

Court No. - 39

Case :- WRIT - A No. - 10665 of 2021

Petitioner :- Umesh Kumar Sirohi

Respondent :- State Of U P And Another

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- Ashish Mishra, C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Aditendra Singh, learned counsel for the petitioner; Sri Ashish Mishra, learned counsel for the High Court and Sri Nimai Das, learned Additional Chief Standing Counsel for the State-respondents.
2. The present writ petition has been filed to assail the penalty order passed by the State Government dated 16.04.2021, communicated to the petitioner by the Registrar(J)(Confidential), High Court Allahabad vide letter dated 28.05.2021. Thereby, the petitioner - then serving as Additional District & Sessions Judge, Lalitpur has been removed from service, with immediate effect. The petitioner was appointed to the U.P. Civil Service (Judicial) in the year 2001. In 2013, he was promoted and thus appointed to the U.P. Higher Judicial Service. While serving as Additional District & Sessions Judge, Meerut, first Charge Sheet dated 08.08.2016 was issued to the petitioner. Again, on 20.03.2017 a second Charge Sheet was issued to the petitioner.
3. The first Charge Sheet dated 08.08.2016 led to institution of Departmental Inquiry No. 21 of 2015, on the following four charges :

"1. That you with the help of your younger brother Sri Raj Kumar Sirohi, the then Civil Judge (Junior Division)/Judicial Magistrate, Meerut and other family members demanded dowry as a condition for your brother's marriage with Dr. Muskan Sirohi D/o Ummed Singh (W/o Sri Raj Kumar Sirohi). Part of the demand for dowry was also

fulfilled. You and your brother continued to press the demand of dowry even after marriage so much so that Sri Raj Kumar Sirohi deserted his wife for non-fulfillment of dowry demand. The demand and receipt of dowry for marriage of your brother with Dr. Muskan Sirohi is a misconduct within the meaning of Rule 11-A of the U.P. Government Servant Rules, 1956.

Thus, you have committed misconduct within the meaning of Rule 11-A read with Rule 3 of the U.P. Government Servants Conduct Rules, 1956.

2. That on 26.06.2014, during the course of reconciliation meeting between the family members of Dr. Muskan Sirohi with you and your younger brother Sri Raj Kumar Sirohi, you self inflicted an injury on your left hand, as a conspiracy to involve Dr. Muskan Sirohi and her family members in a criminal case. In furtherance thereof your wife Smt. Meghana Sirohi lodged an FIR against Dr. Muskan Sirohi and her family members being Case Crime No. 472 of 2014, U/s 395, 397 IPC at P.S. Medical College, Meerut.

Thus, you have acted in a manner which is unbecoming of a Judicial Officer. Further, you have misused your authority as a Judicial Officer and failed to maintain absolute integrity. Thus, you have committed misconduct within the meaning of Rule 3 of the U.P. Government Servants Conduct Rules, 1956.

3. That you and your younger brother Sri Raj Kumar Sirohi, the then Civil Judge (Junior Division)/Judicial Magistrate, Meerut have tried to influence the Investigating Officer by misusing your official position during the course of investigation of the aforesaid Case Crime No. 472 of 2014.

Thus, you have acted in a manner which is unbecoming of a Judicial Officer. Further, you have misused your authority as a Judicial Officer and failed to maintain absolute integrity. Thus, you have committed misconduct within the meaning of Rule 3 of the U.P. Government Servants Conduct Rules, 1956.

4. That you and your younger brother Sri Raj Kumar Sirohi, the then Civil Judge (Junior Division)/Judicial Magistrate, Meerut have tried to influence the Additional Chief Judicial Magistrate, Court No. 5, Meerut and thus interfered in the judicial proceeding arising out of Case Crime No. 472 of 2014.

Thus, you have committed misconduct within the meaning of Rule 3 of the U.P. Government Servants Conduct Rules, 1956."

4. The second Charge Sheet dated 20.03.2017 led to institution of Departmental Inquiry No. 24 of 2016, on the following three charges. They read as below :

"(1) That while posted as Additional District Judge, Meerut you misused your position and tried to influence Sri XXXXX, Additional Chief Judicial Magistrate-V, Meerut in your personal

case No. 93650 of 2015 (Crime No. 472 of 2014) State Vs. Rama Singh and Others U/s 452, 324 IPC, P.S. Medical, Meerut in which your wife Smt. Meghna Sirohi is complainant. Firstly, in November 2015 you asked Sri XXXXX, ACJM-V to summon the Circle Officer in connection with filing of charge-sheet and thereafter in December 2015 you asked Sri XXXXX to take cognizance under Section 307 IPC in the said case.

*(2) That while posted as Additional District Judge, Meerut you made false allegation against Sri *****, the then District Judge, Meerut that his behaviour towards you was prejudicial, which allegation was found to be false in the Vigilance Enquiry Report dated 26.10.2016.*

(3) That your another allegation against the then District Judge, Meerut that he submitted a false report dated 02.03.2016 to the High Court in respect of your effort to influence the concerned Magistrate, was again found to be false in the Vigilance Enquiry Report dated 26.10.2016."

5. Both inquiries were conducted simultaneously. Inquiry No. 21 of 2015 was conducted at Prayagraj, by Judge 'A' while Inquiry No. 24 of 2016 was conducted at Lucknow, by Judge 'B'. The Inquiry Judge 'A' submitted the report in Inquiry No. 21 of 2015, dated 26.04.2019 whereas Inquiry Judge 'B' submitted their report in Inquiry No. 24 of 2016, dated 03.07.2019. Upon such Inquiry Reports submitted, the matter went (to the Full Court) through the Administrative Committee. Upon submission of the two Inquiry Reports and appraisal by the Administrative Committee, both Inquiry Reports (in Inquiry Nos. 21 of 2015 and 24 of 2016) were made available to the petitioner vide further communications dated 26.04.2019 and 03.07.2019, to obtain his comments.

6. The petitioner submitted his comments/representation to the two Inquiry Reports on 6.8.2019 and 19.8.2019, respectively. Thereafter, the matter was considered by the Full Court on 11.12.2020. Therein, the Full Court resolved to accept the two Inquiry Reports and inflict major penalty of removal from service, with immediate effect. That decision has been approved by the State Government and has been communicated to the petitioner. Hence this challenge.

7. Submissions advanced by learned Senior Counsel for the petitioner are:

(i) Petitioner being a Government Servant, he is fully protected under the umbrella of Article 311 of the Constitution of India. Relying on Rule 9 (4) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the 'Rules') read with Rule 34 of the U.P. Higher Judicial Service Rules, 1975, it has been submitted, even after substitution of Article 311(2) of the Constitution of India, the petitioner is entitled to a reasonable opportunity of being heard and to a reasoned order dealing with his representation/comments - offered to the two Inquiry Reports, referred to above.

8. Insofar as the Full Court made no mention of such comments/representation and further insofar as it has offered no reason whatsoever to deal with the representations made against the two Inquiry Reports, the penalty order is wholly contrary to the law. Reliance has been placed on **Union of India and others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588** as followed in **Punjab National Bank and others Vs. K.K. Verma, (2010) 13 SCC 494**. In **Hari Om Gupta Vs. State of Bihar, 2015 SCC OnLine Patna 4511**. Thus, it has been submitted, notwithstanding the substitution of Article 311(2) of the Constitution of India, the obligation remained on the Appointing Authority/Disciplinary Authority, to act with reason. That has been violated.

9. Specific to the Rules, it has been submitted, Rule 9(4) of the Rules clearly mandates that the Disciplinary Authority must not only give opportunity to the delinquent - to represent against the Inquiry Report, but it must also record its reasons to award the penalty. In that regard, it has been urged, the decision of a coordinate bench of

this Court, in **Umesh Chandra Vs. State of U.P. and others, 2005 SCC OnLine All 2370**, insofar as it does not notice or deal with the mandatory statutory requirement of Rule 9(4) of the Rules, is not good law. At the same time, responding to the counter submission advanced by learned counsel for the High Court on the strength of the another decision of the coordinate bench of this Court in **Madhav Prasad Vs. Deputy Managing Director, (2004) (4) LLN 857**, it has been urged that that decision supports the submission of the petitioner - that the Appointing Authority/Disciplinary Authority or even the Appellate Authority, must record its reasons to reject the objections raised by the delinquent, to the Inquiry Reports, and it must give reasons to support its order.

10. Second, it has been submitted, at the Full Court meeting dated 11.12.2020, the Inquiry Judge 'A', and the District Judge (at whose instance the complaint was lodged against the petitioner and who in the meantime had been elevated to the bench of this Court), participated. By their mere participation, the decision of the Full Court became tainted and untenable in law. Here, as has already been recorded in the earlier order dated 15.4.2023, the relevant record was produced on 16.4.2024. The same was allowed to be examined by the learned counsel for the petitioner. We had perused the same and retained its photocopy on the record. It so transpires that Inquiry Judge 'A' had not attended the Full Court meeting dated 11.12.2020. As to the participation of the learned District Judge who had by then been elevated to the bench of this Court, his specific abstention is recorded in the original record. Though it is handwritten, in absence of any further challenge or doubt raised to the authenticity or genuineness of the original record produced during these proceedings, that issue must rest here.

11. Third, it has been submitted, Charge no. 4 of Inquiry No. 21 of 2015 and Charge No. 1 of Inquiry No. 24 of 2016, overlapped. Thus, the the same alleged misconduct was twice inquired into. That itself is cited as a ground to vitiate the inquiries.

12. Fourth, it has been submitted, Domestic Inquiry No. 21 of 2015 was wholly vitiated as (i) the Inquiry Report is conjectural; (ii) it has been prepared in complete violation of principles of natural justice; (iii) it has been prepared upon denial of any opportunity to the petitioner to cross-examine the Employers' Witnesses; (iv) the Inquiry Judge 'A' had, for no reason, denied to recall of Employers' Witnesses for cross-examination; (v) the forced absence of the petitioner in the Inquiry proceedings, occasioned by his prolonged illness was completely ignored, for no good reason given and (vi) the material relied by the petitioner was not considered in the Inquiry Report.

