

(2017) 02 TP CK 0006
In the Tripura High Court
Case No : WP(C) 408 of 2013

Sri Pankaj Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1955 — Rule 3
Constitution of India, 1950 — Article 226, Article 309
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 2(n), Section 3

Citation : (2017) LIC 1091

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : Somik Deb, A. Lodh, A. Pal

Final Decision : Dismissed

Judgement

S.C. Das, J.—By filing this writ petition under Article 226 of the Constitution of India, the petitioner prayed for rendering substantive and conscionable justice by quashing/setting aside Disagreement Note of the Disciplinary Authority, dated 21.11.2012 (Annexure-P/6 to the writ petition) and also the order of punishment dated 20.11.2013 (Annexure-P/8 to the writ petition) issued by the respondent No.1 in respect of a disciplinary proceeding drawn against the petitioner on the allegation of committing sexual harassment to respondent No.4, an official subordinate of the petitioner, in the work place.

2. Heard learned counsel, Mr. Somik Deb for the petitioner; learned counsel, Mr. A. Lodh for the respondent Nos. 1 to 3 and learned counsel, Mr. A. Pal for the respondent No.4.

3. Undisputed facts are that the petitioner was working as Commandant of 66th Battalion, Central Reserve Police Force (for short, 66th Bn. C.R.P.F.) in the year 2009, on being promoted to the post of Commandant on 25.03.2009.

Respondent No.4 was a newly employed direct recruit Assistant Commandant of the 66th Bn. C.R.P.F. and as such the petitioner was the superior authority and respondent No.4 was subordinate to the petitioner.

4. In the writ petition, the petitioner alleged that he verbally as well as in writing advised respondent No.4 to improve her performance but the respondent No.4 failed to do so rather exhibited cowardice and committed misconduct by disobeying lawful order.

5. Respondent No.4 while working as a subordinate of the petitioner in the capacity of Assistant Commandant made three complaints against the petitioner alleging harassment meted to her in different manner by the petitioner. The first complaint was made on 16.08.2009 addressed to IGP, C.R.P.F. The second complaint was made on 25.08.2009 to Director General of C.R.P.F. (Respondent No.3) and the third complaint was made on 07.09.2009 addressed to the Chairman, National Commission for Women, New Delhi. Copies of those complaints marked as Annexure-P/4 to the writ petition (collectively).

In those complaints respondent No.4 made specific allegations of harassment by the petitioner in different manner.

6. A Complaint Committee was constituted consisting of three members headed by Dr. (Miss) R. Naik, DIG (Medical) as Chairperson to enquire into the allegation of sexual harassment alleged by respondent No.4. Accordingly inquiry was conducted and the Complaint Committee submitted its report dated 23.07.2012 (Annexure-P/5 to the writ petition) (Annexure-C Series to the Addl. counter affidavit filed by the respondent Nos. 1, 2 and 3).

The report submitted by the Complaint Committee appears to be exhaustive and very lucid containing the summary of the allegations made in the complaint, scope of inquiry, summary of the inquiry and the findings of the Committee.

7. The complaints made by respondent No.4 appears to be summarized by the Complaint Committee and the summary of the complaint has been very lucidly reflected in Part-I of the report which reads as follows:-

"Part-I

A) Summary of the complaint

The Complaint Committee has examined the complaint in the light of the definition of Sexual Harassment as defined in the case of Visakha v. State of Rajasthan. Instruction laid down by Hon'ble Supreme Court in Medha Kotwal Lele and others v. Union of India was also kept in mind.

From the complaints, it raises the following issues.

Under the influence of liquor Shri Pankaj Kumar, Comdt. used to call Smt. Tulsi Dungriyal, A/C alone in the name of briefing and made her to sit with him for hours talking on irrelevant topics.

Some of the specific incidents as mentioned by complainant in her complaint are as follows:-

1. On 24/06/09 and 25/06/09 while she was on movement with Coys (B,C,D,E,F&F of 66 Bn) along with Shri Pankaj Kumar, Comdt. and other Officers in a special train from Mokamaghat he called her at odd hours and forcefully made her to sit with him while he was in drunken condition. When she told that she was not well then he called Dr. B.V.Rao, COM(SG) to check her B.P. in front of him. On early hours of dated 25/06/2009 when the complainant tried to avoid his company he threatened her by saying that "you do not know me I am your CO, I will crush you, I will ruin your career."

2. On 26/06/09 when complainant was performing special ops duty at Goaltore-Pingboni road, Shri Pankaj Kumar, Comdt. came and stated shouting at her and forcefully took her in his vehicle.

3. On 15/08/09 he called complainant on the mobile phone to report to him in his room when she was on area domination duty. When she reported to him in his room, she found him in heavy drunken condition. He continued his drinking and smoking in front of her. He made to sit her for more than a hour talking on baseless things. Again on same day while she was on duty he called her on her mobile phone at about 2145 hrs and directed her to report him in his room immediately. She reported to him around 2300 hrs and found him in the drunken condition. He talked to her on unwanted and irrelevant topics. Complainant left his room at around 0015 hrs by saying that she wanted to take her dinner. But he again called her on her mobile phone unnecessarily at around 0100 hrs.

4. Incident of 16/08/09:- On 16/08/09 at around 0500 hrs he called her on her mobile phone to report in his room where she found him in heavily drunken condition. On reporting he shouted at her using unparliamentarily language against her and her gender. He repeatedly called her in his room and on her mobile phone till 1000 hrs and even did not allow her to fresh up in the morning. When she told him that she is feeling highly insecured and harassed by his behaviour and had not taken her breakfast yet, the Comdt. immediately ordered the Mess NCO to bring breakfast for her when Mess Ct. brought breakfast, Comdt. kicked the breakfast tray upon her and used indecent language and stating that "Heroine Tere piche to purana 2-I/C para tha, abbey tu chiz kya hai, ooyhe" and mentioned the name of some officer Pankaj Peter Saha who was teasing him taking her name.

5. Incident of 18/08/09

a. Shri Pankaj Kumar, Comdt called complainant in the morning and pointed some incomplete work in mess documentation and threatened her that on that basis he incomplete work in mess documentation and threatened her that on that basis he will spoil her career and send her to jail etc.

b. Around 1930 hrs on same day again he called her and asked to withdraw

complaint but when she denied to do so, he threatened her by saying that he will inform to senior officers of CRPF that she is having connection with Naxalites. He will prove this and send her to jail and will crush her.

c. On 18/08/09 at about 2200 hrs on hearing the stand to call when the complainant came out of her room, she saw that Shri Pankaj Kumar, Comdt was standing outside the building in drunken condition. On seeking her, he shouted and threatened her by saying that "abhi tumhe sabak sikhata hoon" and started advancing towards her. On seeing this, complainant ran towards her room and locked herself from inside. On this Shri Pankaj Kumar, Comdt. started banging the door of her room and tried hard to open.

6. On 19/8/09 early morning Shri Pankaj Kumar, Comdt. seized all the documents of complainant's company along with her personal files and files related to enquiry proceedings for which she was detailed as P.O. without any valid reason and without any seizer memo.

7. Used to call complainant on her mobile phone during odd hours without any valid reasons. Even called her several times at odd hours while she was on leave on 19/06/2009. According to complainant, Shri Pankaj Kumar, Comdt and his wife repeatedly called her on her mobile phone on 03/10/09 from early morning to late night threatening her with dire consequences even while she was posted out from 66 Bn.

8. On 04/09/09 Shri Pankaj Kumar, Comdt again threatened complainant that if she will not withdraw her complaint against him then he will order for kit classification of all her personal luggage present at Dett/coy location and will also allege in writing that she has taken the photographs of Maoists and other operational documents."

8. The report shows that the Committee acted most judiciously and afforded opportunity to both side to adduce evidence. From the side of Disciplinary Authority, 6(six) witnesses were examined and several documents were proved and marked as exhibits. Opportunity was given to the charged officer i.e. the petitioner (hereinafter mentioned as petitioner) to adduce evidence and he submitted a list of 7(seven) witnesses but ultimately he neither examined himself nor examined any of those listed witnesses and also did not participate in the inquiry proceeding, as a result, the inquiry was done ex parte from 09.03.2012.

9. The finding of the Committee on each item of the complaints has been recorded by the Committee and for ready reference, I would like to reproduce it which reads as follows:-

"ii) Findings of the committee

Calling the complainant alone in the name of briefing under influence of alcohol:-

It could be corroborated from the statements of PW-05 and PW-09 (Para 2 & 6) and also from the inquiry report para 8(a) dated 31/08/09 (Exhibit-I) of Mr. B.R.

Kamath (the then DIGP CRPF) that he used to do prolonged briefing while he was drunk that too at odd hours. Contention of Shri Pankaj Kumar, CO that he called her in the name of briefing and teaching her to correct her shortcomings is not correct.

This act shown by him creates doubt about his actual intention. So this charge of complainant against Shri Pankaj Kumar stands to be proved.

