

(2018) 12 DEL CK 0072

In the Delhi High Court

Case No : Civil Writ Petitions No. 4673 Of 2002, Civil Miscellaneous No. 7933, 7934 Of 2002

F.S. Chauhan

APPELLANT

Vs

UOI & Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Indian Penal Code, 1860 — Section 409, 418, 469, 471
Prevention of Corruption Act, 1988 — Section 7, 8, 9
Code of Criminal Procedure, 1973 — Section 156(3)
Evidence Act, 1872 — Section 91
Companies Act, 1956 — Section 201
NTPC Conduct, Discipline and Appeal Rules, 1977 — Rule 3(f), 3(g), 5(5), 5(12), 5(18), 5(20), 20, 23, 24, 25, 25(2), 25(3), 25(8), 25(11), 25(19)(ii), 26, 26(3), 36A, 37, 38

Citation : (2018) 12 DEL CK 0072

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Anil Airi, Adarsh Tripathi, Sukanya Lal

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J

CM. No. 7934/2002 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4673/2002

1. The present petition has been filed by the petitioner with the following prayers:

"It is therefore, most respectfully prayed that this Hon"ble Court may graciously be pleased to:

- (a) quash the Report of Enquiry dated 13/04/2001 and consequent order of dismissal of the petitioner dated 21/06/2002 passed by respondent No.6
- (b) quash the order of suspension dated 14/12/96, Memorandum of Charge dated 17/12/96 and order appointing Enquiry Officer and Presenting Officer dated 6/9-1-97 passed by Shri G.P. Singh, then a Gen. Manager of respondent No.2.
- (c) quash the resolution dated 2nd July 1997 of the Board of Directors of respondent No.2 including the malafide order of transfer of the petitioner from Dadri to Patna.
- (d) direct the respondent No.2 to recover the cost of funds and resources of the company spent in defending the respondent No.5 and his co-accused in various courts of law in violation of section 201 of the Companies Act, 1956.
- (e) direct the respondent No.2 to regularize the period of service of the petitioner from 1995 onward and grant him promotion and all other consequential benefits as due to him from 1995 till the date of disposal of this writ petition according to the level of his performance exhibited by the petitioner before 1995.
- (f) allow the cost of litigation which the humble petitioner had to undergo along with a just compensation for the loss, damages and mental agonies which the humble petitioner and his family had to undergo.
- (g) pass any other order or direction in favour of the petitioner and against the respondents as deemed appropriate in the facts and circumstances of the case and in the interest of justice."

2. In substance, the challenge in the writ petition is to the report of enquiry dated April 13, 2001 and the consequent order of dismissal of the petitioner dated June 21, 2002, which was passed pursuant to chargesheet dated December 17, 1996 issued to the petitioner.

3. The facts as noted from the writ petition are that the petitioner joined National Thermal Power Corporation (NTPC) in the year 1979. While the petitioner was working at Badarpur Thermal Power Station, he was transferred and asked to report to respondent no.5, the then General Manager of National Capital Power Project, Dadri on July 10, 1995 who in turn directed the petitioner to report to one Shri Brij Kishore, Sr. Manager (EMG) and nominated the petitioner as the coordinator for Resettlement and Rehabilitation (R&R) of the Project Affected Persons (PAPs) of a nearby village, Muthiani. It is the case of the petitioner that a group of executives of NCPP including Shri Brij Kishore, M.P.S. Bir, P.S. Soman, A.K. Atrea, Y.N.P. Sinha and K.S.S. Ajjan under the patronage of respondent No.5 were engaged in a scandal of bribes, forgeries and misappropriation of the public funds allocated for the resettlement and rehabilitation of the PAPs. It is his case that Shri Brij Kishore demanded illegal gratification from PAPs of village Muthiani for award of R&R contracts to them by exercising his influence over the petitioner. On refusal by the said PAPs to pay illegal gratification, Sh. M.P.S. Bir

moved an office note dated August 17, 1995 for award of the said R&R contracts to the non-PAPs on illegal considerations in violation of the R&R policy of the company and Sh. P.S. Soman forwarded the same for recommendation of the petitioner. Thereupon, Sh. Brij Kishore, Sr. Manager (EMG), Sh. A. K. Atrea, Sr. Manager (CCD) and respondent no.5 coerced the petitioner to recommend the award of the said R&R contracts to the said non-PAPs. That on refusal of the petitioner to recommend the said R&R contracts in favour of the said non PAPs, Sh. Brij Kishore secured a false and anonymous complaint written under his dictation by one of his subordinates, Shri Brij Kishore Gupta, Sr. Asstt. Engineer (EMG) under a fictitious name of "Jatav Samiti, Muthiani" against the petitioner under a conspiracy to implicate and to remove him from "R&R coordination" and thereupon to award the said contracts to the said non-PAPs in their favour, for illegal considerations. It is the case of the petitioner that in furtherance of the conspiracy, Sh. Y.N.P. Sinha, DGM (CCD) recorded false remarks on the said false complaint and respondent no.5 used the false and anonymous complaint against the petitioner as genuine, knowing the same to be false and thereby removed the petitioner from R&R Coordination and thereafter awarded the said R&R contracts to the said non-PAPs in violation of the R&R policy on illegal considerations and further subjected the petitioner to the control of the said Sh. Brij Kishore. It is the case of the petitioner that he submitted the complaint dated November 18, 1995 with a documentary evidence of commission of aforesaid forgery and fraud to respondent no.5. Respondent no.5 concealed the complaint and evidences enclosed therewith and continued to subject the petitioner to the control of Sh. Brij Kishore. It is the case of the petitioner that on realizing the collusion of respondent no.5 in the conspiracy, the complainant submitted a copy of the complaint dated November 18, 1995 to the then Director (Vigilance). The Vigilance Department investigated the matter and found Sh. P.S. Soman, Sh. M.P.S. Bir, Sh. R.C. Garg and Shri Brij Kishore Gupta, prima facie at fault in its report dated April 29, 1996, but the names of Shri Brij Kishore and respondent no.5 were omitted. On further investigation, the controlling officer of the petitioner, Sh. Brij Kishore, and his subordinate Sh. Brij Kishore Gupta were chargesheeted but no action was taken against the others. That an aggrieved PAP filed a complaint under Section 156 (3) Cr.PC on May 22, 1996 accusing Sh. G.P. Singh, Sh. Brij Kishore, Sh. P.S. Soman, Sh. M.P.S. Bir, Sh. Y.N.P. Sinha and Sh. Brij Kishore Gupta of having committed various cognizable criminal offences in the aforesaid matter in which matter a Case Crime no. 35/1999 was registered on the orders of the Court against the said executives. On failing to get his complaint dated November 18, 1995 redressed even after the vigilance investigation, the petitioner invoked the Executive Grievance Procedure of NTPC in pursuance of which Sh. G.P. Singh, Sh. A.C. Chaturvedi and Sh. S. Manchanda styling themselves as Chairman, Member Secretary and Member of the Staff Council called the petitioner on July 20, 1996 and threatened that if the petitioner pursued the matter of his complaint dated November 18, 1995 anymore, he himself would be chargesheeted by them. It is his case that the henchmen of Sh. Brij Kishore threatened the petitioner and his family with dire

consequences. Therefore, the petitioner requested the police for security vide letter dated August 26, 1996. It is his case that thereupon the petitioner submitted a representation dated September 16, 1996 to the respondent no.3 requesting for disciplinary action against respondent no.5 and his accomplices. But no action was taken and the petitioner was still subjected to the malafide control of Sh. Brij Kishore. It is the petitioner's case that on December 1, 1996, the Director (Operation) of the respondent no.2 company (NTPC) Sh. B.N.Ojha, called upon the petitioner for getting his arms license renewed at New Delhi on December 2, 1996. The petitioner already under the threat to his life started early in the morning at about 7.30 AM on December 2, 1996 from his residence. He deposited the weapon in police malkhana, collected all information on documents required; the power of attorney and arms license of Sh. B.N. Ojha and got his license renewed. When the petitioner handed over the renewed license back to Sh. B.N. Ojha in his office at Scope Complex, Lodhi Road New Delhi in the afternoon on December 2, 1996, he was shocked to learn from Sh. B.N. Ojha that while the petitioner was present at New Delhi, Sh. Brij Kishore alleged that he was assaulted by the petitioner at Dadri and Sh. G.P.Singh had passed an order of suspension of the petitioner.

4. It is his case that on advice of Sh. B.N. Ojha, he made a letter of denial dated December 2, 1996 stating that the allegation of Sh. Brij Kishore was false and handed over the same to respondent no.5 on December 3, 1996 even before receiving any allegation in writing. It is his case that respondent no. 5 instead of providing a copy of the complaint of Sh. Brij Kishore to the petitioner treated the said letter of denial of the petitioner as his complaint against Sh. Brij Kishore and ordered a preliminary enquiry on December 3, 1996 by Sh. K.S.S. Ajjan and placed the onus on the petitioner to prove that the allegation of Sh. Brij Kishore, which till then was not even conveyed to the petitioner, was false. On December 14, 1996, it was ordered that the petitioner would report to Sh. S. Manchanda, the then Head of Technical Services Department w.e.f said date. It is his case that Sh. K.S.S. Ajjan forced the petitioner to disclose his whereabouts and movements on December 2, 1996 before levelling any allegation against him and it appears that after that Sh. Brij Kishore framed his complaint against the petitioner, ante-dated as of December 2, 1996, to fit into the details disclosed by the petitioner. When the petitioner requested for an opportunity to make his defence, Sh. K.S.S. Ajjan told him that there was no evidence adduced by any one against him and therefore there was no need of defence. As such no witness was examined in the presence of the petitioner and the petitioner was also not allowed to produce evidence in his defence. It is the petitioner's contention that Sh. K.S.S. Ajjan had recorded the statement of some persons at the back of the petitioner and prepared a report of preliminary enquiry on the basis of which respondent No.5 asked and served order dated December 14, 1996 suspending the services of the petitioner.

5. The petitioner was compelled to file W.P. (C) 4785/1996 in this Court inter alia praying for quashing of the suspension dated December 14, 1996, and for a

decision on his representation dated September 16, 1996. It is his case that after receiving a copy of the writ petition, respondent no.5 served a Memorandum of Charge dated December 17, 1996 on the petitioner on December 24, 1996, which compelled the petitioner to file an additional affidavit in the writ petition inter alia praying for quashing of the said Memorandum of Charge on the ground that Shri G.P. Singh, a G.M. who styled himself as "Disciplinary Authority", was not a "Disciplinary Authority" for the petitioner because the "Disciplinary Authority" for major penalty proceedings against the manager, E-5 under the rules was specified as "C.M.D."

6. It is averred that on January 9, 1997 this Court stayed the Enquiry Proceedings and directed the respondent No.3 to decide the representation dated September 16, 1996 with a reasoned order. It is the case of the petitioner that in spite of the order of stay dated January 9, 1997, respondent No.5 styled himself as a "Disciplinary Authority" for the petitioner and served his orders appointing one of his accomplice as Enquiry Officer and the aforesaid Shri A.K. Atrea as Presenting Officer for conducting the enquiry against the petitioner. It is averred that on April 3, 1997, this Court observed that the appeal, lay against the order of suspension to the Board of Directors / CMD under the schedule of Conduct Disciplinary and Appeal Rules of NTPC and accordingly directed the Board of Directors to decide the appeal of the petitioner against his suspension with a reasoned order. The proceedings in the enquiry against the petitioner were stayed till the appeal of the petitioner was decided by the Board, and granted liberty to the petitioner to get the writ petition revived in case he remains aggrieved from the order of the Board passed in his appeal. It is his case that there was no notice or agenda and as such nothing to suggest that any meeting of the Board of Directors was held to consider the appeal of the petitioner against his suspension and 3 out of 9 members of the Board including its Chairman were themselves the respondents in the W.P.(C) 4785/1996 and that passing an impartial decision could amount to their own indictment.

7. On July 8, 1997, a copy of a document purported as a copy of minutes of meeting of the Board dated July 2, 1997 was served on the petitioner. From the said minutes, it appears that respondent no.5 entered the room and presented a document purported by him to be a copy of CDA Rules, but different from the CDA Rules admitted by the respondents and then relied upon by this court in passing order dated April 3, 1997 in W.P.(C) 4785/1996. According to him, the respondent no.4 replaced the schedule of the CDA rules relied upon by this Court in passing its order dated April 3, 1997 by two annexures purported to be Schedule of Delegation of Power in respect of Disciplinary Matters and Modified Schedule of Delegation of Powers in respect of Disciplinary Matters arising out of all vigilance investigations. Thus, it is his case that the fabricated CDA Rules placed before the Board stipulating different levels of authorities for imposing the same penalty for the same misconduct on the same level of employees, depending merely on whether a Vigilance Officer or any other Officer of the respondent company investigated the alleged misconduct, inherently violates

Article 14 of the Constitution.

8. It is his case that respondent No.4 misled the Board by saying that IOM dated July 04, 1994 which reconfirms the position that CMD is the "Disciplinary Authority" for Manager relates to the modified schedule of Annexure II of CDA Rules in spite of the fact that no CDA Rules were either existed or even stipulated. It is his averment that the Board directed the appropriate clarificatory memorandum to be used for post facto notification, but no such notification was ever made even after July 2, 1997. It is averred that respondent no.4 also induced the Board to pass similar orders in the matters not referred to them. According to the petitioner, the Board in the minutes has stated that the order dated April 3, 1997 of this court was not correct in holding that the appeal of the petitioner lay to them. The Board went on to pass its decision on the facts constituting the matter of the enquiry, which enquiry was yet to be conducted by one of their subordinates and thereby the outcome of the proposed enquiry. It is averred that the Board exceeded its reference and transferred the petitioner in violation of public interest, transfer policy, working requirement of the manpower, with their motives being to shield respondent no.5 and his accomplice officials because of scandal, conspiracy of briberies, forgeries and misappropriation of public funds. In substance, it is his case that the Board did not revoke the suspension of the petitioner on merits, but merely forced him and his family to physically move on transfer to Patna. He stated that this court had stayed his transfer in W.P.(C) 2971/1997 and further observed that the enquiry officer conducting the disciplinary proceedings against the petitioner was biased and he could not expect any justice from this enquiry officer and biased witnesses.