13. Similarly, the Inquiry Report in the Domestic Inquiry 24 of 2016 was vitiated for reason of non-consideration of essential facts. Here, it has been submitted, the first date in the proceeding in Case No. 93650 of 2015 arising from Case Crime No. 472 of 2014, was 16.1.2016. This fact was proven by the petitioner through oral evidence of D.W.4, the then System Officer, District Judgeship, Meerut. That witness was not cross-examined by the Presenting Officer. Yet, the Inquiry Judge 'B' inferred (contrary to the record), that the above described case was heard by Sri XXXXX, the then ACJM on 18.12.2015, when the alleged occurrence took place.

14. Also, the documents relied upon in the Charge Sheet leading to institution of Departmental Inquiry 24 of 2016 were never proven. Neither the letter of Sri XXXXX learned ACJM, dated 18.12.2015, nor the Report/complaint of the then learned District Judge dated

2.3.2016, nor the Vigilance Report dated 26.10.2016, were proven in those proceedings. Yet, those documents have been referred to and relied upon by the Inquiry Judge 'B'. In that regard, it has been further submitted that the Charge Sheet that led to that inquiry had referred to only two documents namely, the report submitted by the District Judge dated 2.3.2016 and the letter written by the learned ACJM, Sri XXXXX to the learned District Judge, dated 12.1.2016.

15. Next, it has been submitted, the specific application moved by the petitioner before the Inquiry Judge 'B' - to be permitted to confront the employer witness D.W.4 with certain documents was denied by adopting wholly erroneous procedure. The cross-examination of the said witness was closed on 3.7.2018 whereas the documents were summoned on 16.4.2019. Further, it has been submitted, no evidence was led to prove charge nos. 2 and 3.

16. Responding to the above, Sri Ashish Mishra learned counsel for the High Court would submit, the penalty order has been passed wholly in accordance with law. After substitution of Article 311(2) of the Constitution of India, the only mandatory requirement in law remains - to conduct the departmental inquiry with respect to charges that may lead to award of major penalty. That compliance has been made. Further, in view of the existing provision of Article 311 (2) of the Constitution of India, read with Rule 9 of the Rules, the High Court was obligated to serve on the petitioner the two Inquiry Reports and to call for his comments. That requirement was also fulfilled, on an admitted case basis. Upon due consideration of the same, the Full Court has accepted the two Inquiry Reports and has awarded due penalty.

17. As to the requirement to furnish reasons, the position in law (being claimed by the learned Senior Counsel for the petitioner), has

been hotly contested. Sri Mishra would submit, after the Constitutional Amendment (42nd amendment), the constitutional requirement stood fulfilled upon due Inquiries made and upon opportunity granted to the delinquent to furnish his representations against both Inquiry Reports. Those were considered by the Full Court - the Disciplinary Authority. Since the Full Court accepted the Inquiry Reports and concurred with the findings recorded therein, after appraisal of the objections raised thereto, neither any further consideration was required to be made by the Full Court in its capacity as the Disciplinary Authority nor it was required to record its own/separate reasons, either to accept the Inquiry Reports or to award the penalty of removal from service. In that regard, first, he has referred to and heavily relied on the coordinate bench decision in **Umesh Chandra (supra)**.

18. On **Mohd. Ramzan Khan (supra)**, it has been submitted, the said decision nowhere lays down the law that the Disciplinary Authority must record its independent reasons either to accept the Inquiry Report or to award the punishment. The only requirement in law enforced by **Mohd. Ramzan Khan (supra)**, is the furnishing of Inquiry Report to the delinquent and calling for his comments thereto. As to the requirement of reasons to be given by the Disciplinary Authority, he would submit, the law in that regard has remained consistent that the Disciplinary Authority need not record its separate reason where it proposes to accept the Inquiry Report and the findings of the Inquiry Officer (here Judge). Thus, reliance has been first placed on **Ram Kumar Versus State of Haryana, 1987 Supp SCC 582** and **Indian Institute of Technology, Bombay v. Union of India and others, 1991 Supp 2 SCC 12**. Also, reliance has been placed on a coordinate bench decision of the Court in **Madhav Prasad Vs. Deputy Director (supra)**. Doubt, if any, is stated to have

been removed upon the recent decision of the Supreme Court in **Boloram Bordoloi Vs. Lakhimi Gaolia Bank and others, (2021) 3 SCC 806.**

19. Dealing with Rule 9(4) of the Rules, it has been submitted, the said Rule has no application to the facts of the present case. In any case, it does not postulate an independent requirement on the Disciplinary Authority, to record its reason - to either accept an Inquiry Report or to award punishment. In his submission Rule 9(4) of the Rules would come to life only where Rule 9(2) of the Rules first applies. Thus, only where the Disciplinary Authority disagrees with the findings of the Inquiry Officer (here Judge), it would be first obligated to offer his own/ex-parte consideration and record its own finding and reasons therefor. That reasoning of the Disciplinary Authority would arise, first at the stage of disagreement being expressed to the findings of the Inquiry Officer and second, at the stage of award of penalty under Rule 9(4) of the Rules. In the facts of the present case, the Disciplinary Authority i.e. Full Court did not disagree with either of the two Inquiry Reports submitted by the two Inquiry Judges. On the contrary, the Full Court accepted both the Inquiry Reports. Therefore, the trigger to activate Rule 9(4) of the Rules (that exists by way of of Rule 9(2) of the Rules), was not activated. Consequently, the Full Court was not obligated in law, to give any further reasons. He has relied on coordinate bench decisions of the Court in **Sanjeev Kumar Vs. State of U.P. and others, (2008) SCC OnLine All 1089, Nishith Ranjan Tiwari Vs. State of U.P. and others, (2013) SCC OnLine 11768, State of U.P. and others Vs. Neeraj Verma, 2021 SCC OnLine All 422 and Shailendra Kumar Srivastava Vs. State Public Services Court, Lucknow and others, 2023 SCC OnLine All 1896.**

20. Merely because certain other High Courts, may have opted for another procedure and merely because on a subjective opinion that approach may appear to be better, may never be a ground either to apply the Rules contrary to the legislative intent or to vitiate the penalty order, for reason of that approach not taken.

21. Responding to the submission of duplication of charge, it has been vehemently urged, there is none. While Charge no. 4 in Domestic Inquiry No. 21 of 2015 was of the delinquent (petitioner) having tried to influence the learned ACJM in a judicial proceeding arising out of Case Crime No. 472 of 2014, the charge no. 1 in the Domestic Inquiry 24 of 2016 was of misuse of position to try influence the learned ACJM in Case No. 93650 of 2015, arising out of Case Crime No. 472 of 2015 - to summon the Circle Officer, to submit a Charge Sheet and to take cognizance under Section 307 IPC.

22. The challenge raised to the two Inquiry Reports - being in violation of rules of natural justice and being otherwise vitiated in law, has been rebutted with vehemence, by relying on various order sheet entries of the two Inquiry proceedings; applications received, entertained and dealt with by the two Inquiry Judges; the evidence received in the two inquiries as also the conduct offered by the petitioner in the course of the two inquiries. Reference has also been made to the fact that the other delinquent whose conduct was jointly inquired into in the course of the Domestic Inquiry No. 21 of 2015, was none other than the real younger brother of the petitioner. He too being a judicial officer, his conduct was similarly inquired into. He had cross-examined the Employers' Witnesses, on many dates. As to the *ex parte* nature of Inquiry No. 21 of 2015, relying on the Inquiry record, it has been assertively urged that the petitioner left the Inquiry Judge 'A' with no option but to proceed *ex parte* in terms of Rule

7(10) of the Rules. More than enough opportunity was granted to the petitioner to participate in those proceeding and allow them to conclude, in a time bound manner. However, repeated adjournments were sought and the conduct of non-appearance (without seeking adjournment), was also continued, despite long pendency of the Inquiry proceeding. It has been stated, all documents and evidence led at the Inquiry proceedings were made available to the delinquent petitioner. His rights were not prejudiced.

23. While both Inquiries commenced in the year 2017, they continued over a long period of almost two years. Even if the petitioner may contend and try to justify that he could not appear on certain dates for reasons, however, the continuous unabated conduct of absence offered - over a long period of time in the course of two Inquiry proceedings, may not be overlooked. Both, in the Disciplinary Inquiry No. 21 of 2015 and 24 of 2016, the petitioner habitually absented himself and participated on certain dates of his choice, without making any *bona fide* effort to let those proceedings conclude. Thus, in a nutshell, it has been submitted, the rules of natural justice may not be read as iron cast rules. Insofar as sufficient and reasonable opportunity of hearing was given to the petitioner during the course of both Inquiry proceedings, no breach of that fundamental requirement of law, was committed.

24. As to the proof of the charges and the objections thereto, it has been urged, here strict rule of evidence would not apply. Insofar as balance of evidence rule would allow for conclusions to arise (in the disciplinary proceedings), and be sustained on a preponderance of possibilities, such conclusions may not be interfered with even by appeal authorities, less so by a Writ Court. Thus, reliance has first been placed on the decision of the Supreme Court in **State of Haryana and Another Vs. Rattan Singh, (1977) 2 SCC 491, Union**

Of India and others vs. P. Gunasekara, (2015) 2 SCC 610 and State of Karnataka and Another Vs. Umesh, (2022) 6 SCC 563.

25. Then, specific to the case of disciplinary proceedings against a judicial officer, reliance has been placed on **R.R. Parekh Vs. High Court of Gujarat and Another, (2016) 14 SCC 1, Registrar General High Court of Patna Vs. Pandey Gajendra Prasad and Others, (2012) 6 SCC 357, Desh Bhushan Jain Vs. State of U.P. and Another, 2007 SCC OnLine All 1568 and Satya Pal Narang Vs. State of U.P. and 2 Others, 2015 SCC OnLine All 8365.** Thus, it has been submitted, in the case of judicial officers, the concept of misconduct acquires a different shade. Misconduct of having tried to influence another judicial officer, had to be dealt with most seriously, with an iron hand.

26. Having heard learned counsel for parties and having perused the record, in the first place, we may deal with the ground of challenge raised on the strength of Article 311 of the Constitution of India read with Rule 9(4) of the Rules. Article 311 of the Constitution of India, as it stands, reads as below:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

27. Also, Rule 9 of the Rules reads as below:

"9. Action on Inquiry Report- *(1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.*

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own finding thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

28. In **Mohd. Ramzan Khan (supra)**, the following issue had arisen for consideration by the Supreme Court:

"2. The short point that falls for determination in this bunch of appeals is as to whether with the alteration of the provisions of Article 311(2) under the Forty-second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent has lost his right to be entitled to a copy of the report of enquiry in the disciplinary proceedings."