1. Incident on 24/06/09 and 25/06/09 in special train from Mokamaghat to Chandrakona road- it could be corroborated from the statement of pw-9 (para 2), answers of question no.150 and 159 by pw-9 during his cross examination that the delinquent in drunken condition forcefully made complainant to sit with him during odd hours on the pretext of briefing although he knew that she was not well at that time. According to complainant and pw-9, only Smt. Tulsi Dungriyal and Shri Pankaj Kumar, CO were present in aisle area and the curtain was put down (Ans. of Qn.no.2 during re-cross examination of PW-9 Dated 10/1/11). But according to Shri Pankaj Kumar, Comdt no curtains were provided in that compartment. In contradictory, vide letter NO.ECR/MEC/CHG/405 dated 24/02/11 (Exhibit-2) received from the Office of the General manager, East Central Railway, it has been confirmed that normally at that time curtains were provided in windows and aisle area in AC II tier coaches. If there would have been any operational emergency then he should have called her of briefing along with other officers also who were present in the same compartment. This conduct of Shri Pankaj, CO does not withstand the test of decency towards of female subordinate.

On early morning hours of 25/06/09 when the complainant tried to avoid his company he threatened her by saying that "you do not know me I am your CO, I will crush you, I will run your career". This fact has been corroborated in statement of PW-9(para- 2) and answer to question No.159 during his cross examination who was the only eye-witness to this. So this charge of complainant against Shri Pankaj Kumar stands to be proved.

2. Incidence of Dated 26/6/09 It could be corroborated from the answers to the question No.14,15,16 and 18 of PW-2 and also from the statement (para-4) and answers of PW-9 to question No.174 and 175 during his cross examination (Only eye-witness) that Shri Pankaj Kumar, CO was drunk and shouted at other officers of the battalion including complainant but from nowhere it could be corroborated that forcefully he took her his vehicle. So this charge by complainant against Shri Pankaj Kumar stands to be partially proved.

3. Incident of 15/08/09-(Calling her back from A/D duty and Ambush duty) It could be established from the call details of telephone No.of Shri Pankaj Kumar, CO (mobile No.9647364505) and Mrs. Tulsi Dungriyal, A/C (mobile No.9647362673) (Exhibit-3) it has been admitted by the Delinquent on page No.11 in his reply to the complaint dated 25/3/10 that he had called her to report back from duty and to confirm on telephone or SMS or by physical

presence whichever is convenient. So she had reported. He has also written that he may have rang up to her for knowing that whether normal SITREP has been sent or not. But as per the call details it has been revealed that he has called on her mobile several times which is not justified. So this charge of complainant against Shri Pankaj Kumar stands to be proved.

4. Incident on 16/8/09- On 16/8/09 from early morning onwards Delinquent kept on calling on her mobile repeatedly which is established from call details of the said date (Exhibit-4) Further it was mentioned that Shri Pankaj Kumar, CO kicked the breakfast tray upon her and commented that "heroine tere piche to purana 2-I/C para tha, abbey tu chiz kya hai, ooyhe" and mentioned the name of some officer Pankaj Peter Shah who was teasing him taking her name. This fact is corroborated by the statements of PW-5 and PW-8 whom she told telephonically on that particular day only. But there are no direct evidences that whether he used unparliamentary language against her or not. So this charge of complainant against Shri Pankaj Kumar stands to be partially proved.

5. Incident of 18/08/09-

i) On 18/08/09, Shri Pankaj Kumar, Comdt. had ordered her to attend to the incomplete documentation and not to go for operations. But she went for A/D duty on her own without his lawful order. According to complainant, Shri Pankaj Kumar, Comdt had only verbally told her not to go for duty and when she asked to give it in writing he didn't do so. So she proceeded on duty as it was an operational urgency due to Bandh call by PSJBC in case she went on her own defying order of Comdt. then he could have issued a warning or advisory letter to her or could have reported this matter to his higher officials as it was Operational misconduct. Instead Comdt. signed that day's SITREP as normal (Exhibit-5) So this charge by complainant against Shri Pankaj Kumar stands to be proved.

ii) As per statement of complainant, around 2200 hrs on 18/8/9, Comdt. had called for stand to in the campus. When she came out of her room, she noticed Comdt. in drunken condition and was aggressive. On seeing this she got frightened and locked herself inside her room and in panicky called many senior officers over phone including DIG Sri B.R.Kamat(PW-2) On the direction of Sri Kamat, guard was placed in front of her room.

It could be corroborated from the answers of PW-2 to question No.-1 asked by Chairperson SLCC wherein he stated that he had directed Insp. Lal Chand to place guard in front of complainant's room as she had telephonically requested PW-2 because of her feeling of insecurity due to aggressive behaviour of Shri Pankaj Kumar, Comdt. Also in answer to question No.-2 of Recross examination of PW-2 it is said that during his telephonic conversation with Sri Pankaj Kumar it could be make out that he was in agitated mood and drunk which was also mentioned in his enquiry report (Exhibit-1) submitted to IGP ES on 31/8/09.

Also corroborated from the statements of pw-1, pw-4, pw-5, pw-6 and pw-8 that she made alarming phone call to many senior officers including them and told

that her CO is threatening her, banging on her door and trying to make forceful entry into her room.

The contention of Shri Pankaj Kumar, Comdt that he had ordered the stand to and reinforcement only under command of Mrs. Tulsi Dungriyal A/C as there was attack on Kantapahari Camp seems to be a cover up story as it leaves many loose ends open on following grounds:-

i) If there was any operational emergency and Mrs. Tulsi Dungriyal A/C didn't respond to it, any other officer/Insp. could have been detailed in her place. But it didn't happen so.

ii) Shri Pankaj Kumar, Co could have called on mobiles of OCs of some nearby companies for reinforcement but he didn't do so. It is also evident from the deployment of 66 Bn that both Kantapahari Camp location and Dett Hq 66 are at the two ends of AOR of 66 Bn and between them there are two more camp locations of 66 Bn (Ramgarh and kadasole).

iii) It is evident from the call details of Mrs. Tulsi Dungriyal (mobile No.9647362673) on 18/08/09 (Exhibit -6) and from the statements of pw-1, pw-2, pw-5, pw-6, pw-7 and pw-8 that she made alarming calls to them and may other senior officers of CRPF. This shows that there was some problem with her on the said date and she was under mental stress. So the contention of Shri Pankaj Kumar, CO that this was gimmick is wrong.

iv) It could also be corroborated from answer No.-3 of PW-02 during his re-cross examination that there was no camp attack but there was firing somewhere outside.

v) In SITREP OF DETT/66 (Exhibit-77) it was written that reinforcement not provided due to non response of OC B/66 and she was informed through her security-aide. If she didn't respond then either CO-66 or OC F/66 located at Kantapahari camp could have called her on her mobile phone but they didn't do so. Neither there was any SOP or any such contingency plan that in case of attack on Kantapahari Camp reinforcement would be provided only by OC- B/66. So this charge of complainant against Shri Pankaj Kumar stands to proved.

6. On 19/09/09 early morning Shri Pankaj Kumar, Comdt seized all the documents of complainant's company along with her personal files and files related to enquiry proceedings for which she was detailed as P.O. without any valid reason and without any seizer memo. According to the complainant this fact could be ascertained from pw-02 on whose interventions only, documents were given during charge handing taking over (Answer to question No.203 during cross examination of complainant). But this could not be corroborated neither from the statement of pw-02 nor during his cross examination. So this charge of complainant against Shri Pankaj Kumar stands to be not proved.

7. Calling complainant on her mobile phone at odd hours. It could be established from the call details (Exhibit-3,4 & 6) One specific incident on 19/06/09 which

has been mentioned in complaint as well as during her Cross examination (Q. no.105 to 108) that instead of calling her repeatedly for the same cause Delinquent could have utilized other Battalion mechanisms to convey the matter. (Call details not available) From the call details of 03/10/09 it is evident that Shri Pankaj Kumar, Comdt called complainant on her mobile phone (9469210171) several times from his official mobile no.(9647364505) of CO 66 Bn (Exhibit- 8) Further on 19/02/10 also Shri Pankaj Kumar, Comdt called from his official mobile No.(943581118) of CO 10 Bn to her mobile phone (9469210171) several times from 1130 hrs to 1239 hrs (Exhibit-8) The contentions of Shri Pankaj Kumar, Comdt is that he used to call on her mobile phone because of official urgency. But it is not worthy to mention here that he called the complainant on her mobile phone several times even when she was transferred out from 66 Bn. So this charge of complainant against Shri Pankaj Kumar stands to be proved. But the intention of Shri Pankaj Kumar couldn't be ascertained as no conversation details are available.

