

GAHC010169442016



IN THE GAUHATI HIGH COURT

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

WP(C) 1494/2016

Force No 941400224 CT/GD Johnny Dkhar

S/o Late N.N. Sharma

R/o 3rd Mile, Upper Shillong, Nongkseh East

Khasi Hills District, Meghalaya, PIN 793001.

.....**Petitioner**

VERSUS

1. The Union of India,

Represented by the Secretary to the
Government of India, Ministry of Home Affairs,
New Delhi-110001.

2. The Senior Commandant, Central Industrial
Security Force, ASG, Lokapriya Gopinath Bordoloi
International Airport, Guwahati, Assam,
Ministry of Home Affairs, PIN 781017.

3. The Assistant Commandant/Enquiry Officer

CISF Unit, ASG, Guwahati, Assam, PIN 781017.

.....**Respondents**

BEFORE

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the petitioner : Mr. R. Mazumdar, Advocate
For the respondents : Mr. B. Chakraborty, CGC
Date of hearing : 25.01.2024
Date of Judgment/Order : **02.02.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. B. Chakraborty, learned CGC for the respondents.

2. This petition is filed under Article 226 of the Constitution of India assailing inter-alia, the actions of the respondent authority to initiate *de-novo* departmental proceedings against the petitioner which has been conveyed by letter dated 04.11.2015 (Annexure-F), order dated 26.12.2015 (Annexure-G), by which the respondent authority appointed an Enquiry Officer to conduct the said enquiry into the charges developed against the petitioner and the Enquiry Notice dated 07.02.2016 (Annexure-A).

3. The brief facts of the case is that the petitioner joined the CISF as Constable/GD on 15.01.1994 and accordingly, was discharging his duties.

4. On 06.07.2011, while the petitioner was returning from Calcutta, after attending his official training, to his present unit at Jorhat, the petitioner was robbed in the station. The petitioner was also administered some medicines. On somehow reaching his parent unit at Jorhat, the petitioner was taken to Jorhat Civil Hospital wherefrom he was referred to Psychiatrist for further examination. The petitioner was then taken to the Hospital of Assam Rifle, where the doctor

recorded that the petitioner was under the influence of liquor.

5. Thereafter, the petitioner was placed under suspension vide an order dated 08.07.2011 and was also informed that a disciplinary proceeding is going to be initiated against him.

6. Subsequently, on 02.08.2011, a copy of the memorandum of charges was issued against the petitioner wherein the respondent authority alleged that the petitioner was using indecent and filthy language towards his senior official under influence of liquor.

7. Accordingly, departmental enquiry was held, wherein the petitioner was found guilty of the charges framed and thereafter, by order dated 22.12.2011 the petitioner was awarded the penalty of 'removal from service'.

8. Being aggrieved by the said removal order dated 22.11.2011, the petitioner preferred an appeal before the Deputy Inspector General, CISF, Airport (E & NE), HQrs., Kolkata. However, the appellate authority rejected the said appeal vide order dated 24.04.2012.

9. The petitioner thereafter, filed a writ petition being WP(C) No.30/2013 before the Meghalaya High Court against the said removal order dated 22.11.2011 and the appellate authority's order dated 24.04.2012.

10. The Meghalaya High Court vide judgment and order dated 20.07.2015, in the aforesaid writ proceedings, was pleased to set aside the aforesaid removal order dated 22.11.2011 and the aforesaid appellate authority's order dated 24.04.2012. The Meghalaya High Court was further pleased to grant leave to the respondent authorities to take fresh enquiry if they so desire or to reinstate the petitioner.

11. Paragraph 14 of the said judgment and order dated 20.07.2015 is

extracted hereunder for ready reference-

“14. For the reasons discussed above and keeping in mind the principle of natural justice and fair enquiry I hereby set aside the impugned orders dated 22.12.2011 and 24.04.2012 and leave the respondent to take fresh enquiry if they so desire or to reinstate the petitioner. In case if any enquiry is held, the two witnesses namely HC/GD Bhuwan Ram and Constable SS Kedare, are also directed to depose before the enquiry authority and disclose the truth. The authority concerned also to examine the Doctor and to pass necessary order in accordance with law after giving full opportunity of defence to the petitioner.”

