

Indian Institute Of Technology Delhi & ... vs Atul Kumar Mittal & Anr on 27 March, 2025

Author: Sachin Datta

Bench: Vibhu Bakhru, Sachin Datta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on

+ LPA 190/2019

INDIAN INSTITUTE OF TECHNOLOGY DELHI & ANR.

Through: Mr Gourab Banerji, Senior
with Mr Arjun Mitra, Ms
Chatterjee, Mr Rakesh T
Supreeth V. and Mr Mohi
Advocates.

versus

ATUL KUMAR MITTAL

Through: Respondent in perso

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present appeal assails a judgment dated 20.02.2019 passed in W.P.(C) 9777/2017 whereby the inquiry into the allegations of sexual harassment against the respondent, as well as the consequent penalty of compulsory retirement has been set aside, and the appellant/s has been directed to re-instate the respondent.

2. The inquiry against the respondent (professor at IIT, Delhi) was conducted on account of certain complaints of sexual harassment received by the institute. The factual background leading up to the filing of the W.P.(C) 9777/2017, and the impugned order dated 20.02.2019 is set out hereunder:

FACTUAL BACKGROUND:

3. On 22.01.2013 a complaint was received by the Director, IIT Delhi from a Ph.D scholar. By the said communication, the concerned Ph.D scholar expressed certain apprehensions and sought change of guide for the purpose of pursuing her Ph.D. Consequently, a fact finding committee was formed to look into the complaint dated 22.01.2013. The Fact Finding Committee submitted its report on 13.02.2013 based on interaction with the complainant/Ph.D Scholar. The same was placed for consideration before the Sexual Harassment Complaints Committee (hereinafter "SHCC") on 26.02.2013.

4. During the said meeting, the SHCC took note of the fact that while the Fact Finding Committee's inquiry with regard to the complaint dated 22.01.2013 was going on, another complaint had been received on 30.01.2013 by another student adverting to some instance/s during the year 2004. It was decided by the SHCC to initiate an inquiry into the matter. Pursuant thereto, a notice dated 18.03.2013 was served upon the respondent; on 22.03.2013, the respondent sought time to file a detailed reply. Subsequently, a detailed reply was submitted wherein the respondent sought to controvert the allegations made against him and elaborate factual submissions were made by the said respondent. It was also sought by the respondent as under:

"In view of the above, I therefore request you to kindly provide me the reasonable time alongwith the copies of all the documents relating to the proceedings of the fact finding committee, and the basis on which the inferences have been drawn by the committee."

5. The matter came to be considered again in the meeting of the SHCC on 25.03.2013. The minutes of the said meeting record as under:-

"The Committee has already perused the complaints as well as documents in support thereof at the time of directing Prof. A.K. Mittal to submit his response. After perusing the response and the brief points of defense raised by him the Committee after detailed deliberations was of the view that at this stage no final merits of the case have to be given. The requirement was to decided whether or not a regular inquiry has to be instituted. Since this Committee is of the considered view that the allegations and harassment are prima facie made out, a regular inquiry should be instituted against Prof. A.K. Mittal and a charge sheet served upon him in next 15 days after getting the same approved by disciplinary authority.

Amongst various objections raised by Prof. A.K. Mittal that laid down procedures have not been followed by preliminary Fact Finding Committee, the Committee feels that since Prof. A.K. Mittal is going to get an ample opportunity for defense, this objection does not sustain. However, there are no hard and fast rules for laid down procedures followed by preliminary Fact Finding Committee."

6. Subsequently, another communication dated 02.04.2013 came to be addressed by the respondent; the same reads as under:-

"To, The Chairperson, Sexual Harassment Complaint Committee IIT Delhi, ar Madame, Kindly refer to my earlier request by way of letter dated 25th March, 2013 requesting for further reasonable time to respond point wise motivated allegations made against me tarnishing my image. I have not heard from you on my request for granting me reasonable time to file reply to your notice.

I have also requested that the scheduled meeting of the committee on 25th March, 2013 was to consider my preliminary response, requesting copies of all the

documents relating to proceedings of the fact finding committee, and the basis on which the inferences have been drawn by the committee. Besides these, I further request to provide me copy of conduct rules of the IIT Delhi under which proceedings were initiated.

While filing my detailed reply I will also bring on record the developments pending inquiry about the motivated and false allegations made by the complainant. Kindly, supply me the required documents as stated above and reasonable time (4 weeks after receipt of those documents) so that I can present my point wise reply with evidences. I have to produce witnesses to bring the truth on record about-allegations in question and the conspiracy angle so. In the mean time, I have received emails from two of my students, which relate to the pertinent subject and are enclosed herewith for your kind perusal and attention.

I am anxiously waiting for your response for the grant of reasonable time and making relevant documents available to me so that I can effectively reply to your notice IITD/R/2013/AREG-425, dated 18/03/2013 as soon as possible, and be relieved from deep mental stress and agony for no fault on my part.

With regards, Sd/-

Atul K. Mittal Professor, Department of Civil Engineering."

7. The respondent, while seeking the relevant document/s which, inter alia, formed the basis of the conclusion/s drawn by the Fact Finding Committee, also sought to produce certain documents in the form of communication/s addressed by other Ph.D Scholar in support of his defence.

8. On 08.04.2013, the Office of Registrar, IIT (Delhi) issued a communication, which reads as under:-

"The Sexual Harassment Complaint Committee in its meeting held on 25th March, 2013 has decided that a regular inquiry be initiated against Prof. A.K. Mittal and a charge-sheet served upon him after getting it approved from the competent authority.

Kindly find placed below a draft charge sheet prepared in consultation with and duly vetted by Sh. Arjun Mitra, Legal Advisor. Since in this case, Board of Governors is the disciplinary authority, it is requested to get it approved from the Chairman, Board of Governors, IIT Delhi on behalf of BOG.

Urgent Please"

9. Subsequently, on 26.04.2013, a Memorandum was issued stating that the Chairman Board of Governors proposes to hold an inquiry against Dr. A.K. Mittal/the respondent. The said

Memorandum reads as under:-

"MEMORANDUM The Chairman, Board of Governors, proposes to hold an inquiry against Dr. A.K. Mittal Professor under Rule 14 of the Central Civil Services (CCA) Rules, 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13(9) of the Institute. The substance of imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed Statement of Articles of Charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each Article of Charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

Dr. A.K. Mittal is directed to submit within 10 days of the receipt of this Memorandum, a written statement of his defence and also state whether he desires to be heard in person.

He is informed that an enquiry will be held only in respect of those articles of charge as not admitted. He should, therefore, specifically admit or deny each article of charge.

Dr. A.K. Mittal is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the orders or directions issued in pursuance of the said Statute/relevant Rules, the Inquiring Authority may hold the inquiry against him ex parte.

Attention of Dr. A.K. Mittal is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Dr. A.K.Mittal is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

The receipt of this Memorandum may be acknowledged (By order and in the name of Chairman Board of Governors)"

10. The Articles of Charge along with the statement of imputation of misconduct, were enclosed with the said Memorandum.

11. In response, a detailed communication dated 07.05.2013 was addressed by the respondent to the Chairman, Board of Governors, IIT (Delhi). While making elaborate submissions on the merits of the allegations against him, the respondent also objected to the fact that report of the Fact Finding

Committee had not been provided to him. It was also requested that an authenticated copy of the SMS/messages which had been mentioned in the Articles of Charge be provided to the respondent. Certain other documents were also sought by the respondent.

12. Learned counsel for the appellant has emphasised that the communication dated 07.05.2013 contained a statement of the respondent that he would prefer "an open inquiry in conformity with the provisions of the rules under which the inquiry is proposed to be held".

13. Despite the aforesaid detailed communication/defence statement dated 07.05.2013 of the respondent, a noting dated 09.05.2013 of the Registrar of the Appellant No. 1, contains the following observations:-

"OFFICE OF THE REGISTRAR A charge sheet was served upon Prof. A.K. Mittal, Dept. of Civil Eng. vide Memo No. IITD/Estt.I/U-1/2013/IESI/1429 dated 26.04.2013. He was required to submit a written statement of defense by 9-5-2013. However, as inquired from Estt. I Section, his written statement of defense has not yet been received in the section."

14. Consequently, on 06.06.2013, an Office Memorandum was served on the respondent stating as under:-

"OFFICE MEMORANDUM It has reference to Office Memorandum No. IITD/Estt.I/U- 1/2013/IESI/1429 dated 26.4.2013. Written statement of your defence has not been received as yet.