29. Taking note of the Constitutional Amendment whereby clause 2 of Article 311 was substituted, the Supreme Court observed as below:

"11. The question which has now to be answered is whether the Forty-second Amendment has brought about any change in the position in the matter of supply of a copy of the report and the effect of non-supply thereof on the punishment imposed."

12. We have already noticed the position that the Forty-second Amendment has deleted the second stage of the inquiry which would commence with the service of a notice proposing one of the three punishments mentioned in Article 311(1) and the delinquent officer would represent against the same and on the basis of such representation and/or oral hearing granted the disciplinary authority decides about the punishment. Deletion of this part from the concept of reasonable opportunity in Article 311(2), in our opinion, does not bring about any material change in regard to requiring the copy of the report to be provided to the delinquent."

13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case [(1969) 2 SCC 128 : (1970) 1 SCR 251] , the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and

proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out: [Administrative Law, 6th edn., p. 10]

"The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing.... They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

...

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

...

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount

to violation of rules of natural justice and make the final order liable to challenge hereafter."

30. Thus, the Supreme Court enunciated the law in **Mohd. Ramzan Khan (supra)** - despite substitution of Article 311(2), wherever the Inquiry Officer may have submitted a report to the Disciplinary Authority recording finding/s of guilt of the delinquent, the latter would remain entitled to a copy of that Inquiry Report and would be further entitled to represent thereagainst. The consequence of non-compliance of that essential requirement would amount to violation of rules of natural justice and would vitiate the final order of the Disciplinary Authority. Yet, that law was enforced prospectively.

31. Applying the law laid down by the Supreme Court in **Mohd. Ramzan Khan (supra)** may only require us to examine if the two Inquiry Reports submitted by the two Inquiry Judges 'A' and 'B' were supplied to the petitioner and whether he was given a right to represent thereagainst. The answer to the same is in the affirmative and undisputed. As noted above, the two Inquiry Reports dated 26.04.2019 and 03.7.2019 were served on the petitioner. He made representations thereagainst on 06.08.2019 and 19.08.2019. Therefore, it cannot be gainsaid that there was violation of **Mohd. Ramzan Khan (supra)**.

32. That said, it is also not the Constitutional law that legislative law could not provide for a higher test to be met by the Disciplinary Authority. Thus, despite substitution of Article 311(2) of the Constitution of India, it remained open to the State legislature to enact a law to provide that the Disciplinary Authority may generally/ in all cases, record its reasons - to reject the objections that may be received from the delinquent employee (against an adverse Inquiry Report), and/or to further record reasons to inflict any particular punishment/penalty. That requirement, if provided, would not fall

foul of the bench mark Constitutional law requirement, enforced by the amended Article 311 of the Constitution of India. Insofar as the Constitution of India does not prohibit recording of such reasons, it may remain open to the legislative bodies to enact appropriate law to prescribe that higher test - of reasons to be recorded by the Disciplinary Authority. However, such a requirement may be pressed/claimed specifically on the strength of legislative law, and not otherwise.

33. Here, we consider the true import of Rule 9 of the Rules: (i) In the first place, Rule 9 of the Rules comes into play upon submission of the Inquiry Report by the Inquiry Officer. Under Rule 9(1) of the Rules, after perusing the Inquiry Report, the Disciplinary Authority may remit the case for re-Inquiry, either to the same Inquiry Officer or another. However, if such a course is to be adopted by the Disciplinary Authority, he would be obligated to first record his reasons to do so, in writing. That requirement flows, not on any pre-existing principle of law, but only in view of that mandatory requirement incorporated in the Rule 9(1) of the Rules.

(ii) Second, under Rule 9(2) of the Rules, if on perusal of the Inquiry Report, the Disciplinary Authority disagrees with the findings of the Inquiry Officer on all or any charge and proposes to impose penalty, without directing a re-Inquiry under Rule 9(1), he may record his own findings with respect thereto. If he so acts, he would be further obligated to record his reasons in support of such findings. Again, that requirement flows only from the plain reading of Rule 9(2) of the Rules, only.

(iii) Thus, read together, Rule 9(1) and (2) provide for two alternative eventualities/courses, either of which may be adopted by the Disciplinary Authority, if he disagrees with the Inquiry Report

exonerating the delinquent of all or any charge. In either case, he would be obligated to record his reasons to do so i.e. whether he proposes a re-Inquiry or to impose punishment, on existing material.

(iv) Third, upon submission of an Inquiry Report - exonerating a delinquent of all charges, the Disciplinary Authority, if he agrees with the findings of the Inquiry Officer, he may (in terms of Rule 9(3) of the Rules), accept that Inquiry Report and conclude the disciplinary proceedings, without issuing any notice to the delinquent.

34. In either of the three eventualities, the legislature has not contemplated any opportunity of hearing to the delinquent, at that stage. Thus, we conclude, the proceedings under Rule 9(1), (2) and (3) remain wholly *ex parte*, to the delinquent.

35. What follows is Rule 9(4) of the Rules. The said sub-Rule is clearly in three parts:

(a) The first part contains the pre-condition for its exercise. Thus, Rule 9(4) of the Rules may come into play when, in the light of the *ex parte* 'findings' recorded by the Disciplinary Authority under Rule 9(2) of the Rules, it is of the further view that any of the penalties specified under Rule 3 of the Rules, may be imposed i.e. without first requiring a re-inquiry. Explicitly, that is referable only to Rule 9(2) of the Rules, and not otherwise.

(b) The second part of Rule 9(4) prescribes the procedural compliance to be made by the Disciplinary Authority - to proceed under that sub-Rule. It provides, the Disciplinary Authority may at that stage, grant to the delinquent employee (i) copy of the Inquiry Report; (ii) his own findings (*ex parte*), recorded under sub-Rule (2) and (iii) reasonable opportunity to represent against his *ex parte* 'findings'.

(c) The third part of the Rule 9(4) confers the decision making power on the Disciplinary Authority. Here, the legislature mandates the Disciplinary Authority to record his fresh/second set of reasons i.e., his reasons to reject the objections that he may have received from the delinquent employee (to his own *ex parte* 'findings' recorded under Rule 9(2) of the Rules). Only then, the Disciplinary Authority is enabled to pass "a reasoned order" imposing any of the penalties specified in Rule 3 of the Rules.

36. Rule 9(2) of the Rules lays the mandatory pre-condition to be satisfied, to invoke Rule 9(4) of the Rules. Only where the Disciplinary Authority first disagrees with the Inquiry Officer and further, where (upon such disagreement), the Disciplinary Authority proposes - to himself impose any of the penalties on the delinquent (on the strength of the material contained in the Inquiry Report) after rejecting the conclusions drawn by the Inquiry Officer and without seeking a re-Inquiry under Rule 9(1) of the Rules – first, the provisions of Rule 9(2) of the Rules would have to be strictly complied i.e. *ex parte* 'findings' and 'reasons' would have to be first recorded by the Disciplinary Authority. Those would be in the nature of a tentative/provisional opinion formed by the Disciplinary Authority on the strength of the material contained in the Inquiry Report, itself. Once that opinion would have been formed by the Disciplinary Authority, Rule 9(4) of the Rules would get activated, and not before. It would obligate the Disciplinary Authority to issue further notice to the delinquent and to supply him a copy of the Inquiry Report together with 'its own' [Rule 9(2)] 'its findings'/'his findings' [Rule 9(4)] and 'reasons' recorded in terms of Rule 9(2) of the Rules.

37. Consequently, further requirement would arise—to pass a reasoned order on all or any one charge that may have been inquired into. The

legal mandate/requirement (on the Disciplinary Authority), to pass a ‘reasoned order’ created under Rule 9(4) of the Rules - to award any particular punishment to the delinquent arises only by way of a necessary consequence or sequel to Rule 9(2) first invoked by the Disciplinary Authority, and not otherwise.

38. That view had been taken by the coordinate bench of this Court in **Sanjeev Kumar (supra)**, wherein it was observed as below:

“6. Rule 9, sub-rule (2) clearly provides that if the disciplinary authority disagrees with the findings of the Inquiry Officer on any charge, it shall record its own finding thereto with the reasons. Sub-rule (4) further requires that if the disciplinary authority is of the opinion that the Government servant deserves imposition of some penalty under rule 3, he shall furnish a copy of the inquiry report along with his findings recorded, if any, under sub-rule (2) of Rule 9 to the delinquent employee and would allow him reasonable time to submit a reply/representation. After receiving the representation, again the disciplinary authority shall consider the aforesaid material along with the reply if any, and pass a reasoned order imposing one or more penalty mentioned in rule 3 and communicate the same to the delinquent employee.

7. Therefore, there are two stages at which the disciplinary authority has to pass reasoned orders, one under sub-rule (2) and the other under sub-rule (4). Under sub rule (2) it has to record its reasons for disagreement with inquiry report in respect to findings on certain charges and thereafter communicate the same to the latter. Under sub-rule (4) it has to pass a reasoned order for imposing penalty after the representation of the delinquent employee is received.

8. The punishment order dated 9-6-2004. impugned in this writ petition, ex facie shows that after noting down facts pertaining to communication of disagreement and receipt of reply of the delinquent employee, in para 3, respondent No. 1 has recorded his conclusion that charges No. 1, 3 and 4 are proved and the petitioner is liable to pay Rs. 6,837.14 besides censure entry and withholding of increment. The aforesaid order by no means satisfy the requirement of a reasoned order as contemplated under rule 9(4) of 1999 Rules.

...

