedings on the charges of sexual harassment of female research scholars, has preferred this writ petition assailing the legality and validity of the disciplinary proceedings as also the impugned order dated 17.12.2014 whereby, the penalty of compulsory retirement was imposed on him.

The relevant features and background aspects may be noticed in a little detail, having regard to the multifarious arguments advanced on behalf of the petitioner on the matters of procedure as also the merits of the case.[1]

[1] It may be mentioned at the outset that looking to the facts involved, the names of female research scholars as also the female witnesses, whether occurring in discussions/narratives or in reproduction of the contents of documents, are being omitted to avoid their identity, with asterisk (*) mark at the appropriate places.

Complaints against the petitioner and inquiries by the Women's Cell

On 30.04.2014, Ms. T, one of the research scholars in the department of Mathematics at the respondent-university made a complaint to the Vice Chancellor with the allegations that though she was working under the supervision of another professor but her supervisor, Dr. S, hardly showed any interest in her work and expressed that she was busy with other students. The complainant alleged that in the circumstances, she was sometimes required to go to the petitioner for academic advice but then, the petitioner not only exhibited unwarranted concern towards her but even attempted to flirt with her. The complainant further alleged that one day, the petitioner called her to his room and after some useless talks, indulged into the acts of unwelcome physical contacts; and expressed his yearning for more such acts while suggesting that getting intimate with him will be of help in her work. The complainant, while further alleging that the petitioner boasted of having such relations even with her supervisor, stated that despite her avoidance, the petitioner was making calls on her mobile and she was feeling disturbed and uncomfortable because of the harassment by the petitioner. The very same day i.e., on 30.04.2014, this very complaint, albeit in an abridged form, was also made to the Dean of Students Welfare.

The complaints so made by Ms. T were handed over to the Women's Cell of the respondent-university for appropriate inquiry. However, while such complaints were pending with the Women's Cell, another research scholar at the respondent-university, Ms. P, who was working under the supervision of another professor, made yet another complaint of sexual harassment against the petitioner on 13.05.2014. This second complainant alleged that as per the suggestion of her

supervisor, she was to take advice from other professors including the petitioner but the petitioner exhibited unnecessary concern towards her work and health and even made the suggestion that her guide was not good; and that on 19.02.2014, the petitioner indulged in 'nonsense and useless' talks and even claimed his relations with the other (female) professor in the department. The complainant further alleged that on the second day, the petitioner called her in the chamber and after some talks about studies, stated that he loved her and also made unbecoming comments on her physique and indulged into unsavoury physical contacts. The complainant further alleged that on the third day, the petitioner came down to her hostel hurriedly and tried to convince that he had not done anything wrong; but she narrated the deeds of the petitioner to her parents' whereafter, the petitioner called on her mobile to state his clarification. This complainant also alleged that the next day, the petitioner scolded her and even stated that she was having less women hormones and was a mental patient. The complainant further alleged that the petitioner tried to reject her synopsis without any valid reason but the same was approved after being sent to IIT, Guwahati. The complainant yet further stated that when Ms. T made the complaint, the petitioner sent her message not to get involved in the case directly or indirectly; and that she was very much disturbed and uncomfortable because of the harassment by the petitioner.

It is further noticed that while taking up the first complaint of Ms. T, the Women's Cell of the respondent-university heard the complainant and the petitioner as also the course supervisor of the complainant; and took note of the assertions of the petitioner that the complainant was seeking to take a revenge because he had rebuked her for arrogant attitude, want of sincerity, and lack of dedication. The Women's Cell,

however, formed the unanimous opinion that there was a prima facie case of sexual harassment and hence, recommended in its report dated 26.05.2014 that appropriate disciplinary proceedings be taken against the petitioner while putting him under suspension and a criminal complaint be also filed, as and when necessary.

In relation to the other complaint of Ms. P also, the Women's Cell of the respondent-university recorded the statements of the complainant and the petitioner. The Cell took note of the assertions of the petitioner that there was a 'common force' and 'game plan' of vested interests to silence him completely; and that four of his senior colleagues were going to retire and as a senior person, it was his duty to look after the welfare of the department. The Cell also took note of the submissions of the petitioner that he had opposed the synopsis of the complainant and even one of the external experts could not ascertain how much mathematics the synopsis contained, but the Guwahati based expert gave a positive reply and hence, her synopsis got approved. The Cell again found existence of a prima facie case of sexual harassment against the petitioner and made similar nature recommendation in its other report dated 03.06.2014, for disciplinary and other proceedings against him.

Initiation of disciplinary proceedings and previous writ petitions by the petitioner

After receipt of the aforesaid reports from the Women's Cell, the petitioner was served with an order dated 09.06.2014, as issued by the Registrar of the respondent-university, that the disciplinary proceedings, on the allegations of sexual harassment, were under contemplation against him and as such, he was placed under suspension with immediate effect. The said order dated 09.06.2014 was sought to be

questioned by the petitioner by way of a writ petition in this Court, being WP (C) No.226 of 2014. This writ petition was considered and disposed of by a learned Single Judge of this Court on 30.06.2014. A few relevant aspects of the said order dated 30.06.2014 may be noticed.[2]

In the said order dated 30.06.2014, learned Single Judge of this Court took note of the contentions on behalf of the petitioner that the Women's Cell of the respondent-university had not complied with Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 and that the copies of documents/complaints were not furnished to him. The learned Single Judge also took note of the submissions that the petitioner had filed a representation dated 13.06.2014 to the Executive Council of the respondent-university for furnishing the documents and for revocation of suspension and proceeded to dispose of the writ petition with the directions that: (i) the copies of documents demanded by the petitioner shall be supplied to him within six days; (ii) the petitioner shall be allowed to submit his explanation within seven days of the receipt of such copies; (iii) after receiving the petitioner's explanation, the respondents shall decide within a week if any inquiry was requisite; (iv) in case the inquiry was to be initiated, the article of charge, imputations and documents shall be supplied to the petitioner within a week of his explanation; and (v) the inquiry shall be held in compliance with the principles of natural justice and shall be completed within three months from the date of initiation. The learned Single Judge also provided that

[2]It may be mentioned that the orders passed in the three previous writ petitions filed by the petitioner have not been placed on record of this petition but, looking to their relevance, the records of the said three petitions have been requisitioned during the course of submissions. The relevant aspects of the orders passed in those petitions are, accordingly, referred in this order.

in case the inquiry was not completed within the stipulated period, the petitioner would be reinstated in service without prejudicing the inquiry.

It appears that after the order aforesaid, on 04.07.2014, certain documents were supplied to the petitioner, essentially relating to the first complaint of Ms. T and the report thereupon. In his response, the petitioner reiterated the stand that the complaint had been filed with malicious intent and because of his rebuke. Thereafter, the petitioner was served with an order dated 18.07.2014, as issued by the Registrar of the respondent-university, to the effect that a departmental inquiry into the matter of sexual harassment was being initiated against him; and then, he was served with the memorandum dated 23.07.2014 for an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules of 1965 [hereinafter referred to as 'the Rules of 1965'] carrying the article of charge, statement of imputations of misconduct, a list of documents relied upon, and a list of witnesses carrying the names of two other research scholars at the respondent-university.

The contents of the article of charge and statement of imputations had been as under:-

> *"**STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST PROF.A.K. DAS, DEPARTMENT OF MATHEMATICS, NEHU, SHILLONG***
>
> ***ARTICLE-I***
>
> *That the said Prof. A.K.Das , Department of Mathematics, NEHU, Shillong, while functioning as such, committed act of sexual harassment to the female research scholars of the said Department when they approached him for guidance in their research work.*
>
> *By his above act, Prof.A.K.Das as an employee of the University has committed a serious misconduct in gross violation of the provisions of Rule-3(I) of the CCS (Conduct) rules, 1964 which requires every Government servant at all times (i) to maintain absolute integrity, (ii) to maintain devotion to duty and (iii) do nothing which is unbecoming of a government servant.*
>
> *The above act of Prof. A.K.Das calls for imposition of major penalty under the provision of Rule-II of the CCS(CCA) Rules, 1965.*
>
> *Sd/-*
> *Registrar"*

"STATEMENT OF IMPUTATION OF MISCONDUCT/MISDEMEANORS IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST PROF.A.K.DAS, PROFESSOR, DEPARTMENT OF MATHEMATICS, NEHU, SHILLONG

ARTICLE-II

That the said Prof. A.K.Das, Department of Mathematics while functioning as such committed act of sexual harassment to the female research scholars of the said Department when they approached him for guidance in their research work.

The above act of Prof. A.K.Das is grossly immoral, outrageous to the modesty of the female research scholars and highly detrimental to the conducive and congenial academic atmosphere of the Department for academic pursuit of the female students/research scholars.

And thus, the above act of Prof. A.K. Das is highly unbecoming of him as an employee of the University and a serious misconduct on his part which is in gross violation of the provisions of Rule-3(I) of the CCS (Conduct) rules, 1964 which requires every Government servant at all times (i) to maintain absolute integrity, (ii) to maintain devotion to duty and (iii) do nothing which is unbecoming of a government servant.

And therefore, the above act of Prof. A.K.Das calls for imposition of major penalty under the provision of rule-II of the CCS(CCA) rules, 1965.

Sd/-
Registrar"

From the material placed on record, it appears that six documents were supplied to the petitioner with the memorandum dated 23.07.2014, being the complaints of Ms. T and Ms. P and the respective reports by the Women's Cell of the respondent-university.

While stating his grievance against the aforesaid order dated 18.07.2014 and the memorandum dated 23.07.2014, the petitioner preferred another writ petition in this Court, being WP(C) No. 259 of 2014. Suffice it to notice that in the said petition, on 04.08.2014, this Court directed the petitioner to submit his reply by the next day while adjourning the matter for three weeks and while making it clear that the inquiry against the petitioner was not stayed. Nothing substantial transpired in the said writ petition and the same was ultimately dismissed as infructuous on 28.01.2015, after conclusion of the inquiry and passing of the order impugned. It appears that even before the said

writ petition was taken up for consideration, the petitioner had already submitted his written statement of defence on 03.08.2014.

Before taking note of the relevant contents of the written statement of the petitioner, appropriate it would be to complete the narration about the previous writ petitions by the petitioner. After his submission of the written statement of defence, the petitioner was served with an order dated 18.08.2014, for commencement of the inquiry proceedings by the Women's Cell of the respondent-university. The petitioner took exception against such holding of inquiry by the Women's Cell, particularly when the said Cell had made the reports against him and hence, again approached this Court by way of yet another writ petition, being WP (C) No.301 of 2014. The said third writ petition of the petitioner was decided by the order dated 22.09.2014 wherein, another learned Single Judge of this Court (the then Chief Justice) took note of the background aspects and Rule 14 (2) of the Rules of 1965; and while expressing the opinion that in the requirements of fair play, the same Cell could not have been assigned the inquiry in this matter, quashed the impugned memorandum appointing the Inquiring Authority but left it open for the respondent-university to appoint some other authority as the Inquiry Officer while extending the period of inquiry by another three months. The learned Single Judge concluded on the writ petition with the following observations and directions:-

> *"10. Thus, I allow the writ petition and quash the impugned memo No.F.17-269/Esst-II/2012-8242 dated 22.8.2014 issued by the Registrar, NEHU, Shillong. However, it would be open for the university to appoint some other authority as the Inquiry Officer, if it is so advised. At this stage, learned counsel for the respondent-University submits that since the time of three months granted for holding the inquiry shall expire on 30-9-2014, this Court may consider to extend the period. Thus, the period of inquiry is extended by another 3(three) months and in terms of this order, the writ petition is disposed of."*

After the directions aforesaid, the respondent-university constituted another Board of Inquiry [hereinafter also referred to as 'the Board'] to inquire into the charges against the petitioner by the order dated 22.10.2014. This Board of Inquiry carried out the inquiry proceedings and made its report on 15.12.2014, on the basis whereof the Disciplinary Authority passed the impugned penalization order dated 17.12.2014.

In view of the submissions made in this matter, a closer look at the proceedings of inquiry would be necessary. However, before such details, appropriate now it shall be to take note of the relevant contents of the written statement of the petitioner, forming the core of his defence.

