

GAHC040005572021



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

Writ Petition (C) 183/2021

Shri Arun Sawin,
S/o - Shri Winson Sawin Tutsa,
R/o - Changlang,
P.O. - Changlang,
Dist - Changlang, Arunachal Pradesh.

.....**Petitioner**

-Versus-

- 1.** The State of Arunachal Pradesh,
Represented by the Chief Secretary Government of Arunachal Pradesh,
Civil Secretariat, Itanagar,
P.O. - Itanagar.
- 2.** The Commissioner/Secretary [Home Department], Government of
Arunachal Pradesh,
Civil Secretariat, Itanagar,
P.O. - Itanagar.
- 3.** The Director General of Police [DGP],
Police Head Quarter [PHQ],
Chandranagar/Itanagar,
P.O. - R.K. Mission.
- 4.** The Inspector General of Police [IGP],
Police Head Quarter [PHQ],

Chandranagar/Itanagar,

P.O. - R.K. Mission.

5. The Commandant, 3rd IRBN,

Head Quarter, Seijosa,

P.O. - Seijosa,

Dist - Pakke Kessang, Arunachal Pradesh.

6. Shri Dojo Bagra,

Inspector General, Commander E-Company,

3rd IRBN cum Enquiry Officer [E.O.],

C/o - Commandant, 3rd IRBN, BHQ, Seijosa,

P.O. - Seijosa,

Dist - East Kameng, Arunachal Pradesh.

.....**Respondents**

Advocates :

For the Petitioner : Mr. T. Son.

For the Respondents : Mr. R.H. Nabam.

Date of Hearing : 16.06.2023.

Date of Judgment and order : 18.07.2023.

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER [CAV]

Heard Mr. T. Son, learned counsel for the petitioner and Mr. R.H. Nabam, learned Additional Advocate General, Arunachal Pradesh for the state respondents.

2. In this petition, under Article 226 of the Constitution of India, the

petitioner, Shri Arun Sawin has put to challenge the correctness or otherwise of the order dated 17th June/2014, No. 3rd IRBN/BHQ/SJA/DE-39/13, passed by respondent No. 5, the Commandant 3rd IRBN, Head Quarter, Seijosa, Pakke Kessang, Arunachal Pradesh, pursuant to a departmental proceeding, initiated against him by the respondents. It is to be mentioned here that vide impugned order dated 17.06.2014, the petitioner, who was serving in 3rd IRBN, Head Quarter, Seijosa, Pakke Kessang, Arunachal Pradesh, as Constable, was removed from service.

3. The background facts leading to filing of this writ petition is adumbrated herein below:-

“The petitioner was serving as a Constable under 3rd IRBN, BHQ Seijosa, in East Kameng District and later on, he was shifted to BHQ, Jully, Itanagar. In the year 2012, he was attached with the Itanagar Police Station and posted in the office of the Arunachal Times. On 21.11.2012, the petitioner fallen sick and since then his health condition did not improve and for his medical treatment he left the camp for his native place, with the permission of Guard Commander Shir Krishan Khant Jha of E-Company, who had entered the same in the entry register. After a week, while the petitioner came back, he found that he had already been put under suspension due to absence from the duty and on production of the Medical Certificate the respondent authority had revoked his suspension order.

But, unfortunately, while he was returning from his native place to Itanagar, he had missed the bus and remained stranded at Margherita Bazar. There he met one of his old friend namely, Shri Tawang Khetry at Margherita Bus Stand in Assam, who also missed the bus to Itanagar. Then they have decided to proceed to

