GAHC010106342019

2026:GAU-AS:12382

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WP(C) No. 3317 of 2019

1. MRS. PONUNG MOYONG,
D/o- Opang Moyong,
R/o- Wai Apartment, 3rd Floor Apartment No. 5, Abotani Colony,
Itanagar,
District- Papumpare,
State- Arunachal Pradesh,
PIN: 791111.

… PETITIONER.

-Versus-

1. FOOD CORPORATION OF INDIA,
Represented by its Chairman-cum-Managing Director,
having its Head Office at 16-20, Barakhamba Lane,
New Delhi,
PIN- 110001.

2. CHAIRMAN-CUM-MANAGING DIRECTOR,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi,
PIN- 110001.

3. EXECUTIVE DIRECTOR (NE),

Food Corporation of India,
Zonal Office (NE),
Guwahati,
State- Assam.

4. GENERAL MANAGER (R),
Food Corporation of India,
Regional Office, Itanagar,
District- Papumpare,
State- Arunachal Pradesh,
PIN: 791111.

5. THE STATE OF ARUNACHAL PRADESH,
Represented by the Chief Secretary,
Government of Arunachal Pradesh, Itanagar,
District- Papumpare,
State- Arunachal Pradesh,
PIN: 791111.

6. THE CHIEF SECRETARY,
Government of Arunachal Pradesh, Itanagar,
District- Papumpare,
State- Arunachal Pradesh,
PIN: 791111.

7. DIRECTOR,
Social Welfare, Woman & Child Development Department,
Government of Arunachal Pradesh, Itanagar,
District- Papumpare,
State- Arunachal Pradesh,
PIN: 791110.

8. ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION,
ESS- Section, Itanagar,
District- Papumpare,
State- Arunachal Pradesh,

PIN: 791111.

… RESPONDENTS.

BEFORE

HONOURABLE MR. JUSTICE NELSON SAILO

Advocate for the petitioner:		Mr. S. Chakraborty, Adv.
Advocates for the respondents:		Mr. B. K. Singh, SC, FCI, R-1 to 4, Mr. M. R. Adhikari, GA, AP, R-5 to 7
Date on which judgment is reserved	:	20.08.2026
Date of hearing	:	13.08.2026 & 20.08.2026
Date of pronouncement of judgment	:	28.08.2026
Whether the pronouncement is of the operative part of the judgment?	:	No
Whether the full judgment has been pronounced?	:	Yes

<u>JUDGMENT AND ORDER (CAV)</u>

Heard Mr. S. Chakraborty, learned counsel for the petitioner. Also heard Mr. B. K. Singh, learned Standing Counsel, Food Corporation of India, for the respondent Nos. 1 to 4 and Mr. M. R. Adhikari, learned Government Advocate, Arunachal Pradesh, for the respondent Nos. 5, 6 & 7.

[2.] By filing this writ petition, the petitioner has prayed for a direction to set aside the inquiry proceedings drawn against her by the authorities of the Food Corporation of India (FCI) after her repatriation to her parent department under the Government of Arunachal Pradesh. The petitioner has also prayed for setting aside and quashing the Inquiry Officer's report dated 14.03.2018 (Annexure – V) and the Letter dated 09.01.2019 (Annexure – X), addressed to the Chief Secretary to the Government of Arunachal Pradesh by the General Manager (Vigilance) of the FCI requesting imposition of strict penalty on the petitioner on the basis of the Inquiry Report dated 14.03.2018.

[3.] This Court, while issuing notice of motion vide Order dated 24.05.2019 directed that no action should be taken by the State Authorities against the petitioner till the next date. The said interim order was extended from time to time and continues till date.

[4.] Brief facts of the case as projected by the petitioner is that she was appointed as a Child Development Project Officer (CDPO) in the Social Welfare, Women & Child Development Department, Government of Arunachal Pradesh in the year 1991. While working as such, she was permitted to go on deputation to the FCI as an Assistant General Manager (General)/Area Manager for a period of two (2) years and was accordingly released by her parent Department w.e.f. 02.09.2011 vide Order dated 01.08.2011. She joined FCI post on 30.09.2011 and was posted at the Regional Office in Itanagar vide Office Order dated 20.10.2011. She was, thereafter, asked to hold additional charge of Area Manager, District Office, Banderdewa, w.e.f. 01.11.2011 and later, she was exclusively posted at Banderdewa vide Office Order dated 05.05.2012.