12. Thereafter, the petitioner was informed by an office memorandum dated 04.11.2015 that the petitioner was reinstated in service in the same status, he was, as on the date of passing the final order of penalty and that a *de-novo* enquiry is going to be conducted against him in terms of the said judgment and order dated 20.07.2015.

13. Paragraph 3 of the said office memorandum dated 04.11.2015 is extracted hereunder for ready reference-

“03. WHEREAS the administrative decision of CISF HQrs., New Delhi to implement J.O in toto has been conveyed by CISF APS HQrs vide letter No V-14013/APS/CC-201/BC/LC/2015-9236 dated 01.10.2015 with further directions that he shall be reinstated in service in the same status, he was, as on date passing final order of penalty and undertake a de-novo enquiry and to ensure deposition of the two witnesses namely HC/GD Bhuwan Ram and Constable S.S. Kedare before the enquiry officer. The doctor (Medical Officer, Assam Rifles, MI Room Jorhat) who conducted medical examination of the petitioner may also be examined during the de-novo enquiry and the petitioner may be given full opportunity of defense in accordance with law and a speaking final order may be passed after completion of de-novo enquiry.”

14. Accordingly, the petitioner rejoined in the service at his parent unit at Jorhat and upon being asked, to serve at Indira Gandhi International Airport, Guwahati, the petitioner since then is serving at Guwahati.

15. By order dated 26.12.2015, the petitioner was informed about the appointment of the Enquiry Officer to conduct *de-novo* enquiry into the charges levelled against the petitioner.

16. Thereafter, the enquiry notice dated 02.02.2016 was issued to the petitioner, whereby he was given notice of the *de-novo* enquiry to be held on 08.02.2016 against him into the charges framed earlier by order dated 02.08.2011.

17. The petitioner objected before the respondent authorities to the *de novo* enquiry on the ground that the respondents in terms of the judgment and order dated 20.07.2015 had either to take fresh enquiry or to reinstate him.

18. In view of the aforesaid objection, the respondent authorities preferred a miscellaneous application being M.C. [WP(C)] No.27/2017 before the Meghalaya High Court seeking clarification of the said judgment and order dated 20.07.2015 passed in WP(C) No. 30/2013.

19. The Meghalaya High Court by order dated 25.04.2019 disposed of the said application by holding that there is no ambiguity in the judgment and order dated 20.07.2015, requiring clarification.

20. The petitioner being aggrieved by the aforesaid decision of the respondent authorities to initiate *de-novo* enquiry on the basis of the charges framed by order dated 02.08.2011 and the consequent orders of the respondent authorities dated 26.12.2015 informing the petitioner the appointment of the Enquiry Officer and the enquiry notice dated 02.02.2016, filed the present writ petition.

21. Mr. R. Mazumdar, learned counsel for the petitioner submits that the impugned order of initiation of *de-novo* enquiry is in contravention of the

judgment and order dated 20.07.2015 of the Meghalaya High Court. He further submits that a plain reading of Paragraph 14 of the said judgment and order abundantly demonstrates that the Meghalaya High Court has granted the option to the respondent authorities to either take fresh enquiry if they so desire or to reinstate the petitioner. The word 'or' which means 'in the alternative' is used to indicate the said option. The respondent authorities having reinstated the petitioner could not have thereafter initiated *de-novo* enquiry.

22. He further submits that the *de-novo* enquiry being based on the earlier charge-sheet is bad in law. In support of the aforesaid submission he relies upon the decision of the Hon'ble Apex Court in the case of *Chairman-cum-Managing Director, Coal India Ltd. and Ors. Vs. Ananta Saha and Ors.*, reported in (2011) Vol. 5 SCC at Page 142.

23. Mr. B. Chakraborty, learned CGC for the respondents, on the other hand, submits that the Meghalaya High Court has set aside the enquiry proceedings only on the ground of procedural irregularities, and having not gone into the validity of the charge-sheet dated 02.08.2011, the fresh enquiry has to be taken up from the stage at which it was found to be vitiated. In support of the aforesaid submission, he relies upon the decisions of the Hon'ble Apex Court in the case of *State of Uttar Pradesh Vs. Brahm Datt Sharma*, reported in (1987) Vol. 2 SCC at Page 179 and in the case of *State of Punjab and Ors. Vs. Chander Mohan*, reported in (2005) Vol. 13 SCC at Page 81.

