

(2007) 01 DEL CK 0192

In the Delhi High Court

Case No : WPC No. 4993 of 2003 and 18119 of 2004

Dr. S.K. Agarwal

APPELLANT

Vs

Indian Institute of Technology and Others

RESPONDENT

Date of Decision : 08-01-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(5), 9.11

Constitution of India, 1950 — Article 226, 311

Institutes of Technology Act, 1961 — Section 13, 16, 16(2), 2, 7

Citation : (2007) 01 DEL CK 0192

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : M.N. Krishnamani and Parag Tripathi, J.K. Das and N.R. Sharma, for the Appellant; Maninder Singh and Kirtiman Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J.—The writ petitioner, in these two proceedings under Article 226 of the Constitution of India, is seeking the quashing of his suspension from the post of Chief Medical Officer, Indian Institute of Technology Delhi (IIT); the quashing of charge sheet issued to him, and the quashing of the inquiry proceedings.

2. The petitioner claims to be distinguished medico, having graduated in M.B.B.S., M.D. from prestigious medical institutions of the country. He has more than 27 years of professional experience both within and outside the country. Prior to his selection as Chief Medical Officer, (CMO), IIT, he was working in the Medicine & Cardiology Department of Dr. R.M.L. Hospital. The petitioner had an impeccable and unblemished service record and an excellent reputation as a Cardiologist. The I.I.T., Delhi has a fourteen bedded hospital, manned by the doctors of different specialties. The petitioner was appointed as the CMO of this Hospital in the year 1992. After joining the IIT Hospital, the petitioner by his untiring efforts made seminal contributions in improving the IIT Dispensary into

an Organized Hospital and was able to bring AIIMS faculty as part time visiting specialists.

3. One Dr. Rajshree had been working in the IIT, and had applied for appointment to the post of CMO; her candidature was, however, turned down as she did not possess the requisite experience; the petitioner was appointed instead. It is claimed that she nurtured a grievance on this score. Till the appointment of one Prof. Sirohi as Director of IIT, the petitioner faced no problems; however, after his appointment, it is alleged that he started to face hurdles in functioning; Dr. Rajshree is said to have been the protege of Prof. Sirohi. Some irregularities were alleged against the petitioner in the preparation of comparative statements of medicines tabulated for purchase of medicines for the year 2003-2004. The petitioner, on the basis of such alleged irregularities, was served a major penalty charge sheet by the IIT Authorities dated 07.06.2003. Prof. R.S. Nirjar was appointed as the Enquiry Officer on 21.06.2003. Alleging the initiation of departmental proceedings as illegal, the petitioner challenged it by a writ petition, being CWP No. 4993 of 2003. That petition (hereafter "the first petition") is premised on the basis of the inquiry being vitiated by legal malice, as well as mala fides. The second writ petition questions the inquiry proceedings, and the report submitted to the IIT.

Facts and grounds of challenge in the first petition, relating to validity of charge sheet, and suspension.

4. The petitioner alleges that initially an effort was made to make the post of Chief Medical Officer (CMO) rotational to accommodate Dr. Mrs. Rajshree Aggarwal; however, the said design could not succeed. It is averred that in the IIT, in matters of purchase of medicines there are two Committees i.e., Doctors Committee and the Standing Committee (which is the final approving body). For the year 2003-2004, quotations for purchases were invited by the CMO i.e. the petitioner. As per procedure a draft comparative statement was prepared by the Store Pharmacist of the Hospital under the supervision of the petitioner. The said statement was circulated and put up to all the doctors of the Doctors Committee. Dr. (Mrs.) Rajshree Aggarwal was also a member of this Committee. The deliberations of the Doctors Committee comprising of the petitioner and six others were placed before the final approving body i.e., Standing Purchase Committee headed by Prof. Chander Shekhar, Chairman, Hospital Advisory Committee. Both the petitioner as well as Dr. (Mrs.) Rajshree Aggarwal were also members of that Committee too. It is alleged that the standing purchase committee, after detailed examination of the various recommendations received finally approved recommendations of the Doctors Committee on 28.4.2003. It is alleged that barring few exceptions almost all the recommendations made by the petitioner which were in the nature of modifications/suggestions in the draft comparative statements prepared by the Store Pharmacist were approved by the Standing Purchase Committee. In all such recommendations emphasis was given to quality and reputation of the drug as to its cost. In respect of life saving drugs

and other medicines prescribed for external use, the approach of the petitioner, it is alleged, was to ensure performance of the products based upon feedbacks received from the patients and not merely to prefer cheap medicines notwithstanding their poor results.

5. It is alleged that though almost all the changes/modifications/suggestions in the comparative statement by the petitioner were endorsed/accepted by the Doctors Committee, a mischievous, motivated and malafide complaint was made by Dr. (Mrs.) Rajshree Aggarwal dated 25.4.2003 alleging that the petitioner had made additions, alterations, deletions in the draft comparative statement prepared by the Store Pharmacist. It is alleged that the complaint was dated 25.4.2003 whereas the complainant and other members of the Standing purchase committee including the Chairman Prof. Chander Shekhar had approved a large number of recommendations on 29/30.04.2003 without suggesting therein that the petitioner had committed any irregularity/illegality. It is alleged that the designs of Dr. (Mrs.) Rajshree Aggarwal were about to be frustrated as she was due to retire shortly, cognizance was taken straight away on the complaint dated 25.4.2003 filed by her. In the complaint she had mentioned that "Finally the Doctors decided to review the whole list of drugs including the deleted products. Thus the irregularity in the comparative statement of drugs was rectified", yet, the petitioner was suddenly placed under suspension by Director R.S. Sirohi on 13.05.2003 in his absence i.e., while he was on outstation leave for three days (13.-15.05.2003) without seeking any Explanation from him. It is alleged that even accepting the totality of the allegations against the petitioner no misconduct has been committed by him.