It is again requested to submit your written statement of defence positively by 8.6.2013."

15. On 19.06.2013, the acting Director of IIT, Delhi sent a communication to the Chairman, Board of Governors, stating as under:-

"INDIAN INSTITUTE OF TECHNOLOGY DELHI Subject: Charge-sheet against Prof. A.K. Mittal, Deptt. of Civil Engg.

With the approval of the Chairman, Board of Governors, Prof. A.K. Mittal in the Department of Civil Engineering was served upon a Charge-sheet vide Office Memorandum No. IITD/Estt.I/U- 1/2013/IESI/1429 dated 26.4.2013 with the direction to submit a written statement of his defense within 10 days of the receipt this Memorandum. He received this Memorandum on 29.4.2013.

In response to this, Prof. Mittal has submitted his reply dated 7.5.2013 addressed to Chairman, BOG, which is placed at Flag/A. He has not admitted the charges and allegations contained in the said Memorandum. Further stated that he would prefer an open inquiry in conformity with the provisions of the Rules under which the

inquiry is proposed to be held, if after receipt of his written statement of defence, the Chairman, BOG decide to proceed with the inquiry.

In view of the above, the reply of Prof. A.K. Mittal along with Charge-sheet served upon him are placed below, for kind consideration and appropriate decision.

The BOG is the appointing authority in such cases but in emergent cases the Chairman, B.O.G. may exercise the powers of the Board under Statute 7(4) and inform the Board of action taken by him for its approval. The Chairman, BOG is therefore requested to advise further action to be taken in the matter. The approval so accorded by the Chairman, BOG, will be reported to BOG in its next meeting for ratification."

16. Subsequently, on 02.08.2013, a Board of Inquiry was constituted to hold an inquiry. The same was done by a communication issued by the Chairman, Board of Governors stating as under:-

"Sub: Constitution of Board of Inquiry Having perused the Chargesheet and Reply of Prof. A.K. Mittal, I am of the Considerate opinion that it would be required to initiate regular inquiry proceedings as per rules so as to ascertain the facts in this case.

Let inquiry be conducted by a Board of Inquiry comprising Prof. Saroj Mishra, Prof. Manjeet Jassal & Prof. T.C. Kandpal, Shri Nanak Chand, Deputy Registrar may act as Presenting Officer."

17. The order dated 12.08.2013, whereby the board of inquiry was constituted, reads as under:-

" INDIAN INSTITUTE OF TECHNOLOGY DELHI HAUZ KHAS: NEW DELHI: 110016 No. IITD/IES1/2013/U-I/2746 Date: 12.8.2013 ORDER WHEREAS an inquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13(9) of the Institute is being held against Prof. A.K. Mittal, Deptt. of Civil Engineering.

AND WHEREAS the Chairman, Board of Governors considers that Board of Inquiry should be appointed to inquire into the charges framed against Prof. A.K.Mittal, Deptt. of Civil Engineering.

NOW, THEREFORE, the Chairman, Board of Governors in exercise of the powers conferred under the said Statute, hereby appoints the following faculty members as the Inquiry Authority to inquire into the charges framed against the Prof. A.K. Mittal Dept. of Civil Engineering:-

1. Prof. (Ms.) Saroj Mishra
2. Prof. (Ms.) Manjeet Jassal

3. Prof. T.C. Kandpal (By order and in the name of the Chairman, BOG)"

18. It is noticed that the Memorandum dated 26.04.2013 whereby an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 was proposed to be initiated against the respondent, as also the constitution of the Board of Inquiry (on 12.08.2013), was under orders of, and in the name of the Chairman, Board of Governors of the Appellant No. 1. During this period (26.04.2013-12.08.2013), the matter was not considered by the Board of Governors (hereinafter 'BOG').

19. The proceedings before the Board of Inquiry took place only on 02.12.2013 and 06.12.2013. The proceeding dated 06.12.2013 records that the charged officer (the respondent) submitted a list of 24 documents required by him. It also records that the Inquiry Authority, after discussions with the charged officer and the presenting officer regarding the relevance of the various documents requested, issued certain direction/s with regard to the request for documents, as detailed in the Annexure-II thereof.

20. In the said Annexure-II, it was, inter alia, recorded that "the Inquiry authority decided that both the complainant and the charged officer should submit an authenticated and verified document through service provider on SMSs exchanged through messages and viber in terms of its verbatim content with full details".

21. On 23.01.2014, an order was issued by the Registrar of IIT, Delhi (in the name of BOG) stating as under:-

"ORDER WHEREAS an inquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13(9) of the Institute is being held against Prof. A.K.Mittal, Deptt. of Civil Engineering.

AND WHEREAS the Chairman, Board of Governors has earlier vide notification No. IITD/IES1/U-1/2746 dated 12.08.2013 appointed an Inquiry Authority comprising of Prof. (Ms.) Saroj Mishra, Prof. (Ms.) Manjeet Jassal and Prof. T.C. Kandpal to inquire into the charges framed against Prof. A.K.Mittal.

AND WHEREAS the members of above referred Inquiry Authority have requested to be allowed to withdraw from the Inquiry since the procedures involved are complex.

NOW, THEREFORE, the Chairman, Board of Governors in exercise of the powers conferred under the said Statute, hereby appoints Justice (Retd.) Rekha Sharma as the Inquiry Officer to inquire into the charges framed against Prof. A.K.Mittal, Deptt. of Civil Engineering.

(By order and in the name of the Chairman, BOG)"

22. In the meantime on 09.12.2013, The Sexual Harassment of Women at Workplace: (Protection, Prohibition and Redressal) Act, 2013 (hereinafter 'the POSH Act'), came into force. Section 11 of the

same contemplates as under:-

"11. Inquiry into complaint.-- (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable....."

23. Pursuant to the coming into force of the aforesaid Act, an Internal Complaints Committee (hereinafter "ICC") for the Appellant No. 1 was constituted on 17.01.2014, for year 2013-14. The said communication reads as under:-

"In suppression of IITD notification IITD/ICDN/27/2013/1347 dated 30.9.2013 vide which a Sexual Harassment Complaint Committee was constituted for the year 2013-14, the following Internal Complaints Committee is hereby constituted with immediate effect under the provisions contained in Section 4 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

1. Pro. (Ms.) B. Bhaumik Chairperson Elect. Engg. Dept.
2. Ms. Poonam Mahajan, Supdt. Member Planning Unit.
3. Ms. Sanya Ohri, 3rd Yr. B.Tech Member Student E.No. 2011TT10961, Himadri Hostel
4. Mrs. Sudha Tiwari Member, NGO Chairperson, Shakti Shalini, 6/30-B, Lower Ground, Kargil Park Lane, Janpura-B, New Delhi- 110014
5. Sh. N.C. Chauhan, Dy. Registrar Member/Convener The terms of reference, tenure etc. remain the same as notified earlier. "

24. On 26.02.2014, the respondent wrote to the Director IIT, Delhi, inter alia, requesting that his complaint be referred to the ICC constituted under the POSH Act. Vide communication dated 27.03.2014, the respondent again sent a communication to the Director IIT, Delhi raising a grievance that the documents as sought by the respondent had not been supplied to him.

25. On 01.07.2014, the respondent wrote to the inquiry officer again requesting that the matter be referred to the ICC for consideration. On 11.08.2014, a detailed inquiry report was submitted by the inquiry officer. The said inquiry report, inter alia, notes that by virtue of Section 28 of the POSH Act,

the inquiry officer was not precluded from conducting the inquiry. It was, inter alia, observed as under:

"It appears to me that Dr. Mittal is labouring under some misconception with regard to my appointment to inquire into the allegations made against him. It is true that under the 'The Sexual Harassment Act' an Internal Complaint Committee is required to be constituted with regard to complaints of sexual harassment at workplace. But it is also true that this Act does not prohibit an inquiry to be conducted under Rule 14 of the CCS (CCA) Rules, 1965, Central Civil Services (Conduct) 1964, and Statue 13(9) of the Institute. As a matter of fact Section 28 of the 'The Sexual Harassment Act' says that "Provisions of this law will be in addition and not in derogation to any law for the time being in force". Reference in this regard may also be made to an office memorandum of IIT Delhi, dated April 16th 1993 whereby, CCS (Conduct) Rules 1964, CCS (CCA) Rules 1965, fundamental and supplementary rules are made applicable to the employees of the Institute."