[5.] The petitioner was brought back to the Regional Office in Itanagar vide Office Order dated 16.03.2016 and one Sri Ankur Parakh, Assistant General Manager (General) (AGM [G]), was also to take charge of Area Manager, FCI in the District Office in the Banderdewa from the petitioner. The petitioner handed over the charge and after availing medical and other leave, she resumed her office at Regional Office, Itanagar on 05.05.2016. After she joined her duties, she requested for repatriation to her parent Department vide letter dated 20.05.2016 addressing the letter to the General Manager, FCI, Itanagar, citing health grounds due to work pressure. The petitioner, however, came to be placed under suspension by the Managing Director, FCI, vide Order dated 24.05.2016 on the alleged ground that she had caused loss to the Corporation. As per the Suspension Order, she was placed at the disposal of the Zonal Office at Guwahati, which become her Headquarter.

[6.] Thereafter, a Memorandum containing the Article of Charge and Statement of Imputation of Misconduct was issued to her on 19.08.2016 under Regulation 58 of the FCI (Staff) Regulation, 1971 (in short Regulation of 1971). She was directed to submit a written reply within ten (10) days from the date of receipt of the said Memorandum. By another order also dated 19.08.2016, her suspension was revoked by the Managing Director, FCI. The petitioner sought for some time to submit her reply to the charges and also requested for furnishing documents relating to contracts and storage for the period between 2009-2016 but her request was not acceded to.

[7.] The petitioner, thereafter, vide Order dated 20.09.2016 was repatriated back to her parent Department and after her repatriation, the Managing Director, appointed an Inquiry Officer and a Presenting Officer on 24.11.2016 to conduct an inquiry and the petitioner was asked to appear in the Inquiry, which commenced on 25.07.2017 in the FCI Regional Office at Guwahati and, thereafter, she appeared before the Inquiry Officer on 25.07.2017 and denied the allegations levelled against her.

[8.] According to the petitioner, the Inquiry Officer conducted a common inquiry proceeding against her along with other charge-sheeted Officials of the FCI, who were working with her in the Office at Banderdewa. The petitioner, therefore, contended that the same is not tenable, since she belongs to the State Service under the Government of Arunachal Pradesh, whereas the other officials were FCI employees and the competent authorities to impose penalties of dismissal upon the two (2) categories of persons are different. This apart, there was no specific official order from the competent authority consenting to the drawing of common proceeding in terms of Rule 19 of the CCS (CCA) Rules, 1965. The petitioner was also cited as a witness against the other co-charge sheeted employees for the same inquiry.

[9.] Consequently, the inquiry report was submitted on 14.03.2018 and a letter written to the Chief Secretary to the Government of Arunachal Pradesh on 09.01.2019 along with a copy of the Inquiry report asking the latter to impose strict penalty against her. Aggrieved, the petitioner is before this Court.

[10.] Mr. S. Chakraborty, learned counsel for the petitioner submits that since the FCI is the borrowing Department, it was required from them to inform the lending Department about the circumstances leading to the suspension of the petitioner on 24.05.2016 in terms of Regulation 65(1) of the Regulation of 1971. However, the same was not done and for which, the suspension of the petitioner is bad in law. He, further, submits that the petitioner vide her Letters dated 07.09.2016 & 09.08.2017 had requested for certain documents, so as to enable her defend herself in the departmental proceeding by submitting meaningful written statement of defence. However, the respondent authorities failed to furnish her the documents asked for, which is not disputed by them. Therefore, the petitioner has been deprived of a fair chance of defending herself.

[11.] The learned counsel submits that the common inquiry proceedings against the petitioner and the other FCI employees is violative of the rights of the petitioner, since her parent employer is the Government of Arunachal Pradesh, while, it is the FCI for the other employees. He, further, submits that the Inquiry Officer failed to make any independent assessment on the allegations alleged against the petitioner and simply relied upon the various reports placed before him. Therefore, the findings of the Inquiry Officer suffer from non-application of mind and, therefore, cannot be sustained.

