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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.01.2026

% Judgment delivered on: 22.01.2026

\+ **LPA 313/2024**

PARVEEN KUMAR .....Appellant

Through: Appellant in person.

versus

EXPORT INSPECTION COUNCIL & ORS. .....Respondents

Through: Mr. L.R. Khatana, Adv. for R-1 to R-4.
Mr. Sandeeep Mahapatra, CGSC with Ms. Mrinmayee Sahu and Mr. Tribhuvan, Advs. for R-3.
Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr.Kritarth Upadhyay, Mr. Saksham Sharma and Mr. Mathy V Kutty, Advs. for R-5/UOI.

\+ **LPA 1045/2024 & CM APPL. 60976/2024**

EXPORT INSPECTION COUNCIL & ORS. .....Appellants

Through: Mr. L.R. Khatana, Adv.

versus

PARVEEN KUMAR & ORS. .....Respondents

Through: Respondent no.1 in person.
Mr. Sandeep Kumar Mahapatra, CGSC with Ms. Mrinmayee Sahu and Mr.Tribhuvan, Advs. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Since these two Letter Patent Appeals challenge the same judgment and order dated 06.03.2024 passed by learned Single Judge, whereby the writ petition filed by the appellant in LPA 313/2024, namely Praveen Kumar has partly been allowed, with the consent of the parties the appeals were heard together and are being decided by the common judgment and order which follows:

2. For convenience, Praveen Kumar, the appellant in LPA 313/2024 shall be referred to as the "petitioner" and the Export Inspection Council, the appellant in LPA 1045/2024 shall be referred to as the "respondent" in this judgment.

FACTS

3. The petitioner, at the relevant point of time, was working as Technical Officer with the respondent, which is a statutory body created under Section 3 of the Export (Quality Control and Inspection) Act 1963. In respect of certain charges disciplinary proceedings were instituted against the petitioner and accordingly, a charge sheet dated 24.03.2014/27.03.2014 was served upon him. The charge sheet contained three articles of charge.

4. Article I of the charge contained an allegation that the petitioner was directed on 04.02.2014 to proceed on tour to Sub-Office, Kanpur of the Agency and to hold the said charge w.e.f 06.02.2014. The petitioner was

charged with disobedience of this order dated 04.02.2014. It was also alleged in respect of this charge that he did not proceed to Kanpur despite the reminder dated 26.02.2024, by making representations and, thus, indulged in dilatory tactics and ultimately did not proceed to Kanpur on tour. According to the charge sheet, such an act amounted to disobedience on the part of the petitioner, in violation of Rule 3(1)(ii)(iii) of the Central Civil Services (Conduct) Rules, 1964, which also amounted to grave misconduct on his part.

5. As per Article II, the petitioner instead of proceeding on tour to Kanpur pursuant to the order dated 04.02.2014, filed a tour programme which was vague and could not be considered for processing. The petitioner was informed, vide letter dated 06.02.2014, that there was no provision for providing train tickets for a touring officer and, as such, he was directed that he should submit a proper tour programme and proceed to Sub Office Kanpur, failing which the matter would be viewed seriously. Such an act, as per Article II of the charge sheet, was treated to be willful disobedience on the part of the petitioner, amounting to grave misconduct and violation of Rule 3(1)(ii)(iii) of the CCS (Conduct) Rules 1964.

6. Article III of the charge stated that the petitioner not only disobeyed the order dated 04.02.2014 to proceed to Kanpur rather, he vide his letters dated 11.02.2014 and 26.02.2014, raised certain issues which were not germane and in the said letters he used impolite, indecent, derogatory and irresponsible language in respect of superior officers levelling false and baseless allegations. This Article of Charges also stated that false, frivolous and baseless allegations were made by the petitioner without any basis or evidence, which was an act of unbecoming of an employee of the respondent

and such an act of willful use of impolite, indecent, derogatory and irresponsible language in respect of superior officers was in violation of Rule 3(1)(ii)(iii) of the CCS (Conduct) Rules 1964, which amounted to grave misconduct on his part.

7. The petitioner appears to have initially resisted the charge sheet and instituted a writ petition being W.P.(C) No. 2458/2014 before this Court with the prayer to quash the charge sheet dated 27.03.2014 and also to quash the order dated 04.02.2014. The petitioner had also prayed in the said writ petition that suitable directions be issued for departmental action against the alleged misconduct of certain officers of the respondent and further, that he be awarded exemplary damages on account of the alleged suffering and pain as an exemplary deterrent.

8. The writ petition, however, was dismissed as withdrawn vide order dated 22.04.2014, with the direction to the respondent to grant further two weeks' time to file reply to the charge sheet. It was further directed that the decision in respect of the request of supplying documents made by the petitioner, shall also be taken within five days.

9. This Court, thus, did not interfere with the charge sheet dated 27.03.2014.

10. One Rajvinder Singh, Deputy Director working with the respondent was appointed as Inquiring Authority to conduct the inquiry against the petitioner vide order dated 23.05.2014, however, since the said Inquiring Authority expressed his inability to hold the inquiry, one Mr. Inder Singh, retired Deputy Secretary/Commissioner for departmental enquiries, Central

Vigilance Commission, was appointed as the Inquiring Authority to inquire into the charges against the petitioner.

11. The petitioner raised certain objections against the appointment of a retired public servant as the Inquiring Authority as, according to the petitioner, it would be in contravention of Rule 11(2) of Export Inspection, Agency Employees (Classification, Control and Appeal) Rules, 1978 (hereinafter referred to as the 'EIA Rules').

12. The objection raised by the petitioner in respect of appointment of Mr. Inder Singh as inquiring authority was to the effect that since the said public servant had retired, he is not a public servant in terms of Rule 11(2) of the EIA Rules. According to the petitioner, it is only a public servant who can be appointed to inquire into the charge sheet, and the public servant ought to be a serving public servant and not a retired one. The said objection was rejected and the inquiry accordingly proceeded, which was concluded by the said Inquiring Authority, who prepared the Inquiry Report dated 07.09.2015.

13. The Inquiring Authority forwarded the Inquiry Report to the Disciplinary Authority. The Disciplinary Authority tentatively agreed with the findings of the Inquiry Authority. The Inquiry Report dated 07.09.2015 was served upon the petitioner vide letter dated 10.09.2015, giving him opportunity to submit his comments/representation, if any, on the findings of the Inquiring Authority within 15 days. It was stipulated in the said letter dated 10.09.2015 that in case the petitioner fails to submit his comments/ representation within the specified period, the disciplinary authority will finalize further action accordingly.

14. From a perusal of the records available before us, it appears that the petitioner submitted his representation dated 09.10.2015 to the findings recorded by the Inquiring Authority. The Inquiry Report along with the representation of the petitioner against the same was considered by the disciplinary authority who passed the order of punishment and inflicted the penalty of reduction in rank upon the petitioner from the post of Technical Officer to the lower rank of Junior Scientific Assistant vide the order dated 17.02.2016. It was further stipulated in the punishment order dated 17.02.2016 that the penalty of reduction in rank would operate until the petitioner is found fit by the competent authority to be restored to the higher post of Technical Officer.

15. The said punishment order dated 17.02.2016 was put to challenge by the petitioner by way of filing a statutory appeal under Rule 20 of the EIA Rules on 22/23.03.2016. The appellate authority, however, vide order dated 20.02.2017, did not find any cogent ground to interfere with the order passed by the disciplinary authority and, therefore, dismissed the appeal. It is this order of punishment dated 20.02.2016 and the order passed by the appellate authority, dated 20.02.2017 which were challenged by the petitioner by instituting the writ petition being W.P.(C) No. 3940/2017, which has partly been allowed by the learned Single Judge *vide* order dated 06.03.2024 which is under challenge in these two appeals, one filed by the petitioner (employee) and the other filed by the respondent (employer).

16. The learned Single Judge, while passing the impugned judgment and order has found the appointment of a retired officer as the Inquiring Authority to be in contravention of Rule 11(2) of the EIA Rules, however, regarding the inquiry proceedings, being hit by the *vice* or bias of *de facto*

prejudice on account of a retired officer being appointed as the inquiring authority, the learned Single Judge has clearly recorded a finding that the same were not clear from the records.