26. The inquiry officer concluded that the articles of charges against the respondent were proved.

27. A writ petition being W.P.(C) 6059/2014 came to be filed by the respondent which was disposed of vide order dated 15.09.2014 which reads as under:-

"The learned counsel for the respondent states that a final decision on the Inquiry Report has not been taken by the Board of Governors/Deciding Authority. He states that the Board of Governors/Deciding Authority shall give full opportunity to the petitioner to be heard and make his representation including with respect to the factual matrix of the case. He further states that after affording the petitioner the aforesaid opportunity, a speaking order will be passed.

In view of the statement made by the learned counsel for the respondent, I find no reason to interfere with the proceeding at this stage.

The petitioner shall appear before the Board of Governors on 03.11.2014. The petitioner shall also file all material, on which he seeks to rely, at least one week prior to the hearing.

Needless to mention that the petitioner shall have liberty to apply in case a cause so arises.

The petition is, accordingly, disposed of. "

28. It later transpired that contrary to what had been apprised by the learned counsel for the IIT on 15.09.2014 during the course of hearing of W.P.(C) 6059/2014, the Board of Directors had already taken a decision on 06.09.2014 on the inquiry report.

29. Consequently, an application came to be filed by the respondent in which, eventually, a Single Judge of this Court vide order dated 30.04.2015 directed that the minutes of the meeting dated 06.09.2014 be effaced from record and an opportunity of hearing with the documents be provided to the respondent by the BOG. Elaborate directions were passed by the Court to ensure that an opportunity of hearing was provided to the respondent during the course of consideration of the matter by the BOG.

30. Consequently, a special meeting of BOG was convened on 22.07.2015. The respondent filed his written representation before BOG on 20.07.2015 and also presented his case before the Board. After deliberations, the Board held that the inquiry report and the charges against the respondent stood proved and found it appropriate to impose the major penalty of "compulsory retirement" on the respondent. Accordingly, it was decided that a show-cause notice would be issued to the respondent regarding proposed penalty under Clause 39 of the IIT Delhi Statutes.

31. The show cause notice in terms of the decision taken by the BOG during the meeting held on 22.07.2015, was issued on 21.10.2015. The respondent filed his reply thereto.

32. On 04.04.2016, the BOG met and after considering the replies filed by the respondent decided to impose a major penalty of compulsory retirement on the respondent. An order was passed on 29.06.2016 recording as under:-

"ORDER WHEREAS a charge sheet was served upon Prof. Atul Kumar Mittal vide O.M. No. IITD/Estt.I/U-1/2013/IESI/1429 dated 26.04.2013 under Rule 14 of the Central Civil Services (CCA) Rules 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13(9) of the Institute.

AND WHEREAS Justice Rekha Sharma (Retd.) was appointed as an Inquiry Officer vide No. IITD/ESI/2013/U-1/380 dated 23.01.2014 to inquire the charges framed against Prof. Atul Kumar Mittal alleging that while he was supervising his two Research Scholars: his behaviour with them was inappropriate and unbecoming of a Guide.

AND WHEREAS the report of the Inquiry Officer was submitted vide her letter dated 11.08.2014, holding that the charges against Prof. Atul Kumar Mittal stand proved.

AND WHEREAS the Board of Governors, in compliance with the directions of the Hon'ble High Court, considered that report of Inquiry Officer and also heard Prof. A.K. Mittal on 22.07.2015 and decided to accept the inquiry report and proposed to impose a major penalty of compulsory retirement on Prof. A.K. Mittal.

AND WHEREAS as per the decision of the Board taken at its meeting held on 22.07.2015, a Show Cause Notice was served upon Prof. A.K. Mittal vide No. IITD/IESI/U-1/2015/2702 dated 21.10.2015 for making representation against the proposed penalty of compulsory retirement under the provision of Statute 13(9) of the

IIT Delhi Statutes.

AND WHEREAS the reply dated 23.11.2015 and 20.01.2016 submitted by Prof. A.K.Mittal against the Show Cause Notice dated 21.10.2015 were considered by the Board at its meeting held on 04.04.2016.

AND WHEREAS after detailed deliberations, the Board resolved at its meeting held on 04.04.2016 that its proposal to impose major penalty of compulsory retirement on Prof. A.K. Mittal be confirmed and Prof. A.K. Mittal be compulsorily retired with immediate effect and necessary orders be issued accordingly.

NOW, THEREFORE, in compliance with the decision of the Board of Governors as above, the major penalty of Compulsory Retirement is hereby imposed on Prof. A.K. Mittal, Department of Civil. Engg., IIT Delhi with immediate effect."

33. A writ petition, being W.P.(C) 11720/2016, was filed by the respondent against the imposition of major penalty of "compulsory retirement". The same was disposed of vide order dated 16.12.2016 relegating the respondent to pursue his appellate remedy under Statute 13(10) of the IIT Statutes, Delhi.

34. On 25.10.2017, the President of India in his capacity as the visitor of IIT Delhi, and in exercise of power conferred under Statute 13(10) of the Statutes of Institute, dismissed the appeal of the respondent. In this background, W.P.(C) 9777/2017 was filed by the respondent against the order of "compulsory retirement" and also against the dismissal of his appeal.

THE IMPUGNED JUDGMENT:

35. The impugned judgment set asides the order dated 29.06.2016 (by virtue of which the respondent has been compulsorily retired) and also the order dated 25.10.2017 passed by the Visitor of IIT Delhi in exercise of its Appellate jurisdiction.

36. It has been held in the impugned judgment that there were procedural irregularities in the conduct of the inquiry as also substantive non-compliance with the relevant provisions of the IIT Statutes, Delhi.

37. In particular, it was held that there was no occasion for the Chairman Board of Governors, to exercise the powers of the Board as the circumstances of the case did not attract the provisions of Statute 7(4). Statute 7(4) reads as under:-

"7. The Chairman

(4) In emergent cases the Chairman may exercise the powers of the Board and inform the Board of the action taken by him for its approval."

38. The impugned judgment notes the timelines/sequences of events, in particular, that fact that it was on 26.04.2013 that the Chairman, Board of Governors proposed to hold an inquiry against the respondent; and it was on 12.08.2013 that the Board of Inquiry was constituted. The first meeting of the Board of Inquiry was held only on 02.12.2013 i.e. four months after the date of its constitution. It was observed that "..... Thus, it is established that there was neither any emergency nor the emergency powers under Statute 7(4) were available to be exercised in view of the judgment of Prakash Kutik Choudhary Vs. Collector of Dhule, 1989 SCC Online Bom.

306."

39. It was also held that the statement of defence dated 07.05.2013 of the respondent was neither supplied to the inquiry authority nor to the disciplinary authority. It was also observed that the record of the case placed before the three member inquiry constituted on 12.08.2013 and later inquiry committee constituted on 23.01.2014, did not contain the statement of defence dated 07.05.2013 submitted by the respondent. It is noted in the impugned judgment that the "Inquiry Authority in her report dated 11.08.2014 herself records that no counter version has been presented before her with the result that she had no option but to believe the truthfulness, authenticity and credibility of the statement made before her. Thus, principles of natural justice was grossly violated by not taking into consideration the statement of defence dated 07.05.2013."

40. The impugned judgment also notes that various documents sought by the respondent were not supplied. It is noticed that the three-member inquiry committee, during the proceedings dated 06.12.2013, had issued directions for supply of the authenticated copy of the SMS/messages which had been referred to in the Articles of Charge.

41. It is noticed in the impugned judgment that "...the Inquiry Authority as well as the Board of Governors failed to take into account the fact that the earlier Inquiry Authority had issued directions to the Disciplinary Authority to provide the documents which the Disciplinary Authority did not comply. Therefore, merely by change of Inquiry Authority this legal obligation cannot be said to be whittled....."

42. The impugned judgment also notices that the inquiry authority, while holding the respondent to be a serial offender, referred to the complaint of another student which was not even adverted to in the Articles of Charge.

43. Paragraph 47 of the impugned judgment also noticed that the entire inquiry report dated 11.08.2014 does not make any reference whatsoever to any submissions having been advanced by the presenting officer.

44. Para 48 of the impugned judgment takes note of the fact that the complaint dated 30.01.2013 was in respect of an incident of 2004 and during the intervening period the complainant was in regular correspondence with the respondent, till she was reprimanded for plagiarism by the respondent. On this basis, it is observed that the complaint was highly belated and did not inspire much confidence.