The Statement of Defence

In his detailed statement of defence, the petitioner strongly denied the charges and maintained that he had never acted in a manner which was immoral or outrageous to the modesty of female research scholars and detrimental to the congenial academic atmosphere of the department; and that none of his conduct was in violation of Central Civil Services (Conduct) Rules of 1964 [hereinafter referred to as 'the Conduct Rules of 1964']. The petitioner also gave out the names of several female students, who had completed their M.Phil and Ph.D under his supervision. While denying the allegations of complainants, the petitioner maintained that both of them wanted to complete their Ph.D. by 'taking undue advantages of loopholes in the system', which was not acceptable to him.

The petitioner maintained that his admonition of the complainant Ms. T for her arrogant attitude was the reason of her taking action against him while stating that Ms. T, after taking admission into her

Ph.D. program under the supervision of Dr. S, was finding the subject matter very difficult and started abstaining herself wherefor, her supervisor became upset and on 22.04.2014, asked her to look for some other supervisor; and then, after remaining absent for about a week, Ms. T suddenly appeared in his Faculty-room on 29.04.2014 and sounded confident as if he would readily accept her as his Ph.D. Student. The petitioner alleged that while Ms. T was sitting in his Faculty-room, Dr. S arrived there but Ms. T totally ignored her. This, according to the petitioner, made him upset, and '*in order to create a sense of realization in her mind*', he '*rebuked her strongly for her arrogant attitude and lack of dedication*' and asked her to look for some other supervisor. The petitioner alleged that on being unsuccessful in convincing him, Ms. T left the room and the following day, '*decided to shut him off*'.

Further, the petitioner specifically refuted, almost word-by-word, every allegation leveled by Ms. T while denying each and every act/deed imputed. The petitioner maintained that the allegations leveled against him were '*totally false and fabricated*' and were made with '*malicious intent'*. The petitioner also submitted that when Ms. T found that neither him nor Dr. S would give her any undue favour, she decided to remove him from the system and also to put a social stigma on Dr. S by '*misusing the legal weapon available with her*.'

As regards the other complainant Ms. P, the petitioner submitted that the synopsis submitted by her for the purpose of registration carried hardly any notable mathematics and the same was strongly opposed by him in the faculty meeting of the department dated 20.03.2014. The petitioner maintained that he was well supported by another professor of the department and when the synopsis was almost on the verge of

rejection, considering the plight of student, it was sent to the external experts; and even one of the external experts politely expressed his doubts as to how much of mathematics was contained in the said synopsis. Again, the petitioner specifically refuted, almost word-by-word, every allegation leveled by Ms. P while denying each and every act/deed imputed by her and while asserting, inter alia, that he always regarded the female students and the female colleagues in high esteem.

The petitioner generally accused the complainants of seeking undue favours and then seeking to settle scores with him, for having realized '*that with their dishonesty, insincerity and inability it would be difficult to get a Ph.D. in Mathematics from this department'*

The petitioner also indicated that all four of his senior colleagues were going to retire in about two years and, 'as a responsible teacher and researcher', it was his duty to look after the welfare of the department; and because of his attitude as a responsible teacher, the two complainants were finding him to be a big obstacle.

Thus, to put in a nutshell, the case of the petitioner had been: (i) that he always regarded the female students and the female colleagues in high esteem and the allegations against him were totally false and fabricated; (ii) that both the complainants wanted to complete their Ph.D. by taking advantage of certain loopholes in the system but he was standing as the stumbling block for them while working as a conscientious teacher; (iii) that Ms. T expected undue favour from him and from Dr. S and hence, she decided to remove them from the system while putting stigma on Dr. S too; (iv) that Ms. T was antagonized for having been rebuked by him; and (v) that Ms. P was having a score to settle for he had opposed her synopsis and hence, she joined hands with Ms. T with the same set of allegations.

The Inquiry Proceedings

As noticed, after such submission of the written statement of defence, the respondent-university proposed to get the inquiry conducted by the Women's Cell but, this Court did not approve of such a proposition; and after the aforesaid order dated 22.09.2014 in WP (C) No. 301 of 2014, the respondent-university constituted another Board of Inquiry by the order dated 22.10.2014.[3]

The petitioner was summoned to appear before the Board of Inquiry and with the notice, copies of article of charge with statement of imputations; written statement of defence; list of witnesses; order appointing the Presenting Officer; and order appointing the Board of Inquiry were supplied to him.

On 17.11.2014, the first date of inquiry, the petitioner denied the charges; pleaded not guilty; and also submitted that he would be presenting the case himself. On this date, the Presenting Officer submitted a list of witnesses and copies thereof were supplied to the petitioner; and the petitioner submitted a list of documents which he required for examination. The Board of Inquiry ordered that the complainant Ms. P would be examined on 18.11.2014; and one of the original witnesses would be examined on 24.11.2014; and, as regards additional witnesses, the dates would be fixed after the petitioner had submitted his list of witnesses. Thereafter, on 18.11.2014, the original documents as sought for by the petitioner were produced by the Presenting Officer, which were examined by him. One particular document, the application for hostel accommodation by Ms. T, as sought for by the petitioner was declined. Then, the Presenting Officer

[3] The original record of proceedings of the Board of Inquiry has been produced by the learned counsel for the respondent-university during the course of hearing; and the relevant contents are being referred/reproduced from this original record.

submitted a list of documents requested by the petitioner; and yet further, six additional documents were supplied to the petitioner. Thereafter, the deposition of the complainant Ms. P was taken and the Board ordered issuance of summons for appearance of the five witnesses of the department on 01.12.2014.

On 24.11.2014, the third date of proceedings, the petitioner submitted written objections against the production of the so-called 'new' evidence with reference to Sub-rule (15) of Rule 14 of the Rules of 1965. However, this objection was rejected by the Board and thereafter, cross-examination of the complainant Ms. P was carried out and deposition of another witness was also taken. The Board re-fixed the matter as regards one of the additional witnesses and otherwise posted the matter on the date already fixed i.e., 01.12.2014. The Board recorded the proceedings dated 24.11.2014 as under:-

> *"The Proceedings of the Board of Inquiry commenced at 10.00 AM in presence of the charged Government Servant, Prof. A.K.Das, Presenting Officer, Prof. K.Ismail, the Complainant, Miss P*. Later in the afternoon, after the cross-examination of the Complainant, Miss P*, Smt. TPL*, Prosecution witness also appeared for deposition of her statement.*
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> *The charged Govt. Servant Prof. A.K.Das submitted an objection to the production of new evidences by the Presenting Officer on behalf of the Disciplinary authority and reproduced the Note given to Sub Rule 15 of Rule 14 of CCS(CCA) Rules 1965 which says that "New evidence shall not be permitted on 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 inherent lacuna or defect in the evidence which has been produced originally.*
>
> *The Presenting Officer in reply referred to Sub Rule 15 of rule 14 and stated that the need to bring more evidences is because the charged Govt. Servant in his Written Statement has categorically stated in Para S4 that "The statement of article of charge framed against me and the statement of imputation of misconduct/misdemeanours in support of the articles of charge are extremely vague in nature without names and other particular of the female research scholars who allegedly suffered sexual harassment" and hence there is a need to produce additional documentary evidence and witnesses. The additional documentary evidences and list of witnesses have been supplied to the charged Govt. Servant in the last hearing and he has received the same without making any objection. The additional documentary evidences and witness are vital to the proceedings and may be allowed.*

The board of Inquiry examined the provisions of the Rule referred to by the charged Govt. Servant and after careful examination of the provisions is of the view that the additional documentary evidences and witness are important to enable the Board of Inquiry to give a correct finding and therefore the prayer of the charged Govt. Servant is rejected. The additional documentary evidences and witness are allowed.

The cross-examination of the complainant was taken out and later deposition of Smt. TPL was taken out.*

The Board of Inquiry also saw a prayer from one of the witnesses, Dr. A for fixing another date of deposition as she is not available on 1/12/2014. Prayer allowed. Date refixed for 05/12/2014.*

Case adjourned till 1st December, 2014."

(Underlining supplied for emphasis)

Thereafter, on 01.12.2014, the petitioner reiterated his objection to the production of so-called 'new' evidence. The Board declined to entertain such repetition of objection while pointing out that the matter had already been disposed of in the earlier sitting and the petitioner had not given out any additional justifications for reiterating his objection. Thereafter, the statements of four witnesses were recorded. The record of proceedings dated 01.12.2014 reads as under:-

"The Proceeding of the Board of Inquiry (4th) commence on 01/12/2014 in the presence of Prof. A.K.Das Prof. M.M.Singh, Dr. S, Mr. Ali Asgar, Ms. P*, Mr. Deiborlang Nongsiang and Prof. K. Ismail.*

Before the examination of the Witnesses was to be commenced. The Charged Officer, Prof. A.K.Das reiterated his objection to the production of new evidence by Presenting Officer on behalf of the Disciplinary Authority.

This matter referred by the Charged Officer has been disposed off in the earlier sitting of the Board and as the Charged Officer has not submitted any additional justifications for reiterating his objection. The Board of Inquiry is of the opinion that the prayer made by the Charged Officer cannot be entertained.

The examination of Shri Deiborlang Nongsiang(PW-2) was taken up and later he was cross examined. The examination and cross examination of Shri Ali Asgar(PW-3), Dr. M.M.Singh(PW-4) and Dr.S(PW-5) was taken up.*

The Board of Inquiry also received a letter from the Registrar, NEHU, according extension of time upto 15th December, 2014 for the Board of Inquiry to complete the Proceeding against Prof. A.K.Das, Department of Mathematics, NEHU, Shillong, The Board of Inquiry accept the extension and also decided that the deposition of the witnesses can be read over and accepted by any of the three members. Thereafter, the Proceeding was adjourned till the 5th December, 2014."

On the next date i.e., 05.12.2014, the petitioner submitted two written objections regarding: (1) non-inclusion of his objections and

disallowing some of his questions during the statement of one of the departmental witness; and (2) taking depositions of as many as four witnesses on a single day and that too, before examination of the original witnesses. The Board only observed that it would be examining the matter further and proceeded to record the depositions of the other complainant Ms. T and the remaining departmental witness. The matter was thereafter adjourned to 08.12.2014, for recording deposition of the petitioner as also of his defence witness. The record of proceedings dated 05.12.2014 reads as under:-

> *"The proceedings of the departmental inquiry commenced today and petitions were received from the charged Govt. Servant about 1) non inclusion of objections and disallowed questions during the recordings and the deposition and cross examination of Dr. S*(PW-5) 2) Objection to the depositions and cross examinations of four additional witnesses on a single day that too before the depositions and cross examination of the original witnesses. The Board of Inquiry read out full text of the two petitions and requested the charge Govt. Servant if he wanted to explain and indicate the course of action that needs to be taken further. Presenting Officer observed that it is not a fact that the charged Govt. Servant has not been given ample opportunity to cross examine the witnesses. The Board will examine the matter further. Meanwhile the deposition of the complainant will commence on oath and thereafter cross examination will be conducted and the deposition of the last witness of the prosecution will commence after lunch.*
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> *The deposition and cross-examination of the complainant Ms. T* was taken up in the presence of the Charge govt. Servant, Presenting Officer and Ms. P*, the other complainant. The deposition and cross-examination of defence Witness Dr. A*(PW-6) also taken up. The evidence from the prosecution is closed today and the examination of the Defence will start on the 8th of December, 2014 for recording the deposition of the Charged Officer Prof. A.K.Das and the Defence Witness Dr. Jibitesh Dutta, Asstt. Professor, Department of Basic Science and Social Sciences, NEHU. Issue notice to the Defence Witness accordingly.*
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> *The Presenting officer will submit written argument on the 9th December, 2014 and the Defence will submit the written argument on the 11th December, 2014.*
>
> *Case adjourned till 8th December, 2014."*

On 08.12.2014, when asked if he would offer himself as a witness in defence or produce any witness, the petitioner categorically replied in the negative but made a request to the Board that the documents produced by him may be taken into consideration as defence exhibits. The Board recorded the submissions of the petitioner as also of the