8. On 04/09/09 Shri Pankaj Kumar, Comdt again threatened complainant that if she will not withdraw her complaint against him then he will order for kit classification of all her personal luggage present at Dett/coy location and will also allege in writing that she has taken the photographs of Maoists and other operational documents. Due to lack of evidences it could not be proved. Besides the above mentioned points following observations were noticed during the course of enquiry:-

1) From statements of PW-1, PW-2, PW-9, PW-10 it has been revealed that Sri Pankaj Kumar Comdt. was a habitual drinker.

It is evident from the letter No.D.III-1/2009-Ops dated 26/6/09 and ltr Dated 15/7/09 of Sri B.R. Kamat, DIG(Exhibit-9 & 10) that during operation on 26/06/09 Sri Pankaj Kumar didn't wake up on time in morning because he was drunk.

PW-9 during his cross-examination stated that on 26/06/09 Sri Pankaj Kumar was suffering from abdominal pain due to hyperacidity because he drank too much liquor during previous night. But he didn't mention it in his prescription slip because Sri Pankaj Kumar requested him not to mention it on paper. So he only verbally advised him not to drink in future (answer of question No.90 during cross examination of PW9).

It is also evident from the letter No.C.IV-1/2009-ESPS(66) dated 11/10/09 of IGP ES (Mr. M. Nageswar Rao,IPS) that it is a fact that Sri Pankaj Kumar, C)-66 Bn consumes liquor (Exhibit-11).

However as per statement of Sri Pankaj Kumar he was sick on 26/6/09 for which he has also produced prescription of Dr. B.V.Rao (PW-9) in its support (Exhibit-12) Besides letter received from CH, CRPF, New Delhi, dated 23/11/09 it has been opined that "at present Sri Pankaj Kumar does not show any sign of alcohol abuse/alcohol dependence/any other substance abuse" (Exhibit-13).

2). Influenced pw-9 to give statement in his favour. It could be corroborated from Ans No. 12,26,30,31,97,101,102,121,128,131 and 132 of PW-9 during his cross examination Dated 3/1/11. Further from the call details on 15/12/10 (Exhibit-14) CD if their telephonic conversation (Exhibit-15) and the envelope sent to PW-9 by Shri Pankaj Kumar Comdt (Exhibit-16) that he tried to influence PW-9.

3) Forced complainant to report at Dett Hq and wanted her to be relieved from there instead of Bn HQ Mokamaghat. It raises a doubt his motive behind this (statement of PW-01 and ans no.10).

4) Contention of Shri Pankaj Kumar, Comdt that she was not able to perform her duties properly could not be justified since Smt. Tulsi was given additional charges although she was a probationer.(Exhibit-17).

If the complainant was not doing work as expected out of her, then Comdt. should have pointed this through Advisory, DO letters or warning letters etc. But she got appreciation letters from Shri Pankaj Kumar, Comdt on 30/06/09 (Exhibit-18) and Shri Kuldiep Singh (IGP Western Zone, West Bengal) on 5/9/09 (Exhibit-19). Further it seems to be impractical that just within a span of 12 days he has given both appreciation letter and D.O. letter regarding her quarterly performance not found up to the mark (Exhibit-20). Both the DO letters given by him to the complainant contradict each other Besides there has been over writing/cutting in her memorandum of services (Exhibit-21) which is against normal official practise. So from all these facts it could be corroborated that there might be some ulterior motive of Shri Pankaj Kumar, Comdt behind all this.

5) Shri Pankaj Kumar, Comdt counter alleged on her that she was not properly managing the Ors mess One Advisory letter dated 08/7/09 (Exhibit-22) regarding this has been issued to Mrs. Tulsi Dungriyal but signature of receipt is not found on the office copy and also there is no adverse entry by Shri Pankaj Kumar, CO in the mess visit register (Exhibit-24) during the period under reference whereas it could be seen on the advisory letter dated 20/05/09 issued (Exhibit-23) to her showing her signature of receipt.

On 15/08/09 Comdt. has written poor maintenance and blank pages on one of the mess register of B/66 (Exhibit-25) but nowhere it is evident from the tour diary of Shri Pankaj Kumar, CO (Exhibit-26) that he has inspected documents of OR?s mess of B/66 on that particular day.

According to him she knowingly used to miss mess menu and there was financial embezzlement in the Ors mess. But Shri Pankaj Kumar, Comdt. never pointed this before except on 16/8/09 (Exhibit-24) whereas in his reply to the complaint on page no.11 he has mentioned of Sri Pankaj Kumar that the complainant was not properly managing the Ors mess seems to be wrong.

6) As per Shri Pankaj Kumar, CO on the day of Guwahati accident both complainant and pw-9 were found absent from duty. But from the SITREP which

was signed by the Comdt himself it is evident that complainant went to that spot and evacuated the injured personells (Exhibit-27) Further it could also be seen on the signal dated 18/04/09 that there had been some over-writing/cutting done with some malafide intention. Originally this signal was given by 66 Bn to POLCENT ES and POLCENT OPS NES but after overwriting/ cutting it seems to be given by B/66 to TIGER 66 which is not justified as it is signed by TIGER 66 himself. So the contention of Shri Pankaj Kumar, CO seems to be wrong that PW-9 and complainant were absent from duty on that day.

7) Shri Pankaj Kumar, CO also called on mobile phone of other lady Officer at odd hours for which she wrote a D.O. letter dated 5/9/09 (Exhibit-28) to stop such purposeless calls to her. The contention of Shri Pankaj Kumar, CO during the cross-examination of P.W-9 was that it was operational urgency so he called her. But he didn't try to defend himself during the cross-examination of Smt. Karuna Rai (PW-10) and denied to further cross examine PW-10 although thrice he was given chance by SLCC Chairperson to do so. So this stands to be proved."

10. In Part-III of the report, the Complaint Committee recorded its conclusion which reads as follows:-

"Part-III

Conclusion

The committee has examined in detail the charges of Sexual Harassment levelled by Mrs. Tulsi Dungriyal A/C against Shri Pankaj Kumar, CO The committee has examined all witnesses of the prosecution side and available evidences. But the committee could not examine defence witnesses since the enquiry was conducted Ex-parte.

On close scrutiny and evaluation of all the witnesses and available evidences, it has been revealed that Shri Pankaj Kumar, Comdt used to consume liquor. His behaviour towards a lady officer was not proper and he used to call the complainant at odd hours in the name of briefing.

The complainant Mrs. Tulsi Dungriyal A/C neither mentioned anything about Sexual Harassment in any of her complaints addressed to IGP ES, DG CRPF whereas in her complaint to NCW She had mentioned the word Sexual Harassment only on subject of complaint. But in the contents she has mentioned nothing about Sexual Harassment nor there is any mention about her verbal complaint on the subject to her senior officers as also evident from enquiry report of Shri B.R.Kamath (then DIGP CRPF Durgapur) and from letter of Sri M. Nageswar Rao (then IGP ES CRPF) Further it is difficult to substantiate the charge of Sexual Harassment without listening to the defence side as normally in such type of offences there are no direct evidences and witnesses. In this case also, the lone eyewitnesses Dr. B.V.Rao CMO(SG) has only stated about her harassment but nothing about Sexual Harassment.

Therefore the Committee is of the opinion that though Mrs. Tulsi Dungriyal A/C

was harassed and felt insecure by the uncalled for behaviour of Shri Pankaj Kumar, Comtd. but it could not be termed as Sexual Harassment although it creates doubt about is actual intention."

11. A bare reading of the report makes it abundantly clear that the Committee arrived at a conclusion that the allegations made by the respondent No.4 in her complaints were proved but according to the Committee it could not be termed as "sexual harassment."

12. The Disciplinary Authority did not agree with the ultimate conclusion of the Complaint Committee. According to the Disciplinary Authority the allegations which were made by respondent No.4 and the Committee found to have proved, amounts to "sexual harassment" and the Disagreement Note dated 21.11.2012 (Annexure-P/6 to the writ petition) (Annexure-C series to the counter affidavit) reads as follows:-

"tentative reasons for disagreement of Disciplinary Authority

A complaint of Ms. Tulsi Dungriyal, A/C 66 Bn (Now in 38 Bn) regarding alleged sexual harassment at work place met out to her by Shri Pankaj Kumar, Commandant 66 Bn.(IRLA) 3529) (Now posted in GC,CRPF, Agartala, Tripura) was received from Member Secretary, National Commission for Women, New Delhi vide DO No.8/10743/MK/NK/NWC/2009 dated 07/09/2009 for enquiry in accordance with guidelines contained in Vishaka judgment of Hon?ble Supreme Court. Accordingly, Sector Level Complaints Committee of Eastern Sector, CRPF headed by Dr. (Ms) Rajasri Nayak, DIG(Med), CH, CRPF, Bhubaneswar enquired into the complaint. The Committee has completed the inquiry and submitted the proceedings in which it has opined that allegations at sl.no.,12,4 & 6 as proved, 3 & 5 as partially proved and 7 as not proved. Chairperson SLCC has also held out that though Mrs. Tulsi Dungriyal, A/C was harassed and felt insecure by the uncalled behaviour of Shri Pankaj Kumar, Comtd. But it could not be termed as Sexual Harassment although it creates doubt about his actual intention. After examining the report of the Committee, the Disciplinary Authority tentatively disagrees with the conclusion of Committee due to the following reasons:-

2. As per guidelines issued by the Hon?ble Supreme Court in the matter of Vishaka & Other v. State of Raj & Ors (AIR 1997 SC 3011) 32 the terms sexual harassment also include:-

1. It can be humiliating and may constitute a health and safety problem, or
2. It is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including or promotion or advancement or when it creates a hostile environment, or
3. It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment. In its judgment Hon?ble Apex Court has categorically mentioned that "Sexual

harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which impairs prevents the employee's full utilization of employment benefits or Opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create and intimidating hostile or offensive working environment.