45. Para 49 of the impugned judgment notices that the inquiry should have been conducted within the framework of the POSH Act and not by the inquiry officer.

SUBMISSIONS ON BEHALF OF THE APPELLANT:-

46. Learned senior counsel for the appellant emphasized that in the present case, the inquiry that was conducted against the respondent was consistent with the proviso to Rule 14 of the CCS (CCA) Rules, 1965. It is emphasized that the inquiry was held based on the recommendation of the SHCC. Attention is drawn to the fact that in the reply dated 07.05.2013 which was submitted by the respondent to the Chairman, Board of Governors, it has been stated by the respondent himself that he preferred "an open inquiry in conformity with the provisions of the Rules". It is emphasized that the respondent appeared before the Board of Inquiry on various occasions, including on 02.12.2013 and 06.12.2013. In these circumstances, it is contended that it was not open for the respondent to urge that there was any irregularity in institution of an inquiry against him.

47. It is further submitted that the impugned judgment erred in reaching the conclusion that issuance of charge-sheet ran afoul of the judgment of the Supreme Court in *Union of India v. B.V. Gopinath*, (2014) 1 SCC 351, on the basis that the charge-sheet dated 26.04.2013 was neither issued by the BOG (Disciplinary Authority) nor approved by the Board. It is submitted that in the judgment in *B.V. Gopinath* (supra) is distinguishable on a number of grounds. In that case, there was a specific requirement that the charge-sheet had to be approved by the Finance Minister and the concerned employee was also protected under Article 311 of the Constitution. However, it is submitted that such is not the situation in the present case.

48. The protection available to the employee/respondent in this instance is to be found in Statute 13(9) of the IIT Statutes, Delhi which only provide that certain major penalties cannot be provided to by any authority subordinate to that by which he has been appointed.

49. Reliance is also placed on the judgment of the Division Bench of the Gauhati High Court in *Dr. Brijesh Kumar Rai Vs. Indian Institute of Technology*, (2022) Gau LR 90.

50. Reference has also been made to the judgment of the Supreme Court in *P.V. Srinivasa Sastry Vs. Comptroller and Auditor General*, (1993) 1 SCC 419 to contend that the disciplinary proceedings do not have to be initiated by the appointing authority himself but can be initiated by any authority/officer who is subordinate to the appointing authority but is superior to the officer against whom the inquiry is to be conducted.

51. It is further submitted that the learned Single Judge erred in reaching the conclusion that there was no occasion to invoke Statute 7(4) of the Statute of IIT, Delhi. It is submitted that the situation required expeditious intervention/action, and it was not expedient to wait for the BOG to convene, given that as per prevalent practice, the BOG meets only four times a year.

52. It is further submitted that since the BOG ratified the appointment of Justice (Retired) Rekha Sharma as inquiry Officer, any alleged irregularity in issuance of the charge-sheet or at any stage

thereafter, stood ratified. It is further submitted that the respondent consciously chose not to appear before the inquiry committee presided by Justice (Retd.) Rekha Sharma and as such, there is no credence in the allegations regarding denial of the principles of natural justice.

53. It is submitted that there is no bar for non-member of the faculty to act as inquiry officer. It is submitted that in any event, based on the order dated 15.09.2014 passed by this Court in C.M.APPL. 14757/2014 filed in W.P.(C) 6059/2014, the BOG carried out an elaborate exercise and passed a detailed order pursuant to its meeting dated 22.07.2015, where all submissions of the respondent were considered.

54. It is submitted that the impugned judgment erred in assailing the conclusion drawn by the inquiry officer on the merits of the matter; it is submitted that judicial review is permissible only as regards the decision making process and does not entail a review of intricate factual aspects. In the circumstances, it is submitted that the impugned judgment is not in conformity with the law and is required to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

55. The respondent, who appeared in person, submitted that it was impermissible for the SHCC to delegate the task of carrying out the inquiry to any other committee. It is submitted that the same is contrary to Vishaka guidelines as also the POSH Act.

56. It was emphasized that the submissions made by the respondent before the SHCC vide communications dated 22.03.2013, 25.03.2013, 02.04.2013 and 03.04.2013 were not considered by the SHCC or even thereafter by the BOG. It is submitted that in the absence of a valid inquiry by the SHCC, it was impermissible for any disciplinary action to be taken against the respondent.

57. Reliance is placed upon the judgment of the Supreme Court in B.V. Gopinath (supra) to contend that it was incumbent on the disciplinary authority to itself personally apply its mind to the charge-sheet and the findings of the inquiry. In the absence of the same, non-consideration of the matter by the disciplinary authority at the appropriate stage is fatal to the inquiry.

58. It is emphasized that the written statement of defense submitted by the respondent on 07.05.2013 was not considered by the SHCC or by the disciplinary authority prior to the constitution of the Board of Inquiry or at any stage thereafter.

59. It is submitted that it is incumbent on the disciplinary authority to peruse both the charge-sheet as well as the statement of defense before constituting any inquiry authority. It is further submitted that neither at the stage of issuance of charge-sheet nor at the stage of constituting the inquiry authority, the matter was considered by the disciplinary authority. It is further submitted that the failure to provide essential documents caused grave prejudice to the respondent and vitiates the inquiry. It is submitted that the Board of Inquiry, during the proceedings dated 06.12.2013 observed that "both the complainant and the charged officer should submit an authenticated and verified document through service provider on SMSs exchanged through messages and viber in terms of its

verbatim content with full details".

60. It is submitted that the BOG while examining the matter on 22.07.2015 failed to consider the aforesaid relevant aspects and acted mechanically in the matter without applying its mind as to the aforesaid substantive and procedural lapses in the inquiry, which goes to the root of the matter.

61. It is submitted that the learned Single Judge has examined the matter in correct perspective and has rightly set aside the orders dated 29.06.2016 and 25.10.2017. It is submitted that the same does not warrant any interference in these proceedings.

REASONING AND FINDING:

62. Having considered the rival contentions of the parties, this Court finds merit in the contentions of the respondent as regards the significant procedural infractions in the conduct of inquiry into the complaints against the respondent.

63. At the outset, it is noticed that in terms of the judgment rendered by the Supreme Court in Vishaka and Others v. State of Rajasthan and Others, (1997) 6 SCC 241, the Supreme Court has laid down binding Rules and Guidelines for inquiring into complaints of sexual harassment. The same contemplates setting up of a Complaints Committee, headed by a woman, with at least half of its members being women. It is also laid down that such a Complaints Committee would include an external member, either an NGO or another body. The directions issued in Vishaka (supra) were mandatory and binding, constituting law within the meaning of Article 141 of the Constitution of India. The relevant portion of the said judgment is reproduced as under -

"16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

17. The GUIDELINES and NORMS prescribed herein are as under:

HAVING REGARD to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

.....

5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time- bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.....

.....

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly."

64. Subsequently, vide Order dated 26.4.2004, the Supreme Court in *Medha Kotwal Lele and Others v. Union of India and Others*, Writ Petition (Crl.) No. 173-177/1999, observed as under -

"2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

"Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka's case*, SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules."

65. Pursuant to the directives of the Supreme Court in *Vishaka (supra)*, vide notification No.11012/5/2001-Estt.(A) dated 01.07.2004, a proviso was introduced in Rule 14 of the CCS (CCA) Rules, 1965, which states that in respect of complaints relating to sexual harassment, the Complaints Committee appointed in terms of the directions in *Vishaka (supra)* shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of CCS (CCA) Rules, 1965.

66. The proviso to Rule 14(2), as inserted, reads as under:-

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

rules."

67. Thus, it is unmistakably provided that where there is a complaint of sexual harassment, the Complaints Committee shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority.

68. In *Sandeep Khurana v. Delhi Transco Ltd. and Ors.*, 2006 SCC OnLine Del 1633, a single-judge bench of this Court, while determining the procedure to be followed for taking disciplinary action on a complaint of sexual harassment and the role of the "State Complaint Committee", relied on the judgment of the Supreme Court in *Vishaka (supra)*, the Order dated 26.4.2004 in *Medha Kotwal Lele and Others v. Union of India and Others*, Writ Petition (Crl.) No. 173-177/1999, and the proviso to Rule 14(2) and made the following observation -

"26. In the present case the Departmental Complaint Committee has exonerated the petitioner. The State Complaint Committee has found the petitioner guilty of sexual harassment. If the Departmental Complaint Committee is deemed to be the Inquiring Authority then the petitioner cannot be removed from service as the Departmental Complaint Committee does not find him guilty. So far as the State Complaint Committee is concerned, it was not the Inquiry Committee either by virtue of the judgment in the case of *Medha Kotwal Lele (Supra)* nor by virtue of the amendment in the Rules which has been extracted above.