Presenting Officer in this regard; and, looking to the request of the petitioner to mark the documents produced by him as exhibits, the Board again queried if the petitioner would offer himself as a witness to co-relate the documents but the petitioner reiterated his denial to examine himself as a witness. Thereafter, the Board proceeded with the general examination of the petitioner as per Sub-rule (18) of Rule 14 of the Rules of 1965 and recorded the proceedings as under:-

> *"The proceeding of the 6th hearing of the Departmental Inquiry against Prof. A.K.Das (Charged Govt. Servant) in accordance with rule CCS (CCA) Rule 1965 commenced today the 8th December, 2014 at 10.00 A.M. The Presenting Officer and Charged Govt. Servant were both present. As the case for the disciplinary authority (prosecution) has been closed on the 5th of December, the Charged Govt. Servant was asked if he would offer himself as a witness in his defense or produce any other witness. Earlier, the charged Govt. Servant had submitted the name of one defense witness and summon was issued to him to appear today. However, the defense witness has not appeared and the charge govt. Servant has informed that he will not produce his witness any more. The charged Govt. Servant has further submitted that he declines to make any submission orally or in writing in defense as a witness but has produced documents which he has requested the Inquiry Board to be taken into consideration as defense exhibits. Copy of the documents submitted by him numbering 14 nos. Have been placed before the Inquiry Board. The Presenting Officer observed that the Charged Govt. Servant objected to the production of new evidences by the prosecution and therefore, the new production of defense at this stage can be accepted only if the Charged Govt. Servant can justify that if without these documents produced today there would be an inherent lacuna or defect in the evidence which has been produced originally. The Presenting Officer also observed that the Charged Govt. Servant had, at the time of his presentation of the list of additional witnesses received the copies with no objection and had made his objection only on the next hearing.*
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> *On the issues raised by the Presenting Officer, the Charged Govt. Servant has submitted that the documentary evidence produced by him today are in accordance with Sub Rule 17 of rule 14 and are not related to the provision of Sub Rule 15 of rule 14 and as such no justification is required to be stated before the Board of Inquiry as to the fact that these evidences are required. He has also submitted that under the Central Vigilance Commission Manual chapter XI such evidences can be produced as exhibits in the defense of the charged govt. Servant.*
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> *Copies of the letter submitted by the Charged Govt. Servant was furnished to the Presenting Officer, however, Presenting Officer did not receive the same.*
>
> *As the Charged Govt. Servant has produced defence documents requesting the Inquiry Board to record them as defense exhibits, the Board of Inquiry has again questioned the Charged Govt. Servant whether he offers himself as a witness in his defense to correlate the documents with his statement before the Board of Inquiry. The Charged*

Govt. Servant reiterated that he declines to examine himself as a witness. The Board of Inquiry now proceeds to record the general examination of charged Govt. Servant as provided under Sub Rule 18 of rule 14 of the CCS (CCA) Rule.

The examination of the Charged Govt. Servant by the Board of Inquiry proceeded and form part of the records. Copies of the same are furnished to both the Presenting Officer and Charged Govt. Servant.

Case adjourned till 9th December, 2014 at 10.30 am for submission of written brief arguments by the Presenting Officer."

On 09.12.2014, the Presenting Officer submitted his written arguments but with these written arguments, submitted yet another document in the form of photostat of a wedding invitation card (that co-related with the disputed fact about the time of petitioner's alleged interaction with Ms. P on 21.02.2014). The petitioner, thereafter, filed his written brief of submissions on 11.12.2014. After the aforesaid proceedings, the Board drew up its report on 15.12.2014 and forwarded the same to the concerned authorities of the respondent-university and immediately thereafter, on 17.12.2014, the petitioner was served with the impugned order awarding the penalty of compulsory retirement while treating the period of suspension as being on duty for pension purposes.

It is not in dispute that the copy of the inquiry report was never supplied to the petitioner before passing the order impugned. In fact, a copy of this report has been placed on record only with the counter affidavit in this petition.

The Inquiry Report

As noticed, the copy of inquiry report was supplied to the petitioner only as an annexure to the counter affidavit in this petition. The petitioner has filed a rejoinder affidavit, inter alia, bringing on record the grounds of his challenge to the said inquiry report. Appropriate it would be to notice at this juncture the broad features of the inquiry report dated 15.12.2014.

In Part I of the inquiry report, the Board referred to the background aspects leading to its constitution; and in Part II and Part III, the Board recounted the proceedings of reading out the charges to the petitioner, production of documents by the parties, the names of witnesses and particulars of the documents produced. Thereafter, the Board proceeded with the assessment of evidence and recorded its findings in Part IV of the report. In paragraph (1.a) thereof, the Board scrutinized the deposition of the complainant Ms. P; and took note of the implicating statements in her examination-in-chief, particularly those relating to the alleged incidents of 19.02.2014 to 22.02.2014. Thereafter, the Board proceeded on its analysis of the testimony of Ms. P and, after dealing with the aspects projected by the petitioner in the cross-examination and written submissions, rejected his contentions and expressed the opinion that the petitioner was '*deliberately misleading the Board and thereby suppressing vital facts that did occur on the 22nd February, 2014'*.

The Board took up, in paragraph (1.b), scrutiny of the deposition of the other complainant Ms. T; and took note of her implicating narratives, of the incidents that allegedly took place on 20.03.2014, on 28.03.2014 or 31.03.2014, and on 12.04.2014. The Board analysed her testimony too while dealing with the aspects projected by the petitioner in the cross-examination and the motives alleged by him; and, while rejecting the contentions of the petitioner, concluded as under:-

> "*The Charged Govt. Servant Prof. A.K. Das has assigned a motive behind her filing the complaint but the motive has not been spelt out and the Board of Inquiry has not been able to establish a motive especially as, because of the incident the Complainant-cum-witness has have to abandonee* (sic) *the pursuit of her Ph.D. research work in NEHU due to the uncongenial atmosphere which the Charged Govt. Servant created. The deposition made by Ms. T stands as a vital piece of evidence in support of the charge of sexual harassment as she does not stand to benefit anything at all by filing the complaint and deposing before the Board of Inquiry."*

Thereafter, in paragraph (2), the Board examined and analysed the statements of other witnesses including two faculty members of the department, Dr. S and Dr. A, who alleged indiscreet, unwarranted and unwelcome behaviour of the petitioner with them in the past. Further, the Board analysed the written brief of the Presenting Officer in paragraph (3), and that of the petitioner in paragraph (4). Thereafter, the Board scrutinized the record of general examination of the petitioner and then, made a brief reference to the documents filed.

After having thus surveyed the record, the Board ultimately recorded its findings and conclusions in Part V of the report as under:-

> "***Findings***
>
> *The Board of Inquiry to the best of its efforts conducted a fair and unbiased inquiry into the charges framed against Prof. A.K. Das, Department of Mathematics, NEHU, Shillong in accordance with the provisions of Rule 14 of CCS (CCA) Rule 1965 and as per the term laid down in the University Order F. No.17-269/Estt-II/2012-8432 and 22-10-2014 and F. No.17-269/Estt-II/2012-8430 dated 22-10-2014. The Board of Inquiry particularly ensured that the Charged Govt. Servant gets sufficient opportunity to defend himself. The Inquiry concluded on 11th December 2014 after the submission of written brief by the Charged Govt. Servant.*
>
> *The Charged Govt. Servant in his written statement which forms part of the record has stated that the charges made by the Disciplinary Authority are vague as the names of the research scholars, the date, time and place of occurrence of the incidents have not been indicated.*
>
> *The Board of Inquiry has been able to obtain the above information with the submission of the additional documents furnished by the Presenting Officer under the provisions of Rule 14 Sub-rule 15 of the CCS (CCA) Rule, 1965 and these documents have bridged the lacuna which has been alleged to be in the Article of Charge. The names of the female research scholars have been established and the dates, times and places of occurrences have been established in the deposition made by the Complainants-cum-witnesses who are victims of Sexual Harassment.*
>
> *It may be mentioned that the Hon'ble Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra (1999) 1SCC 759, has observed that where the evidence of the victim inspires confidence in the case of sexual harassment, the Court are obliged to rely on it. It also observes that in a case involving charge of sexual harassment or attempt to sexually molest, the Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression "molestation".*
>
> *The Charged Govt. Servant Prof. A.K. Das, Department of Mathematics, NEHU, Shillong in his denial of the charge framed against him has attempted to assign a motive that the complainants are made as*

'vendetta' for his attempts to improve the academic performance of the female research scholars. He has on the one hand admitted that both the complainants-cum-witnesses are not directly under his supervision as their guide but on the other hand it has been observed that his interest in them is more than what the call of duty ascribes. He has even gone to the extent of verifying the attendance of one of the complainant who had gone to attend the AIS Conference at Chennai from the Convener of the Conference and ***thus his integrity is questionable and in gross violation to the provision of Rule-3(1) (i) of the CCS (Conduct) Rules, 1964****.*

The Charged Govt. Servant has tried to mislead the Board of Inquiry and suppressed facts relating to the observations of the External Experts viz. Namely, Dr. Jothilingam and Dr. AnupamSaikia. By such acts the Charged Govt. Servant has proved that his devotion to duty is questionable.

His attempt to assign motive that the complaints are 'vendetta' is not established, especially as the main complainant Ms. T who filed her complaint on 30th April, 2014 and for which a Disciplinary Proceeding has been drawn against the Charge Govt. Servant, Prof. A.K.Das, has abandoned her pursuit to complete her Ph.D. from NEHU due to the uncongenial atmosphere created by the action of Prof. A.K.Das, Charged Govt. Servant.*

The evidence adduced from the depositions of Dr.S and Dr.A* also supports the allegations against the said Charged Govt. Servant that he has, over a period a time been committing acts of sexual harassment which is highly detrimental to the conducive and congenial academic atmosphere of the Department in particular and the University in general. He, therefore* ***has not maintained devotion to duty as required under Rule 3(1)(ii) of the CSS(Conduct) Rules, 1964.***

The acts of sexual harassment as reported by the complainants against the Charged Govt. Servant Prof. A.K.Das are established as discussed in the Analysis at Part-IV of this Report.

As per the established law, "Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct." By the act of sexual harassment to the female research scholars namely, Ms. P and Ms. T* by the Charged Govt. Servant when they approached him for guidance is in violation of Rule 3(1)(i) of the CSS(Conduct) Rules, 1964 (Vishaka and Ors. Vs. State of Rajasthan and Ors., JT 1997(7) SC 384).*

It is therefore established, that ***the act committed by the Charged Govt. Servant Prof. A.K.Das is unbecoming of a Govt. servant and in violation of Rule 3(1)(iii) of the CCS(Conduct) Rules 1964.***

The Board of Inquiry, therefore, finds that the Charged Govt. Servant Prof. A.K.Das has committed serious misconduct in gross violation of provision of Rule – 3(I) of the CCS(Conduct) Rules, 1964 which requires every Government Servant at all times(i) to maintain absolute integrity, (ii) to maintain devotion to duty and (iii) do nothing which is unbecoming of a government servant.

The Board of Inquiry also noted that this case falls under the ambit of Rule 3-C of the CCS(Conduct) Rules 1964 which states as follows:

Rule 3-C of the CCS(Conduct) Rules: Prohibition of sexual harassment of working women

(1) No Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.(sic)

(2) Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

EXPLANATION **-** *For the purpose of this Rule, "sexual harassment" includes such unwelcome sexually determined behavior, whether directly or otherwise, as-*

(a) Physical contact and advances;
(b) Demand or request for sexual favours;
(c) Sexually coloured remarks;
(d) Showing any pornography; or
(e) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

The impugned order dated 17.12.2014

As noticed, the aforesaid report of the Board of Inquiry was forwarded to the concerned authorities of the respondent-university on 15.12.2014 and immediately thereafter, on 17.12.2014, the petitioner was served with the impugned order awarding him the penalty of compulsory retirement while treating the period of suspension as being on duty for pension purposes. The impugned order dated 17.12.2014 reads as under:-

"Pursuant to the Resolution No.EEC:37:2014:2:(i) adopted by the Executive Council in its 37th Emergent Meeting held on 17.12.2014, the Vice Chancellor is pleased to order the compulsory retirement of Dr. Ashish Kumar Das from the post of Professor of the Department of Mathematics, NEHU, Shillong ***w.e.f. 17.12.2014 (afternoon)****.*

The period of suspension i.e. from ***09.06.2014 to 17.12.2014*** *shall be treated as on duty for all practical purposes including pensionary benefits."*

The petitioner attempted to maintain an appeal against the aforesaid order dated 17.12.2014 to the Executive Council of the respondent-university but this appeal was not entertained for the reason that the Executive Council itself was the Disciplinary Authority that had passed the order imposing penalty. Having received such a communication from the Registrar of the respondent-university dated 30.01.2015, the petitioner preferred this writ petition questioning the

legality and validity of the proceedings as also the order passed against him.