[12.] The learned counsel submits that the Inquiry Officer proceeded *ex-parte* against the petitioner by recording the statements of the witnesses in spite of being informed by the petitioner about her inability to attend the inquiry due to official duties. He submits that in fact no order was recorded by the Inquiry Officer for proceeding with the inquiry proceeding *ex-parte*. Therefore, the recording of the statements of the witnesses in the absence of the petitioner has resulted in the violation of principle of natural justice and, therefore, the entire proceeding should be set aside.

[13.] The learned counsel submits that after repatriation of the petitioner to her parent Department vide Order dated 20.09.2016, the FCI authorities on 24.11.2016 appointed an Inquiry Officer and a Presenting Officer, which is not permissible in law, since the petitioner had ceased to be an employee of the FCI on her repatriation back to her parent Department. Under the circumstance, the learned counsel submits that an appropriate interference from this Court is called for.

[14.] The learned counsel also by referring to the Inquiry Report dated 14.03.2018 submits that the findings and the conclusion of the Inquiry Officer is vague and without any basis. He submits that as per Regulation 58(23)(d), it is incumbent upon the Inquiry Officer to prepare an Inquiry Report containing the findings on each article of charge and the reasons thereof. However, upon perusal of the Inquiry Report, the same is not to be seen and, therefore, even on this ground, the Inquiry Report and the entire inquiry proceedings should be set aside. The learned counsel in support of his submissions has relied upon the following authorities:-

(1) Allahabad Bank & Ors. v. Krishna Narayan Tewari, (2017) 2 SCC 308;

(2) Oil and Natural Gas Corporation Limited v. Western Geco International Limited, (2014) 9 SCC 263;

(3) S.N. Mukherjee v. Union of India, (1990) 4 SCC 594;

(4) Roop Singh Negi v. Punjab National Bank & Ors., (2009) 2 SCC 570;

(5) Shiv Parshad Pandey v. CBI through Director, New Delhi, (2003) 11 SCC 508; and

(6) B.L. Satyarthi v. State of M.P., 2014 Legal Eagle (MP) 983.

[15.] Mr. B. K. Singh, learned Standing Counsel, Food Corporation of India, by referring to the affidavit-in-opposition filed by the FCI on 10.11.2020 submits that after the petitioner was intimated about appointment of the Inquiry Officer and the Presenting Officer, she submitted an application before her parent

Department requesting for the appointment of the Inquiry Officer and the Presenting Officer by the State Government, despite fully knowing that there was no option available for a Delinquent Officer to make such a prayer under the CCS (CCA) Rules, 1965 or the Regulation of 1971. The petitioner appeared before the Inquiry Officer on 25.07.2017 and 26.07.2017 in the preliminary hearing conducted for document verification and appointment of a Defence Assistant, where she denied the charges levelled against her. Although, she submitted an application for providing her certain documents on 09.08.2017 but she failed to appear in the subsequent proceedings on 24.08.2017 and 25.08.2017 and only intimated that she cannot attend the inquiry proceeding as she was engaged in the enrollment of her Aadhaar card for certain Central Government Schemes vide her letter dated 24.08.2017. Even thereafter, while the inquiry proceedings was fixed again on 26.10.2017 and 27.10.2017, the petitioner failed to attend the same and only sent an e-mail on 26.10.2017 stating that she was pre-occupied with office work, which requires her personal presence.

[16.] Later, when the proceeding was fixed on 29.12.2017 and 30.12.2017, the petitioner again through her e-mail on 28.12.2017 informed her inability to attend the hearing as she was on medical leave. Since, the provisions of the Regulation of 1971 mandate for a time frame to complete the inquiry proceedings, the Inquiry Officer, therefore, recorded the deposition of Shri S. K. Pramanik, PW1. He then fixed the next date for proceeding on 10.01.2018 and 11.01.2018 but again, the petitioner failed to attend the proceeding and the Inquiry Officer, therefore, proceeded to record the statements of the PWs viz; Shri Nitin Khurana, Shri Jay Prakash and Shri Amit Kumar Singh**.** Similarly, on the next dates i.e., 23.01.2018 & 24.01.2018, the petitioner failed to attend the proceeding and the statements of one Shri Inder Kumar Negi was recorded. Subsequently, the proceeding was again fixed on 02.02.2018 & 03.02.2018, on which dates the petitioner failed to appear and the statements of Shri Ashung Ngalung was recorded.