24. He further submits that the use of word 'or' in paragraph 14 of the judgment of the Meghalaya High Court is not in the alternative but in the context of the said paragraph, will mean 'and' also. In support of the aforesaid submission, he relies upon the decision of the Hon'ble Apex Court in the case of *J. Jayalalitha and Ors. Vs. U.O.I. and Anr.*, reported in (1999) Vol. 5 SCC at page

138.

25. By relying on Section 8 of the Central Industrial Security Force Act, 1968, he further submits that the respondent authorities in order to take fresh enquiry against the petitioner has to first reinstate him in service inasmuch as after the petitioner was removed from service, he ceased to be an enrolled member of CISF and unless and until he is enrolled back as a member of CISF, the respondent authorities could not have initiated *de-novo* enquiry against him. As such, the respondent authorities upon coming to the decision that a *de-novo* enquiry is to be initiated against the petitioner in terms of the leave granted by the Meghalaya High Court in its judgment and order dated 20.07.2015 reinstated the petitioner and thereafter, initiated the *de-novo* enquiry against him.

26. He further submits that the writ petition is liable to be thrown out inasmuch as the petitioner has suppressed material facts and has accordingly, not approached this Court with clean hands. The writ petitioner has not disclosed the fact that the *de-novo* enquiry has already commenced and that he has participated in the said enquiry. In support of the aforesaid submission, he relies upon the decision of this Court in the case of *Saleha Begum Vs. State of Assam*, reported in 2006 (2) GLR 110.

27. I have considered the submissions made by the learned counsels for the parties and also have perused the materials on record.

28. The issues that arises for consideration are as follows-

i) Whether the respondent authorities in terms of the leave granted by the Meghalaya High Court in its judgment and order dated 20.07.2015, could have initiated the subject de-novo enquiry against the petitioner after reinstating him

in service?

ii) Whether the impugned decision of the de-novo enquiry based on the first charge-sheet after the removal order dated 22.12.2011 was set aside on the ground that the departmental enquiry held was highly improper and illegal, is valid?

iii) Whether there is any suppression of material facts warranting dismissal of the writ petition?

29. I shall take up the third issue namely "*Whether there is any suppression of material facts warranting dismissal of the writ petition?*" **first.**

30. The respondents have contended that the writ petitioner has not disclosed about the initiation and participation in the *de novo* enquiry and hence, have committed fraud upon the Court.

31. I have perused the averments made in the writ petition, particularly, Paragraph Nos. 22 and 25 which are reproduced herein below for ready reference-

"22. That the petitioner begs to submit that the Hon'ble High Court of Meghalaya while disposing of the writ petition, make an observation that to provide full opportunity to defense of the petitioner. But the enquiry officer, without giving sufficient time has asked the petitioner to bring witnesses, if he so desire. It is apparent from the act of the enquiry officer he is not conducted the inquiry proceedings in a fair manner rather from his act biasness of the enquiry officer is apparent. In view of the above also, the proceedings initiated by the respondent is liable to be set aside and quashed.

25. That the petitioner begs to state that it is apparent from the order dated 02/02/2016, (Annexure H, Page No.50), the Enquiry Officer, without closing all prosecution witnesses and affording an opportunity to cross examine them, asked the petitioner to bring/submit list of defense witnesses. The

Enquiry Officer has also not taken any initiative to call the doctor, as prosecution evidence, who examined the petitioner.”

32. A close scrutiny of the aforesaid paragraphs indicates that the writ petitioner has disclosed the initiation of the *de novo* enquiry and participation thereof. As such, there is no suppression of facts. Accordingly, the issue no. 3 is answered in favour of the writ petitioner.