3. Therefore, the Disciplinary Authority tends to tentatively disagree with the conclusion/opinion of Committee and feels that the action on the part of Shri Pankaj Kumar Commandant (C/O) tantamount to sexual harassment as per guidelines issued by Hon'ble Supreme Court as discussed above.

Sd/ 21/11/2012

(Vivek vaid)

DIG(CR & VIG)"

13. The Disagreement Note was communicated to the petitioner along with the report and the petitioner submitted his representation to the President of India, the Disciplinary Authority wherein he also sought some clarification.

The Disciplinary Authority after considering the representation of the petitioner as well as considering the inquiry report and after consulting the Union Public Service Commission (for short, UPSC), by impugned order, dated 20.11.2013, inflicted the following punishment.

"10.NOW THEREFORE, in the light of above and having regard to all aspects of the case, the president considers that the ends of justice would be met in this, if the penalty of reduction to the next lower grade/post ie. to the rank of Second-in-Command (2I/C) with the pay fixed at the minimum of the grade ie. Rs.15600/- in the pay band of Rs.15600-39400/- with grade pay Rs.7600/- on permanent basis is imposed on Shri Pankaj Kumar, Commandant (IRLA-3529) and orders accordingly. A copy of the advice of UPSC letter No.F.3/103/2013-SI dated 19/09/2013 is enclosed.

By order and in the name of the President"

14. The petitioner challenged the order of punishment as well as the Disagreement Note on various grounds. I would like to deal with all the grounds as raised by learned counsel, Mr. Deb one after another.

Respondent Nos. 1 to 3 submitted counter affidavit supporting the action of the Disciplinary Authority and contended that the inquiry was conducted following the direction of the Apex Court in the case of Visakha & Ors v. State of Rajasthan & Ors., reported in (1997) 6 SCC 241 and the Complaint Committee was duly

constituted following the rules and procedure and the direction of the Apex Court and all opportunity was afforded to the petitioner according to the rules and regulations/standing order and so this Court in exercise of the power of judicial review is not called for to interfere in the ultimate decision of the Disciplinary Authority.

15. Respondent No.4 also submitted counter affidavit controverting the contention of the petitioner made in different paragraphs of the writ petition and contended that the allegation of sexual harassment to her in the workplace has been proved and therefore, writ petition should be dismissed.

16. The petitioner submitted rejoinder affidavit in reply to the contention of the respondents on 29.01.2016 and thereafter respondent No.1, 2 and 3 also submitted additional counter affidavit once on 07.05.2016 and again on 16.08.2016. The petitioner also submitted rejoinder affidavit again on 14.09.2016 in respect of the pleadings of respondent No.1 to 3 made in their additional counter affidavit dated 16.08.2016.

17. At the time of hearing, learned counsel, Mr. Lodh appearing for respondent Nos. 1 to 3 placed before the Court the relevant records of the disciplinary proceeding and I have carefully gone through the same.

18. Learned counsel, Mr. Deb has argued that the respondent No.4 filed three complaints and in first two complaints dated 16.08.2009 and 25.08.2009, there was no allegation of "sexual harassment". But in the 3rd complaint she specifically mentioned in the subject, the word, "sexual harassment" and the allegations made in the 3rd complaint i.e. the complaint dated 07.09.2009 consists of several allegations which were not made in her earlier complaints. The complainant, therefore, developed her allegations every now and then and therefore, the Disciplinary Authority would not rely upon those complaints and would not initiate any disciplinary proceeding against the petitioner.

Learned counsel, Mr. Lodh and Mr. Pal submitted that the 3rd complaint is the elaboration of first and second complaint. The allegations were very specific that she was subjected to sexual harassment and maltreatment while in service as a subordinate to the petitioner.

19. All the three complaints have been placed on record. Copies of the same were supplied to the petitioner. The first complaint was in short seeking redress. The second complaint was also made elaborating the allegation of harassment seeking redress to the superior authority. The third complaint was in details in respect of all items of allegations made by the respondent No.4 and it was addressed to the National Commission for Women which was ultimately sent to the Disciplinary Authority and on the basis of the same, the inquiry was initiated. The allegations made in the complaints summarized by the Complaint Committee very lucidly in their report. Copies of the complaints were supplied to the petitioner asking him to submit his written statement and I find in the record placed by the respondent Nos. 1 to 3 (official respondents) that the petitioner

submitted a detailed written statement addressed to the Chairman of the Complaint Committee on 25.03.2010. The Complaint Committee conducted inquiry and collected evidence on the basis of which the report has been submitted. So, in my considered opinion, there is no merit in the submission made by learned counsel, Mr. Deb that respondent No.4 developed her allegation in the last complaint and made baseless allegation.

20. The next argument advanced by learned counsel, Mr. Deb is that the allegations whatever have been made by the respondent No.4 does not amount to "sexual harassment" as defined in Vishaka's case. According to Mr. Deb, the Complaint Committee rightly observed that the allegations made by respondent No.4 may amount to harassment but cannot be termed as "sexual harassment".

Mr. Lodh and Mr. Pal submitted that it was a misconception of the Complaint Committee that those allegations which were found to have proved against the petitioner cannot be termed as sexual harassment. The allegations were well covered by the definition of sexual harassment defined in Vishaka's case as well as defined in the standing order of the CRPF.

21. The issue of sexual harassment at work place fell for consideration before the Apex Court in Vishaka's case wherein, in Para 17 (2), the Court defined the word thus:-

"2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical verbal or nonverbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

22. According to the Mr. Deb, there is neither allegation nor evidence that any act or omission on the part of the petitioner fall within the purview of the five

categories defined by the apex court, which amounts to sexual harassment and so, the Complaint Committee rightly observed that there might be harassment of the respondent No.4 but there was no "sexual harassment".

23. As already reproduced hereinbefore, the Complaint Committee summarized the items of allegations and based on the evidence recorded during inquiry arrived at a conclusion that those allegations were proved but at the conclusion the Complaint Committee made observation that those allegations cannot be termed as sexual harassment although it creates doubt about his actual intention.

24. After the judgment of the Apex Court in Vishaka's case, rule 3 (C) in the Central Civil Services Conduct Rules was incorporated which stands thus as of now--

"3-C Prohibition of sexual harassment of working women

(1) No Government servant shall indulge in any act of sexual harassment of any woman at any workplace.

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

Explanation. ? 1. For the purpose of this rule, -

(a) "sexual harassment" includes any one or more of the following acts or behaviour, (whether directly or by implication) namely : -

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment : -

(i) implied or explicit promise of preferential treatment in employment; or

(ii) implied or explicit threat of detrimental treatment in employment; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes,-

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;

(ii) hospitals or nursing homes;

(iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(v) a dwelling place or a house."

25. According to Mr. Deb, Clause (b) and (c) of Sub rule (2) of Rule 3(c) was incorporated in the year 2014 whereas the alleged sexual harassment of the respondent No.4 was in the year 2009 and therefore, the circumstances contained in Clause (b) and (c) cannot be applied in the case of the petitioner.

26. Mr. Lodh, learned counsel referring to the standing order No.4 of 2004 dated 16.08.2004 submitted that after Vishaka's case the Disciplinary Authority of CRPF issued the standing order. A copy which is annexed as Annexure-A series to the additional counter affidavit which defined the sexual harassment thus:-

"Definition:

Sexual harassment will include such unwelcome sexually determined behaviour by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as:-

(i) Physical contact and advances

(ii) A demand or request for sexual favours

(iii) Sexually coloured remarks

(iv) Eve-teasing

(v) Unsavoury remarks

(vi) Jokes causing or likely to cause awkwardness or embarrassment

(vii) Innuendos and taunts

(viii) Gender based insults or sexist remarks

(ix) Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like

(x) Touching or brushing against any part of the body and the like

(xi) Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings

(xii) Forcible physical touch or molestation

(xiii) Physical confinement against one's will and other act likely to violate one's privacy

(xiv) Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

And includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex only on the ground of sex."

27. The scope, therefore, was widened and a scope of interpretation as to what amounts to sexual harassment has been widened and the acts of the petitioner squarely come within the purview of that definition.