9. It is also averred that the petitioner had filed W.P.(C) 4425/1997 inter alia praying for quashing of resolution dated July 2, 1997 of the Board, for necessary action on the report of the vigilance investigation, and for grant of sanction of prosecution of the respondent no.5 and his accomplices. It is averred that the enquiry officer conducting the departmental enquiry against the petitioner, in pursuance of the Memorandum dated December 17, 1996 of Sh. G.P.Singh often fixed the venue of the enquiry in places inasmuch as 600-1600 Kms. away from the residence / workplace of the petitioner without sufficient notice and coincided the dates of enquiry with the hearings of the petitioner in the court of law at Delhi / Ghaziabad and framed incorrect record of enquiry at the back of the petitioner. It is stated that on July 9, 1998, the Enquiry Officer did not allow the defence assistant to participate, did not provide any inspection of the listed documents, did not provide copies of the statement of the management witnesses made during preliminary enquiry in spite of assurance dated March 2, 1998 and yet framed the incorrect record of examination of the management witnesses by leading questions. According to the petitioner, the Enquiry Officer himself forged the record of the examination of management witness - 4 so as to unduly support the story of the management. Thus, the petitioner submitted a complaint dated July 10, 1998 against the said forgery of evidence committed by the Enquiry Officer with a request for change of the Enquiry Officer, who had

submitted the impugned enquiry report. The petitioner in his petition referred to order passed on July 6, 1999 in W.P.(C) 4785/1996, 2971/1997, 4425/1997 and CCP 387/1997, whereby this court revived the W.P.(C) 4785/1996, ordered the petitioner to file amended writ petition incorporating the challenge with reference to resolution of the Board dated July 2, 1997 and recorded that this Court has to consider the case of the petitioner and the validity of the resolution dated July 2, 1997 and held that if the petitioner ultimately succeeds in W.P.(C) 4785/1996, this Court has to consider the question whether the second respondent was justified in transferring the petitioner to Patna and all the pleas taken by the petitioner with reference to disciplinary proceedings including challenge to show cause notice and orders appointing Enquiry Officer would be available to him after conclusion of the said disciplinary proceedings. This court dismissed the W.P.(C) 2971/1997 challenging the order of transfer of the petitioner and directed the second respondent to complete the disciplinary proceedings against the petitioner on or before December 31, 1999. The court had also granted liberty to the petitioner to challenge the ultimate order if it goes against him in accordance with law. It is stated that the Enquiry Officer did not conduct any proceedings in the enquiry except on 4-5 days, did not allow inspection or provide copies of the required documents, did not render any assistance to the petitioner in conduct of his defence and did not complete the enquiry on or before December 31, 1999 and as such he filed a Contempt Petition 42/2000 on which notice was issued. It is the case of the petitioner that he challenged the dismissal of the W.P.(C) 2971/1997 in LPA No. 287/1999 in which matter the Division Bench of this Court had stayed the transfer of the petitioner from Dadri to Patna.

10. A show cause notice dated October 14, 1999 was served on the petitioner as to why his services be not terminated on the ground that he did not move on transfer from Dadri to Patna. The petitioner approached this court which stayed the operation of the show cause notice dated October 14, 1999 on November 4, 1999 in writ petition being W.P.(C) 6713/1999. It is averred that in the enquiry, the Enquiry Officer fixed the enquiry on October 29 - October 30, 1999 at Anta, Rajasthan, about 600 Kms. away from the place of duty / residence of the petitioner. It is his case, the second respondent did not pay any TA/DA. On failure of the petitioner to reach the venue, the Enquiry Officer passed an ex-parte order closing the enquiry without cross-examination of the management witnesses and without giving any opportunity of defence to the petitioner. In view of this, the petitioner had to approach this Court and the Court overruled the order dated October 30, 1999 of the Enquiry Officer vide order dated November 17, 1999 passed in W.P.(C) 6829/1999 and directed that it would be open to the petitioner to contend all his points before the Enquiry Officer and the enquiry shall be conducted in accordance with the order dated July 6, 1997 and the Rules of the respondent for conduct of the enquiry. Thereafter the Enquiry Officer conducted the enquiry from December 12, 1999 to December 23, 1999, but in violation of principles of natural justice and procedure and made no effort to complete the same within the time granted by this court. It is averred that the

petitioner was made to produce his defence witness even before cross-examination of the management witnesses. The documents listed at Serial nos. 1, 10, 12, 13 and 14 of Annexure-III of the Memorandum of Charge dated December 17, 1996 could not at all be produced in enquiry. It is his case that the original of the documents listed in serial nos. 2 and 3 of Annexure - III of the memorandum of charge dated December 17, 1996 were found to have been forged by the Presenting Officer and Management witness-3. It is averred that when the cross-examination of the management witnesses was in progress, the Enquiry Officer suddenly shifted the venue of enquiry from Dadri to a place in Rajasthan about 600 Kms. Away. It is the stand of the petitioner that on April 24, 2000 as the management witness-2 could not reach the enquiry proceedings scheduled for cross-examination of management witness-2 had to be adjourned to 11 AM on the same day. That because a notice of the next date of enquiry was yet to be received, the enquiry was not being taken in accordance with the orders of this court. The petitioner approached this court filing CM. No. 4639/2000 in W.P.(C) 4785/1996 praying for appropriate orders commanding the respondents to provide TA/DA, assistance, inspection of documents, copies of previous statements of the witnesses and sufficient opportunity of cross-examination of the management witnesses and liberty for conduct of defence to the petitioner, in the enquiry. According to the petitioner, counsel for the respondent no.2 revealed on June 2, 2000 that the enquiry was completed in the last week of April, 2000 and the report of the enquiry was submitted to "Disciplinary Authority" on May 20, 2000 contrary to the fact that there was no notice of any proceedings after adjournment of 11 AM on April 24, 2000 for cross-examination of management witness-2. The petitioner again approached this court vide CM. No. 5492/2000 in W.P.(C) 4785/1996 praying for a restraint order against the second respondent for taking action on the enquiry report dated May 20, 2000 and for setting aside of the said report of enquiry and for directing the second respondent to conduct and complete the remaining part of the enquiry in which matter the court had issued notice to the respondents on June 11, 2000. The petitioner referred to an order dated November 15, 2000 passed in LPA 287/1999 wherein it was directed, the petitioner will join at Patna within 10 days. The respondent company was to release the salary of the petitioner for the interim period and his wage arrears in accordance with law within one month of his joining at Patna. On his joining at Patna, he was at liberty to make representation for seeking his posting to a place near Delhi. The enquiry proceedings which had been concluded were to be re-opened to the extent that the petitioner was to be provided an opportunity to cross-examine the departmental witnesses that have not been earlier cross-examined by him. After the completion of the cross-examination by the petitioner, he was to be given an opportunity to produce his defence. The enquiry was to be completed within a period of 12 weeks from December 15, 2000. The petitioner was held to be entitled to TA/DA according to the Rules. The respondent was to furnish a copy of preliminary report to the petitioner. The earlier report of Enquiry Officer and findings arrived at by him were to be treated as cancelled and not to be acted

upon. This court had also disposed of W.P.(C) nos. 6829/1999, 6713/1999, 4785/1996 and 4425/1997. This court had also said, in case a final order is passed, liberty was with the petitioner to challenge the same by raising pleas as available to him in accordance with law. Accordingly, the petitioner joined at Patna. He made a representation for his posting near Delhi. The Enquiry Officer decided the sequences and minimum time of cross-examination of the management witnesses on December 15, 2000 as three witnesses for five days, but on the other hand did not conduct any proceedings from December 16, 2000 to January 28, 2001 and from January 31, 2001 to February 18, 2001 and then suddenly changed the sequence on February 20, 2001 and declared that the cross-examination of any management witness would not be allowed to exceed four hours on the pretext of the paucity of time left for completion of the enquiry and fixed a date for production of defence witnesses on March 5, 2001 even before completion of cross-examination of the management witnesses.

11. It is averred that this court had extended the time for completing the enquiry for a further period of one month. It is stated that the Enquiry Officer held sitting on March 5, 2001. He refused to provide any opportunity of cross-examination of the management witnesses to the petitioner in spite of the extension of time and again forced the petitioner to produce his defence before cross-examination of management witnesses and thus illegally declared the enquiry proceedings as closed at four hours on March 29, 2001. The petitioner has also averred that on May 4/11, 2001, this court had passed an order in W.P.(C) 909/2001 that the stand of the respondent in not paying salary to the petitioner is not sustainable. On the issue of cross-examination of the witnesses, it was stated that it would be open to the petitioner to take up the plea if so advised before the appropriate forum. Accordingly, the petitioner submitted a representation dated August 16, 2001 to the respondent no.3 being "Disciplinary Authority", according to him, against denial of reasonable opportunity of cross-examination of the management witnesses, but the respondent no.3 did not consider the said representation and rather the subordinate of respondent no.6 rejected the representation on January 1, 2002. It is his case that respondent no.6 styled himself as "Disciplinary Authority" for petitioner and called upon him to submit his representation or submission against the report of the enquiry against which the petitioner submitted his representation dated January 21, 2002. It is his case that the respondent no.6 claiming himself to be a "Disciplinary Authority" has passed an order of dismissal of the petitioner from services vide order dated June 21, 2002, which is not a speaking order and does not even suggest that respondent no.6 considered the objections raised by the petitioner against the report of enquiry dated April 13, 2001. Further no opportunity was given to the petitioner before imposing extreme punishment of dismissal on him.

12. Even though, a detailed counter affidavit has been filed, the gist of the stand of the respondents on the impugned action i.e the suspension/charge sheet/enquiry proceedings/penalty order is primarily as under.

13. A common affidavit has been filed by respondents 2 and 3. Insofar as respondents 4 and 5 are concerned, they have filed an affidavit confining to the allegations made against them. There is no affidavit filed on behalf of respondents 1, 6 and 7. The respondents 2 and 3 being National Thermal Power Corporation (for short "NTPC") and Chairman & Managing Director, NTPC, the main respondents, have in their affidavit stated that the petition filed by the petitioner is not maintainable. The petitioner was guilty of charges of misbehavior and assault on an officer of the respondent Corporation inside the office and during working hours of the respondent Corporation. The charges were duly proved during enquiry proceedings. It being a finding of fact, cannot be assailed by invoking extraordinary writ jurisdiction of this Court as this Court is not a Court of Appeal nor is the Court exercising revisional jurisdiction. In other words, a finding of fact cannot be reversed. It is their case that adequate and reasonable opportunity was afforded to the petitioner to establish his innocence. According to them, during the enquiry, the petitioner had adopted an attitude of total non-cooperation and had tried to delay the proceedings by raising unnecessary and frivolous objections with a view to protract the proceedings. They have also taken a plea that the respondents 1 and 3 to 7 have been unnecessarily impleaded. According to them, respondent No.1 has been impleaded only to create jurisdiction of this Court. Otherwise, it is their case that no cause of action has accrued within the jurisdiction of this Court. In support of this submission, it is stated that the petitioner was posted at Patna at the relevant time. Neither the Enquiry Officer whose findings are impugned in the petition, conducted the enquiry proceedings within the jurisdiction of this Court nor is the Office of the "Disciplinary Authority" located in Delhi. It is also stated, no enquiry proceedings were held within the jurisdiction of this Court. It is also averred, the petitioner did not file any statutory appeal provided under the Rules. Therefore, the petition is liable to be dismissed.

14. It is averred that the services of the petitioner are governed by the Conduct, Discipline and Appeal Rules (for short "CDA Rules"). Under the said Rules, the petitioner has not exhausted all the remedies with an ulterior motive and has made unfounded and wild allegations against the Board of Directors. The petition is liable to be dismissed on the ground that it is premature. It is also averred that the petitioner has raised all sorts of frivolous and unconnected issues, which neither relate to the charge sheet nor to the enquiry proceedings. It is stated that the petitioner is making elaborate references to the previous petitions filed by the petitioner in this Court, just to confuse and divert the mind of the Court. It is stated that the issue in the present petition is a limited one i.e whether the charge sheet was proper and in terms of the Rules, enquiry was held as per Rules, petitioner was given adequate opportunity to defend himself and the findings of the enquiry were conveyed to the petitioner. They have denied that the enquiry has not been conducted in accordance with the principles of natural justice and the Rules.

15. In the counter affidavit, the respondents 2 and 3 have denied that the

respondent No.6 is not the "Disciplinary Authority". It is their case that the order of dismissal had been passed by the Appointing Authority and only communicated by the respondent No.6. It is stated that the suspension order was issued on December 14, 1996 pending enquiry. It was followed by charge sheet on December 17, 1996 issued by the "Disciplinary Authority", and the Enquiry Officer was appointed on December 24, 1996 as per the CDA Rules. As regards the suspension order dated December 14, 1996, this Court by its order dated April 03, 1997 and May 13, 1997 directed the petitioner to file appeal before the Board as per the CDA Rules and the said appeal was decided by the Board in terms of the order of the Court by Resolution dated July 02, 1997. The Board of Directors while considering the appeal of the petitioner relied on the CDA Rules of the Company. The Schedule at Annexure I of delegation of powers annexed to the CDA Rules specifies at Sr. No.3 that for employees in the grade of E5 level and below under their control, General Manager/Executive Director/Functional Director is Competent Authority to pass order of suspension pending enquiry. For issuance of a charge sheet to a Manager (E5) level, the General Manager is the Competent Authority as provided at Sl. No.1 of the said Schedule.