Miao and hired a Taxi. While they were proceeding toward Miao, they got down at Jagun to purchase betel nut and cigarette and involved in an altercation with a shopkeeper in connection with change and the shop keeper then informed the Jagun Police Station and then police came and took them into the custody and a case, being Lekhapani PS Case No. 06/2013 was registered under section 384 IPC read with section 25(i) (A) of the Arms Act. On 22.02.2013, after languishing in jail for a period of 48 days, he was granted bail by the learned Sessions Judge, Tinsukia. In the meantime, on getting information of that incident, the Commandant, 3rd IRBN, immediately placed him under suspension, and drawn up a departmental proceeding and appointed one Inquiry Officer and the said officer had examined four witnesses but he did not allow him to cross-examine the witnesses and submitted inquiry report hold that the charges proved and thereafter, the Disciplinary Authority, vide impugned order dated 17.06.2014, had removed him from service. Thereafter, the petitioner had preferred an appeal on 28.07.2014, and since then the appeal has been pending before the Inspector General of Police, Arunachal Pradesh, PHQ, Itanagar till date. Thereafter, on 09.09.2019, the learned Sub-Divisional Judicial Magistrate [M], Margherita, Tinsukia, Assam has acquitted him from all the charges leveled against him.”

4. Being aggrieved by the said order, dated 17.06.2014, for removal from his service in contravention of the Rules and procedure and for refusing to grant him opportunity to cross-examine the witnesses’ and denial of justice in spite of acquittal from the criminal case, the petitioner has instituted this writ petition seeking relief(s) as aforesaid.

5. Respondent Nos. 3 and 4 has filed their affidavit in opposition denying

the assertions made by the petitioner. It is stated that on 22.11.2022, the petitioner was found unauthorizedly absent from the duty place i.e. The Arunachal Time's Office, E-Sector, Itanagar without intimation and prior permission of the competent authority and during the unauthorized period of absence on 10.01.2013, the petitioner along with one Constable Tawang Khetry of Second IRBN B, Deployed in Changlang district, had made attempt to extort money in the name of National Socialist Counsel of Nagaland [NSCN] an underground outfit operating in district of Tirap and Changlang showing arms, at Jagun, under Tinsukia district where they have been arrested by Assam Police in connection with Lekhapani P.S. Case No. 06/2013, under section 384 read with section 25(i) (A) Arms Act. Thereafter, he was placed under suspension with effect from the date of his arrest and detention, vide order dated 16.01.2013, No. 3rd IRBN/BHQ/Jully/DE-08/VOL-I/12. It is also stated that thereafter, one regular departmental inquiry was initiated against him vide Memo No. 3rd IRBN/BHQ/SJA/DE-39/13, dated 14.03.2013, and an Inspector was appointed to conduct the inquiry and in the said inquiry the petitioner did not co-operate and then with approval from the Disciplinary Authority, the inquiry officer has conducted the same ex-parte against the petitioner and after completion of inquiry the inquiry officer submitted report to the Disciplinary Authority with the finding that charges framed against the petitioner is well established and proved. Then acting upon the inquiry report the Disciplinary Authority i.e. Commandant 3rd IRBN, Seijosa imposed penalty of removal from service vide order No. 3rd IRBN/BHQ/SJA//DE39/13 dated 17.06.2014. The petitioner then filed one appeal petition on 21.07.2014, before the Inspector General of Police [PHQ] and vide order dated 09.10.2014, No. THQ/BP-10 of

2013, the appellate authority had dismissed the same. Under the aforesaid facts and circumstances it is contended to dismiss the petition.

6. The petitioner had filed his affidavit in reply denying the assertion made by the respondent in the affidavit in opposition of the respondent No. 3 and 4 and brought on record, some WT messages and summon issued to him. Thereafter, the respondent No. 3 and 4 have filed additional affidavit. The petitioner also had filed his reply to the additional affidavit submitted by the respondent No. 3 and 4 denying assertion made in the additional affidavit and that he was suffering from dental ailment for which he could not appear before the inquiry officer and thereafter, pursuant to the summon dated 06.06.2013, he appeared before the inquiry officer, July and accepted his attendance and the inquiry officer purportedly and illegally recorded his statement and that he has not received the WT message and summons in time and he has been deprived of the reasonable opportunity to defend him as provided under Article 311 of the Constitution of India.