17. The finding recorded by learned Single Judge in the impugned judgment and order regarding the appointment of the Inquiring Authority being in violation of Rule 11(2) of the EIA Rules can be found in paragraph 44 of the judgment, which is extracted herein below:

> *"44. In view of the above, this Court has come to the irresistible conclusion that the Inquiry Officer who was appointed, admittedly being a retired officer of the respondent, did not fulfill the criteria of a 'public servant' and as such, the said appointment is violative of Rule11 (2) of the EIA Rules."*

18. However, as observed above, learned Single Judge has also recorded a finding that it is not clear from the records that any real prejudice was caused to the petitioner on account of appointment of Inquiring Authority, though, though in violation of Rule 11(2) of the EIA Rules and further that it is also not clear from the records that there was an element of bias on the part of the Inquiring Authority. The said findings can be found in paragraph 52 and 53 of the impugned judgment, which are extracted herein below:

> *"52. This Court has considered the aforesaid submission of learned counsel for the respondent as also the petitioner in the context of defacto prejudice caused to the petitioner. On an overall consideration of the letter and perusal of the inquiry proceedings placed before this Court, it would be difficult to conclusively render a finding as to whether any real prejudice indicting the inquiry proceedings itself has been established before this Court. No doubt that the petitioner did protest against the appointment of the Inquiry Officer; the bias of the Inquiry Officer; as also some issues regarding the recording of statement of the witnesses, however the bias or the de facto prejudice as such is not clear from the records.*
>
> *53. In view of the above, this Court holds that there has been a clear violation of Rule 11 (2) as also 11(4) of EIA Rules, 1978. This opinion is also fortified by the judgment of the Supreme Court as referred to above. While holding that there has been a violation of Rule11 (2) in terms of appointment of retired officer as an Inquiry Officer, however since de facto prejudice has not been established clearly in terms of the aforesaid observations and also in line with the judgment of the Supreme Court in **Alok Kumar** (Supra), this Court is of the considered opinion that the inquiry proceedings till the stage of Inquiry Report are not vitiated."*

19. In the impugned judgment, learned Single Judge has also found that during the inquiry proceedings, Rule 11(4) of the EIA Rules was also violated in as much as that no opportunity of personal hearing was afforded to the petitioner which violated Rule 11(4) of the EIA Rules. According to the learned Single Judge, the Disciplinary Authority is mandated in terms of Rule 11(4) of EIA Rules to afford the charged officer an opportunity to tender a written statement of defence against the article of charges. He has further concluded that though in the written statement of defence submitted by the petitioner *vide* his letter dated 12.05.2014, he had specifically sought an opportunity of personal hearing, however the respondent did not grant any opportunity despite the said prayer, which according to learned Single Judge amounted to violation of Rule 11(4) of the EIA Rules. Consequently, learned Single Judge quashed the order of punishment dated 17.02.2016 as also the order passed by the Appellate Authority, dated 20.02.2017 and directed the respondent to afford a proper and justifiable opportunity to the petitioner of personal hearing before the Disciplinary Authority at the stage of consideration of written statement of defence.

20. The learned Single Judge has also held that the petitioner would be entitled to subsistence allowance as admissible in accordance with EIA Rules on the post that the petitioner was holding at the time of initiation of the disciplinary proceeding, from the date from which the petitioner had sought personal hearing till the date he was reverted back to the post of Technical Officer or was finally dismissed from service, whichever is earlier. The learned Single Judge has, thus, remitted the matter to the Disciplinary Authority for decision afresh. The operative portion of the impugned judgment and order is embodied in paragraph 54 and 55, which are extracted herein below:

"54. The upshot of the above conclusion is that the impugned orders of the Disciplinary Authority dated 17.02.2016 and the Appellate Authority 20.02.2017 are quashed and set aside. The respondent is directed to afford a proper and justifiable opportunity to the petitioner of personal hearing before the Disciplinary Authority at the stage of consideration of the Statement of Defence. Consequently, the petitioner would be entitled to the subsistence allowance as admissible in accordance with the EIA Rules, 1978 at the post that the petitioner was holding at the time of initiation of the disciplinary proceedings, from the date when the petitioner had sought personal hearing till the date when he was reverted back to the post of Technical Officer or was finally dismissed from service, whichever was earlier.

55. Considering the fact that it has been held above that there has been a direct violation of Rule 11 (2) and Rule 11 (4) of the EIA Rules, 1978 and the matter is remitted back to the Disciplinary Authority, the facts as referred to by the learned counsel for the parties need not be examined or appreciated at this stage lest the same cause any prejudice to either of the parties. As such, the issues on facts are left open for the consideration of the Disciplinary Authority."

SUBMISSION OF THE PETITIONER

21. The petitioner, who appears in person, has impeached the impugned judgment and order passed by the learned Single Judge by submitting that though learned Single Judge has remitted the matter back to the Disciplinary Authority, however since it was a case of no evidence on the basis of which charges have been found to be proved, the matter ought not have been remitted to the Disciplinary Authority.

22. His further submission is that since it is a case of no evidence, the relief as prayed for by the petitioner in the writ petition ought to have been granted in totality instead of remanding the matter back to the Disciplinary Authority. In support of his submission, the petitioner has relied upon a judgment of Hon'ble Supreme Court in ***Bhupenderpal Singh Gill v. Sate of Punjab & Ors., 2025 INSC 83.*** He has submitted that in the said case, the Hon'ble Supreme Court found that since there was no legal evidence on the basis of which the charged employee therein could be held guilty of the charges, the order of penalty was quashed and it was held that the charged

employee shall be entitled to full pension without any cut. He has laid emphasis on paragraph 33 and 41 of the said judgment, which are extracted as under:

> *"33. Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not ordinarily subject tocorrection in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice, or that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry, or that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case, or that the conclusion of the disciplinary authority is ex facie arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion, or there is any other ground very similar to the above, the high court may in the exercise of its discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be urged by such servants depending upon the extent of breach that is manifestly demonstrated."*

> *"41. We have extracted verbatim (supra) the reasons assigned by the Division Bench in support of the ultimate order it passed modifying the penalty. It is not in doubt that in a rare and appropriate case, to shorten litigation and for exceptional reasons to be recorded in writing, a high court may substitute the punishment imposed on the delinquent employee. However, what has overwhelmed our ability of comprehension is that the Division Bench despite having returned clear findings in favour of the appellant adopted a hands-off approach by leaving the findings with regard to the charges untouched. In our considered opinion, the tenor of the impugned order does suggest that the Division Bench found the appellant to have been wronged and regard being had thereto, the Division Bench ought to have set things right by interfering with the findings and granting full relief that we intend to grant to the appellant. The impugned order, insofar as it declines to interfere with the findings on the charges, being clearly indefensible, we proceed to grant relief to the appellant as indicated hereafter."*

23. As to the violation of Rule 11(2) of the EIA Rules, the petitioner has placed reliance on ***Ravi Malik v. National Film Development Corpn. Ltd.,* (2004) 13 SCC 427,** wherein interpreting a rule which is similarly worded as Rule 11(2) of the EIA Rules, Hon'ble Supreme Court has held that the person to be appointed as an Inquiring Authority must be a serving public servant and not a retired public servant. He has further stated that ***Ravi Malik (supra)*** lays down the correct law, wherein it has been held that a retired officer would not come within the definition of 'public servant' for the purposes of the rule under which the disciplinary proceedings were held in that case. Paragraph 7 of the judgment in ***Ravi Malik (supra)*** is extracted herein below:

> *"7. In this case the Central Vigilance Commission had issued instructions permitting retired officers to be appointed as inquiry officers. The words "public servant" used in Rule 23(b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of "public servant" for the purpose of Rule 23(b). Rule 7 cannot be interpreted to mean that the direction issued by the Central Vigilance Commission would override any interpretation which a court may put, as a matter of law, on it."*

24. The petitioner, while defending the finding recorded by learned Single Judge in the impugned judgment and order that there has been violation of Rule 11(4) of the EIA Rules, has relied upon ***Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84*** and ***Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739.*** He has stated that the disciplinary proceedings are vitiated on account of non-observance of Rule 11(4) of the EIA Rules and such submission is supported by the principle enunciated by Hon'ble Supreme Court in ***Kunj Behari Mishra (supra)*** and ***Yoginath D. Bagde (supra)***.

25. On the aforesaid counts, it has been prayed by the petitioner that the part of the judgment and order passed by learned Single Judge, whereby the matter has been remitted to the Disciplinary Authority to take a decision afresh is liable to be set aside and the petitioner is entitled to be granted complete relief as was prayed for by him in the writ petition.