16. As far as Schedule at Annexure II is concerned, it was annexed subsequently to the CDA Rules indicating the concept of "Disciplinary Authority" in vigilance matter only. In the instant case, its provisions are not attracted. The case in hand relates to alleged indiscipline and misconduct, without any element of corruption, dishonesty or a vigilance issue. Therefore, the Schedule at Annexure II was not looked into by the Board. Further, the inter office order dated July 04, 1994 mentioned in this context relates to Schedule at Annexure-II and therefore, inapplicable. Suffice it to state that the case of the respondents 2 and 3 is that the enquiry has been held in accordance with the principles of natural justice and the Rules. The charges having been proved against the petitioner by the Enquiry Officer, the same has resulted in the penalty of dismissal, which is appropriate.

SUBMISSIONS:-

17. The petitioner, who appeared in person has, with regard to the impugned orders submitted that the writ petition filed by him is maintainable even without exhausting the alternate remedy. In this regard, he has referred to an order dated November 15, 2000 passed in LPA No. 287/1999 granting liberty to the petitioner to file a petition in accordance with law. With regard to the impugned orders, he stated that the same are without jurisdiction as all the above orders were passed by a person already accused in a previous complaint by the petitioner, hence, vitiated by bias and malice. The enquiry was conducted in gross violation of Rules, law, principles of natural justice and in disobedience of the orders passed by this Court. The order of suspension/charge sheet/appointment of Enquiry Officer/Presenting Officer and order of dismissal have been passed by an Authority claiming to be the "Disciplinary Authority", which it is not under Sl. No.2 of Schedule to the CDA Rules, which Rules, having been admitted by the respondents, were relied upon by this Court in passing order

dated April 03, 1997.

18. He also stated that the document filed on behalf of respondents 2 and 3 tilted as NTPC Conduct, Discipline and Appeal Rules, 1977 are not admissible. In this regard, it is his submission that the styling by the signatory to those orders as "Disciplinary Authority", itself demonstrates the fact that he relied upon the Schedule to the CDA Rules filed by the petitioner, which specifies "Disciplinary Authority", not at Annexure I to the CDA Rules filed on behalf of respondents 2 and 3, which has no mention of this term.

According to him, the definition of "Disciplinary Authority" under Rule 3(f) also indicates that "Disciplinary Authority" must be found in the Schedule appended to the Rules, which is so found in the Schedule appended to the Rules and not found in the Schedule at Annexure-I to the Rules. He stated, the definition of the "Disciplinary Authority" under Rule 3(f) indicates only one Schedule appended to the Rules and in fact only one Schedule is appended to CDA Rules filed by the petitioner, while two Schedules are annexed to the Rules filed by respondents 2 and 3. He stated, Rules 25 and 26 do not refer to or provide for different Disciplinary authorities for the same grade of employees but the two Schedules annexed to the Rules filed by the respondents 2 and 3 provide for two different Authorities to pass orders for the same grade of employees depending on the relevant fact of investigation agency and thus hit by Article 14 of the Constitution of India. He heavily relied on the order dated April 03, 1997, wherein this Court had referred to the fact of appeal lying before the Board of Directors. He also stated that the respondent No.4 replaced the Schedule titled as "Schedule to NTPC Conduct, Discipline and Appeal Rules" by two Schedules framed and titled as Annexure-I, Schedule of Delegation of Powers in respect of disciplinary matters under the NTPC Conduct, Discipline and Appeal Rules and Annexure-II modified Schedule of Delegation of Powers in respect of disciplinary matters arising out of the vigilance investigations under NTPC Conduct, Discipline and Appeal Rules for employees in the grade of Rs.1,000-1900 and above but failed to alter the definition of "Disciplinary Authority" and text of relevant Rules which still suggest that there is only one Schedule to the CDA Rules and that there is no jurisdiction vested in any Authority lower than the "Disciplinary Authority" in appointing Enquiry Authority under Rules 25(2), framing charges under Rule 25(3), appointing Presenting Officer under Rule 25(2), receiving report of enquiry under Rule 25(19)(ii) and considering the findings, forming opinion and making order imposing penalty under Rule 26(3).

19. He stated that the contradiction apparent in Annexure-II ipso facto demonstrates crudeness of the forgery committed, inasmuch as the title of Annexure-II is inconsistent with its content. It was also his submission, the Schedules appended to Rules filed on behalf of respondents 2 and 3 delegate powers to different authorities for issue of charge sheet, appointing Enquiry Officer/Presenting Officer, receipt and consideration of report of enquiry and imposing penalty, which is hit by the Rule against the delegation, upheld by the

Supreme Court in various judgments. In substance, it is his case that the document NTPC Conduct, Discipline and Appeal Rules, 1977 (as amended upto July 1993) are not the applicable CDA Rules.

20. It is his case that the proceedings against the petitioner were prejudiced and vitiated by personal bias. According to him, a person already accused and facing trial for previously framing a false complaint against the petitioner again made an allegation against the petitioner and cited his co-accused as a witness and another co-accused passed the order of suspension dated December 14, 1996, Memo of Charge dated December 17, 1996, order appointing Enquiry Officer and Presenting Officer dated January 04/07, 1997 and the said Enquiry Officer acted under his dictates, which is also evident from a true copy of inter office memo dated October 07, 1997. He submitted, the Enquiry Officer not only examined management witnesses at the back of the petitioner but also forged the evidence, framed false record, flouted the orders of this Court and faced contempt proceedings, being observed as biased by this Court. While, the petitioner's application for change of Enquiry Officer dated July 10, 1998 was not yet disposed, in the meantime, the biased Enquiry Officer concluded the enquiry in gross violation of Rules and principles of natural justice.

21. He submitted, on October 14, 1999, the respondents served a notice of termination of services of petitioner. The Enquiry Officer stage managed an enquiry at the back of the petitioner and passed an order closing enquiry dated October 30, 1999. On a challenge, this Court had stayed the termination, vide order dated November 04, 1999 and overruled the closure of enquiry dated October 30, 1999 but the Enquiry Officer has still been addressing the petitioner as "Ex-Manager" in display of his prejudice and predetermination to see that the petitioner is dismissed from service by hook or by crook. It is his submission that the enquiry was conducted in violation of Rules, procedure and principles of natural justice and also in disobedience of orders of this Court. He has stated the following:-

(i) First document listed with the Memorandum of Charge being complaint itself could not be produced in the enquiry and its Author MW1 not allowed to be cross examined by the petitioner;

(ii) PW 5, who granted leave to the petitioner for December 02, 1996 not allowed to be cross examined and confronted with the C.L. Card bearing his signature and later the Enquiry Officer rejected the same in defence on a plea "why it was not produced earlier".

(iii) The Enquiry Officer fraudulently inserted an extraneous document in place of the listed document No.1 which did not exist and relied upon in gross violation of the settled position of law;

(iv) The Enquiry Officer illegally used the report of preliminary enquiry for corroborating the case of management in conflict with his own orders dated July 09, 1998 and December 20, 1999 and the law;

(v) The Enquiry Officer illegally framed examination in chief of the management witnesses by leading question at the back of the petitioner and did not give any opportunity to the petitioner to cross examine them, which is in disobedience of orders passed by this Court on July 06, 1999, November 19, 1999, November 15, 2000 and order dated March 02, 2001;

(vi) The Enquiry Officer breached his own orders dated March 02, 1998, January 10, 2000, July 09, 1998 and December 15, 2000 for denying cross examination of witnesses and for unduly supporting the case of the prosecution.

22. One of the contention of the petitioner is that the Enquiry Officer himself cross examined the defence witnesses at length and grossly misinterpreted the evidence adduced on record by making false statements in his report of enquiry. In this regard, it is his submission that under para (g), page 28 of the Enquiry Report, Enquiry Officer stated that Shri Brij Kishore, MW 1 in his testimony confirmed the contents of his letter dated December 02, 1996 which is demonstrated to be false by the fact on record that letter of Shri Brij Kishore dated December 02, 1996 being listed document No.1 could never be produced and in fact, did not exist. Under Para (n), page 33 of the Enquiry Report, Enquiry Officer stated that "Management Witness-5 checked the attendance register which was not signed by Shri Chauhan" which statement is demonstrated to be incorrect by the complete statement of MW-5 on record "Yes, I checked the Attendance Register and found that Shri F.S. Chauhan and Shri Brij Kishore has not signed on that day and other executives had signed" and, the actual statement demonstrates the falsity of the case framed against the petitioner. At page 43 of his report, Enquiry Officer misrepresented the testimony of DW-2 whom he himself also cross examined at length, by saying that answer of this witness to all the suggestions was that he does not remember anything which is contrary to the record that not only he answered the minutest details but also explained in answer to question No.23 as to why he remembered the details of December 02, 1996 so vividly. At page 45 of his report, the Enquiry Officer misrepresented the testimony of DW-3, whom he himself cross examined at length, by saying that the evidence of DW-3 clearly establishes that there was some bandage on the hand of Shri Brij Kishore on December 02, 1996 which is contrary to the record where he emphatically stated in response to question No.36 that "I did not see any plaster on the hand of Shri Brij Kishore but saw merely a bandage that too after about a period of 3-4 days". The Enquiry Officer misrepresented the record of cross examination of DW-5, where he in one Question had asked DW-5 about the lift which he had taken in the car of Shri Brij Kishore on December 02, 1996 and in a different question about the color of the sweater which Shri Brij Kishore wore on December 03, 1996 by saying on page 46 of his report that he could not answer about the color of sweater of Shri Brij Kishore although he took a lift in his car and traveled with him for more than half an hour. The Enquiry Officer after himself cross examining DWs at length and failing to impeach their credibility, intimidated DWs.

23. The petitioner also stated that the Enquiry Officer did not give any reasonable opportunity of cross examination of MWs by the petitioner despite repeated orders and extension of time granted for the purpose by this Court. The Enquiry Officer after having failed to give any opportunity of cross examination of MWs by the petitioner despite this Court having passed order in this regard dated July 06, 1999 and November 17, 1999, this Court again passed specific directions in that regard vide order dated November 15, 2000 in LPA No. 287/1999. The Enquiry Officer re-opened enquiry proceeding on December 15, 2000 at Dadri Project and requested the petitioner to ensure to complete the cross examination of "3 witnesses in 5 days" so as to ensure completion of enquiry within scheduled period (12 weeks) and decided the sequence also of cross examination of the MWs and fixed the next date from 8th to 12th January, 2001 at Dadri. Afterwards, the respondent No.7 cancelled the date given for enquiry at Dadri and held proceedings on 29th January, 2001 and 30th January 2001 and further from 19th February, 2001 to 28th February, 2001 at "Anta" in Distt. Baran, Rajasthan, albeit, in disobedience to the order dated November 15, 2000 in LPA No. 287/1999. On 20th February, 2001 at "Anta", the Enquiry Officer all of a sudden, in breach of his own order dated December 15, 2000, to give 5 days" time for cross examination of three witnesses, declared that only 4 hours will be given for cross examination of each witness and presented MW 1 for his cross examination at 9.30 am and declared that after four hours his cross examination will be interrupted and declared completed while himself knowing the fact that even the cross examination of MW 2 could not complete even after 3 days whereas MW 1 was the Complainant himself and most important witness interalia, to be cross examined on 40 pages of documents filed by him and as also to his previous statement that he verified his complaint addressed to the GM, which in fact did not exist. The petitioner protested orally but in vain. Thereupon, the petitioner prepared formal application but the Enquiry Officer refused to pass any order on the same. In the meantime, the time of four hours passed and the Enquiry Officer vide his DOS of 1.30 pm on 20th February, 2001 declared "cross examination of Shri Brij Kishore will not be held now. His Examination in Chief shall be considered for the purpose of finalization of inquiry" and adjourned the inquiry to continue at 2.30 pm with cross examination of the next M.W. Likewise, he declared the cross examination of other Management Witnesses also completed without giving any reasonable opportunity and without any cross examination having taken place in fact.

24. The petitioner also stated, the Enquiry Officer has made baseless presumptions and drawn absurd inferences against the petitioner contrary to the facts and evidence on record. The Enquiry Officer has drawn a presumption on page 40 of his report that "Dr. Aditya Arya, DW-1 could not explain as to how many certificates like document D-9 have been issued by him in the past, nor could explain as to whether any written request was made by Shri Chauhan for issuance of certificate D-9" which presumption is in conflict with answer of DW-1 to question No.19 that "the person who issued the certificate is no more" and

also contrary to the certificate D-9 which was issued by the Assistant Commissioner of Police, Shri Lal Ram and not by DW-1. On page 40-41 of his report, the Enquiry Officer rejected the whole of the testimony of DW-1 Dr. Aditya Arya by his presumption, "it is beyond imagination that how Shri Chauhan could deposit the arms and ammunitions within such a short period (10-15 minutes). Even moving around in the space of 100 yards, more time (than 10-15 minutes) will be taken", which is nothing but "absurd presumption" because it is common sense that anyone can verify that walking 100 yards does not take even five minutes and deposit of a licensed arm/ammunition after the orders of a senior police office does not take even 10 minutes. The Enquiry Officer concealed his own DOS dated 23rd March, 2001 and report of inspection dated 23rd March, 2001 of the Original, 1st and 2nd carbon copies of the receipt No.29, where he himself checked the genuineness of the receipt to his full satisfaction and wherefrom he had noted the fact that No.29 printed in the 1st carbon copy was crossed by carbon impression of letter "M" from the scribbled "9-10 am" and appeared as "28" and the ACP Lal Ram also mistook the number 29 as "28" and erroneously mentioned "28" as the Receipt No. in his Certificate D-9 and therefore, the Receipt No. 28 was irrelevant to the enquiry. Yet, the Enquiry Officer drew an absurd presumption on page 42 of his report that the receipt No.28 did not exist on the records of Delhi Police even though DW-4 stated that the same was not requisitioned but could be inspected after due permission of his department. On page 52, the Enquiry Officer raised a presumption, "how a police officer could accept any application without the applicant's address", which is demonstrated to be absurd by the answer to question No.63 of C.O's cross examination which states that in deposit of licensed weapons, furnishing of residential address is not important because name, address with a certified photograph of the licensee is given in the license itself. The Enquiry Officer concealed a material fact that order dated December 04, 1996 passed by Shri A.C. Chaturvedi, DGM (P&A) NCPP directed the petitioner to report to the Head of Technical Services Deptt. MW-5 with immediate effect and on December 09, 1996 MW-5 being the Controlling Officer of the petitioner had sanctioned his 1/2 day C.L. each for November 28, 1996 and November 29, 1996 and 1 days C.L. for December 02, 1996 and MW 5 in his examination in chief also said that it is the job of the Controlling Officer to sanction leave and the Enquiry Officer himself deprived the petitioner from producing the C.L. card at an earlier stage by refusing to grant opportunity of cross examination of MW5 to him where he could confront the MW 5 with the said C.L. card. Despite request of the petitioner, Enquiry Officer also refused to summon the record of attendance of employees from the P&A Deptt, for verification of the leave sanctioned by MW-5 to the petitioner. The petitioner also relied upon the following judgments in support of his submission:-