6. Hurriedly, a Fact Finding -Preliminary Inquiry Committee was constituted by the Director Prof. R.S. Sirohi under the Chairmanship of Prof. Chander Shekhar to look into the complaint. It is alleged that provisions of the Administrative Manual of the IIT, viz. Rule 9.11 mandates exercise of jurisdiction of the Central Vigilance Commission (CVC) to the IIT and that in terms of Section 2 of Chapter III of the Vigilance Manual it is mandatory for the IIT to conduct the preliminary enquiry by the Chief Vigilance Officer appointed by the IIT in matters of alleged financial irregularities. However, that procedure was not followed.

7. The petitioner also alleges malafides of the authorities during the course of the fact finding inquiry exercise. The committee started recording statements of the doctors and others between 20.5.2003 - 28.5.2003. The Committee in all examined six witnesses. The complainant Dr. (Mrs.) Rajshree Aggarwal was examined on 23.5.2003 and Dr. Ajay Kumar Jain was examined on 28.5.2003. During the process of examination of witnesses by the preliminary enquiry committee Prof. Chander Shekhar the head of the Committee left for Japan on 24.05.2003. It is alleged that the report of the fact finding committee was not supplied to the petitioner. It is further alleged that while the examination of the prosecution witnesses had not been completed and was under process on 22.5.2003, as the same could have been completed only on 28.5.2003, the

Chairman, Board of Governors Sh. V.R. Kirloskar approved initiation of disciplinary proceedings against the petitioner. It is alleged that the report could not have been in existence, on 22.5.2003 when even the statement of the complainant was recorded only on 23.5.2003 and the last statement was recorded on 28.5.2003. Additionally also fabrication in the records has been alleged, evident from the fact that the statement before the said Committee. However, the records reveal that the members of the fact finding committee attested the said statement on 20.5.2003 i.e., even when his statement did not exist.

8. It is alleged that further to the act of malice, the IIT Authorities continued the petitioner's suspension for two and half years without any basis and paid him only 50% of salary towards subsistence allowances as against the 75% of his salary. Non application of mind is alleged, in regard to continuation with the suspension order for such a long period, despite clarification of the position by Govt. of India, Ministry of Personal Public Grievances and Pension, by amendment of Rule 10(5). The suspension was revoked only on 9.11.2005.

9. The charge sheet has been attacked as without jurisdiction; the petitioner avers that as per Clause 3.3, Chapter III of the Administrative Manual his appointing authority is the Board of Governors, not the Chairman. Also as per Clause 5.1 of Chapter V of the Manual the disciplinary authority is the Board of Governors and not the Chairman. The initiation of proceedings by the Chairman, Board of Governors, not being the competent disciplinary authority, according to the petitioner, vitiates the entire enquiry. It is stated that under the scheme of the Acts and Statutes of the IIT Delhi, the Board of Governors is a collegial body and the functions of the Board of Governors are contained in Section 13 of the Indian Institute of Technology Act, 1961 (hereafter "the Act"). The functions of the Chairman, Board of Governors are separately prescribed in Section 16 of the IIT Act, 1961. In terms of Section 16(2) of the said Act, the Chairman is not the decision making authority but only the implementing authority of decisions of the Board of Governors. The Chairman, Therefore, cannot be a substitute for the Board of Governors, it is only in rare and exceptional cases of grave emergency that the Chairman under the Statues in terms of Section 7 of the Statues may exercise the power of the Board. It is an admitted position on record that no grave emergency existed in the case of the petitioner warranting exercise of such power by the Chairman and nothing has been placed on the record to even remotely suggest the same.

10. It is alleged that the initiation of enquiry proceedings, by issuance of a charge sheet, amounts to exercise of quasi judicial power. Besides the proceedings being initiated by an authority not competent to do so, the procedure adopted amounted to an instance of hostile discrimination, as the petitioner was singled out for separate treatment. The Petitioner has placed on record the case of a similarly situated Group A Officer Prof. B.N. Gupta in whose case the initiation of the enquiry etc. has been done by the Board of Governors

i.e. by order and in the name of the Board of Governors and not the Chairman of Board of Governors.

11. It is alleged that the fact finding enquiry report and other relevant materials were never placed before the Chairman, Board of Governors on 22.05.2003 as asserted by the IIT. The process of recording of statement of the witnesses before the fact finding enquiry committee commenced on 20.05.2003. The statement of complainant Dr. (Mrs.) Rajshree Aggarwal was recorded on 23.05.2003 and the last witness i.e. Dr. Ajay Kumar Jain's statement was recorded on 28.05.2003. The Chairman of the Fact Finding Committee Prof. Chander Shekar left the country on 24.05.2003 and proceeded on ex-India leave; Therefore, the report of the fact finding enquiry committee could not have been in existence on 22.05.2003 to which the Chairman, Board of Governors has stated to have applied his mind and granted his approval. The petitioner also alleges that initiation of disciplinary proceedings for various penalties is to depend on the gravity of the dereliction and has to be judged by the disciplinary authority; under the Act and Statutes of the IIT his disciplinary authority was the Board of Governors and no material was ever placed before the Board of Governors prior to initiation of disciplinary proceedings against him. Also no material in the form of preliminary enquiry report was in existence on 22.05.2003, i.e. the date on which the Chairman, Board of Governors is alleged to have given his approval though not competent under the Rules. The charge sheet has also been attacked as illegal, having been issued without awaiting the reply and response of the petitioner, which was furnished on 23-6-2003. The petitioner also states that the departmental proceedings were initiated without approval from Central Vigilance Commission (CVC). The jurisdiction of CVC extends to all employees of Central Government. Detailed procedures and guidelines were laid down in the said Manual, in keeping with the principles of natural justice and fair play. In case of the petitioner in the said mandatory requirements has been deliberately given a go by.