ARGUMENTS ON BEHALF OF THE RESPONDENT

26. Sh. L.R. Khatana, learned counsel representing the respondent – Export Inspection Council, has argued that the findings recorded by learned Single Judge in respect of violation of Rule 11(2) of the EIA Rules in the facts of the instant case are not tenable in as much as that Hon'ble Supreme Court in ***Union of India v. Alok Kumar, (2010) 5 SCC 349,*** while referring to ***Ravi Malik (supra),*** has held that even a retired public servant can be appointed as Inquiring Authority. He has further stated that ***Alok Kumar (supra)*** has subsequently been quoted with approval by Hon'ble Supreme Court in ***Union of India v. P.C. Ramakrishnayya, (2010) 8 SCC 644,*** wherein as well it has been held that a retired public servant can be appointed as Inquiring Authority. Reliance has also been placed by the learned counsel representing the respondent that the law laid down in ***Alok Kumar (supra)*** and ***P.C. Ramakrishnayya (supra)*** has been referred to and relied upon in a latest judgment by Hon'ble Supreme Court in ***Union of India v. Jagdish Chandra Sethy, 2023 SCC OnLine SC 1932*** and therefore, the findings recorded by learned Single Judge in the impugned judgment and order in respect of there being violation of Rule 11(2) of the EIA Rules, is liable to be set aside in view of the aforesaid pronouncements.

27. He has further submitted that the argument made by the petitioner that it was a case of no evidence, is not tenable as is borne out from the records.

In this respect, it has been stated by learned counsel for the respondent that the Inquiring Authority as also the Disciplinary Authority have considered the evidence available on record of the disciplinary proceedings and have come to the conclusion that all the three article of charges leveled against the petitioner were proved. His submission is that from a perusal of the inquiry report submitted by the Inquiring Authority and the punishment order passed by the Disciplinary Authority, it is abundantly clear that the Inquiring Authority as well as the Disciplinary Authority have drawn their conclusion on the basis of evidence available and after discussing the evidence and analyzing the same, the findings regarding guilt having been proved against the petitioner has been recorded by these authorities, and therefore, it is not a case of no evidence at all. His submission, thus, is that such an argument is absolutely misconceived in the facts of the case. He has also stated that the petitioner appears to be confused between a case based on no evidence and a case based on misappreciation or misconstruction of evidence. His submission is, that so far as the scope of judicial review in respect of an order of penalty in disciplinary matters against employee is concerned, the law is very clear, according to which this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, would not interfere so far as the finding of facts are concerned. He has stated that interference in such matters is permissible and possible only if any legal flaw in the departmental proceedings or violation of any statutory rule prescribing procedure for conducting the departmental proceedings is established, in absence whereof on finding of facts recorded by the Disciplinary Authority, the order of penalty cannot be interfered with except in exceptional cases where some perversity in the findings can be established. It is his further submission that once the learned Single Judge came to the conclusion even on facts that there

was no legal flaw in the order passed by the Disciplinary Authority, remitting the matter back to him for the alleged violation of Rule 11(4) of the EIA Rules, is unwarranted in law.

28. Sh. Khatana, arguing further, stated that the disciplinary proceedings against the petitioner were conducted strictly in accordance with the requirement in the EIA Rules, which are statutory in nature and no violation had occurred during the course of inquiry including that of Rule 11(4) of the EIA Rules for the reason that at every required step, the petitioner was given adequate opportunity in the form it is available to him under EIA Rules. Therefore, his submission is that the finding recorded by learned Single Judge regarding violation of Rule 11(4) of the EIA Rules is liable to be interfered with by this Court in this appeal.

29. He has also drawn our attention to the fact, as is borne out from a perusal of the records available even on these appeals, that as per the requirements of EIA Rules, the petitioner was given opportunity to submit his comments/representation to the inquiry report submitted by the Inquiring Authority, which is the only requirement post submission of the inquiry report and therefore, there is no violation of Rule 11(4) of the EIA Rules. It is also stated by Sh. Khatana that after submission of the inquiry report by the Inquiring Authority, the petitioner was not only given an opportunity to submit his comments/representation to the inquiry report but in fact he availed this opportunity and submitted his representation objecting to the findings recorded by the Inquiring Authority in the inquiry report, which amounted to sufficient compliance of the relevant rules.

30. In respect of the submission regarding permissibility of appointment of retired public servant as Inquiring Authority under Rule 11(2) of the EIA

Rules, it has been argued on behalf of the respondent that the law in this regard is no more *res integra*. He further stated that the judgments in the case of ***Jagdish Chandra Sethy (supra), Alok Kumar (supra) and P.C. Ramakrishnayya (supra)*** make the legal position clear in this respect. He has also argued that ***Alok Kumar (supra)*** considers the law laid down in ***Ravi Malik (supra)*** and thereafter holds that for the purpose of appointment of Inquiring Authority, the Disciplinary Authority can entrust the inquiry to a retired public servant as well for the reason that such a retired public servant is paid remuneration for the same. To buttress his submission that public servant will include a retired public servant, he has referred to the definition of the expression 'public servant' occurring in Section 21 of the Indian Penal Code, 1860 (hereinafter referred to as the "**IPC**"), which is extracted here under:

> ***"21. "Public servant".***—*The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—*
>
> *[* * * * *]*
>
> *Second.— Every Commissioned Officer in the Military, [Naval or Air] Forces[[*** of India];*
>
> *[Third.— Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]*
>
> *Fourth.— Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;*
>
> *Fifth.— Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;*
>
> *Sixth.— Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;*
>
> *Seventh.— Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;*

Eighth.— Every officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.— Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government] [***];

Tenth.— Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

[Eleventh.— Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

[Twelfth.— Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]"

31. On the aforesaid counts, it has been prayed on behalf of the respondent that the impugned judgment passed by learned Single Judge is liable to be set aside in its entirety and the appeal filed by the respondent deserves to be allowed.

ISSUES

32. On the basis of the material available on record as also based on the competing submissions made by the learned counsel for the parties, the following issues emerge for our consideration and adjudication in this case:

a. Whether it is legally permissible for a Disciplinary Authority to appoint a retired public servant as Inquiring Authority under Rule 11(2) of the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978; and

b. As to whether in the facts of the instant case there has been any violation of Rule 11(4) of the said Rules, which warranted the matter to be remitted to the Disciplinary Authority for decision afresh from the stage the disciplinary proceedings have been found vitiated by learned Single Judge in the impugned judgment and order.

ANALYSIS & CONCLUSION

ISSUE (a)

33. For appropriately deciding this issue, the relevant rules for appointment of Inquiring Authority under Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the **"CCS (CCA) Rules"**), which is applicable to the central government employees, such rule occurring in the Railway Servants (Discipline and Appeal) Rules, 1968, which is applicable to the railway servants and the rule governing appointment of Inquiring Authority under the EIA Rules, which is applicable in the instant case, need to be extracted which are as under:

a. Rule 14(2) of the CCS (CCA) Rules reads thus:

> ***"PART VI – PROCEDURE FOR IMPOSING PENALTIES***
>
> ***14. Procedure for imposing major penalties***
>
> *(1)*********
>
> *(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants*

(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

b. Rule 9(2) of Railway Servants (Discipline and Appeal) Rules, 1968 is as under:

> ***"9. Procedure for imposing major penalties.***
>
> *(1) *********
>
> *(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof."*

c. Rule 11(2) of EIA Rules is as under:

> ***"Part-VI***
>
> ***PROCEDURE FOR IMPOSING PENALTIES***
>
> *11.(1) *********
>
> *(2) Whenever the disciplinary authority is of opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against Agency employee, it may itself inquire or appoint under this rule [a public servant**] to inquire into the truth thereof."*

34. Apart from the above, Rule 23(b) of the Service Rules and Regulations, 1982 which regulates the appointment of Inquiring Authority in case of employees of National Film Development Corporation Limited (hereinafter referred to as the **"NFDCL"**) which has been discussed in ***Ravi Malik (supra)*** also needs to be noted, which reads as under:-

> *"23. (b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof."*

35. If we compare the aforesaid rules regulating the appointment of Inquiring Authority in respect of employees of various organizations namely

the Government of India, the Railways, NFDCL and Export Inspection Council, what we find is that Rule 14(2) of the CCS (CCA) Rules and Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 are similarly worded, whereas Rule 23(b) applicable in case of employees of NFDCL and Rule 11(2) of the EIA Rules applicable in the instant case, are couched in similar language.