- (i) Government of A.P. & Ors v. M.A. Majeed & anr (FB) 2006 LAB. I.C. 1616;
- (ii) Union of India and ors. v. B.V. Gopinath etc AIR 2014 SC 88;

- (iii) Tayabbhai M. Bagasarwalla and another v. Hind Rubber Industries Pvt. Limited, AIR 1997 SC 1240;
- (iv) Saikia Businessmen's Association & others v. Howrah Municipal
- (v) Sangramsinh P. Gaekwad and others v. Shantadevi P. Gaekwad (Dead) through Lrs. and others (2005) 11 SCC 314;
- (vi) Steel Authority of India Ltd. v. Union of India & Ors 2006 (9) Scale 597;
- (vii) Roop Kumar v. Mohan Thadani, AIR 2003 SC 2418;
- (viii) Arjun Choubey v. Union of India AIR 1984 SC 1356;
- (ix) Surat Singh v. S.R. Bakshi, AIR 1971 Delhi 133;
- (x) Kuldeep Singh v. Commissioner of Police and others (1999) 2 SCC 10;
- (xi) Tilak Chand Mangatram Obhan v. Kamala Prasad Shukla and others 1995 Supp. (1) SCC 21;
- (xii) The Andhra Pradesh State Road Transport Corporation v. Sri Satyanarayan Transport, AIR 1965 SC 1303;
- (xiii) Professor Ramesh Chandra v. University of Delhi and ors JT 2015(2) SC 139;
- (xiv) Kamal Joshi v. M.P. State Textile Corporation Ltd. 1991 LAB I. C. NOC 55;
- (xv) State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623;
- (xvi) Modula India v. Kamakshya Singh Deo, (1988) 4 SCC 619;
- (xvii) Vijay Narain Singh v. Supdt. of Police, Bijnor & Ors 1994 Supp. (2) SCC 56;
- (xviii) Chairman cum M.D., Coal India Ltd. v. Anata Saha and others 2011 (4) Scale 398;
- (xix) Bangalore Development Authority v. Vijaya Leasing Ltd. and others, AIR 2013 SC 2417;
- (xx) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, 2013(11) Scale 268;
- (xxi) State of Kerala v. M/s Kerala Rare Earth & Minerals Limited AIR 2016 SC 1817;
- (xxii) A.R. Antulay v. R.S. Nayak & anr, AIR 1988 SC 1531.

25. On the other hand, Mr. Anil Airi, learned Senior Counsel for the respondents 2 to 6 submitted that the petitioner was chargesheeted for following charges in accordance with CDA Rules as amended upto 1993:

- (i) Rule 5(5)- Acting in a manner prejudicial to the interests of the company;

(ii) Rule 5(12)- Indecent behavior in the premises of the company where such behavior is related to or connected with the employment;

(iii) Rule 5(20) - Commission of any act subversive of discipline or good behavior;

(iv) Rule 5(18) - Absence from workplace without permission.

26. Mr. Airi stated, the objection of the petitioner regarding jurisdiction to hold the enquiry proceedings is without any basis inasmuch as the services of the petitioner are governed by the CDA Rules (as amended upto July 1993), annexed as Annexure RA-III. As per the relevant rule applicable for the employees in the grade E-5 the General Manager is the "Disciplinary Authority" for passing suspension order pending enquiry. He is also the authority to issue charge sheet and appointing Enquiry Officer. The Chairman-cum-Managing Director of respondent No.2 is however the competent authority for passing the order of dismissal. He stated, under the CDA rules, Rule 3(f) "Disciplinary Authority" has been defined as the authority specified in the schedule appended to the Rules and competent to impose any of the penalties specified in rule 23 and the "Competent Authority" has been defined under rule 3(g). Annexure I relates to the delegation of powers in respect of disciplinary matters under NTPC Conduct, Discipline and Appeal Rules and Annexure-II relates to the disciplinary matters arising out of vigilance. The petitioner is placing reliance on Annexure-II, which is not applicable to the petitioner. Mr. Airi stated, it is further provided under Rule 37 that where a doubt arises as to the interpretation of any of the rules, the matter shall be referred to the Board for final decision and under Rule 38, the Board is competent to amend or add the rules. In the present case, the Board of Directors has, already considered all objections and contentions of petitioner and passed Resolution dated July 02, 1997 that as per the delegation of powers, the General Manager is the "Disciplinary Authority" for the petitioner in respect of issuing suspension order, charge sheet and appointment of Enquiry Officer and Presenting Officer. The decision of Board is final and is not subjected to any other interpretation. The Board of Directors as such has confirmed and ratified all actions taken prior to passing the resolution dated July 02, 1997.

27. Mr. Airi stated, it is on record that the petitioner was issued Memo of Charge dated December 17, 1996 and after his reply dated December 26, 1996, which was not found satisfactory, enquiry was initiated as per the CDA Rules and the enquiry commenced from September 09, 1997. Any letter issued prior to the chargesheet stood superseded, and would hold no significance. The petitioner was not co-operating in the enquiry on one reason or the other. The petitioner would not attend the enquiry and would attend the enquiry at his own whims as would be apparent from the daily order sheets. Enquiry Officer appointed was also not part of Dadri Office and was working at different station. Mr. Airi stated, it is also an admitted fact that the Enquiry Officer had no interaction either with the petitioner or complainant Shri Brij Kishore. The enquiry was ordered to be proceeded ex parte on October 30, 1999 and re-opened on November 17, 1999 and petitioner was again proceeded ex parte on April 24, 2000 as per orders of

this Court, which was re-opened on November 15, 2000 and the enquiry was concluded on April 13, 2001. Mr. Airi stated that the examination in chief of the Management Witnesses was carried on 9th July, 1998 and 10th July, 1998 during which, the petitioner was very much present, but opted not to cross examine these witnesses, on some flimsy ground of unavailability of preliminary enquiry report and non availability of defence assistant. The witnesses were constantly offered to the petitioner, but the petitioner never ever started with the cross examination. After the passing of the order dated December 15, 2000, the petitioner was provided with copy of preliminary enquiry report. The witnesses coming from various part of the country constantly kept waiting from 20th February, 2001 to 24th February, 2001 for cross examination. The petitioner was requested by Enquiry Officer several times to commence cross examination of Management Witnesses, but the petitioner did not even put a single question to any of these witnesses. All the witnesses kept waiting which is apparent from the daily order sheets of these dates. Mr. Airi stated that this Court vide order dated November 15, 2000 had fixed a time of three months to conclude the enquiry with effect from December 15, 2000. In such circumstances, Enquiry Officer was left with no other option and under the mandate of this Court had to complete the inquiry in a time bound manner. The Enquiry Officer, thereafter restricted the time for cross examination by the petitioner to four hours per witness. Even this opportunity was not availed by the petitioner, and not even a single question was asked to any of these witnesses. According to him, the petitioner cannot now complain and raise a grievance of said four hours as even said time of four hours was not utilized by the petitioner. It is not a case where cross examination commenced and Enquiry Officer stopped the same on expiry of four hours, but is a case of no cross examination at all when opportunity was duly given.

28. Mr. Airi submitted that this Court by judgment dated November 15, 2000 inter alia issued several directions including providing preliminary report to the petitioner as also permitting him to cross examine the Management Witnesses. It was also directed that petitioner would not seek production of any other document. It is stated that all earlier orders passed by this Court stood merged with the judgment dated November 15, 2000. The petitioner was duly provided with a copy of preliminary enquiry report by the Management. The petitioner as such at this point of time cannot raise any objection with respect to non-production of any document. After the petitioner adduced his evidence, the enquiry was concluded and enquiry report was duly given to the petitioner. Thereafter, the petitioner was given show-cause by Management and after considering his reply, the order of dismissal was passed by the Competent Authority i.e CMD, which was issued vide order dated June 21, 2002. Mr. Airi stated that the enquiry proceedings were conducted on almost 38 dates. The petitioner only cross examined one management witness for almost 5 dates and thereby kept on wasting the time of the proceedings. Mr. Airi submitted that the documents filed by the petitioner during the enquiry proceedings in his defence, were filed for very first time at the fag end of the enquiry proceedings, and were

never filed at the first instance. These documents were never produced, referred to or relied upon by the petitioner, at the time of making representations or previously when the enquiry continued for almost a period of 3-4 years. Further, these documents were never confronted to management witnesses and hence no credibility can be adduced to any of these documents.

29. Mr. Airi submitted, the case of the petitioner is that he was not present in the office premises, let alone at the place of incidence as alleged. The petitioner states that he visited Parliament Street, Police Station to deposit the fire arm and the same was deposited by him at 10.00 am and a receipt to that effect has been produced:

- a. The petitioner filed his list of documents on December 23, 1999 as also its list of witnesses on the said date;
- b. The said list of document of petitioner refers to receipt No.28 dated December 02, 1996 and certificate dated March 12, 1997;
- c. The certificate of March 12, 1997 of the Police is concerning and refers to Receipt No.28;
- d. The petitioner however subsequently started referring to Receipt No.28;
- e. The Receipt No.28 or 29 or the certificate dated March 12, 1997 were never produced before the Enquiry Officer or before the Management witness at any point of time. The said document was also never referred to in any of the representation of the petitioner to the Management or in any proceedings initiated by the petitioner in this Court. There is nothing to show that any such document existed as the petitioner never referred to nor relied upon them at any stage of the enquiry proceedings prior to December 23, 1999;
- f. None of these documents were ever confronted to any of the Management Witnesses.

As such these documents cannot be referred to or relied upon by the petitioner for any purpose whatsoever. Further, these management witnesses had confirmed the presence of petitioner at Dadri in the office premises of management and the said witnesses were never cross examined.

30. Mr. Airi submitted, as regards casual leave card, the same was produced for the very first time by the petitioner during his chief examination of March 28, 2000. The said casual leave card as per the petitioner bears signature of Shri S. Manchanda, who ostensibly has sanctioned on 9th December for casual leave on 28-29th November and 2nd December, 1996. Mr. S. Manchanda appeared as witness on behalf of the Management. However, the casual leave card was never confronted to the said witness and in fact has only been produced after the Management offered Shri S. Manchanda for cross examination. Mr. Airi submitted, the petitioner on one hand did not participate in the enquiry proceedings and on the other hand continued to create hurdles in the enquiry

proceedings by filing frivolous petitions before one Court or other. The petitioner has tried to forestall the enquiry by filing several petitions one after the other. Mr. Airi submitted that the burden of proof required in departmental enquiry is preponderance of probability and it is not required to be proved beyond reasonable doubt. Hence, the charges in the present case, in light of the evidence, on record, were duly proved. Mr. Airi also submitted, the scope of interference by this Court is restricted to situation only when the enquiry report is based upon no evidence and in writ jurisdiction, this Court will not re-appraise the evidence led before the authority and come to a conclusion other than the one arrived at by the Competent Authority. He relied upon the following judgments in support of his contention:-

- (i) SBI and ors v. Narendra Kumar Pandey, (2013) 2 SCC 740;
- (ii) Canara Bank v. V.K. Awasthy (2005) 6 SCC 321;
- (iii) State of U.P v. Man Mohan Nath Sinha and Anr (2009) 8 SCC 310;
- (iv) State of Haryana v. Rattan Singh, AIR 1977 SC 1512;
- (v) State Bank of Patiala and ors v. S.K. Sharma (1996) 3 SCC 364;
- (vi) Union of India v. Parma Nand (1989) 2 SCC 177;
- (vii) Government of AP and ors v. Mohd. Nasrullah Khan (1996) 3 SCC 364;
- (viii) Government of Tamil Nadu and Anr. v. A. Rajapandian AIR 1995 SC 561;
- (ix) Rae Bareli Kshetriya Gramin Bank v. Bholanath Singh and Ors. AIR 1997 SC 1908;
- (x) High Court of Judicature at Bombay, through its Registry v. Shashikant S. Patil and Anr. (2000) 1 SCC 416;
- (xi) State of Mysore and Ors v. Shivabasappa Shivappa Makarpur AIR 1963 SCC 375;
- (xii) B.C.Chaturvedi v. Union of India and others (1995) 6 SCC 749;
- (xiii) Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, AIR 2003 SC 1571.