14. We do not however, agree to the above submission. When the rule framing authority itself has made separate provision making it obligatory upon the disciplinary authority to record reasons at two different stages, one, when it disagrees with the findings of the inquiry officer and, secondly, when it decides to pass an order of punishment after considering the reply given by the delinquent

employee against the findings of disagreement of the disciplinary authority, then it is obligatory upon the disciplinary authority to follow such-procedure strictly. This Court would not read the aforesaid provision in such a manner so as to make one or the other exercise nugatory by reading the order in the manner as suggested by learned Standing Counsel. The reasons contained in the disagreement note constitute the ex parte view taken by the disciplinary authority against the findings recorded by the inquiry officer. When it is communicated to the delinquent employee and he submits its reply, the disciplinary authority is benefited with the explanation given by the delinquent employee. In order to find out as to whether it would like to stick to its earlier view of disagreement with the finding of the inquiry officer or the same needs to be changed, modified, partly or wholly in the light of explanation given by the delinquent employee, it has to apply its mind again.

The reasons, therefore, are required to be recorded by the disciplinary authority as to why the explanation given by the delinquent employee is or is not satisfactory. The purpose and objective of reasons to be recorded under sub-rule (2) and (4) of Rule 9 are different. They are to be recorded at different stages with slightly different material inasmuch as at the former stage, the stand of the delinquent employee is not available to the disciplinary authority while in the later case it is available. We, therefore, are clearly of the view that non-observance of Rule 9(4) is fatal since its compliance is mandatory. If the delinquent employee after communicating its disagreement note and inquiry officer's finding to the delinquent employee and after receiving the reply failed to pass a reasoned order imposing punishment upon the delinquent employee, such order would not be tenable in law and has to be set aside.

18. In the circumstances, the writ petition is allowed and the impugned order dated 9-6-2004 is quashed. However, it will be open to the disciplinary authority to pass a fresh order in accordance with law keeping in view the observations made hereinabove. There shall be no order as to costs."

39. It was followed by another coordinate bench of this Court in **Nishith Ranjan Tiwari (supra)**, wherein it was observed as below:

"In the case of Sanjeev Kumar (supra), the Court has held that Rule 9(2) are mandatory in nature, providing two stages where reasons are required to be provided by the disciplinary authority. In Rule 9(2) when the disciplinary authority disagrees with the inquiry report, reason has to be assigned and the same has been interpreted requiring them to be communicated to the delinquent employee. Admittedly, there is no defence available to the delinquent employee before the disciplinary authority at that stage. Therefore, Rule 9(4) provides that having regard to the findings on all or any of the charges by the disciplinary authority, penalty is specific in Rule 3 should be imposed on the charged

government servant for which he shall provide a copy of the inquiry report along with his findings recorded under Sub Rule 2 of rule 9 to him and further required him to submit his representation if he so desires within a reasonable specified time.

In this back drop this rule has been interpreted that consideration of explanation of the petitioner should be made in such a manner that if the disciplinary authority disagrees with the explanation, he has to assign reasons for disagreement with the explanation offered by the delinquent employee failing which the impugned order of punishment shall become illegal.”

40. Again, in **Neeraj Verma (supra)**, that view was followed by yet another coordinate bench. It was observed as under:

“12. Sub-rule 2 of Rule 9 of the 1999 Rules clearly provides that if the disciplinary authority disagrees with the findings of the Inquiry Officer on any charge, it shall record its own finding thereto with the reasons. Sub-rule (4) of Rule 9 of the 1999 Rules further requires that if the disciplinary authority is of the opinion that the Government servant deserves imposition of some penalty under Rule 3, he shall furnish a copy of the inquiry report along with his findings recorded, if any, under Sub-rule 2 of Rule 9 to the delinquent employee and would allow him reasonable time to submit a reply/representation. After receiving the representation, the disciplinary authority shall again consider the aforesaid material along with the reply, if any, and pass a reasoned order imposing one or more penalty mentioned in Rule 3 and communicate the same to the delinquent employee.

13. From the aforesaid, it transpires that when the rule framing authority itself has made separate provision, making it obligatory upon the disciplinary authority to record reasons at two different stages, one, when it disagrees with the findings of the inquiry officer and, secondly, when it decides to pass an order of punishment after considering the reply given by the delinquent employee against the findings of disagreement of the disciplinary authority, then it is obligatory upon the disciplinary authority to follow such procedure strictly. The reasons contained in the disagreement note constitute the ex parte view taken by the disciplinary authority against the findings recorded by the inquiry officer. When it is communicated to the delinquent employee and he submits its reply, the disciplinary authority is benefited with the explanation given by the delinquent employee. In order to find out as to whether it would like to stick to its earlier view of disagreement with the finding of the inquiry officer or the same needs to be changed, modified, partly or wholly in the light of explanation given by the delinquent employee, it has to apply its mind again. The reasons, therefore, are required to be recorded by the disciplinary authority as to why the explanation given by the delinquent employee is or is not satisfactory. The purpose and objective of reasons to be recorded under Sub-rule 2 and 4 of Rule 9 are different. They are to be recorded at different stages

with slightly different material inasmuch as at the former stage, the stand of the delinquent employee is not available to the disciplinary authority while in the later case it is available. We, therefore, are clearly of the view that non-observance of Rule 9(4) is fatal since its compliance is mandatory. If the delinquent employee after communicating its disagreement note and inquiry officer's finding to the delinquent employee and after receiving the reply failed to pass a reasoned order imposing punishment upon the delinquent employee, such order would not be tenable in law and has to be set aside."

41. We are not inclined to accept the submission advanced by Sri Khare that in the last noted decision, the coordinate bench had ruled that the Disciplinary Authority would be required to record its reason to reject the representation, even in a case where no earlier order may have been passed in terms of Rule 9(2) of the Rules. The words used in a judgement by an author judge are not to be interpreted as words of a statute. The words "if any" used in conjunction with the words "his finding recorded" (with reference to the findings recorded under Rule 9(2) of the Rules), do not suggest or convey that the Disciplinary Authority was enjoined to record its reasons to reject the representations even where he agreed with the conclusions drawn by the Inquiry Officer. Neither any statutory indication nor any discussion exists, to infer such reasoning.

42. The ratio of the decision is contained in the later paragraph where in no unclear terms, it has been held that the requirement to record the reasons in two stages exists where a Disciplinary Authority first disagrees with the finding of the Inquiry Officer and second, where he decides to pass an order of punishment after considering the reply given by the delinquent. It is that procedure that has been held to be obligatory. In the facts of that case, procedure under Rule 9(2) of the Rules had been adopted. In that context the discussion had emerged.

43. To complete the discussion, we may also note, similar view had also been taken by yet another coordinate bench of this Court in

Shailendra Kumar Srivastava (supra). There, it was observed as below:

“20. Sub-Rule (2) of Rule 9 of 1999 Rules contains a provision in respect of a situation where there is disagreement with the Inquiry Officer on any charge, by the Disciplinary Authority. According to the said provision, in case the Disciplinary Authority disagrees with the findings of the Inquiry Officer he shall record its own finding thereon for the reasons to be recorded. Once the Disciplinary Authority records reason for disagreeing with the findings of the Inquiry Officer on any charge, the Disciplinary Authority shall thereafter proceed either to exonerate the delinquent officer if charges are not proved or to impose the penalties as specified in Rule 3 of 1999 Rules.

21. It is thus incumbent upon the Disciplinary Authority in terms of Rule 9(2) of the 1999 Rules that in case of disagreement, he has to give reasons while recording his own finding. Sub-Rule (4) of Rule 9 of 1999 Rules provides that the penalty shall be imposed on the delinquent officer only once he is provided with a copy of inquiry report and the finding of the Disciplinary Authority recorded under Sub-Rule (2) of Rule 9 requiring him to submit his representation if he so desires. Thus a careful reading of Rules 9(2) and 9(4) of the 1999 Rules as discussed here-in-above, makes it clear that in case the Disciplinary Authority does not disagree with the findings of the Inquiry Officer he shall furnish a copy of the Inquiry Report to the Delinquent Officer requiring him to submit his representation to the same and then, he will pass appropriate orders. However, in a situation where the Disciplinary Authority disagrees with the findings of the Inquiry Officer, he has to record his own finding, that too with reasons for disagreement, and thereafter he has to serve the findings and the reasons for disagreement with the findings of the Inquiry Officer to the Delinquent Officer. The requirement as given in Rules 9(2) and 9(4) of 1999 Rules is to provide adequate opportunity to the Charged Officer to rebut the findings of the Disciplinary Authority and the reasons for his disagreement. Such a course as available in Rules 9(2) and 9(4) of the 1999 Rules is in conformity with the principles of natural justice.”

44. Therefore, there is no basis to the submission being advanced by learned Senior Counsel for the petitioner that the requirement of recording reasons under Rule 9(4) of the Rules exists and may be enforced, independent of Rule 9(2) of the Rules. The submission is misconceived. It is rejected.

45. Having taken that view, we are further not inclined to accept the submission of Sri Khare that unless Rule 9(4) is read as suggested

(by him), there would exist no requirement to furnish a copy of the Inquiry Report to the delinquent and/or to grant him opportunity to represent thereagainst. Though attractive in first blush, the submission must fail. Those requirements arise, sustain and are enforced in law, on the pure strength of Article 311 of the Constitution of India, as interpreted in **Mohd. Ramzan Khan (supra)**. In view of that higher law existing, lack of statutory law (either by principal legislature or its delegate) would make no difference. Consequently, where the Disciplinary Authority intends to agree with the Inquiry Report – concluding the guilt of a delinquent, the Disciplinary Authority may proceed in accordance with procedure prescribed under Article 311 as interpreted by the Supreme Court in **Mohd. Ramzan Khan (supra)**. That circumstance not provided by Rule 9 of the Rules would remain governed by the Constitutional provision (Article 311), as interpreted by the Supreme Court.

46. As to the ratio relied upon by learned Senior Counsel for the petitioner in the decisions of the Supreme Court in **Punjab National Bank and Others Vs. K.K. Verma, (2010) 13 SCC 494, Hari Niwas Gupta Vs. State of Bihar (2015) SCC OnLine Pat 4511, Hari Niwas Gupta Vs. State of Bihar (2020) 3 SCC 153, D.K. Agrawal Vs. Council of the Institute of Chartered Accountants of India, 2021 SCC OnLine SC 903, Dr. Anurika Vaish Vs. Union of India, 2015 SCC OnLine All 9599, Chairman Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, (2009) 4 SCC 240 and Institute of Chartered Accountant of India Vs. L.K. Ratna and Others, 1986(4) SCC 537**, we find the same to be distinguishable and/or not applicable, to the present facts.

47. In **Punjab National Bank and Others (supra)**, the ratio of **Mohd. Ramzan Khan (supra)** had been considered and it was ruled

that the right to represent against the findings of the Inquiry Report remained undisturbed by the 42nd Constitutional Amendment. As to facts, Regulation 7(2) of the Punjab National Bank, considered in that decision read as below:

“ ...

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

...”

48. The above Regulation was read to imply that it mandates the employer to furnish the Inquiry Report to the delinquent in case the Disciplinary Authority chose to record its reason to disagree with the same. In paragraph-24 of the report, it was held as below:

”24. Regulation 7(2) requires the disciplinary authority to record its reasons for disagreement wherever it disagrees with the findings of the enquiry officer. Regulation 9 provides for communicating to the employee concerned, the orders passed under Regulation 7, apart from providing him with a copy of the enquiry report. These Regulations will have to be read as laid down only with a view to provide an opportunity to the employee to represent against the findings to the extent they are adverse to him. Then only will they become meaningful.”

49. Clearly, that Regulation 7(2) may be comparable to Rule 9(2) of the Rules. As to facts involved, in that case, the Disciplinary Authority disagreed with the Inquiry Report. Relying on the ratio of the Supreme Court in an earlier decision with respect to the same regulation, in **Punjab National Bank and Others Vs. Kunj Behari Mishra, (1998) 7 SCC 84**, it was first concluded that the requirement to supply a copy of the Inquiry Report was mandatory. Then as to the requirement of recording of reasons, the Supreme Court found that there was no dispute that though the Disciplinary Authority had differed from the Inquiry Officer, failure to provide copy of the Inquiry Report and failure to afford opportunity to represent

thereagainst amounted to critical breach of the procedure. In those facts and on that reasoning, the order of the High Court allowing the writ petition (on that ground), was sustained. As discussed above, that situation would arise under the Rules where the Inquiry Officer would have furnished a report exonerating the delinquent of the charge, yet, the Disciplinary Authority may choose or propose to take a different view on that Inquiry Report itself, to punish the delinquent. Such is not the case here.

50. The decision of the Patna High Court as affirmed by the Supreme Court in **Hari Niwas Gupta (supra)** arose on entirely different facts and applicable law. There, the inquiry contemplated by law was waived by invoking Article 311(2)(b). In that context, the requirement of recording of reasons was found mandatory. Insofar as specific requirement exists to record reasons to dispense with the domestic inquiry and those reasons had not been recorded by the Disciplinary Authority, completely different legal issue had arisen, in that case. Suffice to note, in the present case, the domestic inquiry was not dispensed. Rather, the disciplinary action has been taken on strength of two Inquiry Reports.

51. In **D.K. Agrawal (supra)** the procedure before the Council for the purpose of award of penalty was regulated. There existed Chartered Accountant Regulations, 1964. Regulation 15 read as below:

“15. Procedure in a hearing before the Council.

(1) If the Council, in view of its findings, is of opinion that there is a case for passing one of the orders specified in clauses (a) or (b) of sub-section (4) of Section 21, it shall—

(a) furnish to the respondent a copy of the report of the Disciplinary Committee and a copy of its findings : and

(b) give him a notice indicating the order proposed to be passed against him and calling upon him to appear before

it on a specified date or if he does not wish to be heard in person, to send within a specified time, such representation in writing as he may wish to make against the proposed order.

(2) The scope of the hearing or of the representation in writing, as the case may be, shall be restricted to the order proposed to be passed.

(3) The Council shall, after hearing the respondent, if he appears in person, or after considering the representation, if any, made by him, pass such orders as it may think fit.

(4) The orders passed by the Council shall be communicated to the complainant and the respondent.”

52. In that context of the law, the Supreme Court observed as below:

“21. Needless to say that, the power exercised by the Council under Section 21 is quasi-judicial in nature. Perusal of the recommendations of the Council shows that it did not discuss the report of the Disciplinary Committee, the written statement and the oral submissions of the appellant while coming to the conclusion that he is guilty of misconduct. However, the concluding portion of the recommendations of the Council made an incorrect statement that the Council had considered all the materials on record and the written and oral submissions of the appellant. The observations of the Disciplinary Committee cannot by any stretch of imagination be treated as findings. At best, they may be termed as the material which falls within the domain of consideration by the Council. The Council has failed to give its own independent findings. The recommendations made by the Council are not supported by independent reasons. The recommendations, in our opinion, have been made mechanically by the Council.

22. Recording of reasons is a principle of natural justice and every judicial/quasi-judicial order must be supported by reasons to be recorded in writing. It ensures transparency and fairness in the decision-making process. The person who is adversely affected wants to know as to why his submissions have not been accepted. Giving of reasons ensures that a hearing is not rendered as a meaningless charade. Unless an adjudicatory body is required to give reasons and make findings of fact indicating the evidence upon which it relied, there is no way of knowing whether the concerned body genuinely applied itself to and evaluated the arguments and the evidence advanced at the hearing. Giving reasons is all the more necessary because it gives satisfaction to the party against whom a decision is taken. It is a well-known principle that justice should not only be done but should also be seen to be done. An unreasoned decision may be just, but it may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of fairness and justice.”

53. Again, in the absence of any requirement under the Rules, comparable to the Regulation 13 of the Chartered Accountant Regulations, 1964 (considered by the Supreme Court), the ratio being relied is not applicable to the facts of the present case.

54. At the same time, in **Dr. Anurika Vaish (supra)**, a coordinate bench of this Court observed as under:

“142. There is yet another aspect namely where a collective decision is taken by a body of people, a decision of a policy matter or a declaration of the manner of functioning or any other administrative matter may not necessarily require giving of reasons but where a decision making process which deals with the individual rights of a person and is governed by rules, regulations and statutes, then the power to decide is conferred by law and regulated by it. In such, a situation, even a collective decision by a body cannot afford to be subjective and it has to record reasons. A debate between recording of brief reasons and reasons in detail is always a matter of adjudication. In our opinion, even in a collective decision the reasons even if brief should contain the material on the basis whereof such a reason is being recorded. Any form of vagueness or just cryptically mentioning the conclusion would not suffice to show that reasons have been discussed even while forming a collective opinion. A mere recital of vague reasons would not be sufficient nor a matter like the present one where, the aggrieved party has a right to know the reasons for the decision being taken either for or against him.”

55. While it cannot be disputed that such observation was made, it would be premature and inappropriate to conclude that the said ratio is applicable to the instant case involving disciplinary proceedings governed by Rule 9 of the Rules. Suffice to note, the general principle considered by the coordinate bench did not arise in the context of any *pari materia* provision in law. Thus, what has been laid down by the coordinate bench is a sound principle to be applied in appropriate case. However, it would remain subject to just exceptions arising from specific statutory provisions, that may commend otherwise. Since the present proceedings arise from Rule 9 of the Rules, we may not rush to apply the principle considered by the coordinate bench in the above noted decision, in preference to the statutory rule that otherwise applies. As noted above, specifically

Rule 9 has been considered in **Sanjeev Kumar (supra)**. That principle has been consistently applied. Therefore, there is no reason to depart from that consistent reasoning accepted and applied by this Court, to apply a general principle of law laid down by another coordinate bench of the Court in Dr. **Anurika Vaish (supra)**, especially since that principle of law did not arise with reference to Rule 9 of the Rules.

56. Also, the decision of the Supreme Court in **Chairman Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank (supra)**, laid down that an order of affirmation need not contain elaborate reasons like an order of reversal but it does not mean that the order of affirmation need not contain any reason whatsoever. At the same time, it may not be forgotten that the said observation was made in the context of exercise of appellate power to affirm an order or punishment. In the present case, the issue has arisen not on the appellate authority having affirmed the order passed by the Disciplinary Authority and thus confirmed the penalty. On the contrary, in the present case affirmation is not to an order passed by a lower authority but it is the order passed by the original authority itself i.e. the Disciplinary Authority accepting the Inquiry Reports containing findings of the Inquiry Officers (here Judges). For that reason, the principle invoked by learned Senior Counsel for the petitioner would remain inapplicable to the facts that are wholly dissimilar.

57. In **L.K. Ratna and Others (supra)**, the ratio arose in the context of Regulation governing the disciplinary proceedings against a Chartered Accountant. That ratio would not apply to the present case inasmuch as detailed procedure for inquiry into misconduct of members of the Institute of Chartered Accountant existed in the shape of Section 21 of the Chartered Accountant Act, 1949. Section 21(3)

of the Act clearly provided for recording of reasons by the Disciplinary Authority itself - to support the findings of misconduct. Therefore, that decision is also wholly distinguishable.

58. Coming to the exact proceeding before us, in **Umesh Chandra (supra)**, another coordinate bench of the Court had the occasion to consider a similar objection. The objection as to lack of reasons given by the Full Court was specifically examined in the context of penalty handed out to a Judicial Officer, by this Court. It was observed as below :-

“27. It has further been submitted by Sri Rajvanshi that the Administrative Committee as well as the Full Court had not recorded any reason while passing the impugned order and rejecting the representation of the petitioner; therefore, the order impugned stands vitiated. This contention lacks merit for the reason that this is a matter of common knowledge that inquiry report is accepted first by the Administrative Committee after full deliberations and only then it is being made available to the delinquent officer for making comments. It is reconsidered after receiving the comments of the delinquent officer and having deliberations. The matter is then placed before the Full Court wherein the further deliberations take place. Thus a very cumbersome procedure is prescribed to have the check and balance and to rule out the possibility of arbitrariness, as deliberations take place in Full Court. An order does not become bad merely because reasons have not been recorded unless the delinquent succeeds in establishing that such a decision was not permissible on the report submitted by the Inquiry Judge or the inquiry report itself was perverse being based on no evidence or contrary to the evidence on record. (Vide Ram Kumar v. State of Haryana, 1987 Supp SCC 582 : AIR 1987 SC 2043; Somdutta v. Union of India, AIR 1989 SC 414; S.N. Mukherji v. Union of India, (1990) 4 SCC 594; Union of India v. E.G. Nambodiri, (1991) 3 SCC 38 : AIR 1991 SC 1216; State Bank of Bikaner & Jaipur v. Prabhu Dayal Grover, (1995) 6 SCC 279; State of U.P. v. Yamuna Shanker Mishra, (1997) 4 SCC 7 : AIR 1997 SC 3671; Badri Nath v. Government of Tamil Nadu, (2000) 8 SCC 395; and State of U.P. v. Narendra Nath Sinha, AIR 2001 SCW 3380).

28. In National Fertilizers Ltd. v. P.K. Khanna, AIR 2005 SCW 4333, the Apex Court reiterated the same view observing as under:—

“The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Inquiry Officer means

that the Disciplinary Authority has adopted the conclusion and the basis of the conclusion as its own. It is not for the Disciplinary Authority to restate the reasoning.”

29. Recording of reasons is warranted necessarily in case the Disciplinary Authority does not agree with the findings recorded by the Inquiry Officer. Therefore, we find no substance in the aforesaid submission at all.”

59. In absence of any requirement under the Rules to obligate the Disciplinary Authority i.e. Full Court to record its express reasons to accept the Inquiry Report and award penalty, it commends to us that the general principal in law governing award of penalties in service matters as laid down by the Supreme Court in **Ram Kumar (supra)** is good law. In paragraph 8 of the said report it was held as below:

“8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order.”

60. That principle has been reiterated in **Boloram Bordoloi (supra)** wherein it has been observed as below :-

“11. We are of the view that the judgment of this Court in ECIL [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] is not helpful to the case of the appellant. Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary

authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10-12-2005, the Board's decision is communicated vide order dated 21-12-2005 in Ref. No. LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that the orders [Boloram Bordoloi v. Lakhmi Gaolia Bank Writ Appeal No. 361 of 2008, order dated 3-4-2009 (Gau)] , [Boloram Bordoloi v. Lakhimi Gaonlia Bank, WP (C) No. 219 of 2006, order dated 8-6-2007 (Gau)] impugned are devoid of reasons. “

61. To the same effect (though in different facts), it has been reasoned by another coordinate bench of this Court in **Madhav Prasad (Supra)**. To keep the our discussion limited, amongst others the following question was considered by that coordinate bench:

“Whether the disciplinary/appointing authority and the appellate authority are required to record detailed/separate reasons, even if they agree with the findings of the inquiry report.”

62. The same was answered in the following terms:

“63. We have already held that it is not necessary to record detailed/ separate reasons in case the appointing/disciplinary authority or the appellate authority agrees with the findings of the inquiry officer but this does not mean that the reasons may not be recorded. It is advisable that the reasons be recorded in order to show fairness and the fact that the case has been considered.

64. Separate reasons may not be necessary for agreeing with the findings of the inquiry report however this does not mean that in case any other point, apart from the finding of the inquiry report- for example that no opportunity has been afforded or bias-is taken then it should not be dealt by a reasoned order.””

63. Ultimately, it was recorded as below:

“(v) The appointing/disciplinary or the appellate authority is not required to record detailed/separate reasons in case they agree with the inquiry report containing valid reasons. However in case questions-other than finding of the inquiry officer-are involved then the appointing/disciplinary J or the appellate authority is required to record its reasons on those questions. In this case some such questions were involved but most of them were raised for the first time in the writ petition. We have also rejected all of them; there is no necessity to send the case back.”

64. Thus, both in the context of the Rules and the binding law, we are of the view that the Disciplinary Authority / Full Court was not obligated to record its express reasons-to reject the representation

made by the delinquent or to accept the Inquiry Report or to award particular penalty.

65. Coming to the further submissions advanced by learned Senior Counsel for the petitioner, it must be recognized – to sustain a challenge raised to a Domestic Inquiry it must be shown to be vitiated. If the Domestic Inquiry was fair and proper, the punishment awarded by the Disciplinary Authority may not be interfered with, even by an appellate authority, if there had been one. In the context of judicial review proceeding that have arisen before us, exercise of our jurisdiction may remain confined to examine if the procedural requirements had been complied with and if the two Domestic Inquiries were fair and proper.

66. Fact conclusions drawn on appraisal of material, quantum of penalties awarded may not (*per se*) warrant our consideration. Only in very exceptional cases, where grossly punishment is seen awarded (to the proven misconduct), limited room may exist - to examine that issue. If charges levelled against the petitioner, a senior judicial officer are seen duly proven at the Domestic Inquiries and a charge being (amongst others), to try influence another judicial officer in the course of a judicial proceeding, it may itself eclipse any further consideration to the quantum of punishment awarded. Therefore, the first issue to be examined is fairness and completeness of the two domestic inquiries.

67. During the course of hearing, we had required learned counsel for the parties to make available to us date charts of the two inquiry proceedings. Both sides have provided us the same. We consider it proper to make reference to the details of the two inquiries. The first inquiry i.e. the Departmental Inquiry No.21 of 2015 commenced with the issuance of Charge Sheet on 08.08.2016. On that the petitioner

filed his written statement on 12.07.2017. The next date was fixed on 09.08.2017. On that date the petitioner absented whereas the other delinquent (hereinafter referred to as second delinquent), was present. He pressed for permission to be assisted by a retired judicial officer. It was allowed. On that date, statement of E.W.-1 (wife of the second delinquent), was partly recorded and its copy provided to the second delinquent. On the next date 10.08.2017 also, the petitioner remained absent. The statement of E.W.-1 was continued to be recorded in the first half. The inquiry was postponed for 6:30 p.m. The petitioner remained absent in those proceedings as well. The statement of E.W.-1 continued to be recorded on the next date fixed, 18.09.2017. Also, part statement of E.W.-1 was recorded on 10.08.2017. Its copy was provided to the second delinquent.

68. Before the next date fixed (18.09.2017), on 12.09.2017, the petitioner moved an adjournment application. It was rejected on that date itself. Consequently, on the next date fixed on 18.09.2017, the second delinquent appeared before the Inquiry Judge 'A' whereas the petitioner continued to absent himself. For that continued absence, the inquiry was directed to proceed *ex parte* against the petitioner. The statement-in-chief of E.W.-1 was completed and the Inquiry fixed for 30.10.2017 - for cross-examination of E.W.-1.

69. On that date, the petitioner presented himself at the inquiry and raised objections as to the preparation of charge sheet and rejection of (certain) applications. He also prayed for stay of the inquiry proceedings. At the same time, he applied for recall of E.W.-1. Since E.W.-1 had not been cross-examined till then, the application for her recall was rejected. Copy of statement of E.W.-1 recorded 09.08.2017, 10.08.2017 and 18.09.2017 was provided to the petitioner. E.W.-1 was offered for cross-examination. At that stage, the petitioner refused to cross-examine the E.W.-1, expressing his

inability. At the same time, E.W.-1 prayed to make further statement. That prayer was accepted and her further statement was recorded. On that date, second delinquent remained absent. Accordingly, the inquiry was fixed for 07.12.2017 for the cross-examination of E.W.-1

70. Before the next date (7.12.2017), on 25.11.2017, the petitioner again moved an application seeking adjournment. It was rejected on 27.11.2017 with the observation that inquiry would proceed *ex parte* against the petitioner, if he failed to appear on the date fixed. The petitioner filed yet another application on 30.11.2017 - to be provided copies of the earlier orders passed by the Inquiry Judge 'A' and also copy of the orders requiring him to remain present on the next date.

71. On the date fixed 07.12.2017, the second delinquent moved application to refer to the matter to the Mediation Centre attached to the High Court. It was rejected and the second delinquent was offered to cross-examine E.W.-1. At the same time, the present petitioner now moved application seeking assistance of a practising lawyer. That application was also rejected. However, the Inquiry Judge 'A' again granted opportunity to the petitioner to cross examine E.W.-1 on 11.12.2017.

72. On 11.12.2017, the petitioner as also the second delinquent were present. The petitioner pressed his application dated 08.12.2017, seeking adjournment. It was rejected and at that stage the Inquiry Judge 'A' directed the Inquiry to proceed on day-to-day basis. Also, the Inquiry Judge 'A' dealt with further applications moved by second delinquent to drop the charges and to adjourn the Inquiry proceedings till conclusion of criminal proceedings. Faced with that consequence, the second delinquent began and on 12.12.2017, he completed the cross examination of E.W.-1. Thereafter, the petitioner began the cross-examination of E.W.-1. However, it could not conclude till 7:45

P.M. on 12.12.2017. Accordingly the matter was fixed for the next date i.e. 13.12.2017. On that date the petitioner again absented himself and moved an adjournment application of the same date. It was rejected by the Inquiry Judge 'A' and opportunity earlier granted to the petitioner to cross examine E.W.-1, was closed. The next date fixed in inquiry on 23.01.2018. However, on that date Inquiry Judge 'A' was not available. Therefore, the next date was fixed for 06.02.2018.

73. On 06.02.2018 also the petitioner remained absent. Since the Inquiry had been directed to proceed *ex parte* against him, it was continued. On 06.02.2018, 07.02.2018, 09.02.2018 statements of E.W.-2, E.W.-3, E.W.-4 and E.W.-5 were recorded. Those, witnesses were cross-examined by the second delinquent. However, the petitioner remained absent, without any application for adjournment etc. Next date was fixed for 20.02.2018 to 22.02.2018.

74. On 19.02.2018, the petitioner moved another adjournment application dated 15.02.2018. It was also rejected, in view of the earlier order of Inquiry Judge 'A' to proceed on a day-to-day basis.

75. On 20.02.2018, 21.02.2018 and 22.02.2018, E.W.-6, E.W.-7, E.W.-8 and E.W.-9 were examined by the Presenting Officer. They were cross-examined by the second delinquent. However, the petitioner remained absent. At that stage, the Presenting Officer informed the Inquiry Judge 'A' that no further evidence was to be led by the employer. The Inquiry was then fixed for 16.03.2018, for defence evidence.

76. Two days prior to the date fixed, the second delinquent filed an application providing a list of 45 defence witnesses. He was required to state the relevancy of the witnesses named by him. On the date fixed, 16.03.2018, while the petitioner remained absent, the second

delinquent moved another application seeking adjournment for one week. The matter was thus adjourned to 27.03.2018. On 27.03.2018, orders were passed on the application of the second delinquent regarding relevancy of Defence Witnesses and the next date was fixed in the inquiry, for 16.04.2018. However, the present petitioner remained absent on that date also and did not make any application or furnish list of Defence Witnesses.

77. On 16.04.2018, the Defence Witnesses (of the second delinquent), were present but both delinquent absented. At the same time, it may also be noted, the second delinquent moved an adjournment application on which request, Inquiry proceeding was fixed for 07.05.2018. Yet, the petitioner neither remained present nor moved any application. Later, on 04.05.2018 an adjournment application was moved by the present petitioner. It was allowed and the Inquiry proceeding adjourned for the date 14.05.2018. It was also made clear that the application moved by the petitioner dated 02.04.2018 seeking recall of Employer Witness would be considered on the next date.

78. The present petitioner then moved another adjournment application on 04.05.2018 and another application to inquire about the status of his earlier application dated 02.04.2018. The Inquiry Judge 'A' fixed the date on 14.05.2018.

79. Though it was made very clear to the petitioner that no further adjournment would be granted, yet again, adjournment was sought. It was granted for the date 16.05.2018.

80. On another application made by the second delinquent the Inquiry had been fixed for 23.07.2018. On that date fixed, amongst others, again an adjournment was granted to the petitioner for the date 08.08.2018 - to decide the petitioner's application dated 02.04.2018

seeking recall of Employer Witness. Also, on 23.7.2018, upon adjournment sought by the second delinquent, next date fixed was 11.08.2018. Also, 08.08.2018, the petitioner, moved another set of adjournment applications dated 31.07.2018 and 01.08.2018. Those were rejected and the order communicated to the petitioner. Instead of appearing on the next date fixed (08.08.2018), the petitioner again moved an adjournment application, this time through e-mail. At that stage, after having granted repeated and continued opportunities (to the petitioner to participate in the Inquiry and also to press his application for recall of witness), after a very long period of time, the Inquiry Judge 'A' finally proceeded to reject the application seeking recall of E.W.-1. Also, having rejected the application moved through e-mail, the Inquiry was fixed for 11.08.2018, for opportunity to lead Defence Evidence.

81. On 11.08.2018 also, the petitioner and the second delinquent did not appear. Besides seeking repeated adjournments and thus delaying the inquiry proceedings, the petitioner did not file any application disclosing his desire to lead any evidence. In any case, the petitioner did not appear on the date fixed. Therefore, in such circumstances, the Inquiry Judge 'A' closed his opportunity to lead Defence Evidence and Inquiry was fixed for oral hearing, on 31.08.2018.

82. After the opportunity to lead the defence evidence stood closed, the petitioner filed another application dated 21.08.2018 to seek permission to lead the Defence Evidence. Objections were invited thereon, on 24.08.2018. The application itself was fixed for disposal on the date already fixed in Inquiry i.e., 31.08.2018.

83. On 31.08.2018, the second delinquent appeared and sought legal assistance. It was granted. At the same time, the petitioner remained absent. Consequently, his applications dated 21.08.2018, 23.08.2018

and 28.08.2018 were disposed of, first. The application dated 23.08.2018 to be supplied copies was rendered infructuous whereas his application dated 21.08.2018 to lead defence evidence and his further application dated 28.08.2018 came to be rejected. At the same time in view of the order passed on the separate application made by the second delinquent, the Inquiry was fixed for 04.09.2018.

84. On 04.09.2018, the petitioner again absented whereas the second delinquent remained present and led defence evidence. The Defence Witness was cross-examined by the Presenting Officer. Next date was then fixed for 05.09.2018.

85. On that date, the petitioner as also the second delinquent remained absent. Neither filed any application to seek adjournment. Even the Defence Witness remained absent. Accordingly, the Inquiry Judge 'A' closed the defence evidence and the Inquiry was fixed for 12.09.2018.

86. Having thus got time, predictably, on 11.09.2019, the petitioner filed another adjournment application and on this occasion stated that on his application an agenda item had been placed before the Administrative Committee of the Court. Therefore, the matter may be adjourned to another date. The learned Inquiry Judge 'A' adjourned the Inquiry for 26.09.2018. However, on that date the matter had to be further adjourned for 03.10.2018 as the Presiding Officer was on another official duty.

87. On 03.10.2018, the matter had to be adjourned as Inquiry Judge 'A' was on leave. Accordingly, the matter was fixed for 10.10.2018, for submissions and disposal of applications dated 07.09.2018 and 11.09.2018 moved by the petitioner. On the date fixed i.e., 10.10.2018, the petitioner again remained absent. Accordingly, the Inquiry was fixed for the next date 11.10.2018.

88. On 11.10.2018, both delinquent remained absent. Accordingly, the applications of the petitioner were rejected for non-prosecution and the Presenting Officer was heard. The Inquiry Report was reserved.

89. After that stage had been crossed, the petitioner again moved an application dated 16.10.2018 requesting for opportunity for hearing to be granted to him before preparation of Inquiry Report. Even at that stage, the Inquiry Judge 'A' allowed that application and fixed the matter for 14.11.2018. By further order dated 25.10.2018 the Inquiry was fixed for 14.11.2018. On that date though the petitioner remained present however, he refused to advance submissions. Considering such conduct of the petitioner, the Inquiry Report was reserved.

90. Seen in that light, there is no procedural defect noted in the Inquiry proceeding in Departmental Inquiry No. 21 of 2015. Admittedly, the charge sheet was served on the petitioner alongwith a copy of the documents etc. He was given much more than fair or deserved or warranted opportunity to furnish his reply, cross examine the witnesses, lead evidence and present defence.

91. As noted above, the Inquiry lingered and in any case remained pending over a long period from 08.08.2016 (when the charge sheet was issued), for almost after three years, owing solely to the erring conduct offered by the petitioner. Innumerable adjournments were sought by him. More than reasonable opportunities were granted to the petitioner to participate in the inquiry proceedings, at each stage. The petitioner, absolutely abused the opportunity of hearing granted to him. He made all efforts to defeat the fair conduct of the Inquiry and made a mockery of the law.

92. On several occasions, despite it being known to the petitioner that the proceedings would not be adjourned any further and would proceed *ex parte* against him, he continued to maintain his conduct of deliberate non-participation. It appears to be the most conscious act on part of the petitioner to wilfully avoid the disciplinary proceedings. Yet, preserving him from any harm that he otherwise deserved (for reason of his conduct), the Inquiry Judge 'A' took a lenient view and allowed the petitioner to participate in the inquiry proceedings. Yet, the conduct of the petitioner remained defiant to the extent he failed to participate. In the present facts, the repeated opportunities granted to the petitioner (despite his conduct to consciously absent therefrom), were not deserved in law, rather, they may have been occasioned by indulgence granted by the Inquiry Judge 'A'.

93. The petitioner offered an unrepentant conduct that may only be described – in one word, as ‘incurable’. Therefore, the petitioner may never claim that he was not heard - on one date or another. No order passed by the Inquiry Judge 'A' may be read in isolation and the petitioner may not be permitted to falsely exaggerate the alleged adverse consequence visited on him by such order. On the whole and consistently as also on purpose, the petitioner is seen wholly and solely responsible for the consequence of *ex parte* Inquiry Report that came to be visited on him.

94. What then requires our consideration is, if sufficient evidence was led to prove the charge of misconduct. Before we may take note of the evidence led to prove the charge of misconduct, it would be relevant to consider the law with respect to the scope of disciplinary proceedings and misconduct alleged against an employee. In **State of Haryana & Anr. Vs. Rattan Singh, (1977) 2 SCC 491**, Justice V. R.

Krishna Iyer in his inimitable and unique style expressed the principle thus:

"4. It is well settled that 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, fairplay 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. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."

95. Then, applying that test to cases involving misconduct by a judicial officer, the law on the subject was considered by a coordinate bench of this Court in **Umesh Chandra (supra)**, wherein it was observed as under :

"14. In High Court of Judicature at Bombay v. Udaysingh, (1997) 5 SCC 129 : AIR 1997 SC 2286 the Hon'ble Apex Court while dealing with a case of judicial officer held as under:—

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or

shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified.”

15. *This Court in Ram Chandra Shukla v. State of U.P., (2002) 1 ALR 138 held that the case of judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers. In High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil, (1997) 6 SCC 339 : AIR 1997 SC 2631, the Supreme Court observed as under:—*

“The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.
-----”

...

17. *In All India Judges' Association v. Union of India, (1992) 1 SCC 119 : AIR 1992 SC 165, the Hon'ble Supreme Court observed that Judges perform a “function that is utterly divine” and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. “The personality, knowledge, judicial restraint, capacity to maintain dignity” are the additional aspects which go into making the Courts functioning successfully.*

18. *In Tarak Singh v. Jyoti Basu, (2005) 1 SCC 201, the Hon'ble Supreme Court observed as under:—*

“Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public

confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

96. Then, in **R. R. Parekh (supra)**, the Supreme Court observed as below :

"16. ...The issue which arises in such cases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error of judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. The legality of a judicial determination is subject to such remedies as are provided in law for testing the correctness of the determination. It is not the correctness of the verdict but the conduct of the officer which is in question. The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power. The circumstances let into evidence to establish misconduct have to be sifted and evaluated with caution. The threat of disciplinary proceedings must not demotivate the honest and independent officer. Yet on the other hand, there is a vital element of accountability to society involved in dealing with cases of misconduct. There is on the one hand a genuine public interest in protecting fearless and honest officers of the District Judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrongdoing, responsible for his or her actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice."

97. Applying that principle, we note, Charge no. 4 in Departmental Inquiry No. 21 of 2015 was with respect to efforts made by the petitioner to influence a junior judicial officer - the learned Additional Chief Judicial Magistrate, Court No. 5, Meerut in a judicial proceeding arising out of Case Crime No. 472 of 2014 - the case in which the petitioner and his close family members were directly involved and interested. The FIR had been lodged by none other than the wife of the present petitioner, making allegations that EW-1 (her sister-in-law) had inflicted serious injuries to the petitioner.