Rival Submissions

In his extensive and strenuous arguments, learned counsel for the petitioner has assailed the validity of disciplinary proceedings and the order impugned with the submissions that in the present case, right from commencement and upto culmination, the proceedings have been conducted in total disregard of the statutory rules as also the principles of natural justice; and the findings have been recorded against the petitioner on surmises, conjectures and inadmissible evidence; and further, the punishment has been awarded to the petitioner without even supplying him a copy of the inquiry report. Thus, with reference to the decision of the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi v. Union of India: (1995) 6 SCC 749,*** learned counsel has made a fervent plea that the present case calls for interference by the Court.

The learned counsel has contended in the first place that even at the preliminary stage, respondents violated the provisions of Sub-rule (1) of Rule 10 of the Rules of 1965 when the Registrar of the respondent-university issued the order dated 09.06.2014 placing the petitioner under suspension in the purported exercise of powers under Statute 27 (1) of the NEHU Act, 1973 though, under the said Statute, the powers of putting under suspension could have only been exercised by the Vice Chancellor. With reference to the decision of the Hon'ble Supreme Court in the case of ***Marathwada University v. Seshrao Balwant Rao Chavan: (1989) 3 SCC 132***, the learned counsel has argued that when the Statute prescribed the power to be exercised by a particular person, the same could not have been exercised by any other, unless delegated in accordance with law. According to the learned

counsel, the Registrar being neither the authority contemplated by Rule 10 (1) of the Rules of 1965 nor a delegated authority, evident it is that the Disciplinary Authority never applied its mind to the case of the petitioner; and the initiation of the proceedings by the Registrar vitiated the proceedings at the very inception.

In the second limb of arguments, learned counsel for the petitioner has contended that the article of charge and the statement of imputations of misconduct/misdemeanor, annexed as Annexures I and II to the memorandum dated 23.07.2014, had been completely vague as opposed to the requirements of Sub-rule (3) of Rule 14 of the Rules of 1965 inasmuch as neither the particulars of the complainants were stated nor the date, time, place and nature of alleged incidents were disclosed. While relying on the decisions of the Hon'ble Supreme Court in ***Union of India and others v. Gyan Chand Chattar : (2009) 12 SCC 78, Sawai Singh v. State of Rajasthan: (1986) 3 SCC 454,*** and ***State of Uttar Pradesh v. Mohd. Sharif (dead) through LRs.: (1982) 2 SCC 376***, the learned counsel has argued that the inquiry proceedings stand vitiated for being based on vague charges.

In the third and lengthy limb of arguments, learned counsel for the petitioner has assailed the conduct of proceedings by the Board of Inquiry with the submissions that there had been blatant violation of the mandatory requirements of the Rules of 1965 as also the principles of fair play and natural justice in the inquiry proceedings. Learned counsel has referred to the inquiry proceedings in detail and has argued that the conduct of inquiry in an unwarranted hurried manner as also the baseless report by the Board clearly indicate its pre-determined mindset with pre-conceived notions. The learned counsel has also referred to the fact that in the initial list, only two witnesses were mentioned but on the

first date of inquiry i.e., 17.11.2014, the Presenting Officer submitted a list of additional witnesses and then, on the next date i.e., 18.11.2014, submitted additional documents. Such insertion of additional evidence, according to the learned counsel, had been squarely against the mandate of the Note appended to Sub-rule (15) of Rule 14 of the Rules of 1965 that no new evidence shall be brought in the disciplinary proceedings so as to fill up a gap or lacuna. Learned counsel has argued that the petitioner never waived his objections with regard to such additional evidence and in fact, raised the objections in writing too but the Board of Inquiry overruled such objections in gross violation of the requirements of the Rules; and on this count alone, the proceedings deserve to be quashed. Apart from the aforesaid decision in ***Md. Sharif*** (supra), the learned counsel has referred to and relied upon the decisions in ***Arjan Singh v. Kartar Singh and others: AIR 1951 SC 193***, ***Mathura Prasad v. Union of India and others: (2007) 1 SCC 437***, ***State Bank of Patiala and others v. S.K. Sharma: (1996) 3 SCC 364***, ***Mannalal Khetan and others v. Kedar Nath Khetan and others: (1977) 2 SCC 424, Union of India and Others v. A.K. Pandey: (2009) 10 SCC 552, Tara Singh and others v. State of Rajasthan and others: (1975) 4 SCC 86***, ***Samurai Electronics Pvt. Ltd. and another v. Municipal Council and another: (1998) 2 SCC 707***, ***Hukam Chand Shyam Lal v. Union of India and others: (1976) 2 SCC 128***, ***State of Punjab v. Davinder Pal Singh Bhullar and others: (2011) 14 SCC 770***, and ***Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association and others : 1988 (Supp) SCC 55***.

The learned counsel has elaborated on the submissions that gross violation of mandatory requirements by the Board of Inquiry, despite repeated objections, has highly prejudiced the petitioner

because such violation completely changed the course of inquiry and in fact, the Board recorded its findings solely on the consequences of such violation; and hence, for the reason of such prejudice, the proceedings deserve to be quashed. The learned counsel has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India and others v. Prakash Kumar Tandon: (2009) 2 SCC 541***. The learned counsel has also argued that the Board of Inquiry relied upon entirely inadmissible evidence and did not supply the copies of the statements of witnesses as were recorded during the course of inquiry by the Women's Cell and hence, there had been denial of reasonable opportunity to the prejudice of the petitioner. Learned counsel has referred to the decisions in ***Kuldeep Singh v. Commissioner of Police and others: (1999) 2 SCC 10, Rajasthan State Road Transport Corporation and others v. Mohar Singh: (2008) 5 SCC 542***, ***State of Uttar Pradesh and others v. Saroj Kumar Sinha: (2010) 2 SCC 772***, ***Roop Singh Negi v. Punjab National Bank and others: (2009) 2 SCC 570***, ***Life Insurance Corporation of India and another v. Ram Pal Singh Bisen: (2010) 4 SCC 491, Nicks (India) Tools v. Ram Surat and another: (2004) 8 SCC 222,*** and ***Brajendra Singh Yambem v. Union of India and another: (2016) 9 SCC 20***.

In the fourth limb of his arguments, learned counsel for the petitioner has contended that before imposition of penalty, the respondents never provided the petitioner with a copy of the inquiry report and a legitimate opportunity of contesting the findings of the Board of Inquiry in total disregard to the mandate of Sub-rule 2(A) of Rule 15 of the Rules of 1965. The learned counsel has argued that the respondents have filed the copy of the inquiry report only with their counter affidavit and have taken the plea that the petitioner was not

prejudiced for having actively participated in the proceedings and having cross-examined the witnesses, but the manner in which the evidence was evaluated and the manner in which the findings were recorded even on inadmissible evidence, the denial of an opportunity to file representation against the findings of the Board of Inquiry has caused serious and immeasurable prejudice; and such prejudice is confounded by the facts that the entire findings are only *ipse dixit* of the Board and there is no Appellate Authority in the respondent-university who could have re-appreciated the evidence and the contentions. Learned counsel has also argued that the Board has proceeded in an entirely illegal manner by shifting the entire burden on the petitioner while not examining the contradictions and inconsistencies in the evidence. Apart from the decision of ***Roop Singh Negi*** *(Supra)* and ***Gyan Chand Chattar*** *(Supra)* the learned counsel has also relied upon the decisions in ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh: (1972) 1 SCC 595*** and ***M.V. Bijlani v. Union of India and others: (2006) 5 SCC 88***.

The learned counsel has also argued that it is not a rule universally applied that a woman would not ordinarily make allegations against her honour; and has referred to the decision of the Hon'ble Supreme Court in the case of ***Pandurang Sitaram Bhagwat v. State of Maharashtra: (2005) 9 SCC 44***. The learned counsel has further argued that the final order imposing penalty, as issued under the hand of the Registrar and not the Disciplinary Authority and that too, without indicating the reasons or justifications, is in stark violation of the principles of natural justice and cannot sustain itself. Learned counsel has relied on the decision in ***G. Vallikumari v. Andhra Education Society and others: (2010) 2 SCC 497***.

With the aforesaid contentions, learned counsel for the petitioner has submitted that the impugned proceedings and orders deserve to be quashed and the petitioner deserves to be reinstated with continuity in service, back wages, and costs. Learned counsel has again referred to the decision in ***Roop Singh Negi*** *(Supra)* as also the decision in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others: (2013) 10 SCC 324***.

Per contra, learned counsel for the respondent-university has made elaborate reference to the facts of the case, particularly the nature of complaints, the nature of charges and the evidence led in the inquiry; and has vehemently argued that all the basic requirements of statutory rules and the principles of fair play having been met and there being cogent findings against the petitioner that he had indulged in sexual harassment of female research scholars, the matter calls for no interference. As regards the submissions concerning issuance of order by the Registrar of the respondent-university, learned counsel has argued that the decision to put the petitioner under suspension and to hold an inquiry was taken by the Vice Chancellor of the respondent-university and by the order dated 09.06.2014, the Registrar only communicated the order so made by the competent authority. The learned counsel has further argued that in fact, the petitioner attempted to challenge the order so issued by the Registrar by way of a writ petition in this Court but, the Court did not accept such a challenge and only directed that the requisite copies be supplied to the petitioner and further that the departmental inquiry, when initiated, be concluded within the given timeframe. Thus, according to the learned counsel, the challenge to the order dated 09.06.2014 no longer survives and deserves to be rejected.

As regards the second limb of arguments, that the article of charge and the statement of imputations of misconduct/misdemeanor had been vague as opposed to the requirements of Sub-rule (3) of Rule 14 of the Rules of 1965, learned counsel for the respondent-university has referred to the article and the statement of imputations as also the accompanying complaints and has submitted that right from inception, the petitioner was conscious and aware of the allegations against him and the precise charges he had to meet and hence, there had not been any prejudice to the petitioner.

As regards the first part of the third branch of submissions of learned counsel for the petitioner, learned counsel for the respondent-university has again referred to the orders passed by this Court in the other litigations and the requirements of law for expeditious proceedings in such matters relating to the charges of sexual harassment at workplace; and has strenuously argued that when the composition of Inquiring Authority, as earlier set up, was challenged and this Court directed a different Inquiring Authority to be set up, other than the members of the Women's Cell, while extending the period of inquiry by three months, the new Board of Inquiry was constituted and the said Board conducted the proceedings in an expeditious manner so as to complete the inquiry within the time permitted by law and by the order of this Court. The other parts of the third branch of arguments of the counsel for the petitioner have been refuted with the submissions that the inquiry had been conducted in a fair and objective manner with requisite compliance of the requirement of rules. Learned counsel for the respondent-university has strenuously argued that it had not been a case of introduction of any new evidence after conclusion of the inquiry proceedings but the list of additional witnesses as also the additional

documents were indeed filed at the very commencement of the inquiry and were duly supplied to the petitioner. According to the learned counsel, the petitioner's objection, as regards violation of the requirements of Note to Sub-rule (15) of Rule 14 is entirely misplaced because the said Note applies only when the evidence had been concluded in the inquiry; and has no application to the present case where the list of additional witnesses as also the additional documents were filed even before commencement of the evidence. As regards yet another part of the submissions that the Board of Inquiry has relied upon inadmissible evidence and has not returned cogent findings, learned counsel for the respondent-university has vehemently argued that the findings of the Board are essentially based on the statements of the two complainants, who have categorically established the case of sexual harassment against the petitioner and who are duly corroborated by the other witnesses. With reference to the decisions in ***S.R. Tiwari v. Union of India and another: (2013) 6 SCC 602*** and ***Registrar General High Court of Judicature of Madras v. K. Muthukumar Swami: (2014) 16 SCC 555***, learned counsel has argued that when the conclusion in the disciplinary proceedings cannot be termed as perverse, no interference is called for.