31. In his rejoinder arguments, the petitioner submitted that he enjoyed a reputation of an honest and competent officer and promoted from time to time until his posting at NCPP Dadri on July 10, 1995. However, just after about 1 ½ month, the petitioner refused to allow any award of R&R contracts in violation of the Rules and Policy in a meeting of R&R coordinators with the GM on August 22, 1995 which created his enemies. Some of them, did not even know him by face but wrote complaint against his behavior. In a false and forged complaint, DGM (CCD) Shri YNP Sinha who did not even know him by face, falsely wrote his note dated September 29, 1995 that he had been counseling Mr. Chauhan and Shri

G.P. Singh, in furtherance of the conspiracy, used the forged document as genuine and removed the petitioner from R&R job and awarded the R&R Contracts to non-eligible person in violation of the Rules and policy. He submitted, after a vigilance enquiry, Mr. G.P. Singh, Brij Kishore etc were also accused of offences u/s 418/409/469/471 IPC and under Section 7/8/9 PC Act and the petitioner requested respondent No.3 for sanction for their prosecution but the petitioner was compelled to work under their control until one of them alleged "assault" dated December 02, 1996. Shri G.P. Singh acted as "Disciplinary Authority", which he was not and vitiated the matter inter alia by sua causa, malice and bias. He stated, on December 18, 1996, the petitioner filed CWP NO. 4785/1996 in this Court. On January 09, 1997 this Court directed respondent No.3 to consider the petitioner's representation dated September 16, 1996 but he still refused to consider the said Issue No.3. On January 09, 1997, this Court granted sufficient time to the respondents to file their objections, if any, against the CDA Rules filed by the petitioner and after failing to do so, when the respondents admitted the said Rules in Court on April 03, 1997, this Court referred to and relied upon the admitted Schedule and found that GM was not the "Disciplinary Authority" for Executives in E-5 Grade and therefore observed "admittedly appeal lies against the order of suspension passed against the petitioner to the Board of Directors/CMD" and directed the Board of Directors to decide the appeal of the petitioner. On July 02, 1997, instead of relying upon the admitted CDA Rules in hearing the appeal or even getting the order dated April 03, 1997 set aside or modified in accordance with law, the Board relied upon a new document as "CDA Rules, amended upto 1993" and over-ruled the decision of this Court dated April 03, 1997 by observing the Appellate Authority to be Executive Director.

32. The petitioner stated that IOM dated July 04, 1997 admits the fact that CDA Rules were not amended between February 03, 1989 and July 4, 1994 which demonstrates falsity of new document which is titled as CDA Rules, amended upto 1993 and framed in 1993 as it shows pay scales of 1993 and it does not matter even if this IOM refers to vigilance matters only as wrongly observed by the Board in the Resolution dated July 02, 1997. He relied upon the following facts to demonstrate that the CDA Rules amended upto 1993 is false, fabricated, un-notified & not applicable;

(i) The fact that Shri G.P. Singh styled himself as "Disciplinary Authority" and not "Competent Authority" itself demonstrates that he did not refer to the CDA Rules, amended upto 1993 as the alleged applicable Annexure-I thereof does not contain the term "Disciplinary Authority";

(ii) It strangely replaces the Schedule envisaged even u/r 3(f) by the two "Annexures";

(iii) Rule 3(f) defines "Disciplinary Authority" as the authority "specified" in the Schedule but it is not found anywhere in Annexure-I;

(iv) The newly inserted Rule 36A and the utterances made by the Board about the "Disciplinary Authority" such as "Maintenance of discipline in the Project is the responsibility of General Manager. He is the Disciplinary Authority in this case" is in conflict with the definition thereof under Rule 3(f) are hit by Section 91, Evidence Act and therefore void in accordance with the ratio decidendi of Roop Kumar (supra);

(v) The two annexures specified different authorities for imposing the same penalty on the same grade of employee for the same misconduct. For example, for imposing major penalty (other than removal & dismissal) on an employee in the grade of Rs.3700/-and below; full powers are given to GM under Sl. No. 5(a) III but to E.D. under Sl. No.2 col. 2 based on irrelevant fact of agency of "investigation". Therefore, hit by Article 14 of the Constitution and void;

(vi) The Board by its direction dated July 02, 1997 for issuance of appropriate clarificatory Memorandum has admitted the fact that his document was never notified earlier and therefore, not applicable to the petitioner;

(vii) The grade of Rs.5200-7325 appears under Sl. No. 1 but disappears from Sl. No.5 of Annexure-I.

33. He submitted, the resolution dated July 02, 1997 of the Board of Directors and document inserted by them as CDA Rules, as amended up to 1993 deserve to be quashed as contumacious, fraudulent, pre-judiced, ultra-vires. The Memorandum of Charge itself promised that the Articles of Charge shall be proved by the documents and witnesses listed therewith only.

Letter of Sh. Brij Kishore, Sr. Manager dated December 02, 1996 addressed to G.M. at Sl. No.1 never saw the light of the day. Rather, Brij Kishore alleged on July 09, 1998 "I submitted my complaint of this assault to the management". Further, it is settled that no inquiry or investigation much less framing of definite charge can be embarked upon without first of all reducing the allegation to writing. Therefore, as on December 17, 1996 Sh. G.P. Singh had nothing except his own personal knowledge of the allegation, if any, to frame the charge. Thus, at best, Sh. G.P. Singh himself was the "Complainant" and acted as "Disciplinary Authority" and framed charge citing his co-accused as MWs and appointed Enquiry Officer all by himself in gross violation of principles of natural justice. Further, Sh. G.P. Singh was so much prejudiced against the petitioner that while he gave a time up to December 31, 1996 for the petitioner to submit a written statement of his defence under para 2 of Memo of Charge, he did not wait even for a single day and initiated the process for appointment of the Enquiry Officer on December 17, 1996 itself and in fact appointed the E.O. and P.O on or before December 24, 1996 but falsely declared, vide his order dated January 07, 1997 and January 04, 1997, as if appointed after receipt of the written statement on January 04, 1997 which also vitiates the initiation of the proceedings by prejudice. Therefore, initiation of action vide order of suspension dated February 14, 1996, Memo of Charge dated December 17, 1996, Order appointing Enquiry

Officer dated January 04, 1997, another order appointing Presenting Officer dated January 7, 1997 passed by GM, Sh. G.P. Singh, were not only vitiated by absence of jurisdiction but also by other violations of the principles of natural justice. He submitted, the suspension and Charge are also vitiated by afterthought reframing of the allegation after pre-mature disclosure of his defence by his letter of denial, ill advised by the Dir(O). After receiving the denial on December 03, 1996, Sh.G.P. Singh re-framed the allegation which is evident from the statement of Shri. G.J. Rao, in the preliminary enquiry. The order dated December 03, 1996 illegally and wrongly termed the "Letter of denial" as the "Complaint" of the petitioner and appointed a subordinate of the aforesaid accused DGM (CCD) YNP Sinha, namely Sh. KSS Ajjan, to hold a preliminary enquiry. He did not allow the petitioner to even understand the allegation and concluded enquiry by observing "the complaint of Sh.F.S. Chauhan is a fabricated complaint; hence the complaint of Sh. Brij Kishore, appears prima facie to be correct."

34. He stated, likewise in the detailed enquiry, the Enquiry Officer rejected the relevant defence evidence like C.L. card DD-15, evidence of deposit of weapon by the petitioner at P.S. Parliament Street at about 9 am of December 02, 1996, produced at the relevant stage of "Defence Evidence" on a pervert plea that had the same been genuine, it would have been disclosed in the said "Letter of Denial" given to Sh. G.P. Singh on December 03, 1996. But, had the same been mentioned in detail in the said denial dated December 02/03, 1996, not only the Charge been further reframed accordingly but also the deposition of the biased MWs could include false allegations accordingly. Thus, the whole enquiry was vitiated by pervert and illegal shifting of the burden of proof. He submitted that the remarks of the Enquiry Officer dated December 10, 1999 on the application dated December 08, 1999 demonstrate that till then he did not receive any of the listed documents which demonstrates the falsity of his own statement under para (c) of his report. He submitted, after recording the examination in chief of MWs under Rule 25(11) on July 9-10, 1998 without pre-requisite inspection of the listed document under Rule 25(8) and tampering with the record of examination in chief of MW4, the respondent No.7 Enquiry Officer in collusion with respondent No.2 shifted the venue of enquiry to a far off place in Rajasthan and disobeyed the order dated July 06, 1999 of this Court by not giving even the salary, much less TA/DA and making it impossible for the petitioner to even reach that place and closed the enquiry on October 30, 1999 which was opened vide order dated November 17, 1999 in CW 6829/1999 and was fraudulently closed on April 24, 2000 which report of Enquiry was cancelled by the order dated November 15, 2000 in LPA NO. 287/99.

35. The petitioner submitted even after the specific directions of this Court dated November 15, 2000 that the petitioner shall be provided opportunity to cross examine the departmental witnesses at Dadri Project and information on December 15, 2000 as to the date(s) on which he is required to cross examine the witnesses and when he shall produce his defence within a period of 12

weeks; the Enquiry Officer changed the place of enquiry from Dadri to a far off place in Rajasthan about 550 kms away, not informed the petitioner on December 15, 2000 as to the date(s) on which he could cross examine the witnesses and when he could produce his defence within the said period of 12 weeks, not held any sitting for 9 weeks and suddenly changed the sequence at that new place and imposed time limit of four hours on cross examination in gross violation of the order dated November 15, 2000 and neither heard the petitioner's objection nor allowed him to approach this Court until he illegally declared the Management Evidence closed and fixed date for defence evidence. He stated, on a CM in CWP 909/2001, this Court not only directed the Enquiry Officer to not hold the sitting on March 05, 2001 but also extended the time by one month, on the petitioner's prayer for cross examination of the remaining nine MWs and the petitioner communicated the order on March 03, 2001 and requested the Enquiry Officer for the same but he refused. On March 14, 2001 when requested for cross examination of MWs before defence, Enquiry Officer falsely recorded, "CO... started disorderly behavior in the proceedings....." and forced the CO to produce his Defence Evidence, in disobedience of the said order dated March 02, 2001.

36. He stated, regarding evidence, MW 1, MW 2 and MW 10 are the witnesses who said that CO was present at the subject NCPP premises on December 02, 1996 at 8.25 am but before telling about CO, each of them conspicuously and without asking, explains his unusually early presence, by the excuse proved false by cross examination of MW2. He admitted in answer to question no. 142 that dealing with "IR problem" was a function of P&A Department. Further, his alleged meeting with CO at 8.25 am, at a place about 1/2 a km away demolishes the case of the MW1 alleging assault at the same time. DW 2 proved that he met CO at 7.45 am on his way to Delhi and MW 10 from 8 am to 9 am at his house. DW 3 proved that offices of MW 1 and CO were locked at least up to 10 am. DW 5 proved he was with MW 1 and MW 10 in the car up to 8.45 am. Other MWs are irrelevant. So, false MW evidence is demolished by DWs who were cross examined at length by Enquiry Officer also. Enquiry Officer misquoted, misrepresented DWs testimony and made false allegations. Thereafter, respondent No.6 impersonated as "Disciplinary Authority" and embarked upon the process of imposing major penalty under Rule 26(3) but after making a finding of guilty he resiled from impersonation of "Disciplinary Authority" and transferred the matter, which is not the procedure prescribed under Rule 26(3) and is in derogation thereof. He stated, therefore, the Report of Enquiry and final order dated June 21, 2002 also deserve to be quashed and the respondents deserve to be held liable for the misconduct committed by them.

CONCLUSIONS:-

37. Having heard the learned counsel for the parties, first of all, I intend to deal with the submission made by Mr. Airi that the writ petition filed by the petitioner is not maintainable as the same has been filed without exhausting the alternate

remedy of appeal before the Board of Directors. According to Mr. Airi, the apprehension of the petitioner that he will not get justice from the Board of Directors, which has to decide the appeal, as it has decided the appeal of the petitioner against his suspension on July 02, 1997, is without any basis. He pleaded that even the orders dated July 06, 1999 and November 15, 2000 in LPA No. 287/1999 provide that the petitioner can challenge the departmental proceedings if the final order goes against the petitioner.

38. Mr. Airi may be right if under the conduct Rules, a remedy of appeal is provided, the same need to be availed of, but I find that the present petition has been filed in the year 2002 and sixteen years have gone by. It is too late in the day to relegate the petitioner to the process of appeal before the Appellate Authority. As far as reliance placed by Mr. Airi on the judgment of the Supreme Court in the case of *State Bank of India v. Narendra Kumar Pandey* (supra) is concerned, the Supreme Court in the said case was dealing with facts wherein the respondent, who was functioning as Deputy Manager of the Bank was served with a charge sheet dated February 15, 1995. The said charge sheet culminated in the dismissal of the respondent. The charged officer without availing the remedy of statutory appeal, approached the High Court under Article 226 of the Constitution of India. The Court allowed the writ petition and quashed the impugned order on the ground that the Presenting Officer had failed to discharge his obligation of making available the list of all the documents and witnesses to the Charged Officer and therefore the findings of the Enquiry Officer could not have been sustained. It directed holding of a fresh inquiry. The Supreme Court was of the view that the Charged Officer had not submitted his written statement to the Authority, nor had he appointed a Defence Representative despite several opportunities given to him. The Court held, the plea of the respondent about the non-compliance with the procedure before the High Court could have been raised by the Charged Officer before the Enquiring Authority but the same was not done and he did not cooperate in the enquiry proceedings. The Supreme Court held that the Enquiring Authority was within its right to hold the enquiry ex-parte against the Officer. It was in this background, the Supreme Court had held in para 25 that under Article 226 of the Constitution of India, the High Court was not justified in interfering with the order of dismissal passed by the Appointing Authority after a full-fledged inquiry especially when the Service Rules provided an alternate remedy of appeal. The Supreme Court also held that it is a settled position of law, a High Court in exercise of power of judicial review under Article 226 of the Constitution of India, does not sit as an Appellate Authority and the same is confined to correction of an error of law or a procedural error. The said judgment would have no relevance to the issue raised by Mr. Airi on the non-maintainability of the writ petition only on the ground that the petitioner has not availed the remedy available under the Conduct Rules.

39. Further, the writ petition cannot be dismissed on this ground only as there is no dispute that the services of the petitioner have been dismissed by the order dated June 21, 2002. This Court would be within its right to consider the said

order. The plea of appellate remedy available to the petitioner is only to relegate the petitioner to the said remedy as there may be a likelihood that the plea raised by the petitioner in this petition, both on merit and on the procedure could be accepted by the Appellate Authority. But as stated above, it would be too late in the day to relegate the petitioner to the appellate remedy. This submission of Mr. Airi is liable to be rejected. In view of this conclusion of mine, I am of the view, the judgments relied upon by Mr. Chauhan i.e Dr. Kuntesh Gupta (supra), Veerappa Pillai (supra), Ram and Shyam Company (supra) and Surat Singh and Ors (supra) on the propositions that writ petition is maintainable in spite of alternate remedy, need not be referred to / dealt with.