36. ***Ravi Malik (supra)***, on which the petitioner has heavily relied, was a case relating to an employee of NFDCL where the expression 'public servant' occurring in Rule 23(b) was interpreted to mean that a public servant eligible to be appointed as an Inquiring Authority should be a serving public servant and not a retired public servant. Hon'ble Supreme Court quoting Rule 23(b) in paragraph 2 of ***Ravi Malik (supra)*** has arrived at such a conclusion in para 7 of the report, which is extracted herein below:

> ***"7.*** *In this case the Central Vigilance Commission had issued instructions permitting retired officers to be appointed as inquiry officers. The words "public servant" used in Rule 23(b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of "public servant" for the purpose of Rule 23(b). Rule 7 cannot be interpreted to mean that the direction issued by the Central Vigilance Commission would override any interpretation which a court may put, as a matter of law, on it."*

37. In ***Alok Kumar (supra)*** which was a case of a railway employee, Hon'ble Supreme Court has held that the expression 'other authority' occurring in Rule 9(2) of the relevant rules will encompass in its fold a retired public servant as well. The judgment rendered by Hon'ble Supreme Court in ***Ravi Malik (supra)*** has been taken note of in ***Alok Kumar (supra)***. However, it has been observed that ***Ravi Malik (supra)*** was of no assistance in ***Alok Kumar (supra)*** for two reasons, firstly, that rule falling for consideration before the Supreme Court in ***Alok Kumar (supra)*** was

different than the Rule which was discussed in ***Ravi Malik (supra)*** and secondly, in ***Ravi Malik (supra),*** Hon'ble Supreme Court was concerned with the expression 'public servant' appearing in Rule 23(b) of the Rules relating to employees of NFDCL and it is in that context that the Court expressed the view that 'public servant' should be understood in its common parlance and a retired officer would not fall within the meaning of 'public servant', for the reason that on account of retirement he loses the characteristic of being a 'public servant'. In ***Alok Kumar (supra)***, it was further observed that the expression occurring in Rule 23(b) which was the subject matter of discussion in ***Ravi Malik (supra)*** was not the same as in the rule which was applicable to the charged employee in ***Alok Kumar (supra)*** where a very different expression i.e. 'other authority' has been used. Hon'ble Supreme Court, thus, opined that absence of the words 'public servant' was conspicuous by its absence in the Rules with which ***Alok Kumar (supra)*** was concerned. The relevant findings recorded in this regard in ***Alok Kumar (supra)*** can be found in paragraph 45 of the said judgment, which is extracted herein below:

> ***"45.*** *Reliance placed by the respondents upon the judgment of this Court in Ravi Malik [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression "public servant" appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that "public servant" should be understood in its common parlance and a retired officer would not fall within the meaning of "public servant", as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. "other authority" and "person/persons". In other words, the absence of the words "public servant" of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance."*

38. ***P.C. Ramakrishnayya (supra)*** was also concerned with railway servant rules, where the language occurring in Rule 14(2) of the CCS (CCA) Rules and Railway Servants (Discipline and Appeal) Rules, 1968 was found to be akin to each other and it is in this background that ***Alok Kumar (supra)*** was followed and it was held that in case of railway servants a retired public servant can also be appointed as Inquiring Authority. ***P.C. Ramakrishnayya (supra)*** also discusses ***Ravi Malik (supra)*** and relies upon the finding recorded in paragraph 45 of the judgment in ***Alok Kumar (supra).*** It is also to be noted that ***Jagdish Chandra Sethy (supra)*** has also relied upon ***Alok Kumar (supra)*** while considering ***Ravi Malik (supra).*** Extracting paragraph 45 of the report in ***Alok Kumar (supra)***, it has been held in ***Jagdish Chandra Sethy (supra)***, who was an employee of the Central Government, that a retired public servant could be appointed as an Inquiring Authority. It is, thus, clear that ***Alok Kumar (supra)*** and ***P.C. Ramakrishnayya (supra)*** were the cases where Hon'ble Supreme Court was concerned with disciplinary action against the railway employees whereas in ***Jagdish Chandra Sethy (supra)*** the Court was concerned with the disciplinary action against a Central Government servant and, therefore, in these judgments the arguments based on ***Ravi Malik (supra)*** which was a case concerning an employee of NFDCL was not accepted.

39. Admittedly, the Rule discussed in ***Ravi Malik (supra)*** is akin to the Rule in the present case, however, further reasoning given by Hon'ble Supreme Court in ***Alok Kumar (supra)*** can be taken aid of, in our considered opinion, for arriving at a correct conclusion as to whether even in the instant case where the language of the Rule is slightly differently worded as compared to the Rules relating to railway servants or central government servants, appointment of retired government servant as Inquiring Authority

is permissible or not. What we find in ***Alok Kumar (supra)*** is that Hon'ble Supreme Court has discussed the law relating to appointment of Inquiring Authority which has been in vogue since the British regime. Hon'ble Supreme Court discusses the provision of Section 3 of the Public Servants (Inquiries) Act, 1850 which reads as under:-

> *"3. Authorities to whom inquiry may be committed. Notice to accused. – The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, Commissioners for the purpose; notice of which Commission shall be given to the person accused ten days at least before the beginning of the inquiry."*

40. Section 3 of the Public Servants (Inquiries) Act 1850 as quoted above provides that inquiry may be conducted either by 'Court', 'Board' or 'other authority' or even by 'any other person or persons to be appointed by the Government, Commissioners for the purpose'.

41. ***Alok Kumar (supra)*** examined the ambit, scope and ramification of Railway Servants (Discipline and Appeal) Rules, 1968 and returned a finding that the said Rules clearly show that there is a discretion vested in the Disciplinary Authority enabling itself to hold an inquiry itself or get the truth of imputation inquired by any 'other authority' in terms of the Rules.

42. ***Alok Kumar (supra)*** further lays down that the expression 'other authority' under the said Rules, has neither been explained nor defined and that even the Railways Act, 1890 does not define the term authority and further that in absence of any specific definition or meaning of this expression, reliance ought to be placed on understanding of this expression in common parlance. The Court further records that the expression 'authority' should be understood in its plain language and without

necessarily curtailing its scope. It is also held by Hon'ble Supreme Court that it will be more appropriate to understand the said expression and give it a meaning which should be in conformity with the context and purpose in which it has been used. The Court also observed that 'other authority' appearing in Rule 9(2) is intended to cover a vast field and there is no indication of the mind of the framers of the rules that the expression must be given a restricted or narrow meaning. The Supreme Court further proceeds to consider the argument that expression 'other authority' shall have to be construed to mean only the persons who are in service of the railways, in other words, the expression authority used in Rule 9(2) contemplates only a person who is in service and excludes the appointment of an Inquiring Authority of a retired railway officer/official.

43. The Supreme Court in ***Alok Kumar (supra)*** also considers the judgment in ***Ravi Malik (supra).*** It further proceeds to take into account the 'Doctrine of Exclusion' and observes that as per the settled principle of interpretation, exclusion must either be specifically provided, or the language of rule should be such that it definitely follows by necessary implication. It has also been held that the language occurring in the rule permitting exclusion should be explicit or the intent should be irresistibly expressed for such exclusion.

44. In ***Alok Kumar (supra)***, Hon'ble Supreme Court has clearly held that if it was so intended, the framers of rule applicable to railway servants could have used expressions like 'public servant in office' or 'an authority in office' and also that absence of such a language shows the mind of the framers that it was never intended to restrict the scope of 'other authority' by limiting it to the serving officers/officials. Elaborating further, Hon'ble

Supreme Court also held that principle of necessary implication further requires that exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule. Repelling the argument that provision of Rule 9(2) contains implicit exclusion in its language and that exclusion is absolute, Hon'ble Supreme Court in this case did not find any merit in such contention giving the reason that the exclusion clause should be reflected in explicit and specific terms or language since in the clauses excluding the jurisdiction of Court, the framers of law apply specific language. Noticing that in some cases such exclusion could be read with a reference to irresistible implicit exclusion, Hon'ble Supreme Court found in ***Alok Kumar (supra)*** that language in Rule 9(2) does not support such a contention and further that application of principle of exclusion can hardly be inferred in absence of any specific language.

45. The Apex Court in ***Alok Kumar (supra)*** also considers the purpose of departmental inquiry and opined that purpose is to put the Charged Officer to the articles of charges and imputation of misconduct and seek his reply in accordance with the rules and principles of natural justice. The Court further opined that the Inquiring Authority is a delegatee of the disciplinary authority and has to conduct the inquiry within the limited authority so delegated to him. It has further been observed in this judgment that Inquiry Report is submitted to the competent authority after its conclusion which is expected to apply its mind to the entire record and then decide whether any punishment should be imposed or not. The Court also expressed the conclusion that all substantive functions in disciplinary proceedings are performed by the disciplinary or the specified authority and it is only an interregnum inquiry which is conducted by the delegatee of the said authority i.e. the Inquiring Authority appointed by the disciplinary authority.