Mr. Lodh, learned counsel, has argued that the amended part of Rule 3(c) of the Conduct Rules shall also apply since it is a declaratory law in respect of the definition of sexual harassment and in support of it he has referred to several case laws.

28. To constitute sexual harassment it is not required that the delinquent is to touch the body of the victim lady or to molest her in any other manner. Sexual harassment is a behaviour of the offender aimed at a woman employee in the workplace and that behaviour shall be sexually oriented attributed to a woman at workplace. An unusual conduct or behaviour to a woman employee at workplace which is not generally expected and from which an inference may be drawn that the behaviour was because of the fact that the victim was a woman amounts to "sexual harassment" in workplace. If we carefully read the definition in Vishaka's case, it would appear that the five categories which the Apex Court noted while defining sexual harassment was an inclusive definition. It means the Apex Court left it open to appreciate particular facts and circumstances in a particular case as to whether it amounts to sexual harassment or not. The definition given by the Apex Court, therefore, is not a restricted definition rather it is an extensive definition which includes many other aspects apart from those five categories specified by the Apex Court.

29. In the Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition 2012 in Chapter 3 has given a note on restrictive and extensive definition and we may quote one paragraph in between page 179 and 180 which reads as follows:-

"(a) Restrictive and extensive definitions

The Legislature has power to define a word even artificially. So the definition of a word in the definition section may either be restrictive of its ordinary meaning or

it may be extensive of the same. When a word is defined to 'mean' such and such, the definition is prima facie restrictive and exhaustive; whereas, where the word defined is declared to 'include' such and such, the definition is prima facie extensive. When by an amending Act, the word 'includes' was substituted for the word 'means' in a definition section, it was held that the intention was to make it more extensive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive; on the other hand, if a word is defined 'to apply to and include', the definition is understood as extensive. These meanings of the expressions 'means', 'includes' and 'means and includes' have been reiterated in *Delhi Development Authority v. Bhola Nath Sharma*. The use of word 'any', e.g. any building also connotes extension for 'any' is a word of very wide meaning and prima facie the use of it excludes limitation."

30. Mr. Pal, learned counsel for the respondent No.4 submitted that the allegation that the petitioner used to call the respondent No.4 to his room every now and then and even at odd hours of night on the pretext of briefing her and that he used to take liquor in presence of respondent No.4 have been proved with overwhelming evidence and such conduct of the petitioner amounts to sexual harassment meted to the respondents.

31. He referred to the decision of the Apex Court in the case of *Apparel Export Promotion Council v. A.K.Chopra*, reported in (1999) 1 SCC 759. In that case the allegation of sexual harassment was against the respondent A.K. Chopra to a subordinate employee and while deciding that case the Apex Court observed that 'Regarding the nature of approach that courts should take while dealing with cases of sexual harassment at the place of work of female employees, it is to be borne in mind that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the delinquent superior officer is wholly misplaced and mercy

has no relevance. (Paras 22,25,23 and 28).

The Court also observed-- Each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty?the two most precious fundamental rights guaranteed by the Constitution of India. The contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. This is in keeping with CEDAW(1979) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women and the International Covenant on Economic, Social and Cultural Rights. These international instruments cast an obligation on the Indian State to gender-sensitive its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. The courts must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. (Paras 26 and 27).

32. The summary of complaint has already been reproduced hereinbefore which contains definite item of allegations made by the respondent No.4 and the Complaint Committee after appreciation of evidence on record has observed that those particular items of the allegations were proved against the petitioner.

33. The statement of the petitioner in respect of the allegations made by her has not been shaken in cross examination by the petitioner in any manner. Though this Court is not required to re-examine and/or re-appreciate the evidence but still for fair ends of justice, I have examined the evidence on record and the material allegations made by the petitioner has been supported by other items of the evidence also.

34. In a case of sexual harassment the law is settled that the allegation made by the complainant shall ordinarily be accepted if her statement inspires confidence. An unmarried lady officer of CRPF, in her probation period made the complaint against her official superior for harassing her in different way making remarks in respect of her performance alleging that he will crush her and will ruin her career etc. and other remarks ?heroine tere piche to purana 2-I/C para tha, abbey tu chiz kya hai, ooyhe? , in my considered opinion definitely amounts to sexual harassment and nothing else. The conduct/behaviour of the petitioner gives a clear impression that he behaved with the respondent No.4 in the manner as

alleged by respondent No.4, only because she was a lady officer subordinate to him. There is nothing else to make any other inference from the facts and circumstances of the case. In the writ petition the petitioner stated that he verbally as well as through written communication advised respondent No.4 to mend her ways. In Para 2.2 of the writ petition, the petitioner mentioned about three letters dated 07.05.2009, 08.07.2009 and 16.08.2009 marked as Annexure-P/1 (colly) but I find only a letter dated 08.07.2009 regarding quality of food in the mess and another letter dated 20.05.2009 advising respondent No.4 to be careful in respect of policy matters. There is no letter dated 07.05.2009 and 16.08.2009. Letter dated 08.07.2009 is in respect of maintaining quality of food requesting the officer commanding and letter dated 20.05.2009 advising respondent No.4 to be careful in respect of policy matters and administrative matter. There is nothing more in Annexure-P/1 (colly). Annexure-P/3 to the writ petition is a signal to the DIG alleging that respondent No.4 was negligent in the discharge of duty. Those documents have not been proved by the petitioner in the disciplinary proceeding. So, mere presentation of the same with the writ petition cannot be of any advantage of the petitioner. However, as I find that Annexure-P/3 was dated 19.08.2009 but before that the respondent No.4 made complaint against the petitioner. So it might happen that when respondent No.4 made complaint against the petitioner, he made allegation that respondent No.4 was negligent in performing her duty.

35. In respect of complaint dated 16.08.2009 made by respondent No.4, an inquiry was conducted by DIGP, CRPF and the report of the Inquiry annexed as Annexure-P/9 to the writ petition wherein DIGP, CRPF observed as follows:-

"a) The written complaint to IGP ES and verbal complaints were made to different senior officers by Ms Tulsi Dungriyal AC on 16/08/09 and 18/08/09 as she was fed up with the practise of Commandant of calling her alone in the name of briefing and teaching her to correct shortcomings that in night hours. Keep her sitting for pronged duration when Shri Pankaj Kumar Comdt was under influence of liquor and created doubts about his actual intention. But Ms Tulsi Dungriyal, AC has not made any complaint about sexual harassment she was only complaining about mental harassment and felling of insecurity due to his shouting under the influence of liquor.

b) Consumption of liquor in operational areas by a Comdt, whose leadership and style at functioning have a direct bearing on the discipline and operational efficiency of the unit cannot be allowed. Shri Pankaj Kumar, Comdt, should avoid drinking in public places and should not set a bad example and become nuisance to offices and men.

c) As mention above the remedial steps taken by Comdt, to rectify her lapsed by personal briefing showing example are also not out of the way. Shri Pankaj Kumar Comdt. Being the senior most officer. Should have behave in a armature manner and if the lady officer is not doing her work as expected out of her after pointing out same verbally, through advisory letter and through DO Ltrs to her it

should have been taken up with higher authorities which he has not done. He should have also mentioned same in the Memorandum of service of the officer.

d) Ms Tulsi Dungriyal, AC was sent on leave up to 2/9/09 to avoid any further problem after her rejoining, probabilities of harassing her on various other pretexts by comdt and such allegations by Ms. Tulsi Dungriyal AC cannot be ruled out.

e) As regards enquiry from other officers only 2 officers were available in Golator i.e. Shri Pankaj Kumar Comdt and Ms. Tulsi Dungriyal AC none of the SOs or other ranks came nobody told the E.O. anything but he has found these from where it is not know. I is out to tell the truth probably due to the fact that they do not want to allege anything against the comdt and the officer as they are serving under them, which is quite but nature. So there is nobody who is an eye witness to all these things happened. Further in a CRPF Units whatever transpires between officers are normally not done in front of other ranks and even if it is done other ranks pretend ignorance as they do not want to normally get into this type of misunderstanding between officers as they are serving under them.

f) Ms Tulsi Dungriyal AC had put up hardly six months of service and it will be difficult for her to serve under a Comdt like Shri Pankaj Kumar, Comdt who often remains under indulgence of liquor. Lady officers may not be posted to units deployed in any LWE areas.

g) My personal experience also reveals that Shri Pankaj Kumar Comdt at times remain under the influence of liquor and he shouts at his officers even in front of other ranks as mentioned in my Ltr. No.D.III-1/2009 OPS dated 26/06/2009.

9. Hence, it is recommended that MS Tulsi Dungriyal AC from 66 Bn CRPF may be transferred to any other unit forth with. Further Shri Pankaj Kumar Comdt 66 may please be advised to avoid drinking while on duty particularly in Ops area and not to set a bad example to offices and men, as it affects general discipline, moral of officers and men. Lastly I would like to mention here that when Shri Pankaj Kumar Comdt 66 Bn is not under the influence of liquor, then he is operationally quite daring compared to other comdts present in Midnapore area and can produce ops results."

This report was also not exhibited in the disciplinary proceeding, however, in my considered opinion it rather tells against the conduct of the petitioner and in no way help the petitioner to overcome the charges made against him.

36. The Apex Court in catena of decisions observed that the Courts/Tribunals would deal with the cases relating to woman in a realistic manner and not allow the offender to escape on account of procedural technicalities or insignificant lacunas in the evidence and materials as otherwise the offender would receive encouragement and the victims would be totally discouraged by the offender going unpunished. The Apex Court further observed that the Courts and Tribunals are expected to be sensitive in the cases involving offences against women.

37. In the case of Medha Kotwal Lele & Ors. v. Union of India & Ors., reported in (2013) 1 SCC 297, in Para 43 of the judgment, a three Judges Bench of the Apex Court observed thus:-

"43. As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence ? domestic violence, sexual assault, sexual harassment at the workplace, etc; ? and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population ? the women."

In view of the discussions made above, in my considered opinion, the conduct/behaviour of the petitioner meted to the respondent No.4 amounts to sexual harassment in workplace.

38. The next argument advanced by learned counsel, Mr. Deb is that the Disagreement Note dated 21.11.2012 (Annexure- P/6 to the writ petition) is vague since there is no discussion referring to the evidence on record as to on the basis of what evidence/material the Disagreement Note was recorded by the Disciplinary Authority.

Learned counsel, Mr. Lodh and Mr. Pal submitted that the Complaint Committee in its conclusion clearly observed that respondent No.4 was harassed and she felt insecure by the uncalled for behaviour of the petitioner but it could not be termed as sexual harassment and that observation of the Complaint Committee that it was not sexual harassment was a misconception of the Complaint Committee about the definition of sexual harassment and so the discussion of evidence was not called for in the Disagreement Note. On the basis of the finding of the Complaint Committee the Disciplinary Authority arrived at a conclusion tentatively that the conduct/behaviour of the petitioner amounts to commit sexual harassment to respondent No.4.

39. Before the Complaint Committee respondent No.4 appeared and she proved her complaints stating that the allegations she has already made in her complaints and those were her statements. The petitioner thoroughly cross examined her. The Complaint Committee made specific observation that most of the allegations were proved and some of the allegations were partly proved. The Complaint Committee appears to be confused about the definition of sexual harassment and therefore observed that those conduct/behaviour could not be termed as sexual harassment with further opinion that it creates doubt about his actual intention. The intention has to be inferred from the particular facts and circumstances. I have already elaborately discussed above that the conduct/

behaviour meted by the petitioner towards respondent No.4 amounts to sexual harassment in the given facts and circumstances of the case. So there was nothing for the Disciplinary Authority to discuss the evidence while recording Disagreement Note dated 21.11.2012.

40. Learned counsel, Mr. Deb on this point referred various case laws on this point-

? Ram Kishan v. Union of India & Ors., (1995) 6 SCC 157;

? Punjab National Bank & Ors. v. Kunj Behari Misra, (1998) 7 SCC 84;

? SBI & Ors. v. Arvind K. Shukla, (2004) 13 SCC 797;

? Lav Nigam v. Chairman & MD. ITI Ltd. & Anr., (2006) 9 SCC 440 &

? S.P. Malhotra v. Punjab National Bank & Ors., (2013) 7 SCC 251

41. After going through those cases referred by learned counsel, Mr. Deb I am of considered opinion that none of those referred cases relates to sexual harassment in workplace. The facts are identically different. Disagreement Notes in some of those reported cases were not based on the evidence and materials on record and in some cases Disagreement Notes were not forwarded to the delinquent. In the present case the Inquiring Committee submitted report observing that the allegations made by respondent No.4 were proved. While appreciating the report, the Disciplinary Authority observed that those allegations amount to sexual harassment in workplace and thereby disagreed with the ultimate conclusion to that aspect of the finding of the Complaint Committee. The Disagreement Note was sent to the petitioner asking him to submit his representation if any, and accordingly the petitioner submitted his representation addressed to H.E. the President of India (Annexure-P/7 to the writ petition). The representation was taken into consideration and thereafter the ultimate punishment order dated 20.11.2013 was passed.

So, the argument of learned counsel, Mr. Deb that the evidence on record has not been discussed in the Disagreement Note is a misplaced argument having no merit to consider.

42. It is also argued by learned counsel, Mr. Deb that Disagreement Note was signed by DIG (CR &VIG) and he was not the Disciplinary Authority. So the Disagreement Note itself was void.

This argument of learned counsel Mr. Deb also cannot be accepted since the President is the Disciplinary Authority and the decision taken by the Disciplinary Authority is to be communicated by someone subordinate to him and DIG communicated the decision clearly stipulating therein "after examining the report of the Committee, the Disciplinary Authority tentatively disagrees with the conclusion of Committee due to the following reasons".

It is, therefore, evident that the Disagreement Note was recorded by the

Disciplinary Authority and the communication was made by DIG assigning the reasons which have already been reproduced hereinbefore. This argument, therefore, also deserves no consideration.

43. The next argument advanced by learned counsel, Mr. Deb is that Article 311(2) of the Constitution has been violated since no formal charge was framed against the petitioner and thereby prevented him from taking appropriate defence in respect of the particular allegation. The report submitted by the Complaint Committee without any Article of charge framed is not tenable. He has also referred Rule 14(4) of CCS CCA Rules and submitted that the Disciplinary Authority did not formulate any charge and also did not formulate any memorandum of imputations as well as the list of witnesses and list of documents which is mandatory and since that was not done, the entire inquiry proceeding has been vitiated.

44. Mr. Lodh, learned counsel referring to proviso to Sub rule (2) of Rule 14 submitted that the Complaint Committee is to follow Rule 14 mutatis mutandis. The Supreme Court in Vishaka's case clearly observed that the Complaint Committee is to be formulated by the department and proviso to sub rule (2) of Rule 14 prescribes that separate procedure may be followed by the Complaint Committee for holding the inquiry. Proviso to sub rule (2) of Rule 14 reads as follows:-

"Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purposes of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

45. A careful reading of the above provision makes it abundantly clear that in a case of sexual harassment, the Complaint Committee was to follow the procedure of the CCS CCA Rules as far as practicable if separate procedure has not been prescribed for the Complaint Committee. According to the respondents the Director General of CRPF issued a standing order No.4/2004 dated 16.08.2004 (Annexure-A series to the additional counter affidavit) dated 16.08.2016 and that standing order prescribes the procedure to be followed by the Complaint Committee. The standing order No.4/2004 was amended vide amendment order dated 14.07.2005 and it has been prescribed in the said amendment order that in the preliminary hearing Chairperson should serve gist of the complaint to the alleged officer in the form of Article of charge and he should be formally asked whether he pleads guilty or not based on the complaint. Another amendment was brought on 25.05.2006 to the said standing order No.4/2004 wherein it was prescribed that in the preliminary hearing the

Chairperson may serve copy of the complaint instead of gist of complaint to the alleged officer in lieu of Article of charge and he should be formally asked whether he pleads guilty or not based on the complaint. As per that provision the copy of the complaints were served to the petitioner by the Complaint Committee on the date of preliminary hearing. The records of the disciplinary proceeding which is placed before this Court shows that the complaints filed by respondent No.4 were supplied to the petitioner asking him to submit his written statement by a letter dated 03.03.2010 and accordingly, the petitioner submitted his detailed reply on 25.03.2010. It is, therefore, evident that the copies of the complaint were supplied to the petitioner and there is no allegation that the copies of the complaints were not supplied to him. On 26.03.2010 the petitioner was questioned by the Complaint Committee on the charge and copy of his written statement was supplied to the respondent No.4. It is, therefore, evident that no separate and identical charge was framed but the copies of the complaints made by the respondent No.4 were supplied to the petitioner.

46. Mr. Deb, learned counsel submitted that standing order No.4/2004 and subsequent amendments cannot be a substitute of the rules made under Article 309. So, such a standing order cannot be taken into consideration.

47. Learned counsel, Mr. Lodh submitted that the standing order is meant for the CRPF organization and it was not meant for petitioner alone. It was followed in each and every case of sexual harassment. Proviso to sub rule (2) of Rule 14 has prescribed that such separate procedure may be prescribed by any department in respect of inquiry on the allegation of sexual harassment.