30. When the rules are amended to say that the Complaint Committee as envisaged in the *Vishaka's* case (*Supra*) would be deemed to be Inquiry Authority for the purpose of CCS (CCA) Rules it is imperative that the Complaint Committee proceeds according to CCS Rules and in the manner in which an Inquiry Authority conducts its proceedings under the said Rules. The Supreme Court never meant that the Complaint Committees which were to function as Inquiry Authority under the CCS (CCA) Rules could return a finding of guilt against a Government servant without ever adopting the procedure of Rule 14 *ibid*, i.e., giving him a charge-sheet, a memorandum delineating the allegations on which the charges are framed along with other articles like list of witnesses and the documents relied upon and then proceeding in the manner prescribed under Rule 14 of *ibid*. The responsibility of the Complaint Committee, by virtue of the judgment in *Medha Kotwal Lele (Supra)* case, has immensely increased as it is now no more a fact finding Committee. It has been converted into an Inquiring Authority and, therefore, has to follow the procedure prescribed by Rule 14. The action taken cannot be supported on the plea that although Rules are ignored the principles of natural justice has been followed.

69. In *Medha Kotwal Lele and Others v. Union of India and Others*, (2013) 1 SCC 297, it was observed as under :-

"44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated."

70. In view of the above position, the Sexual Harassment Complaints Committee (SHCC) constituted for IIT, Delhi was the forum for conducting an inquiry pursuant to the complaint/s of sexual harassment against the respondent. During its meeting on 26.02.2013, SHCC decided as under:-

"a) To initiate an inquiry into the matter (complaints against Prof. A. K. Mittal by Ms. Tropita Piplai and Ms. Priyanka Jamwal).

b) To serve upon Prof. A. K. Mittal a summary of the complaints within next seven days along with a true copy of the complaints."

71. Subsequently, however, during the meeting of SHCC on 25.03.2013, the SHCC, instead of proceeding with the inquiry on its own, decided as under:-

"The Committee has already perused the complaints as well as documents in support thereof at the time of directing Prof. A. K. Mittal to submit his response. After perusing the response and the brief points of defense raised by him the Committee after detailed deliberations was of the view that at this stage no final merits of the case have to be given. The requirement was to decide whether or not a regular inquiry has to be instituted. Since this committee is of the considered view that the allegations and harassment are prima facie made out, a regular inquiry should be instituted against Prof. A.K. Mittal and a charge sheet served upon him in next 15 days after getting the same approved by disciplinary authority.

Amongst various objections raised by Prof. A.K. Mittal that the laid down procedures have not been followed by preliminary Fact Finding Committee, the Committee feels that since Prof. A. K. Mittal is going to get an ample opportunity for defense, this objection does not sustain. However, there are no hard and fast rules for laid down procedures followed by preliminary Fact Finding Committee.

The Committee was informed by the chairperson and convener that the complainant is under mental trauma and since documents adduced during the process of Fact Finding Inquiry seems to have been shared by many in the dept.

With this in view the committee was deferred concern with such developments and was of the view that this should be suitably communicated to Prof. A. K. Mittal that in case any instance of the material being circulated amongst the dept. could be attributed to him, such instances would lead to further consequences.

Having regard to the sensitivity of the issue and certain aspirations about couple of paper having leaked already made the committee to decide that it may be appropriate to keep the file under lock and key with Security Officer.

As has been advised in the earlier meeting it is again reiterated by the committee that the contents of the meeting should be kept confidential."

72. It was in the above background that a memorandum dated 26.04.2013 was served upon the respondent enclosing the Articles of Charge and thereafter, a fresh 'Board of Inquiry' was constituted. This 'Board of Inquiry' was distinct from the SHCC which [as per the Vishaka (supra) guidelines, the judgment in Medha Kotwal lele (supra) and in terms of Rule 14(2)] was obliged to act as the 'Inquiring Authority' into the complaints of sexual harassment against the respondent.

73. In *Dr. Sonali Badhe v. Ashish Chandra Singh and Others*, 2015 SCC OnLine Del 14737, a Division bench of this Court has considered the proviso of Rule 14 (2) of the CCS (CCA) Rules, 1965 and has held as under:-

"10. We are informed that based on the recommendation of the committee, a notice was issued to the respondent No. 1 by the disciplinary authority granting leave to file

a reply. At this stage, it would be worthwhile to notice that pursuant to the directions issued by the Supreme Court in the case of Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : AIR 1997 SC 3011. Rule 14 of the CCS (CCA) Rules was amended and the following proviso was added:--

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

11. As per the amendment (hereinafter referred to as the 'Proviso') the Complaint Committee was deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of the rules and the Complaints Committee was to hold in case no separate procedure had been prescribed for the Complaints Committee for the inquiry as far as practicable in accordance with the procedure laid down in these Rules. In the case of Medha Kotwal Lele v. Union of India, (2004) 6 SLT 451, it was held by the Supreme Court of India that the report of the Complaints Committee has to be treated as per Rule 14 of the CCS (CCA) Rules as a final report in the enquiry. The relevant observations read as under:

"Complaints Committee as envisaged by the Supreme Court in its judgment in Vishakha's case, (1997) 6 SCC 241 at 253, will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules."

74. In, Tejinder Kaur v. Union of India & Ors., 2017 SCC OnLine Del 12221, this Court acknowledged the dual role of the Complaints Committee and observed as under :-

16. Concededly, the complaints of sexual harassment and disciplinary proceedings pursuant thereto have to be conducted in the manner as specified under the CCS(CCA) Rules, 1965. Insofar as the Inquiring Authority is concerned, there is no dispute that the inquiry has to be conducted by the ICC. However, there is no specific provision in the CCS(CCA) Rules, 1965 that indicates the manner as to how the Disciplinary Authority has to proceed on receipt of the complaint.

20. It is apparent from the above that ICC has a dual role. It has to act as an investigation agency in the first stage and as an Inquiring Authority, if the Disciplinary Authority is of the opinion that disciplinary proceedings be initiated against the officer accused. However, it is also necessary to bear in mind that the above steps are only to serve as a guide and does not replace the statutory provisions of the Act or the CCS(CCA) Rules, 1965.

21. Having stated the above, this court is of the view that ICC having been specifically set up for examining the complaints of sexual harassment, it would have been apposite to refer the complaint of Ms. X to the concerned ICC for a preliminary investigation rather than respondent no. 5.

75. In *Aureliano Fernandes v. State of Goa and Others*, 2023 SCC OnLine SC 621, the Supreme Court considered a similar situation, wherein, a complaint of sexual harassment after having been examined in the first instance by the concerned Committee, became subject matter of an inquiry by a former Judge of the Bombay High Court pursuant to a decision taken by the Executive Council of the concerned Institute. However, subsequently, the mandate of the Inquiry Officer was withdrawn in light of the order passed by the Supreme Court in *Medha Kotwal's* case holding that the report of the Complaints Committee for Prevention of Sexual Harassment of Women at Workplace shall be deemed to be the Inquiry Report under the CCS (CCA) Rules which shall be binding on the Disciplinary Authority for initiating disciplinary actions. In this context, it was observed by the Supreme Court as under :-

"75. The error committed on the part of the EC, is no less grave. It is apparent that the EC continued to remain under an impression that the First Committee to which the complaints were forwarded, was only a 'fact-finding Committee' and that a full-fledged inquiry was still required to be conducted subsequently, in the manner prescribed under Rule 14 of the CCS (CCA) Rules. The result was that though the Report of the First Committee was accepted and the EC proceeded to place the appellant under suspension, for the very first time, it decided to issue him Memorandum detailing the Articles of Charge and the imputation of charges and further appointed a Former Judge of the High Court as an Inquiry Officer to conduct the inquiry in terms of the Rules. Respondent Nos. 2 and 3 got wiser only when the said proceedings commenced and the Inquiry Officer was apprised of the directions issued in *Medha Kotwal's* case where it had been clarified by this Court that the Complaints Committee contemplated in *Vishaka's* case (supra), will be deemed to be an Inquiry Authority for the purposes of the CCS (Conduct) Rules and its report shall be deemed to be a Report under the CCS (CCA) Rules.

76. When the employer itself was oblivious to the remit of the Committee and the Committee remained under the very same impression having described its proceedings as fact-finding in nature, it was all the more incumbent for the respondents to have paused on receiving the Report of the First Committee and verify the legal position before taking the next step. In all this back and forth, it was the

procedure prescribed under Rule 14 for conducting an inquiry of sexual harassment at the workplace that came to be sacrificed at the alter of expeditious disposal, which can neither be justified nor countenanced."

76. In *Union of India v. Dilip Paul*, 2023 SCC OnLine SC 1423, the Supreme Court again took note of the directions issued in *Medha Kotwal Lele* (supra) and observed as under :-

"72. This Court in *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311, held that the complaints committee under the Vishaka Guidelines shall be deemed to be the Inquiry Authority. The relevant portion is reproduced below:--

"Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka* case (1997) 6 SCC 241 : 1997 SCC (Cri) 932, SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter call the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules."

77. It is incorrect on the part of the appellant to suggest that there was any acquiescence on the part of the respondent as to the derogation/deviation of the procedure envisaged under *Vishaka* (supra), *Medha Kotwal Lele* (supra) and proviso to Rule 14(2) of the CCS (CCA) Rules, 1965.

78. Much is sought to be made out from the statement of the respondent in his communication dated 07.05.2013 (in response to the articles of charge) that "I would prefer an open inquiry in conformity with the provisions of the Rules under which the inquiry is proposed to be held, if after receipt of my written statement of defence, you decide to proceed with the inquiry".

79. The said statement cannot be construed to mean that the respondent has waived the requirements of proviso to Rule 14(2) of CCS (CCA) Rules, 1965 and/or the requirement of Section 11 of POSH Act which mandates that the complaint is to be inquired by the concerned Complaints Committee constituted for this purpose.

80. In fact, even when the inquiry was pending, the respondent did protest the manner in which the prescribed procedure was being by-passed. In this regards it is apposite to refer to a representation dated 26.02.2014 addressed by the petitioner to the Director, Indian Institute of Technology, Delhi, stating as under:-

"The Internal Complaint Committee: is the only lawful committee to investigate this case legally, because it has been constituted under the Act realizing the sensitivity of the issue the Union Parliament wanted to handle. Indian Parliament has considered the sensitivity of such issues and chances of character assignation through false complaints has made suitable provisions in the said Act. It has powers to administer oath, this committee will be able to summon and obtain the evidence if desired so. It is my right to demand comprehensive, investigation using best available legal and

institutional means. I do not think that there is any other such strong lawful mechanism available with the institute. Any deviation made by the Institute in violation of the Act in this regard leads complex legal situation resulting into the violation of my rights as well apart from the other complications.

Request: So, my humble appeal is that since an ICC has been constituted by the Institute under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 which is in existence even before the charge sheet was issued, the false complaint against me should be immediately referred to this Committee or a senior staff member/members of the Institute. You good self is further requested to notify me the date and time when I am supposed to appear before the ICC as duly notified under the Act for such inquiry by the Institute."

81. It is also incorrect to suggest that this aspect has been raised for the first time only in these proceedings and was not subject matter of consideration by the learned Single Judge. In this regard, reference is apposite to paragraph 49 of the impugned order in which it has been specifically observed as under :-

"49. It is pertinent to mention here that in the case of Vishaka (supra) decided on 13.08.1997 it was clarified that the guidelines and norms would be strictly observed in all work places for preservation and enforcement of the right to gender equality of the working women. The directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. Admittedly, the alleged incidents are after the decision of Vishaka (supra) and before the Sexual Harassment Act, 2013 came into force. Thus, the case of the petitioner would have been strictly considered under the Vishaka (supra) guidelines instead of binding the inquiry officer to deal with the allegations against the petitioner out of which the petitioner failed to get the fair opportunity and place his case before the inquiry authority."

82. Even assuming that it was permissible for the appellant to by-pass the Sexual Harassment Complaints Committee/ICC for the purpose of conduct of inquiry, there an another lacunae inasmuch as the decision to hold an inquiry under Rule 14 of the CCS (CCA) Rules, 1965, Central Civil Services (Conduct) 1964 and Statute 13(9) of the IIT Statutes, Delhi was not taken by the Board of Governors but instead by the Chairman of the Board of Governors. This is evident from a perusal of the memorandum dated 26.04.2013, the opening lines of which record as under :-

"The Chairman, Board of Governors, proposed to hold an inquiry against Dr. A. K. Mittal Professor under Rule 14 of the Central Civil Services (CCA) Rule 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13(9) of the Institute."

83. Moreover, the decision to constitute a Board of Inquiry was also at the behest of the Chairman, Board of Governors. The relevant communication in this regard issued by the Chairman, Board of Governors is as under:-

"Sub.: Constitution of Board of Inquiry Having perused the Chargesheet and Reply of Prof. A. K. Mittal, I am of the considerate opinion that it would be required to initiate regular Inquiry proceedings as per rules so as to ascertain the facts in this case.

Let inquiry be conducted by a Board of Inquiry comprising Prof. Saroj Mishra, Prof. Manjeet Jassal & Prof. T. C. Kandpal. Shri Nanak Chand, Deputy Registrar may act as Presiding Officer.

Sd/-

Dr. Vijay Bhatkar Chairman, BoG"

84. The subsequent order dated 12.08.2013 issued by the Registrar of IIT, Delhi, also records as under :-

"INDIAN INSTITUTE OF TECHNOLOGY DELHI HAUZ KHAS : NEW DELHI : 110016 No. IITD/IES1/2013/U-I/2746 Date : 12.8.2013 ORDER WHEREAS an inquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965, Central Civil Services (Conduct) Rules, 1964 and Statute 13 (9) of the Institute is being held against Prof. A. K. Mittal, Deptt. of Civil Engineering.

AND WHEREAS the Chairman, Board of Governors considers that Board of Inquiry should be appointed to inquire into the charges framed against Prof. A. K. Mittal, Deptt. of Civil Engineering.

NOW THEREFORE, the Chairman, Board of Governors in exercise of the powers conferred under the said Statute, hereby appoints the following faculty members as the Inquiry Authority to inquire into the charges framed against Prof. A. K. Mittal, Deptt. of Civil Engineering :-

1. Prof. (Ms.) Saroj Mishra
2. Prof. (Ms.) Manjeet Jassal
3. Prof. T. C. Kandpal (By order and in the name of the Chairman, BOG) Sd/-

(Dr. Rakesh Kumar) Registrar"

85. Admittedly, the Disciplinary Authority qua the respondent is the Board of Governors of IIT. Section 11 of the Institutes of Technology Act, 1961, provides as under :-

"11. Board of Governors.--The Board of an Institute shall consist of the following persons, namely:

- (a) the Chairman, to be nominated by the Visitor;

(b) the Director, ex officio;

(c) one person to be nominated by the Government of each of the States comprising the zone in which the Institute is situated, from among persons who, in the opinion of that Government, are technologists or industrialists of repute;

(d) four persons having special knowledge or practical experience in respect of education, engineering or science, to be nominated by the Council; and

(e) two professors of the Institute, to be nominated by the Senate:

Explanation:- In this section, the expression "zone" means a zone as for the time being demarcated by the All-India Council for Technical Education for the purposes of this Act."

86. It can be seen that the Board of Governors is a multi-member body comprising inter alia of nominees of the Government of each of the States comprising the zone in which the Institute is situated, four persons having special knowledge or practical experience in respect of education, engineering or science and two professors of the Institute, to be nominated by the Senate.

87. Under Rule 14 of the CCS (CCA) Rules, it is clearly provided that the charge-sheet has to be drawn up or cause to be drawn up by the "Disciplinary Authority". Moreover, Inquiry Authority is also to be appointed by the "Disciplinary Authority".

88. In the present case, the matter could not be considered by the Disciplinary Authority; that is, the BOG, before issuance of the charge-sheet and before constituting of an 'Inquiring Authority'. Instead the Chairman, BOG invoked the provisions of Statute 7(4) of the IIT Statutes, Delhi to "exercise the powers of the Board".