7. Mr. T. Son, the learned counsel for the petitioner, submits that the Departmental Proceeding against the petitioner was conducted in the most arbitrary and illegal manner and even the petitioner was not allowed to cross-examine the witnesses. Taking this word to the inquiry report submitted by the Inquiry Officer, Mr. Son submits that the inquiry officer has recorded the statement of 5 witnesses including the statement of the petitioner and nowhere in the report it is indicated that the proceeding was conducted ex-parte and that none of the witnesses have been cross-examined by the petitioner as he was not allowed to do so and upon such finding the Disciplinary Authority has

imposed the punishment of removal of the petitioner from service. Taking this court through the impugned order dated 17.06.2014, Annexure-1 of the affidavit in opposition of the respondent Nos. 3 and 4, Mr. Son further submits that the said order suffers from manifest illegality on account of refusal to afford opportunity to cross-examine the witnesses. Mr. Son also submits that even the inquiry officer had recorded the statement of the petitioner in his inquiry report and thereafter, submitted the same. Mr. Son further submits that in the police case the petitioner and another police constable was arrested and both of them were acquitted by the learned SDJM(M), Margherita and against both of them departmental proceeding was initiated and the present petitioner was removed from service by imposing punishment and other person was exonerated from the charges and as such, the order of imposing punishment of removal from service is disproportionate and discriminatory and therefore, it is contended to allow the petition by setting aside the impugned order.

8. Per contra Mr. R.H. Nabam, learned Additional Senior Advocate General, Arunachal Pradesh, submits that the disciplinary proceeding was conducted in accordance with the service rule and proper opportunity was given to defend himself and in support of the same Mr. Nabam has produced the relevant file before this court for examination. Mr. Nabam further submits that though the petitioner was acquitted in the criminal case the same has no bearing upon the Departmental Inquiry and the petitioner remain absent from duty for 105 days and since the petitioner was working in a discipline force it is necessary to impose such a punishment upon the petitioner in order to maintain discipline in the force and therefore, Mr. Nabam contended to dismiss this petition.

9. In view of the assertions made by the parties in their respective pleadings and in view of the submission advanced by learned counsel for both the parties, the issues, that has arisen for adjudication by this court are formulated as under :-

[i] whether the impugned order of removal of the petitioner from service dated 17th June/2014, vide No. 3rd IRBN/BHQ/SJA/DE-39/13, suffers from any infirmity or illegality requiring interference of this court.

[ii] whether during the departmental inquiry reasonable opportunity was afforded to the petitioner to defend himself, in view of the provision of Article 311 of the Constitution of India.

10. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well the documents on record and also perused the respective file by Mr. Nabam, learned Additional Advocate General, Arunachal Pradesh.

11. Article 311 [1] of the Constitution of India provides that "no person, who is a member of a Civil Service of the Union or an All India Service or a Civil Service of his State or hold a Civil Post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clause 2 provides that no person, as aforesaid, shall be dismissed or removed or reduce in rank except an inquiry in which he has been informed of the charges against him give him a reasonable opportunity of being heard in respect of

those charges.

12. In the case in hand it appears that the petitioner was posted at Arunachal Times Office situated at Itanagar, with effect from 22/11/12, till 05.12.2012, and a show cause notice **(Annexure-3(a))** was issued to him on 05.12.2012, vide order No. 3rd IRBN/BHQ/JULLY/CT/AS/PF-460/10. It also appears that thereafter, on 16.01.2013, vide order No. 3rd IRBN/BHQ/JULLY/DE-08/VOL-I/12, **(Annexure-6)** he was placed under suspension, with effect from 10.01.2013. Thereafter, vide order dated 17.05.2013, No. 3rd IRBN/BHQ/SJA/DE-39/13, **(Annexure-7)** an inquiry, under Rule 7 of APP (D & A) Rule 1999 was being held against the petitioner by appointing Inspector - Dojo Bagra of 3rd IRBN E-Coy CHQ, Jully, Itanagar. Thereafter, on 14/03/2013, vide Letter No. 3rd IRBN/BHQ/SJA/DE-39/13, **(Annexure-8)** Memorandum of Article of Charges was furnished to him and the petitioner had received the same on 05.03.2013. The petitioner then submitted his reply **(Annexure-A)** on 20.05.2013, denying the charges framed against him. It also appears that thereafter, the Inquiry Officer had submitted his Report, **(Annexure-10 (Series))** by holding that the charges framed against the petitioner stands well established and proved. Thereafter, the Disciplinary Authority had, vide order dated 17th June/2014, No. 3rd IRBN/BHQ/SJA/DE-39/13, **(Annexure-E)** of the Additional Affidavit, removed the petitioner from service. Thereafter, the petitioner had preferred an appeal **(Annexure-12 of the petition)** on 28th July, 2014 before the Appellate Authority and vide order dated 9th October, 2014, No. PHQ/DP-10/2013, **(Annexure-11 of the petition)** the Appellate Authority had dismissed the

appeal preferred by the petitioner.

13. It also appears that the petitioner, in his petition, at paragraph No. 12, had taken a specific plea that he was not allowed to cross-examine the prosecution witnesses by the Inquiry Officer and he was not allowed to adduce evidence in his defence, and the enquiry was conducted in a bias and malicious manner. In paragraph No.15 also the petitioner had taken a plea that he was not allowed to adduce evidence in his defence. It also appears that after completion of enquiry, the Disciplinary Authority had forwarded a copy of the Inquiry Report to him, proposing to impose the punishment of removal from service, and pursuant to said letter the petitioner had filed a representation, dated 21.05.2014, and in paragraph No.5 of the said representation he had taken a categorical stand that the Inquiry Officer had, without presenting the witnesses before him and without granting him an opportunity to cross-examine them, came to an unwarranted finding, which is against the principle of natural justice and equity and fair play.

14. Mr. T. Son, the learned counsel for the petitioner also during argument, referring to a decision of Hon'ble Supreme Court in **Union of India and Others vs. P. Gunasekaran** reported in **(2015) 2 SCC 610**, has vehemently submitted that the inquiry was conducted in violation of the principle of natural justice as no opportunity to cross-examine the prosecution witnesses and also to adduce defence evidence were afforded to the petitioner and as such it requires interference of this court. The submission of Mr. Son is not controverted by Mr. Nabam, the learned Senior Additional Advocate General for the state respondents. Rather it was the contention of Mr. Nabam that the inquiry was

conducted ex-parte as the petitioner did not co-operate with the Inquiry Officer. Similar stand is also taken by the respondent No.3 and 4 in their affidavit in opposition. Mr. Nabam also produced before the court the relevant File of departmental Inquiry, for inspection of this court. To a pointed query of this court Mr. Nabam, however, could not show from the order sheet of the Inquiry Officer about giving any opportunity of cross-examination to the petitioner, though a contention is being made that the inquiry was conducted ex-parte.

15. Having carefully gone through the relevant File, produced before this court, I find that the Inquiry Officer, during enquiry, had examined four prosecution witnesses and also recorded the statement of the petitioner. It also appears that the Inquiry Officer had maintained Order Sheet while conducting the inquiry. The order sheets, so maintained by him, reveals that he had recorded the statement of the petitioner on 27.06.2013 and examined witness Ct. Tawang Khetry on 16.07.2013. Thereafter, the Inquiry Officer proceeded to Jagun and directed the petitioner to reach Jagun. On 12.09.2013, he proceeded to Lekhapani P.S. and collected documents such as FIR and seizure list and recorded statement of the O/C Lekhapani P.S. and complainant and witnesses.

16. The order sheet dated 12.09.2013, also reveals that the petitioner remained absent on that day and therefore the said witnesses could not be cross-examined. It is to be mentioned here that on 12.09.2013, the petitioner had informed the Inquiry Officer that he could not reach Jagun and the same was duly reflected in the order dated 12.09.2013. That being so, the Inquiry Officer ought not to have proceeded to examine the complainant and another person and the O/C. Lekhapani P.S. as witness in absence of the petitioner.

Moreover, the order dated 16.07.2013 reveals that the Inquiry Officer had examined witness Tawang Khetry on that day and the order sheet does not reflect that the petitioner was remained present on that day. The statement of the witness Tawang Khetry also reveals that there was no cross-examination. Absence of any order regarding examination of the witness Tawang Khetry in presence of the petitioner and that opportunity was given to the petitioner to cross-examine the witnesses, goes a long way to fortified the stands taken by the petitioner that he was not allowed to cross-examine the witnesses by the Inquiry Officer. Thus, it becomes clear that the Inquiry Officer had examined all the four witnesses in absence of the petitioner and these witnesses are namely Tawang Khetry, the O/C Lekhapani P.S. and the complainant and another witness.

17. The order sheet, maintained by the Inquiry Officer in the departmental proceeding also reveals that he had issued summon to the petitioner to appear before him on 27.09.2013, and thereafter, again issued summon to him to appear before him on 04.10.2013. As the summons could not be served upon the petitioner the Inquiry Officer had written a letter for ex-parte Departmental Enquiry to the C.O. and he received approval on 24.10.2013, and thereafter on 04.11.2013, the Inquiry Officer had submitted his report.

18. Thus, it becomes clear from the aforesaid discussion that the Inquiry Officer had examined all the four witnesses in absence of the petitioner and much prior to receiving approval on 24.10.2013, to proceed ex-parte, and as such the petitioner was deprived of the opportunity to cross-examine them and this amounts to violation of the principle of natural justice and also clause 2 of

Article 311 of the Constitution of India. This fortified the stand of the petitioner that the Inquiry Officer had conducted the inquiry in most arbitrary and bias manner. Thus, the stand so taken by the state respondents that the inquiry was an ex-parte inquiry, got no legs to stand upon..

19. It is to be noted here that Rule 7 of the Arunachal Pradesh Police (Discipline & Appeal) Rules 1999 provides for procedure for imposing major punishments. Sub-Rule 12 of the said Rule provides for cross-examination of the witnesses produced on behalf of the Disciplinary Authority, by the charged official. Sub-Rule 14 provides that if examination of any witness as court witness is necessary then it shall be brought on record in presence of the charged officials who shall be permitted to cross-examine all such witnesses. Rule 8 provides for Ex-parte departmental proceeding and it has to be done by the inquiry authority with prior approval of the disciplinary authority. In the instant case approval to proceed ex-parte was taken after examination of all the witnesses. Thus, Sub-Rule 12 of Rule 7 of Arunachal Pradesh Police (Discipline and Appeal) Rules 1999 stands violated.

20. Sub-Rule 21 of Rule 7 also provides for an enquiry report which shall contain:-

- (i) The article of charge and the statement of the imputations of misconduct or misbehavior;
- (ii) The defence of the member of the subordinate rank in respect of each article of charge;
- (iii) An assessment of the evidence in respect of each article of

charge;

(iv) The finding on each article of charge and the reason thereof;

21. In the instant case a careful perusal of the Enquiry Report, which is annexed with the petition at page No. 69 to 71 of the Annexure 10 (series) reveals that the same only contains the statement of the witnesses, including the statement of the petitioner and the analysis and finding. The first two requirements in point No.(i) and (ii) appears to be conspicuously missing and thereby, mandatory requirement of Sub-Rule 21 of Rule 7, appears to be not complied with. What was the charge and what was the statement of imputations of misconduct or misbehavior and what was the defence of the petitioner in respect of the charge, nothing has been reflected in the report. The reason in arriving at the finding so recorded by the Inquiry Officer is also not there. Thus, the report appears to be not in conformity with the requirement of the Sub-Rule 21 of Rule 7 of the Arunachal Pradesh Police (Discipline & Appeal) Rules 1999.

22. In the case of **P. Gunasekaran** (supra) Hon'ble Supreme Court has held as under:-

“12. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair**

conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

In the case in hand it appears from the record that points at (b) and (c) stands violated by the Inquiry Officer. The Rule and Principle of natural justice both stands violated.

23. The principles of natural justice have been designed to ensure fairness in action by the State and public bodies and, therefore, an important facet of [Article 14](#) of the Constitution of India. One of the principles of natural justice i.e. the principle of *audi alteram partem* has been explained by the Supreme Court in numerous judgments handed down by the Supreme Court from time to time. In the case of [A. K. Kraipak vs. Union of India](#) reported in **(1969) 2 SCC 262**, in paragraph 20, Hon'ble Supreme Court held thus:-

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is

that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far more reaching effect than a decision in a quasi-judicial enquiry. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

24. In the case of [Union of India v. Tulsiram Patel](#), (1985) 3 SCC 398 in paragraph No.95 and 96 of Tulsiram Patel (supra), the Supreme Court beautifully concertized law on the subject, as under:-

"95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in [Article 14](#) because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of [Article 14](#); therefore, a violation of a principle of natural justice by a State action is a violation of [Article 14](#). [Article 14](#), however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The

principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of "State" in [Article 12](#), is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

96. The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of [Article 311](#) in the light of what is stated above, it will be apparent that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in [Article 14](#) as a result of the interpretation placed upon that Article by recent decisions of this Court. Clauses (2) of [Article 311](#) requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under clauses (2) of [Article 311](#) has been elaborately set out by this Court in Khem chand's case in the passages from the judgment extracted above. Though that case related to the original clause (2) of [Article 311](#), the same applies to the present clause (2) of [Article 311](#) except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of [Suresh Koshy George v. The University of Kerala and others](#), such an opportunity is not the requirement of the principles of natural justice and as held in [Associated Cement Companies Ltd. v. T. C. Shrivastava](#)

and others neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The Opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall's Case upon section 240(3) of the Government of India, 1935, which was accepted by this Court in Khem Chand's Case. If, therefore, an inquiry held against a government servant under clause (2) of [Article 311](#) is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of [Article 311](#) and there will be no scope for having recourse to [Article 14](#) for the purpose of invalidating it."

25. In the case in hand, from the documents placed on record and also from the submission of learned counsel for both the parties, this court fails to derive satisfaction that reasonable opportunity of being heard was given to the petitioner at the time of Departmental Proceeding against him by allowing him to cross-examine the witnesses and as such, the principle of natural justice stands violated to its fullest amplitude and the right of the petitioner, as provided under Article 311 of the Constitution of India seems to be violated herein this case.

26. It also appears from paragraph No. 19 of the affidavit in reply of the petitioner that the petitioner along with one Tawang Khetri constable of 2nd IRBN, Meao was arrested in connection with Lekhapani PS Case no. 6/2013 under 384 of the IPC read with section 25 (i) (a) of the Arms act and both were remanded to jail hazoot and after completion of trial the learned SDJM (M), Margherita has acquitted them of the charges. A department at proceeding was also initiated against constable Tawang Khetri of 2nd IRBN and in the said

departmental proceeding, he was exonerated.

27. Mr. T. Son, learned counsel for the petitioner referring to the case of Tawang khetri, submits that 2 persons were arrested allegedly for committing the same offence and both of them were acquitted by the learned court below and in the departmental proceeding one of them exonerated and the petitioner was removed from service and the punishment so imposed upon the petitioner is grossly disproportionate and the same requires interference of this court. The submission of Mr. Son, thus, appears to have substance inasmuch as for the same charge one person is exonerated and the other one removed from the service.

28. However, Mr. Nabam, learned Senior Additional Advocate General submits that there was charge of unauthorized absence against the petitioner besides the charge of demand of ransom and that acquittal in criminal case has no bearing upon the departmental proceeding. But, the submission of Mr. Nabam left this court unimpressed inasmuch as the petitioner and constable Tawang khetri were remained in jail hazoot and during that period constable Tawang Khetry was also remained un-authorizedly absent from duty.

29. Thus, the punishment, so imposed upon the petitioner, by the respondent authority, appears to be grossly disproportionate and on such count also the impugned order of imposing punishment upon the petitioner requires interference of this court.

30. In the result I find sufficient merit in this petition and accordingly, the

same stands allowed. The impugned order of imposing punishment of removal from service upon the petitioner, dated 18.06.2014, No. 3rd IRBN/BHQ/DE-39/13 stands set aside and quashed. In view of quashing of the impugned order 18.06.2014, now, the respondent authorities shall re-instate the petitioner in his service with all consequential benefits. The above exercise has to be carried within a period of 3 months from today. However, liberty will remain with the respondent to proceed against the petitioner from the stage of recording of evidence, giving all reasonable opportunity of being heard, which are available to a public servant, under the relevant law, if so advised.

31. In terms of above, this writ petition stands disposed of leaving the parties to bear their own cost.

JUDGE

Comparing Assistant