[17.] The learned Standing Counsel, therefore, submits that despite several repeated intimations, the petitioner out of her own volition failed to appear before the Inquiry Officer and, therefore, the inquiry had to be proceeded without her. He submits that the allegations of the petitioner that there was a common proceeding along with other employees of the FCI is not correct. In fact, the proceedings drawn against the petitioner was independent to the proceedings drawn against the employees of the FCI. However, keeping in view the category of employees under the FCI, the same were grouped together for a common inquiry as permissible under Regulation 62 of the Regulation of 1971.

[18.] The learned Standing Counsel also submits that in fact FIRs were lodged by the CBI against few of the delinquents including the petitioner and that after the filing of the charge-sheet the matter is sub-judiced before the Court of Special Judge (CBI) at Yupia in the State of Arunachal Pradesh. The same, therefore, only goes to show that there has been serious irregularities, fraudulent payments and misappropriation of stock, resulting in huge loss of money to the tune of Rs. 86.30 crores approximately as per the findings of the inquiry proceedings. Therefore, the Inquiry Report against the petitioner is sustainable and should be acted upon by the Disciplinary Authority in terms of the Communication laid by the General Manager (Vigilance), FCI on 09.01.2019 to the Chief Secretary to the Government of Arunachal Pradesh.

[19.] The learned Standing Counsel, further, submits that the respondent FCI being the borrowing Department is within its rights to conduct the inquiry proceedings against the petitioner. In fact, as per the Regulation of 1971, the borrowing department can impose minor penalties upon the employee, who is on deputation to the FCI in consultation and intimation with the lending department. It is only in respect of major penalties that the inquiry report has to be forwarded to the lending department for necessary action.

[20.] The learned Standing Counsel, apart from Regulation 54 of the Regulation of 1971 has referred to the Handbook for Inquiry Officers and Disciplinary Authorities, 2013, prepared by the Institute of Secretariat Training and Management, Department of Personnel & Training, Ministry of Personnel Public Grievances & Pensions, Government of India, more particularly, Chapter-23 of the said handbook. He, further, submits that there is no dispute to the fact that the borrowing department can initiate disciplinary proceedings against the officer/employee, who is on deputation to the FCI. The learned Standing Counsel submits that the Inquiry Report is yet to be acted upon by the Government of Arunachal Pradesh and, therefore, the writ petition itself is pre-mature. He submits that it is an established principle of law that inquiry proceedings, which has not culminated into a final order of penalty ordinarily cannot be challenged in a writ proceeding, unless the proceeding itself is not authorized.

[21.] The learned Standing Counsel, therefore, submits that the inquiry report under the facts and circumstances should be allowed to be acted upon by the Disciplinary Authority concerned, since there is no finality at this stage. It may so happened that the Inquiry Report is not accepted by the Disciplinary Authority for some reasons or the other and, therefore, the Court may not put an embargo on the respondent authorities concerned to act upon the Inquiry Report at this stage. He, thus, submits that the writ petition has no merit and should be dismissed. In support of his submissions, the learned Standing Counsel has relied upon the following decisions:-

> *(1) Punjab National Bank & Ors. v. Sh. Kunj Behari Misra etc., (1998) 7 SCC 84;*
>
> *(2) Union of India & Anr. v. Kunisetty Satyanarayana, (2006) 12 SCC 28; and*
>
> *(3) B.C. Chaturvedi v. Union of India & Ors., (1995) 6 SCC 749.*

[22.] The learned Standing Counsel has also produced the relevant records in a printed form for perusal of this Court.

