

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 713 of 2023

G.A. Lata Devi

Petitioner

Vs.

State of Manipur

Respondent

**BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

JUDGMENT
(Oral)

28.05.2025

Heard Mr. N. Surendrajit, learned counsel appearing for the petitioner; and Mr. Th. Vashum, learned G.A. appearing for the respondent.

The present writ petition has been filed assailing the memorandum dated 27.09.2023 issued by the Commissioner of Excise, Manipur for initiating a departmental enquiry against the petitioner. The charges framed against the petitioner is that she used a fake educational certificate at the time of her appointment as a Lady Constable in the Excise Department, Manipur.

[2] The brief facts of the case is that the petitioner was appointed as a Lady Constable in the Excise Department, Manipur by an order dated 26.03.1979. While she was in service, the Vigilance Department registered a case being Vigilance Case No. 14/V/SP-V/2009 and made an enquiry to find out whether the educational certificate produced by the petitioner for entering government service is a fake or fabricated document. After holding an enquiry, the Director of Vigilance, Manipur, made a recommendation to the Commissioner of Excise, Manipur to initiate a departmental proceedings against the petitioner on the ground that the educational certificate of the

petitioner for passing class-IX from Wangkhei Girls' High School, which was produced and used by her at the time of appointment as a Lady Constable in Excise Department, Manipur, is a fake certificate. Despite the said recommendation made by the Vigilance Department, the Excise Department did not initiate any departmental enquiry against the petitioner while she was in service and the petitioner retired from service w.e.f. 30.11.2019 on attaining the age of superannuation. Later on, the Commissioner of Excise, Manipur issued the impugned memorandum dated 27.09.2023 for initiating a departmental enquiry against the petitioner.

[3] Mr. N. Surendrajit, learned counsel appearing for the petitioner, raised only one ground in challenging the said impugned memorandum. It has been submitted by the learned counsel that under Rule 9(2)(b)(ii) of the Central Civil Services(Pension) Rules, 1972, it is, inter alia, provided that any departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, shall not be in respect of any event which took place more than four years before such institution. It has been submitted by the learned counsel appearing for the petitioner that the charges made against the petitioner is that the petitioner used a fake educational certificate at the time of her appointment as a Lady Constable in the Excise Department, Manipur which occurred in the year 1979 and that the petitioner retired from service on attaining the age of superannuation w.e.f., 30.11.2019. It has also been submitted that in the present case, the authorities initiated a departmental enquiry only in the year 2023 and since the departmental enquiry was not initiated within 4(four) years from the date of occurrence of the event which took place in the year 1979, the initiation of the departmental enquiry under the impugned memorandum is ultra vires the provisions of Rule 9(2)(b)(ii) of the Central Civil Services(Pension) Rules, 1972. The learned counsel

accordingly submitted that on this ground alone, the impugned memorandum is liable to be quashed and set-aside.

[4] In support of his contention, the learned counsel relied on the following case laws:-

(a) State of U.P. & anr. Vrs. Shri Krishna Pandey reported in **(1996) 9 SCC 395**, wherein it has been held as under:-

'6. ... In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on 31-3-1987 and the proceedings were initiated on 21-4-1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taking action thereon.'

(b) Babu Verghese & ors. Vrs. Bar Council of Kerala & ors. reported in **(1999) 3 SCC 4222** wherein it has been held as under:-

'31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor V. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This Rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad Case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law.'

(c) Brajendra Singh Yambem vrs. Union of India & anr. reported in **(2016) 9 SCC 20** wherein it has been held as under:-

34. Rule 9(2) of the CCS (Pension) Rules, 1972 reads thus:

"9. Right of President to withhold or withdraw pension.- (1) ***

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the government servant, be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental Proceedings, if not instituted while the government servant was in service, whether before his retirement, or during his re-employment-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the government servant during his service.”

A perusal of the above Rule makes it clear that if the disciplinary proceedings are not instituted against the government servant by the disciplinary authority while he was in service, then the prior sanction of the President of India is required to institute such proceedings against such a person. It is also clear that such sanction shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings.

35. The learned counsel appearing on behalf of the appellant has rightly placed strong reliance on Rule 9(2) b(ii) of the CCS(Pension) Rules, 1972. It is an undisputed fact that the appellant retires from service on 31-08-2006. The learned Single Judge of the High Court by way of judgment and order dated 18-5-2006 in Writ Petition (C) No. 720 of 2022 quashed the disciplinary proceedings in the case pertaining to the missing arms and ammunition. However, liberty was granted to the disciplinary authority/enquiry officer to conduct the disciplinary enquiry afresh after supplying the copies of the proceedings of the enquiry to the appellant. The said judgment and order of the Single Judge was challenged by the respondents by way of Writ Appeal (C) No. 45 of 20016, in which the Division Bench, by the judgment and order dated 7-11-2006 upheld the order of the Single Judge of the High Court. It was only pursuant to this that the fresh memorandum of charges dated 22-8-2008 was issued to the appellant, which was clearly beyond the period of limitation of four years as provided for under the CCS(Pension) Rules, 1972.

36. Similarly, in the case involving the contraband ganja, the Single Judge of the High Court by way of the judgment and order

dated 16-6-2006 passed in Writ Petition (C) No. 805 of 2005 quashed the departmental enquiry under the memorandum of charges dated 14-5-1998. The Division Bench dismissed Writ Appeal (C) No. 25 of 2007 filed by the respondents vide judgment and order dated 13-11-2008 and upheld the order of the learned Single Judge. It was pursuant to this that the fresh departmental enquiry was initiated against the appellant on 16-10-2009 after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS(Pension) Rules, 1972.

37. The appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in WP(C) No. 264 of 2010. The High Court quashed the memorandum of charges on the ground that it was issued after four years from the date of the alleged incident. Therefore, it was held that the said action of the disciplinary authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS(Pension) Rules, 1972. This important legal aspect of the case was not considered by the Division Bench of the High Court while setting aside the common judgment and order dated 1-9-2010 passed by the learned Single Judge in Writ Petition(C) No. 904 of 2008 (arms and ammunition case) and Writ Petition (C) No. 264 of 2010 (contraband ganja case).

38. It is well-established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in *Babu Verghese v. Bar Council of Kerala*, the relevant paragraphs of which are extracted hereunder: (SCC pp. 432-33, paras 31-32)

'31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the

act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor V. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under:

‘[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

32. This Rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad Case* was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law.’

The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under 9(2)(b)(i) read with Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.

[5] Mr. Th. Vashum, learned G.A. appearing for the respondent, submitted that the Vigilance Department registered a case being Vigilance Case No. 14/V/SP-V/2009 against the petitioner and made an elaborate enquiry to find out whether the educational certificate used by the petitioner for her appointment as a Lady Constable in Excise Department was a false and fabricated document or not.

After holding an elaborate enquiry and after giving a clear finding that the educational certificate of the petitioner for passing Class-IX from Wangkhei Girls’ High School and produced and used by her at the time of

appointment as a Lady Constable in Excise Department, Manipur, was a fake certificate, the Director of Vigilance made a recommendation to the Commissioner of Excise Department, Manipur, to initiate a departmental proceedings against the petitioner by writing a letter dated 08.10.2017, before the petitioner retired from service.

[6] The learned G.A. submitted that even though recommendation has been made by the Vigilance Department to initiate a departmental proceedings against the petitioner in the year 2017, the Excise Department initiated the departmental proceedings against the petitioner only in the month of September, 2023 by issuing the impugned office memorandum. The learned G.A., further submitted that the mandate of Rule 9(2)(b)(ii) of the CCS (Pension) Rules is that departmental enquiry can be initiated against a retired government employee within 4(four) years from the date of his or her retirement and that as the petitioner retired from service in the year 2019 and as the departmental enquiry was initiated within 4(four) years from the date of her retirement, the authorities have not committed any illegality and no interference from this Court is called for.

[7] I have heard at length the submission advanced by the learned counsel appearing for the parties and also examined carefully the materials available on record. In the present case, there is no dispute with regard to the following facts:-

- (i) That the petitioner joined service as a Lady Constable in the Excise Department, Manipur on 26.03.1979 and that she retired as an Assistant Sub-Inspector of Excise w.e.f., 30.11.2019;
- (ii) The impugned memorandum for initiating a departmental enquiry against the petitioner was issued only on 27.09.2023 and that the charges framed against the petitioner is that the petitioner produced and used a fake educational certificate at

the time of her appointment as a Lady Constable in the Excise Department, Manipur.

In my considered view, the event of misconduct alleged to have been committed by the petitioner occurred in the year 1979 and as the departmental proceedings was initiated against the petitioner only in the month of September, 2023, that too after her retirement, the initiation of the departmental enquiry against the petitioner is barred by the provisions of Rule 9(2)(b)(ii) of the CCS(Pension) Rules.

[8] Taking into consideration, the above proposition and the principles of law laid down by the hon'ble Apex Court relied on by the counsel appearing for the petitioner, this Court is satisfied that the initiation of the departmental proceedings against the petitioner under the impugned memorandum dated 27.09.2023 is illegal and accordingly, the same is hereby quashed and set-aside.

It is made clear that the authorities will not be debarred by this order from taking any appropriate action against the petitioner as permissible under law.

With the aforesaid direction, the present writ petition is hereby disposed of.

JUDGE

FR/NFR

Indrajeet