As regards the fourth limb of arguments, about non-furnishing of copy of inquiry report, learned counsel for the respondent-university, with reference to the Constitution Bench decision in ***Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others: (1993) 4 SCC 727*** and other decisions in ***State of U.P. v. Harendra Arora: (2001) 6 SCC 392*** and ***State Bank of India and others v. Bidyut Kumar Mitra and others: (2011) 2 SCC 316,*** has contended that furnishing of the copy of inquiry report is not a matter of ritual and the

alleged omission does not *ipso facto* vitiate the proceedings. Learned counsel has argued that on the principles settled by Hon'ble Supreme Court, the onus was heavy on the petitioner to show prejudice, if any, caused to him; and in the present case, when the petitioner has failed to show any prejudice and has not been able to establish if supplying of the copy of inquiry report before passing the order by the Disciplinary Authority was going to make any difference, the order impugned calls for no interference.

Further, with reference to the decisions of the Hon'ble Supreme Court in ***Vishaka and others v. State of Rajasthan and others: (1997) 6 SCC 241*** and ***Apparel Export Promotion Council v. A.K. Chopra: (1999) 1 SCC 759***, learned counsel for the respondent-university has argued that in the matter of present nature, involving sexual harassment of the female research scholars by the professor, narrow technicalities need to be avoided and the broader probabilities of the case are required to be examined. According to the learned counsel, when the charge of sexual harassment stands established against the petitioner by cogent evidence, particularly the statements of the victim women themselves, the writ petition deserves to be dismissed.

The points for determination

From the submissions as made, the principal issues arising for determination in this case are:

(1) As to whether the proceedings against the petitioner stood vitiated for having been initiated with issuance of the order of suspension dated 09.06.2014 by the Registrar of respondent-university and not by the Disciplinary Authority?

(2) As to whether the inquiry proceedings were taken up on vague article of charge and statement of imputations, depriving the petitioner an adequate opportunity of defence?

(3) (a) As to whether the inquiry proceedings were conducted by the Board of Inquiry in violation of the mandatory requirements of the Rules of 1965 as also the principles of fair play and natural justice?

(b) As to whether the findings against the petitioner are only *ipse dixit* of the Board and are based on conjectures and inadmissible evidence?

(4) What is the effect of the admitted facts that the copy of the inquiry report was not supplied to the petitioner and he was not given an opportunity to represent against the same before imposition of penalty by the Disciplinary Authority?

(5) As to whether the impugned order dated 17.12.2014, being a non-speaking one, cannot be sustained?

After having examined the matter in its totality, this Court is satisfied that so far the matters of procedure, relating to the initiation of disciplinary proceedings as also conduct of inquiry are concerned, the contentions urged on behalf of the petitioner are without substance but then, there had been fundamental faults on the part of the Disciplinary Authority inasmuch as the copy of inquiry report was not supplied to the petitioner and he was not afforded an opportunity to represent against the same; and then, a non-speaking order was passed while imposing the penalty of compulsory retirement. In the given set of circumstances of the case and the nature of allegations and then, in view of the fact that there was no Appellate Authority to re-examine the matter, this Court finds that a clear case of prejudice is made out and the matter deserves to be remitted to the Disciplinary Authority for passing

appropriate speaking order in accordance with law after allowing the petitioner an opportunity to make his representation against the inquiry report.

In the aforesaid view of the matter, this Court, would prefer not to express any opinion on the issues pertaining to the merits of the case, which are proposed to be left open for objective and dispassionate consideration of the Disciplinary Authority. However, and at the same time, this Court finds it just and appropriate that the other issues raised on behalf of the petitioner, particularly those pertaining to the matters of procedure, which are either devoid of substance or are of no bearing, be dealt with and pronounced upon so that the same are not left open for any further and unnecessary debate or dispute.

Sexual harassment of women at workplaces - prohibition and redressal mechanisms

Before embarking upon the contentions urged in this matter, appropriate it would be to briefly take note of the law relating to the sexual harassment of women at workplaces. On 13.08.1997, the Hon'ble Supreme Court delivered the landmark decision in the case of *Vishaka* (supra) on the anvil of Articles 14, 19, 21, 15 (1), (3), 42, 51-A (a), (e) of the Constitution of India, recognizing the rights of working women against sexual harassment at workplaces while observing that '*the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse*'; and while holding that every incident of sexual harassment at workplace results in violation of the fundamental rights of gender equality and that of life and liberty. The Hon'ble Supreme Court referred, inter alia, to the Government of India's commitment at the Fourth World

Conference on Women at Beijing, inter alia, to formulate and operationalize a national policy on women; and to set up a commission so as to defend the women's human rights. The Hon'ble Supreme Court also referred to the absence of enacted law to provide for the effective enforcement of basic human right of gender equality and guarantee against sexual harassment and hence, laid down the guidelines and norms for due observance at all workplaces until a legislation was put in place for the purpose. The guidelines and norms prescribed in *Vishaka* became the pilots as also pivots in the development of the constitutional philosophy on this area relating to gender equality and the human right of dignified condition for all.

Thereafter, in its various orders dated 26.04.2004 and 17.01.2006 and 19.10.2012 in *Medha Kotwal Lele*[4] and in the order dated 03.02.2012 in *Seema Lepcha*[5], the Hon'ble Supreme Court re-emphasized the need for implementation of the directions issued in *Vishaka* and issued further directions for putting in place the Complaints Committees for dealing with the complaints of sexual harassment at workplaces while providing, inter alia, that the Complaints Committee as envisaged in *Vishaka* would be deemed to be the Inquiring Authority for the purposes of the Conduct Rules of 1964; that the report of the Complaints Committee would be deemed to be an inquiry report under the said Rules; and that the respective Governments shall be giving comprehensive publicity to the redressal mechanism/s put in place. The Supreme Court also directed that the guidelines of *Vishaka* shall be applied by the other regulatory bodies like the Bar Council of India, Medical Council of India etc. etc.

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[4](2013) 1 SCC 311, (2013) 1 SCC 312 and (2013) 1 SCC 297
[5](2013) 11 SCC 641

Ultimately, the present enactment, known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ['the Act of 2013'] came to be passed by both the Houses of Parliament and, after receiving the assent of the President of India on 22.04.2013, came into force on 09.12.2013.

It is neither in dispute nor of any doubt that the respondent-university answers to the description of "workplace" within the meaning of Clause (o) of Section 2 of the Act of 2013; the complainants concerned are covered under the broad connotation of "employee" under Clause (f) of Section 2 for the purpose of the Act of 2013; and the acts and behaviour imputed on the petitioner fall within the inclusive definition of "sexual harassment" under Clause (n) of Section 2 of the Act of 2013 that reads as under:-

> "*2 (n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-*
>
> > *(i) physical contact and advances; or*
> > *(ii) a demand or request for sexual favours; or*
> > *(iii) making sexually coloured remarks; or*
> > *(iv) showing pornography; or*
> > *(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;"*

Eschewing other details of the said enactment, a relevant aspect related to the development of law for the purpose of the Central Civil Services (Conduct) Rules of 1964 may be taken note of as admittedly, the said Rules do apply to the present case. After the decision in *Vishaka*, Rule 3-C came to be inserted to the Central Civil Services Conduct Rules on 07.03.1998, specifically prohibiting sexual harassment of women at any work place. However, by way of the notification dated 19.11.2014, Rule 3-C was amended so as to

incorporate the relevant features of the Act of 2013 in these Conduct Rules of 1964.[6]

Scope of judicial review of disciplinary proceedings

It remains trite that the scope of judicial review of the disciplinary proceedings by the Court, particularly in a petition under Article 226 of the Constitution of India, is ordinarily confined to the decision making process and does not extend to the decision itself. In other words, the

[6]This Rule 3-C, as amended and made applicable w.e.f. 19.11.2014, reads as under:-

"3C. Prohibition of sexual harassment of working women, - (1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

Explanation.- (I) for the purpose of this rule.-

(a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication) namely:-
(i) physical contact and advances; or
(ii) a demand or request for sexual favours; or
(iii) making sexually coloured remarks; or
(iv) showing pornography; or
(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;"

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:-
(i) implied or explicit promise of preferential treatment in employment; or
(ii) implied or explicit threat of detrimental treatment in employment; or
(iii) implied or explicit threat about her present or future employment status; or
(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
(vi) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes,-
(i) any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
(ii) hospitals or nursing homes;
(iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
(iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
(v) a dwelling place or a house."

power of judicial review is to examine if the charged officer received fair treatment with fair opportunity of defence with adequate compliance of the requirements of statutory rules as also the rules of natural justice and else, so far the aspects relating to the conclusion of facts are concerned, the Disciplinary Authority and the Appellate Authority, wherever available, are the sole judge of the fact. In the case of *B.C. Chaturvedi* (supra), the Hon'ble Supreme Court has delineated the relevant principles in the following:-

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*
>
> *13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

The scope of judicial review in the matters relating to misconduct was further explained by the Hon'ble Supreme Court in *Mathura Prashad* (supra) as under:

> *"19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."*

However, in the case of *S.K.Sharma* (supra), the Hon'ble Supreme Court, while observing that principles of natural justice cannot be put in a strait-jacket and cannot be reduced to any hard and fast formulae; and their applicability depends upon the context and the facts and circumstances of each case, explained that the test in such a case is to examine as to whether, after taking all things together, the delinquent officer had or did not have a fair hearing. The Hon'ble Supreme Court said, -

> *"11. …..But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words: (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.*
>
> *28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair*

hearing, a fair deal, to the person whose rights are going to be affected……." *(Underlining supplied for emphasis)*

As regards the inquiry proceedings concerning the charge of sexual harassment, in the case of *A.K. Chopra* (supra), the Hon'ble Supreme Court laid down, even before the Act of 2013, that these cases are not to be examined on insignificant discrepancies or narrow technicalities and are required to be dealt with sensitivity, where sympathy or latitude have no role to play, while observing as under:-

"28. ….. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. ….."

The questions arising in this petition may now be taken up for determination with reference to the principles aforesaid.

Point No. 1

As to whether the proceedings against the petitioner stood vitiated for having been initiated with issuance of the order of suspension dated 09.06.2014 by the Registrar of respondent-university and not by the Disciplinary Authority?

As noticed, after receipt of reports from the Women's Cell, the petitioner was served with the said order dated 09.06.2014, as issued by the Registrar of the respondent-university that the disciplinary proceedings, on the allegations of sexual harassment, were under contemplation against him and as such, he was placed under suspension with immediate effect. The order dated 09.06.2014 was sought to be questioned by the petitioner by way of a writ petition [WP (C) No.226 of 2014] but this writ petition was disposed of by a learned Single Judge of this Court on 30.06.2014 with the requirements that: the

concerned respondents would furnish the copies of the documents mentioned in the petitioner's representation; the petitioner would be allowed to submit his explanation after receiving such copies; after receiving the petitioner's explanation, the university would decide if any inquiry was requisite; the inquiry, if initiated, would be completed within three months while complying with the principles of natural justice after serving the article of charge etc. of initiation; and lastly, in case of inquiry being not completed within three months, the petitioner would be reinstated without prejudicing the inquiry.[7]

In view of the order so passed in the writ petition filed by the petitioner it is but clear that this Court did not interfere with the order of suspension dated 09.06.2014 as such; and the said petition was disposed of with directions aimed at ensuring fair compliance of principles of natural justice while also providing that the petitioner would be reinstated in case the inquiry was not completed within three months of initiation.