46. The Hon'ble Supreme Court, thus, discussing in detail came to the conclusion that since the purpose for which the Inquiring Authority is appointed by the disciplinary authority is to conduct only an interregnum inquiry preceding the final decision regarding punishment which is to be taken by the disciplinary authority, therefore, the submission that 'other authority' occurring in Rule 9(2) has to be a person in service alone cannot be accepted.

47. ***Alok Kumar (supra)*** also notices the definition of 'public servant' appearing in the Indian Penal Code (hereinafter referred to as IPC) and observes that the said provision of Indian Penal Code was not brought to the notice of the Court dealing with ***Ravi Malik (supra).*** The Court goes on to observe that as per Section 21 of the IPC a public servant denotes a person falling under any of the descriptions mentioned in the said provision and further that such expression occurring in Section 21 of the IPC brings within its ambit arbitrator or any person to whom any cause or matter has been referred to for decision or report by any Court or any other competent public authority. The Court further opines that as per the Twelfth Clause of Section 21 of the IPC even 'every person' can be a public servant and that sub-clause (a) appended to the Twelfth clause of Section 21 of the IPC provides that a person who is in service of the government or is remunerated by fees or commission for the performance of any public duty by the government is also a public servant. The inference drawn by Hon'ble Supreme Court in ***Alok Kumar (supra),*** as embodied in paragraph 47 of the report, is that a person engaged by a competent authority to work on a fee or a fixed remuneration can be a public servant. The Court has further observed that it is not understandable as to how a person engaged for the purpose of performing a delegated function would not be 'other authority' within the

meaning of Rule 9(2) in the wake of the fact that the said Rule does not specify any qualification or pre-requisites which need to be satisfied before a person can be appointed as an Inquiring Authority.

48. The Court, thus, finally observed that it is to be left to the discretion of the disciplinary authority as to who is to be appointed as an Inquiring Authority and unless such exclusion of a former employee of the government is spelt out specifically from the Rules, it will be difficult for the Court to introduce that element and the principle of implication simplicitor. The relevant discussion made and conclusion drawn by Hon'ble Supreme Court in ***Alok Kumar (supra)*** are found in paragraph 38 to 47 that are germane to decide the issue (a) as culled out above, which read as under:

> ***"38.*** *It is clear from above that there is some unanimity as to what meaning can be given to the expression "authority". The authority, therefore, should be understood on its plain language and without necessarily curtailing its scope. It will be more appropriate to understand this expression and give it a meaning which should be in conformity with the context and purpose in which it has been used. The "other authority" appearing in Rule 9(2) is intended to cover a vast field and there is no indication of the mind of the framers that the expression must be given a restricted or a narrow meaning. It is possible that where the authority is vested in a person or a body as a result of delegation, then delegatee of such authority has to work strictly within the field delegated. If it works beyond the scope of delegation, in that event it will be beyond the authority and may even, in given circumstances, vitiate the action.*
>
> ***39.*** *Now, we have to examine the argument of the respondents before the Court that the expression "other authority" shall have to be construed to cover only the persons who are in the service of the Railways. In other words, the contention is that the expression "person" used under Section 3 of the Act and expression "authority" used under Rule 9(2) contemplates the person to be in service and excludes appointment of an enquiry officer (authority) of a retired railway officer/official.*
>
> ***40.*** *Heavy reliance was placed by the respondents upon the judgment of this Court in Ravi Malik v. National Film Development Corpn. Ltd. [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] We have already discussed at some length the scheme of the Rules. As already noticed, we are not required to discuss in any further elaboration the inquiries taken under the Act, inasmuch as none of the respondents before us have been*

subject to public departmental enquiry under the provisions of the Act. Rule 9(2) requires the authority to form an opinion, whether it should hold the inquiry into the truth of imputation of misconduct or misbehaviour against the railway servant itself or should it appoint some other authority to do the needful. Thus, there is an element of discretion vested in the competent authority to appoint "other authority" for the purposes of conducting a departmental enquiry.

41. *It is a settled principle of interpretation that exclusion must either be specifically provided or the language of the rule should be such that it definitely follows by necessary implication. The words of the rule, therefore, should be explicit or the intent should be irresistibly expressed for exclusion. If it was so intended, the framers of the rule could simply use the expression like "public servant in office" or "an authority in office". Absence of such specific language exhibits the mind of the framers that they never intended to restrict the scope of "other authority" by limiting it to the serving officers/officials. The principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule.*

42. *The learned counsel appearing for the respondents wanted us to accept the argument that the provisions of Rule 9(2) have an implicit exclusion in its language and exclusion is absolute. That is to say, the framers have excluded appointment of former employees of the Railway Department as other authority (enquiry officer) under these provisions. We find no merit in this contention as well.*

43. *An exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language, as in the clauses excluding the jurisdiction of the court the framers of the law apply specific language. In some cases, as it may be, such exclusion could be read with reference to irresistible implicit exclusion. In our opinion the language of Rule 9(2) does not support the submission of the respondents. Application of principle of exclusion can hardly be inferred in the absence of specific language. Reference in this regard can be made to the judgment of this Court in New Moga Transport Co. v. United India Insurance Co. Ltd. [(2004) 4 SCC 677 : AIR 2004 SC 2154]*

44. *In the present case, neither of these ingredients appear to be satisfied. Ultimately, what is the purpose of a departmental enquiry? It is, to put to the delinquent officer/official the charges or article of charges and imputation and seek his reply in the event of there being no substance to hold an inquiry in accordance with the rules and principles of natural justice. The enquiry officer appointed by the disciplinary authority is a delegatee and has to work within the limited authority so delegated to him. The charges and article of charges and imputations are served by the disciplinary/competent authority. The inquiry report is submitted again to the competent authority which is expected to apply its mind to the entire record and then decide whether any punishment should be imposed upon*

the delinquent officer or not. Thus, all substantive functions are performed by the disciplinary or the specified authority itself. It is only an interregnum inquiry. It is conducted by the delegatee of the said authority. That being the purpose and specially keeping in mind the language of Rule 9(2), we are unable to accept the contention that "other authority" has to be a person in service alone. Thus, it is not only the persons in service who could be appointed as enquiry officers (other authority) within the meaning of Rule 9(2).

45. *Reliance placed by the respondents upon the judgment of this Court in Ravi Malik [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression "public servant" appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that "public servant" should be understood in its common parlance and a retired officer would not fall within the meaning of "public servant", as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. "other authority" and "person/persons". In other words, the absence of the words "public servant" of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance.*

46. *Another factor which we may notice is that the definition of "public servant" appearing in the Penal Code, 1860 (for short "the Code"), reliance upon which was placed by the respondents, was not brought to the notice of the Court while dealing with Ravi Malik [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] . In terms of Section 21 of the Code a public servant denotes a person falling under any of the descriptions stated in the provision. While it refers to a different kind of persons it also brings within its ambit every arbitrator or every person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority. Furthermore, as per the twelfth clause of inclusion, in this very section, even "every person" can be a public servant. In fact, in terms of Section 21(a) a person who is in service of the Government or remunerated by fees or commission for the purpose of any public duty of a Government is also a public servant.*

47. *Thus, a person who is engaged by a competent authority to work on a fee or a fixed remuneration can be a public servant. We fail to understand then how a person engaged for the purposes of performing a delegated function in accordance with law would not be "other authority" within the meaning of Rule 9(2). The Rule has not specified any qualifications or prerequisites which need to be satisfied before a person can be appointed*

as an enquiry officer. It has been left to the discretion of the disciplinary authority. Unless such exclusion of a former employee of the Government was spelt out specifically in the Rule, it will be difficult for the Court to introduce that element and the principle of implication simpliciter."

49. Though, the principle of law laid down in ***Alok Kumar (supra)*** is based on interpretation of Rule 9(2) occurring in Railway Servants (Discipline and Appeal) Rules, 1968 where the language slightly differs from the language in Rule 11(2) of the EIA Rules, however, as is the case in Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, Rule 11(2) of the EIA Rules also is not worded in a way where exclusion of retired public servant can be read. For the purposes of ascertaining as to whether Rule 11(2) of the EIA Rules excludes or not from its fold a retired public servant, what we importantly notice is that the language occurring in Rule 11(2) of the EIA Rules is akin to the language employed in Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

50. As is the case in Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, which has been interpreted by Hon'ble Supreme Court in ***Alok Kumar (supra)***, Rule 11(2) of the EIA Rules also does not contain a language where exclusion of retired public servant has been specifically provided; neither any such exclusion from a bare reading of the language available in Rule 11(2) of the EIA Rules flows by necessary implication. Applying the principle of interpretation as applied by Hon'ble Supreme Court in ***Alok Kumar (supra)***, since there is no specific language which exhibits the mind of the framers of Rule 11(2) of the EIA Rules for exclusion of a retired public servant to be appointed as Inquiring Authority, it would not be, in our opinion, incorrect to hold that even the expression 'public

servant' occurring in Rule 11(2) of the EIA Rules would include retired public servant as well.