98. In support of that Charge, documentary evidence in the shape of order sheet dated 18.12.2015 prepared by the learned Additional Chief Judicial Magistrate, in his own handwriting, was proved. It established that the wife of the petitioner had pressured the learned Additional Chief Judicial Magistrate to allow her application dated 14.12.2015 or to keep the matter pending at the stage of cognizance and issue of summons to the accused persons. No material was brought before the Inquiry Judge 'A' to doubt that order sheet entry. Also, the learned Additional Chief Judicial Magistrate and the learned District Judge at whose complaint Departmental Inquiry No. 21 of 2015 had been initiated, were examined by the Inquiry Judge 'A'. They were extensively cross-examined by the second delinquent. The Inquiry Judge has considered that evidence and observed, that no evidence existed to dislodge the statements of EW6 and EW7, namely the learned District Judge and the learned Additional Chief Judicial Magistrate. It was thus found proved that the misconduct alleged, occurred and was reported.

99. On a holistic consideration of that objective and relevant material, the Inquiry Judge 'A' reached the subjective conclusion that the petitioner had tried to influence a judicial officer - in the course of a judicial proceeding involving the petitioner and his family members. The most serious misconduct had been made out against the petitioner, a senior judicial officer. It needs no emphasis that a judicial office may remain distant and pure – unaffected and immune to personal gain and/or loss. Any transgression committed by a judicial officer to extract any benefit for the self or for the benefit of those to whom the judicial officer may be closely related, would always be dealt with most severely. Once the 'bad fish' is identified, it may not be retained in the 'tank'. No room may ever exist and no margin of error may be permitted as may allow any possibility for a

judicial officer to seek to influence another judicial officer, in exercise of judicial function. If there exists a temple of justice, judicial officers must act like its high priests who must not only conduct the rituals involving discharge of their duties on the dias but they must zealously guard the purity of the temple itself. A judicial officer who defiles his office, merits no mercy.

100. With respect to charge no. 2 of false injury to his person, it was noted - an FIR was lodged alleging offences under Section 395 and 397 IPC. With respect to the same, the Inquiry Judge 'A' found that EW1, the wife of the second delinquent had elaborately described the occurrence to the effect that she along with her close family members had visited the petitioner's residence to resolve her matrimonial discord. In that process, when EW1 along with her close family members reached the residence of the petitioner, they were first locked up inside a room. Thereafter, the petitioner inflicted injuries to his person, using a shaving blade. He then ran out - shouting that he had been injured by EW1. Thus, at his instance, the situation was falsely escalated. Thereupon, police personnel visited the place of occurrence. They were pressured by the petitioner to arrest the complainant/EW1. Though the said witness was elaborately cross-examined by the second delinquent and was partly cross-examined by the present petitioner, no material has been shown to exist (on the Inquiry record), to doubt the truthfulness of the statement of EW1, before the Inquiry Judge 'A'. Similar facts were stated by EW3, the father-in-law of the second delinquent. EW5, a brother officer of the petitioner (who was residing in the same residential colony as the petitioner), also testified as to the occurrence that had taken place at the petitioner's official residence on 26.06.2014. In that, he described that the petitioner had some altercation at his residence. He further admitted knowledge as to existence of matrimonial discord in the

marriage of the second delinquent. At the same time, he further stated that he had not heard of any incident involving robbery committed by the complainant/EW1, at the residence of the petitioner. Seen in that light, no material had arisen before the Inquiry Judge 'A' to doubt the allegation of exaggeration of the real occurrence. Less so, no evidence was led to establish occurrence involving ingredients of serious offences under Section 395 and 397 IPC.

101. Other charges alleging efforts to influence the Investigating Officer and demand of dowry, were also found proved.

102. That being the status of evidence and findings recorded on the strength of the material and evidence, we are unable to accept the submission being advanced by learned Senior Counsel for the petitioner that the findings recorded by the Inquiry Judge 'A', were conjectural. In paragraph-2 of **R.R. Parekh (supra)**, it has been observed as below :

“20. A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which govern a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of probabilities. The High Court while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall for re-appreciation or re-evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in Disciplinary Inquiry No. 15 of 2000.”

103. Then, in **Pandey Gajendra Prasad & Ors. (supra)** with respect to the scope of judicial review in such proceedings, the Supreme Court observed as below :

“18. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in

departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

19. Explaining the scope of jurisdiction under Article 226 of the Constitution, in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25] , this Court made the following observations: (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.”

20. Elaborating on the scope of judicial review of an assessment of the conduct of a judicial officer by a committee, approved by the Full Court, in Syed T.A. Naqshbandi v. State of J&K [(2003) 9 SCC 592 : 2003 SCC (L&S) 1151] this Court noted as follows: (SCC p. 600, para 7)

“7. ... As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made

by the Committee and approval accorded by the Full Court of the High Court.”

104. Then, in **P. Gunasekaran (supra)**, the principle governing the exercise of discretionary jurisdiction under Article 226 and 227 of the Constitution of India, was summarised as below :

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, reappreciating 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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 Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate 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.

105. Thus, we find, no good ground is made out to offer any interference. The scope of judicial review has to remain limited. The disciplinary inquiry in Departmental Inquiry No. 21 of 2015 is found to be fair and proper and conclusions drawn by the Inquiry Judge 'A', based on material and evidence collected during that Inquiry, with which the petitioner had been confronted. Also, that material cannot be described as extraneous or irrelevant.

106. Though the above discussion itself is enough to reach the result of the dismissal of the writ petition, yet in view of the further submissions advanced we may note that the conduct of the petitioner in the second inquiry, being Domestic Inquiry no. 24 of 2016, was no better. All efforts were made by Inquiry Judge 'B' to allow the petitioner every opportunity to participate in those proceedings, as well. In that, charge-sheet was issued to the petitioner on 20.3.2017. On 23.5.2017, the petitioner was granted time to submit reply to the charge-sheet, by 30.5.2017. On 13.6.2017, two weeks further time was granted to the petitioner to furnish his reply and the inquiry was fixed for 7.7.2017. The petitioner failed to appear on the date fixed. Yet, time was granted till 24.7.2017. The inquiry proceeding was adjourned on 10.8.2017 and 5.9.2017. On the next date fixed i.e. 10.10.2017, the petitioner appeared before the Inquiry Judge 'B'. Direction was issued to make available to the petitioner copies of all documents demanded. Similar direction was again issued on 2.11.2017. On 29.11.2017, the Presenting Officer was directed to lead Employers' Evidence. On 13.12.2017, a weeks' further time was granted to the petitioner, to inspect the record and to obtain copies of documents.

107. In view of the further request made by the petitioner, on 16.01.2018, the Presenting Officer was directed to supply copies of specified documents. The inquiry remained adjourned on the next dates 12.01.2018 and 19.02.2018. Repeated adjournment sought by the petitioner was refused and the inquiry proceeding directed to proceed *ex parte* on 19.03.2018. Statement of EW-1 – the learned ACJM, was recorded. He was allowed to be cross-examined by the petitioner on 30.05.2018. That cross-examination was concluded on 03.07.2018. On 07.08.2018, 05.09.2018, 11.10.2018, 30.11.2018, the inquiry was adjourned. On the next date 14.12.2018, the inquiry was fixed for 19.1.2019. Petitioner was given opportunity to produce his witnesses and the next date fixed for 14.2.2019. On that date, further opportunity was granted to the petitioner to produce list of his witnesses, by 05.4.2019. On 05.04.2019, petitioner moved an application to recall E.W-1 for further cross examination. That application was rejected. After dealing with further applications regarding summary of documents etc., on 15.05.2019, the Presenting Officer concluded the cross examination of the petitioner.

108. Seen in that light, again it has to be accepted – more than reasonable opportunity (to defend his case), was granted to the petitioner in the course of second inquiry by the Inquiry Judge ‘B’. The petitioner was in no way prejudiced or prevented from setting up his defence. He examined DW-4, the then System Officer posted at District Court, Meerut. On the strength of that examination, petitioner sought to doubt the correctness of the charge allegation that the petitioner had tried to influence the ACJM on 18.12.2015. However, the petitioner could not dislodge the basic fact existence of ordersheet entry 18.12.2015 recorded by the learned ACJM. What may have transpired on 16.01.2016 was not the subject matter of the charge levelled and it was not the subject matter to be inquired into in the

course of the Domestic Inquiry proceedings. The misconduct with which the petitioner was charged was found proven. The misconduct being, his effort to influence another judicial officer in the course of a judicial proceeding, in which he was personally interested, enough material was brought on record. The petitioner was confronted with all adverse material that were being relied against him and the Inquiry Judge 'B' reached the conclusion of his guilt as to that misconduct, based on material and evidence gathered in the course of that inquiry.

109. It must be recorded that in the course of his cross examination, the petitioner admitted having called the ACJM on telephone, through 'I' the lawyer representing the petitioner's wife in the case giving rise to the misconduct. In this regard, the Inquiry Judge 'B' has observed as under:-

"At this juncture, it would be relevant to point out that in his cross-examination, Sri Sirohi has stated that he never met Sri xxxx (the ACJM) and he has no grudges against him. In order to remove certain doubts, as certain advocates were not happy with his way of working, he had a telephonic conversation with Sri xxxx through Sri 'I', Advocate. Thus, there was a telephonic conversation between Charged Officer and EW-1. When confronted with the question that Sri 'I', Advocate, who has been produced by him as DW-6, is an interested witness, the Charged Officer has stated that he has no relation with Sri 'I', Advocate as he is Advocate for the complainant, Dr. Meghna Sirohi."

110. Once the petitioner admitted having called the learned ACJM (who was seized with the case proceeding involving his close family members), that too, using the mobile phone of his wife's lawyer – ostensibly to check the ACJM regarding his working, every other detail referred to by learned Senior Counsel for the petitioner - to point certain deficiencies in the conduct of that Inquiry, pales into insignificance. For the guilt of the petitioner - a judicial officer to be established, the above quoted passage was enough. Clearly, the petitioner had not called the ACJM in his capacity as a senior officer

but as the husband of the complainant that too using the phone of her lawyer. The inviolable code of conduct and self-restraint to be always maintained by any human being who may ever come to occupy a judicial office, is seen clearly and irreparably violated, by the petitioner. In committing that transgression, the petitioner earned absolute demerit. It rendered him unfit to hold judicial office, any further. As with the mythological '*Shishupal*', so with the petitioner, he made that 'one' transgression that could not be spared.

111. In view of the above, writ petition fails and is accordingly **dismissed**. No order as to costs.

Order Date :- 02.5.2024

Abhilash/Salman/Faraz/Prakhar/Manoj

(Donadi Ramesh, J.) (S. D. Singh, J.)