



Serial No.03
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.6/2025 with
MC (WA) No.34/2025

Date of order: 13.11.2025

1. Union of India represented by the Secretary to the Government of India,
Ministry of Home Affairs, New Delhi-110011.
2. The Director General Assam Rifles, Assam Rifles Headquarters,
Shillong-793010 .
3. The Inquiry Authority 44 Assam Rifles Pin-932044 C/o 99 APO
4. Commanding Officer 44 Assam Rifles Pin-932044 C/o 99 APO

..... Appellants

Vs.

5360091 F/A Smt Maya Devi

..... Respondent

Coram:

Hon'ble Mr. Justice Soumen Sen, Chief Justice

Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Appellants : Mr. R. Debnath, CGC

For the Respondent : Mr. L. Khyriem, Adv with
Mr. W. Jyrwa, Adv

i) Whether approved for
reporting in Law journals etc.: Yes

ii) Whether approved for publication
in press: Yes/No



JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This appeal arises out of a judgment passed by the learned single judge in a writ petition filed by the respondent challenging the decision of the competent authority in imposing a major penalty of compulsory retirement from service.

2. The writ petitioner was initially appointed as a female attendant on 11.07.2002 in the Assam Rifles on compassionate ground in place of her husband (L) Nirmal Kumar Singh, who had predeceased her and who, during his lifetime, was personnel of the Assam Rifles and lost his life in the line of duty in an avalanche in the year 1992.

3. In the course of her work, the writ petitioner took leave for 26 days, including two days of earned leave and six days transit leave from 01.10.2010 to 26.10.2010. On the prayer made, the writ petitioner was allowed extension of leave till 15.11.2010 for a further period of 20 days. Admittedly, the writ petitioner could not resume her duties on the expiry of the said leave for which she received a letter No.14043/A/2010/473 dated 23.12.2010, issued by the respondent authority requesting her to resume duty immediately.

4. The writ petitioner, however, did not join her duty citing various reasons, which inter alia, included the pendency of a criminal case filed



against her son and herself for which she had to attend to, and also for settling of family affairs, resulting in her not being able to resume duty in time. The writ petitioner appeared on 16.10.2012 at the Transit Camp at Dimapur, Nagaland with the Assam Rifles Unit there to rejoin her duty. She joined for duty at 44 Assam Rifles on 21.10.2012.

5. In view of her overstayed leave, a show cause notice was issued being No.44AR/A/A3/2339 (CIVIL) dated 06.12.2012. The writ petitioner submitted her reply to the said show cause notice on 07.12.2012, explaining the reasons for her absence and also pointing out that she had earlier sent a number of letters whereby she had informed the authorities concerned about her absence. However, the respondent authorities proceeded to conduct an inquiry into the matter and set out a statement of imputations of charge in support of the articles of charges framed against the writ petitioner for alleged absence from duty without prior permission. An inquiry officer was appointed, who held the preliminary hearing in the matter and had requested the writ petitioner to attend the same vide his communication No.5360091/FA/44/AR/Discp/2014/026 dated 28.03.2014. The writ petitioner attended the inquiry proceedings in person. Thereafter, the writ petitioner was served with a copy of the order bearing No.I.12015/A (Discp)/DI-Maya Devi/2014 dated 23.05.2014, wherein the



proceeding against her was concluded with the major penalty of compulsory retirement from service.

6. Being aggrieved by the said order dated 23.05.2014, the writ petitioner approached the Hon'ble Gauhati High Court by way of a writ petition being WP (C) No.517 of 2015, and the same was disposed of on 04.02.2015 with a direction upon the authorities concerned to accept the appeal to be filed by the writ petitioner in this regard.