33. As regards the issue no. 1 as to “*whether the respondent authorities in terms of the leave granted by the Meghalaya High Court in its judgment and order dated 20.07.2015, could have initiated the subject de-novo enquiry against the petitioner after reinstating him in service?*”, a bare reading of Paragraph No. 14 of the judgment and order dated 20.07.2015 passed by the Meghalaya High Court, which is extracted hereinabove, amply demonstrates that the Court has granted leave to the respondent authorities to either take fresh enquiry if they so desire or to reinstate the petitioner. In other words, the Meghalaya High Court after holding the disciplinary enquiry held earlier illegal and interfering the removal order, left the entire matter in the wisdom and discretion of the respondent authorities to take a decision. The aforesaid order is absolutely unambiguous and clear. In fact, when the respondent authorities approached the Meghalaya High Court for clarification of the said judgment and order, the Meghalaya High Court was pleased to reject the same. That being so, the respondent authorities were at liberty to either initiate fresh enquiry or to reinstate the petitioner. The aforesaid decision falls under the realm of administrative action. It is a settled principle of law that the judicial function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness. It appears from the materials available on record, that the respondent authorities decided to initiate fresh enquiry against the

petitioner and accordingly, reinstated the petitioner so as to initiate fresh enquiry inasmuch as the petitioner was removed from service and according to the respondent authorities unless and until the petitioner is enrolled back as a member of CISF, they could not have initiated the fresh enquiry. Since it was within the discretion of the authorities to either take fresh enquiry or to reinstate the petitioner, the respondent authorities having done so, this Court has limited power to interfere with the decision of the respondent authorities. That does not, however, mean that there is no control over the discretion of the administration. In *Sharp Vs. Wakefield*, reported in (1891) AC Page 173, Lord Halsbury observed;

“Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion..... according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.....”

34. It is equally true that there is nothing like unfettered discretion immune from judicial reviewability. The Court in exercise of judicial review, is not concerned with the correctness of the finding of fact, but the manner in which the decision was made. In other words, so long as those findings are reasonable and supported by evidence, the Court does not substitute its judgment for that of the administration. It is settled law that the Court shall interfere with the discretionary power exercised by the administration in the following circumstances- i) failure to exercise discretion and ii) excess or abuse of discretion.

35. In this regard, reference is also made to the decision of the Apex Court in the case of ***Indian Railway Construction Limited Vs. Ajay Kumar***

reported in 2003 (4) SCC 579. Paragraph 15 to 21 is quoted herein for ready reference:-

“15. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety, Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

16. The famous case commonly known as "The Wednesbury cases is d treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

17. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (KB at p. 229: All ER pp. 682 H-683 A). It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For f instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed: (KB p. 230: All ER p. 683 F-G)

"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

18. Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account b irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not

one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

19. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

"Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality and the third procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community;" Lord Diplock explained "irrationality" as follows: (All ER p. 951a-b)

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesburys unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

20. In other words, to characterize a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

21. These principles have been noted in the aforesaid terms in *Union of India v. G. Ganayutham*. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself."

36. It is clear from the aforesaid decisions, that the discretion exercised by the

Administrative authorities shall not be interfered unless the decision is illegal, irrational, unreasonable, arbitrary and against the procedure establish by law.

37. Keeping in mind these principles, I shall now examine the decision of the respondent authorities to take fresh enquiry against the petitioner by reinstating him in service.

38. Section 8 of the Central Industrial Security Force Act, 1968, quoted hereinabove, provides that the respondent authorities can award penalty only to an enrolled member of the force. Section-2 (aa) further provides that and "enrolled member of the Force" means any subordinate officer, under officer or any other member of the Force of a rank lower than that of an under officer. Section-2 (ab) further provides that "Force" means the Central Industrial Security Force constituted under Section-3. Thus, in order to exercise power under Section 8, it is condition precedent that the person is a enrolled member of the CISF. In the present case, the petitioner upon being removed from service vide order dated 22.12.2011, ceased to be a member of the CISF. In view of the leave granted by the Meghalaya High Court to the respondents, the respondent authorities have the discretion to either 'take fresh enquiry' against the petitioner or to 'reinstate him in service'. As noted above, in order to take fresh enquiry against the petitioner, the petitioner has to be an enrolled member of the CISF, otherwise, the respondent authorities cannot exercise its powers under Section 8 of the said Act. It is in the light of the aforesaid provision, the respondent authorities exercised its discretion and directed initiation of *de novo* enquiry by reinstating the petitioner inasmuch as the respondent authorities cannot initiate de-novo enquiry unless and until they reinstate him in service. Thus in order to exercise the option of 'taking de-novo enquiry', as a necessary corollary, the petitioner has to be first reinstate in service. As such, the manner

in which the said discretion is exercised cannot be said to be arbitrary, unreasonable and fanciful. In fact, it is reasoned and in accordance with law. Having held so, this Court is of the view that the decision taken by the respondent authorities to initiate *de novo* enquiry against the petitioner by reinstating him in service warrants no interference from this Court. As such, the issue no. 1 is decided against the writ petitioner.