89. The learned Single Judge is right in noting that the relevant timelines negate the contention that the present case fell within the category of cases contemplated under Statute 7(4) [supra] so as to obviate the requirement of the matter being considered by the BoG. In this regard, it is relevant that even though the memorandum enclosing the Articles of Charge was issued on 26.04.2013, the 'Inquiring Authority' was not constituted until 12.08.2013 and proceedings before the 'Board of Inquiry' took place only on 02.12.2013 and thereafter on 06.12.2013.

90. These timelines belie the contention that the matter could not await due consideration by the Board of Governors. Reference is apposite to a judgment of the Supreme Court in Union of India and Others v. B. V. Gopinath, (2014) 1 SCC 351, wherein, it has been laid down that in the context of disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965, the charge-sheet has to be drawn up by the Disciplinary Authority only upon approval by the Appointing Authority (the Finance Minister in that case). Para 41 of the said judgment reads as under :-

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

91. Para 52 of the said judgment also reads as under :-

"52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge-sheet". These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P.V. Srinivasa Sastry v. CAG has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4) "4. ... However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority."

It is further held that: (SCC p. 422, para 4) "4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to

the holders of a civil post."

92. The aforesaid findings were rendered in the context of Article 311(1) of the Constitution of India which contemplates that no person who is a member of a civil service of the Union or an all India Service can be dismissed or removed by an authority subordinate to that by which he was appointed.

93. It is notable that Statute 13(9) of the IIT Statutes, Delhi also similarly provides as under :-

"13. Terms and Conditions of Service of Permanent Employees (9) The Director may place a member of the staff appointed at the Institute under suspension -

.....

No order imposing on any member of the staff any of the penalties specified at (i) to (iii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority."

94. As such, the observations in B. V. Gopinath (supra) squarely apply to the facts of the present case. In terms thereof, it was incumbent on the Disciplinary Authority to take the decision to hold an inquiry, and also to issue/deliver the Articles of Charge.

95. Learned senior counsel for the appellant has sought to distinguish the aforesaid case relying upon the judgment of Gauhati High Court in Dr. Brijesh Kumar Rai v. Indian Institute of Technology and Ors., (2022) 2 Gau LR 90. In that case, the disciplinary action was occasioned on account of an incident which took place on 02.08.2019 involving physical altercation between two Assistant Professors in IIT, Gauhati which resulted in cross FIRs being lodged in the Police Station. In that background, the Director of the concerned Institute had issued a memorandum dated 13.08.2019 which contained the charges leveled against the concerned Assistant Professor in that case. The decision to issue a memorandum was taken by the Director invoking Clause 7(4) of the Statutes governing IIT, Gauhati. In that context, it was observed by the Gauhati High Court as under:-

"19. In the present case, there cannot be any room for confusion as to whether the Director can exercise the powers of the appointing authority or not. There are certain emergent situations where these powers can be exercised, which has already been referred above. Although these powers have been given to the Chairman and not to the Director, but the admitted position is that at the relevant time there was no Chairman and, therefore, by reason of clause 9(16), the Director has these powers. Clause 9(16) reads as under:-

"9.(16) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise or in the event of Chairman being unable to discharge his functions owing to absence, illness or any other cause the

Director may discharge the functions assigned to the Chairman under Statute 7."

xxx xxx xxx

28. In any case, there is absolutely no ambiguity regarding the fact that in an emergent situation, the Chairman and, in his absence, the Director can exercise the powers of the Board of Governors. On this there is no dispute. Whether there is any emergent situation or not is again a matter which will depend upon the facts of the case. The present facts of the case, in our opinion, were such where an immediate and emergent action was required. Two professors of the Institute had allegedly indulged in a fist fight in broad daylight in front of the students and other members of the staff, which resulted in filing of FIR and cross-FIR against each other. An immediate action was needed to be taken by the Director, which has been done. Therefore, looking from all angles, we find absolutely no anomaly in the exercise of powers by the Director of the Institute. Hence, we find no merit in the present writ appeal."

96. As can be seen, the facts of the present case are entirely different as the present case did not involve any emergent situation of the kind that arose in the facts of the case before the Gauhati High Court. Apart from the timelines referred to above, in the present case (i) Article 1 of the charge concerns alleged inappropriate behavior by the respondent with one of the female students during the period October, 2012 till December, 2012 ; (ii) Article 2 of the charge concerns the alleged inappropriate behavior of the Respondent with another Ph.D student in January, 2004.

97. Given the time period to which the allegations in the Articles of Charge pertain, it cannot be said that the present case qualified as an emergent case so as to dispense with due consideration of the matter by the Board of Governors before serving of the memorandum/charge-sheet on the respondent and/or before constituting an Inquiring Authority to inquire into the same.

98. This Court is also not inclined to accept the appellant's contention that the ratification by the BOG, the articles of charge/s and/or the appointment of the Inquiry Officer appointed on 23.1.2014, automatically validates any purported irregularity in the issuance of the charge sheet or the subsequent proceedings. Mere ratification of the appointment does not, in itself, cure procedural lapses or confer legitimacy upon actions that may have been flawed from the outset.

99. In this regard, reference is apposite to the judgment of the Supreme Court in *Sunny Abraham v. Union of India and Another*, (2021) 20 SCC

12. Notably, in the said case, the Supreme Court considered its judgment in *B.V. Gopinath*, (supra) and specifically dealt with the contention, as to whether the ex post facto approval by the disciplinary authority to a charged memorandum would cure the defect exposed in *B.V. Gopinath*, (supra). The Supreme Court noted that *B.V. Gopinath*, (supra) clearly lays down that a charge memorandum, without approval of the disciplinary authority, is "non est" and goes beyond 'remediable irregularity'. It was emphasized by the Supreme Court that Rules 14(2) and 14(3) of the CCS (CCA) Rules, 1965 contemplate independent approval of the disciplinary authority at both

stages- for the purpose of initiation of inquiry and also for the purpose of the charge memorandum. Any omission on this count would render the charged memorandum fundamentally defective, not capable of being validated retrospectively. It has been observed by the Supreme Court as under:-

"8. The Delhi High Court in the appellant's case primarily examined the issue as to whether having regard to the aforesaid Rules, a charge-sheet or charge memorandum could be given ex post facto approval or not. The main distinguishing feature between the case of the appellant and that decided in B.V. Gopinath is that in the facts of the latter judgment, the subject charge memorandum did not have the ex post facto approval. Stand of the respondents is that there is no bar on giving ex post facto approval by the disciplinary authority to a charge memorandum and so far as the present case is concerned, such approval cures the defect exposed in Gopinath case. On behalf of the appellant, the expression "non est" attributed to a charge memorandum lacking approval of the disciplinary authority has been emphasised to repel the argument of the respondent authorities.

15. The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis B.V. Gopinath². In the latter authority, the charge memorandum without approval of the disciplinary authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the disciplinary authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the disciplinary authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the disciplinary authority at both stages -- for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the disciplinary authority. If there is any default in the process of application of mind independently at the time of issue of charge

memorandum by the disciplinary authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in B.V. Gopinath, as would be evident from para 8 of the Report which we reproduce below : (SCC p.

358) "8. Ms Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings.

According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo.

According to the learned Additional Solicitor General, CAT as well as the High Court⁷ had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy."

100. Apart from the aforesaid aspects, it is also noticed that the written version/reply dated 07.05.2013 submitted by the respondent has not even been taken note of in the report dated 11.08.2014 of the Inquiring Authority.

101. Learned senior counsel for the appellants seeks to justify the same on the basis that the said Inquiring Authority inquired into the matter de novo. However, the same is belied by a perusal of the order dated 23.01.2014, whereby, the Chairman of Board of Governors appointed the single member Inquiry Officer after the earlier 'Inquiring Authority' sought to withdraw. The said order reads as under:-

INDIAN INSTITUTE OF TECHNOLOGY DELHI HAUZ KHAS : NEW DELHI - 110016 No. I1TD/1ES1/2013/U-1/380 Date: 23.1.2014 ORDER WHEREAS an inquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965, Central Civil Services (Conduct).Rules, 1964 and Statute 13 (9) of the Institute is being held against Prof. A.K. Mittal, Deptt. of Civil Engineering.

AND WHEREAS the Chairman, Board of Governors has earlier vide notification No.IITD/IES1/U-1/2746 dated 12.08.2013 appointed an inquiry Authority comprising of Prof.(Ms.) Saroj Mishra, Prof. (Ms.) Manjeet jassal and Prof. T.C. Kandpal to inquire into the charges framed against Prof. A.K. Mittal.