Facts and grounds relating to the challenge to inquiry proceedings, and the report submitted to IIT

12. Prof. R.S. Nirjar conducted the first proceeding on 13.01.2004 and the second proceeding on 06.02.2004 after which he resigned as enquiry officer. A new inquiry officer, Prof. A.K. Khare, Director, Institute of Engineering & Technology, Lucknow (Respondent No. 2 in WP. 18119/04 (hereafter "the second petition") was appointed in place of Prof. R.S. Nirjar by IIT Authorities, on 05.03.2004. Prof. Khare held the first proceeding on 30.04.2004. The petitioner alleges that thereafter, Prof. Khare entered into an unholy alliance with the Institute authorities to victimize him. The IIT authorities by showing undue favors to the Inquiry Officer influenced his mind to the detriment of the petitioner. It is alleged that the next date of inquiry was fixed on 15.06.2004. The Institute authorities gratified the inquiry officer by offering free hospitality such as free boarding/lodging/conveyance from 13.06.2004 to 15.06.2004 for

himself and his family members whereas the inquiry proceedings were fixed for 15.06.2004 only. Copies of bills and booking for the guest house of the IIT have been relied on by way of substantiation of the allegations. It is alleged that Shri Khare, influenced by the free hospitality of the Institute Authorities and to wreak private vengeance on account of the petitioner having projected the facts of enjoyment of undue favors by him, conducted the proceedings on 15.06.2004 in utter disregard of rules. The conduct of proceedings is termed "a farcical show". It is alleged that the inquiry officer allowed introduction of Prosecution witnesses to inquiry without supplying copies of statements of such witnesses, to the petitioner, and without affording him opportunity of submitting the list of additional defense documents/defense witnesses, in disregard of mandate of Central Civil Services (Classification Control and Appeal) Rules, 1965 (hereafter "CCS Rules") on the subject. The petitioner moved an application to the competent authority for transfer of the inquiry officer on grounds of prejudice and bias in terms of OM No. 39/40/70-Estt (A) dated 09.11.1972. It is alleged that in terms of the said Memorandum once an application is moved by a charged officer, the proceedings should be stayed. The request was turned down on 19.07.2004. The petitioner preferred an appeal to the appellate authority viz. the President of India on 31.07.2004 for transfer of the inquiry officer Prof. A.K. Khare on allegations of prejudice and bias. It is alleged that the said representation is pending, and that in fairness, Prof. A.K. Khare ought to have desisted from conducting any proceeding after 31.07.2004. Yet, the inquiry officer issued a notice dated 05.08.2004 to the petitioner for holding the proceeding on 16.8.2004. Such a view has been attacked as a gross disregard of the mandate of OM dated 9.11.1972 which specifically obligates the inquiry officer to stay the inquiry proceedings once an appeal is filed for transfer of inquiry officer on grounds of prejudice and bias.

13. It is averred that the petitioner is a patient of Cervical Spondylosis c VBI and is under the treatment of Orthopedic Department of All India Institute of Medical Sciences (AIIMS). He further avers that he was advised rest for 10 days w.e.f. 13.8.2004. The inquiry officer was duly intimated about the said fact of illness; the request was supported by the Medical Certificate issued by the AIIMS doctors. It is alleged that the petitioner again received a notice from the inquiry officer dated 13.10.2004 informing him about the holding of the proceeding on 18.10.2004. The sickness of the petitioner continued. The attending Orthopedic doctor of AIIMS, it is averred advised medical rest for two weeks w.e.f. 15.10.2004 to the petitioner. The inability of the petitioner to attend the proceeding, was apprised by him to the inquiry officer, through an intimation along with the medical certificate which was duly taken on the record. The inquiry officer noted the sickness of the petitioner in the minutes of the meeting dated 18.10.2004. The relevant portion of the proceeding dated 18.10.2004 inter alia, reads as follows:

Dr. S.K. Agarwal submitted an application through messenger dated 18.10.2004, enclosing a medical certificate, and informed about his inability to attend the

proceedings due to illness. Shri S.K. Jain, defense Assistant also submitted a letter dated 18.10.2004, expressing his inability to attend the proceedings because of pre-occupation.

The Inquiry Officer asked Dr. R. Agarwal and other doctors of the Institute Hospital whether they are aware about the illness of Dr. S.K. Agarwal, or Dr. S.K. Agarwal has ever taken the services of the Institute's doctors for the ailment he is now suffering. Dr. R. Agarwal, Head Hospital Services, and other doctors present pleaded their ignorance about the illness of Dr. S.K. Agarwal and informed that Dr. S.K. Agarwal is not taking any treatment from the Institute Hospital for Cervical Spondylosis c VBI.

The Inquiry Officer asked the Presenting Officer whether the charged officer or his defense assistant has submitted any list of defense witnesses/defense documents they would like to produce before the Inquiry officer, as was ordered in the regular hearing held on 16.8.2004. The Presenting Officer informed that no such documents/list/information has been submitted by the charged officer or his defense assistant to him. The proceedings of the day were stopped at this point.

14. It is alleged that after 18.10.2004, no communication was received by the petitioner from the Inquiry Officer till 19.11.2004. On that date a memorandum signed by Shri A.S. Malhotra, Registrar, IIT, Delhi along-with an ex parte report prepared by the Inquiry Officer dated 11.11.2004 was received calling upon the petitioner to submit a representation within 15 days from its receipt. The validity and legality of this ex parte inquiry report submitted by the Inquiry Officer is the subject matter of challenge in the second writ petition. The petitioner's ground of challenge is that the inquiry was conducted in a biased manner, and in utter violation of principles of natural justice. The inquiry officer was duty bound to stay his hands, once it was brought to his notice that an appeal on the question of bias was pending before the appellate authority, viz. the President of India. It is also alleged that the inquiry officer violated principles of natural justice in ignoring the reasonable request for deferment of the proceedings, due to the illness of the petitioner. He should have awaited for some time, after noticing that the request for adjournment was backed by medical advice from the AIIMS. Ignoring that advice, and proceeding on the assumption that the petitioner intentionally kept himself away from the proceeding, by not getting examined by the doctors in IIT (when there is no such requirement) the inquiry officer acted in an unfair and unreasonable manner.

Stand of IIT

15. The IIT denied the petitioner's stand that Mr. Vijay R. Kirloskar had not acted as the Chairman of the Board of Governors till 20.06.03 and had not laid the office of the Chairman on 19.04.03. It avers that all the documents pertaining to the case of the petitioner had been placed before Shri R. Kirloskar, the Chairman of the Board of Governors of IIT who had granted the approval on 22.5.03, for issuing charge sheet. Thereafter the charge-sheet against the petitioner was

placed before the Chairman Board of Governors of IIT and was approved on 6.6.03. The decision of the Chairman was ratified by the Board of Governors on 8.8.03.