39. As regards the issue no. 2 as to “*whether the impugned decision of the de-novo enquiry based on the first charge-sheet after the removal order dated 22.12.2011 was set aside on the ground that the departmental enquiry held was highly improper and illegal, is valid?*”, it appears from the judgment and order dated 20.07.2015 passed by the Meghalaya High Court that the Court has held the departmental enquiry to be illegal and highly improper and was pleased to set aside the impugned removal order and was further pleased to grant leave to the respondents to either ‘take fresh enquiry’ or ‘to reinstate the petitioner’. In Paragraph Nos. 27 and 28 of the case of *Chairman-cum-Managing Director, Coal India Ltd. (supra)* relied by the petitioner, the Hon’ble Apex Court has held as hereunder-

“27. *There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee.*

28. *The High Court had given liberty to the appellants to hold de novo enquiry, meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood quashed. In such a fact-situation, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh charge-sheet could not arise.”*

40. On the other hand, in Paragraph No. 5 of the case of *Brahm Datt Sharma (supra)* relied by the respondent, the Hon’ble Apex Court has held as hereunder-

“5. *The question which falls for consideration is whether notice dated January 29, 1986 was*

invalid and liable to be quashed. The learned Single Judge of the High Court quashed the notice on the sole ground that the allegations specified in the show cause notice were the same which had been the subject matter of departmental inquiry resulting in the respondent's dismissal from service, and since dismissal order had been quashed in the writ petition, it was not open to the State Govt. to take proceedings for imposing any cut in the respondents pension on the same set of charges. We do not agree with the view taken by the High Court. While quashing the order of dismissal the learned Judge did not quash the proceedings or the charges; instead he had quashed dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment as the recommendation with regard to the quantum of punishment made by the Inquiry Officer had not been communicated to him. In fact while allowing the writ petition the learned single Judge himself observed in his order dated August 10, 1984 that it would be open to the State Govt. to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the charges or the findings recorded against the respondent during the inquiry held against him. After the decision of the writ petition, it was open to the State Govt. to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service on attaining the age of superannuation it was open to the State Govt. to pass order awarding punishment to him after issuing a fresh show cause notice and supplying to him a copy of the recommendation made by the Inquiry Officer. There was no legal bar against the State Govt. in following such a course of action. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry; those charges remained alive even after quashing of the dismissal order and it was therefore open to the State Govt. to take action against the respondent in accordance with the rules. No disciplinary proceedings could be taken as the respondent had retired from service, the Govt. therefore considered it appropriate to take action against him under Art. 470, Civil Service Regulations. The Regulation vests power in the appointing authority to take action for imposing reduction in the pension, as the State Govt. is the appointing authority it was competent to issue show cause notice to the respondent. The notice specified various acts of omissions and commissions with a view to afford respondent opportunity to show that he had rendered throughout satisfactory service and that the allegations made against him did not justify any reduction in the amount of pension. If disciplinary proceedings against an employee of the Govt. are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation. before the completion of the proceedings it is open to the State Govt. to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Govt. to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to

the Govt. to take proceedings against the Govt. servant in accordance with rules for the deduction of pension and gratuity. In this view the High Court committed error in holding that the show cause notice was vitiated."

41. It appears from the decision of the Hon'ble Apex Court in *Coal India Ltd. (supra)* that in the first round of litigation, the learned Single Judge of the Calcutta High Court quashed the impugned disciplinary proceeding and had given liberty to the appellant employer to start the proceeding de novo giving adequate opportunity to the delinquent. In context of the aforesaid finding, the Hon'ble Apex Court held that the question of initiating a fresh enquiry without giving fresh charge-sheet could not arise.