51. We are also of the considered opinion that the language available in Rule 11(2) of the EIA Rules does not indicate that by necessary implication the retired public servants can be excluded. In ***Alok Kumar (supra),*** Hon'ble Supreme Court has also held that principle of necessary implication for the purposes of exclusion requires that such exclusion should be an irresistible exclusion and should also be in conformity with the purpose and object of the rule. The purpose and object of the rule regulating appointment of the Inquiring Authority has already been discussed in ***Alok Kumar (supra)***, according to which the inquiry is conducted by the Inquiring Authority as a delegatee of the Disciplinary Authority and such inquiry is only an interregnum inquiry and therefore, it is difficult to accept the contention that 'other authority' has to be a person in service alone. The purpose of appointing the Inquiring Authority under Rule 11(2) of the EIA Rules and that of Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 is the same and no difference in the purpose of appointing the Inquiring Authority in these two sets of rules can indisputably be there.

52. While interpreting the expression 'other authority' occurring in Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, Hon'ble Supreme Court in ***Alok Kumar (supra)*** has also referred to the provisions of Section 21 of IPC, especially sub-clause (a) appended to clause Twelfth of Section 21 of IPC and it has been held that every person, who is in the service or pay of the government or is remunerated by fee or even by commission for performance of any public duty by the government, will be a public servant. In the instant case undeniably that the Inquiring Authority

who conducted the inquiry against the petitioner was a retired public servant, however, he was remunerated by the respondent and therefore, for this reason as well the contention that an Inquiring Authority under Rule 11(2) of the EIA Rules, cannot be a retired public servant, in our opinion, does not appear to be feasible.

53. As far as reliance placed on ***Ravi Malik (supra)*** by the petitioner is concerned, even though the relevant rule, which was under consideration therein and which pertained to the employees of NFDCL, is similarly worded as Rule 11(2) of the EIA Rules, however, ***Ravi Malik (supra)*** has been considered in ***Alok Kumar (supra)***, wherein it has clearly been noticed that the provisions of Section 21 of the IPC were not brought to the notice of the Court in ***Ravi Malik (supra)***. Further, the reasoning given in ***Alok Kumar (supra)*** for holding that 'other authority' shall include retired public servants as well in Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as noticed above, in our considered opinion, can be applied to correctly arrive at the conclusion as to whether the expression 'public servant' occurring in Rule 11(2) of the EIA Rules would include a retired public servant as well.

54. We have already discussed in detail the reasoning on the basis of which conclusion in ***Alok Kumar (supra)*** has been drawn by Hon'ble Supreme Court. The same reasoning, according to us, has to be applied to appropriately interpret Rule 11(2) of the EIA Rules for coming to the conclusion as to whether 'public servant' in this case as well would include retired public servant. Accordingly, applying the reasoning given in ***Alok Kumar (supra)*** by Hon'ble Supreme Court where ***Ravi Malik (supra)*** has also been referred to and considered, we have no hesitation to hold that the

expression ‘public servant’ occurring in Rule 11(2) of the EIA Rules will, in its fold, include retired public servant as well.

55. For these reasons, we do not find any illegality in appointment of Sh. Inder Singh, a retired public servant, as Inquiring Authority in this case who conducted the inquiry and submitted the Inquiry Report to the Disciplinary Authority.

ISSUE (b)

56. Any discussion or consideration on this issue would be incomplete if we do not note the entire Rule 11 of the EIA Rules. Rule 11 falls in Part-VI of the EIA Rules and appears therein under the heading “PROCEDURE FOR IMPOSING PENALTIES”. Apart from Rule 11, Rule 8 and 12 of the EIA Rules are also relevant to be noticed. Rule 8, 11 and 12 of the EIA Rules extracted herein below:

RULE - 8

“PART V
PENALTIES & DISCIPLINARY AUTHORITIES

8. *The following penalties may, for good and sufficient reasons as hereinafter provided, be imposed on an Agency employee, namely:*

Minor Penalties

(i) *Censure;*

(ii) *Withholding of his promotion;*

(iii) *recovery from his pay of the whole or part of any pecuniary loss caused by him/her to the Agency by negligence or breach of order;*

(iv) *Withholding of increments of pay;*

Major Penalties

(v) *reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the Agency employee will earn increment of pay during the period of such reduction and whether on the expiry of such period, the reduction will or, will not have the effect of postponing the further increments of his pay;*

(vi) reduction to a lower time scale of pay, grade or post which shall ordinarily be a bar to the promotion of the Agency employee to the time scale of pay, grade or post from which he was reduced, with or without further directions regarding conditions of the restoration to that grade or post from which the Agency employee was reduced and the seniority and pay on such restoration to that grade or post;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Agency; and

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Agency.

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed:

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

***Explanation** - The following shall not amount to a penalty within the meaning of this rule, namely:*

(i) withholding of increments of pay of an Agency employee for failure to pass any departmental examination in accordance with rules or orders governing the post which he holds or the terms of his appointment;

(ii) stoppage of an Agency employee at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of an Agency employee whether in a substantive or officiating capacity after consideration of his case to a grade or post for promotion to which he is eligible;

(iv) reversion to a lower service, grade or post of an Agency employee officiating in a higher grade or post on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;

(v) reversion to his permanent service, grade or post of an Agency employee appointed on a probation to another grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;;

(vi) compulsory retirement of an Agency employee in accordance with the provisions relating to his superannuation or retirement;

(vii) termination of the services-

(a) of an Agency employee appointed on probation during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or

(b) of a temporary Agency employee in accordance with the rule 16 of the Export Inspection Agency Service Rules; or

(c) of an Agency employee under an agreement in accordance with the terms of such agreement.

(viii) replacement of the service of the Agency employee whose services had been borrowed from a Central Government, State Government or a local or other authority from which the services of such Agency employee had been borrowed:

"NOTE- The Agency or its subordinate authorities described under Rule 9 are competent or imposing penalties within the meaning of Rule 8 on an employee of the Agency in respect of misconduct committed before his employment, if the misconduct was of such a nature as has rational connection with his present employment in the Agency and renders him unfit and unsuitable for continuing service".”

RULE – 11

“Part-VI

PROCEDURE FOR IMPOSING PENALTIES

11. *(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 8 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and in the manner hereinafter provided.*

*(2) Whenever the disciplinary authority is of opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against Agency employee, it may itself inquire or appoint under this rule [a public servant**] to inquire into the truth thereof.*

Explanation: *Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the*

inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against an Agency employee under this rule and in the manner hereinafter provided, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehavior in support of each article of charge; which shall contain–

(a) a statement of all relevant facts including any admission or confession made by the Agency employee;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Agency employee a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Agency employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charges have been admitted by the Agency employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner hereinafter provided.

(b) If no written statement of defence is submitted by the Agency employee, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquire into any articles of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a [public servant] or a legal practitioner, to be known as the "Presenting

Officer" to present on its behalf the case in support of articles of charge

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority –

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehavior;
(ii) a copy of the written statement of defence, if any, submitted by the Agency employee;
(iii) a copy of the statement of witnesses, if any referred to in sub-rule (3);
(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Agency employee; and
(v) a copy of the order appointing the "Presenting Officer".

(7) The Agency employee shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him/her of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days as the inquiring authority may allow.

(8) The Agency employee may take the assistance of any Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Agency employees may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

***NOTE:** - The Agency employee shall not take the assistance of a Government servant who has three pending disciplinary cases in hand in which he has to give assistance.*

(9) If the Agency employee who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain signature of the Agency employee thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Agency employee pleads guilty.

(11) The inquiring-authority shall, if the Agency employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Agency employee may, for the purpose of preparing his defence;

(i) Inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) Submit a list of witnesses to be examined on his behalf;

***NOTE:-** If the Agency employee applies orally or in writing for the supply of copies of statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.*

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Agency but not mentioned in the list referred to in sub-rule (3).