7. The writ petitioner thereafter filed an appeal before the competent authority against the impugned order dated 23.05.2014, which was rejected with an order No.I.12015/A (Discp)/DI-Maya Devi/2015/841 dated 04.06.2015, and the penalty of compulsory retirement from service was upheld. Again, the writ petitioner preferred an application dated 30.07.2016 before the concerned authority seeking reinstatement of her service, but she was informed by a letter No.I.14015/Rec/Adm-IV (Civ)/Pension/2016/111 dated 08.09.2016 that she cannot be reinstated and she is also not entitled to any pension as she is 22 days short for being eligible for pension as far as qualifying service under the Central Service (Pension) Rules, 1972 is concerned. Thereafter, with the letter No.I.14015/Rec/Adm-IV(Civ)/Pension/2017/148 dated 16.01.2017, the writ petitioner was directed to sign the final settlement of her accounts and



payments pertaining to her entitlements. The writ petitioner did not accept the said direction of her superior officers and being aggrieved by the impugned order dated 23.05.2014, the appellate order dated 04.06.2015, the order dated 08.09.2016 refusing reinstatement as well as the order dated 16.01.2017 whereby she was directed to sign the necessary documents and papers for payment of her entitlement and filed a writ petition praying inter-alia, for quashing of the said order. The writ petition was allowed. This order is under challenge.

8. The learned single judge considered the materials on record as well as the submissions made on behalf of the parties, and thereafter, following the decision in *Managing Director, ECIL, Hyderabad & ors v. B. Karunaka & ors*¹ directed reinstatement with all due benefits, including back wages to which she is entitled to in accordance with law, had she not been issued with the said impugned order by which she was compulsorily retired from service. The learned single judge has considered the affidavits filed by the parties, wherefrom it would appear that the reasons for the writ petitioner's inability to join service due to ill health and other factors were duly communicated to the Assam Rifles and the said letters explaining and disclosing the reasons have been duly received by the Assam Rifles. In

¹ (1993) 4 SCC 727



fact, the employer has enquired from the writ petitioner, as to when she would be fit to join since she had been continuously absent since 15.11.2010. The writ petitioner has also specifically alleged in the writ petition that the inquiry report was not furnished to her and as a result whereof, she was unable to file any response to such report and the imposition of penalty, was in clear violation of the principles of natural justice.

9. In response to such allegation, the respondent authorities in their affidavit-in-opposition have denied the averment and stated that all possible opportunity was afforded to the writ petitioner to defend herself and she was informed of the initiation of the disciplinary proceedings against her. The writ petitioner was allowed to file her show cause to nominate a serving or retired government employee to assist her in the proceedings, but she chose not to nominate anyone in this respect, but has personally participated in the whole proceedings, her signature being attested to the relevant papers throughout the whole process. However, the respondent authority has not made any categorical statement that after the conclusion of the inquiry, upon the inquiry officer having prepared and filed his report to the authority concerned, a copy of such report was given to the writ petitioner.



10. The consequence of not serving the inquiry report has been dealt with elaborately in *Managing Director, ECIL* (supra) and in fact, the learned single judge in deciding the matter in favour of the writ petitioner has relied upon paragraphs 25, 27 and 29, which are reproduced below:

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the



guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

11. There cannot be any doubt that a major punishment was imposed upon the writ petitioner without supplying her with any inquiry report. This is a clear act of violation of the principles of natural justice. *Managing Director, ECIL* (supra), is a clear authority for the proposition that the enquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee, so that he can make an adequate representation explaining his/her stand failing which it shall be considered to be breach of natural justice. This principle is laid down in *Managing Director, ECIL* (supra) in paragraph 29, which is reproduced below:

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer’s report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee’s right to defend himself against the charges levelled against him.”

(emphasis supplied)

12. In the instant case, admittedly, the enquiry officer is other than the disciplinary authority. Accordingly, the ratio in *Managing Director, ECIL* (supra), squarely applies to this case.



13. We have already referred to paragraph 29 above, however, for the purpose of better understanding, paragraphs 30(iv) and (v) are also reproduced below:

“30. (iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in *Mohd. Ramzan case* should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all the



sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.” (emphasis supplied)

14. The non-supply of an enquiry report, the findings and other materials relied upon by the enquiry officer are required to be disclosed to the writ petitioner in order to enable him to explain the circumstances which formed the basis and foundation of the enquiry report and non-supply of such materials and enquiry report are clear violation of the principles of natural justice. Whether the writ petitioner has absented wilfully, or disobeyed the direction of his superior must be well reflected in the enquiry report and the writ petitioner is entitled to know the reasons for any adverse observation made by the enquiry officer in the report in this regard. An unauthorised absence, does not always mean that it was done wilfully.



15. In *M.V. Bijlani v. Union of India and others*², the scope of judicial review in the context of judicial disciplinary proceedings, has been explained in paragraph 25 in the following words:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

16. Similarly, in *B.C. Chaturvedi v. Union of India and others*³, a three-judge Bench decision of the Hon’ble Supreme Court had noticed the scope of judicial review with regard to the disciplinary proceedings and observed as follows:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a

² (2006) 5 SCC 88

³ (1995) 6 SCC 749



public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusions or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature or punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

17. It is trite law that before forming any opinion with regard to the punishment which is to be imposed on the writ petitioner, the delinquent has to be given an opportunity to submit a reply or representation on the



enquiry report offering adequate reasons to show that the findings are erroneous or perverse. The impugned decision of removal was arrived at without there being any consideration of the comments of the writ petitioner on the enquiry report. We have already noted the various grievances that the writ petitioner raised in the enquiry proceedings, which have not been denied. The writ petitioner in her representation to the enquiry report is entitled to point out any defect with the procedure, a defect of substantial nature in the appreciation of evidence and any misleading evidence on both oral or documentary. In her representation, any input and explanation given by the delinquent are also to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules.

18. We are, thus of the view that there has been a violation of the principles of natural justice at the level of the disciplinary authority when an opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining her comments on the enquiry report.

19. In this regard, we may also refer to a fairly recent decision of the Hon'ble Supreme Court in the *State of U.P. v. Ram Prakash Singh*⁴,

⁴ (2025) SCC OnLine SC 891



thereafter an extensive consideration of all the decisions including the decision where *B. Karunakar* (Supra) was discussed, the Hon'ble Supreme Court has succinctly summarised the principles that emanate from *B. Karunakar* (Supra) and other decisions in the following paragraphs:

“43. Interpretation of *B. Karunakar* (supra), particularly bearing in mind the shifting trend towards the ‘prejudice’ principle and the insistence on the pleading and proof of ‘prejudice’, may have unintended consequences for delinquent employees which have not been visualized hitherto, therefore, having the potential of rendering the law laid down by the Constitution Bench a dead letter.

44. To recapitulate, *B. Karunakar* (supra) has unequivocally held that non-furnishing of the enquiry report would deprive the employee of the opportunity and disable him to demonstrate before the disciplinary authority the perversity in such report by filing a representation. The object that is sought to be achieved by furnishing of the enquiry report is this. If the report were furnished, the delinquent employee could persuade the disciplinary authority to hold that either he is innocent and/or that he does not deserve any punishment, or may be let off with a minor punishment. Providing a delinquent employee with an opportunity to respond to the enquiry report is, thus, a crucial procedural step that must precede disciplinary action. Failure to do so, such as imposing punishment without furnishing the report, could severely handicap the employee’s ability to effectively question or challenge the decision in an appeal/appropriate proceedings, as he would be unaware of the materials against him. In such a case, at best, nothing more than a plain and simple plea can be urged that non-furnishing of the enquiry report has deprived him of reasonable opportunity to counter the findings of guilt without, however, he being able to demonstrate prejudice. It is axiomatic that without reading the enquiry report, there cannot be an effective and meaningful challenge to the findings contained therein.

45. That apart, the right to receive the report of enquiry being available prior to a final decision being taken in the disciplinary



proceedings cannot be postponed by any arbitrary act of the employer in not following the law, which can be or should be validated by the court, and what was intended to be a pre-decisional opportunity cannot be made to partake the character of a post-decisional opportunity.” (emphasis supplied)

20. The decision of the disciplinary authority stands vitiated by reason of the fact that she is unaware of the reasons for the enquiry officer to come to a finding against her by not accepting the explanation she had offered for not being able to join the duty as the enquiry report was not admittedly supplied to her. She is entitled in law to know the reasons forming the basis of the final decision. In our view, it is a clear violation of the principles of natural justice.

21. The learned counsel for the appellants has relied upon the decision of the Hon'ble Supreme Court in *State Bank of India & ors v. Bidyut Kumar Mitra & ors*⁵ to argue that the writ petitioner would be required to demonstrate prejudice caused to her in not supplying the inquiry report. In our respectful reading of the said decision, it appears that the issue presently under consideration is different and the ratio of the said decision would not be applicable in the present case. In *State Bank of India* (supra), it would appear that the respondent did not care to raise the issue of non-supply of the documents during the entire course of the enquiry

⁵ (2011) 2 SCC 316



proceedings, and also in the written brief containing his defence arguments, he has not raised such issue. The respondent also did not comply with the procedural requirement and hence, it was held that he cannot now complain that there is a breach of the procedural requirements. In such circumstances, it was held that the respondent failed to prove any prejudice he had suffered that has resulted in miscarriage of justice. It was further found that the respondent did not even care to submit the list of documents within the stipulated period. Further, the respondent did not even care to specify the relevance of the documents sought to be requisitioned. The respondent was merely trying to make capital out of his own lapse in not submitting the list of documents in time and also not stating the relevance of the documents required to be produced. It was on such a conspectus of fact, the Hon'ble Supreme Court set aside the order of the Division Bench.

22. Moreover, unlike the decisions where it was held that non-supply of the report may not result in the disciplinary proceedings being declared null and void, in the instant case, it is on record that she was never allowed to be represented by any of her friends or colleagues who are familiar with the procedure and formalities of the inquiry, and she was never supplied with the documents relied upon by the inquiry officer nor was she ever



allowed to inspect such documents even though she was given only a list of the documents relied upon by the authorities in the said inquiry. The writ petitioner was never given the opportunity to cross-examine the prosecution's witnesses.

23. In view thereof, we accept and conclude that there is a violation of the principles of natural justice and the ratio in *Managing Director, ECIL* (supra) applies in the instant case.

24. Accordingly, we direct the appellants to supply a copy of the inquiry report upon the writ petitioner within a fortnight from date, to which the writ petitioner, shall make a detailed representation within four weeks thereafter.

25. The disciplinary authority is directed to conclude the proceedings preferably within a period of three months from date of submission of the representation by the writ petitioner. The writ petitioner, shall be reinstated only for the purpose of completing the disciplinary proceeding and she shall be entitled to the subsistence allowance as per the extant rules from the date of the order of dismissal i.e., on or from 23.05.2014, till the proceedings are concluded. All the arrears towards the subsistence allowance, shall be paid within a period of four weeks from the date, and that shall be a condition precedent before any further proceeding can be



initiated for conclusion of the disciplinary proceeding. In the event the subsistence allowance is not paid within the aforesaid period, the impugned order shall revive.

26. The reinstatement to be made, as a result of setting aside the enquiry for failing to furnish the report, is treated as a reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report. The said direction is in accordance with the decision in *Managing Director, ECIL* (supra) as discussed in paragraph 31 of the judgment.

27. The impugned order stands modified to the aforesaid extent.

28. Accordingly, the appeal and the miscellaneous application are disposed of, however, without costs.

(H.S. Thangkhiew)
Judge

(Soumen Sen)
Chief Justice