In the face of the order dated 30.06.2014 as passed in the said writ petition and in view of the fact that thereafter, the article of charge was indeed drawn up and the inquiry proceedings did take place, this Court has no hesitation in holding that the petitioner is not entitled to question the order of suspension and initiation of inquiry now and in this writ petition. This is apart from the fact clarified on behalf of the respondent-university that the decision to put the petitioner under suspension and to hold an inquiry was taken by the Vice Chancellor and, by the order dated 09.06.2014, the Registrar had only communicated the decision so taken by the competent authority. In the

[7] As noticed, this period of three months for completing the inquiry was extended for another three months in the order dated 22.09.2014, as passed in WP (C) No.301 of 2014.

given facts and circumstances, the decision in *Seshrao Balwant Rao Chavan* (supra) is of no application to the present case. The first contention urged on behalf of the petitioner fails and stands rejected.

Point No. 2

As to whether the inquiry proceedings were taken up on vague article of charge and statement of imputations, depriving the petitioner an adequate opportunity of defence?

In the second limb of arguments, it has been contended on behalf of the petitioner that the article of charge and the statement of imputations had been totally vague inasmuch as, neither the particulars of complainants were stated nor the date, time, place and nature of alleged incidents were disclosed. In addition to the submission so made, it may also be observed that in the article of charge, only Rule 3(1) of the Conduct Rules of 1964 was mentioned and with that Rule 3-C was not mentioned. However, these shortcomings are hardly of any material effect in this matter.

In the case of *Gyan Chand Chattar* (supra), the Hon'ble Supreme Court underscored the requirements, inter alia, that inquiry proceedings ought to be conducted fairly and objectively, with strict adherence to the statutory provisions and the principles of natural justice; that charges should be specific and definite with details of the incident forming the basis of charge; and that the findings ought not to be perverse or unreasonable nor be based on surmises and conjectures. The Supreme Court observed and held as under:-

> *"35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, not the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record*

reasons for arriving at the finding of fact in the context of the statute defining the misconduct."

In the case of *Sawai Singh* (supra), the appellant had been a returning officer to conduct panchayat elections and was alleged to have shown undue favour to one of the contesting candidates by manipulating the withdrawal of a dummy candidate; and was also alleged to have committed forgery by erasing a word on the nomination paper. After the inquiry, the appellant was removed from service but when the charges were found lacking in material particulars, in the given set of facts, the Hon'ble Supreme Court found that the charges were vague and it was difficult for the appellant to meet the same. However, the Supreme Court clearly laid down that the requirements of natural justice depend upon the facts and circumstances of a case and the nature of inquiry and the subject-matter as under:

"17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non."

(Underlining supplied for emphasis)

In the case of *Mohd. Sharif* (supra), the date and time of his alleged misconduct, of having entered the government forest and having injured the feelings of one community, were not stated in the charge-sheet framed and served upon the employee and even the location of the place of incident was also not indicated. In the given set of facts, the Hon'ble Supreme Court held that the employee was prejudiced in the matter of his defence in the inquiry.

On material aspects, the cases referred on behalf of the petitioner proceed on their own facts. Though the basic principles remain that the rule of fair play and reasonableness are to be ensured but then, furnishing of the relevant facts with sufficient clarity is a matter required to be visualized in the facts and circumstances of the given case.

The contents of article of charge and statement of imputations in the present case have been noticed hereinbefore wherefrom, this much is clear that the petitioner was duly informed that the basic charge against him was of having committed the acts of sexual harassment of the female research scholars when they approached him for guidance and that such acts were immoral and outrageous to the modesty of female research scholars and detrimental to the conducive atmosphere in the department. Of course, the names of the complainants and the particulars of the alleged incidents were not detailed out in such article and statement of imputation but indisputably, along with them, the documents were supplied to the petitioner, including the copies of the complaints and the reports of the Women's Cell.

As noticed, the petitioner filed a detailed statement of defence wherein, he replied to, and refuted, each and every allegation of Ms. T and Ms. P, almost word-by-word, and also alleged that the complainants had scores to settle because: (i) Ms. T expected undue favour and had received a rebuke from him for alleged insincerity and lack of devotion; and (ii) he had opposed the synopsis of Ms. P. The petitioner also specifically stated that both the complainants wanted to complete their Ph.D. by taking advantage of certain loopholes in the system but he was standing as an obstacle for them. In his meticulously drafted statement of defence, the petitioner never alleged that he was unable to identify and comprehend the charges he was to meet, or that there was any

ambiguity hovering over. Moreover, the petitioner thoroughly cross-examined the complainants as also other witnesses in the course of inquiry with precise understanding about their stand and about his own defence. In an overall comprehension of the matter, there is not an *iota* of doubt that petitioner clearly understood, with all certainty, as to who were the complainants, what were the complaints, and what were the charges against him. Thus, the petitioner cannot allege denial of reasonable opportunity of defence or any prejudice in the matter of his defence at the inquiry.

It is moreover clear that so far the complaint of Ms. P was concerned, even the dates had been clearly spelt out where the complainant stated that the first incident took place on 19.02.2014 and the other incidents took place on the subsequent consecutive dates. The places of incidents were also indicated in the complaint. Of course, the dates of the alleged incidents were not mentioned in the complaint of Ms. T but even in her regard, the petitioner could not deny the facts that there had been interactions with her and that lastly, she was in his faculty room on 29.04.2014. In this matter concerning allegations of sexual harassment, when the complaints carried the imputations without any ambiguity or obscurity; and when the imputations were undoubtedly understood by the petitioner himself, the suggestion that he was prejudiced in his defence for vagueness of charges and imputations remains baseless and cannot be accepted. The contentions urged in this regard also stand rejected.

Point No. (3) (a)

As to whether the inquiry proceedings were conducted by the Board of Inquiry in violation of the mandatory requirements of the Rules of 1965 as also the principles of fair play and natural justice?

Taking up different facets of the contentions in the third limb of arguments, as regards the conduct of proceedings by the Board of Inquiry, this Court is clearly of the view that the Board has conducted the proceedings in a fair manner with adequate opportunity of defence to the petitioner; and the imputations against the Board, as regards the conduct of proceedings, wherever and whatever suggested by the petitioner, are of no substance.

The main plank of the arguments of the learned counsel for the petitioner had been that in the inquiry, new and additional evidence was inserted in violation of the requirements of the Note appended to Sub-rule (15) of Rule 14 of the Rules of 1965. This very objection was not only taken by the petitioner during the course of inquiry but was reiterated by him even after rejection; and has further been extensively pressed before this Court, though meritless at the very fundamentals and being rather misplaced.

The decisions referred by the learned counsel for the petitioner in the case of *Tara Singh and Samurai Electronics* (supra) that the Note, when promulgated with the rules is part of the rule and must be construed accordingly, are neither of any doubt nor of any debate. The principles in the case of *Hukum Chand Shyam Lal* (supra) that when a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner are also not of any debate. Similarly, the decisions in the cases of *Devinder Pal Singh Bhullar and Hakimwadi Tennants' Association* (supra) have also been unnecessarily cited because there is no allegation of waiver, acquiescence or intentional relinquishment of right by the petitioner. Further unnecessary arguments have been made with reference to the decisions in *Mannalal Khetan* and *A.K. Pandey* (supra) that the negative words are ordinarily

used as the legislative device to make a statutory provision imperative. The principles in *Arjan Singh's* case (supra) for receiving and admitting additional evidence by the Appellate Court under Order XLI Rule 27 of the Code of Civil Procedure are also not even remotely connected with the issue at hand. The decisions aforesaid do not make out any case in favour of the petitioner.

Rule 14 of the Rules of 1965 lays down the clear procedure for imposing major penalties. Various Sub-clauses of Rule 14, in their feasible chronology, give out the steps of procedure in the matter of inquiry with the mandate that no order imposing major penalty would be made except in accordance with the inquiry to be held, as far as may be, in the manner provided. The disciplinary authority may make the inquiry itself or appoint an authority to inquire, per Sub-rule (2) of Rule 14.[8] As per Sub-Rules (3) and (4) of Rule 14, the article of charge and statement of imputations are required to be drawn up and delivered to the charged Government servant requiring his written statement of defence. From Sub-rule (5) to Sub-rule (13), various steps of procedure are prescribed, ensuring attendance of the charged Government servant, reading out charges, discovery or production of documents etc. which need not be dilated here. Per Sub-rule (14) of Rule 14, on the date fixed for inquiry, the oral and documentary evidence is to be adduced for or on behalf of the Disciplinary Authority and the witnesses are to be examined. Sub-rule (15) of Rule 14 appears in that chronology, investing the Inquiring Authority with discretion to allow the Presenting Officer to produce the evidence not included in the list

[8]Though, significantly, in the year 2004, a proviso was added to Sub-rule (2) of Rule 14 to the effect that in the matter of complaints of sexual harassment within the meaning of Rule 3-C of the Conduct Rules of 1964, the Complaint Committee shall be deemed to be the Inquiring Authority but, as noticed, thereafter, the Act of 2013 came into force and in the present case, this Court directed by the order dated 22.09.2014 in WP(C) No. 301 of 2014 that the Inquiring Authority ought to be different than the Women's Cell of the respondent-university because the Cell had recommended for departmental inquiry.

earlier; or to call for new evidence; or even to recall or re-examine any witness. Under this Sub-rule (15), the Inquiring Authority may also allow the charged Government servant to produce new evidence, if considered necessary in the interests of justice. The Note appended to Sub-rule (15) of Rule 14 has been strongly relied upon in this case on behalf of the petitioner. The entire of Sub-rule (15) with the Note may be reproduced as under:-

> *"(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring authority may, in its discretion allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant 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 Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests 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."***

It is at once clear that the above-quoted Sub-rule (15) of Rule 14 of the Rules of 1965 primarily operates where additional evidence, oral or documentary, is sought to be adduced or taken before closing of the case on behalf of the Disciplinary Authority. Of course, this sub-rule also permits the Inquiring Authority to allow the charged person to produce new evidence, if such production is considered necessary in the interests of justice. By its very nature, Sub-rule (15) *ibid.* is to be applied and operated after the evidence has been led by the party concerned, when there is a necessity of adducing further or new evidence. In this context, the Note clarifies that 'new evidence' shall not be permitted or called for nor any witness would be recalled to fill up any

gap in the evidence. The permissibility for such 'new evidence' is only when there is an inherent lacuna or defect in the evidence produced originally. The phrase 'produced originally' obviously refers to the evidence that had already been produced under Sub-rule (14) as also under other provisions in that regard.

It is difficult to appreciate that the Note appended to Sub-rule (15) is at all pressed into service in this case, in support of the objection against the so-called new evidence. True it is that on the first date of proceedings, i.e., 17.11.2014, the Presenting Officer produced a list of additional witnesses and then, on the second date i.e., 18.11.2014, produced additional documents. Both, the additional list of witnesses and the additional documents, were duly received by the Board of Inquiry, after finding the same being necessary for arriving at a just and proper decision in the matter. As noticed, the article of charge and statement of imputations had not been elaborate and in the initial list of witnesses even the two complainants were not mentioned. The documentary evidence had a little role to play in the matter but even in that regard, only the complaints and reports of Women's Cell were mentioned initially. For an overall comprehension of the matter with all the necessary facts and the surrounding factors, the witnesses as also supporting documents were considered necessary by the Board and hence were received with a speaking order. The significant aspect of the matter had been that these were received by the Board even before commencement of evidence on behalf of the Disciplinary Authority.

The Note appended to Sub-rule (15) of Rule 14 is of course of imperative value; but has no application to the present case when the additional list of witnesses and the additional documents were taken on record at the very initial stage of inquiry and even before examination of

any witness by any of the parties. When no evidence had been led by any of the parties at the time of receiving the list of additional witnesses and additional documents, there was no question of filling up any so-called 'gap' in evidence; rather the procedure adopted by the Board was of fairness to all the parties concerned with this matter, including the petitioner himself. The so-called additional witnesses were directly related with the matter: two of them were the complainants themselves who were, in any event, required to be examined; and the remaining were, one way or the other, related with the facts asserted in the complaints: two of them being the respective supervisors of the complainants and two other being the members of the same department of Mathematics in the respondent-university. It would have been travesty of justice if the relevant persons, directly related with the subject-matter, were not examined in this inquiry. The Board consciously permitted the additional list of witnesses before commencement of the evidence and this Court is unable to find any error or illegality in the procedure so adopted by the Board. The contention urged on behalf of the petitioner in this regard, therefore, stands rejected.

In the other line of this branch of arguments, it has been emphasized by the learned counsel for the petitioner that introduction of additional witnesses and additional documents caused prejudice to the petitioner who remained in dark as to what those witnesses were to depose; and copies of the statements of those witnesses during the enquiry by the Women's Cell were not supplied to the petitioner. These submissions are rather overstretched. As observed hereinabove, the witnesses allowed to be examined by the Board of Inquiry were directly related with the matters in issue and were required to be examined for a just and proper conclusion.

So far the previous statements of the said witnesses, said to have been recorded by the Women's Cell, are concerned, the same were neither relied upon by the department nor by the Board of Inquiry. If at all the petitioner wanted to confront those witnesses with any other statement, he could have made the prayer for requisitioning the record of inquiries by the Women's Cell. As noticed, the petitioner was indeed allowed to inspect all the documents requisitioned by him, barring one[9], as recorded in the proceedings of the inquiry dated 18.11.2014. It is also noticed that so far the witness Dr. S was concerned, the petitioner submitted with his additional documents the communication sent by her to the authorities at the earlier point of time. Though there had been want of proper exhibiting of documents on the part of the Presenting Officer as also on the part of the petitioner, but this aspect of the omission shall be examined a little later. Suffice it to notice at this stage that the suggestion of the petitioner about want of supply of necessary documents remains equally baseless.

There cannot be any quarrel with the proposition that a charged employee is entitled to all the relevant statements, documents and materials so as to enable him to have a reasonable opportunity to defend[10]. However, the decisions as referred do not make out a case in favour of the petitioner for the reason that in the present case, the necessary documents were not denied to him and he was extended every opportunity of cross-examining the witnesses and projecting his own case/defence.

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[9]being that of application for hostel accommodation by Ms. T, which was entirely irrelevant and had no bearing on the substance of the matter.

[10]vide *Saroj Kumar Sinha: (2010) 2 SCC 772, Mohar Singh: (2008) 5 SCC 542 & Prakash Kumar Tandon: (2009) 2 SCC 541* and other decisions referred by the learned counsel for the petitioner.

The next grievance on behalf of the petitioner that the Board proceeded in a hurried manner remains equally unjustified. Apart from the requirements of the statute, it is noticed that even as per the order dated 22.09.2014 as passed in WP(C) No. 301 of 2014, the inquiry was to be concluded within three months. The inquiry proceedings effectively commenced only on 17.11.2014 and were spread over a period of about one month where the Board permitted extensive and elaborate cross-examination of the complainants and dealt with all the objections of the petitioner and his vast and widespread written arguments. The Board does not appear to have proceeded with any unwarranted hurry and it is difficult to accept that the Board violated the principles of fair play and natural justice.

As noticed, in the case of *S.K.Sharma (supra)*, the Hon'ble Supreme Court has tersely explained the approach towards applicability of the principles of natural justice and the procedural provisions that the test is as to whether, after taking all things together, the delinquent had or did not have a fair hearing. Applying these principles to the given set of facts and circumstances and in summation of the discussion aforesaid, this Court is clearly of the view that, taking all the things together, neither the petitioner was deprived of fair opportunity of hearing and of defending himself in the inquiry proceeding nor the Board of Inquiry violated the mandatory requirements of the Rules of 1965 and the principles of fair play and natural justice.

However, this Court would hasten to observe that the findings foregoing are not decisive of the other issues calling for determination in this case because even if the inquiry proceedings were conducted in a fair manner, there could still be other shortcomings, having a bearing on the final conclusion of the Disciplinary Authority. Such aspects relating

to other shortcomings shall, of course, be examined in the next points for determination. Having regard to the circumstances, necessary observations in regard to the questions in point No. 3(b), as to whether the findings against the petitioner are only *ipse dixit* of the Board and are based on conjectures and inadmissible evidence, being essentially relating to the merits of the case, shall also be made later, and after examining the other points for determination.

Point No. 4

What is the effect of the admitted fact that the copy of the inquiry report was not supplied to the petitioner and he was not given an opportunity to represent against the same before imposition of penalty by the Disciplinary Authority?

Point No. 5

As to whether the impugned order dated 17.12.2014, being a non-speaking one, cannot be sustained?

It is not in dispute in this case that the copy of inquiry report was not supplied to the petitioner before passing the impugned order dated 17.12.2014 whereby, the penalty of compulsory retirement was imposed on him; and, in fact, a copy of the inquiry report came to be supplied to the petitioner only when placed on record by the respondent-university with the counter affidavit in this petition. The question is the effect of this material omission on the part of the Disciplinary Authority where the copy of inquiry report was not supplied to the petitioner before passing of the order impugned.

The issue relating to the requirement of supplying the copy of inquiry report to the charged employee and the effect of omission thereof had been a matter of several debates and remained a vexed one until the same was settled by the Hon'ble Constitution Bench in the case of *B. Karunakar* (supra); and was further expanded and explained by the later decisions of the Hon'ble Supreme Court including those in

Harendra Arora and *Bidyuth Kumar Mitra* (supra). For the present purpose, the history of development of law on the issue, as to whether the report of the Inquiry Officer is required to be furnished to the charged employee so as enable him to make a proper representation before the Disciplinary Authority arrives at its own finding with regard to guilt or otherwise, need not be elaborated upon. Suffice it to notice that ultimately, in *B. Karunakar,* the Constitution Bench clearly held that the right to represent against the findings in the inquiry report is a part of reasonable opportunity to the charged employee. The Constitution Bench explained the *raison d'être* as to why the charged employee's right to receive the report of Inquiry Officer is an essential part of reasonable opportunity in the following:-

> *"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the enquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as*

> *well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."*
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> *(underlining supplied for emphasis)*

The Constitution Bench, therefore, concluded that a denial of the Inquiry Officer's report before taking of decision by the Disciplinary Authority amounts to denial of reasonable opportunity to the employee and is a breach of the principles of natural justice in the following:-

> *"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."*
>
> *(underlining supplied for emphasis)*

However, the pronouncement aforesaid was not the end of matter and the Constitution Bench further proceeded to answer the incidental question i.e., the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee. In this regard, the Constitution Bench laid down that the theory of reasonable opportunity was not that of performance of rite and rituals and the question will have to be examined on the facts and circumstances of each case if, in fact, prejudice has been caused to the employee on account of denial of the report; and any unnatural expansion of the principles of natural justice would be antithetical to justice. The Constitution Bench stated the law in this regard in the following:

> *"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing*

of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amount to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

(underlining supplied for emphasis)

The course to be adopted in such matters was also delineated in *B. Karunkar* in the following:-

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as it regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal set aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome . If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

(underlining supplied for emphasis)

After the aforesaid enunciation of the basic principles in *B. Karunkar,* the Hon'ble Supreme Court further examined the issue relating to the want of supply of copy of inquiry report when the statutory

rule provide for such supply of copy in the case of *Harendra Arora* (supra) and laid down in no uncertain terms that the requirement for the charged employee to show prejudice for want of supply of copy of the inquiry report would apply even when statutory rule provide for such supply of copy in the following:-

> *"23. Thus, from a conspectus of the aforesaid decision and different provisions of law noticed, we hold that the provision in Rule 55-A of the Rules for furnishing a copy of enquiry report is a procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of ECIL to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing a copy of enquiry report under the statutory provisions and/or service rules."*
>
> *(underlining supplied for emphasis)*

In the case of *Bidyut Kumar Mitra* (supra), the Hon'ble Supreme Court reiterated the law, with reference to its previous decision in *Haryana Financial Corpn. v. Kailash Chandra Ahuja*[11], that failure to supply a report of the inquiry officer does not *ipso facto* result in proceedings being declared null and void and the order of punishment as *non est* and ineffective; but the delinquent is required to plead and prove that such non-supply of report had caused him prejudice and resulted in miscarriage of justice, the Hon'ble Supreme Court said,-

> *"41. At this stage, it would be relevant to make a reference to certain observations made by this Court in Haryana Financial Corpn. v. Kailash Chandra Ahuja, which are as under:*
>
> > *"21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside."*

[11] (2008) 9 SCC 31

In the scheme of the Rules of 1965, various steps requisite and various options open for the Disciplinary Authority after receiving the inquiry report are delineated in Rule 15 that reads as under:-

> "***15. Action on the inquiry report***
>
> *(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.*
>
> *(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority 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 Inquiring Authority on any article of charge to the 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 the report is favourable or not to the Government servant.*
>
> *(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).*
>
> *(3) 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 Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:*
>
> *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 Government servant.*
>
> *(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on 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 an order imposing any such penalty on the Government servant."*

Thus, in a given case under the Rules of 1965, the Disciplinary Authority, after receiving the report of the Inquiring Authority, may remit the case for further inquiry for the reasons to be recorded in writing. However, when the Disciplinary Authority proposes to proceed further on the inquiry report, it has to ensure forwarding of a copy thereof, together with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority, to the charged employee, who may submit his written representation/submissions; and it is obligatory for the Disciplinary Authority to consider the representation, if made, and to record its findings before imposition of penalty/penalties. Therefore, there is no doubt on the statutory requirements in the scheme of the Rules of 1965 that a copy of the inquiry report is required to be supplied to the delinquent when the Disciplinary Authority proposes to proceed on the same; and the delinquent is required to be afforded an opportunity of making representation against the same before the Disciplinary Authority takes its final decision in the matter. In the present case, the copy of the inquiry report was indeed not supplied to the petitioner. Hence, the questions to be adverted to, with reference to the decisions above-referred, are as to whether, taking the matter as a whole, a case of prejudice is made out and as to whether supplying of the copy of inquiry report was likely to make a difference in the result.

Having examined the matter in its totality, this Court is of the view that a clear case of prejudice to the petitioner for want of copy of inquiry report is made out; and it is difficult to conclude that supplying of such copy and consideration of the representation of the petitioner were never going to make any difference in the conclusions of Disciplinary Authority.

As observed hereinbefore, though the Board of Inquiry did not violate the mandatory requirements of the Rules of 1965 and the principles of fair play and natural justice and the petitioner was not deprived of fair opportunity of hearing and of defending himself in the inquiry proceeding, but and however, there had been certain other shortcomings as also certain such doubtful aspects of the matter, which ought to have been addressed to by the Disciplinary Authority with reference to the requirements of the Rules of 1965. Having regard to the questions involved, it is rather imperative to point out such shortcomings/doubtful aspects, of course, only with prima facie observations.

Noticeable it is in the first place that the Board of Inquiry stated its so called scrutiny and analysis of the documents produced by the parties in the manner that the additional documents submitted by the Presenting Officer had 'bridged the lacuna' referred by the petitioner and the documents were duly accepted under Sub-rule (15) of Rule 14 *ibid*. The Board, thereafter, indicated that the document marked by the petitioner as Annexure D-6 was a notice of faculty meeting held on 20.03.2014 at 2:30 p.m. but this one and other documents were never exhibited for the reasons best known to the petitioner. It is, of course, true that the petitioner, despite having been offered and asked twice over, chose not to depose as a witness nor produced any other witness so as to exhibit the documentary evidence, however, proper exhibition of documents on behalf of the department is also difficult to be found from the record of the inquiry proceedings. This Court is neither accepting nor rejecting the Inquiry Report on this ground but these particular features were required to be examined by the Disciplinary Authority with reference to the record of inquiry proceedings.