***NOTE: -** The Agency employee shall indicate the relevance of the documents required by him to be discovered or produced by the Agency.*

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward, the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in such-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recoded by it in writing that the production of all or any of such documents would be against the Agency's interest or public interest or security of the state, it shall inform the inquiring authority accordingly and the inquiring authority shall on being so informed, communicate the information to the Agency employee and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Agency employee. The Presenting Officer shall be entitled to re-examine the witness on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it think fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Agency employee or may itself call for new evidence or recall and re-examine any witness and in such case the Agency employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Agency employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Agency employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

***NOTE: -** New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.*

(16) When the case for the disciplinary authority is closed the Agency employee shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Agency employee shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Agency employee shall then be produced. The agency employee may examine himself in his own behalf if he so prefers. The witnesses produced by the Agency employee shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Agency employee closes his case, and shall, if the Agency employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Agency employee to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Agency employee, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Agency employee to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specific for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provision of this rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 8 but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 8, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 8 should be imposed on the Agency employee, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Agency employee such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiry authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to

exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:

(a) the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) the defence of the Agency employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

***Explanation:** If in the opinion of the inquiry authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge.*

Provided that the findings on such article of charge shall not be recorded unless the Agency employee has either admitted die facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include:

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the Agency employee;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Agency employee or both during the course of the inquiry; and

(e) The orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

RULE – 12

"12. *(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 11 as far as may be applicable.*

(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.

(3) If the disciplinary authority having regard to its finding on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 8 should be imposed on the Agency employee, it shall, notwithstanding anything contained in Rule 13, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to(ix) of Rule 8 should be imposed on the Agency employee, it shall make an order imposing such penalty and it shall not be necessary to give the Agency employee any opportunity of making representation on the penalty proposed to be imposed.

Provided that where an enquiry has been held in accordance with the provisions of Rule11 for any of the penalties specified in clause (v) to (ix) of Rule 8, the Disciplinary Authority, if it is different from the Inquiring Authority, shall before making any final order of imposing such penalty, forward a copy of the inquiry report to the Agency employee concerned giving him an opportunity of making any representation or submission in writing to the Disciplinary Authority."

57. Rule 8 of the EIA Rules provides for two types of penalties which can be imposed on the employees of the respondent, namely, minor and major penalties. In this case, we are concerned with penalty of reduction in rank which is a major penalty as described in Rule 8(v) of the above quoted rules.

58. Rule 11(1) of the EIA Rules mandates that no major penalty as defined in clause (v) to (ix) of Rule 8 can be imposed except after an inquiry, as far as may be, in the manner provided in the said rules. Rule 11(3) provides that if it is proposed to hold an inquiry against an employee, the Disciplinary Authority shall draw or cause to be draw a charge sheet or the substance of imputation of his misconduct or misbehavior which shall contain a statement of all relevant facts, list of documents and a list of witnesses by which and by whom the Article of Charges are proposed to be proved.

59. Sub-rule 4 of Rule 11 provides that once the charge sheet is drawn, the Disciplinary Authority shall serve or cause to be served such charge sheet upon the delinquent employee which will contain the article of charges, statement of imputations of misconduct or misbehavior and list of documents and witnesses. It further provides that the charged officer/official, on service of charge sheet, shall be required to submit written statement of his defence and to state whether he desires to be heard in person or not. In our opinion, sub-rule 4 of Rule 11 mandates two acts, (i) service of the charge sheet, and (ii) requiring the employee to submit his written statement of defence and to state whether he desires to be head in person. The actual connotation of the expression, 'he desires to be heard in person' has to be understood in the light of the stage of the disciplinary proceedings at which it has been mandated that the Disciplinary Authority shall require the delinquent

employee to state as to whether he desires to be heard in person or not. Sub-rule 4 of Rule 11 comes into play once the charge sheet is drawn and is served upon the delinquent employee. It provides that apart from serving the charge sheet, the delinquent employee will have to be given an opportunity to submit his written statement of defence and also to indicate as to whether he desires to be heard in person.

60. Considering the stage of disciplinary proceedings at which Rule 11(4) of the EIA Rules operates, in our considered opinion, the expression 'he desires to be heard in person' occurring therein would mean providing opportunity of hearing to the delinquent employee during the course of inquiry to be conducted pursuant to the service of charge sheet and not at any other stage. In the instant case, in terms of Rule 11(2) of the EIA Rules, the Disciplinary Authority decided not to conduct the inquiry himself rather an Inquiring Authority was appointed and therefore, in our opinion, what is meant by the expression 'he desires to be heard in person' occurring in Sub-rule 4 of Rule 11 is that the delinquent official was to be provided opportunity of being heard in person during the course of inquiry conducted by the Inquiring Authority.

61. The learned Single Judge, however, in the impugned judgment and order, though quotes Rule 11(4) of the EIA Rules, it is, however, concluded that the said rule prescribes the procedure as to how the Disciplinary Authority would proceed "post receipt of proceedings concluding with the Inquiring Authority's report". In our opinion, application of Rule 11(4) of the EIA Rules has to be made immediately after service of the charge sheet and not "post receipt of the proceedings by the Disciplinary Authority on conclusion of the inquiry" conducted by the Inquiring Authority.

62. The learned Single Judge has referred to the letter dated 12.05.2014, *vide* which the petitioner had submitted his written statement of defence. It is to be noticed, as is borne out from the records available before us on these two appeals, that the letter dated 12.05.2014 was submitted by the petitioner in reference to the charge sheet dated 27.03.2014, wherein it was stated *inter alia,* by the petitioner that the charge sheet was a culmination of his stand taken against "onslaughts of Director, EIC" and that the Director had become a symbol of deriving sadistic pleasure in harassing and running down honest officers of the organization notwithstanding the fact that he realizes his incompetence to the position which he holds by virtue of fluke. In the said letter, the petitioner also stated that allegations against him in the charge sheet are preposterous, misconceived and without any substance. He further denied the said charges unequivocally and expresses his desire to be heard in person.

63. We have already noticed that initially instead of participating in the proceedings, the petitioner had challenged the charge sheet dated 27.03.2014 by way of instituting *W.P.(C) 2458/2014* before this Court, which was dismissed as withdrawn with certain directions. Thus, the stage at which the petitioner had submitted the letter dated 12.05.2014 expressing his desire to be heard in person, was not the stage "post culmination of the proceedings at the end of the Inquiring Authority"; rather it was at the stage where he denied the charges leveled against him in the charge sheet and expressed his desire to be heard in person. It is not the case of the petitioner that during the course of the inquiry held by the Inquiring Authority, he was not heard personally or was prohibited from participation in the inquiry. In our opinion, what is meant by the expression, 'he desires to be heard in person' occurring in Rule 11(4) of the EIA Rules, is that in case after service of the

charge sheet while the delinquent employee furnishes his written statement of defence and desires to be heard in person, he shall be provided opportunity to be heard in person during the course of inquiry conducted by the Inquiring Authority and that he shall be given the opportunity to participate in the proceedings conducted by the Inquiring Authority in accordance with the rules. The provision of Rule 11(4) of the EIA Rules, in our opinion, does not contemplate any opportunity of personal hearing "post receipt of the proceedings concluding with the Inquiring Authority's report", as has wrongly been concluded by the learned Single Judge in paragraph 45 of the impugned judgment and order.

64. As a matter of fact, once the proceedings conclude at the end of the Inquiring Authority, he, under the EIA Rules, is mandated to forward the Inquiry Report to the Disciplinary Authority and further action follows at the end of the Disciplinary Authority. As per the scheme of Part-VI (PROCEDURE FOR IMPOSING PENALTIES) of the EIA Rules, once the inquiry proceedings are concluded by the Inquiring Authority, he is required to prepare a report which is generally called an Inquiry Report, as per Rule 11(23) of the EIA Rules and such report shall contain articles of charge, statement of imputations of misconduct or misbehavior, defence of the employee concerned, assessment of the evidence in respect of each article of charge and the findings on each article of charge and the reasons thereof.

65. Rule 11(23)(ii) of the EIA Rules mandates that the Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward the records of the inquiry to the Disciplinary Authority, which shall include the Inquiry Report prepared under Rule 11(23)(i) of the EIA Rules, the written statement of defence submitted by the employee, the oral and documentary

evidence produced in the course of the inquiry, written briefs, if any, submitted by the Presenting Officer or the employee and the orders made by the Disciplinary Authority and Inquiring Authority in regard to inquiry. Thus, Rule 11(23)(ii) of the EIA Rules requires the entire proceedings of the inquiry conducted by the Inquiring Authority to be forwarded to the Disciplinary Authority.