[23.] Mr. M. R. Adhikari, learned Government Advocate, Arunachal Pradesh, by referring to the affidavit-in-opposition filed by the State, submits that it is not a fact that the lending Department was not aware about the petitioner being suspended. In fact, the lending Department had been duly informed about her suspension by furnishing a copy of the Suspension Order to the Department. He, further, submits that as per the Rule 20 of the CCS (CCA), 1965, the borrowing authority has the power of disciplinary authority for the purpose of conducting disciplinary proceedings against the officer borrowed from another department or other authorities. Therefore, the Order dated 24.11.2016, by which the inquiry was ordered, solely against the petitioner is in order. There is no question of there being an inquiry against a group of persons or a common proceeding as contended by the petitioner. He, therefore, submits that there is nothing irregular in the proceeding drawn against the petitioner and, therefore, the writ petition should be dismissed.

[24.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials on record including the records produced by the learned Standing Counsel, FCI.

[25.] From the projection made by the petitioner, the issue to be decided is as to whether the inquiry proceedings drawn against the petitioner is sustainable in law and on facts. In other words, whether the inquiry proceeding conforms to the requirement as laid down in the Regulation of 1971.

[26.] The petitioner, as may be noticed, was appointed as CDPO in the Social Welfare, Woman and Child Development Department, Government of Arunachal Pradesh, in the year 1991 and was on deputation in the FCI since 30.09.2011 till she was repatriated back in her Parent Department w.e.f. 21.09.2016 (AN) vide Order dated 20.09.2016. During her deputation in the FCI, she held the post of Area Manager in the district office of the FCI at Banderdewa. That on account of certain allegations by which she was alleged to be responsible for causing huge loss to the FCI, she was placed under suspension vide Order dated 24.05.2016. She was suspended by invoking Regulation 66(1)(a) of the Regulation of 1971 with immediate effect. It was further provided that during the period of suspension, her Headquarter would be the Zonal Office (North East) Guwahati.

[27.] Coming to the provision under which the petitioner was placed under suspension, it may be seen that the Regulation 66(1)(a) provides that the appointing authority or any authority to which it is sub-ordinate or the disciplinary authority or any other authority empowered in that behalf by the Board, by general or special order, may place an employee under suspension, where a disciplinary proceeding against him/her is contemplated or is pending. "Board" as per the definition under Section 2(b) of the Regulation, means the Board of Directors of the Corporation. There is no dispute to the fact that the FCI being the borrowing Department, the competent authority in the FCI, admittedly is authorized to suspend an employee, who is under deputation in the FCI.

[28.] Regulation 65 provides for the provisions regarding officers borrowed from Central or State Governments, government-owned organizations, companies and Corporations. Regulation 65(1) provides that where an order of suspension is made or disciplinary proceedings are taken against a government servant or an employee of a public sector or private section undertaking, whose services have been borrowed from a government or an authority sub-ordinate thereto or such undertaking, the authority lending his services shall forthwith be informed of the circumstances leading to the order of his/her suspension or of the commencement of disciplinary proceedings, as the case may be.

[29.] In the present case, it may be seen that a copy of the order of suspension of the petitioner dated 24.05.2016 was marked to the Department of Woman and Child Development, Government of Arunachal Pradesh. Regulation 65(1), otherwise requires borrowing authority to forthwith inform the lending authority the circumstances leading to the order of suspension or the commencement of disciplinary proceedings. In the suspension order, apart from alleging the petitioner to be responsible for causing huge loss to the Corporation, no further details was given informing the lending Department about the circumstances leading to the issuance of the suspension order.

[30.] Subsequently, the Memorandum of Charge was issued to the petitioner on

19.08.2016 requiring her to submit her written statements of defence within ten (10) days of receipt of the Memorandum and also to state as to whether she desired to be heard in person. The Memorandum also contended the statements of articles of charge framed against the petitioner, which were four (4) articles in all. No doubt that a copy of the Memorandum has also been marked to the Chief Secretary, Government of Arunachal Pradesh, but the fact remains that as per the Regulation 65(1), such intimation of suspension and commencement of disciplinary proceedings are to be informed to the lending authority forthwith. The order of suspension was issued on 24.05.2016 and the Memorandum subsequently issued on 19.08.2016. Having regard to the provisions of Regulation 65(1), it only appears that the stipulation provided therein has not been adhered to by the Borrowing Authority i.e., FCI.