48. I am in full agreement with the submission of learned counsel, Mr. Lodh and I cannot agree with the submission of learned counsel, Mr. Deb on this point. Standing order No.4/2004 was made for the CRPF as a whole and the petitioner did not challenge that standing order though it has been brought on record by filing affidavit. While there was a standing order, there is no bar for the issuing authority in making amendment to that order. The technical point raised by learned counsel, Mr. Deb is of no consequence that the amendments were not made according to the formal procedure. The standing order clearly prescribes that in preliminary hearing the Chairperson shall supply a copy of the complaint in lieu of separate Article of charge. So while CCS CCA Rules itself prescribes that for the purpose of inquiring into the cases of sexual harassment the department/ Disciplinary Authority may prescribe their separate procedure and since CRPF has prescribed the procedure separately by a standing order, there was no illegality committed by the Disciplinary Authority in not formulating a separate and identical charges on the basis of the complaints. While the entire complaint was supplied which contains the specific allegations in respect of sexual harassment, the legal requirement was fulfilled.

49. Learned counsel, Mr. Deb referred the decision of the Apex Court in the case of Union of India & Ors v. B.V. Gopinath, reported in (2014) 1 SCC 351 and referring to Para 41 of the judgment submitted that the entire proceeding has

been vitiated because of non compliance of Rule 14(4) of CCS CCA Rules. Para 41 of the judgment reads as follows:-

"41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the Disciplinary Authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the Disciplinary Authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the Disciplinary Authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the Disciplinary Authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister."

50. No doubt, as contained in Article 311(2) of the Constitution specific charges to be framed in respect of the allegation against a person of civil service. Rule 14(4) prescribes that Article of charges, memorandum of imputations are to be prepared by the Disciplinary Authority and to be supplied to the charged officer with list of witnesses and the list of documents. But in a case of sexual harassment of woman in workplace the law has been clearly spelt out by the Apex Court and pursuant to the proviso to sub Rule (2) of Rule 14 while the department has framed their own standing order to enquire into the cases of sexual harassment, I am of considered opinion that there is no illegality for not formulating separate and identical charges specially in the case where the copies of the complaints were supplied to the petitioner according to the standing order. This argument, therefore, merits no consideration.

51. Learned counsel, Mr. Deb has also submitted that the word "as far as practicable" used in proviso to sub-rule (2) of Rule 14 does not mean that the Complaint Committee shall ignore the provisions of Rule 14. According to Mr. Deb, Rule 14 has been made under Article 309 of the Constitution in consistency with the provisions of Article 311 and so while enquiring into the allegation, Rule 14 ought to be followed very strictly.

He referred to Para 26 of the Apex Court decision in the case of N.K. Chauhan & Ors. v. State of Gujarat & Ors., reported in (1977) 1 SCC 308.

52. Learned counsel, Mr. Lodh also referred the same decision and submitted that the Complaint Committee was supposed to follow the separate procedure substantially and as far as practicable should follow the procedure prescribed in Rule 14 of CCS CCA Rules. The expression "as far as practicable" means practicable, feasible, possible, performable. It means not interfering with the ratio prescribed under any Rule which fulfils the interest of administration, but flexible provision clothing government with powers to meet special situations where the normal process of the government resolution cannot flow smooth.

53. Sexual harassment in workplace is a very serious problem not only in our country but globally. So, while dealing with that special situation, the special provision has been prescribed in the Conduct Rules as well as the Rules of procedure of enquiry to effectively deal with the menace of sexual harassment of woman in workplace. The provision has got special significance and therefore, has to be attached with due importance. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came after repeated judgment of the Apex Court which shows that after Vishaka's case only in 2013 the enactment has been made and in the meantime there were many other decisions of the Apex Court on this issue. So, the special procedure has been made by different department which in my considered opinion is not violative of Article 311 of the Constitution.

The Complaint Committee, as it appears conducted the inquiry following the principles of natural justice affording opportunity to the petitioner. There is nothing to show that the Complaint Committee followed a procedure which is not recognised either by CCS CCA Rules or by the standing order. So, I find nothing to draw an adverse inference.

54. The next argument advanced by learned counsel, Mr. Deb is that there is no approval of the Home Minister in the Disagreement Note in respect of punishment of the petitioner. He has referred to Govt. of India M.H.A., O.M. No.F.39/1/69-Ests. (A) dated the 16th April, 1969 and No.11012/7/79-Estt.(A), dated the 7th September, 1979 reflected in Note No.28 of Rule 14 of Swami's CCS CCA Rules which prescribes as follows:-

"(28) Procedure for initiation of proceedings against a Group 'A' Officer.-Having regard to the Transaction of Business Rules, it is necessary, that in cases where the Disciplinary Authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister.

2. It would be sufficient if the Minister's orders are obtained for taking action ancillary to the issue of the charge-sheet at the stage when the papers are put up to him for initiation of disciplinary proceedings. However, formal orders of the Minister should be obtained at the stage of passing final orders in the name of the President imposing penalty.

Note.-By virtue of Rule 3 of the Transaction of Business Rules, it is competent to the Minister to delegate his functions to the Secretary or any other officer by

general or special orders and on such delegation it would not be necessary to take the Minister's order in such case.

3. It is also pointed out that according to entry 39 (i) of the Third Schedule to the Government of India (Transaction of Business) Rules, 1961, cases relating to dismissal, removal, compulsory retirement or reduction in rank of an officer of the All India Service or the Central Service Group 'A' holding a post, appointment to which requires the approval of the Appointments Committee of the Cabinet, are required to be submitted to the Prime Minister and the President.

4. All Ministers and Departments are requested to keep in view the aforesaid provisions of the Government of India (Transaction of Business) Rules, 1961, while dealing with cases of Group 'A' Officers holding posts within the purview of the Appointments Committee of the Cabinet, in addition to clarification is Paras. 1 and 2 above."

He has also referred to the decision of the Apex Court in the case of B.V. Gopinath (supra) wherein the Apex court has observed that the file should be routed through the Finance Minister since in that particular case the Finance Minister was the In-charge Minister of the particular department.

Mr. Lodh, learned counsel of the respondents placing the original record submitted that the file was routed by the Home Minister being the Minister of the Department of Forces and on perusal of the original file I find that the Disagreement Note as well as the punishment order was passed after processing the file through Home Minister. So, there is no merit in the submission advanced by learned counsel, Mr. Deb that the proceeding was not initiated following the proper procedure and the punishment order was not passed by the appropriate Disciplinary Authority. The punishment order dated 20.11.2013 itself shows that Vivek Vaid, DIG(CR & VIG) signed the order, "by order and in the name of the President". Record also shows that after the Disagreement Note was supplied to the petitioner he also submitted the representation to H.E. the President of India and so he was well having with the knowledge that the Disciplinary Authority was dealing with the subject matter of the inquiry and this argument, therefore, cannot stand.

55. The respondent No.4 made consecutive three written complaints alleging harassment/sexual harassment in the workplace by the petitioner. The first complaint was enquired by DIG, CRPF and report submitted by him has been annexed as Annexure-P/9 and his finding has already been reproduced hereinbefore which also reflects the conduct and behaviour of the petitioner. The second complaint was the elaboration of the allegation made in the first complaint. Since no action was taken by the authority the respondent No.4 made third complaint to the National Commission for Women which was forwarded to the authority. All those complaints were thereafter forwarded to the Complaint Committee of the department. There is no allegation about constitution of the Complaint Committee. In the course of disciplinary proceeding some allegations

were raised against the Chairperson but that was turned down by the authority. The copies of the complaints were supplied to the petitioner and he submitted his written statement. He also participated in the hearing of the proceeding, cross examined the complainant and some other P.Ws. He also submitted his list of witnesses but ultimately did not participate in the proceeding and thereafter the proceeding was conducted ex parte against the petitioner.

56. The Complaint Committee in its report observed thus:-

"Defence hearing was fixed on 30/05/11 and on the same day the list of defence witnesses was handed over to the complainant. But defence hearing could not be started due to one or other reasons in spite of all cooperation given to both sides by SLCC board. So the enquiry was held ex-parte from 09/03/12 onwards due to the following reasons:-

i) Ever since the initial D/Asst. Shri Mithilesh Kumar, Comdt. has withdrawn himself as D/Asst. from the proceeding since 05/08/11, ample of opportunity was given to the Delinquent to arrange of suitable D/Asst. in his place. But he failed to do so. However at last Delinquent Vide his sig. Dated 17/8/11 intimated regarding nominating Sri S.C.Jha as his D/Asst. But again vide his sig. Dated 14/9/11 intimated that Sri S.D.Jha is unwilling to function on his D/Asst. This way he mislead the SLCC Board and stayed the enquiry proceedings due to his inability to arrange a suitable D/Asst for his case.

ii) Since Sep-2011 enquiry proceeding is being adjourned due to some or other reasons projected by him.

iii) Earlier on 30/09/11 and 30/01/12 enquiry was held up due to his absence. Therefore, vide this office signal dated 23/02/12 last opportunity was given to delinquent to appear before the board. Neither the delinquent nor his defense witness reported for last held proceeding on 09/03/12.

iv) Delinquent had submitted his representation before the SLCC board to stay the proceeding vide signal dated 07/09/11 which was rejected by DIG(CR & VIG) Dte vide his letter dated 29/11/11. But the delinquent time and again submitted the same representation to stay the proceedings which was already been clarified by the higher office.

So ample of opportunities were given to the delinquent to appear before the SLCC board so as to defend his case but he failed to do so instead he used delayed and dilatory tactics in the proceedings which indicates his non co-operative attitude to complete the proceedings at the earliest. Due to all these reasons mentioned above ex-parte proceedings have been conducted."

57. It is, therefore, evident that the petitioner delayed the proceeding for about a year because of his non cooperation and he voluntarily withdrawn himself from participation in the proceeding and did not adduce any evidence. It therefore does not fit in the mouth of the petitioner that he was not given reasonable opportunity of hearing. The proceeding was initiated in the year 2010 and the

report was submitted in the year 2012. It was absolutely long time taken in completing the inquiry and it appears that it was because of the conduct of the petitioner.

58. The power of judicial review of this Court under Article 226 of the Constitution is very limited. It is possible only where the principles of natural justice has been violated i.e. opportunities, which ought to be afforded to the delinquent as per rules/procedure were not given or that the decision of the domestic tribunal was based on no evidence. If there is no glaring violation of the principles of natural justice and if there is some evidence to support the decision taken by the Disciplinary Authority, the Court should not sit as a matter of appeal to re-appreciate the evidence and to substitute the finding of the Disciplinary Authority with its own finding.

The Supreme Court in the case of Union of India & Ors. v. P.Gunasekaran, reported in (2015) 2 SCC 610 in Para 12 to 19 has observed thus:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re appreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the Disciplinary Authority had erroneously failed to admit the admissible and material evidence;
- h. the Disciplinary Authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in *State of Andhra Pradesh and others v. S. Sree Rama Rao*, AIR 1963 SC 1723, many of the above principles have been discussed and it has been concluded thus:(AIR pp.1726-27, para 7)

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In *State of Andhra Pradesh and others v. Chitra Venkata Rao* (1975) 2 SCC 557), the principles have been further discussed at paragraph-21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P.*

v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board v. Niranjan Singh* (1969) 1 SCC 502, said that the High Court does not interfere with the conclusion of the Disciplinary Authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh* case this Court held that the High Court exceeded its powers in interfering with the findings of the Disciplinary Authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the Disciplinary Authority should prevail and the High Court should not have

interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed-up by the living legend and centenarian Justice v. R. Krishna Iyer, J. in *State of Haryana v. Rattan Singh* (1977) 2 SCC 491. To quote the unparalleled and inimitable expressions: (SCC p.493, para 4).

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is

objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

17. In all the subsequent decisions of this Court upto the latest in *Chennai Water Supply and Sewerage Board v. T. T. Murali Babu* (2014) 4 SCC 108 these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the Disciplinary Authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.1992 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.1992 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.1992 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ..."

19. The Disciplinary Authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the Disciplinary Authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India."

59. In the case of *Apparel Export Promotion Council* (supra), also the Supreme Court in Para 16 of the judgment observed thus:-

"16. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the

departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans*, (1982) 3 All ER 141, observed :

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised or enjoyed by law to decide for itself, a conclusion which is correct in the eyes of the court."

60. Since I find no procedural infirmity in the proceeding and since I am of the opinion that the finding is based on the evidence on record and the petitioner did not adduce any evidence to rebut it, I find no justification at all to interfere with the Disagreement Note and/or the punishment thereto.

61. The next argument advanced by learned counsel, Mr. Deb is that while inflicting he punishment the recommendation of UPSC was considered whereas copy of the same was not supplied to the petitioner. On this point, he relied on the decision of the Apex Court in the case of *S.N.Narula v. Union of India & Ors.*, reported in (2011) 4 SCC 591.

62. On the other hand, learned counsel, Mr. Lodh for the official respondents has submitted that there was no regal requirement of supplying copy of the recommendation of UPSC. Referring to the Memo of Govt. of India in the department of Personnel and Training OM No.1102/10/2007-Estt.(A) dated 7th January 2008 learned counsel, Mr. Lodh has submitted that the consultation with UPSC was not required to be supplied to the delinquent.

63. In the case of *S.N. Narula* (supra), the Apex court made it categorically clear that where the opinion of the UPSC was obtained and the Disciplinary Authority acted upon that opinion of the Commission, the report of the Commission must be communicated to the person before the final order and non communication of the same will vitiate the order. This judgment of the Apex Court holds the field.

64. Learned counsel, Mr. Deb though argued this point and referred the decision of the Apex Court but there was no grounds taken in the pleadings of the

petitioner that he was not supplied with a copy of the report of Union Public Service Commission before inflicting the punishment.

65. After going through the writ petition meticulously, I find the petitioner in Para 3.2 at page 24 of the writ petition petitioner made the following statement:-

"It would be further apt to scan herein the Report, submitted by the UPSC. At this juncture, it is submitted that the salient mandate, contained under Article 320(3)(c) of the Constitution of India may be recalled. A bare perusal of the same would unmistakably reveal that the same is couched in a mandatory language, and therefore, the role of UPSC is not discretionary. It is submitted that the UPSC is saddled with the solemn obligation, to examine as to whether procedure has been fairly conducted, in accordance with the statutory prescriptions, after observing the principles of natural justice."

66. Nothing was stated in the writ petition that copy of the recommendation of the UPSC was not supplied to the petitioner. The petitioner thereafter also submitted two rejoinder affidavits one on 29.01.2016 and the last one on 14.09.2016. In those rejoinder also the petitioner did not raise any ground that copy of the recommendation of UPSC which was considered by the Disciplinary Authority was not supplied to him to make his representation. While no such plea was taken by the petitioner in his writ petition, such argument cannot be taken into consideration beyond the pleadings.

67. The punishment order, as I find, was passed taking into consideration the material evidence on record and also considering the Commission's recommendation and since there was no ground taken in the writ petition regarding the Commission's report I find no scope at all to interfere with the punishment order taking advantage of the decision of the Apex Court in the case of S.N.Narula (supra).

68. The next argument advanced by learned counsel, Mr. Deb is that the punishment is not inconformity with the provisions of rule 11 of CCS CCA Rules and, therefore, the punishment order is liable to be set aside.

69. Rule 11 of CCS CCA Rules prescribes minor penalties and major penalties. In the heading major penalties, sub Rule (vi) prescribes thus:-

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period?

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time-scale of pay, grade, post or service."

70. The punishment inflicted reads thus:-

"10.NOW THEREFORE, in the light of above and having regard to all aspects of the case, the president considers that the ends of justice would be met in this, if the penalty of reduction to the next lower grade/post ie. to the rank of Second-in-Command (2I/C) with the pay fixed at the minimum of the grade ie. Rs.15600/- in the pay band of Rs.15600-39400/- with grade pay Rs.7600/- on permanent basis is imposed on Shri Pankaj Kumar, Commandant (IRLA- 3529) and orders accordingly. A copy of the advice of UPSC letter No.F.3/103/2013-SI dated 19/09/2013 is enclosed.

By order and in the name of the President"

71. The Disciplinary Authority i.e. the President of India considered that the petitioner should be reduced to the next lower grade/post i.e. the rank of Second-in-Command with the pay fixed at the minimum of that grade. So, the punishment was permanent in nature. There is nothing wrong in inflicting such a punishment.

72. Note No.9 below Rule 11 of CCS CCA Rules consists G.I., M.F., O.M. No.F.2 (18)-E.III/61, dated the 7th May,1961 which reads as follows:-

"(9) Reduction to a lower service, grade or post or to a lower time-scale.?Every order passed by a Competent Authority under sub-rule(2) of Fundamental Rule 29 imposing on a Government servant the penalty or reduction to a lower service, grade or post or to a lower time-scale should indicate?

(i) the date from which it will take effect and in cases where the reduction is proposed to be imposed for a specified period, the period (in terms of years and months) for which the penalty shall be operative. It should be noted that the reduction may be for an unspecified or an indefinite period and in cases where no period has been specified in the order of penalty, the conclusion is that the penalty is for an unspecified period.

(ii) the extent (in terms of years and months), if any, to which the period referred to at (i) above shall operate to postpone future increments on restoration after the specified period. The period specified under this sub clause shall in no case exceed the period specified under sub-clause (i) above."

73. The petitioner was reduced to the next lower grade and with a direction to fix his pay at the minimum of that grade. So, it was specific that it was permanent reduction to the lower grade at the lowest pay scale of the grade and there is nothing wrong in such fixing of the punishment.

74. The offence allegedly committed by the petitioner was grave and hence, the punishment cannot be said to be disproportionate to the gravity of the offence.

75. The writ petition is, therefore, found to be devoid of any merit and hence stands dismissed.

76. The five files and a note sheet submitted by learned counsel, Mr. Lodh for the respondent Nos. 1, 2 and 3 as reflected in order dated 19.01.2017 be returned to him.

77. Parties to bear their own costs.