42. In the case of *Brahm Datt Sharma (supra)*, on the other hand, the High Court did not enter into the validity of the charges or the findings recorded against the respondent during the enquiry held against him. In fact, in the said case, the dismissal order alone was quashed as the respondent was not granted opportunity to show-cause against the proposed punishment. It was in that context, the Hon'ble Apex Court held that it was open to the State Government to have taken up the proceedings against the respondents from the stage at which it was found to be vitiated.

43. The decisions of the Apex Court has to be understood in the context of the case where the decision is rendered. The Apex Court in the case of ***State of Haryana Vs. Ranbir Alias Rana*** reported in ***2006 Vol-5 SCC at page 167*** has held in paragraph 12 that- a decision is an authority for what it decides and not what can logically be deduced there from. Further, the Apex Court in the case of ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited and Others*** reported in ***2020 Vol-8 SCC at page 401*** has held as herein under:-

“ 44.1.5. For taking into comprehension the ratio of Pioneer Urban³ and for its application to the question at hand, appropriate it would be to recount the basic principles expounded and explained by a three-Judge Bench in Haryana Financial Corpn. v. Jagdamba Oil Mills that the observations of the Court in a judgment are always required to be read in the context in which they appear. This Court has said:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton 88 (at AC p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge.'

20. In Home Office v. Dorset Yacht Co. Ltd. 89 Lord Reid said (at All ER p. 297g-h), 'Lord Atkin's speech is not to be treated as if it were a statutory definition. It will require qualification in new circumstances Megaurry. 1. in Shepherd Homes Lid. v. Sundham (No. 2)90 observed: "O must not, of course, construe even a reserved judgment of even Russele L.J. as if it were an Act of Parliament. And, in British Railways Board v Herrington Lord Morris said:

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

44. It is clear from the aforesaid decisions of the Apex Court that observations in precedent must be read in the context in which they appear and must not be read out of context.

45. As such, the facts of the present case is absolutely different from the facts

of the case of *Brahm Datt Sharma (supra)*, relied by the respondent. Therefore, the said observation is not applicable in the facts of the present case. In the said case, the learned Single Judge while quashing the order of dismissal did not quash the proceedings, but had quashed only the dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment. As such, the decision in the case of *Brahm Datt Sharma (supra)* has no relevance in the facts of the present case.

46. In view of the decision of the Apex Court in *Coal India Ltd. (supra)*, the mandate of the law is that once the Court quashes the disciplinary proceedings and gives liberty to the authorities to hold *de novo* enquiry, the entire earlier proceedings including the charge-sheet, stands quashed. In fact, the disciplinary proceedings commences with issuance of charge-sheet. In the present case, the Meghalaya High Court having set aside and quashed the disciplinary proceedings, the entire earlier proceedings including the charge-sheet stood quashed. Therefore, it was not permissible for the respondent authorities to initiate *de novo* enquiry in terms of the leave granted by the Meghalaya High Court dated 20.07.2015 on the basis of the earlier charge-sheet which stood quashed. As such, the issue no. 2 is decided in favour of the writ petitioner.

47. In view of the above, this Court is of the opinion that the decision of the respondent authorities to *initiate de novo* enquiry by reinstating the writ petitioner is valid and warrants no interference from this Court. However, the impugned order dated 26.12.2015 issued by the SR. Commandant informing the petitioner that the Enquiry Officer is appointed to conduct *de-novo* enquiry into the charges levelled against him and the impugned enquiry notice dated 02.02.2016 issued by the Enquiry Officer, whereby the petitioner was given

notice of the *de novo* enquiry to be held into the charges framed against the writ petitioner vide the earlier charge-sheet dated 02.08.2011 are illegal and invalid to that extent alone. As such, the impugned order dated 26.12.2015 and the impugned enquiry notice dated 02.02.2016 are hereby set aside and quashed to the extent of holding de-novo enquiry on the basis of the charge-sheet issued earlier. It is needless to clarify that the respondent authorities are at liberty to start the *de novo* proceedings by issuing a fresh charge-sheet.

48. With the aforesaid discussion and observation, this writ petition stands allowed partly.

49. The writ petition stands disposed off.

JUDGE

Comparing Assistant