40. Now, as far as the submission of the petitioner that the order of suspension / charge sheet / appointment of Enquiry Officer and Presenting Officer was made by General Manager, who is not competent to issue the said orders under the CDA Rules, as the petitioner being Manager, E-5 level, it is the Chairman cum Managing Director who is competent and as such the very initiation of the enquiry proceedings vide Memorandum dated December 17, 1996 is illegal and void ab-initio is concerned, Mr. Chauhan in support of his submission had relied upon Rule 3(f) of the CDA Rules, which defines "Disciplinary Authority". Rule 24, on which reliance was placed by Mr. Chauhan, inter-alia stipulates as under:-

Rule 24. Disciplinary Authority to impose penalties- The Disciplinary Authority, as specified in the schedule, or any authority higher than it may impose any of the penalties specified in Rule 23 on any employee.

41. Rule 37 of the Rules, on which the respondents had relied upon, stipulates that in the eventuality of any doubt with regard to interpretation of Rules, the matter shall be referred to the Board.

42. The schedule to the Rules prescribes the Appointing Authority / Disciplinary Authority / Competent Authority and Reviewing Authority. For the Executives in the grade of E-1 and above, CMD / Functional Director is the Appointing Authority / Disciplinary Authority / Competent Authority, whereas the Board of Directors is the Appellate Authority / Reviewing Authority. On the basis of this Schedule, it was contended by Mr. Chauhan that it did not have any annexures. So, as per the Schedule, it is the CMD, who is the Appointing Authority / Disciplinary Authority / Competent Authority, who was competent to issue a charge sheet / appoint Enquiry Officer / Presenting Officer and act on Enquiry Officer's report. I may state here that the petitioner does not dispute the penalty order was passed by the CMD. In substance, his grievance is with regard to suspension, charge sheet and the appointment of Enquiry Officer / Presenting Officer, which orders were issued by the General Manager and not by the CMD and as such, the same are void ab-initio, which, according to him, vitiates the subsequent action / orders.

43. On this issue, the case as pleaded by Mr. Airi was by relying upon CDA Rules, as amended upto July 1993, which has two annexures, is that the General

Manager is competent to suspend the petitioner; issue Charge Sheet to him and appoint Enquiry Officer and Presenting Officer and the penalty of removal / dismissal can be imposed by the Competent Authority, who is the CMD in this case. He drew distinction between disciplinary matters under the CDA Rules relating to indiscipline without any element of corruption and the disciplinary proceedings held pursuant to vigilance investigation for dishonesty, where the Appointing Authority is competent to suspend the Officer, issue Charge Sheet and appoint Enquiry Officer and Presenting

Officer.

44. I may state here, the petitioner has disputed the CDA Rules (as amended upto July, 1993) as filed by the respondents by stating that (i) the title of Annexure-II is inconsistent with its contents; (ii) the schedule appended to the Rules filed by the respondent Nos.2 and 3 delegate powers to different authorities for issuance of Charge Sheet; appointment of an Enquiry Officer and Presenting Officer; receipt and consideration of the inquiry report and imposing penalty, which according to him is against the law laid down by the Supreme Court; (iii) the signatory to the subject orders, i.e Mr. G.P. Singh, styled himself as "Disciplinary Authority" instead of Competent Authority, as was provided in the Rules. He also relied heavily on the order dated April 03, 1997 passed by this Court to contend that the Rules as relied by him have been admitted by the respondents in the said proceedings before this Court and under which, it is the CMD, who is the Appointing Authority / Disciplinary Authority / Competent Authority having full powers to impose penalty and as such General Manager was not competent to suspend him, issue charge sheet to him and appoint Enquiry Officer / Presenting Officer.

45. The argument as advanced by the petitioner appears to be appealing on a first blush, but on a deeper consideration of his submission and the Rules relied upon by the parties, this Court firstly is of the view that the petitioner has not challenged the amendment made to the CDA Rules incorporating two annexures i.e Annexures I and II. The argument of Mr. Chauhan that the document is a forged one is not appealing. This I say so, in view of the resolution of July 02, 1997 of the Board wherein the Board had considered all the pleas now advanced by Mr. Chauhan to hold as under:-

"In the first instance, the Board considered the question of competence of the General Manager, who issued the suspension Order and Charge Sheet, as Disciplinary Authority. The Executive Director (P&A) (who was called in the meeting) explained that Rule-3(f) of CDA Rules (as amended), defines "DISCIPLINARY AUTHORITY" to mean the "authority specified in the Schedule appended to these Rules and competent to impose any of the penalties specified in Rule 23". Further, Rule 20 of CDA Rules specifies that the "appointing authority, or disciplinary authority or any other authority empowered in that behalf by the Management by general or special order may place an employee under Suspension".

The Schedule at Annexure I of Delegation of Powers annexed to the CDA Rules under SI No. 3 specified that for employees in the grade of Rs.5200-6875/- (E5 level) and below under their control, the General Manager / Executive Director / Functional Director is the competent authority to pass Order of Suspension pending enquiry / trial. For issue of Charge sheet to a Manager (E5 level), under SI. No.1 of the said Schedule it is also the General Manager who is the competent authority. This view was accepted and reaffirmed by the Board as correct.

Further, the ED(P&A) clarified that Schedule at Annexure II subsequently attached to the said CDA Rules which modified the concept of Disciplinary Authority in Vigilance matters only is not attracted in this case, since it is a case of alleged indiscipline and misconduct, without any element of corruption or dishonesty. Hence, Schedule at Annexure II of CDA Rules need not be looked into. He added that the IOM dated 4.7.94 mentioned by Appellant in Appeal relates to the modified schedule of Annexure-II of CDA rules which relates to matters arising out of the Vigilance Cases / investigation reports. As such, the said Schedule is inapplicable in this case. While accepting the view as correct, the Board directed that appropriate clarificatory Memorandum regarding Schedule at Annexure II of CDA Rules and IOM dated 4.7.94 be issued by NTPC for general information and guidance of all concerned."

46. The aforesaid minutes discuss the Annexure I and II. The amendments being in place, the effect thereof has been considered by the Board. In view of the amendments in the Rules, the effect thereof is, that the General Manager is competent to issue the Charge Sheet. The appointment of Enquiry Officer and Presenting Officer can be made by Executive Director. The imposition of penalty of removal and dismissal has to be by the CMD, being the Appointing Authority.

47. Insofar as the plea of Mr. Chauhan, that the definition of "Disciplinary Authority" in the definition clause refers to schedule and not to the annexures is concerned, this plea is not correct in view of the definition in Rule 3(f) of the Rules, which defines "Disciplinary Authority" to mean the Authority specified in the schedule. If the Schedule, as filed by respondents 2 and 3 is seen, it does contemplate Schedule as Annexure-I and modified Schedule as Annexure-II. So it follows that the Schedule consist of two annexures, Annexures-I and II and the procedure followed by the respondents for issuance of Charge Sheet; appointment of Enquiry Officer; Presenting Officer; action on the Inquiry report; imposition of penalty being in terms of the Annexures, the same cannot be faulted. So, the submission of Mr. Chauhan is without any merit. I also agree with the submission made by Mr. Airi that under Rule 37, a doubt about the interpretation of Rules shall be referred to the Board for final decision and the issue having been considered by the Board, the decision is final. I may state here, that it is the case of Mr. Chauhan that IOM dated July 04, 1994 admits the fact that CDA Rules were not amended between February 03, 1989 and July 04, 1994, which demonstrate the falsity of new document which is titled as "CDA Rules amended upto 1993". I am afraid, such a submission of Mr. Chauhan is not

appealing. Firstly, it is an inference, that is being drawn by Mr. Chauhan on the strength of IOM dated July 04, 1994. Secondly, the objection of Mr. Chauhan was considered by the Board on July 02, 1997, while considering his appeal in terms of the direction of this Court, which has already been reproduced above.

In fact, it is not the case of the petitioner (except stating that the 1993 Rules, are false, fabricated, unnotified) that no such amendments have been carried out to the Rules by the Board. The amendments, through Annexures-

I and II being in place, the plea of Mr. Chauhan is unsustainable. That apart, as far as the plea of Mr. Chauhan that the title of Annexure-II is inconsistent with its content is concerned, the submission apart from being vague is also without any merit, as the Annexure-II is not applicable to the proceedings against the petitioner, as the same have not arisen out of vigilance investigations. In the case of the petitioner, it was Annexure-I, which was applicable and also followed. Further, the title broadly denotes applicability of Annexure-II to disciplinary matters arising out of vigilance investigations against employees in the grade of Rs.1,000 - 1900 and above. The contents further classify Disciplinary / Appellate and Reviewing Authority on the basis of pay-scales drawn by the employees. In other words, the Authorities vary for the employees drawing different pay-scales, over and above the pay-scale of Rs.1000-1900. Mr. Chauhan in support of his submission had relied upon the judgment in the case of Government of A.P. & Ors v. M.A. Majeed & anr (supra) that the charge sheet issued by the incompetent authority would be wholly without jurisdiction. In view of my conclusion above, this judgment has no applicability.

48. Similarly, as far as the reliance placed by Mr. Chauhan on the case of Union of India and ors. v. B.V. Gopinath etc (supra) is concerned, the same is also not applicable. Similarly, the reliance placed by Mr. Chauhan on the judgment of Chairman cum M.D., Coal India Ltd. (supra) shall also have no applicability. As far as the challenge of the petitioner to the vires of the two Annexures specifying different Authorities for imposing the same penalty on the same grade of employee for the same misconduct as violative of Article 14 of the Constitution of India is concerned, the same is not appealing. Firstly no such plea has been taken in the writ petition to enable the respondents justify the Rule. Secondly, he is not disputing the power of the Board to frame such a Rule. In any case, I note in both the cases, the Appointing Authority i.e CMD is empowered to impose penalty of removal / dismissal as was done in this case. So, no prejudice is caused to the petitioner on the penalty. The reliance placed by Mr. Chauhan on the judgment of the Supreme Court in the case of State of West Bengal v . Anwar Ali Sarkar (supra) is misplaced as the judgment is distinguishable on facts, and in view of my conclusion above that in both the Annexures for officers of petitioner"s status, the Authority to impose removal / dismissal penalty is Appointing Authority. I must also state, the fact that the penalty having been imposed by the Appointing Authority, which is Authority competent and being higher than the General Manager, who has issued Charge Sheet, the proceedings

cannot be said to be vitiated.

49. Insofar as the plea of Mr. Chauhan that the proceedings against him were prejudice and vitiated by Sua Causa, personal bias, inasmuch as a person already accused of facing trial for previously framing a false complaint against the petitioner again made an allegation against the petitioner and citing his co-accused as witness and another co-accused, who passed the order of suspension, memorandum of charge and order appointing Enquiry Officer and Presenting Officer, which is clear from the inter office memo dated October 07, 1997 is concerned, in substance the allegations of the petitioner are against respondent No.5 G.P. Singh, who issued charge sheet and appointed Enquiry Officer. The said plea has to be understood in the context of the allegations made in para 8 of the writ petition wherein the petitioner has, in effect stated as under:-

(i) On his transfer from Badarpur Thermal Power Station, the petitioner reported to respondent No.5, the then General Manager, NCPP, Dadri who in turn directed the petitioner to report to one Shri Brij Kishore, Sr. Manager (EMG). A group of executives at NCPP including Sarv Shri Brij Kihore, M.P.S. Bir, P.S. Soman, A.K. Atrea, Y.N.P. Sinha and K.S.S. Ajjan under the patronage of respondent No.5 were engaged in a scandal of briberies, forgeries and misappropriation of the public funds allocated for the resettlement and rehabilitation of the PAPs;

(ii) Shri Brij Kishore demanded illegal gratification from PAPs of village Muthiani for award of the R&R contracts to them by exercise of his influence over the petitioner. On refusal of the said PAPs to pay illegal gratification, Sh. M.P.S. Bir moved an office note dated August 17, 1995 for award of the said R&R contracts to the non-PAPs on illegal consideration;

(iii) Mr. P.S. Soman forwarded the same for recommendation of the petitioner. Thereupon Sh. Brij Kishore , Sh. A.K. Atrea and respondent No.5 coerced the petitioner to recommend the award of the said R&R contracts to the non project affected persons;

(iv) Sh. Brij Kishore secured a false and anonymous complaint written under his dictation by one of his subordinates, Sh. Brij Kishore Gupta, under a fictitious name of "Jatav Samiti, Muthiani" against the petitioner under a conspiracy to implicate and remove him from R&R coordination;

(v) Sh. Y.N.P. Sinha, DGM (CCD) recorded false remarks on the said false complaint and respondent No.5 treated the said false and pseudonymous complaint against the petitioner as genuine, knowing the same to be false and thereby removed the petitioner from the R&R coordination and thereafter awarded the said R&R contracts to the said non-PAPs;

(vi) The petitioner submitted a complaint dated November 18, 1995 with documentary evidence of commission of aforesaid forgery and fraud to respondent No.5. The respondent No.5 concealed the complaint and evidences enclosed therewith and continued to subject the petitioner to the control of Sh.

Brij Kishore;

(vii) On realizing the collusion of respondent No.5 in the conspiracy, the petitioner submitted a copy of the complaint dated November 18, 1995 to the then Director (Vigilance) on March 21/22, 1996. The Vigilance department investigated the matter and found Sh. P.S. Soman, Sh. M.P.S. Bir, Sh. R.C. Garg and Sh. Brij Kishore Gupta prima-facie at fault in its report dated April 29, 1996. Later Sh. Brij Kishore and his subordinate Brij Kishore Gupta were charge sheeted. The aggrieved PAPs filed a complaint u/s 156(3) Cr.PC on May 22, 1996 accusing Sh. G.P. Singh, Brij Kishore, P.S. Soman, M.P.S. Bir, Y.N.P. Sinha and Brij Kishore Gupta of having committed various cognizable criminal offences in the aforesaid matter in which matter a Case Crime No. 35/99 was registered on the orders of the Court. On September 16, 1996, the petitioner submitted representation to respondent No.3 requesting disciplinary action against respondent No.5 and his accomplices but no action was taken and the petitioner was still subjected to the malafide control of Sh. Brij Kishore. The Court in Ghaziabad summoned respondent No.5 and others for their appearance in the case relating to perjury, misappropriation, framing of false complaint against the petitioner on a complaint of PAP, which made respondent No.5 and all his accomplices gang up and remove the petitioner from the scene.