66. As per Rule 12(1) of the EIA Rules, once the Disciplinary Authority receives the record of the inquiry including the Inquiry Report from the Inquiring Authority, in case the Disciplinary Authority is not the Inquiring Authority itself, it may remit the case to the Inquiring Authority for further inquiry for reasons to be recorded in writing thereupon the Inquiring Authority shall proceed to hold further inquiry in accordance with the provisions of Rule 11 of the EIA Rules. Rule 12(2) of the EIA Rules provides that if the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article on charge, he shall record his reason for such disagreement and record his own findings on each charge whereupon in terms of Rule 12(4), if the Disciplinary Authority forms an opinion that any of the major penalties should be imposed on the employee concerned, the Disciplinary Authority shall make an order imposing such penalty, and in that eventuality it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed.

67. Thus, what we find from a close scrutiny of the scheme of the EIA Rules is that the only requirement of providing opportunity to the delinquent employee, post submission of the Inquiry Report by the Inquiring Authority for the purposes of imposing any of the major penalties as described in Rule 8(v) to (ix) EIA Rules, is that before imposing such major penalty, the

Disciplinary Authority shall forward a copy of the Inquiry Report to the employee concerned giving him opportunity to make representation or submissions in writing against the findings recorded by the Inquiring Authority in the Inquiry Report, to the Disciplinary Authority. Thus, a close examination of the scheme of the rules relating to procedure for imposing penalties occurring in Part-VI of the EIA Rules, suggests that the rules do not contemplate any opportunity of being personally heard to the delinquent employee after submission of the Inquiry Report by the Inquiring Authority except for serving upon the delinquent employee a copy of the Inquiry Report and requiring him to submit his submissions to the findings recorded by the Inquiring Authority. Thus, all what is required under the said rules is that if it is a case of imposition of major penalty, the Inquiry Report submitted by the Inquiring Authority has to be forwarded to the delinquent employee giving him an opportunity to make representation or his submission in writing against such an Inquiry Report and such representation or submission is to be made to the Disciplinary Authority.

68. Indisputably, in the instant case the Disciplinary Authority did not differ with the findings recorded by the Inquiring Authority in the inquiry conducted against the petitioner, who found all the three articles of charge proved against the petitioner and therefore, in terms of the scheme of the EIA Rules, all what was required was that the petitioner would be given the copy of the Inquiry Report along with an opportunity to submit his representation or submission in respect of the findings recorded by the Inquiring Authority. Such opportunity of making representation to the Disciplinary Authority was given in this case to the petitioner against the findings in the Inquiry Report. This is not denied by the petitioner.

69. We have already noticed that *vide* letter dated 10.09.2015, the Inquiry Report submitted by the Inquiring Authority was furnished to the petitioner and by the said letter itself he was provided an opportunity to submit his comments/representation, if any, on the findings of the Inquiring Authority's report within 15 days. Pursuant to which, the petitioner submitted his representation against the findings recorded by the Inquiring Authority in his Inquiry Report, whereupon the punishment order dated 17.02.2016 was passed by the Disciplinary Authority.

70. We, therefore, find that the disciplinary proceedings against the petitioner in the instant case were conducted in strict adherence to the EIA Rules. The petitioner has utterly failed, in our opinion, to establish infringement of any rule including that of Rule 11(4) of the EIA Rules.

71. As far as the findings recorded by learned Single Judge in the impugned judgment and order to the effect that language of Rule 11(4) of the EIA Rules provides for the procedure to be followed "post receipt of the proceedings concluded with the Inquiring Authority's report", we may only observe that the said finding is based on a complete misreading of the provisions of Rule 11(4) of the EIA Rules. In our opinion, learned Single Judge has completely ignored the stage of applicability of Rule 11(4) of the EIA Rules which in terms of the scheme of the rules, cannot be a stage which may arise post receipt of the conclusion of the proceedings by the Inquiring Authority.

72. As observed above, all what is meant by expression, 'he desires to be heard in person' would mean in case the delinquent official desires hearing during the course of inquiry before the Inquiring Authority after submission of the written statement of defence, he cannot be denied such opportunity.

73. We have already concluded, as the records reveal in this case, that it is not the case of the petitioner that he was denied opportunity of any sort during the course of the inquiry before the Inquiring Authority; neither his case is that he was not provided with the copy of the Inquiry Report and the opportunity to make his representation/submission in writing against the findings recorded by the Inquiring Authority was denied to him. Thus, we do not find ourselves in agreement with the learned Single Judge, where he has found that the disciplinary proceedings were vitiated on account of non-observance of Rule 11(4) of the EIA Rules.

74. Regarding the findings of fact, as concluded by the Inquiring Authority which have been accepted by the Disciplinary Authority while passing the order of punishment of reduction in rank, we note that learned Single Judge has found that the said findings are not liable to be interfered with. Further, so far as the power of judicial review of orders passed in the disciplinary proceedings is concerned, it is confined to reviewing as to whether the disciplinary proceedings were conducted in accordance with rules and the procedures regulating such proceedings. The Court, as is settled, need not go into the findings of fact recorded by the Inquiring Authority or Disciplinary Authority unless they are found to be absolutely perverse.

75. We do not see any perversity in the findings recorded by the authorities in the instant case and also note that both, the Inquiring Authority and the Disciplinary Authority, have elaborately considered the evidence available on record and have returned the findings conclusively based on the evidence, finding that all the Article of Charges against the petitioner are proved, which do not require any interference by the Court.

76. It is, thus, not a case based on no evidence in the sense that the Disciplinary Authority has not recorded its finding of guilt without there being any evidence on record and accordingly, the judgment cited by the petitioner in ***Bhupenderpal Singh Gill (supra)*** is of no avail to him. To the contrary, it helps the cause of the respondent. In paragraph 33 of the report in ***Bhupenderpal Singh Gill (supra)***, Hon'ble Supreme Court has reiterated the settled law that an administrative order punishing a delinquent employee is not ordinarily subject to correction in judicial review because the Disciplinary Authority is the sole judge of the facts and further that if there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution of India.

77. The Hon'ble Supreme Court has held in the said case that if on consideration of the material on record, the Court is satisfied that there has been violation of principles of natural justice, or inquiry proceedings have been conducted contrary to the statutory regulations, or the ultimate decision of the Disciplinary Authority is vitiated by considerations extraneous to the evidence and merits of the case, or the Disciplinary Authority has *ex-facie* acted arbitrarily or capriciously so much so that no reasonable person could have arrived at such a conclusion, the High Court may in exercise of its discretion interfere in such punishment orders. Para 33 of the judgment in ***Bhupenderpal Singh Gill (supra)*** is extracted hereunder:

> *"33. Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not ordinarily subject to correction in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the*

Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice, or that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry, or that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case, or that the conclusion of the disciplinary authority is ex facie arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion, or there is any other ground very similar to the above, the high court may in the exercise of its discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be urged by such servants depending upon the extent of breach that is manifestly demonstrated."

78. As far as the manner in which the disciplinary proceedings in the instant case have been conducted, we have already arrived at a conclusion that the proceedings were conducted in accordance with the requirements of EIA Rules and that at every stage where the rules required, the petitioner was given opportunity of being heard or making representation. We do not find that the respondent in any manner has violated the principles of natural justice so that it can be held guilty of non-observance of the procedural fairness contrary to the requirements of the EIA rules. It is also not a case of no evidence as is apparent from a perusal of the records including the order passed by the Disciplinary Authority, which is well elaborated and discussed and is based on the detailed discussion on the evidence available on record and the Inquiry Report submitted by the Inquiring Authority as also the representation made by the petitioner against the findings in the Inquiry Report.

79. As far as the reliance placed by the petitioner on ***Kunj Behari Mishra (supra)*** and ***Yoginath D. Bagde (supra)*** is concerned, it is noteworthy that in the said cases, after submission of the Inquiry Report by the Inquiring Authority, the Disciplinary Authority had taken a view different from the

view taken by the Inquiring Authority with regard to the charges leveled against the delinquent employee and it is in this background it has been held, that in case the Disciplinary Authority takes a view different from the view taken by the Inquiring Authority, the delinquent employee has to be given an opportunity and he should also be supplied with the reasons of different view taken by the Disciplinary Authority. So far as the facts in the instant case are concerned, the Disciplinary Authority had not taken a view different from the view taken by the Inquiring Authority as regards the findings on charge against the petitioner in as much as that both these authorities have found the charges to be proved. Accordingly, these judgments do not have any application to the facts of the instant case.

80. For the aforesaid reasons, it is difficult for us to maintain the judgment and order passed by learned Single Judge.

81. Resultantly, LPA No. 1045/2024 filed by the respondent is allowed and LPA No. 313/2024 is hereby dismissed. The impugned judgment and order dated 06.03.2024 passed by learned Single Judge in W.P.(C) No. 3940/2017 is also set aside.

82. However, there will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

JANUARY 22, 2026
*N.Khanna/**"shailndra"***