16. The IIT avers that the second petition deserves to be dismissed at the threshold on the ground of deliberate suppression of material facts in the present proceedings. It is submitted that in the first petition this Court, by order dated 20.1.04 and 4.2.04 declined to stay the disciplinary proceedings against the petitioner. It is submitted that despite the said orders the second petition was filed seeking a restraint on the disciplinary proceedings without disclosing those orders.

17. It is submitted that the present case pertains to the purchase of medicine for the IIT hospital of which the petitioner was the CMO in 2003. It is alleged that the facts pertaining to and leading to the initiation of proceedings against the petitioner clearly establish that medicines were being sought to be procured for the IIT hospital at higher rates than those at which they could be procured from the market. Specific examples in respect of the aforementioned illegalities have been set out in the counter affidavit, to establish the submissions. The IIT has also relied a list of 114 such deletions carried out by the petitioner which would allegedly have resulted in the procurement of medicines for the IIT at such a higher rate.

18. The IIT alleges that time and again courts have held that disciplinary proceedings ought not to be enjoined under Article 226 of the Constitution and that the same should be permitted to continue. The IIT stated that on 12.03.04 CVC and withdrawn its earlier order 25.2.2004 restraining inquiry, and the record of the disciplinary authority clearly establish that the petitioner deliberately avoided participating in the inquiry proceedings on one pretext or the other. It is Therefore alleged that despite the passage of more than one and a half years the IIT was unable to complete the inquiry due to the petitioner's attempts to stall/protract/frustrate it. It is averred that in the circumstances the inquiry committee submitted its report on the basis of material placed before it and the same is in accordance with the law as laid down by the Hon'ble Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, and subsequently reiterated in other judgments.

19. The allegations of the petitioner against the inquiry officer are denied as baseless. Firstly he leveled allegations against Prof. Nirjar and subsequently against Prof. Khare. Professor Khare was appointed as the Inquiry Officer on 5.3.2004 and the application for change of inquiry officer was made only on 19.06.2004 by which time the examination of various prosecution witnesses was carried out and their statements had been recorded. They were also made available to the petitioner for cross-examining the said witnesses. It is averred that Professor Khare, a Professor at IIT Kanpur want to attend the enquiry proceedings to IIT Delhi and for that reason he was accommodated at the respondents institute. The allegation of bias is denied as misconceived.

20. It is alleged that in any case the petitioners' grievance against the order of suspension dated 13.05.2003 does not survive any more inasmuch as the same has been revoked and the petitioner has joined duty in the IIT hospital with the issuance of order dated 09.11.2005. An application moved by the petitioner on 6.1.2006 seeking to challenge the order dated 9.11.2005 is denied as misconceived.

21. It is also alleged that the inquiry proceedings have been initiated, conducted and concluded by the competent authorities under the IIT Act and statutes; the inquiry report submitted by communication dated 19.11.2004 is valid and calls for no interference by this Court.

22. It is alleged that the reply of the petitioner to the Show Cause Notice, on the report furnished to him, and the action proposed thereon, shall be considered by the competent authority in an objective manner after taking into account the relevant material placed before it.

Submissions of the petitioner

23. Shri M.N. Krishnamani, learned senior counsel appearing in the first petition, submitted that the procedure for initiation of departmental proceedings, were vitiated with mala fides; it was also illegal. He submitted that as per the Statutes and regulations of the IIT, only the Board of Governors were competent to initiate departmental proceedings. The consideration of materials, and decision to issue charge sheet, as well as the charge sheet issued was contrary to the norms, and Therefore without jurisdiction. Reliance was placed upon Clause 3.3 of Chapter III and Clause 5.1 of Chapter V to say that in the absence of application of mind by the Board of Governors of IIT, the entire exercise of initiation of enquiry upon the ostensible orders of Chairman, who had no competence in that regard, was illegal and without jurisdiction. The subsequent proceedings were Therefore a nullity.

24. Learned Counsel relied upon the decision of the Supreme Court, in Union of India and Others Vs. Harish Chandra Goswami, . In that decision, the court upheld the finding of the High Court that the order convening a court material, in the absence of an order of the Lt. General, as per Rule 37, was illegal. By parity of reasoning it was submitted that when the concerned rules and ordinances, as well as circulars of the Central Government, required the Board of Governors to apply their minds, and decide whether to initiate a departmental proceeding, or not, the Chairman, without any semblance of empowerment under the rules, could not have authorized issuance of the charge sheet.

25. It was next submitted, with reference to pleadings, and various charts filed in the first petition, and the documents, that the materials on record were sufficient for this Court to conclude that taken together, there was no basis to issue the charge sheet. It was submitted that the entire list of medicines which had to be procured had been scrutinized in the doctor's meeting, which examined the lists many days. Modifications had been suggested in respect of 207 items, and the

Standing Committee, which included the complainant Ms. Agarwal, had cleared, or approved of 199 such modifications. If the entirety of the charges were to be taken on their face value, the so-called losses that would have been occasioned to the IIT was just over Rs. 17,000/-, in respect of modifications pertaining to life saving drugs. Viewed from the perspective that the total purchases were in the range of Rs. 1.5 crores, the amount was negligible, and hardly called for major penalty proceedings.

26. Learned Counsel submitted that the decision in Union of India (UOI) and Others Vs. J. Ahmed, , of the Supreme Court, had ruled that "misconduct" means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct. In view of that decision, the role of the petitioner at worst could imply error in judgment, or negligence, but never misconduct, warranting initiation of departmental proceedings for major misconduct.

27. Learned Counsel for the petitioner submitted that the decision of the IIT to proceed departmentally was at the behest of Dr. Sirohi, and Dr. Agarwal; it was a motivated and mala fide attempt to foist false and baseless charges. It was submitted that the scheme was to somehow get the petitioner involved in departmental proceedings, have him suspended, so that Dr. Agarwal could realize her dream of becoming the CMO. Dr. Sirohi was party to this conspiracy, because Dr. (Ms) Agarwal was his protege, whom he wanted to help, even at the cost of levelling false charges and implicating an innocent official.