AND WHEREAS the members of above referred Inquiry Authority have requested to be allowed to withdraw from the Inquiry since the procedures involved are complex.

NOW, THEREFORE, the Chairman, Board of Governors in exercise of the powers conferred under the said Statute, hereby appoints Justice (Retd.) Rekha Sharma as the Inquiry Officer to inquire-into the charges framed against Prof, A.K. Mittal, Deptt. of Civil Engineering.

(By order and in the name of the Chairman, BOG) Sd/-

(Dr. Rakesh Kumar) Registrar

102. It can be seen that only the constitution of the 'Inquiry Authority' was changed pursuant to the request of the members thereof that they be allowed to withdraw from the inquiry "since the procedures involved are complex".

103. This did not imply that the written statement/reply of the respondent dated 07.05.2013 would not be taken into account by the Inquiry Officer appointed on 23.01.2014.

104. In UOI and Others v. P. Sasi, 2012 SCC OnLine Del 5043, a Division Bench of this Court, while determining whether the Disciplinary Authority by virtue of his order dated 13.02.2004 (in that case) had directed a 'further' inquiry or a de novo inquiry, observed as under :-

"17. What is of importance is that the Supreme Court observed that where there has not been a proper inquiry because some serious defect has crept in the inquiry, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. Such a direction may also be given, as observed by the Supreme Court, where some important witnesses were not available at the time of inquiry or were not examined for some other reason.

18. In the present case, it is evident that Mr Samuel Mathew had not been examined by the first Inquiry Officer. It is an admitted position that Mr Samuel Mathew is a key witness in this case. We have also noted from the order sheet of 18.06.2003 of the first Inquiry Officer that Mr Samuel Mathew had indeed contacted the Inquiry Officer and had told him his contact number and had also indicated that he may be informed if he was required. After that, the said Mr Samuel Mathew had not been contacted, for whatever reason, as a result of which it can be safely inferred that Mr Samuel Mathew did not at all know as to whether he was to appear before the Inquiry Officer. Therefore, it cannot be said that Mr Samuel Mathew had refused to appear before the first Inquiry Officer. The Disciplinary Authority, as we have already pointed out above, was right in recording that it was simply a case that Mr Samuel Mathew had not appeared. In order to remove this lacuna/defect in the proceedings, the Disciplinary Authority had directed further inquiry for recording the evidence of Mr Samuel Mathew. It so happened that in the subsequent round Mr Samuel Mathew did appear and his evidence was recorded. From this fact also it would be clear that there could be no inference that Mr Samuel Mathew was not willing to appear even in the first round or had refused to do so.

19. We may also point out that because of the further inquiry directed by the Disciplinary Authority, the charged officer also got an opportunity to produce his own witness, namely, DW-2 Mr Gopal K. Nair, who was not available in the earlier round. Therefore, all that the second Inquiry Officer (Mr A. Sinha) had done was to continue the inquiry proceedings further. In our view, he did not conduct any inquiry de novo and it was merely a continuation of the earlier proceedings inasmuch as the evidence of PW-2 Mr Samuel Mathew and that of DW-2 i.e., Mr Gopal K. Nair was recorded. The evidence already on record in the first round was also taken into consideration by Mr A. Sinha while submitting his report dated 26.12.2006."

105. Although in the aforementioned case, a 'further inquiry' was ordered after the first inquiry report had been prepared. In the present case, the previous Inquiry Authority had not yet prepared its report. Before this could happen, the members requested to withdraw, citing the complexity of the procedures. Consequently, Justice (Retd.) Rekha Sharma was appointed as the Inquiry Officer to continue the inquiry into the charges against the respondent. This cannot be regarded as a de novo proceeding but rather a continuation of the same inquiry, albeit by a different Inquiring Officer.

106. Furthermore, the order dated 23.1.2014 begins by stating, "An inquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965, the Central Civil Services (Conduct) Rules, 1964, and Statute 13(9) of the Institute is being held against Prof. A.K. Mittal, Department of Civil Engineering,"

which further demonstrates that this was a case of reconstitution of the inquiry authority, for the purpose of the inquiry "being held" rather than a de-novo inquiry. As such, there appears no justification for not even noticing the reply/defence statement dated 07.05.2013 submitted by the respondent.

107. Moreover, the report dated 11.08.2014 of the Single Member Inquiry Officer takes note of the fact that the request of the respondent for supply of necessary documents has not been acceded to and that this was an outstanding grievance of the respondent.

108. It is notable that amongst the documents that were sought by the respondent and for supply of which, the earlier Inquiry Authority passed an order on 06.12.2013 included "authenticated and verified document through service provider on SMSs exchanged through messages and viber in terms of its verbatim content with full details". The said documents were never obtained from the concerned service provider. It was noticed in the Inquiry Report dated 11.08.2014 as under :-

"The complainant Tropita was asked as to how she could authenticate the sms'es and the documents submitted by her. She stated that she has retained the sms'es as were automatically generated on her phone. She also produced her mobile phone before me where the messages were found recorded. Furthermore, as per her, she even inquired from the service provider if it could authenticate the sms'es that were exchanged to which she received the following reply:-

"We regret to inform that we are unable to cater to your request, to the send the sms details."

However, in her oral statement before me she referred to her complaint made to the Director and identified her signatures thereon which is marked as Annexure-A. The details of the sms'es sent and received on her mobile phone relied upon by her are collectively marked as Annexure-B. She also referred to one sms which she had send to her mother on December 6th 2012 and two emails which she received from Dr. Mittal on December 18th 2012 and another on January 23rd 2013 after she had submitted her complaint. These documents are marked as Annexure C&D respectively."

109. It is noticed that the Inquiry Report dated 11.08.2014 takes note of the statement of the complainant that the service provider had communicated its inability to cater its request for authentication of the concerned SMS messages. However the inquiry report does not disclose:-

- i. any attempt to requisition the necessary information from the service provider;
- ii. specific reason/s as to why the course suggested in Annexure-2 of the order dated 06.12.2013 passed by the earlier 'Inquiry Authority', was not required to be adhered to;
- iii. any steps taken to secure/take custody of the concerned electronic device/s and/or record the statement of the complainant to the effect that the same was held in uninterrupted custody of the complainant.

In fact, the Inquiry Report dated 11.08.2014 despite noticing that the respondent had raised a grievance before the previous 'inquiry authority' (constituted on 23.01.2014) to the effect that the requisite documents had not been supplied to him, omits to specifically deal with and pronounce upon this aspect of the matter.

110. With regard to non-supply of necessary documents, it has been observed by the Supreme Court in *State of Uttar Pradesh and Others v. Saroj Kumar Sinha*, (2010) 2 SCC 772, as under :-

"39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in *State of Punjab v. Bhagat Ram*: (SCC p. 156, paras 6-8) "6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

40. We may also notice here that the counsel for the appellant sought to argue that the respondent had even failed to give a reply to the show- cause notice issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3-8-2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report cannot legally be termed as an enquiry report as it is a reiteration of the earlier enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury.

41. In our opinion the appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition No. 937 of 2003. In terms of the aforesaid order the respondent was required to submit a reply to the charge-sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7-6-2004 in Writ Petition No. 793 of 2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23-7-2003. In our opinion the actions of the inquiry officers in preparing the reports ex parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

42. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal."

111. Also, it is noted that the Inquiry Report dated 11.08.2014 refers copiously to a complaint by another Ph.D student and conduct of the respondent qua that student, even though the said complaint was never a subject matter of the memorandum dated 26.04.2013 and the accompanying Articles of Charge. This has also resulted in the effective denial of the principles of natural justice.

112. For all the above reasons, this Court finds no reason to interfere with the impugned judgment of the learned Single Judge. However, as already directed vide the impugned order, the Appellant/IIT, Delhi is at liberty to conduct an inquiry afresh strictly as per the guidelines of the Supreme Court in Vishaka (supra), Medha Kotwal Lele (supra) and as contemplated in Section 11 of the POSH Act, 2013. It is made clear that this order is based on infraction of procedural requirement/s and shall not be construed as an expression of opinion of this Court on the merits of the allegations against the respondent.

113. The present appeal is disposed of in the above terms.

SACHIN DATTA, J VIBHU BAKHRU, J MARCH 27, 2025 sv, at, r,uk