[31.] It may be, further, be seen that although the petitioner was suspended vide Order dated 24.05.2016 and the Memorandum of Charge issued on 19.08.2016, she was repatriated back to her Parent Department w.e.f., 21.09.2016 (AN) vide Order dated 20.09.2016. It may also be noticed that her suspension was revoked on the same date, when the Memorandum of Charge was issued i.e., 19.08.2016. That after she was repatriated, the Inquiry Officer and the Presenting Officer were appointed by separate orders both dated 24.11.2016. It is the case of the petitioner that she had already been repatriated back to her Parent Department with effect from 21.09.2016 and, therefore, she no longer being a part of the FCI, the inquiry could not have been conducted against her as initiated by the FCI by appointing the Inquiry Officer and the Reporting Officer after her repatriation. In this regard, reliance has been placed by the learned counsel for the petitioner to the case of *Shiv Parshad Pandey (supra)*. In the case of *Shiv Parshad Pandey (supra),* the

Hon’ble Apex Court in the given facts of the case held that the appellant who was an IPS Officer and who was on deputation in the Border Security Force (BSF), upon his repatriation to his Parent Department, ceased to be an officer of the BSF by virtue of Section 3 (2) of the BSF Act, 1968. The Hon’ble Apex Court also took note of the fact that under Section 77 (2) of the same Act, no person, who is subjected to the BSF Act, can be tried for an offence unless the trial commences within six (6) months after such person ceased to be subject to the Act. It was, therefore held that the appellant in that case having already been repatriated to his Parent Department ceased to be a person subject to the BSF Act.

[32.] The above decision of the Hon’ble Apex Court was relied upon by the High Court of Madhya Pradesh in *B.L. Satyarthi (supra).* In that case, the High Court held that Rule 20 of the Madhya Pradesh Civil Services (CCA) Rules, 1966 (Rules of 1966), gives power to the Borrowing Department to take disciplinary action against the Government servant, who is on deputation and that the power to the appointing authority and the disciplinary authority are conferred on the Borrowing Department, which includes the power to suspend and to impose minor penalty with due intimation to the Lending Authority about the circumstances leading to the order of suspension and in case of imposition of minor penalty after due consultation with the Lending Authority. According to the High Court, when such power is given to any authority**,** an assumption has to be drawn that the power can be exercised so long as the relationship of master and servant, employer and employee subsists or the contract of employment is in existence. Once the relationship of master and servant or employer and employee or the contract of service itself comes to an end, the question would be as to how disciplinary action or power to suspend can be exercised by an authority with whom the contract of employment of the employee concerned is no more in existence. Interpreting Rule 20 of the Rules of 1966, the High Court held that the once the employee is repatriated back to the Lending Department, then the contract of employment temporarily created during the period of deputation ceases and if that be the position, then the borrowing department does not have any authority to take action against the employee concerned.

[33.] Coming back to the present case, it may be seen that there is no such provision like the provision in the BSF providing for the time frame under which, a person can be tried for a offence or proceeded against after he/she ceases to be subject to the Regulation of 1971. It may, however, be seen that the provision of Regulation 65, appears to be *pari materia* with that of the Rules of 1966 referred to in the case of *B.L. Satyarthi (supra).* Regulation 65 of the Regulation of 1971 may be abstracted below for ready perusal:-

> "***65. Provisions regarding officers borrowed from Central or State Governments, government-owned organizations, companies and Corporations:***
>
> *(1) Where an order of suspension is made or disciplinary proceedings are taken against a government servant or an employee of a public sector or private section undertaking, whose services have been borrowed from a government or an authority subordinate thereto or such undertaking, the authority lending his services(hereinafter in this regulation referred to as the "lending authority") shall forthwith be informed of the circumstances leading to the order of his suspension or of the commencement of disciplinary proceedings, as the case may be.*
>
> *(2) In the light of the findings in the disciplinary proceeding taken against*

the borrowed government servant, employee of public sector or private sector understating:

(i) If the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of Regulation 54 should be imposed on him, it may, after consultation with the lending authority, pass such orders as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority the service of the government servant or employee of the public sector or private sector undertaking shall be replaced at the disposal of the lending authority;

(ii) If the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) Regulation 54 should be imposed on him, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it may deem necessary."