28. Shri R. Venkatramani, learned Counsel appearing in the other petition, also submitted that the initiation of proceedings was mala fides because the IIT did not have the benefit of the preliminary report. This, it was submitted, was evident from the fact that deposition and statements of some of the witnesses were recorded even after the submission of the report of preliminary enquiry, on the basis of which charge sheet was issued. Reliance was placed on the circumstance that Dr. Rajshree Agarwal's statement was recorded on 23-5-2003, and one Dr. Ajay Kumar's statement was recorded on 28th May, 2003. As per the IIT's pleadings, it was urged, the report of the fact finding committee was placed before the Board of Governors on 22-5-2003, which was an impossibility, and a clear attempt to mislead the court.

29. Learned Counsel submitted that the inquiry officer proceeded poste haste, to finalize the proceedings, despite being informed that the petitioner was unwell and had been medically advised rest. This information was furnished to the inquiry officer, who, on 16th August, 2004, adjourned the proceedings. At that time, he recorded that he would await the intimation about outcome of the appeal preferred by the petitioner on the issue of bias till 31-8-2004. When proceedings were resumed on 18-10-2004, although the inquiry officer was made aware of the petitioner's persisting medical problem, and furnished a copy of the AIIMS doctors report, yet, after recording the request, he proceeded with and concluded the inquiry. This showed the inquiry officer's predilection to

decide the matter somehow, whether the petitioner was in a position to participate, or not. Counsel submitted that the inquiry officer was not justified in doubting the ailment, and illness of the petitioner. The inquiry report, and further action taken by the IIT on the basis of the report, were Therefore in disregard to principles of natural justice, and arbitrary.

30. Learned senior counsel took serious exception to the stand taken by the IIT authorities during the inquiry proceedings, in February-March, 2004. It was urged that the CVC had, by its letter dated 24th February 2004, directed IIT not to continue with inquiry, as the proceedings were not initiated with its prior approval. This was brought to the notice of the inquiry officer, who asked the petitioner to produce any document, or copy of the CVC order in that regard. This was noticed on 30th April, 2004. The petitioner though aware of the position, could not produce copy of any document. When the enquiry commenced again on 15th June, 2004, to a pointed query to the Presenting Officer of IIT, by the inquiry officer, the position indicated was that there was no such order. This, it was submitted, was a clear lie, since the IIT was made aware of the order dated 24-2-2004, issued by CVC. Nevertheless, it professed to be in the dark. This was not only unfair, but displayed mala fides.

31. Mr. Maninder Singh, learned Counsel submitted that both the petitions are not maintainable and should be dismissed. He submitted that the question as to whether the charge sheet contained sufficient material to warrant an enquiry, ought not to be examined in judicial review proceeding under Article 226 of the Constitution of India. He relied upon decisions reported as Hazrat Surat Shah Urdu Education Society Vs. Abdul Saheb, ; Jagmal Singh Vs. Delhi Transport Corporation, ; Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, ; Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Another Vs. R. Rajan and Others, and G.S. Puri Vs. Indian Oil Corporation, , in support of the said proposition.

32. Counsel submitted that there was no illegality, as alleged, in the initiation of enquiry proceedings, even if all the submissions of the petitioner regarding competence of the Board of Governors alone were to be accepted. It was submitted that so long as the Board of Governors approved of the move, and gave its concurrence, the question of competence could not be raised. The legality of the order would assume significance with reference to the authority issuing the final, disciplinary order. It was submitted that in case the competent authority under the rules and regulations does not issue the final order, and it is issued by some other body or subordinate authority, the petitioner can then justifiably, and perhaps successfully challenge it. But that stage had not reached, since no final order has as yet been issued. Counsel submitted that officers and employees of IIT do not have protection of the proviso to Article 311 of the Constitution of India, to say that only the appointing, or disciplinary authority has competence to issue a charge sheet, and none else. The decision in P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, was

relied upon to submit that there is no bar to the initiation of inquiry/proceedings against a delinquent officer by an authority lower in rank to the appointing authority of the delinquent officer but, however, superior to him.

33. Counsel submitted that the allegations of mala fides leveled on the authorities of the IIT and the third respondent were unfounded and baseless. It was urged that there was no material to substantiate such allegations, beyond the statement of the petitioner. Learned Counsel stated that the decision to issue the charge sheet was arrived at objectively, and after considering all the relevant factors, including the report of the fact finding committee. The allegation of the petitioner that the materials and report were fabricated, since all the witnesses had not given their statements, and Professor Chandrasekhar had left India on 24-5-2003, was denied.

34. It was stated, with reference to the records that on 28.04.2003, the fact finding committee was constituted for the purpose of conducting a preliminary inquiry into the allegations. On 08.05.2003, the committee, after going through the records had met with doctors and other concerned staff of the institute hospital as well as the petitioner and on the basis of hearing their version, submitted its report. Counsel submitted that the report was based on the oral version of staff of the hospital; on 19.05.2003, the then Director of the Institute had required that the statement of doctors and the staff of the institute concerned, on whose version the preliminary fact finding report had been submitted, be recorded. Accordingly, this task was undertaken between 20.05.2005 and 28.05.2003. In the meanwhile, the report of the committee, as submitted, was placed before the erstwhile Chairman of the Board of Governors who granted his approval on 22.05.2003. Later, on 08.08.2003, the decision of the Chairman of the Board of Governors was ratified by the Board of Governors in its meeting. Photocopies of the relevant portion of the IIT record along with the above mentioned factual positions were placed on record with the affidavit filed by the Director of the IIT Delhi in accordance with the order dated 10.8.06 passed by this Court.

35. Initially during the course of hearing, learned Counsel for IIT had denied that any advice or direction was issued by CVC requiring stay of enquiry proceedings. This was hotly contested by counsel for the Petitioner, who had produced copies of the replies received from the CVC, to information sought under the Right to Information Act, and submitted that the CVC had indeed issued a direction to suspend the inquiry proceedings, in February, 2004. A copy of that advice, along with a copy of the noting by the then Central Vigilance Commissioner about counsel for the IIT having telephonically asked him to withdraw the notice staying the proceedings, was produced. In the light of these developments, the CVC as well as the Director, IIT were asked to file their affidavits, which they did.

36. Learned Counsel, further to the directions of the court, produced the original records of IIT, which disclosed that he had furnished an opinion to the IIT, contemporaneously at the relevant time, on as to whether the inquiry

proceedings ought to have been proceeded with. In view of the records, he submitted that his earlier argument about the CVC never having asked IIT to stay the proceedings, were without reference to the records, and not correct. He submitted that such submissions were not made with a view to mislead the court, or withhold information. He apologized for the earlier submissions.

37. It was denied that there was any suppression or concealment on behalf of the respondent - IIT. On 25.02.2004, an office memorandum, was issued by the CVC; it was received in the IIT. It required that disciplinary proceedings against the petitioner be stayed. However, the memorandum did not indicate whether the petitioner had brought to the notice of the CVC of the order dated 20.1.2004 and 04.02.2004 issued by this Court declining stay against the conduct of the disciplinary proceedings. It was submitted that on 3.3.2004, IIT received legal advice that since it appeared from the CVC communication dated 25.02.2004, that the orders passed by this Court in the writ petition and appeal filed by the petitioner had not been brought to the notice of the CVC by the petitioner, him, IIT should immediately bring those relevant facts to the notice of the CVC. On 5.3.2004, IIT responded to the CVC's communication through a letter, about the orders passed by this Court in WP (C) Nos. 4823 and 4993 of 2003. The CVC was informed that by order dated 4.2.2004, the Court had specifically rejected the petitioner's prayer for stay of disciplinary proceedings in the aforesaid petitions. Counsel urged that apparently the petitioner did not inform the CVC of orders passed by this Court. He submitted that on 10.03.2004, a copy of the order dated 4.2.2004 passed by this Court was forwarded to the CVC.

38. On 12.3.04 CVC responded to IIT by a communication, to the effect that it was not aware of the orders passed by this High Court. The CVC Therefore stated that action may be taken by the IIT as per the orders of the Court. The counsel submitted that perusal of the communication of CVC, dated 12.3.2004 shows that it was unaware of the orders passed by Court. The CVC also recorded its satisfaction that there were no malafides on the part of the respondent - IIT in the omission to seek first stage advice from the CVC in the present case and for ex post facto consultation with CVC for seeking second stage advice before issuance of the final order. It was Therefore submitted that there was no substance in the allegation that the IIT or anyone on its behalf willfully withheld information from this Court, or the CVC; though the presenting officer of IIT had expressed ignorance of the CVC order, yet, the matter had been resolved on 12-3-2004.

39. Learned Counsel submitted that there is no question of principles of natural justice having been violated, and the petitioner being treated unfairly. He relied upon the charts, annexed to the charge sheet issued to the petitioner, and submitted that there was sufficient material to form an opinion that the petitioner was prima facie involved in a misconduct. Counsel lastly submitted that the record of proceedings before the inquiry officer disclosed that sufficient opportunity had been granted to the petitioner. He leveled false allegations

against the first inquiry officer, who chose not to proceed further. Professor Khare was appointed later; the petitioner sought to repeat the same story, and level unfounded and frivolous allegations against him. When his request was rejected, the petitioner sought to stall the inquiry by filing appeals. The enquiry officer granted reasonable opportunity to the petitioner when he represented about his illness. However, the petitioner persisted in his delaying tactics; as a result, the inquiry officer used his discretion and completed the proceedings, without the petitioner's participation, since he deliberately chose to refrain from the inquiry. This did not in any manner vitiate the inquiry. Counsel submitted that the court's interim order, not to proceed and issue a final order, should be vacated, since the inquiry report was submitted long ago, and the IIT has to process the matter further.

40. The above pleadings and submissions of the parties raise the following points for consideration by the court:

- 1) Was the issuance of charge sheet to the petitioner, by the Chairman, an illegality resulting in its nullity;
- 2) Whether the charge sheet was otherwise vitiated, by mala fides, non application of mind, or any other serious irregularity;
- 3) Whether the inquiry proceedings were vitiated because the IIT did not seek the prior approval of CVC, and did not heed its direction not to proceed further;
- 4) Whether the enquiry proceedings, concluded ex-parte, are vitiated and unjustified, as being in violation of principles of natural justice.

Point No. 1

41. The petitioner has strongly relied upon Clause 3.3 of the Administrative Manual ("Manual") which prescribes that the appointing authority in cases such as the CMO is the Board of Governors. Reliance has also been placed upon Clause 5.1 of Chapter V of the Manual, which states that the disciplinary authority is the Board of Governors. He further emphasized the distinct powers conferred upon the Chairman and the Board of Governors under the Indian Institute of Technology Act, 1961, and submitted that the chairman is only the implementing official, whereas the board of governors decides the issue, including the question of whether to initiate departmental proceedings. On the other hand, the stand of IIT is that there is no specific bar upon an authority, superior to the officer sought to be charge sheeted, from issuing the charge sheet. It is also submitted that in any case, the Board of Governors ratified the decision, on 8th August, 2003.

42. The Supreme Court, in several rulings, including *Scientific Adviser to the Ministry of Defence and Others Vs. S. Daniel and Others*, ; *Registrar Of Cooperative Societies, Madras v. Fernando* 1994 (2) SCC 706 ; *Inspector General of Police and another Vs. Thavasiappan*, and *Director General, E.S.I. and another Vs. T. Abdul Razak, etc.*, , followed its earlier decision in *State of Madhya Pradesh*

and Others Vs. Shardul Singh, . In Shardul Singh's case it was held, interpreting the guarantee under Article 311, as follows:

Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All India Service or Civil Service of a State or holds civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under the provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed any an authority subordinate to that by which he was appointed.