There had been another atypical shortcoming in the matter that a marriage reception invitation card was introduced by the Presenting Officer as an annexure to his written arguments and the same was, to some extent, taken into consideration by the Inquiry Board. While introducing this piece of evidence in his written submission, the learned Presenting Officer stated as under:-

> *"I could get the invitation card for the marriage reception of Dr. Jibitesh Dutta (I am enclosing copy of it. I am not bothered whether it is proper or not to enclose the copy of the invitation card here at this stage. My effort is to convey the truth). The invitation card clearly shows that "Date: Friday, 21st February 2014, Time: From 2 pm onwards"*
>
> *Can it to be true that for a marriage reception starting from 2 P.M. onwards Prof. A.K. Das and his mother went much early and also finished the lunch before 1 P.M. and Shri DeiborlangNongsiang also reaches there at 1 P.M.? I leave it to the wisdom of the Board of Inquiry to decide. I wanted to cross-examine Dr. Jibitesh Dutta on this point. But Prof. A.K. Das was not interested in producing his defence witness. To me the reason is clear.*
>
> *Who is the liar and manipulator? Is it the complainants, the innocent and gullible students? Is it not Prof. A.K. Das who is the biggest liar, manipulator and crooked teacher?"*

Having regard to the circumstances, a little elaboration on the facts surrounding the said marriage reception invitation card appears necessary. It is noticed that when the complainant Ms. P alleged the acts of harassment by the petitioner on 21.02.2014 at about noon time with a visit to her hostel, the petitioner sought to refute by suggesting that on that date, himself with his mother had been at Umpling even before 1:00 p.m. while attending a lunch hosted by Dr. Jeebitesh Dutta. This part of the suggestions of the petitioner were admitted by his research scholar Shri Deiborlang Nongsiang when he stated in the cross-examination that he met the petitioner and the petitioner's mother at Umpling at 1.00 p.m. on 21.02.2014. The Presenting Officer wanted to suggest by way of the said invitation card that the timing for the said lunch was "from 2.00 p.m. onwards".

This aspect of the matter has been unnecessarily blown out of proportion by all, the Presenting Officer, the petitioner, and even the Board of Inquiry. The allegations of the complainant Ms. P had been that on 21.02.2014, the petitioner came to her hostel after giving a call on her mobile. The witness Ms. TPL was produced in corroboration of the fact that the petitioner did visit the hostel when she alleged that at about 12.00 noon, she saw the petitioner near the hostel. The petitioner wanted to say that in fact, by 1.00 p.m., he had had his lunch at the wedding reception of Dr. Jeebitesh Dutta at Umpling. In the first place, it had not been a matter of such a criminal trial where the precise timing of the petitioner's visit to hostel was to have a material bearing on the matter. However, if the Presenting Officer found such invitation card necessary for just and effectual determination of the material question in the case, appropriate procedure ought to have been resorted to. Apart from various expressions in rather intemperate language in the passage reproduced above, the Presenting Officer stated, while introducing such invitation card in the written arguments after conclusion of evidence, that he was purportedly conveying the truth without being bothered if such introduction of evidence at that stage was proper or not! On the other hand, it is also noticed that in the first place, the petitioner mentioned the said Dr. Jeebitesh Dutta as his witness but on 08.12.2014, declined to examine any witness on his behalf. The Board though has not referred to this invitation card as such but has mentioned in its report that it had been 'verified from records' that the lunch for wedding reception of Dr. Jeebitesh Dutta was from 2.00 p.m. onwards. The Board has not indicated as to which other 'record' was examined by it; and the only inference is that the Board relied on the said invitation card and for that reason, found the deposition of the said Shri Deiborlang Nongsiang

unreliable. In an overall view of the matter, this Court would prefer leaving the matter at that only because final finding on merits are to be returned by the concerned authority in accordance with law. Suffice it to observe for the present purpose that the Disciplinary Authority ought to have independently examined the matter from all the relevant angles.

There are a few other aspects relating to the second complainant Ms. P which, per force, acquire attention and ought to be adverted to by the Disciplinary Authority. It is noticed that in her complaint, Ms. P alleged the incidents with her to be of the month of February, 2014 but made the complaint in the month of May, 2014 and only after Ms. T had done so. The nature of allegations leveled in the complaint of Ms. P had been rather akin to those leveled by Ms. T. Be that as it may, the significant fact is that Ms. P was examined as the very first witness in the inquiry on 18.11.2014 and her cross-examination was completed on 24.11.2014. However, this complainant was present in the inquiry proceedings even on the subsequent dates i.e., 01.12.2014 and 05.12.2014 when other witnesses were examined, though she was not a Presenting Officer in the matter. Moreover, the Presenting Officer in his additional documents presented some so-called pages of the alleged diary, said to have been scribed by Ms. P in Assamese language, though such a document was never indicated on any earlier occasion. This apart, it is noticed that as regards the alleged incident of 22.02.2014, Ms. P not only alleged in her deposition that the petitioner scolded and called her a mental patient with less women hormones (as stated in her complaint) but, much ahead of that, she further alleged filthy talks and aggressions by the petitioner with reference to his and her private parts; and also asserted that she slapped him and came out of the room. It is noticed that the Board of Inquiry in its report, while

purportedly analyzing the testimony of Ms. P, though rejected the suggestion of the petitioner that he did not go to the department on 22.02.2014 but thereafter, only expressed the opinion that the petitioner was suppressing the vital facts relating to 22.02.2014. With these observations, the Board concluded on its analysis of the testimony of Ms. P. This has been quite in contrast to the analysis of the deposition of Ms. T, where the Board specifically concluded that her deposition was standing as a vital piece of evidence in support of the charge of sexual harassment. Thus, a deeper analysis is requisite on the part of the Disciplinary Authority as regards the second complainant Ms. P.

There is yet another aspect of the matter, arising out of the evidence led in the inquiry, as has been noticed and commented in the Board's report but which requires the attention of Disciplinary Authority. This relates to somewhat intriguing allegation by the witness Dr. S, who was the supervisor of the complainant Ms. T. At the very outset of her cross-examination, the petitioner asked Dr. S if she stood by her communication to the Chairperson of the Women Cell to which, she replied in the affirmative. A copy of the said communication by Dr. S (dated 07.05.2014) was produced on record but was not formally exhibited, yet this document needs to be referred for being rather an indisputable one. In the said communication, Dr. S stated surprise over the fact that her name had figured in the complaint of Ms. T. She also stated that Ms. T had not being attending on her work sincerely and she (Dr. S) was extremely apprehensive and upset about the future work performance; that she failed to find cooperation from Ms. T; and that ultimately asked Ms. T if she would like to work with any other supervisor because her irregularity and insincerity was not acceptable. According to the said communication of Dr. S, Ms. T allegedly agreed on

her proposition and thereafter, Dr. S saw her sitting with the petitioner on 29.04.2014. Dr. S also stated that in her individual capacity and at her personal level, she had helped Ms. T finding accommodation and she was sad and shocked to learn that Ms. T had involved her in the complaint. Dr. S made a request to the Chairperson of the Women Cell to look into the details of sequence of her engagement which the scholar, which had been amicable and rational and had not transgressed the ethical norms of the teacher and student relationship.

A comprehension of the factual scenario makes it clear that on 07.05.2014 i.e., within a week of the complaint of Ms. T, Dr. S was trying to rebut any such suggestion that she had not shown interest towards Ms. T. However, Dr. S, as a witness in the case, suddenly came out with an allegation that in the past, the petitioner ill-behaved with her and even forced her to take a pen-drive with pornographic films! Though she suggested the incidents to be of the years 2003 to 2009 but did not complain anywhere and in fact, did not state so even while addressing a communication to the Women's Cell after the complaint of Ms. T.

Even the other witness from the department, Dr. A, in her testimony, attempted to suggest the petitioner's alleged discreet and improper behaviour with herself in the past twice over: once, while travelling in relation to a Conference at Hyderabad; and second, when the petitioner allegedly visited her office and talked about her physical appearance and suggested a cream that could be used by her and for that matter, alleged to have helped the other persons like Dr. S too.

Significantly, the Board proceeded to rely upon the aforesaid statements of the said Dr. S and Dr. A, to say that as per their testimony, the petitioner had been committing the acts of sexual harassment '*over a period of time'*. A question, per force, arises as to

whether such a finding could have been returned by the Board of Inquiry without specific complaints from Dr. S and Dr. A and without any charge to that effect. Obviously, it was required of the Disciplinary Authority to examine if such finding could be sustained; and if not, whether the same could be segregated from the rest.

Further, the petitioner had all through been maintaining that he was being targeted and his senior colleagues were going to retire after some time. Again, this Court is not pronouncing on the acceptability or otherwise of these suggestions of the petitioner but these too required their own consideration by the Disciplinary Authority.

In the passing, it may also be indicated that the Board of Inquiry in the last part of its report dated 15.12.2014 cursorily stated that the case was failing within the ambit of Rule 3-C of the Rules of 1964 but even in that regard, did not refer to the amended rule that had come into force w.e.f. 19.11.2014.

Though indicated at the relevant places that this Court is not pronouncing on the merits of the case but in the interest of justice, it is again made clear that the observations foregoing are only for the purpose of indicating that the present one is not a case where want of supply of the copy of inquiry report could be ignored as an inconsequential or insignificant factor; and it cannot be said that the supply of the copy of inquiry report and consideration of the representation of the petitioner would not have made any difference at all. The Disciplinary Authority in the present case ought to have taken care to examine the requirements of the aforesaid Rule 15 and ought to have taken objective decision in the matter after supplying a copy of inquiry report to the petitioner and after affording him an opportunity to represent.

Apart from the omission to supply the copy of the inquiry report to the petitioner and to consider his representation, the Disciplinary Authority committed yet another fundamental mistake in the matter when it chose not to pass a self-speaking order and self-contained order of its analysis and reasoning and rather proceeded as if the report of the Board of Inquiry was a *fait accompli* not requiring any further examination at all. It remains rather elementary that the Disciplinary Authority is under obligation to record its findings on the articles of charge before imposing any penalty on the delinquent. The impugned order dated 17.12.2014 does not carry any reason or any finding at all. It is not the case of the respondent-university that any other reasoned order was passed by the Disciplinary Authority.

As noticed, the petitioner attempted to maintain an appeal against the order impugned but the same was held not maintainable for the reason that penalization order had been passed by the Executive Council and there was no Appellate Authority in the respondent-university over an order of the Executive Council. If no Appellate Authority was available to even once re-examine and re-appreciate the matter, it was moreover incumbent for the Disciplinary Authority to scrupulously and dispassionately examine the entire matter and to return its findings by way of a speaking order. The Disciplinary Authority having failed to do so, the impugned order cannot be sustained.

Thus, to sum up, this Court is clearly of the view that on the facts and in the circumstances of the present case, there had been various such aspects of the inquiry report which definitely called for independent examination by the Disciplinary Authority with reference to the objections of the petitioner. The Disciplinary Authority having failed in its basic duties and having neither supplied the copy of the inquiry report

nor spelt out its reasons for the conclusion, the impugned order cannot be sustained and the matter deserves to be remitted to the Disciplinary Authority for proceeding afresh in the light of the Constitution Bench decision in *B. Karunakar* (supra).

Point No.3 (b)

As to whether the findings against the petitioner are only ipse dixit *of the Board and are based on conjectures and inadmissible evidence?*

The questions in point No. 3(b), as to whether the findings against the petitioner are only *ipse dixit* of the Board and are based on conjectures and inadmissible evidence, essentially relate to the merits of the case. As observed hereinabove, the matter is being remitted to the Disciplinary Authority for decision afresh and in accordance with law. In this view of the matter, these questions are left open for appropriate decision of the Disciplinary Authority.

CONCLUSION:

For what has been discussed and observed hereinabove, while the contentions of the petitioner against the validity of suspension order and initiation of proceedings; against the article of charge and imputations; and against the conduct of inquiry proceedings by the Board of Inquiry stand rejected but his objections in regard to the want of supply of the copy of the inquiry report and want of speaking order by the Disciplinary Authority are upheld.

Accordingly, the writ petition is allowed in part and in the manner that the impugned order dated 17.12.2014 is set aside and the matter stands remitted to the Disciplinary Authority for decision afresh. It shall be permissible for the petitioner to submit his representation/objections against the inquiry report (copy whereof has already been received by him with the counter affidavit) within thirty days from today. The

Disciplinary Authority shall take a decision afresh in the matter with a speaking order within thirty days of receiving the representation/objections of the petitioner. As a corollary to the above, it is also provided that though the petitioner shall stand reinstated but this reinstatement shall only be for the purpose of passing of appropriate order by the Disciplinary Authority and else, he shall continue to remain under suspension; and all other aspects of the matter shall also be determined by the Disciplinary Authority depending on the final outcome, while keeping in view the observations in *B. Karunakar* (supra).

The original record of proceedings of the Board of Inquiry be returned to the learned counsel for the respondent-university for the requisite proceedings.

No costs.

CHIEF JUSTICE

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