50. Having noted the relevant averments made by the petitioner in the petition, the issue raised by the petitioner in substance is primarily that respondent No.5 could not have been a judge in his own cause as certain allegations had been made by the petitioner against him. It has to be seen, whether the averments made, as noted above, do really establish, the plea advanced by the petitioner. The representation relied upon by the petitioner is his complaint dated November 18, 1995. In the said complaint, the petitioner has alleged forgery and fraud committed by certain officers, securing a false complaint under fictitious name of "Jatav Samiti Muthiani" resulting in the removal of the petitioner from R&R Co-ordination. It is the case of the petitioner, that the villagers denied having made such a complaint. Vide his complaint, the petitioner called upon the respondent No.5, to confirm, from the personal record of the petitioner, that nothing adverse is there against him. Suffice it to state, the petitioner has not said anything adverse against the respondent No.5 in the said letter. Rather, he has asked the respondent No.5 to convey to different authorities that the petitioner has not committed any fraud or forgery. In other words, the petitioner had rather sought the assistance of respondent No.5 to clarify the air around him.

51. Even the complaint filed before the Court in Ghaziabad was by the villagers, not by the petitioner against some officers including the respondent No.5. Even the investigation carried out by the vigilance department on the complaint of the petitioner found fault against P.S. Sonam, M.P.S. Bir, R.C. Garg, Brij Kishore Gupta but not against the respondent No.5. In fact, charge sheets have been issued to Brij Kishore and Brij Kishore Gupta for making false allegations against the petitioner. The reference made by the petitioner to the representation dated

September 16, 1996 to state that he made a complaint to the CMD, NTPC to take action against respondent No.5, is not correct as a perusal of the same does not show such a request was made. The only reference to respondent No.5, is in para 11.0 of the said representation wherein the petitioner has referred to the letter dated November 18, 1995 written by him addressed to the respondent No.5. So, till the filing of complaint dated December 02, 1996 by Brij Kishore or for that matter till the time of issuance of charge sheet, there was no allegation, that too of bias, made by the petitioner against the respondent No.5. In fact, on the allegations made by Brij Kishore against the petitioner, the petitioner vide his letter, addressed to the respondent No.5, called upon him to take action against Brij Kishore. If the respondent no.5 was bias, the petitioner would not have called upon the respondent No.5 to take action against Brij Kishore. So, this is unmerited.

52. Insofar as the plea of the petitioner, that the proceedings against the petitioner have been vitiated by personal bias, as a person already accused and facing trial for framing a false complaint against the petitioner and who again made an allegation against the petitioner and cited his co-accused as a witness and another co-accused passed the order of Suspension dated December 14, 1976; issued Memo of Charge dated December 17, 1996; order appointment of Enquiry Officer dated January 04, 1997 and Presenting Officer on January 07, 1997, is concerned, no doubt the petitioner's letter dated November 18, 1995 became a subject matter of disciplinary proceedings against Brij Kishore and Brij Kishore Gupta, vide Memorandum's dated December 22, 1997 (Annexure-3) but that can't be a ground to hold that the proceedings against the petitioner have been vitiated. If the allegations made against the petitioner were correct, surely such a conduct needed to be enquired into, which was actually done by issuing a Charge Sheet to him. This Court shall surely see whether right procedure was followed and whether there is any evidence on record to prove the charges against the petitioner. So, the plea of the petitioner that the proceedings against him are prejudiced or vitiated is not sustainable. Even the pleas that the order of Suspension; Memo of Charge; order of appointing Enquiry Officer are illegal, are also unsustainable.

53. Insofar as the plea of the petitioner that, a co-accused having been cited as a witness, shall also vitiate the proceedings is concerned, this plea of the petitioner is directed against Brij Kishore Gupta, Sr. Assistant Engineer (EMG). The naming of Brij Kishore Gupta, who according to the petitioner was a co-accused, with Brij Kishore in the criminal proceedings, would not vitiate the Memo of Charge, inasmuch as, on a perusal of list of documents (Annexure III to the charge sheet) attached to the Charge Memo, the same refers to a letter dated August 23, 1996, written by Brij Kishore Gupta to Sr. Manager (I/C) TS. It is noted from his statement, the said letter was put to him.

54. A plea was also raised by the petitioner that the criminal proceedings against G.P. Singh (respondent No.5) have a bearing on the proceeding initiated against

the petitioner. The plea was rejected as it is a case of misbehavior. The petitioner in his representation also contended that the Enquiry Officer has prejudged the issue that the criminal proceedings do not have any relevance. I am of the view, that the criminal proceedings initiated by the villagers, including against G.P. Singh, are for different allegations. The allegations against the petitioner are of assault. It is to be seen whether the charge against the petitioner is said to have been proved on the basis of evidence that has come on record.

55. Insofar as the plea of the petitioner that Enquiry Officer has forged the evidence / framed false record, I note the petitioner in his representation dated July 10, 1998 did make the allegation more specifically with regard to the evidence of PW 4 Shri Vidya Patel. It is also alleged by the petitioner that the Enquiry Officer was tutoring the witnesses on how to depose and altering or wrongly recording their statements. The plea of the petitioner may be correct / right in this regard, but it is not understood why the petitioner despite being present, did not cross examine the four MW 5. In fact, it is noted from the proceedings, despite being present, the petitioner even though signed the proceedings sheets but had not signed the statements of the witnesses. He should have, while signing the proceedings sheet, recorded his objection to the manner in which the statements were recorded. No doubt, the petitioner has expressed himself immediately on the next date by way of representation, the allegations, even if true, it has to be seen whether the statements recorded of PW 4 Vidya Patel has any bearing on the findings of the Enquiry Officer against the petitioner. That apart, this Court is of the view, the petitioner being present during the proceedings should have cross examined the witness to nullify the effect of alteration made by the Enquiry Officer to the statement made by the witness. Having not cross examined the witness, the petitioner is precluded from alleging alteration of the statement of the witness by the Enquiry Officer.

56. Apart from the above, Mr. Chauhan has also taken the following pleas in his endeavor to attack the impugned orders. These include; (i) First document listed with the Memorandum of Charge being complaint itself could not be produced in the enquiry and it's author MW 1 not allowed to be cross examined by the petitioner; (ii) PW 5, Mr. S. Manchanda, who granted leave to the petitioner for December 02, 1996 not allowed to be cross examined and confronted with the Casual Leave card bearing his signature and later the Enquiry Officer rejected the same in defence on a plea that it was not produced earlier; (iii) The Enquiry Officer fraudulently inserted an extraneous document in place of the listed document No.1, which did not exist and relied upon it in gross violation of the settled position of law; (iv) The Enquiry officer illegally used the report of Preliminary enquiry for corroborating the case of the management in conflict with his own orders dated July 09, 1998 and December 20, 1999, and the law; (v) The Enquiry Officer illegally framed examination in chief of the management witnesses by leading question at the back of the petitioner and did not give any opportunity to the petitioner to cross examine them, which is in disobedience of orders passed by this Court on July 06, 1999, November 19, 1999, November

15, 2000 and order dated March 02, 2001; (vi) The Enquiry Officer breached his own orders dated March 02, 1998, January 10, 2000, July 09, 1998 and December 15, 2000 for conducting cross examination of witnesses and for unduly supporting the case of the prosecution; (vii) The Enquiry Officer has made baseless presumptions and drawn absurd inferences against the petitioner contrary to the facts and evidence on record.

57. Insofar as the submission at (i) above is concerned, in substance the plea of the petitioner is that the first document listed along with the charge sheet being letter dated December 02, 1996 written by Sh. Brij Kishore, Sr. Manager (EMG) addressed to General Manager. According to Mr. Chauhan, the letter as listed in the list of documents was neither given to him nor offered for inspection. On a reference to the daily order sheet dated January 10, 2000, it is noted that Mr. Chauhan conceded that he was given inspection of a letter from Sh. Brij Kishore, Sr. Manager (EMG) bearing Reference No.08/EMG/44 dated December 02, 1996 addressed to the Sr. Manager, I/C (TSD). According to Mr. Chauhan, the document as listed at Sl. No. 1 of Annexure-3 to the Memorandum dated December 17, 1996 needed to be offered for inspection. It appears that during the enquiry, the original of the document i.e letter under reference No.08/EMG/44 dated December 02, 1996 written by Sh. Brij Kishore, Sr. Manager (EMG) to the Sr. Manager, I/C (TSD) was offered for inspection. At the insistence of the petitioner, the Enquiry Officer directed the Presenting Officer to produce the documents for inspection listed at Sl. No.1 of Annexure-3. It is a conceded position of both the parties that the document as referred to in the list of documents to the Memorandum dated December 17, 1996 i.e letter written by Sh. Brij Kishore, Sr. Manager (EMG) to the General Manager, has not been placed on record. In the Enquiry Report, the Enquiry officer records the statement of the Presenting Officer that the mentioning of the document as a letter written by Sh. Brij Kishore to the General Manager is a typographical error, which has been accepted by the Enquiry Officer. In other words, what has been relied upon by the Presenting Officer is the letter under reference No.08/EMG/44 dated December 02, 1996 written by Sh. Brij Kishore, Sr. Manager (EMG) to the Sr. Manager, I/C (TSD). Mr. Chauhan may be justified in raising an issue that the letter as stated in the list of documents at Sl. No.1 i.e letter addressed to the General Manager has not been produced, but during the enquiry, if reliance has been placed on the letter written to Sr. Manager, I/C (TSD), the plea taken by Mr. Chauhan is unmerited.

58. That apart, the charge against Mr. Chauhan is sought to be proved by producing Mr. Brij Kishore in the witness box and who has also narrated the sequence of events that had taken place on December 02, 1996, which charge in the absence of any cross examination "supposedly" stood proved against the petitioner.

59. Another plea of Mr. Chauhan was that PW5 Mr. S. Manchanda, who had granted leave to him on December 02, 1996 was not allowed to be cross

examined and confronted with "Casual Leave Card" bearing his signature, which was also not allowed to be produced in the enquiry, as part of defence, on the ground that the same was not produced earlier. In this regard, it may be relevant to note that the same appears to have been relied upon / introduced by the petitioner only to show that Mr. S. Manchanda had granted casual leave to the petitioner on December 02, 1996. From the record, it is seen that Mr. S. Manchanda became the Reporting Officer of the petitioner on December 04, 1996 i.e after December 02, 1996. The petitioner applied for leave for half day for November 28, 1996, half day for November 29, 1996 and the leave was sanctioned on December 09, 1996 by S. Manchanda.

60. It is the case of the petitioner that the leave was also recorded (page 1540) for December 02, 1996. In any case, Mr. Manchanda could not have granted leave for the dates prior to December 04, 1996 when he became the Controlling Officer of the petitioner. Without going into the issue, whether Mr. Manchanda had sanctioned the leave or not for December 02, 1996, suffice it would be to state that the document, which was sought to be introduced / relied upon by the petitioner, which was disallowed by the Enquiry Officer, would not have helped the case of the petitioner when admittedly such leave was sanctioned after December 02, 1996 and a preliminary enquiry had already been ordered by the Competent Authority and in fact the same was already underway on December 09, 1996. The reason for the Enquiry Officer to deny the opportunity to the petitioner to place the said document on record is the same that the same was not produced earlier. In any case, in view of my aforesaid conclusion, even if it had been produced earlier, the same would not help the case of the petitioner, and, the plea of Mr. Chauhan, is an afterthought, only to prove, that when he was on leave on December 02, 1996, the charge, which alleged to have taken place in the office shall be unsustainable. The said plea of Mr. Chauhan is unmerited.

61. Insofar as the plea of the petitioner that the Enquiry Officer fraudulently inserted an extraneous document in place of the listed document No.1, which did not exist and was relied upon in gross violation of the settled position of law is concerned, this plea has already been answered by me in the earlier paragraphs when I dealt with the plea of the petitioner that the first document listed in the Memorandum of Charge could not be produced in the enquiry. Having dealt with the same, this submission being a similar one, is also unmerited. In any case, on a perusal of the Enquiry Officer's report, it is seen that the Enquiry Officer had only relied upon the letter under reference No.08/EMG/44 dated December 02, 1996 written by Sh. Brij Kishore, Sr. Manager (EMG) to the Sr. Manager, I/C (TSD).

62. As far as the plea of the petitioner that the Enquiry Officer has illegally used the report of the Preliminary Enquiry for corroborating the case of the management, which is in conflict with his own orders dated July 09, 1998 and December 20, 1999 is concerned, in the proceedings dated July 09, 1998, the

Enquiry Officer had rejected the plea of the petitioner for the documents related to the preliminary enquiry on the ground that the same are not part of the charge sheet. Similar was the order passed by the Enquiry Officer in the hearing dated December 20, 1999. In any case, in terms of order dated February 19, 2001, preliminary enquiry report documents were handed over to the petitioner. In fact, the list prepared thereof was acknowledged by the petitioner on February 10, 2001. So, the plea now being urged is without any merit as there is a compliance of the request made by the petitioner.

63. Insofar as the plea of the petitioner that the Enquiry Officer has illegally framed examination in chief of the management witnesses by leading questions is concerned, I have seen the examination of the management witnesses between the period July 09, 1998 and July 10, 1998. This plea of the petitioner is primarily related to the questions put by the Enquiry Officer to the PW4 Vidya Patel, that too when the Enquiry Officer had asked Vidya Patel by referring to the registration of the vehicle in which he has alleged to have seen the petitioner by stating it as "DA". In this regard, I must state that the Enquiry Officer is not precluded from asking questions to the witness for the purpose of clarification. No objection was taken by the petitioner at the relevant time when the Enquiry Officer had put that question to the witness. Further, I find, the witness, in his deposition has stated that he did not see the registration number of the car and even if the said question put by the Enquiry Officer is held to be a leading question, the same would not be prejudicial to the case of the petitioner as the said statement, shall not prove, that the petitioner had assaulted Brij Kishore. That apart, the Enquiry Officer in his report has made reference only to the colour of the car and not the registration number.

64. Insofar as the plea of cross examination of the MWs by the petitioner is concerned, it is noted from the enquiry proceedings that the Division Bench of this Court in LPA NO. 287/1999 vide its order dated November 15, 2000 had directed the opening of the cross examination, which had been closed by the Enquiry Officer. The Court had also directed the enquiry to be completed within a period of 12 weeks from December 15, 2000. In other words, the enquiry was to be completed on or before March 04, 2001. Pursuant thereto, in terms of proceedings dated December 15, 2000, the Presenting Officer submitted a list of ten number of MWs, whose examination had taken place to be presented for cross examination as per the sequence. The sequence is as under; (i) Sarva Shri Atul Goyal; (2) Brij Kishore; (iii) Dr. R.K. Sharma; (iv) R.P. Patel; (v) P.S. Soman; (vi) S. Manchanda; (vii) B. Chaudhary; (viii) R.C. Garg; (ix) S.K. Dixit; (x) A.K. Gupta. The proceedings of December 15, 2000 also records that in case of extraordinary circumstances, if some witness is not able to be present on the date of enquiry, advance intimation shall be given and accordingly next witness will be present.

65. On December 15, 2000, the enquiry proceedings were adjourned for January 08, 2001 to January 12, 2001 when three MWs were to be produced by the

Presenting Officer for cross examination. It appears that the enquiry proceedings could not take place during that period. The enquiry proceedings were held on January 29, 2001 and January 30, 2001 when the statement of Atul Goyal MW 2 was recorded. On January 30, 2001, the proceedings were adjourned, when MW 2 was cross examined by the Defence Assistant. Thereafter, the proceedings were held on February 19, 2001 when the Presenting Officer informed the Enquiry Officer that Atul Goyal had shown his inability to attend the enquiry proceedings on February 19, 2001 due to his official tour with the CVO and he produced the next witness Sh. Brij Kishore for cross examination. The petitioner protested to the change in the sequence of the management witness. Mr. Chauhan had referred to the order dated December 15, 2000 of the Enquiry Officer to state that till such time, the cross examination of Atul Goyal is complete, no other witness can be called for cross examination. In any case, when the proceedings were held on the same day in the post lunch session, it was decided by the Enquiry Officer that the cross examination of Brij Kishore shall be taken up on February 20, 2001 at 9.30 am. On February 20, 2001, the proceedings were held initially at 9.30 am, when Presenting Officer submitted a letter in connection with the schedule of MWs to be presented for cross examination by Charged Officer / petitioner. Vide the said letter, the Presenting Officer had given the schedule of appearances of the MWs between February 19, 2001 to February 23, 2001. In other words, he was insisting on the completion of cross examination of all the witnesses within five days. As the letter was filed in the morning of February 20, 2001 and the petitioner / DA had an issue with the schedule, it appears they wanted to file their reply to the same and were preparing the reply. I find, the Enquiry Officer was insisting upon the petitioner to cross examine Brij Kishore and to complete the same on that day itself. It was also stated by the petitioner that he was willing to proceed with the cross examination of Brij Kishor, provided an assurance was given that he would be allowed to complete the cross examination of Brij Kishore before calling the next witness and without imposing restriction of time. In his reply to the letter of Presenting Officer, the petitioner stated that the Enquiry Officer threatened him that the cross examination of Brij Kishore will be declared as closed at 6.00 pm on the same day, even though the same was not completed, which according to the petitioner shall amount to denial of sufficient opportunity of cross examination. It is noted from the proceedings that the cross examination could not take place till 12:15 hrs when the Enquiry Officer decided that the cross examination of Brij Kishore be closed. Thereafter, the enquiry was fixed at 2.30 pm on the same day for the cross examination of Dr. R.K. Sharma. In the minutes of the proceedings of February 20, 2001, while signing the same at 1.45 pm, the petitioner / DA noted "the contents of the DOS, are incorrect. The cross examination of Brij Kishore is very essential for the defence of the Charged Officer. The Charged Officer is prepared and willing to cross examine Sh. Brij Kishore if the Charged Officer is allowed to continue and complete." There was no response of the Enquiry Officer on the request of the petitioner, which I find unreasonable. The Enquiry Officer should have permitted the cross examination

without time restriction. It may so happen that the petitioner could have completed the cross examination on the same day itself. Unfortunately, the Enquiry Officer closed the cross examination of Brij Kishore at 12:15 hrs itself or at least in the forenoon session and directed further proceedings shall be held at 2.30 pm for cross examination of Dr. R.K. Sharma-MW 3. The closing of cross examination at 12.15 pm suggest that Enquiry Officer, has not kept his own words that the cross examination of Brij Kishore shall be completed within the day which surely means at least by evening. The cross examination of Brij Kishore was very important as he was the complainant, who alleged that the petitioner had assaulted him and in fact on his testimony, the charge against the petitioner had been proved.

66. That apart, it is also seen from the proceedings that the petitioner submitted a letter at 1.45 pm seeking an adjournment for short date for the reason, the father of the DA was suffering from dementia / cancer, and was advised by the Doctors to be admitted in AIIMS as early as possible, for which the DA had to leave the place of enquiry to Delhi.

67. I also find justification for the petitioner / DA to give reply to the letter filed by the Presenting Officer wherein he was insisting on the completion of cross examination in five days, contrary to what had been decided on December 15, 2000 and February 19, 2001 when no time limit was fixed for the completion of the cross examination of each of the MWs. On February 21, 2001, the petitioner submitted three letters to the Enquiry Officer. In one letter, the petitioner has stated that on December 15, 2000, it was decided by the Enquiry Officer to have examined all three witnesses in five days, to which the Charged Officer extended his full cooperation and prepared himself to complete the cross examination at the rate of three witnesses in five days. But on February 20, 2001, it was stated by the Enquiry Officer that the cross examination of MW 2 Brij Kishore shall be terminated by evening on that day. That apart, time for cross examination of ten witnesses was reduced to five days, even though 60 working days were given by the Court and the petitioner requested that he be allowed to cross examine MW 1 before other witnesses are cross examined. On that date, the cross examination of MW 3 Dr. R.K. Sharma was closed. Similarly, on subsequent dates of enquiry, the cross examination of other MWs was not done by the petitioner either on the ground that the same must take place in terms of the proceedings dated December 15, 2000 or he should be allowed to continue and complete pending cross-examination. I may state here that the stand of the petitioner with regard to the fact that four hours are not sufficient and that he would not commence with the cross unless an assurance was given to him that he would be allowed to complete it, is unreasonable. He should have started the cross examination and if he had not completed it, he could have asked for more time to finish it, as I find from the proceedings, the DWs were examined / cross examined beyond midnight. Having said that, closing of the cross examination of Brij Kishore, that too in the forenoon session only on the ground that the petitioner had not started his cross examination, is not proper and in fact had proved fatal to the petitioner

as the charge against the petitioner was established against him only on the oral testimony of Brij Kishore. To this extent, the proceedings initiated against the petitioner stand vitiated, as there is a denial of reasonable opportunity to the petitioner to cross-examine Management witness. This I say so, because the letter under reference No.08/EMG/44 dated December 02, 1996 written by Sh. Brij Kishore, Sr. Manager (EMG) to the Sr. Manager, I/C (TSD), even though produced in the enquiry cannot help the case of the respondent as the said letter was not exhibited or for that matter proved by the author during the enquiry as the said letter was not even put to Brij Kishore in examination in chief and it is not the case of the respondents that other witnesses have testified having seen the petitioner assaulting Brij Kishore. To that extent, the finding of the Enquiry Officer needs to be set aside. I may state here that the Enquiry Officer has held the other charge as not proved.

68. It may be pertinent to note that the entire case against the petitioner was premised on the allegation of assault on Mr. Brij Kishore, and the proceedings were set in motion only following his own letter of complaint dated December 2, 1996. As noted above, the case against the Charged Official was proved only on the basis of Mr. Brij Kishore's examination-in-chief. In facts of the present case, especially when said letter of complaint was not even exhibited during the subject enquiry proceedings, the opportunity to cross-examine the complainant was of utmost value to the Charged Official's defence. That being denied, in a most arbitrary manner, proved to be a most unfair injury to the Charged Official's case. The Enquiry Officer should not have been so quick to close the Charged Official's opportunity to cross examine the complainant, Mr. Brij Kishore. I may state here, the delay in concluding the enquiry proceedings surely, cannot be attributed to the petitioner post the order dated November 15, 2000 passed by this Court, as between December 16, 2000 to January 28, 2001, and January 31, 2001 to February 2001, the Enquiry Officer did not hold any proceedings. So, unable to hold proceedings, the Enquiry Officer, was not justified to close the cross examination, on the purported ground, that enquiry proceedings were getting delayed, as the proceedings were to be completed in 12 weeks.

69. The relevant conclusion of the Enquiry Officer proving the charge of assault is reproduced as under:-

"Shri Brij Kishore, MW-1 in his examination-in-chief narrates the incident of 2nd Dec, 96 for which, he submitted letter dated 2nd Dec, 96, document No.1 in the present enquiry. He states that he came little early on that day and was doing work in his official room in the workshop building. Since he was doing some important work, he did not want to be disturbed, his steno's room was closed from inside. Somebody knocked the door of the room opening in the gallery at about 08.25 AM and found Shri F S Chauhan, Manager (EMG). Immediately, Shri Chauhan started using filthy language and mentioned in a furious way that "YOU ARE DOING DADAGIRI AND MANIPULATING THE RECORDS". Thereupon he said

that he was doing his work and also said that Shri Chauhan could mark his attendance in the attendance register lying as usual on Steno's table. He immediately lost the temper and started shouting using filthy language and said "MAIN SALE TUJHE JAAN SE MAR DUNGA". While the witness was in shock on account of threats and misbehavior and trying to recover, Shri Chauhan physically assaulted the witness and started inflicting blows with right hand. First blow struck him on the left side of the face as the steno's room is very small. When Shri Brij Kishore tried to save himself, Shri Chauhan inflicted another blow to him and he protected himself by right hand. Therefore, the blow caused injury to his right hand. Upon checking attendance register, he observed that Shri Chauhan did not sign the attendance register. He immediately went to GM's chamber to inform about assault in person.

When he was going to GM's office in his car, he came across, Shri Chauhan who was coming out of P&A Building main gate falling on the way to GM's Office. After meeting GM, he went to hospital to get his right hand checked up, as it was paining. The doctor medically examined him, X-ray was taken and he was told that there is a fracture in little finger of right hand.

The assault took place in Mechanical Workshop Building situated at first floor in the steno's room where he enters in his room. No body was around at that time. After the incident, he coming out of P&A Building gate saw Shri Chauhan. This witness also narrates the past incidents of misbehavior by Shri Chauhan. This witness has not been cross-examined by the delinquent and the details in this regard have been stated above. However, his testimony gets corroborated from the documentary evidence discussed above as well as evidence of Shri Atul Goyal, PW-2, which has also seen the delinquent at about same time."

70. The OPD prescriptions, as relied upon by the respondents would not be conclusive against the petitioner, as the same may only prove an injury to Brij Kishore but not, that the petitioner had assaulted him. A charge of assault surely, has to be proved conclusively.

71. It is a settled position of law in terms of the judgment of the Supreme Court in CMD, Coal India Ltd. v. Anita Saha and Ors. 2011 (4) SCALE 398 and State of Punjab v. Davinder Pal Singh Bhullar and Ors. AIR 2012 SC 364 that if the initial action stands vitiated, any subsequent action thereof hall also stand vitiated.

72. Mr. Airi, during his submissions has relied upon the following judgments in support of his contention on the following proposition:-

73. The aforesaid judgments clearly delineate the scope of judicial review. It is also a settled position of law, as noted from the above, what is a fair opportunity depends upon the facts and circumstances of each case. Surely, where such an opportunity has been given, the proceedings are not open to be attacked on the ground that enquiry was not conducted in accordance with the procedures followed in Courts. But in the case in hand, as I have already concluded that there was a denial of opportunity to the petitioner to defend himself in the

enquiry as he was denied the opportunity of cross examining the main witness and consequently, the proceedings stand vitiated. It necessarily follows that the enquiry report dated April 13, 2001, and the order of dismissal dated June 21, 2002 are set aside.

74. The question now remains what relief the petitioner would be entitled to. I am conscious of the fact that the subject proceedings have been vitiated on a very technical ground. Normally, in such circumstances, the matter should be remanded back to the Authorities to proceed in the enquiry from the stage where the infirmity has occurred but the enquiry report is of the year 2001 and the order of dismissal is of the year 2002. Sixteen years have elapsed thereafter and the fact remains that the petitioner who has appeared in person, has enrolled himself as an Advocate and may have attained the age of superannuation as well. It would be too late in the day to remand the matter back to the respondents to proceed with the enquiry from the position where the infirmity has occurred. In the fitness of things, this Court is of the view, the petitioner shall not be entitled to any consequential benefits in the nature of back wages from the date of order of dismissal till the date he has attained the age of superannuation or has enrolled himself as an Advocate. The period of suspension shall also be treated as such but shall be entitled to all retiral benefits either on the date of superannuation or on the date when he ceases to be employee on his being enrolled as an Advocate if he has enrolled before he had actually attained the age of superannuation. The retiral benefits shall be paid within a period of two months from the date of this order. If the same are released beyond a period of two months, interest @ 9% shall accrue to the petitioner. The writ petition is disposed of. No costs.

CM No. 7933/2002 (for stay)

Dismissed as infructuous.