43. In the present case, although the appointing and disciplinary authority in the case of the petitioner might not be the Chairman of the Board of Governors, that circumstance alone cannot amount to a fatal infirmity in the initiation of the proceedings, more so when the Chairman is next in heirarchy to the Board of Governors, and unquestionably superior in rank to the petitioner. The charge sheet, and decision to issue it, were ratified by the Board of Governors, on 8th August, 2003. Further, the judgments of the Supreme Court have consistently ruled that the question becomes relevant only at the stage of issuance of a final disciplinary order; before that unless prejudice is shown by the charge sheeted employee, by issuance of charge-sheet by an official lower in rank than the disciplinary authority, the court would not interfere with the conduct of inquiry. For these reasons, I see no force in the submission of the petitioner on this point.

Point No. 2

44. The petitioner has alleged mala fides by the IIT, specifically on the part of Dr. Siroha, who has been imp leaded as a respondent in the proceedings, and stated that he actively connived with Dr. (Ms.) Rajshree Agarwal to foist false charges against him, so that Dr. Agarwal could succeed in her dream to become the CMO, a post she was not selected to when she applied for it, and competed along with the petitioner. Although this has been extensively reiterated in the pleadings, with reference to the conduct of Dr. Agarwal, in first accepting the changes in the proposal to acquire the medicines, and later alleging that the petitioner had changed the proposals, without authorization, such allegations of personal malice against Dr. Siroha, imp leaded for the purpose, cannot stand judicial scrutiny. The allegation vis-a-vis Dr. Siroha is that he accepted the suggestions of Dr. Agarwal, and proceeded to refer the matter to the authorities, resulting in an unjustified and unwarranted suspension order of the petitioner.

45. It has been held in several judgments that mala fides should be substantiated with cogent and acceptable evidence or materials, and that mere pleadings in that regard do not suffice. Of course, in given cases, the materials may be susceptible of reasonable inference of mala fides; but the circumstances

must be strong, impelling the court to conclude as such. Ref. M. Sankaranarayanan, IAS Vs. State of Karnataka and others, ; State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, . In the present case, I am of the considered opinion that the materials on record do not justify the conclusion that the charge sheet issued to the petitioner was actuated by mala fides.

46. The next question is whether the departmental proceedings were vitiated for reasons such as non-application of mind, to the materials. It was contended that even if the existing materials were considered, no misconduct was made out; at best the lapses, if any amounted to an error of judgment. J. Ahmed's case (supra) was relied upon for the purpose, in addition to the submission that the charts relied on at best disclosed that the loss which could have resulted to IIT was only to the extent of a little over Rs. 17,000; and that the Standing Committee on purchases had approved almost all the drugs proposed to be procured.

47. It is no doubt true that the jurisdiction under Article 226 is of the widest amplitude; the court can interdict every action of the state, if it is illegal, procedurally irregular, arbitrary, taken in ignorance of material facts, or actuated by malice, oblique motives or extraneous reasons. However, the court normally refrains from questioning and delving deep into decisions taken in legitimate exercise of power, after choosing between various alternatives. In this case, it has been held that the charge sheet was not actuated by mala fides; the question is whether at the stage of inquiry, when no final order has been issued, it would be appropriate for this Court to examine the materials which existed before the IIT, and decide whether they were sufficient and justified issuance of a charge sheet. The decisions of the Supreme Court in Union of India and others Vs. A.N. Saxena, ; Union of India (UOI) and Others Vs. Upendra Singh, are authorities for the proposition that the courts under Article 226 of the Constitution should not interfere, save in exceptional circumstances, specially when mala fides have been established. Doing so would render judicial review an appellate exercise. In this case, the charge sheet discloses prima facie material; so long as that is relevant (as it indeed is) its sufficiency should not be gone into. Therefore, I do not agree with the submission of the petitioner that the decision to issue chargesheet was not based on proper application of mind, or with adequate materials.

48. The last limb of this point is whether the IIT's decision was flawed, because the depositions in the fact finding exercise were recorded after its decision was submitted to the Chairman. The Explanation of IIT in this regard is that the report was submitted on the 8th of May, 2003, and were based on oral versions of staff members; when the then Chairman required the depositions to be recorded, that exercise was carried out. In the meanwhile, the decision to issue chargesheet was taken.

49. At first blush, the procedure indicated by the IIT does appear somewhat

strange, even implausible. There is no Explanation as to why any necessity was felt for recording depositions in the preliminary enquiry after the report was submitted. Curious though such facts may seem, they have to be viewed in a larger canvass. A preliminary, or fact finding inquiry, or exercise is just one mode of gathering materials, and facts. This does not result in any penal or adverse consequence to the employee, who might be proceeded with departmentally. The observations or "findings" have no value, save informing the administrative authority required to take a call on whether to initiate an enquiry. Such material may or may not even be used by the employer, in a departmental enquiry. No formality is attached to the "proceedings" the officials examined, are not cross examined. In these circumstances, even if it is assumed that there were some irregularity in the fact finding exercise, in recording the evidence later, that cannot vitiate the charge sheet, and the departmental proceedings, initiated after issuance of the charge sheet. I answer this point, accordingly, against the petitioner.

Point No. 3

50. This point was not originally raised in the writ petitions, and was brought in by way of a supplementary affidavit, and urged strongly during the course of hearing. Initially, Mr. Maninder Singh, counsel for the IIT had denied that the CVC had ever stayed the inquiry. However, after the petitioner furnished copies of the reply of CVC, and the order dated 25-2-2004, he sought time to obtain instructions. The IIT, and CVC filed their affidavits, and the records of the IIT were produced by counsel. He submitted, after consideration of the records that the earlier submission was made without reference to the relevant documents, and apologized for making a wrong statement.

51. The above narrative shows that in the course of submissions, an impression that the CVC had not written to the IIT appears to have been made. Unfortunately, that was not correct, or borne out by the records. However, counsel produced all the records, and furnished the version of IIT, even while apologizing for his lapse, and stated that there was no intention at any point to mislead the court. After considering the facts, and careful examination of the records, I am inclined to accept the apology.

52. The entire basis of the petitioner's case is that the CVC had directed IIT to suspend inquiry, as its prior approval had not been obtained; this was brought to the notice of the inquiry officer, who on 30-4-2004 required the petitioner to substantiate the argument with documentary material. This was subsequently reiterated, when, in spite of the order of 25-2-2004, the IIT indicated that no such order or advice was received. The CVC in affidavit filed on 09.04.2006 submitted that there was no malafide on the part of the IIT and that it sought the second stage advice from it in November 2004. It has also stated that an order was issued on 25th February 2004 asking IIT not to proceed further in the inquiry against the petitioner, since its approval (first stage) had not been obtained. Apparently the IIT wrote to the CVC, informing it that this Court had

not granted stay of proceedings, despite the petitioner's request, and Therefore, the direction not to proceed further ought to be reviewed. The CVC, in response, on 12-3-2004, stated that the IIT could proceed further, as there was no mala fide in its omission to obtain prior approval before the inquiry started, and requiring the IIT to seek its advice at the second stage, i.e. in the event of a finding of guilt, and the necessity of issuing a penalty.

53. The above narration of events no doubt points at the omission of IIT in regard to obtaining prior approval of CVC before initiating the departmental proceedings. It also shows that the presenting officer did not mention the full facts, to the inquiry officer. Yet, the fact remains, that by 30-4-2004, the CVC had clarified its position, and there was no impediment in proceeding with the inquiry. Additionally, I do not find the position of the IIT (that the enquiry ought to have been proceeded with, since this Court had declined interim orders on two separate dates) unreasonable or arbitrary, in this regard. But for the initial inaccuracy in the submissions on behalf of IIT, this aspect did not need an elaborate scrutiny. In any event, after considering all the materials, I am satisfied with the Explanation furnished by the IIT and its counsel.

Point No. 4

54. The last issue, is whether the conclusion of proceedings, ex-parte, and in the absence of the petitioner, was unjustified and arbitrary. The enquiry officer, Shri Khare held proceedings on 30-4-2004 and 15-6-2004. He had scheduled the next date for 16-8-2004. On 13-8-2004, the petitioner applied for adjournment on the ground of his indisposition. It is undisputed that this application was supported by advice from a doctor of AIIMS; the enquiry officer, on receiving the request, proceeded to adjourn the hearing. This aspect is significant, because Shri Khare accepted the certificate and advice of the doctor at that stage. He issued notice to the petitioner on 13-10-2004, informing him about the scheduled inquiry proceeding for 18-10-2004. The petitioner expressed inability to attend, again, on medical ground; this time too, his request was supported by a copy of doctor's certificate. Curiously, however, on 18-10-2004, Shri Khare, the inquiry officer, asked Dr. Rajshree Agarwal and other doctors of the IIT hospital about their awareness of the illness of the petitioner, or whether had been taken treated by the IIT's doctors for the ailment he was then suffering. Dr. Agarwal, and other doctors present pleaded their ignorance about the illness of the petitioner and informed that he was not being treated by the Institute Hospital for Cervical Spondylosis c VBI. Thereafter, the inquiry officer, questioned whether the petitioner had submitted his list of witnesses, and upon being informed in the negative, closed the proceedings. He submitted his inquiry report, dated 11-11-2004, to the IIT.

55. The IIT's version is that the petitioner was deliberately refraining from attending the enquiry proceedings, and he had to blame himself for the ex-parte inquiry report.

56. All administrative or quasi-judicial actions which can result in an individual being adversely affected, has to be preceded with fair procedure, which implies reasonable opportunity where the concerned person is given sufficient chance to explain his position. Principles of natural justice are not a set of immutable or rigid rules, which can be straight jacketed; nevertheless every procedure has to be fair and reasonable. An enquiry into charges against a public official is not an exception to this principle. The essential rules of natural justice in these cases are issuance of notice, adjudication in an objective manner by a person with no interest in the outcome of the proceedings and adequate opportunity to the person likely to be effected to give his Explanation culminating in an order or report that considers all aspects in an even handed and fair manner. A series of decisions have established that mere infraction of a principle or rule by itself would not vitiate an enquiry; the ultimate test to be applied wherever departmental proceedings are complained against on ground of unfairness; is the test of prejudice.

57. If the above principles are kept in mind, the enquiry officer's conduct in proceeding to close the inquiry on 18th October 2004, is not only inexplicable; it is indefensible. Earlier, in August, 2004, he had accepted the petitioner's identical request for adjournment that application was backed by a medical advice of an AIIMS doctor. The subsequent, October request was similar; it too was supported by the treating doctor's certification. No reason is forthcoming from the minutes of the proceeding of 18th October, 2004 as to why this request was suspect, and unacceptable; the inquiry officer also has not recorded any rationale for his obvious suspicion that the petitioner was maligering. If that was his difficulty, the remedy surely was an easier one; the petitioner could have well been asked to be examined by some doctor in whom either the inquiry officer, or the IIT reposed confidence. Neither course of action was adopted; the inquiry was straightaway, and abruptly closed, granting no further opportunity to the petitioner to answer the charges. I am of the opinion that this procedure was in utter violation of natural justice, and unfair.

58. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , a Constitution Bench ruling of the Supreme Court, had held that if there is any infirmity in enquiry proceedings the courts have to set it aside and permit the proceedings to commence from the stage the infirmity crept in. It would Therefore, be in the fitness of things that the IIT takes a decision to continue the inquiry from the stage it was held ex-parte, on 18th October, 2004, and completes it after granting reasonable opportunity to the petitioner to answer the charges, and lead evidence in support of his case.

59. In view of the above conclusions, I find that the enquiry proceedings after 18-10-2004 were unfair; they, and the inquiry report, are accordingly set aside. The IIT shall take steps to proceed further on the chargesheet issued to the petitioner, and commence the proceedings from the stage they were held ex-parte, grant reasonable opportunity to the petitioner, including permitting him to

cross examine the witnesses of IIT, if he so applies, and leading his own evidence in defense of the charges. The proceedings shall be completed expeditiously, in any case, not later than six months from today, by which time, the inquiry report shall be furnished, and appropriate action be taken.

60. The writ petitions are partly allowed, to the extent indicated above, in the preceding paragraph; there shall, however, be no order as to costs.