[34.] From a perusal of the above abstract of Regulation 65, it may be seen that no such provision has been provided by which disciplinary proceeding can be conducted after the repatriation of the officer concerned to his/her Parent Department. That suspension and imposition of minor penalty is permissible as provided in Regulation 54(i) to (iv) with due intimation and after consultation with the Lending Authority. However, if the disciplinary authority in the FCI is of the opinion that all the major penalty specified in Regulation 54(v) to (ix) should be imposed on the officer borrowed by the FCI, proceeding of the inquiry for such action may also be transmitted as the disciplinary authority may deem necessary.

[35.] In the instant case, the Inquiry Officer and the Presenting Officer were appointed after the petitioner was repatriated back to her Parent Department and the entire proceeding conducted after her repatriation. It was only after the Inquiry Report that was submitted by the Inquiry Officer that Regulation 65(2)(ii) has been applied by the General Manager (Vigilance), FCI, through Communication dated 09.01.2019. It, therefore, would appear that there was no longer the master and servant or employer and employee relationship between the FCI and the petitioner. Therefore, having regard to the provisions of Regulation 65, the only recourse which could have been taken, was to complete the inquiry proceedings before repatriation of the petitioner and not in the manner it was done.

[36.] Proceeding further to the manner in which the inquiry was conducted, it may be seen that a preliminary hearing was conducted on 25.07.2017 by the Inquiry Officer and the petitioner had appeared and denied the charges. She also stated that she would be engaging a Defence Assistant to plead her case. Accordingly, the next hearing was fixed on 02nd & 03rd of August, 2017. However, the petitioner remained absent for one reason or the other until the Inquiry Officer vide his Letter dated 19.12.2017 informed the petitioner that a final hearing will be conducted on 29th & 30th of December, 2017. It was also provided that in case the petitioner failed to appear, the proceedings would be taken *ex-parte*.

[37.] The petitioner again remained absent on the scheduled dates and the Inquiry Officer re-scheduled the final hearing for the 10th & 11th of January, 2018, vide his Letter dated 02.01.2018 and communicated the same to the petitioner. It was also stated in the Letter that in case the petitioner failed to appear on the appointed date and time, the inquiry proceedings would be taken *ex-parte*.

[38.] The petitioner again failed to appear on the appointed dates and in her absence, the Departmental witnesses were examined. Consequently, the Inquiry Officer submitted the inquiry report on 14.03.2018 with a finding that the article of charges were proved. From the records produced by the learned Standing Counsel, FCI, it is seen that apart from the two (2) Communications dated 19.12.2017 & 02.01.2018 of the Inquiry Officer to the petitioner stating that on failure to appear on the appointed dates, the proceedings will be done *ex-parte*, the Inquiry Officer has nowhere recorded the reason or the decision taken for proceeding *ex-parte*. Since, the outcome of the Departmental Proceeding may be detrimental to the delinquent officer, the minimum requirement of an Inquiry Officer is to record the findings that despite due notice, the delinquent officer failed to turn up without any explanations whatsoever and, therefore, the *ex-parte* proceedings was being drawn up.

[39.] From a perusal of the Inquiry Report, it may be seen that the Inquiry Officer, in view of the absence of the petitioner has accepted the documents submitted by the Presenting Officer while agreeing to his submissions. The Inquiry Officer, by doing so, has found the article of charge to be proved. Having regard to the fact that no ground has been recorded by the Inquiry Officer before proceeding *ex-parte* with the Departmental Proceeding, the Inquiry Report in the considered view of this Court is only vitiated and cannot be sustained.

[40.] Thus, upon due consideration of the case in its entirety, the inquiry drawn against the petitioner in view of above findings, is held to be not sustainable and accordingly, the inquiry proceedings initiated vide the Memorandum dated

19.08.2016 and the outcome of the inquiry through the Inquiry Report dated 14.03.2018 are set aside. However, as this Court has not examined the enquiry report on merit and therefore notwithstanding, the setting aside of the inquiry proceedings, the respondent authorities are not debarred from proceeding against the petitioner afresh, which, however should be in accordance with law.

[41.] With the above observations and directions, the writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant